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DEPARTMENT OF DEFENSE

FINANCIAL MANAGEMENT REGULATION

VOLUME 7B: "MILITARY PAY POLICY - RETIRED PAY"

UNDER SECRETARY OF DEFENSE (COMPTROLLER)

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VOLUME 7B, CHAPTER 1: "INITIAL ENTITLEMENTS – RETIREMENTS"

SUMMARY OF MAJOR CHANGES

Changes are identified in this table and also denoted by blue font.

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

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

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

The previous version dated December 2024 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated chapter and formatting to comply with administrative instructions.	Revision
3.8.3	Expanded title into a sentence to comply with formatting administrative instructions.	Revision
8.1	Updated to provide for elimination of the 75 percent cap on additional retired pay for extraordinary heroism for members of the Army, Air Force, and Space Force who served during the Vietnam Era.	Revision
References	Updated references.	Revision

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CHAPTER 1

INITIAL ENTITLEMENTS – RETIREMENTS

1.0 GENERAL

1.1 Purpose

1.1.1. This chapter provides information for the specific qualifications and entitlement for military retired pay, describes the basic types of retirement (regular, non-regular, and disability), discusses voluntary and involuntary retirements, and explains basic qualifications for the differing military retired pay programs (Final Pay, High-3, reduced retirement (i.e., REDUX), Blended Retirement System (BRS), and Temporary Early Retirement Act (TERA)).

1.1.2. Additionally, this chapter provides guidance for all involuntary (mandatory) retirements, and voluntary retirements for all officers, warrant officers, and Army, Air Force, and Space Force enlisted members. Chapter 2 of this volume discusses the processes and procedures for voluntarily transferring enlisted members of the Navy and Marine Corps to the Fleet Reserve or Fleet Marine Corps Reserve.

1.2 Authoritative Guidance

The pay policies and requirements established by the DoD in this chapter are derived primarily from and prepared in accordance with, the United States Code (U.S.C.), including Titles 5, 10, 14, 37 and 38. Due to the subject matter in the chapter, the list of authoritative sources is extensive. The specific statutes, regulations, and other applicable guidance that govern each individual section are listed in a reference section at the end of the chapter.

2.0 MILITARY RETIRED PAY – INITIAL ENTITLEMENTS

2.1 Overview

Officers and enlisted members of the military may be retired for voluntary or involuntary reasons. Military retired pay is divided into three general categories: retired pay for Regular service, retired pay for non-Regular (Reserve/Guard) service, and retired pay for physical disability. With the exception of retirement for physical disability and certain temporary authorities for early retirement, a member must complete the requisite years of service (generally at least 20 years of service) in order to be eligible for retired/retainer pay. See section 3.0 for determining years of service for retired/retainer pay eligibility.

2.1.1. A warrant officer or an enlisted member of the Army, Air Force, or Space Force may be voluntarily retired after completion of 20 years of creditable service. Following such a voluntary retirement, an enlisted member of the Army, Air Force or Space Force becomes a member of the Retired Reserve. See Chapter 2 for rules on an enlisted member of the Navy or Marine Corps.

2.1.2. A commissioned officer may be voluntarily retired after completion of 20 years of active service, of which at least 10 years is active commissioned service.

2.1.3. Any members who continue on active duty after completion of 20 years of service may be retired for voluntary or involuntary reasons.

2.1.4. Members who incur a disability while serving on active duty or while called to active duty for training for 30 days or less may be retired.

2.1.5. Various chapters in Volume 7B provide specific details on eligibility, computation, and payment for each type of retirement.

2.2 Retired Pay Base

The retired pay base is usually determined by the date the member first entered military service. The specific method for calculating the retired pay base may differ for certain involuntary retirements, but it is always calculated using one of the following two methods defined in subparagraphs 2.2.1.1 and 2.2.1.2. Details are in Chapter 3.

2.2.1. The Date of Initial Entry into Military Service (DIEMS) determines whether the retired pay base is the monthly basic pay of the member just before retirement or an average of the highest 36 months of basic pay applicable during the member's career.

2.2.1.1. Final Basic Pay. For members who first entered military service before September 8, 1980, the retired pay base is generally the final basic monthly pay that the member received upon the date of retirement.

2.2.1.2. High-Three Average (High 36 Month Average). For members who entered the military service on or after September 8, 1980, the retired pay base is generally the average of the highest three years (36 months) of monthly basic pay to which the member received for any 36 months of active service whether those months are consecutive or not.

2.2.2. For a member entitled to retired pay for non-Regular (Reserve/Guard) service, the final basic pay or the high-36 average is usually determined using the rates to which the member was actually paid or to which the member would have been entitled if serving on active duty immediately before the date when retired pay is to begin. However, if a person opted to be discharged from the Service upon meeting service requirements for eligibility for retired pay but before meeting the age requirements for eligibility for retired pay, that person is a former member at the age of eligibility to receive retired pay, and, if that person entered the military service on or after September 8, 1980, the applicable rates are those in effect at the time of discharge.

2.3 Retired Pay Multiplier

There are three methods for computing a retired pay multiplier, depending on the applicable retirement system. For each of these methods, a member retired with a physical disability may alternatively have their retired pay multiplier calculated using their percentage of

disability, up to a maximum of 75 percent. The years of service for computing retired pay for Regular retirement are generally the total of years of active service. For non-Regular (Reserve/Guard) members, the years of service are the total of accumulated drill points combined with one point for each day of active duty divided by 360. See section 4.0 for determining years of service creditable for computing retired pay.

2.3.1. For members covered by Final Pay or High-3 legacy retirement plans, the retired pay multiplier is either 2.5 percent multiplied by the years of service creditable for computing retired pay or the percentage of disability awarded by the military service at retirement.

2.3.2. For members covered by the BRS, the percentage multiplier is either 2.0 percent multiplied by the years of service creditable for computing retired pay or the percentage of disability awarded by the military service at retirement.

2.3.3. Regular members who have a DIEMS date on or after August 1, 1986, but before January 1, 2018, were allowed the option to elect a reduced retirement (i.e., REDUX) accompanied by the Career Status Bonus (CSB). Except for disability retirees, the retired pay multiplier is the same as computed in subparagraph 2.3.1, except that it is reduced by one percentage point for each year the member retires short of completing 30 years of service. Section 631 of the National Defense Authorization Act Fiscal Year 2016, Public Law 114-92, amended 37 U.S.C. § 354 to discontinue authorization of any new CSB agreements after December 31, 2017. Note: The CSB reduction factor does not apply to disability retirees, notwithstanding the changes made by Public Law 114–92 (enacted on November 25, 2015 and effective on January 1, 2018) to ***10 U.S.C. § 1401***.

2.3.4. A member who retires for disability may choose a multiplier based on years of service, in accordance with subparagraphs 2.3.1, 2.3.2, or 2.3.3, as applicable, or based on the disability percentage awarded by the Service. However, if the member chooses the Service disability percentage, then the percentage is limited to no more than 75 percent.

2.4 Retired Pay Formulae

If a member entitled to retired or retainer pay would otherwise be entitled to retired pay computed under more than one formula, then the member is entitled to be paid under the applicable formula that is most favorable to the member. The retired pay formulae are more fully covered in Chapter 3. The formulae are as follows:

2.4.1. For Regular and non-Regular (Reserve/Guard) members covered by the legacy retirement pay plan, monthly retired pay is equal to the retired pay base multiplied by 2.5 percent multiplied by years of service. For Regular and non-Regular (Reserve/Guard) members covered by the BRS, monthly retired pay is equal to the retired pay base multiplied by 2.0 percent multiplied by years of service.

2.4.2. For disability retirement, the member may elect retired pay computed under subparagraph 2.4.1, or monthly pay equal to the retired pay base multiplied by military disability percentage, not to exceed 75 percent.

2.4.3. For members retiring for Regular service that elected the REDUX retirement and received the CSB, retired pay is as computed in subparagraph 2.4.1, except the multiplier is reduced by one percentage point for each year the member retires short of completing 30 years of service. Note: Non-regular members who are retired for disability become entitled to immediate retired pay for disability. Once the retired pay for disability commences under ***10 U.S.C., Chapter 61***, the member's pay may not be recomputed at eligibility age (usually age 60) under ***10 U.S.C., Chapter 1223***. Retired pay under 10 U.S.C., Chapter 1223 may only be paid to a member who "is not entitled under any other provision of law, to retired pay from an armed force or retainer pay as a member of the Fleet Reserve or the Fleet Marine Corps Reserve."

2.5 Temporary Early Retirement Authority (TERA)

2.5.1. TERA provides the Secretary of Defense a temporary force management tool with which to affect the drawdown of military forces and yet maintain an adequate and effective well-trained military force. TERA provides the authority for voluntary retirement of members on active duty with at least 15 years, but less than 20 years of creditable service. An eligible member of the Armed Forces may apply for early retirement under the program and receive an annuity equivalent to 2.5 percent of the retired pay base for each year of service completed and a deduction of 1 percent for each year short of 20 years of service. The request is subject to the approval of the Secretary concerned. Drawdown periods are referenced in subparagraph 3.1.2. See Chapter 3 for computation of TERA payment.

2.5.2. A member of the Armed Forces approved for early retirement must:

2.5.2.1. Be currently serving on active duty;

2.5.2.2. Complete 15 or more years of active service upon the effective date of retirement;

2.5.2.3. Not be under evaluation for disability retirement under ***10 U.S.C., Chapter 61***; and

2.5.2.4. Meet grade, skill, years of service, and other eligibility criteria as established by the Secretary of the Military Department concerned.

2.6 Survivor Benefit Plan (SBP)

Retiring members may participate in the SBP program. The SBP program pays a lifetime annuity to the designated survivor of 55 percent of a base amount elected by the member not to exceed full retired pay. Upon receiving notice of having completed sufficient service to qualify for retirement, a non-Regular (Reserve/Guard) member (except for not having attained the requisite age) may also participate in the SBP program. Detailed information regarding the SBP program begins in Chapter 42.

2.7 Cost of Living Adjustments (COLA)

Both retired pay and survivor annuities are adjusted annually by the change in the Consumer Price Index. See Chapter 8 for detailed information on COLAs.

3.0 SERVICE CREDITABLE FOR RETIREMENT ELIGIBILITY

3.1 Creditable Service and Service Reduction for Retirement Eligibility

3.1.1. Computation of Creditable Service for Determining Retirement Eligibility. A computation of creditable service for determining retirement eligibility may be required at any time during a member's military career. Generally, a member must complete at least 20 years of creditable service in order to qualify for retired or retainer pay. Upon completion of 20 years of creditable service, a member may request to be transferred to a retired or retainer status.

3.1.1.1. An enlisted member of the Army, Air Force, or Space Force who completes 20 years of creditable active service may request to be retired.

3.1.1.2. An enlisted member of the Navy or the Marine Corps who completes 20 years of creditable active service may request transfer to the Fleet Reserve or Fleet Marine Corps Reserve. See Chapter 2 for details regarding creditable service for transfers to the Fleet Reserve and Fleet Marine Corps Reserve.

3.1.1.3. An enlisted member of the Regular Army, Air Force, Space Force, Navy, or Marine Corps who completes 30 years of creditable active service or an enlisted member in the Fleet Reserve or Fleet Marine Corps Reserve upon completion of a total of 30 years of combined active and Fleet Reserve service will, upon request, be retired.

3.1.1.4. A Regular or Reserve commissioned officer may voluntarily be retired after completion of 20 years of active service, at least 10 years of which is active commissioned service.

3.1.1.5. A non-Regular member who completes 20 years of creditable qualifying service, but has not yet attained the eligibility age applicable for retired pay, may request transfer to the inactive status list.

3.1.1.6. Members who incur a qualifying disability while serving on active duty, while called to active duty for training for 30 days or less, or while performing inactive duty training may be retired for disability, at which time a service computation is required.

3.1.2. Reduction of the 20-Year Creditable Service Requirement. Under TERA, the Secretary of the Military Department concerned may reduce the 20 years of creditable service requirement to as few as 15 years for retirements during the periods of:

3.1.2.1. December 31, 2011 through December 31, 2025, for Regular retirements only;

3.1.2.2. October 23, 1992 through September 1, 2002, for Regular retirements; and

3.1.2.3. October 23, 1992 through December 31, 2001, for non-Regular retirements.

3.1.3. Reduction of the 10-Year Active Commissioned Service Requirement. The Secretary of the Military Department concerned may also reduce the 10-year active commissioned service requirement to not less than 8 years for retirements during the following periods:

3.1.3.1. January 7, 2011 through September 30, 2018;

3.1.3.2. January 6, 2006 through December 31, 2008; and

3.1.3.3. October 1, 1990 through December 31, 2001.

3.1.4. Active Duty Beyond 20 Years of Service. A member who continues on active duty after completion of 20 years of service may be retired for voluntary or involuntary reasons. Involuntary reasons include court martial sentence, poor performance, failure to qualify for promotion, high year tenure, and age.

3.1.5. Service Creditable for Retirement Eligibility. Service creditable for the purpose of determining retirement eligibility varies with each type of retirement. For retirement types and the specific service creditable for each type, see paragraphs 3.2 through 3.8. See paragraph 3.9 for service that is not creditable.

3.2 Service Creditable for Regular Voluntary Retirement - Enlisted Members (Table 1-1)

The following is service creditable for Regular voluntary retirement for enlisted members:

3.2.1. All active service in the Uniformed Services; and

3.2.2. Service as a cadet or midshipman at Service academy.

3.3 Service Creditable for Voluntary Retirement - Regular and Reserve Commissioned Officers (Table 1-1)

The following constitutes service creditable for voluntary retirement for Regular and Reserve commissioned officers:

3.3.1. Active service in the Uniformed Services;

3.3.2. All service performed by an officer of the Regular Army, Regular Air Force, or Regular Space Force in the Medical Corps, under a contract to serve full-time and to take and change station as ordered, as:

3.3.2.1. A contract surgeon;

3.3.2.2. An acting assistant surgeon; or

3.3.2.3. A contract physician; and

3.3.3. All full-time service performed by an officer of the Regular Army, Regular Air Force, or Regular Space Force in the Dental Corps as:

3.3.3.1. A contract dental surgeon, or

3.3.3.2. An acting dental surgeon.

3.4 Service Creditable for Voluntary or Mandatory Retirement - Warrant Officers

The following constitutes service creditable for voluntary or mandatory retirement for warrant officers:

3.4.1. Active service in the Uniformed Services, except that for mandatory retirement at 30 years of service of an Army Warrant Officer, years of service includes only years of active service as a Warrant Officer; and

3.4.2. All service as:

3.4.2.1. A contract surgeon;

3.4.2.2. A Reserve nurse;

3.4.2.3. A contract dental surgeon;

3.4.2.4. An acting dental surgeon; and

3.4.2.5. A veterinarian in the quartermaster department, cavalry, or field artillery.

3.5 Service Creditable for Mandatory Retirement - Regular Commissioned Officers, Army, Air Force, and Space Force (Table 1-2)

The service creditable for mandatory retirement for Regular commissioned officers of the Army, Air Force, and Space Force includes years of service credited at the time of original appointment in the Regular Army, Regular Air Force, and Regular Space Force. Compute service creditable as stated in subparagraphs 3.5.1 through 3.5.7 to determine eligibility for promotion, except service in subparagraph 3.9.3, plus all years of active commissioned service in the Regular Army, Regular Air Force, and Regular Space Force after that appointment, or the applicable years of service.

3.5.1. A Reserve judge advocate appointed in the Regular Army is credited service after becoming 21 years of age, after December 7, 1941, and before the date of that appointment, or the number of the days, months and years by which the member's age at the time of appointment exceeds 25 years, whichever is greater, plus years of active commissioned service in the Regular Army or Regular Air Force after that appointment.

3.5.2. An officer appointed in the Regular Army, except the Army Nurse Corps or Army Medical Specialist Corps before December 31, 1947, other than an officer covered by subparagraph 3.5.1, or appointed in the Regular Army under the Act of December 28, 1945, is credited the sum of:

3.5.2.1. Years of active commissioned service in the Regular Army after that appointment, and

3.5.2.2. Years of active commissioned service in the Army after becoming 21 years of age and after December 7, 1941, under any earlier appointment.

3.5.3. An officer appointed in the Regular Army, except the Army Nurse Corps or Army Medical Specialist Corps after December 31, 1947, other than an officer appointed in the Women's Army Corps, Regular Army, under section 108 of the Women's Armed Services Integration Act of 1948, is credited the sum of:

3.5.3.1. Years of active commissioned service in the Regular Army after that appointment, and

3.5.3.2. Years of active commissioned service in the Army after becoming 21 years of age and after December 31, 1947, under any earlier appointment.

3.5.4. An officer of the Regular Air Force appointed in the Regular Army or Regular Air Force after December 31, 1947, under section 506 of the Officer Personnel Act of 1947, is credited the sum of:

3.5.4.1. The years of active commissioned service in the Regular Army or Regular Air Force after that appointment; and

3.5.4.2. The years of active commissioned service in the Armed Forces after becoming 21 years of age and after December 6, 1941, under any earlier appointment.

3.5.5. An officer of the Air Force who was appointed in the Regular Army or Regular Air Force after December 31, 1947, other than an officer covered by subparagraphs 3.5.4 or 3.5.6, is credited the sum of:

3.5.5.1. The years of active commissioned service in the Regular Army or Regular Air Force after that appointment; and

3.5.5.2. The years of active commissioned service in the Air Force after becoming 21 years of age and after December 31, 1947, under any earlier appointment.

3.5.6. An officer of the Regular Air Force who was appointed in the Regular Air Force after July 19, 1956, other than an officer covered by subparagraph 3.5.4, or who is designated as a medical or dental officer, is credited the sum of:

3.5.6.1. The years of active commissioned service in the Regular Air Force after that appointment;

3.5.6.2. The years of active commissioned service in the Armed Forces after becoming 21 years of age and before appointment; and

3.5.6.3. The years credited for the purpose of determining grade, position on a promotion list, seniority, and eligibility for promotion under one of the following conditions:

3.5.6.3.1. Three years, if appointed in the Regular Air Force with a view to designation as a medical service officer, and if holding a degree of Doctor of Philosophy or comparable degree in science allied to medicine;

3.5.6.3.2. Not more than 8 years, if one of not more than 100 persons in any calendar year who are appointed from civil life or from Reserves of the Air Force who have qualifications not otherwise available from members of the Air Force on active duty; or

3.5.6.3.3. Not more than 2 years, if appointed while on active duty in the Air Force.

3.5.7. An officer of the Army, Air Force, or Space Force under the Defense Officer Personnel Management Act (DOPMA) is credited with the sum of:

3.5.7.1. The years of active service; and

3.5.7.2. The years of service, other than active service in subparagraph 3.5.7.1, with which the member was entitled to be credited on May 31, 1958, in computing basic pay.

3.5.8. The following rules apply to a regular commissioned officer who is to be retired or separated due to age under ***10 U.S.C. § 1251***:

3.5.8.1. If the officer has fewer than 20 years of creditable service, the officer shall be separated.

3.5.8.2. If the officer has at least 6 but fewer than 20 years of creditable service, the officer is entitled to separation pay computed under ***10 U.S.C. § 1174(d)(1)***.

3.5.8.3. Notwithstanding subparagraphs 3.5.8.1 and 3.5.8.2, a regular commissioned officer who was added to the retired list before January 1, 2021, shall be retired with retired pay computed under 10 U.S.C. § 1401.

3.6 Service Creditable for Mandatory Retirement - Regular Officers, Navy and Marine Corps (Table 1-2)

The following constitutes service creditable for mandatory retirement of Regular officers of the Navy and Marine Corps:

3.6.1. The total commissioned service of an officer on the active list in the line of the Navy or of the Marine Corps is computed from June 30 of the fiscal year in which the officer accepted that appointment. The computation applies when the officer has served continuously on the active list since appointment in the grade of ensign or second lieutenant, either upon graduation from the Naval Academy or under ***10 U.S.C. § 2106*** or ***10 U.S.C. § 2107***.

3.6.2. Every other officer on the active list in the line of the Navy or Marine Corps is considered to have the same service as in subparagraph 3.6.1, who:

3.6.2.1. Has not lost numbers or precedence; and

3.6.2.2. Is, or at any time has been, junior to the other officer for the purposes of eligibility for promotion and selection for promotion during the other officer's latest period of continuous service on the active list.

3.6.3. The total commissioned service of each officer on the active list of the Navy in the Supply Corps or the Civil Engineer Corps who originally was appointed as a Regular or as a Reserve in the grade of ensign in the line, or any staff corps, or in the grade of lieutenant (junior grade) in the Civil Engineer Corps, and who has served continuously on active duty since that appointment, is computed from June 30 of the fiscal year in which the officer accepted that appointment, beginning August 7, 1947.

3.6.4. The total commissioned service of each officer originally appointed in the grade of lieutenant (junior grade) or ensign in any staff corps of the Navy, except the Supply Corps and the Civil Engineer Corps, who since that appointment has served continuously on the active list of the Navy, is computed from June 30 of the fiscal year in which the officer accepted that appointment. This provision does not apply, however, to officers appointed under the Act of April 18, 1946.

3.6.5. Every other commissioned officer on the active list of the Navy in any staff corps is considered to have the same total commissioned service as the officer in the same corps described in subparagraphs 3.6.3 and 3.6.4, having the maximum total commissioned service who:

3.6.5.1. Has not lost numbers or precedence; and

3.6.5.2. Is, or at any time has been, junior to the other officer for the purposes of eligibility for promotion and selection for promotion during that other officer's latest period of continuous service on the active list.

3.6.6. Notwithstanding the provisions of subparagraph 3.6.5, officers on the active list of the Navy in the Medical Service Corps, appointed under the Act of April 18, 1946, are considered to have total commissioned service equivalent to that of their running mates.

3.6.7. Officers on the active list of the Navy in the Nurse Corps are credited with:

3.6.7.1. Active service in the Nurse Corps and the Nurse Corps Reserve; and

3.6.7.2. Active service in the Nurse Corps and the Nurse Corps Reserve, which was abolished by the Army-Navy Nurses Act of 1947.

3.6.8. An officer of the Navy or Marine Corps under the DOPMA is credited with:

3.6.8.1. The years of active service; and

3.6.8.2. The years of service, other than the service included in subparagraph 3.6.8.1, with which member was entitled to be credited on May 31, 1958, in computing basic pay.

3.6.9. For regular commissioned officers to be retired or separated due to age under 10 U.S.C. § 1251, apply the rules set forth in subparagraph 3.5.8.

3.7 Service Creditable for Disability Retirement (Table 1-3)

3.7.1. Members who are unfit to perform their duties because of a disability incurred on active duty where the disability is at least 30 percent may be retired for disability. No minimum amount of creditable service is required.

3.7.2. Members who are unfit to perform their duties because of a disability incurred on active duty where the disability is less than 30 percent may be retired for disability but only if they have 20 years of service computed under ***10 U.S.C. § 1208***, as set forth in subparagraphs 3.7.3 and 3.7.4.

3.7.3. In computing those years of service for this purpose, a member of a Regular Component of the Armed Forces is credited with the greater of:

3.7.3.1. All service the member is considered to have for the purpose of separation, discharge, or retirement for length-of-service, or

3.7.3.2. The sum of active service as a member of the Armed Forces as a nurse, Reserve nurse after February 2, 1901, contract surgeon, contract dental surgeon, or acting dental surgeon;

3.7.3.3. Active service as a commissioned officer of the National Oceanic and Atmospheric Administration (NOAA), or the Public Health Service (PHS). This includes active service as a member of the Environmental Science Services Administration and of the Coast and Geodetic Survey, the predecessor organizations to NOAA and PHS; and

3.7.3.4. Active service while participating in exercises or performing active duty training and drills in the National Guard, under ***32 U.S.C. §§ 502***, ***503***, ***504***, and ***505***.

3.7.4. A member who is not a member of a Regular Component of the Armed Forces is credited with the number of years of service that would count if computing years of service under ***10 U.S.C. § 12733***, dividing the sum of the following by 360:

3.7.4.1. All days of active service;

3.7.4.2. All days of full-time service while performing annual training duty or attending prescribed periods of instruction at a school designated as a military service school by law or by the Secretary concerned; and

3.7.4.3. One day for each point credited under ***10 U.S.C. § 12732(a)(1)(B)-(F)***, but not more than:

3.7.4.3.1. 130 days for any one year of service that includes October 30, 2007, and in any subsequent year of service;

3.7.4.3.2. 90 days in any one year of service between October 30, 2000 and October 29, 2007;

3.7.4.3.3. 75 days in any one year of service between September 23, 1996 and October 29, 2000; or

3.7.4.3.4. 60 days in any one year of service before the year of service that includes September 23, 1996.

Note: The credit includes points at the rate of 15 per year for membership in a Reserve Component of an Armed Force, in the Army or the Air Force without component, or service (except in a regular component) before July 1, 1949 in the categories provided in 10 U.S.C. § 12732(a)(1).

3.7.4.4. One day for each point credited under 10 U.S.C. § 12732(a)(2)(E) related to funeral honors.

3.7.5. The service is responsible for determining the creditable service for a member who is retired for disability.

3.8 Service Creditable for Age and Service Retirement - Non-Regular Member (Table 1-4)

3.8.1. A member or former member of the Reserve Component of an Armed Force, including the National Guard is entitled to retired pay computed under ***10 U.S.C. § 12739*** (See Chapter 3, Table 3-1, Rule 13) for non-Regular service upon application if he or she:

3.8.1.1. Has attained the eligibility age applicable under subparagraph 3.8.6;

3.8.1.2. Has performed at least 20 years of service (subject to subparagraph 3.8.5), as set forth in subparagraph 3.8.2;

3.8.1.3. If completing 20 years of service before April 25, 2005, performed the last 6 years of qualifying service while a member of any category named in 10 U.S.C. § 12732(a)(1) (but not while a member of a Regular Component, the Fleet Reserve, or the Fleet Marine Corps Reserve). If completing 20 years of service before October 5, 1994, the number of years of such qualifying service must be 8 years; and

3.8.1.4. Is not entitled under any other provision of law to retired pay from the Armed Forces or retainer pay as a member of the Fleet Reserve or the Fleet Marine Corps Reserve, except as provided in Chapter 7, section 1.0.

3.8.2. Creditable service to meet the 20 years requirement includes:

3.8.2.1. Service performed in the Uniformed Services;

3.8.2.2. Years of service before July 1, 1949, pursuant to 10 U.S.C. § 12732; or

3.8.2.3. Each 1-year period after July 1, 1949, in which the member earned at least 50 points as calculated under 10 U.S.C. § 12732(a)(2).

3.8.2.4. For the purpose of subparagraph 3.8.2.3 all service in the National Guard is treated as if it were service in a Reserve Component if the member was later appointed in the U.S. Army National Guard or U.S. Air National Guard, or as a Reserve of the Army, Air Force, or Space Force and served continuously in the National Guard from date of Federal recognition to date of that appointment.

* 3.8.3. The Secretary concerned will notify each member who has completed the years of service required for eligibility for retired pay. A Notice of Eligibility will be sent to the member concerned within one year after the person completes that service.

3.8.3.1. A member who has been notified under ***10 U.S.C. § 12731(d)*** that the years of service requirement has been met for eligibility for retired pay may not have that eligibility denied or revoked on the basis of any error, miscalculation, misinformation, or administrative determination of years of service performed, unless it resulted directly from fraud or misrepresentation of the member.

3.8.3.2. The notification of eligibility, which is based on the member's completion of the service requirement, conforms to applicable Military Department regulations. A nonconforming written notice, administratively issued, which shows completion of service requirements of eligibility for retired pay, may not result in the denial of retired pay unless evidence shows that the member caused the service record to be altered or confused.

3.8.3.3. The number of years of creditable service upon which retired pay is computed may be adjusted to correct any error, miscalculation, misinformation, or administrative determination. When a correction is made, the retiree is entitled to retired pay in accordance with the number of years of creditable service, as corrected, from the date the retiree is granted retired pay.

3.8.3.4. Notwithstanding subparagraph 3.8.3.3, the granting of retired pay to a retiree under 10 U.S.C., Chapter 1223 is conclusive as to that retiree's entitlement to such pay only if the payment of retired pay began after October 14, 1966. A notification that a member has completed the years of service required for eligibility for retired pay under 10 U.S.C., Chapter 1223 is conclusive as to that member's subsequent entitlement to such pay only if the notification is made after October 14, 1966.

3.8.4. A member who has met age and service requirements for retired pay, but is retained under ***10 U.S.C. § 12308***, with member's consent, may be credited with that service for all purposes. A member, however, who elects to receive retired pay under 10 U.S.C. § 12731, may not be retained simultaneously on active duty or in active service under 10 U.S.C. § 12308.

3.8.5. A temporary special retirement qualification authority, ***10 U.S.C. § 12731a***, authorized the Secretary of the Military Department concerned to treat a member as having met the 20 years of service requirement if the member completed at least 15 years of service and requested transfer to the Retired Reserve, during the period beginning on October 23, 1992, and ending on December 31, 2001.

3.8.6. Subject to subparagraph 3.8.6.1, the eligibility age for a non-regular retirement for age and service is 60 years of age.

3.8.6.1. After January 28, 2008, the eligibility age for purposes of subparagraph 3.8.6 will be reduced, subject to subparagraph 3.8.6.5, below 60 years of age in the case of a member who, as a member of the Ready Reserve, serves on active duty or performs active service described in subparagraphs 3.8.6.2 through 3.8.6.4. The reduction will be 3 months for each aggregate of 90 days on which the member serves on such active duty or performs such active service in any fiscal year after January 28, 2008, or in any two fiscal years after September 30, 2014. A day of duty may be included in only one aggregate of 90 days for purposes of this subparagraph.

3.8.6.2. Service on active duty is pursuant to a call or order to active duty under a provision of law referred to in ***10 U.S.C. § 101(a)(13)(B)*** or under ***10 U.S.C. § 12301(d)*** or ***10 U.S.C. § 12304b***. Such service does not include a call or order to active duty under ***10 U.S.C. § 12310***.

3.8.6.3. Active service is also service under a call to active service authorized by the President or the Secretary of Defense under 32 U.S.C. § 502(f) for purposes of responding to a national emergency declared by the President or supported by Federal funds.

3.8.6.4. If the member is wounded, otherwise injured, or becomes ill while serving on active duty pursuant to a call or order to active duty under subparagraph 3.8.6.2 or 3.8.6.3, and the member is ordered to active duty under 10 U.S.C. § 12301(h)(1) to receive medical care for the wound, injury, or illness, then each day of active duty under that order for medical care will be treated as a continuation of the original call or order to active duty for purposes of reducing the eligibility age of the member under this subparagraph.

3.8.6.5. The eligibility age under subparagraph 3.8.6.1 may not be reduced below 50 years of age for any person.

3.9 Service Not Creditable for Determining Retirement Eligibility

3.9.1. Enlisted Member's Lost Time. The following periods of absence from duty during a term of enlistment are not creditable to an enlisted member unless they are made up by the member upon return to full duty so as to complete the term for which the member was enlisted. The periods of absence from duty are:

3.9.1.1. Desertion;

3.9.1.2. Absence from organization, station, or duty for more than 1 day without proper authority, as determined by competent authority;

3.9.1.3. Confinement by military or civilian authorities for more than 1 day in connection with a trial, whether before, during, or after the trial; and

3.9.1.4. The member's inability for more than 1 day, as determined by competent authority, to perform assigned duties because of intemperate use of drugs or alcoholic liquor, or because of disease or injury resulting from the member's misconduct.

3.9.2. Officer's Lost Time. Prior to February 11, 1996, a commissioned or warrant officer was entitled to credit for every day in a commissioned or warrant status, without regard to absence of any kind, whether authorized or unauthorized, and including confinement prior to and during trial. In addition, absence during which a member was serving on active duty as an enlisted member was creditable if the enlisted member also held a commission as a Reserve officer. After February 10, 1996, a commissioned or warrant officer may not count the following periods of absence for any purpose other than the computation of length-of-service for basic pay:

3.9.2.1. Desertion;

3.9.2.2. Absence from organization, station, or duty for more than 1 day without proper authority, as determined by competent authority;

3.9.2.3. Confinement by military or civilian authority for more than 1 day in connection with a trial, whether before, during, or after the trial; or

3.9.2.4. Inability to perform assigned duties for more than 1 day, as determined by competent authority, because of intemperate use of drugs or alcoholic liquor, or because of disease or injury resulting from the member's misconduct. The period of such desertion, absence, confinement, or inability to perform duties may not be counted in computing, for any purpose other than basic pay under ***37 U.S.C. § 205***, the officer's length-of-service.

3.9.3. Constructive Service. Constructive service, credited under 10 U.S.C. § 3287 (a)(2)(A) or (B) (repealed), 10 U.S.C. § 3294(b) (repealed), or section 506(c) of the Officer Personnel Act of 1947, is not included in the service computation under subparagraph 3.5.1. Creditable constructive service creditable may be:

3.9.3.1. Three years, if appointed as a chaplain, or for service in the Judge Advocate General's Corps or in the Veterinary Corps of the Regular Army;

3.9.3.2. Three years, if appointed in the Medical Service Corps and if holding the degree of Doctor of Philosophy or comparable degree recognized by the Surgeon General; or

3.9.3.3. Four years (five, if member completed a 1-year internship) credited at the time of appointment in the Medical or Dental Corps for the purpose of determining grade, position on a promotion list, seniority in grade in the Regular Army, and eligibility for promotion.

3.9.4. Other Non-creditable Service. This service may not be counted for the purpose of determining retirement eligibility under paragraph 3.7:

3.9.4.1. Service, other than active service, in an inactive section of the Organized Reserve Corps or Army Reserve, or inactive section of the officer's section of the Air Force Reserve;

3.9.4.2. Service, other than active service, after June 30, 1949, while on the Honorary Retired List of the Naval Reserve or of the Marine Corps Reserve;

3.9.4.3. Service in the inactive National Guard or in a non-federally recognized status of the National Guard;

3.9.4.4. Inactive service in the Fleet Reserve or Fleet Marine Corps Reserve; and

3.9.4.5. Service in any status other than that as a commissioned officer, warrant officer, nurse, flight officer, aviation midshipman, appointed aviation cadet, or enlisted member, and that is described in paragraph 3.1 as creditable.

4.0 SERVICE CREDITABLE FOR COMPUTING RETIRED PAY

4.1 Service for Percentage Multiple

Service authorized to be used as a percentage multiple is specified in each law section authorizing computation of retired pay for each type of retirement. Information on retirement types and service for percentage multiple are provided in this section.

4.2 Voluntary Retirement - Enlisted Members

4.2.1. Years of active service.

4.2.2. Years of service not included in subparagraphs 4.3.1 with which the member was entitled to be credited on June 1, 1958, in computing basic pay. See Volume 7A, Chapter 1, section 2.0.

4.2.3. Years of service not included in subparagraphs 4.2.1 or 4.2.2, with which the member would be entitled to be credited under 10 U.S.C. § 12733. See paragraph 4.7.

4.3 Voluntary Retirement Commissioned Officers

4.3.1. Years of active service is creditable in the Uniformed Services.

4.3.2. Crediting of constructive service for medical and dental officers or an internship is not authorized after September 14, 1981, unless a member was already enrolled in such a program and later graduated, and was commissioned as a medical or dental officer; however, post-September 14, 1981, time is creditable in computing retired pay provided the officer is retirement eligible.

4.3.3. Service creditable in computing retired pay should include time an officer served in the Uniformed Services University of Health Sciences (USUHS). For an officer of the Medical Corps or Dental Corps of the Army or Navy, an officer of the Air Force designated as a medical or dental officer, or an officer of the PHS commissioned as a medical or dental officer, credit actual time served in the program. Any credit otherwise accrued during the same period by reason of Reserve membership would not be used in determining the multiplier for computing retired pay.

> Example: An O-6 with 20 years and 6 months service under 37 U.S.C. § 205 (excludes time at USUHS) is receiving basic pay for an O-6 over 20 years. If this member served 4 years and 6 months at USUHS, then, upon retirement, the member is to receive retired pay computed at 62.5 percent of basic pay as an O-6. The 62.5 percent is computed as 2.5 percent times 25 (20.5 plus 4.5) years of service as this computation will include the USUHS time.

4.3.4. The years of service, not included in subparagraphs 4.3.1 or 4.3.2, with which the member was entitled to be credited on June 1, 1958, in computing basic pay. See Volume 7A, Chapter 1, section 2.0.

4.3.5. Years of service not included in subparagraphs 4.3.1, 4.3.2, or 4.3.3, with which the member would be entitled to be credited under 10 U.S.C. § 12733. See paragraph 4.7.

4.4 Voluntary Retirement - Warrant Officers

See service credited under paragraph 4.3.

4.5 Mandatory Retirement

4.5.1. Army, Air Force, and Space Force service credited is the same as under paragraphs 3.5 or 4.3, whichever is more favorable.

4.5.2. Navy and Marine Corps service credited is the same as under paragraphs 3.6 or paragraphs 4.3, whichever is more favorable.

4.6 Disability Retirement

Service is credited as described under subparagraph 3.7.3 and 3.7.4, regardless of disability percentage.

4.7 Age and Service Retirement – Non-Regular

Total days of service, divided by 360 equals equivalent years and any fraction of a year of service. Note: Under 10 U.S.C. § 1401, before applying percentage factor, each full month of service that is in addition to the number of full years of service is creditable as one-twelfth of a year. The remaining fractional parts of a month are disregarded.

4.7.1. Days of active service;

4.7.2. Days of full-time service under ***32 U.S.C. § 316*** and 32 U.S.C. §§ 502 through 505, while performing annual training duty or attending a prescribed course of instruction at a school designated as a Service school by law or by the Secretary of the Military Department concerned (or designee); or

4.7.3. One day for each point credited under 10 U.S.C. § 12732(a)(1)(B)-(F), but not more than:

4.7.3.1. 130 days for any one year of service that includes October 30, 2007, and in any subsequent year of service;

4.7.3.2. 90 days in any one year of service between October 30, 2000, and October 29, 2007;

4.7.3.3. 75 days in any one year of service between September 23, 1996, and October 29, 2000; or

4.7.3.4. 60 days in any one year of service before the year of service that includes September 23, 1996.

Note: The credit includes points at the rate of 15 per year for membership in a Reserve Component of an Armed Force, in the Army, the Air Force, or the Space Force without component, or service (except in a regular component) before July 1, 1949, in the categories named in 10 U.S.C. § 12732.

4.7.4. One day for each point credited under 10 U.S.C. 12732(a)(2)(E) related to funeral honors.

5.0 UNIFORM RETIREMENT DATE ACT (URDA), TITLE 5, UNITED STATES CODE SECTION 8301

5.1 Authority

5.1.1. Retirement is effective on the first day of the month after that in which retirement would otherwise be effective, except as otherwise specifically provided by statute.

5.1.2. Notwithstanding subparagraph 5.1.1, the rate of final pay under ***10 U.S.C. § 1406***, applicable to members who first became members before September 8, 1980, is computed as of the date retirement would have occurred but for the provisions of subparagraph 5.1.1. See Table 1-5. Members who enter a Uniformed Service after September 7, 1980, receive the retired pay based on an average of basic pay rates for the period actually served, not to exceed a 36-month period. See Chapter 3 for gross pay computation.

5.2 Special Provisions

Under specific circumstances, computation may be based on another basic pay rate that may provide greater pay. See Chapter 3, sections 2.0, 3.0, and 4.0.

6.0 RANK AND PAY GRADE

6.1 General Determination

6.1.1. Grade at Retirement. Unless entitled to a higher grade under some other provisions of law, those Regular and Reserve members who retire other than for disability will retire in the Regular or Reserve grade they hold on the date of retirement. See Volume 7A, Comparable Grades.

6.1.2. Time-in-Grade Requirement. Pursuant to ***10 U.S.C. § 1370***, a commissioned officer, other than a commissioned warrant officer of the Army, Air Force, Space Force, Navy, or Marine Corps, who voluntarily retires in a grade above the grade of O-3, (captain in the Army, Air Force, Marine Corps, Space Force, or lieutenant in the Navy), must have served on active duty in that grade for a period of not less than 3 years.

6.1.2.1. The Secretary of Defense may reduce the active-duty service in-grade requirement of not less than three years to a period of not less than two years for any officer. This authority may not be delegated.

6.1.2.2. In the case of an officer to be retired in a grade at or below the grade of major general or rear admiral, the Secretary of Defense may authorize the Secretary of the military department concerned to reduce the active-duty service in-grade requirement to a period of not less than two years. This authority may not be further delegated.

6.1.3. Waiver of Not Less Than Two Years Active-Duty Service In-Grade Requirement. The President may waive the service in-grade requirements, as stated in subparagraphs 6.1.2.1 and 6.1.2.2, in individual cases involving extreme hardship or, exceptional or unusual circumstances. This authority of the President may not be delegated.

6.1.4. Retirement to the Next Lower Grade. An officer who does not meet the service-in-grade requirement retires in the next lower grade in which the member served on active duty satisfactorily. Officer grade determinations are made by the Service.

6.1.5. Officers in Grades 0-9 and 0-10.

6.1.5.1. An officer in the grade of general or admiral, or lieutenant general or vice admiral, may retire in that grade if the Secretary of Defense certifies, in writing, to the President and the Committees on Armed Services of the Senate and House of Representatives that the officer served on active duty satisfactorily in that grade.

6.1.5.2. The 3-year service in-grade requirement cannot be reduced or waived if the officer is under investigation for alleged misconduct or if an adverse personnel action is pending against the officer for alleged misconduct.

6.1.6. Reserve Officers

6.1.6.1. Pursuant to ***10 U.S.C. § 1370a***, unless entitled to a higher grade, or to credit for satisfactory service in a higher grade under some other provision of law, a member who becomes entitled to a non-Regular Reserve retirement will, upon application, receive credit for satisfactory service in the highest grade held in which that person served satisfactorily, as determined by the Secretary of the Military Department concerned (or designee).

6.1.6.2. To receive credit for satisfactory service in an officer grade below lieutenant colonel or commander, other than a warrant officer grade, a member must serve satisfactorily in that grade, as determined by the Secretary of the Military Department concerned (or designee) as a Reserve commissioned officer in an active status, or in a retired status on active duty, for at least 6 months.

6.1.6.3. To receive credit for satisfactory service in a grade above major or lieutenant commander, a member must serve satisfactorily in that grade, as determined by the Secretary of the Military Department concerned, as a Reserve commissioned officer in an active status, or in a retired status on active duty, for at least 3 years.

6.1.6.3.1. A member who completes at least 6 months of satisfactory service-in-grade, upon transfer from an active status or upon discharge as a Reserve commissioned officer for mandatory age or years of service, may receive credit for satisfactory service in the grade in which serving at time of transfer or discharge in that grade, notwithstanding failure of the person to complete three years of service in that grade, if the person transferred from an active status or discharged as a reserve commissioned officer:

6.1.6.3.1.1. Solely due to the requirements of a nondiscretionary provision of law requiring that transfer or discharge due to the member's age or years of service; or

6.1.6.3.1.2. Because the member no longer meets qualifications for membership in the Ready Reserves solely because of a physical disability, in accordance with Chapter 61 of Title 10, and at the time of such transfer or discharge the member meets the service requirements established by 10 U.S.C. § 12731(a) for eligibility for retired pay under chapter 1223 of Title 10, unless the disability is described in 10 U.S.C. § 12731(b).

6.1.6.3.2. If a member completes at least 6 months of satisfactory service-in-grade while serving as adjutant general under ***32 U.S.C. § 314*** or as assistant adjutant general to such adjutant general, and the member has failed to complete 3 years of service in such grade solely because the member's appointment to such position has been terminated or vacated under ***32 U.S.C. § 324(b)***, then the member may be credited with satisfactory service in that grade, notwithstanding the failure of the member to complete three years of service in that grade.

6.1.6.3.3. The Secretary of the Military Department concerned may allow credit in a higher grade to a member who has been recommended for promotion in a report of a promotion board but before the member is promoted to the recommended grade. Such credit may be allowed when a member who is in the next lower grade serves in a position after recommendation where the minimum authorized grade for the position the member is serving in is the higher grade to which the member is recommended for promotion. The period of service credited may not include any period before the date that the Senate provides advice and consent for the appointment of that member in the recommended grade.

6.1.6.3.4. A member who qualifies for Federal recognition in a higher grade by a board under ***32 U.S.C. § 307*** who serves in that grade in a position for which the higher grade is the minimum authorized grade and is appointed as a Reserve officer in that grade may receive credit for having served in that grade. The period of service for which the credit is afforded to the extent authorized by the Secretary of the Military Department concerned may be only the period the member served in the position after the Senate provides advice and consent for the appointment.

6.1.6.3.5. A member who completes at least 6 months of satisfactory service in a grade above colonel (or, in the case of the Navy, in a grade above captain), and while serving in an active status in such grade, is involuntarily transferred (other than for cause) from active status, may be credited with satisfactory service for the grade in which serving at the time of such transfer, even though he or she does not complete 3 years of service in that grade.

6.1.6.4. When a member's length-of-service in the highest grade held does not meet the service-in-grade requirements, the member receives credit for satisfactory service in the next lower grade in which the member serves satisfactorily for at least 6 months as determined by the Secretary of the Military Department concerned.

6.1.6.5. The Secretary of Defense may authorize the Secretary of a Military Department concerned to reduce the 3-year period required in subparagraph 6.1.6.3 for an officer above major or lieutenant commander, to a period of not less than 2 years for any person, including a person who, upon transfer to the Retired Reserve or discharge, is to be credited with satisfactory service in a general or flag officer grade. The authority of the Secretary of Defense may not be delegated.

6.1.6.6. The number of reserve commissioned officers of an armed force in the same grade for whom a reduction is made under this section may not exceed the number equal to 2 percent of the strength authorized for that fiscal year for reserve commissioned officers of that armed force in an active status in that grade.

6.1.7. Grade on Retirement for Physical Disability. Pursuant to ***10 U.S.C. § 1372***, unless entitled to a higher grade under some other provision of law, members of the Armed Forces who retire for disability under Chapter 61 of Title 10 are entitled to the highest of:

6.1.7.1. The grade or rank in which serving when placed on the Temporary Disability Retired List or, if not carried on that list, on date of retirement;

6.1.7.2. The highest temporary grade or rank in which member satisfactorily served, as determined by the Secretary of the armed force from which the member retired;

6.1.7.3. The permanent regular or reserve grade to which the member would have been promoted had it not been for the disability for which the member is retired and which was found to exist upon physical examination; or

6.1.7.4. The temporary grade to which the member would have been promoted had it not been for the disability for which the member is retired, if eligibility for that promotion was required based on the cumulative years of service or years of service in grade, and the disability was found upon physical examination.

6.2 Special Provisions

6.2.1. Commissioned officers of the Regular or Reserve Component of the Army, Air Force, or Space Force and Regular officers of the Navy or Marine Corps may, at the discretion of the President, be retired by and with the consent of the Senate, in the highest grade held at any time on the active list if they have served as:

6.2.1.1. Chief of Staff to the President;

6.2.1.2. Chief of Staff of the Army;

6.2.1.3. Chief of Naval Operations;

6.2.1.4. Chief of Staff of the Air Force;

6.2.1.5. Chief of Space Operations;

6.2.1.6. Senior member of the Military Staff Committee of the United Nations;

6.2.1.7. General or lieutenant general in a position of importance and responsibility designated by the President;

6.2.1.8. Admirals or vice admirals in positions of great importance and responsibility designated by the President under ***10 U.S.C. § 601***;

6.2.1.9. Chief or assistant chief of a branch of the Regular Army for at least 4 years;

6.2.1.10. Surgeon General of the Army or Air Force in the grade of lieutenant general;

6.2.1.11. Permanent professor of the U.S. Military Academy (USMA) or U.S. Air Force Academy (USAFA). If the grade is below brigadier general and service as professor is long and distinguished, then the professor may, at the discretion of the President, be retired in the grade of brigadier general; or

6.2.1.12. Chiefs of Bureaus or Judge Advocate General.

6.2.2. Regular and Reserve commissioned officers of the Army and Air Force are entitled to the grade equal to the highest temporary grade in which they served on active duty satisfactorily for not less than 6 months. See exception in subparagraph 6.1.2.

6.2.3. Where an existing statute authorizes computation of pay based on a grade in which the member served satisfactorily that is higher than the pay of the grade otherwise entitled, computation is based on the higher grade:

6.2.3.1. Without regard to whether that grade was temporary or permanent, and

6.2.3.2. Even though the military service in which the member held that higher grade is not the military service in which retired.

6.2.4. Retired warrant officers of the Army, Air Force, and Space Force and enlisted members of the Regular Army, Regular Air Force, and Regular Space Force are entitled to be advanced on the retired list to the highest grade in which they served on active duty satisfactorily, when their active service plus time on the retired list equals 30 years.

6.2.5. Unless otherwise entitled to a higher grade, officers of the Regular Navy or Regular Marine Corps holding a permanent grade of W-1 or above, retired with 30 or more years of service, are retired in the grade in which they are serving at the time of retirement.

6.2.6. Unless otherwise entitled to a higher grade, members of the Navy and Marine Corps retired while serving in a temporary grade to which they were appointed in time of war or national emergency that terminates on date of detachment are retired in the grade they would hold if they had not received such appointment.

6.2.7. Warrant officers of the Navy and Marine Corps who retire after completion of 20 years of service may elect to be retired in the highest grade entitled under any provision of law.

6.2.8. Unless otherwise entitled to a higher grade, members, other than retired members of the Navy or Marine Corps, when retired, are advanced on the retired list to the highest officer grade in which they served satisfactorily under a temporary appointment.

6.2.9. A courtesy title is not to be used for computation of pay. The grade for pay purposes is determined under the criteria of general determinations and special provisions as prescribed in this paragraph, with specific reference to the section of law that authorizes the grade for pay purposes.

6.2.10. Members promoted while missing-in-action, whose status is changed to killed in action, are exempted from the 6-month time-in-grade requirement since promotions received while in a missing status are "fully effective for all purposes" under ***37 U.S.C. § 552(a)***. Note: This provision is applicable only to members of the Army and Air Force.

6.2.11. A member who enters a Uniformed Service after September 7, 1980, and who later retires, may receive retired pay computed from a retired pay base made up of active duty pay rates from more than one grade.

6.3 Satisfactory Service

The determination as to what constitutes satisfactory service for the purpose of retirement in the highest grade is within the discretionary power of the Secretary of the Military Department concerned (or designee). The Service determines the retired grade.

7.0 NON-CITIZENS

7.1 Philippine Constabulary/Philippine Scout

The Act of February 2, 1901, as amended by the Act of May 16, 1908, authorized the President of the United States to organize a Military Component to be known as the Philippine Scouts and make it a part of the Regular Army. Retirement eligibility was the same as for enlisted men of the Regular Army. Officers were entitled to the same pay, privileges, and retirement benefits as authorized officers of like grade and service of the Regular Army. The Philippine Constabulary/Philippine Scouts are no longer maintained as a continuing part of the Army.

7.2 Insular Force

The Insular Force of the U.S. Navy was established by Executive Order on April 5, 1901, as amended on June 25, 1901. The Secretary of the Navy was authorized to enlist 500 natives of the Islands of the Philippines and Guam. Members of the Insular Force were eligible for transfer to the Fleet Reserve or to the retired list. The Insular Force is no longer maintained as a continuing part of the Navy.

7.3 Payment

7.3.1. Philippine Scouts. Adjustments of retired pay of Philippine Scouts will be made to reflect changes in the Consumer Price Index as provided by ***10 U.S.C. § 1401a***.

7.3.2. Change in Citizenship of Non-Regular Retirees. If a member's citizenship status changes after retirement, then it may have an impact on the member's retired pay. See Chapter 6 for additional information on change or loss of U.S. citizenship.

8.0 HEROISM PAY

*8.1 Entitlement

8.1.1. Regular Retirement. Enlisted members of the Army, Air Force, Space Force, Navy, and Marine Corps, retired after the completion of 20 or more but less than 30 years of active service for Regular retired pay computation purposes, who are credited by the Secretary concerned with extraordinary heroism in the line of duty, will receive a 10 percent increase to retired or retainer pay. Enlisted members of the Army, the Air Force, and the Space Force, with 20 or more, but less than 30, years of service who are credited by the Secretary concerned with extraordinary heroism in the line of duty, will receive a 10 percent increase to their retired pay, but the total amount of monthly retired pay may not exceed 75 percent of the retired pay base upon which retired pay is

based. Effective December 23, 2024, members who served during the Vietnam Era (the period beginning on August 5, 1964 and ending on March 27, 1973) are not subject to the restriction of 75 percent of the retired pay base upon which retired pay is based. Enlisted members of the Navy, Marine Corps, and Coast Guard with 20 or more, but less than 30, years of active service are eligible to have retired or retainer pay increased by 10 percent without the restriction of 75 percent of the retired pay base upon which retired pay is based.

8.1.2. Non-Regular Retirement. Entitlement to increased Reserve retired pay for heroism became effective October 1, 2002, and applies with respect to retired pay for months beginning on or after that date. Enlisted members of the Reserve Component retired after the completion of less than 30 years of service for non-Regular retired pay computation purposes, who are credited by the Secretary concerned with extraordinary heroism in the line of duty, will receive a 10 percent increase to their retired pay, but the total amount of monthly retired pay may not exceed 75 percent of the retired pay base upon which the computation is based. For enlisted members who retired after December 31, 2006, with more than 30 years of service, the total amount of monthly retired pay may not exceed the sum of 75 percent of the retired pay base upon which the computation is based and 2.5 percent of years of service credited for the computation of retired pay.

8.1.3. Disability Retirement. Enlisted members retired for disability who otherwise are eligible for voluntary retirement for 20 or more, but less than 30, years of service, and who are entitled to a 10 percent increase in pay for certified acts of extraordinary heroism, are entitled to an additional computation under the computation for a length-of-service retirement. However, in no case may the retired pay multiplier for a disability retirement based upon less than 30 years of service exceed 75 percent.

8.2 Determination of Entitlement

The Secretary of the Military Department concerned (or designee) has the authority to grant 10 percent of additional retired pay to an individual who has performed an act of extraordinary heroism in the line of duty. The Secretary's determination as to extraordinary heroism is conclusive for all purposes.

8.3 Special Provisions

8.3.1. Advancement on the Retired List. Retired enlisted members of the Regular Army or Air Force receiving the 10 percent additional increase in pay for extraordinary heroism are not entitled to the 10 percent increase when advanced to a higher grade on the completion of 30 years of service. See Chapter 9.

8.3.2. Recomputation After a Period of Active Duty. For detailed information on recomputation after subsequent active duty, see Chapter 7, section 2.0.

8.3.2.1. Retired enlisted members of the Army, Air Force, and Space Force are entitled to the 10 percent increase in retired pay for extraordinary heroism when pay is recomputed to reflect active service performed after the date of retirement. The retired pay may not exceed 75 percent of the monthly basic pay upon which retired pay is based. Effective

December 23, 2024, members who served during the Vietnam Era (the period beginning on August 5, 1964 and ending on March 27, 1973) are not subject to the restriction of 75 percent of the retired pay base upon which retired pay is based. Regardless of when the member's retired pay was recomputed, benefits will not accrue under this provision for any period prior to November 1, 1992.

8.3.2.2. Enlisted members of the Navy and Marine Corps who elected to receive retainer pay are entitled to the 10 percent increase in their pay for extraordinary heroism when that pay is recomputed to reflect active service performed after date of transfer.

9.0 PAYMENT

9.1 Effective Date of Payment

Pay accrues on a day-to-day basis from and including the date on which retirement is effective, except members who are transferred to the Fleet Reserve/Fleet Marine Corps Reserve. These members become entitled to pay on the day after the date of transfer. Amounts of retired pay and retainer pay due a retired member of the uniformed services will be paid on the first day of each month beginning after the month in which the right to such pay accrues. When the payment date falls on a Saturday, Sunday, or legal holiday, the Director of the Defense Finance and Accounting Service may authorize the payment of retired pay and retainer pay on the preceding workday but not more than three days before the last day of the pay period. See also Chapter 14.

9.1.1. Regular Retirement. Except as otherwise provided by law, the effective date of retirement is the first day of the month after the month in which service requirements are fully met.

9.1.2. Disability Retirement. Placement on the Temporary and Permanent Disability Retired Lists may become effective on any day of the month as specified by the Secretary of the military service concerned (or designee).

9.1.3. Mandatory Retirement for Age and Service. Members attaining age and service requirements for involuntary retirements are retained on active duty through the last day of the month in which age and service requirements are met.

9.1.4. Non-Regular Retirement. Reservists are entitled to pay effective on the date on which the requirements for age and service have been met, or on the first day of any later month that the retiree may elect.

9.2 Revocation of Retirement and/or Transfers

9.2.1. Where proper officials have made a determination that a member is entitled to retirement and retired pay on the basis of physical disability, after the effective date of retirement, the retirement orders are final and can be reopened only upon a showing of fraud, substantial new evidence, mistake of law, or mathematical miscalculation. Subsequent information showing that the decision may have resulted from the exercise of poor judgement alone does not provide a basis

to cancel or modify the prior order. However, the initial retiring action may be cancelled or revoked before the date that it is legally effective because the individual concerned has not yet acquired any rights or become entitled to any retirement benefits under the revoked retiring order.

9.2.2. Transfer of members to the Fleet Reserve/Fleet Marine Corps Reserve and to the retired list of the Regular Navy or Marine Corps or the Retired Reserve is conclusive for all purposes. The Secretary may correct any error or omission in the determination as to the member's grade and years of creditable service.

9.2.3. Payment of active duty pay and allowances may be permitted after the first of the month in which retirement is effective until retirement orders are actually delivered to the member later in the same month, provided prior notice of retirement orders had not been received.

9.2.4. Where advance notice of retirement orders is given, but orders are not delivered, an attempt may be made to revoke them after they become effective and replace them with orders directing retirement at a later date. When it is apparent that the member had no knowledge of the lack of legal authority for this action, and active duty pay and allowances were received "under color of authority," the "de facto rule" permits repayment of active duty pay and allowances paid for the period and later collected.

9.3 Computation

For detailed information on gross pay computation, see Chapter 3.

9.3.1. Monthly Pay. Compute monthly pay as if each month had 30 days. The daily rate is 1/30 of the monthly rate.

9.3.2. Intermediate Day. When retirement begins on an intermediate day of the month, compute pay at the rate of 1/30 for the actual number of days after date of retirement but only through the 30th day of that month. If pay begins on February 28, then pay accrues for 3 days. If the pay begins on February 29, then pay accrues for 2 days.

Table 1-1. Voluntary Retirement

RULE	A person who is	of the	and years of service total	including at least	may retire under 10 U.S.C. §	with retired pay computed under Chapter 3, Table 3-1
1	an enlisted member	Army	20 (note 1)		7314	rule 4.
2	an enlisted member	Air Force (AF) or Space Force (SF)	20 (note 1)		9314	rule 4.
3	a Regular enlisted member	Army	30		7317	rule 4.
4	a Regular enlisted member	AF or SF	30		9317	rule 4.
5	a commissioned officer	Army	20 (note 1)	10 years of active commissioned service (note 2)	7311	rule 5.
6	a commissioned officer	AF or SF	20 (note 1)	10 years of active commissioned service (note 2)	9311	rule 5.
7	a Regular commissioned officer	Army	30		7318	rule 5.
8	a Regular commissioned officer	AF or SF	30		9318	rule 5.
9	a commissioned officer	Army	40		7324	rule 5.
10	a commissioned officer	AF or SF	40		9324	rule 5.
11	a warrant officer	Armed Forces	20 (note 1)		1293	rule 3.
12	a warrant officer	Army	40		7324	rule 5.
13	a warrant officer	AF or SF	40		9324	rule 5.
14	a Regular officer W-1 and above	Navy or Marine Corps (MC) Reserve	40		8321	rule 6.
15	a Regular officer W-1 and above	Navy or MC Reserve	30		8322	rule 7.

Table 1-1. Voluntary Retirement (Continued)

RULE	A person who is	of the	and years of service total	including at least	may retire under 10 U.S.C. §	with retired pay computed under Chapter 3, Table 3-1
16	a Regular officer W-1 and above	Navy or MC	20 (note 1)	10 years of active commissioned service (note 2)	8323 (note 3)	rule 6.
17	a Regular enlisted member (note 4)	Navy or MC Reserve	30		8326	rule 7.
18	an enlisted member	Navy, MC, Navy Reserve, or MC Reserve	20 (Note 1)		may transfer to Fleet Reserve/ Fleet MC Reserve under section 8330	with retainer pay computed under rule 14.
19	an officer or enlisted member	Navy Reserve or MC Reserve	30		8327 (note 5)	rule 8.
20	an officer or enlisted member	Navy Reserve or MC Reserve	20 (Note 1)	10 years of active service served in the 11 years immediately before retirement	8327 (note 5)	rule 8.

NOTES:

1. See subparagraphs 3.1.1 and 3.1.2. Under TERA, Public Law (P.L.) 102-484, § 4403, October 23, 1992, the Secretary of the Military Department concerned (or designee) may reduce the 20 years of creditable service requirement for regular retirement to 15 years of creditable service. Legislative history for TERA is located at 10 U.S.C. § 1293 note. The authority was continuously extended numerous times and ended on September 1, 2002, under P.L. 107-314, § 554. ***P.L. 112-81, section 504(b)*** reinstated this authority effective December 31, 2011, with the end date extended to December 31, 2025, under P.L. 114-328, § 508(a), December 23, 2016. For non-regular retirement, see 10 U.S.C. § 12731a, Temporary special retirement qualification authority, in effect October 23, 1992 - December 31, 2001.
2. See subparagraph 3.1.3.1. Under the Temporary Authority to Reduce Minimum Length of Active Service as a Commissioned Officer Required for Voluntary Retirement as an Officer, the Secretary of the Military Department concerned (or designee) may reduce the 10-year active service requirement to not less than 8 years. ***P.L. 111-383, section 506***, January 7, 2011, extended this authority to September 30, 2013. The most recent period for this authority commenced January 7, 2011, and ended September 30, 2013. Title 10, U.S.C. § 7311(b)(2), 10 U.S.C. § 9311(b)(2), and 10 U.S.C. § 8323(a)(2)(B).
3. Members mandatorily retired under P.L. 86-155 thereafter are considered as having retired voluntarily pursuant to 10 U.S.C. § 8323. See P.L. 86-155, section 3. There are no officers processed under P.L. 86-155 after June 1, 1966.
4. Includes Regular enlisted members holding temporary appointment as commissioned officer or warrant officer.
5. ***Title 10, U.S.C. § 8327*** applies only to persons who were members of the Navy Reserve or the Marine Corps Reserve on January 1, 1953. This section terminates on January 1, 1973.

Table 1-2. Mandatory Retirement - Commissioned Officers and Warrant Officers

RULE	A person who is a	and has at least	who holds the Regular grade of	and time in grade is	and is age	is retired by Secretary of the Military Department concerned under 10 U.S.C. §				with retired pay computed under Chapter 3, Table 3-1
						Army	AF or SF	Navy or Marine Corps	Armed Forces	
1	Regular commis-sioned officer of the Army, AF, SF, Navy, or MC	20 years	below Brigadier General or Rear Admiral (lower half) (note 1)		62 (notes 4 and 23)	1251	1251	1251	1251	rule 9.
2	Regular commis-sioned officer of the Army or AF	20 years	below Major General (note 1)		60	3883 (note 2)	8883 (note 3)			rule 10 or 12.
3	Regular commis-sioned officer of the Army or AF	35 years (note 3)	Major General	5 years	60	3884 (note 2)	8884 (note 2)			rule 10 or 12.
4	Regular commis-sioned officer of the Army or AF	35 years (note 3)	Major General	5 years	62	3885 (note 2)	8885 (note 2)			
5	Regular commis-sioned officer of the Army or AF	35 years (note 3)	Major General	5 years	64	3886 (note 2)	8886 (note 2)			
6	Regular commis-sioned officer of the Army or AF	20 years (note 3)	any grade (note 5)			3913 (note 2)	8913 (note 2)			
7	Regular commis-sioned officer of the Army or AF	28 years (note 3)	Lieutenant Colonel (note 6)			3916 (note 2)	8916 (note 2)			

Table 1-2. Mandatory Retirement – Commissioned Officers and Warrant Officers (Continued)

RULE	A person who is a	and has at least	who holds the Regular grade of	and time in grade is	and is age	is retired by Secretary of the Military Department concerned under 10 U.S.C. §				with retired pay computed under Chapter 3, Table 3-1
						Army	AF or SF	Navy or Marine Corps	Armed Forces	
8	Regular commis-sioned officer of the Army or AF	30 years (note 3)	any grade (note 7)	5 years		3919 (note 2)	8919 (note 2)			rule 10 or 12.
9	Regular commis-sioned officer of the Army or AF		Colonel (note 8)	5 years		3921 (note 2)	8921 (note 2)			rule 10 or 12.
10	Regular commis-sioned officer of the Army or AF		Brigadier General	5 years		3922 (note 2)	8922 (note 2)			rule 10 or 12.
11	Regular commis-sioned officer of the Army or AF		Major General	5 years		3923 (note 2)	8923 (note 2)			rule 10 or 12.
12	Regular officer of the Navy or MC	35 years of total commis-sioned service (note 3)	Rear Admiral (notes 9 and 11)	5 years				6371 (notes 2 and 10)		rule 11.
13	Regular officer of the Navy or MC	35 years of total commis-sioned service (note 3)	Rear Admiral (notes 11 and 12)	7 years				6372 (notes 2 and 13)		rule 11.
14	Regular officer of the Navy or MC	35 years of total commis-sioned service (note 3)	Major General (notes 11 and 14)	5 years				6373 (note 2)		rule 11.

Table 1-2. Mandatory Retirement – Commissioned Officers and Warrant Officers (Continued)

RULE	A person who is a	and has at least	who holds the Regular grade of	and time in grade is	and is age	is retired by Secretary of the Military Department concerned under 10 U.S.C. §				with retired pay computed under Chapter 3, Table 3-1
						Army	AF or SF	Navy or Marine Corps	Armed Forces	
15	Regular officer of the Navy or MC	35 years of total commis-sioned service (note 3)	Rear Admiral (Navy), - Brigadier General (USMC) (note 9)					6374 (note 2)		rule 11.
16	Regular officer of the Navy or MC	35 years of total commis-sioned service (note 3)	Rear Admiral (Navy), Brigadier General (USMC) (notes 11 and 14)	5 years				6375 (note 15)		rule 11.
17	Regular officer of the Navy or MC	30 years of total commis sioned service (note 3)	Captain (Navy), Colonel (USMC) (notes 9 and 16)					6376 (note 2)		rule 11.
18	Regular officer of the Navy or MC	31 years of total commis sioned service (note 3)	Captain (Navy), Colonel (USMC) (notes 11 and 17)							rule 11.
19	Regular officer of the Navy or MC	30 years of total commis sioned service (note 3)	Captain (Navy), Colonel (USMC) (notes 12 and 16)					6377 (notes 2 & 18)		rule 11.
20	Regular officer of the Navy or MC	31 years of total commis sioned service (note 3)	Captain (Navy), Colonel (USMC) (notes 11, 12, and 17)					6377 (notes 2 & 18)		rule 11.

Table 1-2. Mandatory Retirement – Commissioned Officers and Warrant Officers (Continued)

RULE	A person who is a	and has at least	who holds the Regular grade of	and time in grade is	and is age	is retired by Secretary of the Military Department concerned under 10 U.S.C. §				with retired pay computed under Chapter 3, Table 3-1
						Army	AF or SF	Navy or Marine Corps	Armed Forces	
21	Regular officer of the Navy or MC	26 years (note 3)	Commander (Nurse Corps) (notes 11, 12, and 16)					6377 (notes 2 & 18)		rule 11.
22	Regular officer of the Navy or MC	35 years (note 3)	Captain (Navy), Commander (Nurse Corps) (notes 7 and 12)		62			6378 (notes 2 & 19)		
23	Regular officer of the Navy or MC	26 years of total commis-sioned service (note 3)	Commander, Lieutenant Colonel (note 16)					6379 (note 2)		rule 11.
24	Regular officer of the Navy or MC	20 years of total commis-sioned service (note 3)	Lieutenant Commander, Major (note 16)					6380 (note 2)		rule 11.
25	Regular officer of the Navy or MC designated for limited duty	30 years of active naval service	Navy officer serving in grade below Commander MC officer of any grade					8372		rule 11.
26	Regular officer of the Navy or MC designated for limited duty who twice fails promotion	Eligible to retire under any provisio n of law	Commander or Lieutenant Commander (Navy), Major (MC) (notes 16 and 20)					8372		rule 11.

Table 1-2. Mandatory Retirement – Commissioned Officers and Warrant Officers (Continued)

RULE	A person who is a	and has at least	who holds the Regular grade of	and time in grade is	and is age	is retired by Secretary of the Military Department concerned under 10 U.S.C. §				with retired pay computed under Chapter 3, Table 3-1
						Army	AF or SF	Navy or Marine Corps	Armed Forces	
27	Regular officer of the Navy designated for limited duty who is not recommended for promotion	35 years of service	Commander					8372		rule 11.
28	Regular officer of the Navy designated for limited duty	38 years of service	Captain					8372		rule 11.
29	Regular officer of the Navy or MC		any grade below Fleet Admiral		62			6390 (note 2)		rule 11.
30	Regular officer of the Navy or MC		Rear Admiral, Major General, and Brigadier General		62			6394 (note 2)		rule 11.
31	Regular officer of the Navy or MC	20 years of active commis-sioned service (note 3)	Lieutenant Commander, Major and below (Nurse Corps)					6396 (note 2)		rule 11.
32	female Regular officer of the Navy or MC	26 years of active commis sioned service						6398 (note 2)		rule 11.

Table 1-2. Mandatory Retirement – Commissioned Officers and Warrant Officers (Continued)

RULE	A person who is a	and has at least	who holds the Regular grade of	and time in grade is	and is age	is retired by Secretary of the Military Department concerned under 10 U.S.C. §				with retired pay computed under Chapter 3, Table 3-1
						Army	AF or SF	Navy or Marine Corps	Armed Forces	
33	female Regular officer of the Navy or MC	30 years of active commis-sioned service	Captain Colonel (note 21)					6398 (note 2)		rule 11.
34	female Regular officer of the Navy or MC	20 years of active commis-sioned service	Lieutenant Commander, Major (note 5) and below					6400 (note 2		rule 11.
35	commis-sioned officer of the Army	More than 30 years of commis-sioned service (note 22)	USMA - permanent professor or Director of Admissions			7320				rule 10.
36	commis-sioned officer of the AF or SF	More than 30 years of commis-sioned service (note 22)	USAFA - permanent professor or Director of Admissions				9320			rule 12.
37	commis-sioned officer of the Army, AF, SF or Navy	blank	USMA - permanent professor or Director of Admissions USAFA - permanent professor or registrar, and U.S. Naval Academy - permanent professor		64	1251(a), 1252	1251(a), 1252	1251(a), 1252		rule 9.

Table 1-2. Mandatory Retirement – Commissioned Officers and Warrant Officers (Continued)

RULE	A person who is a	and has at least	who holds the Regular grade of	and time in grade is	and is age	is retired by Secretary of the Military Department concerned under 10 U.S.C. §				with retired pay computed under Chapter 3, Table 3-1
						Army	AF or SF	Navy or Marine Corps	Armed Forces	
38	permanent Regular warrant officer of the Armed Forces who twice fails to be selected for promotion	20 years (note 23)	Warrant Officer 1, Warrant Officer 2, and Warrant Officer 3						580	rule 9.
39	permanent Regular warrant officer of the Armed Forces	20 years	Warrant Officer 1, Warrant Officer 2, Warrant Officer 3, and Warrant Officer 4		55 (note 24)				1255 (repealed by P.L. 90.130, November 8, 1967)	rule 9.
40	permanent Regular warrant officer of the Armed Forces	20 years (note 23	Warrant Officer 1, Warrant Officer 2, Warrant Officer 3, and Warrant Officer 4		62				1263	rule 9.
41	permanent Regular warrant officer of the Armed Forces	30 years of active service (For Army warrant officer, must be 30 years active service as a warrant officer)	Any grade, except Navy W-5 shall be retired upon completion of 33 years of total active service.						1305	rule 9.

Table 1-2. Mandatory Retirement – Commissioned Officers and Warrant Officers (Continued)

RULE	A person who is a	and has at least	who holds the Regular grade of	and time in grade is	and is age	is retired by Secretary of the Military Department concerned under 10 U.S.C. §				with retired pay computed under Chapter 3, Table 3-1
						Army	AF or SF	Navy or Marine Corps	Armed Forces	
42	Regular officer of the Army, AF, SF, MC, or Navy	28 years of commis-sioned service Note 25	Lieutenant Colonel, Commander (Navy)			633	633	633	633	rule 9.
43	Regular officer of the Army, AF, SF, MC, or Navy	30 years of commis-sioned service	Colonel, Captain (Navy)			634	634	634	634	rule 9.
44	Regular officer of the Army, AF, SF, MC, or Navy	30 years of commis-sioned service	Brigadier General, Rear Admiral (Lower Half) (Navy)	At least 5 years		635	635	635	635	rule 9.
45	Regular officer of the Army, AF, SF, MC, or Navy	35 years of commis-sioned service	Major General, Rear Admiral (Navy)	At least 5 years		636	636	636	636	rule 9.
46	Regular officer of the Army, AF, SF, MC, or Navy	38 years commis-sioned service	Lt General, Vice Admiral (Navy)	At least 5 years		636	636	636	636	rule 9.
47	Regular officer of the Army, AF, SF, MC, or Navy	40 years commis-sioned service	General, Admiral (Navy)	At least 5 years		636	636	636	636	rule 9.

Table 1-2. Mandatory Retirement - Commissioned Officers and Warrant Officers (Continued)

NOTES:

1. Member is exempt from mandatory retirement at age 62 if holding one of the following positions: permanent professor or director of admissions of U.S. Military Academy, permanent professor at U.S. Naval Academy, or permanent professor or registrar of U.S. Air Force Academy. See Rule 37.
2. Sections repealed by P.L. 96-513, December 12, 1980, effective September 15, 1981.
3. Army or AF service is computed under paragraph 3.5 (10 U.S.C. §§ 3927 and 8927 were repealed by P.L. 96-513).
4. Deleted.
5. Member was not recommended for promotion.
6. Member was on the lieutenant colonel promotion list.
7. Member was excessive number in any grade.
8. Member was on the colonel promotion list.
9. Member was not restricted in performance of duty.
10. Title 10, U.S.C. § 6371, Executive Order 11284, May 27, 1966 was revoked by Executive Order 12553, February 25, 1986.
11. Member was not recommended for continuation on active duty.
12. Member is restricted in performance of duty.
13. Title 10, U.S.C. § 6372 was repealed by P.L. 96-513, December 12, 1980 (94 Stat. 2898).
14. Member who served as Commandant of the U.S. Marine Corps.
15. Title 10, U.S.C. § 6375 was repealed by P.L. 87-123, August 3, 1961.
16. Member failed selection for promotion twice to next higher grade and was not on promotion list.
17. Member was not on promotion list and retirement subject to completion of 5-years of service in grade.
18. Title 10, U.S.C. § 6377(c) was repealed by P.L. 90-130, November 8, 1967.
19. Any Navy captain or commander who will complete 35 years of total commissioned service or who will become age 62 in the fiscal year in which the selection board is convened is ineligible for consideration for retention.
20. Deleted.
21. Except female officers on promotion list or serving as assistant to Chief of Naval Personnel with rank of captain, or assistant to Commandant of the U.S. Marine Corps with rank of colonel.
22. Compute service under paragraph 3.3.
23. Compute service under paragraphs 3.5 and 3.6. Title 10, U.S.C. § 1263 allows a retirement of a Warrant Officer age (at age 62), but only if the member already has 20 years of service.
24. The statute, which pertained to female Regular warrant officers, was repealed by P.L. 90-130, November 8, 1967 (81 Statute 374).
25. This rule is not applicable to a Navy officer to whom Rule 25 or 26 applies or who is a permanent professor at the U.S. Naval Academy.

Table 1-3. Disability Retirement

RULE	A person who is	of the	ordered to active duty for	and is determined	may retire under 10 U.S.C. §	with retired pay computed under Chapter 3, Table 3-1
1	an enlisted member, warrant officer, or commissioned officer	Armed Forces entitled to basic pay	30 days or less or on inactivity-duty training	unfit to perform duties of his or her office, grade, rank, or rating because of physical disability (note 1)	1204	rule 1.
2	an enlisted member, warrant officer, or commissioned officer	Armed Forces entitled to basic pay	30 days or less	unfit to perform duties of his or her office, grade, rank, or rating because of physical disability and placed on the TDRL (note 1 and 2)	1205	rule 2.
3	an enlisted member, warrant officer, or commissioned officer	Armed Forces entitled to basic pay	more than 30 days	unfit to perform duties of his or her office, grade, rank, or rating because of physical disability (note 1)	1201	rule 1.
4	an enlisted member, warrant officer, or commissioned officer	Armed Forces entitled to basic pay	more than 30 days	unfit to perform duties of his or her office, grade, rank, or rating because of physical disability and placed on the TDRL (note 1 and 2)	1202	rule 2.

NOTES:

1. Member must have at least 20 years of service as computed under 10 U.S.C. § 1208 (see para. 3.7) or a disability rating of at least 30 percent. (***10 U.S.C. §§ 1201***, ***1202***, ***1204***, and ***1205***).
2. Disability is not determined to be of a permanent nature and stable, but Secretary determines that accepted medical principles indicate that the disability may be of a permanent nature.

Table 1-4. Age and Service, Non-Regular Retirement

RULE	A person who is	of the	and has at least	and is age	may retire under	with retired pay computed under
1	an enlisted member, warrant officer, or commissioned officer	Armed Forces, Reserve, or National Guard (note 1)	20 years of service (note 2)	60 or is otherwise eligible (note 3)	10 U.S.C. § 12731 (note 4)	Chapter 3, Table 3-1, rule 13.

NOTES:

1. Persons completing the 20-year requirement before April 25, 2005, must have performed the last 6 years of qualifying service as a member of a Reserve Component, except that in the case of a member who completed 20 years of service before October 5, 1994, the number of years of such qualifying service will be 8 years.
2. Compute service for entitlement to retired pay under 10 U.S.C. § 12732; see paragraph 3.8. The Secretary concerned had authority to reduce the 20 years of service requirement to 15 years during the period October 23, 1992, to December 31, 2001, under 10 U.S.C. § 12731a.
3. The eligibility will be reduced below 60 years of age by 3 months for each aggregate of 90 days on which a member of the Ready Reserve performs active duty or active service pursuant to a call or order under 10 U.S.C. §§ 101(a)(13)(B), 12301(d), or 12304b or 32 U.S.C. § 502(f) in any fiscal year after January 28, 2008, or in any two consecutive fiscal years after September 30, 2014. The eligibility age may not be reduced below 50 years of age.
4. Member is entitled to retired pay under 10 U.S.C. § 12739 upon application only if not entitled to retired or retainer pay under any other provision of law.

Table 1-5. Rate of Basic Pay for Retired Computation Pay Computation under 10 U.S.C. § 1406 - Final Basic Pay Retirees (note 1)

RULE	A member who	and is	who fully qualified or met requirements to be retired	and retirement is	will have retired pay computed using active-duty basic pay rates in effect on
1	retires on other than the first day of an active-duty basic pay rate change	an enlisted member, warrant officer, or commissioned officer	at any time	voluntary, mandatory, disability, Reservist (age and service)	the first day of retirement (notes 2 and 3).
2	retires on the first day of an active-duty basic pay rate change	an enlisted member (note 3)	at any time	voluntary	the first day of retirement (note 2).
3	retires on the first day of an active-duty basic pay rate change	a warrant officer	at any time	voluntary	the day before the first day of retirement (notes 2 and 3).
4	retires on the first day of an active-duty basic pay rate change	a commissioned officer	before the month immediately preceding the active-duty basic pay rate change date (note 4)		the first day of retirement (note 2).
5	retires on the first day of an active duty basic-pay rate change	a commissioned officer	at any time prior to the active-duty basic pay rate change date	voluntary (note 4)	the first day of retirement (note 2).
6	retires on the first day of an active-duty basic pay rate change	a commissioned officer	during the month immediately preceding the active-duty basic pay rate change date	voluntary	the day before the first day of retirement unless the member specifically requests retirement on a day later than the first day of eligibility for voluntary retirement under the applicable statute; in which case, use active-duty pay rates in effect on the first day of retirement (notes 2 and 6).
7	retires on the first day of an active-duty basic pay rate change	a warrant officer	any time	mandatory	the day before the first day of retirement (note 2).

Table 1-5. Rate of Basic Pay for Retired Computation Pay Computation under 10 U.S.C. § 1406 - Final Basic Pay Retirees (note 1) (Continued)

RULE	A member who	and is	who fully qualified or met requirements to be retired	and retirement is	will have retired pay computed using active-duty basic pay rates in effect on
8	retires on the first day of an active-duty basic pay rate change	a commissioned officer	any time	mandatory	the day before the first day of retirement (note 2).
9	retires on the first day of an active-duty basic pay rate change	an enlisted member, warrant officer, or commissioned officer	during the month immediately preceding the active-duty basic pay rate change date without Secretarial action designating an earlier retirement date	disability (note 5)	the day before the first day of retirement (note 2).
10	retires on the first day of an active-duty basic pay rate change		any time	Non-regular (age and service)	the date the member is granted retired pay; however, if a discharged former member, who entered the military service on or after September 8, 1980, the rate in effect at discharge. See subparagraph 2.2.2. (note 2).

NOTES:

1. See ***5 U.S.C. § 8301(b)***. A retired pay base of average high-36 basic pay is used in lieu of a final basic pay rate in the computation of retired pay for members who enter the Uniformed Services after September 7, 1980. 10 U.S.C. §§ 1406 and 1407.
2. For members who qualify for retirement on an earlier computation date under the same or some other provision of law, compute under rates in effect on that earlier date based on grade **a**nd service credited at that time, if that rate is greater (10 U.S.C. § 1401a(f)).
3. Not applicable to Navy and Marine Corps enlisted members transferred to the Fleet Reserve or Fleet Marine Corps Reserve.
4. Applicable only to retirements under 10 U.S.C. § 8323.
5. If otherwise retirement eligible, then follow rule for that retirement.
6. This rule is effective for retirements on or after December 1, 2000. For retirements prior to that date, compute retired pay using active-duty basic pay rates in effect on the day before the first day of retirement, regardless of the date on which the member requested to be retired. See section 5.0.

*REFERENCES

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1.0 – GENERAL

1.1	10 U.S.C. §§ 1401, 1406, 1407, 1409 P.L. 114-92, sections 631-635, November 25, 2015 P.L. 114-328, sections 631-634, December 26, 2016

2.0 – MILITARY RETIRED PAY – INITIAL ENTITLEMENTS

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2.1.2	P.L. 114-92, sections 631-635, November 25, 2015 P.L. 114-328, sections 631-634, December 26, 2016
2.2	10 U.S.C. §§ 1406, 1407
2.3	10 U.S.C. § 1409 P.L. 114-92, sections 631-635, November 25, 2015 P.L. 114-328, sections 631-634, December 26, 2016
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3.0 – SERVICE CREDITABLE FOR RETIREMENT ELIGIBILITY

3.1	10 U.S.C. §§ 7311, 8323, 9311 P.L. 111-383, section 506, January 7, 2011 P.L. 112-239, section 505, January 2, 2013
3.1.1	10 U.S.C. §§ 1293, 7311, 8323, 9311
3.1.2	DoDI 1332.46, December 21, 2018
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3.2	10 U.S.C. §§ 7325, 9325, 8330, 8326, 8683 (repealed), 1043
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3.3	10 U.S.C. §§ 7326, 9326, 8321-8323, 1043
3.4	10 U.S.C. §§ 1293, 1305, 8321, 8322, 1043
3.4.2	P.L. 81-351, § 511, October 12, 1949
3.5.7	10 U.S.C. §§ 1401, 1405
3.6	10 U.S.C. §§ 2106, 2107
3.7	10 U.S.C. §§ 1208, 1043, 12732, 12733
3.8.1 through 3.8.6	10 U.S.C. §§ 12731, 12732, 12733, 1043, 12738 58 Comp Gen 390 10 U.S.C. § 12731a
3.8.6	P.L. 113-291, section 625, December 19, 2014 P.L. 116-92, section 604, December 20, 2019 10 U.S.C. §§ 101, 12301, 12304b, 12731 10 U.S.C. § 12731(f)
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4.0 – SERVICE CREDITABLE FOR COMPUTING RETIRED PAY

4.1	10 U.S.C. §§ 1405, 7361, 9361, 8333
4.3	10 U.S.C. §§ 1405, 7361, 9361, 8333 37 U.S.C. § 205(a)(7) MS Comp Gen B-195855, April 1, 1980
4.3.2	Office of the Under Secretary of Defense - Military Personnel Policy memo, July 1, 2002 54 Comp Gen 675
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4.5.1 and 4.5.2	10 U.S.C. §§ 3927 (repealed), 8927 (repealed), 1405
4.6	10 U.S.C. § 1208
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6.0 – RANK AND PAY GRADE	
6.1.1 through 6.1.7	10 U.S.C. §§ 7341, 7342, 7343, 9341, 9342, 9343 10 U.S.C. § 1370(b) - (d) 10 U.S.C. § 1370a P.L. 96-513, section 629, December 12, 1980 P.L. 101-510, section 522, November 5, 1990 P.L. 106-398, section 571, October 30, 2000 40 Comp Gen 240 10 U.S.C. § 1372 32 U.S.C. § 307
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7.0 - NON-CITIZENS	
7.1	Section 36, Act of February 2, 1901, 31 Stat 757, Act of May 16, 1908 Section 22a, Act of June 4, 1920, 41 Statute 770
7.2	Executive Order, April 5, 1901 and June 25, 1901
7.3	10 U.S.C. § 1401a
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	10 U.S.C. §§ 9361, 8330, 7361
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	43 Comp Gen 805
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8.3.1	10 U.S.C. 12739
8.3.2.1	10 U.S.C. § 1402
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9.1.2	10 U.S.C. § 1221
9.1.4	10 U.S.C. § 12731
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9.2.2	10 U.S.C. § 8332
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Table 1-1	
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Note 2	P.L. 102-484, section 4417, October 23, 1992
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Note 4	10 U.S.C. § 12731(a)(4)

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P.L. 112-81, section 504, December 31, 2011
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VOLUME 7B, CHAPTER 2: "INITIAL ENTITLEMENTS - FLEET RESERVE/FLEET MARINE CORPS RESERVE"

SUMMARY OF MAJOR CHANGES

Changes are identified in this table and also denoted by blue font.

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

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

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

The previous version dated May 2022 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated chapter with hyperlinks and formatting to comply with administrative instructions.	Revision
References	Updated references.	Revision

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CHAPTER 2

INITIAL ENTITLEMENT-FLEET RESERVE/ FLEET MARINE CORPS RESERVE

1.0 GENERAL

1.1 Purpose

This chapter provides information for the entitlement to military retirement pay when an enlisted member transfers, at his or her request, to the Fleet Reserve/Fleet Marine Corps Reserve. Pursuant to the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2016, as amended by the NDAA FY 2017, the Department of Defense (DoD) established the Modernized Retirement System, commonly known as the Blended Retirement System (BRS). The BRS is the retired pay system for all Service members who enter military service on or after January 1, 2018. Service members who were already in uniformed service before January 1, 2018, were grandfathered under the applicable legacy retirement system. The law permitted active duty Service members with less than 12 years of service on December 31, 2017, or Service members in the Reserve Component who were in a paid status and had accrued fewer than 4,320 retirement points as of December 31, 2017, the option to elect to be covered under the BRS or to remain with their applicable legacy retirement system. The law provided a 1-year election period for those Service members who were eligible to opt into BRS from January 1, 2018, and ending on December 31, 2018. The decision to opt into BRS was irrevocable.

1.1.1. Fleet Reserve and Fleet Marine Corps Reserve

The Fleet Reserve and Fleet Marine Corps Reserve are composed of enlisted members of the naval service transferred to that status under ***Title 10, United States Code (U.S.C.) section 8330***. They were established to provide an available source of experienced former members of the Regular Navy or Navy Reserve and the Regular Marine Corps or Marine Corps Reserve. These members could be organized without further training to fill billets requiring experienced personnel in the first stages of mobilization during an emergency or in time of war.

1.1.1.1. Members of the Fleet Reserve and Fleet Marine Corps Reserve may be ordered to active duty without their consent in time of:

1.1.1.1.1. War or national emergency declared by the Congress, for the duration of the war or national emergency and for 6 months thereafter; or

1.1.1.1.2. National emergency declared by the President or when otherwise authorized by law.

1.1.1.2. In time of peace, any member of the Fleet Reserve or Fleet Marine Corps Reserve may be required to perform not more than 2 months' active duty for training during each 4-year period.

1.1.2. Retirement for Physical Disability

If a member of the Fleet Reserve or Fleet Marine Corps Reserve is found physically unfit for duty, the member will be transferred to the Regular retired list or Reserve retired list of the Navy or Marine Corps, as appropriate. Such retirement is by reason of physical disability.

1.1.3. Retirement After 30 Years of Service

Upon completion of 30 years of active and inactive service, a member of the Fleet Reserve or Fleet Marine Corps Reserve is transferred to the Regular retired list or the Retired Reserve of the Navy or Marine Corps, as appropriate.

1.1.3.1. Unless otherwise entitled to higher pay, each member transferred to the retired list or the Retired Reserve is entitled to retired pay at the same rate as the retainer pay to which he was entitled at the time of his transfer to the retired list or the Retired Reserve.

1.1.3.2. Upon placement on the retired list, a member may be advanced to the highest officer grade in which the member served satisfactorily under a temporary appointment with retired pay based on that grade. See Chapter 9, section 3.0 for advancement on the retired list.

1.2 Authoritative Guidance

The pay policies and requirements established by DoD in this chapter are derived primarily from, and prepared in accordance with the United States Code (U.S.C.), including Titles 5, 10, and 37. The specific statutes, regulations, and other applicable guidance that govern each individual section are listed in a reference section at the end of the chapter.

2.0 TRANSFER ELIGIBILITY-SERVICE FOR PERCENTAGE MULTIPLE PURPOSES

2.1 Minimum Required Service

Upon completion of at least 20 years of active service in the Armed Forces (to include service as a cadet or midshipman), enlisted members of the Regular Navy, Regular Marine Corps, Navy Reserve, or Marine Corps Reserve may request transfer to the Fleet Reserve or Fleet Marine Corps Reserve under 10 U.S.C. § 8330(d). In this section, service as a cadet or midshipman refers to service as a cadet at the U.S. Military Academy, U.S. Air Force Academy, or U.S. Coast Guard Academy; or service as a midshipman at the U.S. Naval Academy. This service is not creditable service for any Officer.

2.1.1. Prior to December 31, 1977, a member became eligible for transfer upon completion of 19 years and 6 months of active service since that part of a year that is 6 months or more was creditable as a whole year. If service is creditable to the member for such purpose before December 31, 1977, then:

2.1.1.1. A completed minority enlistment of the member is counted as 4 years of active service, and

2.1.1.2. An enlistment of the member terminated within 3 months before the end of the term of enlistment is counted as active service for the full term.

2.1.2. On or after December 31, 1977, a member must complete a total of 20 years of active service to be eligible for transfer to the Fleet Reserve or Fleet Marine Corps Reserve. For such members, service creditable under subparagraph 2.1.1, which was not actually served by the member, may not be counted in determining eligibility for transfer.

2.2 Service Creditable for Transfer to the Fleet Reserve or Fleet Marine Corps Reserve

The following service is creditable for transfer eligibility and percentage multiple purposes if performed in an active duty (and active duty for training) status after August 9, 1956:

2.2.1. Service in the Army, Navy, Air Force, Marine Corps, and Coast Guard;

2.2.2. Service as an appointed or enlisted aviation cadet in the Navy Reserve or Marine Corps Reserve; or

2.2.3. Service as a cadet or midshipman at a Service academy (this pertains to only the credit for enlisted members transferring to the Fleet Reserve or Marine Corps Reserve). See Chapter 1, paragraphs 3.2 and 3.3 for rules pertaining to cadet/midshipman credit for officers.

2.3 Service Not Creditable for Transfer to the Fleet Reserve or Fleet Marine Corps Reserve

The following service is not creditable for transfer eligibility and percentage multiple purposes:

2.3.1. Service in the Philippine Constabulary;

2.3.2. Furlough without pay;

2.3.3. Inactive service as a member of a Reserve Component;

2.3.4. Inactive service while on the Temporary Disability Retired List; and

2.3.5. Time lost in excess of 1 day (24 consecutive hours) because of:

2.3.5.1. Sickness due to misconduct (SKMC) before June 17, 1955, the Bureau of Naval Personnel credited time lost due to SKMC for transfer purposes;

2.3.5.2. Nonperformance of duty before July 24, 1956, due to imprisonment because of a general court-martial sentence and while under arrest awaiting trial and during trial that results in conviction as finally approved;

2.3.5.3. Nonperformance of duty after July 23, 1956, due to confinement under a sentence by any court-martial, as finally approved, before, during, and after trial. If the member is acquitted or sentence is set aside and charges dismissed, the period of confinement is not considered time lost;

2.3.5.4. Absence while the member is in civil arrest (while in custody of civil authorities), unless the member is acquitted or released without making restitution or reparation; or

2.3.5.5. Unauthorized absence, which includes absence without leave (AWOL), absence over leave (AOL), and desertion (the latter of which previously was shown as AOL or AWOL and now is shown as Unauthorized Absence).

2.4 Constructive Service

Constructive service is service for which credit is given although not actually performed. Constructive service earned prior to December 31, 1977, is creditable as service for transfer eligibility and percentage multiple purposes. Constructive service is not creditable for determining basic pay rate upon which retainer pay is computed. No constructive service is creditable after December 31, 1977.

2.4.1. Minority Enlistments. A minority enlistment is the enlistment of a male between the age of 14 and 18 or female between the age of 18 and 21 who enlists with the consent of his or her parents or guardians to serve in the Navy or Marine Corps until reaching the age of 21. (The Navy policy is to accept members for enlistment at 17 years of age with written parental consent or 18 years of age without parental consent.) A completed minority enlistment, or a minority enlistment which terminates within 3 months of the expiration date of the enlistment, is counted as 4 years of active service when actual day-for-day service performed totals at least the period constituting the member's minority status upon enlistment, less 3 months. After December 31, 1977, time which is not actually served by the member may not be counted.

2.4.2. Short-Term Enlistment. A short-term enlistment refers to an enlistment that is terminated within 3 months before the end of the term of enlistment. This enlistment is counted as active service for the full term when the actual day-for-day active service performed amounts to at least the full term of the enlistment, less 3 months. After December 31, 1977, time which is not actually served by the member may not be counted.

2.4.3. Involuntary Extension. An involuntary extension is when an enlistment (including a minority enlistment) is extended involuntarily for a specific period. Compute service based on the constructive service principle for short-term enlistments, which applies equally for computing service for transfer by the Bureau of Naval Personnel on and after March 15, 1966, and by the Commandant of the Marine Corps on and after January 1, 1968.

2.4.4. Voluntary Extension. A voluntary extension is when the member agrees to serve beyond the scheduled term, modify the original minority or term enlistment contract by increasing the period agreed to by the member. The same rule established for crediting constructive service for short-term enlistments applies for voluntary extensions.

2.4.5. Lost Time and Inactive Service. Before crediting constructive service for a period of service, deduct any lost time and any inactive service from the member's day-for-day service. After these deductions, if the member is eligible to receive constructive service for the period of enlistment, credit it. If, after deductions, the member is not eligible for constructive service for a period of enlistment, give credit only for the actual day-for-day service. For the definition of lost time, see Chapter 1, subparagraphs 3.9.1 and 3.9.2.

2.4.6. Waiver of Recoupment of Time Lost for Confinement. The circumstances under which the Secretary concerned may waive recoupment of time lost for confinement are provided in ***10 U.S.C. § 972(c)***.

2.5 Conclusiveness of Transfer

All transfers of members to the Fleet Reserve or Fleet Marine Corps Reserve, when effected, are conclusive for all purposes, except that the Chief of Naval Personnel or the Commandant of the Marine Corps, acting for the Secretary of the Navy, may correct any error or omission in the determination as to a member's grade and years of creditable service. When such a correction is made, the member is entitled, when not on active duty, to retainer pay based on the grade and number of years of creditable service, as corrected, from the effective date of transfer.

3.0 SERVICE FOR BASIC PAY PURPOSES

The total service for basic pay purposes follows the same principle as service for percentage multiple purposes. For an explanation of service creditable for basic pay purposes, see Volume 7A, Chapter 1, section 2.0.

4.0 DATE OF TRANSFER

4.1 Effective Date of Transfer

Members are transferred to the Fleet Reserve and Fleet Marine Corps Reserve only by the authority of, and on the date specified by, the Chief of Naval Personnel or the Commandant of the Marine Corps. Commanding officers may defer transfers to the Fleet Reserve up to 30 days beyond the date authorized when urgent operational commitments demand the member's service. Transfers to the Fleet Marine Corps Reserve may not be made on a date other than the date

specified in the authority for release. The Commandant of the Marine Corps must authorize any change in this date prior to the effective date of transfer. The date of transfer is the member's last day of active duty and the member is entitled to active duty pay and allowances for that date.

4.2 Application of Uniform Retirement Date Act

Since a transfer to the Fleet Reserve or Fleet Marine Corps Reserve is not considered a retirement, the Uniform Retirement Date Act (URDA), ***5 U.S.C. § 8301***, does not apply. Once the member has completed a total of 30 years of active service and is eligible for retirement, the member's date of retirement comes under the URDA. A transfer to the Fleet Reserve may be made on any intermediate day of a month as approved by the Chief of Naval Personnel. Transfers to the Fleet Marine Corps Reserve are made on the last day of the month except where transfer has been requested on the effective date of an expiration of enlistment. Except in time of war or national emergency, personnel transferred to the Fleet Marine Corps Reserve are released from active duty on the date of such transfer, unless an order to the contrary is received.

4.3 Modification of "Not Earlier Than Date"

The Chief of Naval Personnel normally does not approve a requested change of authorized date for transfer to the Fleet Reserve. In case of hardship, meritorious circumstances, or unusual conditions, a member may submit a request for a change of authorized date for the transfer to the Chief of Naval Personnel through the commanding officer and appropriate personnel distribution. If an earlier date of transfer is requested, the commanding officer's endorsement must state whether the member's services can be spared. If approved, the Chief of Naval Personnel issues a message to the commanding officer and sends a copy to the Defense Finance and Accounting Service-Cleveland, Retired and Annuitant Pay.

4.4 Effective Date of Retainer Pay

Members transferred to the Fleet Reserve and Fleet Marine Corps Reserve receive "retainer" pay versus "retired" pay, as they are considered to have their services retained for possible use. A member becomes entitled to retainer pay starting on the day after the effective date of transfer to the Fleet Reserve or Fleet Marine Corps Reserve.

4.5 Retainer Pay Effective on the First Day of New Active Duty Pay Rates

4.5.1. When a member is transferred to the Fleet Reserve or Fleet Marine Corps Reserve, compute retainer pay using the rate of active-duty pay received at the time of transfer. For example, if a member is transferred on December 31, 1991, with retainer pay effective on January 1, 1992, compute the member's retainer pay using the January 1, 1991, active-duty pay rates. If a member transferred on January 1, 1992, with retainer pay effective on January 2, 1992, compute retainer pay using the January 1, 1992, active-duty pay rates.

4.5.2. If a member of the Fleet Reserve or Fleet Marine Corps Reserve first became entitled to a monthly retainer pay on or after January 1, 1971, that pay may not be less than the monthly retainer pay to which the member would be entitled if he or she had become entitled to retainer pay at an earlier date. Adjust this monthly retainer pay to reflect any applicable increase in such pay under ***10 U.S.C. § 1401a(f)***. In computing the amount of retainer pay to which the member would have been entitled on that earlier date, base the computation, subject to 10 U.S.C. § 1401a(f), on the member's grade, length of service, and the rate of basic pay applicable at that time. This subparagraph does not authorize any increase in the monthly retainer pay to which a member was entitled for any period before October 7, 1975.

5.0 RANK AND GRADE

A member transferred to the Fleet Reserve or Fleet Marine Corps Reserve has retainer pay computed based on the pay grade in which serving on the date of transfer.

5.1 Pay Grade

A member who served as a temporary officer but holds permanent enlisted status will revert to a permanent enlisted pay grade upon transfer to the Fleet Reserve or Fleet Marine Corps Reserve.

5.2 Retainer Pay

A member who has served as the Master Chief Petty Officer of the Navy or as Sergeant Major of the Marine Corps is entitled to retainer pay at the highest basic pay rate to which the member was entitled while so serving, if that rate is higher.

6.0 GROSS PAY COMPUTATION

6.1 Computation

See Chapter 3, section 2.0 for basic computation.

6.2 Extraordinary Heroism

See Chapter 1, section 8.0 for guidance. See Chapter 3, subparagraph 2.3.3 and Chapter 3, paragraph 5.6 for computation rules.

6.3 Good Conduct (Markings)

For members retired and being paid under laws in effect before October 1, 1949, a 10 percent credit for good conduct may apply. To qualify for this credit, a member must have been retired under the specific citation that contains the authority for this increase, and the member's average marks for conduct for 20 or more years must not have been less than 95 percent of the maximum.

6.3.1. Section 203 of the Naval Reserve Act of 1938, which authorized the 10 percent "good conduct" increase added to retired pay of enlisted members of the Coast Guard who retire from the Coast Guard after 20 years of service, was repealed by Public Law 88-114, dated September 6, 1963.

6.3.2. The saving provision of Public Law 88-114 retained the 10 percent increase for members on active duty with the Coast Guard on or before September 6, 1963. The provision may apply to retired enlisted members of the Coast Guard who served on active duty in the Regular Coast Guard on or before September 6, 1963. Members who served in the Regular Coast Guard before September 6, 1963, but who were not serving in the Coast Guard on September 6, 1963, and who later retired from the Coast Guard, are entitled to the 10 percent good conduct increase, if otherwise qualified.

6.4 Insular Force

Members of the Insular Force were eligible for transfer to the Fleet Reserve or to the retired list. The Insular Force is no longer maintained as a continuing part of the Navy. See Chapter 1, paragraph 7.2 for guidance.

7.0 PAYMENT DATE

See Chapter 1, section 9.0.

*REFERENCES

CHAPTER 2 – INITIAL ENTITLEMENT – FLEET RESERVE/FLEET MARINE CORPS RESERVE

1.0 – GENERAL

1.1	10 U.S.C. §§ 1401, 1406, 1407, 1409 Public Law 114-328, sections 631-634, December 26, 2016 Public Law 114-92, sections 631-635, November 25, 2015 Deputy Secretary of Defense, Memorandum, Subject: Implementation of the Blended Retirement System, January 27, 2017
1.1.1	10 U.S.C. § 8330
1.1.1.1	10 U.S.C. § 8385(a)
1.1.1.2	10 U.S.C. § 8385(b)
1.1.2	10 U.S.C. § 8331
1.1.3	10 U.S.C. § 8331
1.1.3.2	10 U.S.C. § 8262(a)

2.0 – TRANSFER ELIGIBILITY – SERVICE FOR PERCENTAGE MULTIPLE PURPOSES

2.1	10 U.S.C. § 8330(b) and (d) Manuscript Comptroller General (MS Comp Gen) B-195448, April 3, 1980
2.1.1 &2	10 U.S.C. § 8330 (d)(2)(3)
2.3	10 U.S.C. § 972 Comp Gen B-195448, April 3, 1980
2.4	43 Comp Gen 826, June 25, 1964
2.4.1 & 2	10 U.S.C. § 8330(d)
2.4.6	10 U.S.C. § 972(c)
2.5	10 U.S.C. § 8332

3.0 – SERVICE FOR BASIC PAY PURPOSES

	10 U.S.C. § 8330(d)

4.0 – DATE OF TRANSFER

4.2	5 U.S.C. § 8301 44 Comp Gen 584, March 26, 1965
4.5.1	44 Comp Gen 584, March 26, 1965
4.5.2	10 U.S.C. § 1401a(f)

REFERENCES (continued)

5.0 – RANK AND GRADE

5.1	10 U.S.C. § 8330(c) 49 Comp Gen 800, May 26, 1970
5.2	10 U.S.C. § 8330(c) 10 U.S.C. § 1406(i)

6.0 – GROSS PAY COMPUTATION

6.3	Naval Reserve Act of 1938, section 203 34 U.S.C. § 854(b)(repealed) Public Law 88-114, September 6, 1963 MS Comp Gen B-193199, Apr 11, 1979

VOLUME 7B, CHAPTER 3: "GROSS PAY COMPUTATION"

SUMMARY OF MAJOR CHANGES

Changes are identified in this table and also denoted by blue font.

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

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

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

The previous version dated September 2024 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated chapter and formatting to comply with administrative instructions.	Revision
2.13	Added special rule for officers who served in grade O-9 or O-10 and retired in grade O-8.	Addition
5.4.1	Pursuant to Title 10, United States Code, sections 1370(b)(1)(A) and 1370(b)(2), updated subparagraph to state, "The Secretary of Defense may reduce the active-duty 3 year service in grade requirement to not less than 2 years. This authority may not be delegated."	Revision
Table 3-1	Updated table to include Space Force when Air Force is mentioned.	Revision
Table 3-1 Note 4	Updated to provide elimination of the 75 percent cap on additional retired pay for extraordinary heroism for members of the Army, Air Force, and Space Force who served during the Vietnam Era.	Revision
References	Updated references.	Revision

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CHAPTER 3

GROSS PAY COMPUTATION

1.0 GENERAL

1.1 Purpose

This chapter establishes the standard way of computing basic retired pay, which includes the application of saved pay, impact of the Tower Amendment, impact of other special provisions related to retired pay, and calculations and payment of a lump sum of retired pay. This update introduces guidance for the Modernized Retirement System, known as the Blended Retirement System (BRS). BRS is authorized by the Fiscal Year (FY) 2016 National Defense Authorization Act (NDAA), ***Public Law (P.L.) 114-92***, sections 631 through 635. BRS was further modified in the FY 2017 NDAA, ***P.L. 114-328***, sections 631 through 633 and FY 2018 NDAA, ***P.L. 115-91***, section 622. BRS became effective January 1, 2018. Unless specifically stated in P.L. 114-92, P.L. 114-328, or P.L. 115-91, all existing provisions in statute, regulation, and policy related to retired pay, retainer pay, and survivor benefits remain in effect under the BRS.

1.2 Authoritative Guidance

The pay policies and requirements established by DoD in this chapter are derived primarily from, and prepared in accordance with, the United States Code (U.S.C.), including Titles 10, 37, and 38. Due to the subject matter in this chapter, the list of authoritative sources is extensive. The specific statutes, regulations, and other applicable guidance that govern each individual section are listed in a reference section at the end of the chapter.

2.0 BASIC COMPUTATION

2.1 Overview

In most cases, retired or retainer pay is the product of multiplying the retired pay base by the years of service multiplier. In some military disability retirement cases, retired pay is the product of multiplying the retired pay base by the percentage of disability determined by the military service.

2.1.1. Retired Pay Base. The retired pay base is determined by using the active-duty basic pay entitlement of the member.

2.1.1.1. Pre-September 8, 1980 Member. For individuals who first became members before September 8, 1980, the retired or retainer pay base is the basic pay of the member on the day before retirement. See paragraphs 2.2 through 2.6 for exceptions.

2.1.1.2. Post-September 7, 1980 Member. For individuals who first became members after September 7, 1980, the retired or retainer pay base is the average of the highest 36 months of basic pay received.

2.1.1.2.1. The retired pay base for a member with 36 or more months of active service is the average monthly basic pay the member received over their highest earning 36 months. In the case of a Reserve component member, this is the total amount of basic pay to which the member was entitled during the member's high 36 months or to which the member would have been entitled if the member had served on "active duty" during the entire period of the member or former member's high 36 months. Only months during which the individual was a member of a uniformed service may be used. Starting with the highest rate of pay, add together the monthly basic pay amounts until the total number of months equals 36 months. Divide the total pay derived from the sum of months by 36, and round to the nearest cent to obtain the retired pay base applicable to the member. Any lost time the member had is not to be included in the computation.

2.1.1.2.2. The retired pay base for a member with less than 36 months of active service is the member's basic pay for the entire period of the member's active service added together divided by the number of months (including any fractions thereof) of the member's active service. In the case of a Reserve component member, this is the total amount of basic pay to which the member was entitled or to which the member would have been entitled if the member had served on active duty during the entire period before being retired. Divide the total pay by the total time expressed as months and days, count days that are less than 30 as 1/30th of a month. Round the result to the nearest cent.

2.1.1.2.3. A full month served counts as 1 month regardless of any interruption by a pay rate change and regardless of the number of days in that month. Service for an entire calendar month at a single rate of basic pay counts as 1 month under that rate of basic pay, regardless of the number of days in the month, i.e., 28, 29, 30, or 31 days. For a calendar month that has multiple rates of basic pay, compute service for an entire calendar month, for the number of days paid at each rate. For example, if a member has a longevity pay increase effective February 11th, the old rate is applicable for 10 days and the new rate is applicable for 20 days (regardless of leap year). If a month has 31 days, ignore the 31st. For example, if the member has a longevity pay increase effective August 11th, the old rate is applicable for 10 days and the new rate is applicable for 20 days. Allocate the computation of pay for a 30-day month in a straightforward manner.

2.1.1.2.4. When a member serves less than a full month, count only the number of days actually paid so that each total of 30 days equals 1 month. If a member serves less than a full month and one or more rates of basic pay apply, compute each rate as applicable for the number of days paid to the member at that rate. For example, assume the member had a break in service and returned to active duty on February 8th, but has a longevity increase effective February 11th. When a member serves through the end of February, consider the month to have 30 days. This member receives 3 days at one rate and 20 days at the new rate or 23 days of pay.

Example: A member receives monthly basic pay of $17,658.30 over 14 months and 11 days:

$\frac{\$17,658.30}{14 \text{ months} + 11 \text{ days}} = \frac{\$17,658.30}{14.36667} = \$1,229.12$ Retired Pay Base

$1,229.12 Retired Pay Base
x % Retired Pay Multiplier
= $x,xxx.xx Retired Pay Rounded

2.1.1.3. Consider an individual to have first become a member of a uniformed service when that individual is first appointed or is enlisted in the uniformed services. A member who first enlists under the delayed entry program; in a Reserve Component as part of the Senior Reserve Officers' Training Corps (ROTC) or ROTC Financial Assistance programs; as a student at the Uniformed Services University of Health Sciences; or as a participant in the Armed Forces Health Professions Scholarship Program, is considered to have first become a member on the date of enlistment or entry into those programs.

Example 1: A member who first enlists before September 8, 1980, under the delayed entry program; in a Reserve Component as part of the Senior Reserve Officers' Training Corps (ROTC) or ROTC Financial Assistance programs; as a student at the Uniformed Services University of Health Sciences; or as a participant in the Armed Forces Health Professions Scholarship Program, is considered to have first become a member before September 8, 1980.

Example 2: A member who first enlists before January 1, 2018, under the delayed entry program; in a Reserve Component as part of the Senior ROTC or ROTC Financial Assistance programs; as a student at the Uniformed Services University of Health Sciences; or as a participant in the Armed Forces Health Professions Scholarship Program, is considered to have first become a member before January 1, 2018.

2.1.1.4. The Defense Finance and Accounting Service (DFAS) may use a saved pay rate under the provisions of the Tower Amendment to compute retired pay when it is to the member's advantage. See paragraph 4.1 for eligibility. The Tower Amendment authorizes the use of the basic pay rates in effect on the day before the effective date of the rates of monthly basic pay on which the member's retired pay would otherwise be based.

2.1.2. Retired Pay Multiplier

2.1.2.1. In computing retired or retainer pay, other than for disability or non-regular service retirement, the retired pay or retainer pay multiplier is the product of the applicable percentage and the member's years of creditable service. The percentage varies according to the member's retirement program. See Table 3-4 (pre-BRS - 2.5 percent) and Table 3-5 (BRS - 2.0 percent). The term "years of creditable service" means the number of years of service that are creditable to a member in computing the member's retired or retainer pay,

including credit for each full month of service in addition to full years of service. See Chapter 1, section 4.0 for determining creditable years of service for computing retired pay.

2.1.2.1.1. Pre-January 1, 1980 Member. The retired pay or retainer pay multiplier for a member with a Date of Initial Entry into Military Service (DIEMS) before January 1, 1980, is the product of 2.5 percent and the member's years of creditable service unless that member elected to enroll in the BRS.

2.1.2.1.2. Post-January 1, 1980 Member. The retired pay or retainer pay multiplier for a member with a DIEMS on or after January 1, 1980, is the product of 2.5 percent and the member's years of creditable service, unless that member accepted the Career Status Bonus (CSB) or elected to enroll in the BRS.

2.1.2.2. The retired pay or retainer pay multiplier for a regular member with a DIEMS on or after August 1, 1986, but before January 1, 2018, who has accepted the CSB and who retires with less than 30 years of creditable service is:

2.1.2.2.1. The product of 2.5 percent multiplied by the member's years of creditable service;

2.1.2.2.2. Minus 1 percentage point for each full year of creditable service less than 30; and

2.1.2.2.3. One twelfth of 1 percentage point for each full month of creditable service less than a full year.

NOTE: See subparagraph 2.10.2 for the restoring of retired pay at age 62.

2.1.2.3. The retired pay or retainer pay multiplier for a member with a DIEMS on or after January 1, 2018, or a member with a DIEMS before January 1, 2018, who elected to enroll in the BRS, is 2 percent multiplied by the years of creditable service.

2.1.2.3.1. For a regular retirement under the BRS, the years of service multiplier is determined by multiplying 2 percent by the member's years of creditable service, as computed in accordance with ***Title 10, U.S.C. § 1405***. The term "years of creditable service" means the number of years of service that are creditable to a member in computing the member's retired or retainer pay, including credit for each full month of service in addition to full years of service.

2.1.2.3.2. For a non-regular retirement under the BRS, the years of service multiplier is determined by multiplying 2 percent by the years of service credited for percentage purposes. In accordance with ***DoD Instruction (DoDI) 1215.07***, as determined under ***10 U.S.C. § 12733***, the formula for converting retirement points into years of service credited for percentage purposes is total number of retirement points divided by 360.

2.1.2.3.3. For a disability retirement under the provisions of ***10 U.S.C., Chapter 61***, the years of service multiplier is determined by multiplying 2 percent by the member's years of creditable service if enrolled in BRS (otherwise 2.5 percent multiplied by the member's years of creditable service), as computed in accordance with ***10 U.S.C. § 1208***. However, a member may elect to receive retired pay equal to their retired base pay multiplied by the member's rated percent of disability in accordance with ***10 U.S.C. § 1401***. All other provisions of 10 U.S.C., Chapter 61 apply.

2.1.2.4. If retired before January 1, 2007, the retired pay or retainer pay multiplier is limited to 75 percent for a member with more than 30 years of creditable service. If retired after December 31, 2006, for other than disability, there is no restriction on the retired pay multiplier.

2.2 Disability Retirement (Table 3-1, Rules 1 and 2)

2.2.1. The retired pay base pay for a disability retirement is determined based on when a member entered service.

2.2.1.1. Pre-September 8, 1980. For a member who entered service before September 8, 1980, the retired pay base is the monthly basic pay of the grade or rank in which the member was serving when placed on the Temporary Disability Retired List (TDRL), or the highest temporary grade or rank in which the member served satisfactorily or to which the member was entitled on the day before retirement or placement on the TDRL, whichever is the higher.

2.2.1.2. Post-September 7, 1980. For a member who entered service after September 7, 1980, the retired pay base is determined as prescribed in subparagraph 2.1.1.2.

2.2.2. The retired pay multiplier for a disability retirement is determined as follows:

2.2.2.1. A member permanently retired for disability receives retired pay that is equal to the retired pay base under Table 3-1, Rule 1, multiplied by the member's election of either:

2.2.2.1.1. The applicable percentage described in subparagraph 2.1.2.3.3 multiplied by the years of service credited for percentage purposes under 10 U.S.C. § 1208, except as provided in subparagraph 2.2.3;

2.2.2.1.2. Percentage of disability, not to exceed 75 percent, on date retired;

2.2.2.1.3. The retired pay multiplier may not exceed 75 percent for a member with 30 or more years of service, retiring on or before January 7, 2011. The retired pay multiplier is not limited for members with 30 or more years of service who retire on or after January 8, 2011; or

2.2.2.1.4. The retired pay multiplier is 2 percent multiplied by the years credited for percentage purposes under 10 U.S.C. § 1208, for a member who was enrolled in BRS or the percentage of disability, not to exceed 75 percent, on date retired for those who elected to enroll in the BRS.

2.2.2.2. A member placed on the TDRL receives retired pay that is equal to the retired pay base under Table 3-1, Rule 2, multiplied by the member's election of either:

2.2.2.2.1. The applicable percentage described in subparagraph 2.1.2 multiplied by the years of service credited for percentage purposes under 10 U.S.C. § 1208; or,

2.2.2.2.2. Percentage of disability, not to exceed 75 percent, on the date when the military department concerned places the member's name on the TDRL.

2.2.2.2.3. If neither multiplier as described under subparagraphs 2.2.2.2.1 and 2.2.2.2.2 is at least 50 percent, DFAS will pay a minimum of 50 percent of the retired pay base while the member is on the TDRL.

2.2.2.2.4. For a member placed on the TDRL on or before January 7, 2011, the retired pay multiplier may not exceed 75 percent. The retired pay multiplier is not limited for members with 30 or more years of service who retire on or after January 8, 2011.

2.2.3. If a member is retired for disability and is eligible under another provision of law, follow the rule in Table 3-1 applicable to the section of law that is more advantageous to the member. Note, however, for a non-regular member who is retired for disability and becomes entitled to immediate retired pay under Chapter 61 before eligibility age, the retired pay may not be recomputed at eligibility age (usually age 60) based on ***10 U.S.C. § 12731***. To be entitled to retired pay for non-regular service under 10 U.S.C. § 12731, a member must "not be entitled under any other provision of law, to retired pay from an armed force." See 10 U.S.C. § 12731.

2.2.4. DoD will compute creditable service for disability retirees under 10 U.S.C. § 1208. DoD will not apply CSB reduction factors when computing retired pay for disability retirees.

2.3 Voluntary Retirement (Table 3-1, Rules 3 through 8)

2.3.1. The retired or retainer pay base pay for a voluntary retirement is determined based on when a member entered service.

2.3.1.1. Pre-September 8, 1980. For a member who entered service before September 8, 1980, the retired or retainer pay base is the monthly basic pay rate applicable on the date of the member's retirement for the grade or rank in which the member was retired or to which the member advances on the retired list. Compute the retired pay base as shown in Table 3-1, Rules 3 through 8.

2.3.1.1.1. A Reserve enlisted member, who is retired in the highest enlisted grade satisfactorily held on active duty (or in which the member served on full-time National Guard duty satisfactorily) after being administratively reduced in grade not as the result of the member's misconduct, may use the basic pay rate of the retired grade.

2.3.1.1.2. For Army, Air Force, and Space Force Reserve enlisted personnel, the basic pay applicable on the member's date of retirement for the retired grade is the retired pay base, in lieu of the retired pay base under ***10 U.S.C. § 1406(c) or (e)***.

2.3.1.1.3. For Navy and Marine Corps Reserve enlisted personnel transferred to the Fleet Reserve/Fleet Marine Corps Reserve (FR/FMCR) in the highest grade satisfactorily held on active duty after being administratively reduced in grade not as the result of the member's misconduct, use the basic pay rate of the grade in which the member transferred for the retired or retainer pay base. This subparagraph applies to the member who entered a uniformed service before September 8, 1980, and who retired (or transferred to the FR/FMCR) after September 30, 1996.

2.3.1.1.4. For warrant officers, compute the retired pay base on the monthly basic pay to which the member would be entitled if serving on active duty in the retired grade on the day before retirement. If the member, however, is entitled to a higher rate of pay using any other warrant officer grade satisfactorily held by the member on active duty, retired pay may be computed using the basic pay for that warrant officer grade.

2.3.1.2. Post-September 7, 1980. For a member who entered service after September 7, 1980, the retired pay base is determined as prescribed in subparagraphs 2.1.1.2.1 and 2.1.1.2.2.

2.3.1.2.1. An Army, Air Force or Space Force enlisted member with less than 30 years of service who is retired under ***10 U.S.C. § 7314*** or ***10 U.S.C. § 9314*** will have the retired pay base computed using only the rates of basic pay for months of active duty as an enlisted member.

2.3.1.2.2. A Navy and Marine Corps enlisted member who is transferred to the FR/FMCR in accordance with ***10 U.S.C. § 8330*** will have the retired pay base computed using only the rates of basic pay for months of active duty as an enlisted member.

2.3.2. The retired or retainer pay multiplier for a voluntary retirement is determined in accordance with subparagraph 2.1.2.

2.3.2.1. For service credited for percentage purposes of enlisted members, see Chapter 1, paragraph 4.2.

2.3.2.2. For service credited for percentage purposes of commissioned officers, see Chapter 1, paragraph 4.3.

2.3.2.3. For service credited for percentage purposes of warrant officers, see Chapter 1.

2.3.2.4. The retired pay multiplier for a member who enters a uniformed service after July 31, 1986, and who has accepted the CSB, is determined under subparagraph 2.1.2.2.

2.3.2.5. See paragraph 2.11 for retired pay computation for a member retired under the Temporary Early Retirement (TERA).

2.3.3. DFAS may increase retired or retainer pay by 10 percent of retired pay for extraordinary heroism in the line of duty. See paragraph 5.6.

2.4 Involuntarily Retirement (Table 3-1, Rules 9 through 12)

2.4.1. The retired pay base pay for a mandatory retirement is determined as follows:

2.4.1.1. For a member who entered service before September 8, 1980, the retired pay base is the basic pay rate of member's grade that is applicable on member's date of retirement. Do not use the grade of brigadier general if the member was a permanent professor at a military academy and was conferred such a title upon retirement. If a warrant officer is entitled to a higher rate of pay, using any other warrant officer grade satisfactorily held by the member on active duty, retired pay may be computed using the basic pay for that warrant officer grade.

2.4.1.2. For a member who entered service after September 7, 1980, the retired pay base is determined as prescribed in subparagraph 2.1.1.

2.4.2. The retired pay multiplier for a mandatory retirement is determined in accordance with subparagraph 2.1.2.

2.4.2.1. For service credited for percentage purposes of Army, Air Force, and Space Force retirees, see Chapter 1.

2.4.2.2. For service credited for percentage purposes of Navy and Marine Corps retirees, see Chapter 1.

2.4.2.3. The retired pay multiplier for a member who enters a uniformed service after July 31, 1986, and who has accepted the CSB, is determined under subparagraph 2.1.2.2.

2.5 Reservist (Meets Age and Service Requirements) (Table 3-1, Rule 13)

2.5.1. The retired pay base pay for a non-regular retirement is determined as follows:

2.5.1.1. For a member who entered service before September 8, 1980, the retired pay base is the monthly basic pay at the rate applicable on the date granted retired pay, at the highest grade held satisfactorily at any time in the Armed Forces.

2.5.1.2. For a member who entered service after September 7, 1980, the retired pay base is determined as prescribed in subparagraph 2.1.1.2. The high-36 months of such a member are the 36 months for which the pay was the highest, whether or not consecutive, out of all the months before the member became entitled to retired pay or would have become entitled to retired pay. This will generally be the 36 months immediately preceding receipt of retired pay even

though the member may not have been in an active status during such time. However, DFAS may only use months during which the individual was a member of a uniformed service for this purpose.

2.5.1.3. Non-regular members who, after completing 20 years of service computed under 10 U.S.C. § 12732, elect to be discharged to civilian status (awaiting pay at eligibility age) are former members. The high-36 months of such a member would only include the months prior the discharge.

2.5.2. The retired pay multiplier for a non-regular retirement is determined by multiplying the applicable percentage in accordance with subparagraph 2.1.2 by the years of service credited for percentage purposes. See Chapter 1 for service credited for percentage purposes.

NOTE: Pursuant to 10 U.S.C. § 12733, the formula for converting retirement points into percentage years is the total number of retirement points divided by 360. Carry the result to three decimal places; round to two decimal places. Example: 4,735 retirement points divided by 360 equals 13.152 years or 13.15 years for percentage purposes.

2.5.3 For non-regular members who were previously retired for disability and became entitled to immediate retired pay under Chapter 61, see subparagraph 2.2.3.

2.6 Fleet Reserve/Fleet Marine Corps Reserve (FR/FMCR) Transfer (Table 3-1, Rule 14)

When not on active duty, a member transferred to the FR/FMCR is entitled to retainer pay computed by multiplying the retainer pay base by the applicable percentage in accordance with subparagraph 2.1.2 multiplied by the years of service credited for percentage purposes. In lieu of the retainer pay base computed in accordance with ***10 U.S.C. § 1406(d)***, a Reserve enlisted member may use the monthly basic pay for the highest enlisted grade in which the member served satisfactorily, as determined by the Secretary of the Navy. This paragraph applies to an individual who first became a member of the uniformed service before September 8, 1980, and who at the time of transfer is serving on active duty in a grade lower than the highest enlisted grade held by the member while on active duty not as a result of the member's misconduct.

2.6.1. Pre-September 8, 1980 Member. The retainer pay base is the basic pay that the member received at the time of transfer to the FR/FMCR. The retainer pay base is multiplied by the applicable percentage in accordance with subparagraph 2.1.2 multiplied by the number of years of active service (as adjusted in subparagraph 2.1.1) in the Armed Forces.

2.6.2. Post-September 7, 1980 Member. The retainer pay base is the person's high-three average. The high-three average is the total amount of monthly basic pay for the highest 36 months of member's active service, whether or not consecutive, divided by 36. When a member transfers to the FR/FMCR with less than 30 years of service, DFAS computes the high-36 average using only rates of basic pay applicable to months of active duty as an enlisted member.

2.7 Historical Pay Computations

2.7.1. The laws that governed the computation of retainer pay for a member transferred to the FR/FMCR from its inception in 1916, through June 30, 1938, are of no value since assimilated in the Naval Reserve Act of 1938, effective July 1, 1938. Therefore, the earlier computations are not included since they were restated effective July 1, 1938. See Table 3-2 for the pay computations.

2.7.2. A member transferred to the FR/FMCR was administratively placed in a class to differentiate between laws and conditions governing the computation of these pay entitlements. The following classes are applicable to these members:

COMPONENT	CODE	APPLICABLE TO
FR/FMCR	F-4c 1-b	Member who is in the Naval service on July 1, 1925, and later transferred to the FR/FMCR after completion of 16 years but less than 20 years of active service.
FR/FMCR	F-4d 1-c	Member who was in the Naval service on July 1, 1925, and later transferred to the FR/FMCR after completion of 20 years but less than 30 years of active service.
FR/FMCR	F-5 H-1	Member who first enlisted in the Naval service after July 1, 1925, and later transferred to the FR/FMCR before August 10, 1946, after completion of 20 years but less than 30 years of active service.
FR/FMCR	F-6 1-d	Member who first enlisted in the Naval service after July 1, 1925, and later transferred to the FR/FMCR on or after August 10, 1946, after completion of 20 years but less than 30 years of active service.

2.7.3. Longevity is the length of service performed by each member.

2.7.3.1. Before October 1, 1949, longevity pay was a significant factor in computing retainer pay. Certain pay laws contained provisions for computing longevity pay based on the member's length of service. During this period, base pay and longevity fit into the framework of pay formulas to arrive at retainer pay. The computation for the longevity pay changed several times before being superseded by basic pay. The various computations and the periods applicable are:

2.7.3.1.1. Until May 31, 1942, for Navy members, the computation was 10 percent of base pay for the first increment of 4 years of Naval service, plus 5 percent of base pay for each 4-year increment thereafter, not to exceed 16 years, or 25 percent. For example, a member who served 18 years; on transfer to the FR, the longevity pay credit computed as:

2.7.3.1.1.1. 10 percent – 4 years;

2.7.3.1.1.2. 5 percent – 4 years;

2.7.3.1.1.3. 5 percent – 4 years;

2.7.3.1.1.4. 5 percent – 4 years; and

2.7.3.1.1.5. 0 percent – 4 years.

2.7.3.1.2. From June 1, 1942 to September 30, 1949, the computation was 5 percent of base pay for each 3 years of service up to 30 years; a maximum of 50 percent.

2.7.3.2. On October 1, 1949, when basic pay became an important factor, longevity pay was not computed separately but was included in the rate of basic pay.

2.7.3.2.1. A member who transferred to the FR/FMCR on or after October 1, 1949, was required to elect the formula under which DFAS would compute their pay. The two formulas were the fractional (under which a member would receive one third or one-half of base pay) and the percentage (2.5 percent multiplied by years of active Federal service multiplied by basic pay). The authorization for transfer to the FR indicates such election.

2.7.3.2.2. Under P.L. 1028, effective August 10, 1956, a member who transfers to the FR/FMCR receives retainer pay computed on the formula included in the codification of the military pay laws under Title 10 U.S.C. The prior computations were still in effect for the members to whom they applied. A member who enters a uniformed service before September 8, 1980, receives retainer pay computed under this formula.

2.7.3.2.3. A member who enters the uniformed service after September 7, 1980, receives retainer pay under the formula codified in 1956, except the retainer pay base is used instead of a monthly basic pay rate.

2.8 Service Credit Rounding of Months

For percentage purposes in computing retired or retainer pay:

2.8.1. A member who retired before January 1, 1982, receives credit for any fractional part of a year that is 6 months or more as an additional year. Disregard any portion of a year that is less than 6 months. See Table 3-3. This applies to any member who, before January 1, 1982:

2.8.1.1. Applied for retirement;

2.8.1.2. Applied for transfer to the FR/FMCR;

2.8.1.3. Was being processed for retirement under the provisions of 10 U.S.C., Chapter 61; or

2.8.1.4. Was on the TDRL and thereafter retired under the provisions of *10 U.S.C. § 1210(c) or (d)*.

2.8.2. Unless covered by subparagraph 2.1.1, a member who became entitled to retired or retainer pay January 1, 1982 through September 30, 1983, inclusive, received credit on a month-by-month basis for each full month served of 6 months or more. Disregard any fraction of a year less than 6 months. See Table 3-3.

2.8.3. A member who became entitled to retired or retainer pay on or after October 1, 1983, receives credit for each full month served. Disregard less than full months. See Table 3-4.

NOTE: If a member retires October 1, 1983 or later and the member is entitled to retired pay under *10 U.S.C. § 1401a(f)* using a hypothetical retirement date which is before January 1, 1982, service credit of 6 months or more was rounded to a full year. However, funding limitations each FY prohibited payment for months in excess of whole months actually served until permanent codification was effective July 1, 1986.

2.8.4. In calculating the percentage factor under subparagraphs 2.8.2 or 2.8.3, round the percent to the nearest 1/100 of 1 percentage point. For example, 20 years, 7 months (20.58 years) time's 2.5 percent equals 51.45 percent. See Table 3-4. This rounding method will also be used if the member is entitled to retired pay computed under the saved pay provision in paragraph 3.3 or under 10 U.S.C. § 1401a(f) in section 4.0.

2.9 Rounding Retired Pay

Under P.L. 98-94, the 1984 DoD Authorization Act, round the monthly retired or retainer pay entitlement as initially computed and as subsequently adjusted.

2.9.1. Effective October 1, 1983, the initial computation of gross retired pay, if not a multiple of $1, round down to the next lower multiple of $1. Make all further reductions, deductions, withholdings, and allotments from this rounded figure. When retired pay is subsequently increased under 10 U.S.C. § 1401a by cost-of-living adjustment (COLA), the retired or retainer pay, if not a multiple of $1, is rounded down to the next lower multiple of $1.

2.9.2. The retired or retainer pay for a member already retired on September 30, 1983, was not rounded until the next COLA, December 1, 1984. If not a multiple of $1, round the retired or retainer pay to the next lower multiple of $1. The same rounding procedure applies to all subsequent COLA.

2.10 Special Computations for Career Status Bonus With Reduced Retirement (CSB/REDUX)

2.10.1. Except for disability retirees, the retired pay or retainer pay multiplier of members who elected the CSB with REDUX retirement will be reduced 1 percentage point for each full year of creditable service less than 30 and 1/12th of 1 percent for each full month of creditable service

less than a full year. Note: The CSB reduction factors in this subparagraph will not apply to members who are retired for disability under Title 10, Chapter 61 of the U.S. Code.

2.10.2. Effective on the first day of the month following the member's 62nd birthday, DFAS will recompute the retired pay of members who elected the CSB with REDUX to equal the amount of retired pay to which the member would have been entitled on that date if the member had not taken the CSB with REDUX retirement and had no reduction in their multiplier or COLA. Following the restoration discussed in the preceding sentence, DFAS will continue to apply the annual COLA reduction to the member's retired pay each year throughout the member's retirement.

2.10.3. Members who elected the CSB/REDUX retirement and accepted early retirement under the TERA program will have their retired pay recomputed as discussed in subparagraph 2.10.1; however, they will be subject to the TERA reduction factor from Table 3-6 for the entirety of their retirement with no restoration of that reduction at age 62 or at any other time.

2.11 Temporary Early Retirement Authority (TERA)

The TERA legislation provided the Secretary of Defense a temporary additional force management tool with which to affect the drawdown of military forces from October 23, 1992 through September 1, 2002. Congress amended that legislation and reinstated certain TERA provisions for the period beginning December 31, 2011 and ending on December 31, 2025. DFAS will compute the basic TERA retired pay entitlement for members of the Army, Navy, Marine Corps, Air Force, and Space Force as described in this paragraph.

2.11.1. Computation of Retired Pay. DFAS will multiply the applicable reduction factor from Table 3-6 to compute the amount of retired pay otherwise prescribed for a retiring member using years of creditable service, high-36-month average basic pay, and the applicable retired pay percentage factor. The resulting reduced amount of retired pay, if not a multiple of $1, round to the next lower multiple of $1. This rounded amount is the initial gross monthly retired pay entitlement.

2.11.2. Reduction Factor. To determine the appropriate reduction factor from Table 3-6, take the difference between 240 months (20-year career) and the number of months of active service as of the date of the member's retirement or transfer to the FR/FMCR under TERA.

2.11.2.1. Round up to the next whole month any portion of a month of active service in excess of a whole month. For example, round up the total active service of 15 years, 7 months, and 13 days to 15 years, 8 months. Then compute the reduction factor based on 15 years and 8 months as: $(15 \times 12) + 8 = 188$ months and the applicable reduction factor corresponds to the Table 3-6 entry for 240 less 188 or 52 months. The applicable reduction factor for 52 months from Table 3-6 is .95667. Note: In computing the retired pay, disregard the 13 days in excess of 187 months of service. Compute retired pay based on 187 months. The rounding up is applied only to determine the TERA reduction factor.

2.11.2.2. As an example, the retired pay for a member retired under TERA as an E-7, with 15 years, 7 months, 13 days of creditable service and a high-36-month average basic pay of $3,783.50 would be computed as follows:

RPB × ((AS ÷ MO) × RPF) × TRF =
$3,783.50 × ((187 ÷ 12) × .025) × .95667 =
$3,783.50 × (15.5833 ×.025) × .95667 =
$3,783.50 × .3896 × .95667 = $1,410.18 (round down to $1,410.00)

RPB	-	Retired Pay Base (i.e., high-36-month average basic pay)
AS	-	Active Service (in months)
MO	-	Months in a year
RPF	-	Retired Pay Percentage Factor
TRF	-	TERA Reduction Factor (Table 3-6)

2.11.3. TERA Computation Modified for CSB/REDUX. DFAS must modify the basic TERA retired pay entitlement if a member has elected to receive a CSB and is subject to the REDUX retirement plan. In such case, the normal retired pay multiplier must first be reduced by $1/12^{th}$ of 1 percentage point for each month that the member's creditable service is less than 30 years (360 months) under the REDUX computation before the application of the TERA reduction factor from Table 3-6.

Using the example in subparagraph 2.11.2.2, compute the TERA retired pay for a member who has elected to receive a CSB as follows:

RPB × ((AS ÷ MO) × RPF) – (((360 – AS) ÷ MO) ×RRF)) × TRF =
$3,783.50 × ((187 ÷ 12) × .025) – (((360 – 187) ÷ 12) × .01)) × .95667 =
$3,783.50 × ((15.5833 ×.025) – ((173 ÷ 12) × .01)) × .95667 =
$3,783.50 × (.3896 – (14.42 × .01)) × .95667 =
$3,783.50 × (.3896 – .1442) × .95667 =
$3,783.50 × .2454 × .95667 = $888.24 (round down to $888.00)

RPB	-	Retired Pay Base
AS	-	Active Service (in months)
MO	-	Months in a year
RPF	-	Retired Pay Percentage Factor
360	-	30 Years (360 months)
RRF	-	REDUX Reduction Factor (1%)
TRF	-	TERA Reduction Factor (Table 3-6)

Note: The amount determined in subparagraph 2.11.3 will be increased by the annual COLA as determined for other members who have elected the CSB and REDUX retirement. This will result in a COLA that is reduced by 1 percentage point whenever the standard military retirement COLA is greater than 1 percent and the same COLA whenever the standard is 1 percent or less.

2.11.4. Unlike the prior TERA eligibility period from 1992 through 2002, under the new TERA authority, commencing on December 31, 2011, members may not earn additional credit for purposes of re-computing retired pay for any employment by a public service or community service organization.

2.11.5. Persons retired under the TERA provisions have all the same entitlement rights, privileges, and responsibilities of participation in the Survivor Benefit Plan (SBP), as retired members of their respective branch of service.

2.11.5.1. Full coverage under SBP means coverage on the amount of retired pay computed in subparagraph 2.11.1 which is the initial computation of TERA retired pay as reduced by the applicable reduction factor from Table 3-6.

2.11.5.2. For a CSB/REDUX member, the base amount for full SBP coverage is the amount computed using the TERA formula in subparagraph 2.11.1 including the reduction from Table 3-6. The SBP full base amount for a CSB recipient does not include the REDUX retirement reduction in subparagraph 2.11.3. If the member elects a reduced base amount, with spouse concurrence, at the time of retirement, even if based on the REDUX re-computation in subparagraph 2.10.3, no increase will be made in that base amount as a result of the re-computation at age 62 other than an increase to restore the elected base amount to what would have been in effect had full COLAs been in effect. No increase will be made in that base amount as a result of the re-computation at age 62 for the restoration of the retired pay multiplier.

2.12 Exception to High-36-Month Retired Pay Computation for Members Retired Following a Disciplinary Reduction in Grade

Members or former members who entered the uniformed services on or after September 8, 1980, will have their retired pay base computed using the high-36-month average, except for the members described as follows, whose retired pay base is based on the final basic pay of the grade prescribed under 10 U.S.C. § 1406, rather than the highest-36-month average of basic pay.

2.12.1. Affected Members. A member or former member subject to the exception in paragraph 2.12 is one who, by reason of conduct occurring after October 30, 2000:

2.12.1.1. In the case of an enlisted member retired or transferred to the FR/FMCR, is reduced in grade as a result of court-martial sentence, nonjudicial punishment, or an administrative action, unless the member was subsequently promoted to a higher enlisted grade or appointed to a commissioned or warrant grade, in which case see subparagraph 2.12.2.

2.12.1.2. In the case of an officer, retired in a grade lower than the highest grade in which the officer served by reason of denial of a determination or certification under ***10 U.S.C. § 1370*** that the officer served on active duty satisfactorily in that grade, apply this determination only in those circumstances where such determination is the result of conduct occurring after October 30, 2000. Conduct for the purposes of this subparagraph will not include failure to complete the time necessary for certification under 10 U.S.C. § 1370, absent any other conduct bearing on such certification.

2.12.2. Special Rule for Enlisted Members. In the case of an enlisted member retired within 3 years after having been reduced in grade as prescribed in subparagraph 2.12.1.1, and who was not subsequently promoted to a higher enlisted grade (or appointed to a warrant or commissioned grade), the retired pay base will be computed using the final basic pay rather than the high-36-month average. If, however, the member is subsequently promoted to a higher enlisted grade (or appointed to a warrant or commissioned grade), the member's retired pay will be computed using a high-36-month average computation. The computation will use the final 36 months of basic pay, except for the months in which the member served in a grade higher than the grade in which retired. The basic pay for such months will be the rates that would have applied to the member at that time if serving in the grade in which retired such as:

2.12.2.1. An E-7 is reduced to an E-5 and retired as an E-5. This member comes under subparagraph 2.12.1.1, with retired pay base computed under the pre-September 1980 system, which is final pay rules using the pay of an E-5.

2.12.2.2. An E-7 is reduced to an E-5 two years before retirement, is promoted 1 year later to an E-6 and retired as an E-6. This member uses the "Special Rule" and computes a high-36 average as specified in subparagraph 2.11.2 rather than using the final pay of an E-6. In computing the high-36 average, it would include 12 months as an E-7, 12 months as an E-5, and 12 months as an E-6. The "Special Rule" requires that the time as an E-7 will be replaced in the high-36 formula with pay rates of an E-6.

*2.13 Retired Pay Base for Officers Serving in the Grade of O-9 or O-10 Who Are Conditionally or Permanently Retired in the Grade of O-8

Effective December 23, 2024, officers who previously served in the grade of O-9 or O-10 who are conditionally or permanently retired in the grade of O-8 pursuant to 10 U.S.C. § 1370 ***10 U.S.C. § 1370a***, will have their retired or retainer pay base computed using the lower of:

2.13.1. The member's high-36 average as determined under ***10 U.S.C. § 1407(c) or (d)***, as applicable; or

2.13.2. The amount determined under 10 U.S.C. § 1406, as if the officer first became a member of a uniformed service before September 8, 1980.

3.0 APPLICATION OF SAVED PAY

3.1 Career Compensation Act, Effective October 1, 1949

3.1.1. An officer retired for disability before October 1, 1949, who failed to elect within a 5-year period to receive pay under the 1949 Act, or who did not qualify for pay under the 1949 Act, continued to receive pay under laws in effect before October 1, 1949, computed at 75 percent of the basic pay of the grade authorized.

3.1.2. A member who, on October 1, 1949, was a hospital patient and who, before January 1, 1951, retired for disability as the result of the disease or injury for which hospitalized could elect to receive retired pay:

3.1.2.1. Computed under laws in effect on September 30, 1949, at 75 percent of the basic pay of the grade authorized; or

3.1.2.2. Computed under section 402(d) of P.L. 81-351.

3.1.3. A member, who on October 1, 1949, was receiving or was entitled to receive retired pay under any provision of law, was authorized to continue the entitlement to receive the pay to which entitled under the laws in effect on September 30, 1949.

3.2 Military Pay Act, Effective June 1, 1958

3.2.1. A member who:

3.2.1.1. Retired or transferred to the FR/FMCR on or after June 1, 1958 and before April 1, 1963; and

3.2.1.2. Was receiving active-duty basic pay under the April 1, 1955, saved pay rates will continue to receive pay computed under the 1955 rates, based upon service credited for basic pay purposes as of June 1, 1958.

3.2.2. A member who retired or transferred to the FR/FMCR on June 1, 1958, was entitled to pay computed on the June 1, 1958 active duty basic pay rates, or on the April 1, 1955, active duty basic pay rates plus 6 percent, whichever was greater.

3.2.3. A member retired or transferred to the FR/FMCR after June 1, 1958, who was receiving active duty saved pay, was entitled to retired pay computed on the April 1, 1955, active duty basic pay rates, but was not entitled to the additional 6 percent increase.

3.3 Military Pay Act, Effective October 1, 1967

3.3.1. With respect to a member entitled to retired pay computed under this paragraph, the retired or retainer pay may not be less than it would have been if the member had become entitled to that pay based on the same basic pay grade, years of service for basic pay and percentage purposes, and percent of disability (if any) on the day before the effective date of the rates of monthly basic pay on which retired or retainer pay is based. Such members receive pay:

3.3.1.1. Computed under the current basic pay rates in effect on the date of retirement or transfer, or

3.3.1.2. Computed under the rates of basic pay in effect immediately before the current rates, whichever is greater.

3.3.2. The computations in paragraph 3.3 were, in some instances, subject to the provisions of the Uniform Retirement Date Act.

3.3.3. The "1-year look-back" provision codified at 10 U.S.C. § 1401a(e) was repealed by section 921 of the DoD Authorization Act, FY 1984. Under the provisions of that repeal, this paragraph now applies only to:

3.3.3.1. A member retired or transferred to the FR/FMCR October 1, 1967, through September 24, 1983, inclusive; and

3.3.3.2. A member eligible for retirement or transfer on or before September 24, 1983, provided the member retires or transfers on or before September 24, 1986. If the member retires or transfers after September 24, 1986, the retired or retainer pay may not be less than it would have, had the member actually retired or transferred on September 23, 1986.

4.0 TOWER AMENDMENT

4.1 Basic Provisions

4.1.1. A member, who retires or transfers to the FR/FMCR on or after January 1, 1971, and who fully qualifies for retirement on a date earlier than the actual retirement date, receives the most favorable rate of pay, as though the member had actually retired or been transferred on the earlier date:

4.1.1.1. After becoming retirement-eligible on or after January 1, 1971 (see Chapter 1, section 2.0);

4.1.1.2. Based upon the grade and the service creditable on the earlier computation date. (For retirements on or after October 5, 1994, the grade used in the computation cannot be higher than the grade in which the member is retired.);

4.1.1.3. Using the rate of basic pay applicable to the member on the earlier computation date in determining the retired pay base; or

4.1.1.4. Subject to the provisions of paragraph 3.3.

4.1.2. A member, who retired or transferred to the FR/FMCR before October 7, 1975, the effective date of the Tower Amendment, is entitled to pay adjusted from October 7, 1975. No adjustment is authorized under the provisions of the amendment for any period before October 7, 1975.

4.1.3. A member who retired between October 1, 1988 and October 4, 1994, and who is reduced in grade under sentence of court-martial after initially becoming eligible for retired pay is not entitled to computation on a grade higher than the grade in which retired.

4.1.4. See subparagraph 5.3.1 for provision concerning an officer who served in a special position as Chairman or Vice Chairman of the Joint Chiefs of Staff or as a Chief of Service.

4.1.5. See paragraph 5.5 for the provision concerning an enlisted member who served in a special position as a senior enlisted member.

4.2 Earlier Computation Dates

4.2.1. Predetermined earlier computation dates are established for uniformity in computing the pay of a member who qualifies under 10 U.S.C. § 1401a(f), and the Tower Amendment, as amended. Generally, the day immediately preceding an active-duty basic pay rate change is the earlier date of voluntary retirement eligibility, unless the computation is more favorable based on the first day of the month preceding an active-duty basic pay rate change.

4.2.2. A member of the FR/FMCR may transfer on any intermediate day of a month. Therefore, the earlier computation date for this member is the day before new active-duty basic pay rates are effective.

4.2.3. A warrant officer retired under provisions of ***10 U.S.C. § 1293*** (see Table 3-1, rule 3), on the effective date of a change in the active-duty pay rates, receives retired pay computed by using the rate of basic pay in effect on the day before the date of retirement. Thus, the earlier retirement eligibility date under 10 U.S.C. § 1401a(f) computation would be one year earlier with retired pay based upon rates in effect on the day before the earlier eligibility date. If the member is entitled to use the saved pay rate under paragraph 3.3, the rate in effect immediately prior to the rate in effect on the day before the earlier retirement eligibility date is used.

4.3 Computation at the Time of Retirement or Transfer to the FR/FMCR

4.3.1. A member receives the most favorable retired pay, as adjusted by applicable COLA, computed by using:

4.3.1.1. The active-duty basic pay rate applicable on the actual retirement or transfer date;

4.3.1.2. One prior active-duty basic pay rate at the same grade and service applicable on the actual retirement or transfer date if the provisions of paragraph 2.3 apply; or

4.3.1.3. Any active-duty basic pay rate in effect on or after January 1, 1971, at the grade and service credited on the earlier computation date, if retirement-eligible on the earlier date. After this rule is used, apply subparagraph 4.3.1.2 without further loss of grade and service.

4.3.2. A member retiring for disability who is eligible for voluntary retirement or transfer to the FR/FMCR on an earlier date may have gross retired pay entitlement computed in accordance with the provisions of 10 U.S.C. § 1401a(f) when more favorable; however, the basic pay rate applicable for an earlier retirement date under this condition for gross pay computation cannot be used for computing pay based upon the disability rating. DFAS calculates the rate of pay based upon degree of disability only on the basic pay rate applicable under subparagraph 4.3.1.1 or 4.3.1.2 (if applicable).

5.0 SPECIAL PROVISIONS

5.1 Entitlement Under More Than One Pay Formula

A member who is entitled to pay computed under more than one pay formula or provision of law is entitled to be paid under the formula that is most favorable. Note, however, that for a non-regular member who is retired for disability and becomes entitled to immediate retired pay under Chapter 61 before eligibility age, the retired pay may not be recomputed at eligibility age (usually age 60) based on 10 U.S.C. § 12731. See subparagraph 2.2.3.

5.2 Commissioned Officer With More Than Four Years of Active Enlisted and/or Warrant Officer Service

A member, who at the time of retirement, is in pay grade O1E, O2E, or O3E, having served more than 4 years of active duty as an enlisted member and/or warrant officer, receives pay computed on the special basic pay rate that is authorized.

5.3 Commissioned Officer Serving in a Special Position

5.3.1. Joint Chief of Staff and Chief of Service. An officer who serves as Chairman or Vice Chairman of the Joint Chiefs of Staff or as a Chief of the Service may receive retired pay which is computed on the highest rate of basic pay applicable to the member while serving in the special position, if that rate is higher than the rate otherwise authorized as a retired pay base for a member who first became a member before September 8, 1980. Except as provided in paragraph 5.9, effective January 1, 2007, the rate of basic pay cannot exceed Level II of the Executive Schedule. The term “Chief of Service” refers to one of the following:

5.3.1.1. Chief of Staff of the Army;

5.3.1.2. Chief of Naval Operations;

5.3.1.3. Chief of Staff of the Air Force;

5.3.1.4. Commandant of the Marine Corps; or

5.3.1.5. Commandant of the Coast Guard.

NOTE: The member may not use the rate of the special position for computation of retired pay if, during or after serving in the special position, and by the member's conduct after October 16, 1998, the officer is not certified as having served satisfactorily in the grade of general or admiral while serving in that position.

5.3.2. Special Rule for Computation of Retired Pay Base for Commanders of Combatant Commands. An officer who serves as a Commander of a Unified or Specified Combatant Command may receive retired pay that is computed on the highest rate of basic pay applicable to the member while serving in that position. The member may not use the rate of the special position for computation of retired pay if, during or after serving in the special position and by the member's conduct after October 16, 1998, the officer is not certified as having served satisfactorily in the grade of general or admiral while serving in that position. Except as provided in paragraph 5.9, effective January 1, 2007, the rate of basic pay cannot exceed Level II of the Executive Schedule. This special rule will apply with respect to officers who first become entitled to retired pay on or after November 23, 2004.

5.4 Officer in Grade O-9 or O-10

* 5.4.1. An officer who served in grade O-9 or O-10 for not less than 3 years is entitled to retired pay based on that grade if the Secretary of Defense certifies in writing to the President and the Congress that the officer served on active duty satisfactorily. The Secretary of Defense may reduce the active duty 3 year service in grade requirement to not less than 2 years. This authority may not be delegated. (see Chapter 1, subparagraph 6.1.2.1). The Secretary of Defense may not reduce or waive the 3 year time in grade requirement if the officer is under investigation for alleged misconduct or while an adverse personnel action is pending against the officer for alleged misconduct.

5.4.2. An officer who served in grade O-9 or O-10 for a period of less than 3 years before retirement will have retired pay based on the next lower grade, unless a waiver of the time-in-grade requirement has been granted by the appropriate authority. The granting of the waiver will affect only the pay computation for the date of retirement. Computations for earlier dates on which eligible to retire must be based on the next lower grade.

5.4.3. Section 601(e) of ***P.L. 106-65***, October 5, 1999, provides that retired pay be recomputed effective January 1, 2000, for certain members who retired during the period April 30, 1999 through December 31, 1999. As a result, DFAS will recompute the retired pay of

members' grade O-9 with over 26 years of service and O-10s with over 16 years of service. The new rates will be for months beginning on or after January 1, 2000, and will be computed as if the Level II limit had applied at the time of a qualified member's retirement. No increased amount is payable for any period before January 1, 2000, as a result of this subparagraph. DFAS will recompute retired pay rates for affected members as though the following rates of basic pay had been applicable at the time of retirement:

O-9	Over 26 years of service:	$9,528.00
O-10	Over 16 years of service:	$9,528.00
O-10	Over 18 years of service:	$9,528.00
O-10	Over 20 years of service:	$10,167.00
O-10	Over 22 years of service:	$10,167.00
O-10	Over 24 years of service:	$10,167.00
O-10	Over 26 years of service:	$10,491.60

5.5 Enlisted Member Serving in a Special Position

The senior enlisted member of an Armed Force may receive retired pay, which DFAS computes on the highest rate of basic pay applicable to the member while serving in that special position, if that rate is higher than the rate otherwise authorized as a retired pay base for a member who first became a member before September 8, 1980. The term "senior enlisted member" refers to one of the following:

5.5.1. Sergeant Major of the Army;

5.5.2. Master Chief Petty Officer of the Navy;

5.5.3. Chief Master Sergeant of the Air Force;

5.5.4. Sergeant Major of the Marine Corps; or

5.5.5. Master Chief Petty Officer of the Coast Guard.

NOTE: The member may not use the rate of the special position for computation of retired pay if, during or after serving in the special position, and by member's conduct after October 16, 1998, the member is reduced in grade by court-martial, nonjudicial punishment, or other administrative process.

5.6 Heroism Pay

An enlisted member retired after 20 years of service, to include an enlisted member retired due to disability, may be entitled to an additional 10 percent retired pay for extraordinary heroism, if authorized. See Chapter 1, section 8.0.

5.7 Computation Under the Uniformed Services Pay Act, October 2, 1963

5.7.1. Beginning October 1, 1963, a member retired between October 1, 1949 and May 31, 1958, including a member retired before October 1, 1949, receiving pay under the 1949 Act, received the greater of:

5.7.1.1. An increase of 5 percent in the retired pay to which entitled on September 30, 1963; or

5.7.1.2. Pay computed on the basic pay rates established under the June 1, 1958 Act without a 5 percent increase.

5.7.2. Beginning October 1, 1963, a member retired for service before October 1, 1949, and being paid under laws in effect on September 30, 1949 receives the greater of:

5.7.2.1. An increase of 5 percent in the retired pay to which entitled on September 30, 1963; or

5.7.2.2. Pay recomputed on the basic pay rates established by the Military Pay Act of 1958 without a 5 percent increase, based on actual active service creditable.

5.8 Computation Under the Military Pay Act, May 20, 1958

5.8.1. The Military Pay Act, May 20, 1958, authorizes a member who first became entitled to retired pay on June 1, 1958, to receive pay computed on the new June 1, 1958 basic pay rates or on the April 1, 1955 active duty basic pay rates plus 6 percent, whichever is greater.

5.8.2. A member retired after June 1, 1958, who was receiving active duty saved pay was entitled to retired pay computed on the April 1, 1955, active duty basic pay rate, but was not entitled to the additional 6 percent increase.

5.8.3. The basic pay rate used in the computation of pay was increased by increments of $200 for generals and admirals and $100 for lieutenant generals and vice admirals before the 6 percent increase on June 1, 1958, for a retired officer who:

5.8.3.1. Served in that grade for at least 180 days, and

5.8.3.2. Was entitled to retired pay on the day before the effective date of the Military Pay Act of 1958.

5.9 Retired Pay Base for Officers Retired in General or Flag Officer Grades

5.9.1. The retired pay base of a general or flag officer who retires between October 1, 2006 and December 31, 2014 will not be restricted by the requirement in ***37 U.S.C. § 203 (a)(2)*** to reduce basic pay in excess of Level II of the Executive Schedule. The retired pay base will be determined using the rate of basic pay for such period provided by law, rather than such rate reduced.

5.9.2. A general or flag officer who retires on or after January 1, 2015, and who served at any point between October 1, 2006 and December 31, 2014, has partial preservation of the computation of the retired pay base using the rate of basic pay for such period provided by law, rather than such rate reduced with the following guidance as stated in ***10 U.S.C. § 1407a***:

5.9.2.1. The retired pay base amount for a general or flag officer under the Final Pay retirement system is based upon the higher of the following:

5.9.2.1.1. The basic pay rate in effect for the highest grade in which the general or flag officer satisfactorily served and his or her years of service as of the date of retirement, as limited by the Executive Level II ceiling, or

5.9.2.1.2. The basic pay rate in effect on December 31, 2014, not limited by the Executive Level II ceiling, for the grade and years of service for which the general or flag officer had satisfactorily served as of December 31, 2014.

5.9.2.2. The retired pay base amount for a general or flag officer under the high-36 retirement system may include the monthly basic pay rate for the general or flag officer's grade and years of service for:

5.9.2.2.1. All months served during this period of October 1, 2006 and December 31, 2014, not limited by the Executive Level II ceiling, or

5.9.2.2.2. A combination of months served during this period not limited by the Executive Level II ceiling and months served after January 1, 2015, now limited by the Executive Level II ceiling.

5.9.3. A general or flag officer who retires on or after January 1, 2015, and did not serve at any point between October 1, 2006 and December 31, 2014 will be restricted by the requirement in 37 U.S.C. § 203 (a)(2) to reduce basic pay in excess of Level II of the Executive Schedule. The retired pay base will be determined using the reduced rate of basic pay provided by law. NOTE: This subparagraph pertains only to the computation of the retired pay base for Officers Retired in General or Flag Officer Grades. It does not pertain to the retired pay multiplier. All service creditable on the date of retirement is included for purposes of computing the retired pay multiplier for a general or flag officer who retires on or after January 1, 2015.

6.0 LUMP SUM PAYMENTS OF RETIREMENT ANNUITY

6.1 Eligibility

Public Law 114-92, section 633 enacts ***10 U.S.C. § 1415***, affording a member of a uniformed service covered by the BRS at retirement the option to elect to receive a discounted portion of his or her retired pay as a lump sum. To be eligible to elect the lump sum a member must be covered under the BRS, and qualify for a regular retirement or a non-regular retirement. Members who are retired for a physical disability under provisions of 10 U.S.C., Chapter 61 are not eligible for the lump sum option. A member who is not eligible for the BRS or who does not elect to enroll in the BRS is not eligible to elect a lump sum payment of his or her retirement annuity.

6.2 Election

6.2.1. A member, covered by the BRS, who elects to receive a portion of his or her retired pay as a lump sum must make this election not later than 90 days before:

6.2.1.1. The date upon which the member retires and receives a regular retirement; or

6.2.1.2. The date upon which the member first reaches eligibility age required to receive retired pay under the non-regular retirement program, in accordance with DoDI 1215.07.

6.2.2. A member's decision to elect the lump sum must be recorded on a DoD (DD) Form 2656, "Data for Payment of Retired Personnel," in Part II, "Lump Sum Election."

6.2.2.1. The member will indicate the lump sum percentage, either 25 percent or 50 percent, and the number of equal lump sum payments, up to four, on the DD 2656.

6.2.2.2. The DD 2656 must be signed and dated no later than 90 days prior to the date of retirement, or the date the member is eligible to receive retired pay.

6.2.2.3. The lump sum election must be transmitted to DFAS no less than 30 days prior to the date of retirement, or the date the member is eligible to receive retired pay.

6.2.3. An election of a lump sum of retired pay may not be revoked on or after the date of retirement, or on or after the date the member is first eligible to receive retired pay. To revoke a previous lump sum election prior to retirement, the member must submit a signed, notarized statement rescinding the previous election, dated prior to the date of retirement, acknowledging that this decision to refuse the lump sum is final, and must complete a new DD 2656.

6.3 Amount

A member who elects to receive a portion of his or her retired pay as a lump sum may elect to receive the discounted present value of either 25 percent or 50 percent of the gross estimated retired pay. Pursuant to 10 U.S.C. § 1415(b)(2), the lump sum amount takes into account the projected COLA applicable to that member on the day that member elected the lump sum option. The amount is calculated for the period from the day that member is eligible to begin receiving retired pay to the first day of the month following the month during which the retiree attains the age that was the full social security retirement age.

6.4 Discount Rate

The discount rate applied in computing the amount of the lump sum described in paragraph 6.3 will be determined and published in accordance with procedures specified in and subparagraph 6.4.1.

6.4.1. In computing the amount of the lump sum described in paragraph 6.3, the discounted present value will be:

6.4.1.1. The 7-year average of the 23-year maturity monthly average spot rate taken from the "Treasury High Quality Market (HQM) Corporate Bond Yield Curve;"

6.4.1.2. The 7-year average rate is adjusted for inflation using the 7-year average of the 23-year maturity monthly average rate taken from the "Treasury Breakeven Inflation (TBI) Curve." The inflation adjustment is a multi-step procedure:

6.4.1.2.1. Annualize the 7-year average HQM rate;

6.4.1.2.2. Geometrically back out inflation using the 7-year average TBI rate; and

6.4.1.2.3. Transform the result to a semi-annual rate.

6.4.1.3. The resulting inflation-adjusted rate is increased by an additional 4.28 percentage points; and

6.4.1.4. The result is rounded to the nearest 0.01 percentage point.

6.4.2. The Chief Actuary, DoD Office of the Actuary, calculates the discount rate and the Deputy Assistant Secretary of Defense for Military Personnel Policy promulgates the discount rate annually no later than June 1 of each year to be effective as of January 1 of the succeeding year. The rate promulgated on June 1 of each year will be the Department of Treasury published yield curves as of March of that year averaged with the preceding 83 months plus the adjustment factor of 4.28 percentage points. Accordingly, the initial discount rate used for 2018, as described in subparagraph 6.4.1, was published on June 1, 2017, at 6.99 percent.

6.5 Installment Payments

A member who elects to receive a lump sum payment of his or her retired pay may elect to receive this payment in up to four annual installments over no more than 4 years.

6.6 Timing of Payments

A member who elects installment payments in accordance with paragraph 6.5 will receive equal lump sum distributions payable each year on the anniversary of the first installment; the first installment of which will be paid no later than 60 days after:

6.6.1. The date on which that member retires if eligible for a regular retirement; or

6.6.2. The date on which the member first becomes eligible to begin receiving retired pay if eligible for a non-regular retirement.

6.7 Restoration of Full Annuity Payment

The retired pay of a member who elects to receive a lump sum payment of their retired pay in accordance with paragraph 6.2 will be restored to its full monthly annuitized amount as of the first day of the month following the month in which the member attains the full retirement age that was applicable to that member on the day that the member elected the lump sum option, in accordance with 10 U.S.C. § 1415.

6.8 Relationship to Disability Compensation

Public Law 114-92, section 633, modified ***38 U.S.C. § 5304***, "Prohibition against duplication of benefits," to establish that a member electing to receive a portion of his or her retired pay as a lump sum may not concurrently receive Department of Veteran Affairs (VA) disability compensation, except under specified circumstances. Accordingly:

6.8.1. DFAS will report the amount of any lump sum election to the VA.

6.8.2. Pursuant to 38 U.S.C. § 5304, the VA will withhold disability payments to any retiree who elects to receive a portion of their retired pay as a lump sum until the amount withheld (i.e., not paid to the retiree on a monthly basis) equals the gross amount of the lump sum payment received by that retiree. Once the amount of VA disability compensation withheld equals the amount previously received as a lump sum, the retiree is considered to have fully offset the lump sum distribution. The retiree must then agree to waive a portion of each month's future retired pay, equal to the amount of the VA disability compensation to which he or she is now entitled, to begin receiving that VA disability compensation in accordance with 38 U.S.C. § 5304 and ***38 U.S.C. § 5305***.

6.8.3. A retiree who is eligible for Concurrent Military Retirement Pay and Department of Veterans Affairs (VA) Disability Compensation due to a service-connected disability rating of 50 percent or more, is entitled to be paid both his or her military retired pay and his or her VA disability compensation without regard to the required offsets described in 38 U.S.C. § 5304 and subparagraph 6.8.2. Accordingly, retirees who qualify for Concurrent Military Retirement Pay and VA Disability Compensation and who elect to receive a portion of their retired pay as a lump sum are not subject to withholding of VA disability compensation upon receipt of a lump sum payment. See also 10 U.S.C. § 1414.

6.8.4. A retiree who would otherwise be eligible for Combat-Related Special Compensation (CRSC) in accordance with 10 U.S.C. § 1413a, remains subject to the provisions of 38 U.S.C. § 5304 and 38 U.S.C. § 5305, requiring a waiver of retired pay before a retiree can receive VA disability compensation, as discussed in subparagraph 6.8.2. Specific policies and procedures for payment of CRSC to members who elect a lump sum of retired pay follows:

6.8.4.1. In order to be eligible for CRSC, a retiree must first be determined to have a service-connected, compensable disability in accordance with regulations prescribed by the Secretary of the VA.

6.8.4.2. The Secretary concerned will determine what, if any, portion of that member's service-connected, compensable disability meets the criteria for CRSC eligibility in accordance with existing guidance. The Secretary concerned will notify DFAS of the percentage of the retiree's disability related to combat in accordance with existing CRSC guidance.

6.8.4.3. DFAS will determine the resulting value of CRSC entitlement for which the member would otherwise have been eligible, but for the withholding of disability compensation as required by section 633 of P.L. 114-92, such that the member will receive VA disability compensation only for disabilities determined to be CRSC eligible.

6.8.4.4. DFAS will report to the VA which disabilities have been determined to be CRSC eligible, the associated rating, and the resulting value of the CRSC for which the member would otherwise have been eligible, but for receipt of the lump sum.

6.8.4.5. Prior to receiving disability compensation from the VA, the retiree must agree to waive receipt of retired pay, equal to the amount of VA disability compensation payable from that retiree's actual monthly retired pay received.

6.8.4.6. By agreement, the VA will pay disability compensation only for the disabilities determined by the Secretary concerned to be eligible for CRSC utilizing information provided by DFAS for such determination.

6.8.4.7. DFAS will pay CRSC to the retiree in an amount equal to the amount of the retired pay waived. The VA will continue to withhold any amount of disability compensation to which the retiree is eligible in excess of the amount related to combat until such time as the amount withheld equals the gross amount of the lump sum payment received by that retiree.

6.9 Lump Sum Payment Effect on Survivor Benefit Plan

Pursuant to ***10 U.S.C. § 1447(6)(A)*** and ***10 U.S.C. § 1452***, as amended by P.L. 115-91, section 622, FY 2018 NDAA, a member of a uniformed service who elects a lump sum of retired pay, in accordance with 10 U.S.C. § 1415, and is a participant in Survivor Benefit Plan (SBP) or Reserve Component – SBP (RC-SBP) will have coverage at the full base amount, unless the member elects or previously elected, with spousal concurrence if required, to reduce the base amount.

6.9.1. The full base amount for a retiree who elects to receive a lump sum of retired pay is the amount equal to the amount of his or her unreduced monthly retired pay, without regard to the required reduction in monthly retired pay pursuant to the lump sum.

6.9.2. If electing to reduce coverage less than the full base amount, the reduced base amount may be any whole dollar amount that is greater than or equal to $300, but less than the amount of the unreduced retired pay.

6.9.3. All retiring uniformed service member s, including those who elect a lump sum of retired pay, are considered full participants in SBP or RC-SBP having maximum coverage unless:

6.9.3.1. For members retiring with a regular retirement, or members retiring with a non-regular retirement who previously declined to make an election until reaching the age of eligibility for retired pay, an election for less than full SBP coverage is made prior to the first day of entitlement to retired pay, with spousal concurrence if required; or

6.9.3.2. For members qualifying for a non-regular retirement, an election for less than full RC-SBP coverage is made, with spousal concurrence if required, prior to the completion of the 90 day period immediately following notification to the member that he or she has completed the years of service required to be eligible for a non-regular retirement pursuant to 10 U.S.C., Chapter 1223.

6.9.4. The requirements of ***10 U.S.C. § 1450(f)(3)***, regarding former spouse elections remain applicable to members who elect a lump sum of retired pay.

6.10 Disputes

Members who accept the lump sum distribution may not seek review of, or otherwise retrospectively challenge, the amount of the lump sum, particularly in regards to discount rate, actuarial assumptions, or other factors used in computing this amount.

6.11 Division of Retired Pay

Any lump sum payment of retired pay remains subject to the conditions of ***10 U.S.C. § 1408***, with consideration to court orders.

*Table 3-1. Computation of Retired Pay

COMPUTATION OF RETIRED PAY							
RULE	**A** **A member of the**	**B** **who is**	**C** **under provisions of 10 U.S.C.**	**D** **receives the retired pay base**	**E** **multiplied by**	**F** **plus**	**G** **minus/add (note 1)**
1	Armed Forces	retired for disability	§ 1201 § 1204	computed under 10 U.S.C. § 1406(b) or § 1407 (note 2)	the percentage of disability assigned, not to exceed 75 percent or 2.5 percent multiplied by the years of service credited to the member under 10 U.S.C. § 1208, except for a member retiring on or before January 7, 2011, the multiplier is limited to 75 percent (note 3)		
2	Armed Forces	retired for disability	§ 1202 § 1205	computed under 10 U.S.C. § 1406(b) or § 1407 (note 2)	the percentage of disability assigned, not to exceed 75 percent or 2.5 percent multiplied by the years of service credited to the member under 10 U.S.C. § 1208, except for a member retiring on or before January 7, 2011, the multiplier is limited to 75 percent (note 3)	the amount necessary to increase the product of columns D and E to 50 percent of retired pay base.	
3	Armed Forces	voluntarily retired	§ 1293	computed under 10 U.S.C. § 1406(b) or 10 U.S.C. § 1407 (note 2)			excess over 75 percent of retired pay base upon which computation is based if member retires before January 1, 2007 (note 5).

Table 3-1. Computation of Retired Pay (Continued)

COMPUTATION OF RETIRED PAY							
RULE	**A** **A member of the**	**B** **who is**	**C** **under provisions of 10 U.S.C.**	**D** **receives the retired pay base**	**E** **multiplied by**	**F** **plus**	**G** **minus/add (note 1)**
4	Army, Air Force, or Space Force	voluntarily retired	§ 7314 § 7317 § 9314 § 9317	computed under 10 U.S.C. § 1406(c) for Army, 10 U.S.C. § 1406(e) for Air Force and Space Force, or 10 U.S.C. § 1407 (notes 2 and 6)		10 percent of the product of Columns D and E, if applicable (note 4)	excess over 75 percent of retired pay base upon which computation is based if member retires before January 1, 2007 (note 5).
5	Army, Air Force, or Space Force	voluntarily retired	§ 7311 § 7318 § 7320 § 7324 § 9311 § 9318 § 9324	computed under 10 U.S.C. § 1406(c) for Army, § 1406(e) for Air Force and Space Force, or § 1407 (notes 2 and 6)			excess over 75 percent of retired pay base upon which computation is based if member retires before January 1, 2007 (note 5).
6	Navy or Marine Corps	voluntarily retired	§ 8321 § 8323	computed under 10 U.S.C. § 1406(d) or 10 U.S.C. § 1407 (note 2)			excess over 75 percent of retired pay base upon which computation is based if member retires before January 1, 2007 (note 5).

Table 3-1. Computation of Retired Pay (Continued)

COMPUTATION OF RETIRED PAY							
RULE	**A** **A member of the**	**B** **who is**	**C** **under provisions of 10 U.S.C.**	**D** **receives the retired pay base**	**E** **multiplied by**	**F** **plus**	**G** **minus/add (note 1)**
7	Navy or Marine Corps	voluntarily retired	§ 8322 § 8326	computed under 10 U.S.C. § 1406(d) or 10 U.S.C. § 1407 (note 2)	retired pay multiplier from 10 U.S.C. § 1409 for years of service credited for percentage purposes (note 3)	10 percent of columns D and E if applicable (note 4)	excess over 75 percent of retired pay base upon which computation is based, if the member retired before January 1, 2007 (note 5).
8	Navy or Marine Corps	voluntarily retired	§ 8327	computed under 10 U.S.C. § 1406(d) or 10 U.S.C. § 1407 (note 2)	50 percent (note 7)	10 percent of columns D and E if applicable (note 4).	
9	Armed Forces	involuntarily retired	§ 580 § 633 § 634 § 635 § 636 § 1251 § 1263 § 1305 (note 8)	computed under 10 U.S.C. § 1406(b) or 10 U.S.C. § 1407 (note 2)	retired pay multiplier from 10 U.S.C. § 1409 for years of service credited for percentage purposes (note 3)		excess over 75 percent of retired pay base upon which computation is based, if the member retired before January 1, 2007 (note 5).
10	Army	involuntarily retired	§ 7320 § 7321 (note 5)	computed under 10 U.S.C. § 1406(c) or 10 U.S.C. § 1407 (note 2)	retired pay multiplier from 10 U.S.C. § 1409 for years of service credited for percentage purposes (note 3)		excess over 75 percent of retired pay base upon which computation is based, if the member retired before January 1, 2007 (note 5).

Table 3-1. Computation of Retired Pay (Continued)

COMPUTATION OF RETIRED PAY							
RULE	**A** **A member of the**	**B** **who is**	**C** **under provisions of 10 U.S.C.**	**D** **receives the retired pay base**	**E** **multiplied by**	**F** **plus**	**G** **minus/add (note 1)**
11	Navy or Marine Corps	involuntarily retired	§ 8371 § 8372 (note 5)	computed under 10 U.S.C. § 1406(d) or §10 U.S.C. 1407 (note 2)	retired pay multiplier from 10 U.S.C. § 1409 for years of service credited for percentage purposes (note 3)		excess over 75 percent of retired pay base upon which computation is based, if the member retired before January 1, 2007 (note 5).
12	Air Force or Space Force	involuntarily retired	§ 9320 § 9321 (note 5)	computed under 10 U.S.C. § 1406(e) or 10 U.S.C. § 1407 (note 2)	retired pay multiplier for the years of service credited for percentage purposes (note 3)		excess over 75 percent of retired pay base upon which computation is based, if the member retired before January 1, 2007 (note 5).
13	Armed Forces, Reserve, or National Guard	a reservist (meets age and service requirement)	§ 12731	computed under 10 U.S.C. § 1406(b)(2) or 10 U.S.C. § 1407 (note 2)	2.5 percent (or 2.0 percent for members covered by BRS) multiplied by the years of service credited for percentage purposes, (notes 3 and 10)	10 percent of the product of columns D and E (note 4)	excess over 75 percent of retired pay base upon which computation is based if member retired before January 1, 2007 (note 5).
14	Navy or Marine Corps	transferred to the FR/FMCR	§ 8330	computed under 10 U.S.C. § 1406(d) or 10 U.S.C. § 1407 (notes 2 and 9)	the retainer pay multiplier for the years of service credited for percentage purposes (note 3)	10 percent of the product of columns D and E (note 4)	excess over 75 percent of retired pay base upon which computation is based if member retired before January 1, 2007 (note 5).

Table 3-1. Computation of Retired Pay (Continued)

***NOTES:**

1. If a member was initially retired on or after October 1, 1983, the amount computed, if not a multiple of $1, must be rounded to the next lower multiple of $1. Any future adjustments to such pay must be made on the rounded figure. Retired pay of members retired on September 30, 1983 will not be rounded until there is an adjustment under 10 U.S.C. § 1401a; then, and with each subsequent adjustment, the amount as adjusted, if not a multiple of $1, must be rounded to the next lower multiple of $1. The rounded amount becomes the member's entitlement and any future adjustments must be based on this rounded entitlement.
2. For applicable active-duty basic pay rate, see sections 4.0 and 5.0, Chapter 1, paragraph 5.2, and paragraph 3.1. For a person who first became a member of a uniformed service after September 7, 1980, use the high-36-month average. For exception to high-36 months retired pay computation for members retired following a disciplinary reduction in grade, refer to paragraph 2.12.
3. See Chapter 1 for service creditable for percentage purposes:

Voluntary retirement:
Chapter 1, Paragraph 3.2—Enlisted members
Chapter 1, Paragraph 3.3—Commissioned Officers
Chapter 1, Paragraph 3.4—Warrant Officers

Disability retirement:
Chapter 1, Paragraph 3.6

Mandatory retirement:
Chapter 1, Subparagraph 3.5.1—Army, Air Force, and Space Force
Chapter 1, Subparagraph 3.5.2—Navy and Marine Corps

Reservist age and service retirement:
Chapter 1, Paragraph 3.7

4. For enlisted members credited with an act of extraordinary heroism in the line of duty. For Army, Air Force, and Space Force enlisted members, the total retired pay to include the 10 percent increase may not exceed the maximum pay of 75 percent of the retired pay base upon which the computation of such retired pay is based. Effective December 23, 2024, the 75 percent cap referenced in the preceding sentence does not apply to those who served during the Vietnam Era (August 5, 1964 and ending on March 27, 1973). For Navy and Marine Corps enlisted members, the total maximum retired pay is 75 percent of the retired pay base upon which the computation of such retired pay is based, plus the 10 percent increase. Members with more than 30 years of creditable service should also have retired pay computed without the 10 percent add-on and awarded the higher of the two calculations. All members who retire under the provisions of 10 U.S.C. § 12731 with credit for extraordinary heroism are restricted to a maximum pay of 75 percent of the retired pay base upon which the computation of such retired pay is based.
5. For members who retired on or after January 1, 2007, the retired pay multiplier is the sum of 75 percent for 30 years of service plus 2.5 percent for every year over 30 years.
6. For a Reserve enlisted member retired under 10 U.S.C. § 7314 or § 9314 after September 30, 1996, the retired pay base is the monthly basic pay of the member's retired grade (based on rates applicable on date of member's retirement) in lieu of the retired pay base under 10 U.S.C. § 1406(e).
7. Members retired under ***10 U.S.C. § 8327*** are authorized to receive retired pay at 50 percent of the active duty basic pay of their grade when not on active duty. This provision applies only to persons who were members of the Naval Reserve or Marine Corps Reserve on January 1, 1953. The provisions of 10 U.S.C. § 8327 terminated on January 1, 1973. However, termination of the section did not affect any accrued rights to retired pay.
8. Section 564 repealed by P.L. 102-190, December 5, 1991. Section 1255 repealed by P.L. 90-130, November 8, 1967. An officer who was on active duty on September 15, 1981 and who is retired under 10 U.S.C. § 1251 is entitled to retired pay of at least 50 percent of the basic pay upon which the retired pay is based. Title 10, U.S.C. § 1251 allows a retirement for age (at age 62), but only if the member already has 20 years of service. See also 10 U.S.C. § 12731.
9. In lieu of the retainer pay base computed under 10 U.S.C. § 1406(d), a Reserve enlisted member may be entitled to retainer pay computed by using the monthly basic pay for the highest enlisted grade in which the member served satisfactorily, as determined by the Secretary of the Navy. This provision applies to an individual who first became a member of the uniformed service before September 8, 1980 and who, at the time of transfer, is serving on active duty in a grade lower than the highest enlisted grade held by the member while on active duty not as a result of the member's own misconduct.

Table 3-1. Computation of Retired Pay (Continued)

10. Total number of retirement points divided by 360. Carry the resultant figure to three decimal places, round to two decimal places. EXAMPLE: 4735 retirement points divided by 360 = 13.152 or 13.15 years of service for percentage purposes (for the 10 U.S.C. § 12731 retiree only) to be multiplied by the applicable percentage rate described at subparagraph 2.1.2.

Table 3-2. Historical Pay Computations – FR/FMCR

HISTORICAL PAY COMPUTATIONS – FLEET RESERVE AND FLEET MARINE CORPS RESERVE						
RULE	**If member retires in class**	**during period**	**with years of service of at least**	**then pay computation formula is**	**plus**	**and applicable law is**
1	F-4c 1-b	pre-1938 to May 31, 1942	16; less than 20	1/3 x base pay rating in which transferred (note 1)	longevity pay (25 percent maximum), extraordinary heroism (10 percent)	52 Stat 1179, section 203, 34 U.S.C. § 854b.
2	F-4d 1-c	pre-1938 to May 31, 1942	20; less than 30	1/2 x base pay rating in which transferred (note 1)	longevity pay (25 percent maximum), extraordinary heroism (10 percent), or good conduct (10 percent)	52 Stat 1179, section 203, 34 U.S.C. § 854b.
3	F-5 H-1	pre-1938 to May 31, 1942	20; less than 30	1/2 x base pay rating in which transferred (note 1)		52 Stat 1179, section 204, 34 U.S.C. § 854c.
4	F-4c 1-b	June 1, 1942 to August 9, 1946	16; less than 20	1/3 x base pay rating in which transferred (note 1)	longevity pay (50 percent maximum), extraordinary heroism (10 percent)	56 Stat 359, P.L. 607, June 6, 1942.
5	F-4d 1-c	June 1, 1942 to August 9, 1946	20; less than 30	1/2 x base pay rating in which transferred (note 1)	longevity pay (50 percent maximum), extraordinary heroism (10 percent), or good conduct (10 percent)	56 Stat 359, P.L. 607, June 6, 1942.
6	F-5, H-1	June 1, 1942 to August 9, 1946	20; less than 30	1/2 x base pay rating in which transferred (note 1)	longevity pay (50 percent maximum), extraordinary heroism (10 percent), or good conduct (10 percent)	56 Stat 359, P.L. 607, June 6, 1942.
7	F-4c 1-b	August 10, 1946 to September 30, 1949	16; less than 20 (note 2)	1/3 x base pay rating in which transferred (notes 1 or 2)	longevity pay (50 percent maximum), extraordinary heroism (10 percent)	60 Stat 993, P.L. 720, August 10, 1946.
8	F-4d 1-c	August 10, 1946 to September 30, 1949	20; less than 30	1/2 x base pay rating in which transferred (note 2)	longevity pay (50 percent maximum), extraordinary heroism (10 percent), or good conduct (10 percent).	

Table 3-2. Historical Pay Computations – FR/FMCR (Continued)

HISTORICAL PAY COMPUTATIONS – FLEET RESERVE AND FLEET MARINE CORPS RESERVE						
RULE	**If member retires in class**	**during period**	**with years of service of at least**	**then pay computation formula is**	**plus**	**and applicable law is**
9	F-6 (note 3) 1-d		20 years	1/2 x base pay rating in which transferred (note 1) or 2.5 percent x years of active federal service multiplied by base pay of rating in which transferred (note 2)	longevity pay (75 percent maximum), extraordinary heroism (10 percent)	
10	all classes	transferred before October 1, 1949, effective on October 1, 1949	20 years	pay received on 9/30/49 (saved pay) or 2.5 percent x years of active service = percent; percent x basic pay of highest federally recognized rating satisfactorily held (note 4).		
11	F-4c 1-b	on or after October 1, 1949	20 years	1/3 x basic pay receiving at transfer (note 5) or 2.5 percent x years of active federal service = percent; percent x basic pay of rating in which transferred (notes 6 and 8)	extraordinary heroism (10 percent)	
12	F-4d 1-c	on or after October 1, 1949	20 years	1/2 x basic pay receiving at transfer (note 5) or 2.5 percent x years of active federal service = percent; percent x basic pay of rating in which transferred (notes 6 and 8)	extraordinary heroism (10 percent), or good conduct (10 percent)	
13	F-6 1-d	on or after October 1, 1949	20 years	1/2 x basic pay receiving at transfer (note 5) or 2.5 percent x years of active federal service = percent	extraordinary heroism (10 percent)	

Table 3-2. Historical Pay Computations – FR/FMCR (Continued)

HISTORICAL PAY COMPUTATIONS – FLEET RESERVE AND FLEET MARINE CORPS RESERVE						
RULE	**If member retires in class**	**during period**	**with years of service of at least**	**then pay computation formula is**	**plus**	**and applicable law is**
14	F-6 1-d	on or after August 10, 1956	20 years	2.5 percent x years of active service in Armed Forces = percent; percent x basic pay receiving at transfer (notes 7 and 8)	extraordinary heroism (10 percent)	P.L. 1028, August 10, 1956, 10 U.S.C. § 8330.

NOTES:
1. Fractional year of 6 months or more not creditable as 1 year for longevity or transfer.
2. Fractional year of 6 months or more creditable equals' full year for transfer and longevity, effective August 10, 1946.
3. Effective August 10, 1946, class F-5 changed to class F-6.
4. Six months or more equals 1 year for active service; 6 months or more does not equal 1 year for basic pay; nor good conduct or extraordinary heroism.
5. Six months equals 1 year for basic pay and not for computing years of Naval service for transfer.
6. Six months or more equals 1 full year for active service and basic pay.
7. Six months equals 1 year for active service (include constructive service in active service). Six months equals 1 year for basic pay (do not include constructive service in service for basic pay).
8. If member entered a uniformed service after September 7, 1980, substitute the retainer pay base for the base or basic pay.

Table 3-3. Pre-1982 Retirement Percentage Multiple Conversions

PRE-1982 RETIREMENT PERCENTAGE MULTIPLE CONVERSIONS							
At Least			Not More Than				
Years	Months	Days	Years	Months	Days	Converted Years	Percentage
0	6	0	1	5	29	1	2.50
1	6	0	2	5	29	2	5.00
2	6	0	3	5	29	3	7.50
3	6	0	4	5	29	4	10.00
4	6	0	5	5	29	5	12.50
5	6	0	6	5	29	6	15.00
6	6	0	7	5	29	7	17.50
7	6	0	8	5	29	8	20.00
8	6	0	9	5	29	9	22.50
9	6	0	10	5	29	10	25.00
10	6	0	11	5	29	11	27.50
11	6	0	12	5	29	12	30.00
12	6	0	13	5	29	13	32.50
13	6	0	14	5	29	14	35.00
14	6	0	15	5	29	15	37.50
15	6	0	16	5	29	16	40.00
16	6	0	17	5	29	17	42.50
17	6	0	18	5	29	18	45.00
18	6	0	19	5	29	19	47.50
19	6	0	20	5	29	20	50.00
20	6	0	21	5	29	21	52.50
21	6	0	22	5	29	22	55.00
22	6	0	23	5	29	23	57.50
23	6	0	24	5	29	24	60.00
24	6	0	25	5	29	25	62.50
25	6	0	26	5	29	26	65.00
26	6	0	27	5	29	27	67.50
27	6	0	28	5	29	28	70.00
28	6	0	29	5	29	29	72.50
29	6	0				30	75.00

NOTE: This Table applies to members retired before January 1, 1982, with several exceptions covered in paragraph 2.8.

Table 3-4. Post-1981 – Pre-2018 Retirement Percentage Multiplier Conversions

POST-1981 – PRE-2018 RETIREMENT PERCENTAGE MULTIPLIER CONVERSIONS											
Service Multiplier			Service Multiplier			Service Multiplier			Service Multiplier		
Years	Months	(%)	Years	Months	(%)	Years	Months	(%)	Years	Months	(%)
blank	blank	00.	3	blank	7.50	6	blank	15.00	9	blank	22.50
	1	00.20	3	1	7.70	6	1	15.20	9	1	22.70
blank	2	00.43	3	2	7.93	6	2	15.43	9	2	22.93
	3	00.63	3	3	8.13	6	3	15.63	9	3	23.13
blank	4	00.83	3	4	8.33	6	4	15.83	9	4	23.33
	5	1.05	3	5	8.55	6	5	16.05	9	5	23.55
blank	6	1.25	3	6	8.75	6	6	16.25	9	6	23.75
	7	1.45	3	7	8.95	6	7	16.45	9	7	23.95
blank	8	1.68	3	8	9.18	6	8	16.68	9	8	24.18
	9	1.88	3	9	9.38	6	9	16.88	9	9	24.38
blank	10	2.08	3	10	9.58	6	10	17.08	9	10	24.58
	11	2.30	3	11	9.80	6	11	17.30	9	11	24.80
1	blank	2.50	4	blank	10.00	7	blank	17.50	10	blank	25.00
1	1	2.70	4	1	10.20	7	1	17.70	10	1	25.20
1	2	2.93	4	2	10.43	7	2	17.93	10	2	25.43
1	3	3.13	4	3	10.63	7	3	18.13	10	3	25.63
1	4	3.33	4	4	10.83	7	4	18.33	10	4	25.83
1	5	3.55	4	5	11.05	7	5	18.55	10	5	26.05
1	6	3.75	4	6	11.25	7	6	18.75	10	6	26.25
1	7	3.95	4	7	11.45	7	7	18.95	10	7	26.45
1	8	4.18	4	8	11.68	7	8	19.18	10	8	26.68
1	9	4.38	4	9	11.88	7	9	19.38	10	9	26.88
1	10	4.58	4	10	12.08	7	10	19.58	10	10	27.08
1	11	4.80	4	11	12.30	7	11	19.80	10	11	27.30
2	blank	5.00	5	blank	12.50	8	blank	20.00	11	blank	27.50
2	1	5.20	5	1	12.70	8	1	20.20	11	1	27.70
2	2	5.43	5	2	12.93	8	2	20.43	11	2	27.93
2	3	5.63	5	3	13.13	8	3	20.63	11	3	28.13
2	4	5.83	5	4	13.33	8	4	20.83	11	4	28.33
2	5	6.05	5	5	13.55	8	5	21.05	11	5	28.55
2	6	6.25	5	6	13.75	8	6	21.25	11	6	28.75
2	7	6.45	5	7	13.95	8	7	21.45	11	7	28.95
2	8	6.68	5	8	14.18	8	8	21.68	11	8	29.18
2	9	6.88	5	9	14.38	8	9	21.88	11	9	29.38
2	10	7.08	5	10	14.58	8	10	22.08	11	10	29.58
2	11	7.30	5	11	14.80	8	11	22.30	11	11	29.80

Table 3-4. Post-1981 – Pre-2018 Retirement Percentage Multiplier Conversions (Continued)

POST-1981 – PRE-2018 RETIREMENT PERCENTAGE MULTIPLIER CONVERSIONS											
Service Multiplier			Service Multiplier			Service Multiplier			Service Multiplier		
Years	Months	(%)	Years	Months	(%)	Years	Months	(%)	Years	Months	(%)
12	blank	30.00	15	blank	37.50	18	blank	45.00	21	blank	52.50
12	1	30.20	15	1	37.70	18	1	45.20	21	1	52.70
12	2	30.43	15	2	37.93	18	2	45.43	21	2	52.93
12	3	30.63	15	3	38.13	18	3	45.63	21	3	53.13
12	4	30.83	15	4	38.33	18	4	45.83	21	4	53.33
12	5	31.05	15	5	38.55	18	5	46.05	21	5	53.55
12	6	31.25	15	6	38.75	18	6	46.25	21	6	53.75
12	7	31.45	15	7	38.95	18	7	46.45	21	7	53.95
12	8	31.68	15	8	39.18	18	8	46.68	21	8	54.18
12	9	31.88	15	9	39.38	18	9	46.88	21	9	54.38
12	10	32.08	15	10	39.58	18	10	47.08	21	10	54.58
12	11	32.30	15	11	39.80	18	11	47.30	21	11	54.80
13	blank	32.50	16	blank	40.00	19	blank	47.50	22	blank	55.00
13	1	32.70	16	1	40.20	19	1	47.70	22	1	55.20
13	2	32.93	16	2	40.43	19	2	47.93	22	2	55.43
13	3	33.13	16	3	40.63	19	3	48.13	22	3	55.63
13	4	33.33	16	4	40.83	19	4	48.33	22	4	55.83
13	5	33.55	16	5	41.05	19	5	48.55	22	5	56.05
13	6	33.75	16	6	41.25	19	6	48.75	22	6	56.25
13	7	33.95	16	7	41.45	19	7	48.95	22	7	56.45
13	8	34.18	16	8	41.68	19	8	49.18	22	8	56.68
13	9	34.38	16	9	41.88	19	9	49.38	22	9	56.88
13	10	34.58	16	10	42.08	19	10	49.58	22	10	57.08
13	11	34.80	16	11	42.30	19	11	49.80	22	11	57.30
14	blank	35.00	17	blank	42.50	20	blank	50.00	23	blank	57.50
14	1	35.20	17	1	42.70	20	1	50.20	23	1	57.70
14	2	35.43	17	2	42.93	20	2	50.43	23	2	57.93
14	3	35.63	17	3	43.13	20	3	50.63	23	3	58.13
14	4	35.83	17	4	43.33	20	4	50.83	23	4	58.33
14	5	36.05	17	5	43.55	20	5	51.05	23	5	58.55
14	6	36.25	17	6	43.75	20	6	51.25	23	6	58.75
14	7	36.45	17	7	43.95	20	7	51.45	23	7	58.95
14	8	36.68	17	8	44.18	20	8	51.68	23	8	59.18
14	9	36.88	17	9	44.38	20	9	51.88	23	9	59.38
14	10	37.08	17	10	44.58	20	10	52.08	23	10	59.58
14	11	37.30	17	11	44.80	20	11	52.30	23	11	59.80

Table 3-4. Post-1981 – Pre-2018 Retirement Percentage Multiplier Conversions (Continued)

POST-1981 – PRE-2018 RETIREMENT PERCENTAGE MULTIPLIER CONVERSIONS											
Service Multiplier			Service Multiplier			Service Multiplier			Service Multiplier		
Years	Months	(%)	Years	Months	(%)	Years	Months	(%)	Years	Months	(%)
24	blank	60.00	27	blank	67.50	30	blank	75.00	33	blank	82.50
24	1	60.20	27	1	67.70	30	1	75.20	33	1	82.70
24	2	60.43	27	2	67.93	30	2	75.43	33	2	82.93
24	3	60.63	27	3	68.13	30	3	75.63	33	3	83.13
24	4	60.83	27	4	68.33	30	4	75.83	33	4	83.33
24	5	61.05	27	5	68.55	30	5	76.05	33	5	83.55
24	6	61.25	27	6	68.75	30	6	76.25	33	6	83.75
24	7	61.45	27	7	68.95	30	7	76.45	33	7	83.95
24	8	61.68	27	8	69.18	30	8	76.68	33	8	84.18
24	9	61.88	27	9	69.38	30	9	76.88	33	9	84.38
24	10	62.08	27	10	69.58	30	10	77.08	33	10	84.58
24	11	62.30	27	11	69.80	30	11	77.30	33	11	84.80
25	blank	62.50	28	blank	70.00	31	blank	77.50	34	blank	85.00
25	1	62.70	28	1	70.20	31	1	77.70	34	1	85.20
25	2	62.93	28	2	70.43	31	2	77.93	34	2	85.43
25	3	63.13	28	3	70.63	31	3	78.13	34	3	85.63
25	4	63.33	28	4	70.83	31	4	78.33	34	4	85.83
25	5	63.55	28	5	71.05	31	5	78.55	34	5	86.05
25	6	63.75	28	6	71.25	31	6	78.75	34	6	86.25
25	7	63.95	28	7	71.45	31	7	78.95	34	7	86.45
25	8	64.18	28	8	71.68	31	8	79.18	34	8	86.68
25	9	64.38	28	9	71.88	31	9	79.38	34	9	86.88
25	10	64.58	28	10	72.08	31	10	79.58	34	10	87.08
25	11	64.80	28	11	72.30	31	11	79.80	34	11	87.30
26	blank	65.00	29	blank	72.50	32	blank	80.00	35	blank	87.50
26	1	65.20	29	1	72.70	32	1	80.20	35	1	87.70
26	2	65.43	29	2	72.93	32	2	80.43	35	2	87.93
26	3	65.63	29	3	73.13	32	3	80.63	35	3	88.13
26	4	65.83	29	4	73.33	32	4	80.83	35	4	88.33
26	5	66.05	29	5	73.55	32	5	81.05	35	5	88.55
26	6	66.25	29	6	73.75	32	6	81.25	35	6	88.75
26	7	66.45	29	7	73.95	32	7	81.45	35	7	88.95
26	8	66.68	29	8	74.18	32	8	81.68	35	8	89.18
26	9	66.88	29	9	74.38	32	9	81.88	35	9	89.38
26	10	67.08	29	10	74.58	32	10	82.08	35	10	89.58
26	11	67.30	29	11	74.80	32	11	82.30	35	11	89.80

Table 3-4. Post-1981 – Pre-2018 Retirement Percentage Multiplier Conversions (Continued)

POST-1981 – PRE-2018 RETIREMENT PERCENTAGE MULTIPLIER CONVERSIONS											
Service Multiplier			Service Multiplier			Service Multiplier			Service Multiplier		
Years	Months	(%)	Years	Months	(%)	Years	Months	(%)	Years	Months	(%)
36	blank	90.00	38	blank	95.00	40	blank	100.00	42	blank	105.00
36	1	90.20	38	1	95.20	40	1	100.20	42	1	105.20
36	2	90.43	38	2	95.43	40	2	100.43	42	2	105.43
36	3	90.63	38	3	95.63	40	3	100.63	42	3	105.63
36	4	90.83	38	4	95.83	40	4	100.83	42	4	105.83
36	5	91.05	38	5	96.05	40	5	101.05	42	5	106.05
36	6	91.25	38	6	96.25	40	6	101.25	42	6	106.25
36	7	91.45	38	7	96.45	40	7	101.45	42	7	106.45
36	8	91.68	38	8	96.68	40	8	101.68	42	8	106.68
36	9	91.88	38	9	96.88	40	9	101.88	42	9	106.88
36	10	92.08	38	10	97.08	40	10	102.08	42	10	107.08
36	11	92.30	38	11	97.30	40	11	102.30	42	11	107.30
37	blank	92.50	39	blank	97.50	41	blank	102.50	43	blank	107.50
37	1	92.70	39	1	97.70	41	1	102.70	43	1	107.70
37	2	92.93	39	2	97.93	41	2	102.93	43	2	107.93
37	3	93.13	39	3	98.13	41	3	103.13	43	3	108.13
37	4	93.33	39	4	98.33	41	4	103.33	43	4	108.33
37	5	93.55	39	5	98.55	41	5	103.55	43	5	108.55
37	6	93.75	39	6	98.75	41	6	103.75	43	6	108.75
37	7	93.95	39	7	98.95	41	7	103.95	43	7	108.95
37	8	94.18	39	8	99.18	41	8	104.18	43	8	109.18
37	9	94.38	39	9	99.38	41	9	104.38	43	9	109.38
37	10	94.58	39	10	99.58	41	10	104.58	43	10	109.58
37	11	94.80	39	11	99.80	41	11	104.80	43	11	109.80

NOTE: To derive multipliers for service in excess of 43 years and 11 months, divide the number of whole months by 12, compute the quotient to three digits, round to two digits, and add this to the number of years. Then, multiply by .025.

Example 1: 20 years, 7 months, 13 days
7 months ÷ 12 = .583 (.58)
20.58 × .025 = 51.45%

Example 2: 44 years, 8 months, 28 days
8 months ÷ 12 = .667 (.67)
44.67 × .025 = 111.68%

Exception: Members who retire between January 1, 1982 and September 30, 1983 and meet requirements of paragraph 2.7 will round service credit of 6 months or more, as shown on the Table.

Table 3-5. Effective January 1, 2018, BRS Percentage Multiplier Conversions

BRS PERCENTAGE MULTIPLIER CONVERSIONS - EFFECTIVE JANUARY 1, 2018											
Service Multiplier			Service Multiplier			Service Multiplier			Service Multiplier		
Years	Months	(%)	Years	Months	(%)	Years	Months	(%)	Years	Months	(%)
blank	blank	0	3	blank	6.00	6	blank	12.00	9	blank	18.00
	1	.17	3	1	6.17	6	1	12.17	9	1	18.17
blank	2	.33	3	2	6.33	6	2	12.34	9	2	18.34
	3	.50	3	3	6.50	6	3	12.50	9	3	18.50
blank	4	.67	3	4	6.67	6	4	12.67	9	4	18.67
	5	.83	3	5	6.83	6	5	12.84	9	5	18.84
blank	6	1.00	3	6	7.00	6	6	13.00	9	6	19.00
	7	1.17	3	7	7.17	6	7	13.17	9	7	19.17
blank	8	1.33	3	8	7.33	6	8	13.34	9	8	19.34
	9	1.50	3	9	7.50	6	9	13.50	9	9	19.50
blank	10	1.67	3	10	7.67	6	10	13.67	9	10	19.67
	11	1.83	3	11	7.83	6	11	13.84	9	11	19.84
1	blank	2.00	4	blank	8.00	7	blank	14.00	10	blank	20.00
1	1	2.17	4	1	8.17	7	1	14.17	10	1	20.17
1	2	2.33	4	2	8.34	7	2	14.34	10	2	20.34
1	3	2.50	4	3	8.50	7	3	14.50	10	3	20.50
1	4	2.67	4	4	8.67	7	4	14.67	10	4	20.67
1	5	2.83	4	5	8.84	7	5	14.84	10	5	20.84
1	6	3.00	4	6	9.00	7	6	15.00	10	6	21.00
1	7	3.17	4	7	9.17	7	7	15.17	10	7	21.17
1	8	3.33	4	8	9.34	7	8	15.34	10	8	21.34
1	9	3.50	4	9	9.50	7	9	15.50	10	9	21.50
1	10	3.67	4	10	9.67	7	10	15.67	10	10	21.67
1	11	3.83	4	11	9.84	7	11	15.84	10	11	21.84
2	blank	4.00	5	blank	10.00	8	blank	16.00	11	blank	22.00
2	1	4.17	5	1	10.17	8	1	16.17	11	1	22.17
2	2	4.33	5	2	10.34	8	2	16.34	11	2	22.34
2	3	4.50	5	3	10.50	8	3	16.50	11	3	22.50
2	4	4.67	5	4	10.67	8	4	16.67	11	4	22.67
2	5	4.83	5	5	10.84	8	5	16.84	11	5	22.84
2	6	5.00	5	6	11.00	8	6	17.00	11	6	23.00
2	7	5.17	5	7	11.17	8	7	17.17	11	7	23.17
2	8	5.33	5	8	11.34	8	8	17.34	11	8	23.34
2	9	5.50	5	9	11.50	8	9	17.50	11	9	23.50
2	10	5.67	5	10	11.67	8	10	17.67	11	10	23.67
2	11	5.83	5	11	11.84	8	11	17.84	11	11	23.84

Table 3-5. Effective January 1, 2018, BRS Percentage Multiplier Conversions (Continued)

BRS PERCENTAGE MULTIPLIER CONVERSIONS - EFFECTIVE JANUARY 1, 2018											
Service Multiplier			Service Multiplier			Service Multiplier			Service Multiplier		
Years	Months	(%)	Years	Months	(%)	Years	Months	(%)	Years	Months	(%)
12	blank	24.00	15	blank	30.00	18	blank	36.00	21	blank	42
12	1	24.17	15	1	30.17	18	1	36.17	21	1	42.18
12	2	24.34	15	2	30.34	18	2	36.34	21	2	42.34
12	3	24.50	15	3	30.51	18	3	36.51	21	3	42.51
12	4	24.67	15	4	30.67	18	4	36.67	21	4	42.68
12	5	24.84	15	5	30.84	18	5	36.84	21	5	42.84
12	6	25.01	15	6	31.01	18	6	37.01	21	6	43.01
12	7	25.17	15	7	31.17	18	7	37.17	21	7	43.18
12	8	25.34	15	8	31.34	18	8	37.34	21	8	43.34
12	9	25.51	15	9	31.51	18	9	37.51	21	9	43.51
12	10	25.67	15	10	31.67	18	10	37.67	21	10	43.68
12	11	25.84	15	11	31.84	18	11	37.84	21	11	43.84
13	blank	26.00	16	blank	32.00	19	blank	38.00	22	blank	44.00
13	1	26.17	16	1	32.17	19	1	38.17	22	1	44.18
13	2	26.34	16	2	32.34	19	2	38.34	22	2	44.34
13	3	26.51	16	3	32.51	19	3	38.51	22	3	44.51
13	4	26.67	16	4	32.67	19	4	38.67	22	4	44.68
13	5	26.84	16	5	32.84	19	5	38.84	22	5	44.84
13	6	27.01	16	6	33.01	19	6	39.01	22	6	45.01
13	7	27.17	16	7	33.17	19	7	39.17	22	7	45.18
13	8	27.34	16	8	33.34	19	8	39.34	22	8	45.34
13	9	27.51	16	9	33.51	19	9	39.51	22	9	45.51
13	10	27.67	16	10	33.67	19	10	39.67	22	10	45.68
13	11	27.84	16	11	33.84	19	11	39.84	22	11	45.84
14	blank	28.00	17	blank	34.00	20	blank	40.00	23	blank	46.00
14	1	28.17	17	1	34.17	20	1	40.17	23	1	46.18
14	2	28.34	17	2	34.34	20	2	40.34	23	2	46.34
14	3	28.51	17	3	34.51	20	3	40.51	23	3	46.51
14	4	28.67	17	4	34.67	20	4	40.67	23	4	46.68
14	5	28.84	17	5	34.84	20	5	40.84	23	5	46.84
14	6	29.01	17	6	35.01	20	6	41.01	23	6	47.01
14	7	29.17	17	7	35.17	20	7	41.16	23	7	47.18
14	8	29.34	17	8	35.34	20	8	41.34	23	8	47.34
14	9	29.51	17	9	35.51	20	9	41.51	23	9	47.51
14	10	29.67	17	10	35.67	20	10	41.67	23	10	47.68
14	11	29.84	17	11	35.84	20	11	41.84	23	11	47.84

Table 3-5. Effective January 1, 2018, BRS Percentage Multiplier Conversions (Continued)

BRS PERCENTAGE MULTIPLIER CONVERSIONS - EFFECTIVE JANUARY 1, 2018											
Service Multiplier			Service Multiplier			Service Multiplier			Service Multiplier		
Years	Months	(%)	Years	Months	(%)	Years	Months	(%)	Years	Months	(%)
24	blank	48.00	27	blank	54.00	30	blank	60.00	33	blank	66.00
24	1	48.18	27	1	54.18	30	1	60.18	33	1	66.18
24	2	48.34	27	2	54.34	30	2	60.35	33	2	66.35
24	3	48.51	27	3	54.51	30	3	60.51	33	3	66.51
24	4	48.68	27	4	54.68	30	4	60.68	33	4	66.68
24	5	48.84	27	5	54.84	30	5	60.85	33	5	66.85
24	6	49.01	27	6	55.01	30	6	61.01	33	6	67.01
24	7	49.18	27	7	55.18	30	7	61.18	33	7	67.18
24	8	49.34	27	8	55.34	30	8	61.35	33	8	67.35
24	9	49.51	27	9	55.51	30	9	61.51	33	9	67.51
24	10	49.68	27	10	55.68	30	10	61.68	33	10	67.68
24	11	49.84	27	11	55.84	30	11	61.85	33	11	67.85
25	blank	50.00	28	blank	56.00	31	blank	62.00	34	blank	68.00
25	1	50.18	28	1	56.18	31	1	62.18	34	1	68.18
25	2	50.34	28	2	56.34	31	2	62.35	34	2	68.35
25	3	50.51	28	3	56.51	31	3	62.51	34	3	68.51
25	4	50.68	28	4	56.68	31	4	62.68	34	4	68.68
25	5	50.84	28	5	56.84	31	5	62.85	34	5	68.85
25	6	51.01	28	6	57.01	31	6	63.01	34	6	69.01
25	7	51.18	28	7	57.18	31	7	63.18	34	7	69.18
25	8	51.34	28	8	57.34	31	8	63.35	34	8	69.35
25	9	51.51	28	9	57.51	31	9	63.51	34	9	69.51
25	10	51.68	28	10	57.68	31	10	63.68	34	10	69.68
25	11	51.84	28	11	57.84	31	11	63.85	34	11	69.85
26	blank	52.00	29	blank	58.00	32	blank	64.00	35	blank	70.00
26	1	52.18	29	1	58.18	32	1	64.18	35	1	70.18
26	2	52.34	29	2	58.35	32	2	64.35	35	2	70.35
26	3	52.51	29	3	58.51	32	3	64.51	35	3	70.51
26	4	52.68	29	4	58.68	32	4	64.68	35	4	70.68
26	5	52.84	29	5	58.85	32	5	64.85	35	5	70.85
26	6	53.01	29	6	59.01	32	6	65.01	35	6	71.01
26	7	53.18	29	7	59.18	32	7	65.18	35	7	71.18
26	8	53.34	29	8	59.35	32	8	65.35	35	8	71.35
26	9	53.51	29	9	59.51	32	9	65.51	35	9	71.51
26	10	53.68	29	10	59.68	32	10	65.68	35	10	71.68
26	11	53.84	29	11	59.85	32	11	65.85	35	11	71.85

Table 3-5. Effective January 1, 2018, BRS Percentage Multiplier Conversions (Continued)

BRS PERCENTAGE MULTIPLIER CONVERSIONS - EFFECTIVE JANUARY 1, 2018											
Service Multiplier			Service Multiplier			Service Multiplier			Service Multiplier		
Years	Months	(%)	Years	Months	(%)	Years	Months	(%)	Years	Months	(%)
36	blank	72.00	38	blank	76.00	40	blank	80.00	42	blank	84.00
36	1	72.18	38	1	76.18	40	1	80.18	42	1	84.18
36	2	72.35	38	2	76.35	40	2	80.35	42	2	84.35
36	3	72.51	38	3	76.52	40	3	80.52	42	3	84.52
36	4	72.68	38	4	76.68	40	4	80.68	42	4	84.68
36	5	72.85	38	5	76.85	40	5	80.85	42	5	84.85
36	6	73.01	38	6	77.02	40	6	81.02	42	6	85.02
36	7	73.18	38	7	77.18	40	7	81.18	42	7	85.18
36	8	73.35	38	8	77.35	40	8	81.35	42	8	85.35
36	9	73.51	38	9	77.52	40	9	81.52	42	9	85.52
36	10	73.68	38	10	77.68	40	10	81.68	42	10	85.68
36	11	73.85	38	11	77.85	40	11	81.85	42	11	85.85
37	blank	74.00	39	blank	78.00	41	blank	82.00	43	blank	86.00
37	1	74.18	39	1	78.18	41	1	82.18	43	1	86.18
37	2	74.35	39	2	78.35	41	2	82.35	43	2	86.35
37	3	74.51	39	3	78.52	41	3	82.52	43	3	86.52
37	4	74.68	39	4	78.68	41	4	82.68	43	4	86.68
37	5	74.85	39	5	78.85	41	5	82.85	43	5	86.85
37	6	75.02	39	6	79.02	41	6	83.02	43	6	87.02
37	7	75.18	39	7	79.18	41	7	83.18	43	7	87.18
37	8	75.35	39	8	79.35	41	8	83.35	43	8	87.35
37	9	75.52	39	9	79.52	41	9	83.52	43	9	87.52
37	10	75.68	39	10	79.68	41	10	83.68	43	10	87.68
37	11	75.85	39	11	79.85	41	11	83.85	43	11	87.85

NOTE: To derive multipliers for service in excess of 43 years and 11 months, divide the number of whole months by 12, compute the quotient to three digits, round to two digits, and add this to the number of years. Then, multiply by .02.

Example 1: 20 years, 7 months, 13 days
7 months ÷ 12 = .583 (.58)
20.58 × .02 = 41.16%

Example 2: 44 years, 8 months, 28 days
8 months ÷ 12 = .667 (.67)
44.67 × .02 = 89.34%

Table 3-6. Reduction Factors Applicable to TERA

REDUCTION FACTORS APPLICABLE TO TEMPORARY EARLY RETIREMENT AUTHORITY					
Months Less than 240	**Reduction Factor**	**Months Less than 240**	**Reduction Factor**	**Months Less than 240**	**Reduction Factor**
1	.99917	2	.99833	3	.99750
4	.99667	5	.99583	6	.99500
7	.99417	8	.99333	9	.99250
10	.99167	11	.99083	12	.99000
13	.98917	14	.98833	15	.98750
16	.98667	17	.98583	18	.98500
19	.98417	20	.98333	21	.98250
22	.98167	23	.98083	24	.98000
25	.97917	26	.97833	27	.97750
28	.97667	29	.97583	30	.97500
31	.97417	32	.97333	33	.97250
34	.97167	35	.97083	36	.97000
37	.96917	38	.96833	39	.96750
40	.96667	41	.96583	42	.96500
43	.96417	44	.96333	45	.96250
46	.96167	47	.96083	48	.96000
49	.95917	50	.95833	51	.95750
52	.95667	53	.95583	54	.95500
55	.95417	56	.95333	57	.95250
58	.95167	59	.95083	60	.95000

NOTE: Mathematically, the reduction factor (RF) is one minus one twelve hundredth of the difference between 240 and the number of months or remaining portion of a month of active service of such member. Thus, for 188 months the reduction factor is computed as:

RF = 1.0 – [(240-188)/1200]
1.0 – [52/1200]
1.0 – .04333
.95667

*REFERENCES

CHAPTER 3 – GROSS PAY COMPUTATION

1.0 – GENERAL

1.1	10 U.S.C. §§ 1401, 1406, 1407, 1409 P.L. 114-92, sections 631-635, November 25, 2015 P.L. 114-328, sections 631-634, December 26, 2016 P.L. 115-91, section 622, December 12, 2017 Office of the Deputy Secretary of Defense, memo, Subject: Implementation of the Blended Retirement System, January 27, 2017

2.0 – BASIC COMPUTATION

2.1.1.1	10 U.S.C. § 1406
2.1.1.2	10 U.S.C. § 1407 10 U.S.C. § 1407(c)(2) 10 U.S.C. § 1407(d)(2)
2.1.2	P.L. 109-364, section 642, October 17, 2006 10 U.S.C. § 1409(b) P.L. 110-181, section 646, January 28, 2008 10 U.S.C. § 8333(a)
2.1.2.3.1	10 U.S.C. § 1405
2.1.2.3.2	10 U.S.C. § 12733 DoD Instruction (DoDI) 1215.07, July 30, 2019, Change 1, May 17. 2021
2.1.2.3.3	10 U.S.C., Chapter 61 10 U.S.C. § 1208 10 U.S.C. § 1401
2.1.2.4	10 U.S.C., Chapter 61 10 U.S.C. § 1208 10 U.S.C. § 1401 10 U.S.C. § 1409 10 U.S.C. § 12733 DoDI 1215.07, July 30, 2019, Incorporating Change 1, May 17, 2021

REFERENCES (Continued)

2.2.1.1	10 U.S.C. § 1406(b)(1) 10 U.S.C. § 1372
2.2.1.2	10 U.S.C. § 1407
2.2.2.1	P.L. 111-383, section 631, January 7, 2011 10 U.S.C. § 1401(a) 10 U.S.C. § 1402(d) 10 U.S.C. § 1402a(d)
2.2.2.2	P.L. 111-383, section 631, January 7, 2011 10 U.S.C. § 1401(a) 10 U.S.C. § 1402(d) 10 U.S.C. § 1402a(d)
2.2.3	10 U.S.C. § 12731
2.2.4	P.L. 114-92, section 631(c)(1)(A), November 25, 2015 10 U.S.C. § 1401 10 U.S.C. § 1409
2.3.1.1	10 U.S.C. § 1406(b)(1) 10 U.S.C. § 1372
2.3.1.1.2	10 U.S.C. § 1406(c) or (e)
2.3.1.2.1	10 U.S.C. §§ 1407, 7314, and 9314
2.4.1.1	10 U.S.C. § 1406(b)(1)
2.4.1.2	10 U.S.C. § 1407
2.5.1.1	10 U.S.C. § 1406(b)(2) 10 U.S.C. § 1370(d)
2.5.1.2	10 U.S.C. § 1407
2.5.1.3	10 U.S.C. § 12732
2.5.2	10 U.S.C. § 12733 10 U.S.C. § 12739

REFERENCES (Continued)

2.5.2 NOTE	10 U.S.C. § 12733
2.5.3	10 U.S.C., Chapter 61
2.6	10 U.S.C. § 1406(d)
2.8.1.3	10 U.S.C., Chapter 61
2.8.1.4	10 U.S.C. § 1210(c) or (d)
2.9	P.L. 98-94, section 922, September 24, 1983 10 U.S.C. § 1412 Office of the Secretary of Defense (OSD)/Military Personnel and Force Management (MP&FM) Memo, September 29, 1983
2.10	10 U.S.C. §§ 1401a(b), 1409, and 1410 DoD Office of the Actuary Memo, May 5, 1987 Office of the Under Secretary of Defense (OUSD) (Military Personnel Policy (MPP)) Memo, April 12, 2012 DoDI 1332.46, December 21, 2018
2.11	P.L. 102-484, sections 4403 and 4417, October 23, 1992 10 U.S.C., Chapter 67 10 U.S.C. § 1293 note P.L. 112-81, section 504, December 31, 2011 OUSD (MPP) Memo, April 12, 2012 P.L. 114-328, section 508, December 23, 2016 10 U.S.C. § 1293 note DoDI 1332.46, December 21, 2018
2.11.1	10 U.S.C. § 1401 10 U.S.C. § 7361(a) 10 U.S.C. § 8333(a) 10 U.S.C. § 9361(a) 10 U.S.C. § 12739
2.11.3	37 U.S.C. § 322 (renumbered § 354) 10 U.S.C. § 1409

REFERENCES (Continued)

2.11.4	P.L. 112-81, section 504, December 31, 2011 10 U.S.C. § 1293 note OUSD (MPP) Memo, April 12, 2012
2.11.5	OUSD (MPP) Memo, April 12, 2012
2.12	P.L. 106-398, section 651, October 30, 2000 10 U.S.C. § 1406 10 U.S.C. § 1407
2.12.1.2	Office of the Assistant Secretary of Defense/ Military Personnel Policy (OASD/MPP) Memo, December 20, 2001 10 U.S.C. § 1370
2.13	10 U.S.C. § 1370 10 U.S.C. § 1370a 10 U.S.C. § 1407(f)(4) P.L. 118-159, section 605, December 23, 2024
2.13.1	10 U.S.C. § 1407
2.13.2	10 U.S.C. § 1406

4.0 – TOWER AMENDMENT

4.1	10 U.S.C. § 1401a(f)
4.1.3	P.L. 100-456, section 622, September 29, 1988 10 U.S.C. § 1401a(f)
4.2.1	Manuscripts Comptroller General (MS Comp Gen) B-189029, September 2, 1980 10 U.S.C. § 1401a(f)
4.2.3	10 U.S.C. § 1293 10 U.S.C. § 1401a(f)
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5.1	10 U.S.C. § 12731
5.3.1	10 U.S.C. §§ 601(b), 1406(i), 7361, 8325, 8333, and 9361 37 U.S.C. § 203
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5.4	10 U.S.C. § 1370
5.4.1	10 U.S.C. § 1370(b)
5.4.3	P.L. 106-65, section 601(e), October 5, 1999
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6.0 - LUMP SUM PAYMENTS OF RETIREMENT ANNUITY	
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6.1	10 U.S.C. § 1415
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6.8	10 U.S.C. § 1413a 10 U.S.C. § 1414 38 U.S.C. § 5304 38 U.S.C. § 5305
6.9	10 U.S.C. § 1415 10 U.S.C. § 1447(6)(A) 10 U.S.C. § 1450 10 U.S.C. § 1452
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Table 3-5	P.L. 114-92, section 633, November 25, 2015
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VOLUME 7B, CHAPTER 4: "RECOUPMENT OF SEPARATION PAY"

SUMMARY OF MAJOR CHANGES

Changes are identified in this table and also denoted by blue font.

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

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

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

The previous version dated January 2023 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated chapter and formatting to comply with administrative instructions.	Revision
2.7, 5.1 and 9.1	Provided administrative information for specific type of pay pursuant to DoD Instruction (DoDI) 1332.29 and DoDI 1332.43.	Revision
10.3	Updated the formerly used term, "Concurrent Retired and Disability Pay," to new term, "Concurrent Military Retirement Pay and Department of Veterans Affairs Disability Compensation."	Revision
Reference	Updated references.	Revision

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CHAPTER 4

RECOUPMENT OF SEPARATION PAYMENTS

1.0 GENERAL

1.1 Purpose

This chapter provides guidance for the recoupment of payments made to members whose status transitions from involuntary discharge, release from active duty, disability separation, or voluntary separation, to retiree.

1.2 Authoritative Guidance

The pay policies and requirements established by DoD in this chapter are derived primarily from, and prepared in accordance with the United States Code (U.S.C.), including Titles 10, 14, and 38. The specific statutes, regulations, and other applicable guidance that govern each individual section are listed in a reference section at the end of the chapter.

2.0 DEFINITIONS

2.1 Readjustment Pay

Readjustment Pay is a lump-sum payment to members of a Reserve Component of any Military Service, members of the Army or Air Force without component, and Regular Army commissioned officers below the grade of O-4 who were on active duty (other than for training) on September 14, 1981, and were involuntarily released after completing at least 5 years of continuous active duty and who did not qualify for retirement. Separation Pay superseded Readjustment Pay.

2.2 Nondisability Severance Pay

Nondisability Severance Pay is a lump-sum payment to certain commissioned and warrant officers, who were on active duty (other than for training) on September 14, 1981, and involuntarily discharged from active duty under certain conditions. Separation Pay superseded Nondisability Severance Pay. Note: This chapter uses the term “Nondisability Severance Pay” when referring to what is commonly known as “Severance Pay” as a mechanism to distinguish severance pay from disability severance pay.

2.3 Separation Pay

Separation Pay is a lump-sum payment to a member of the Uniformed Services who is discharged involuntarily or released from active duty and who does not qualify for retired pay. For more information, see Volume 7A, Chapter 35.

2.4 Disability Severance Pay (DSP)

The DSP is a lump-sum payment to a member of the Uniformed Services involuntarily separated from the military service for minor physical disability and who does not qualify for disability retired pay.

2.5 Voluntary Separation Incentive (VSI)

The VSI is an annual payment to members who separated voluntarily from service before December 31, 2001, under conditions prescribed by the Secretary of the Military Department concerned (or designee). Voluntary Separation Pay (VSP) superseded VSI.

2.6 Special Separation Benefit (SSB)

The SSB is a lump-sum payment to members who separated voluntarily from service before December 31, 2001, under conditions prescribed by the Secretary of the Military Department concerned (or designee). VSP superseded SSB.

*2.7 Voluntary Separation Pay (VSP)

The VSP is an annual or lump-sum payment to certain members to encourage them to leave active duty voluntarily. The authority to separate a member in conjunction with VSP applies for the period of October 17, 2006, through December 31, 2025. Specific administration of the VSP program procedures is detailed in DoDI 1332.43, to include: eligibility; ineligibility; application and approval; Ready Reserve obligations, benefits, and payment methods; repayment; deduction for disability compensation; and separation program designation codes and reentry codes.

2.8 Recoupment

To align entitlement to retirement benefits with applicable active service, this chapter uses the term recoupment in conjunction with the recovery of readjustment pay, nondisability severance pay, separation pay, DSP, VSI, SSB, or VSP previously received.

2.9 Reserve Special Separation Pay (RSSP)

The RSSP is payable to Reserve members who had completed more than 20 years of service but who had not reached age 60. Payment of RSSP is not subject to recoupment from retired pay. For more information, see Volume 7A, Chapter 58.

3.0 READJUSTMENT PAY

3.1 General Provisions

3.1.1. A member who received readjustment pay before September 15, 1981, because of involuntary discharge or release from active duty after June 28, 1962, and who later qualifies for retired pay under Title's 10 or 14, U.S.C. upon completion of 20 years of active service, must have the retired pay withheld until a total of 75 percent of the readjustment pay has been recovered. For this purpose, consider a member who transferred to the Fleet Reserve or the Fleet Marine Corps Reserve to have "qualified for retired pay under a statute authorizing retirement upon completion of 20 years of active service," even though such transfer may have occurred after completion of less than 20 years of actual service. See Table 4-1.

3.1.2. A Regular Army commissioned officer in the grade of O-1, O-2, or O-3 who received readjustment pay from December 30, 1974 through December 30, 1977, and who later qualifies for retired pay upon completion of 20 years of active service, must have the retired pay withheld until a total of 75 percent of the readjustment pay has been recovered. See Table 4-1.

3.1.3. A member of the Uniformed Services who served on active duty as a temporary officer and held a Reserve officer status upon release from active duty, and received readjustment pay after June 28, 1962, but before September 15, 1981, and who later qualifies for retired pay upon completion of 20 years of active service, must have the retired pay withheld until a total of 75 percent of the readjustment pay has been recovered. See Table 4-1.

3.1.4. A member who received readjustment pay on September 15, 1981, or later, and who later qualifies for retired pay, must have the retired pay reduced until the recovery of the full amount of the readjustment pay. See subparagraph 3.2.2.

3.2 Recoupment of Readjustment Pay

3.2.1. Readjustment Pay Received Before September 15, 1981.

3.2.1.1. Defense Finance and Accounting Service (DFAS) will deduct a total of 75 percent of the gross readjustment pay without interest immediately from retired pay.

3.2.1.2. There is no entitlement to retired pay until the recovery of 75 percent of the lump-sum readjustment pay. During the period that the member is not entitled to retired pay, the member must pay the cost for coverage under the Survivor Benefit Plan (SBP) by direct remittance to:

Defense Finance and Accounting Service, DFAS-CL
SBP and RSFPP Remittance
P.O. Box 979013
St. Louis, MO 63197-9000

3.2.2. Readjustment Pay Received September 15, 1981, or Later. A member who received readjustment pay on September 15, 1981, or later, and who subsequently qualifies for retired pay will have the retired pay reduced in accordance with section 10.0 until the recovery of the full amount of the readjustment pay.

4.0 NONDISABILITY SEVERANCE PAY

4.1 General Provisions

Before September 15, 1981, certain provisions of law governing separation from the active list required recoupment of nondisability severance pay upon a member's retirement. See Table 4-2 for conditions governing recoupment of nondisability severance pay received before September 15, 1981. Members who receive nondisability severance pay on September 15, 1981 or later, and who subsequently qualify for retirement, are subject to recoupment under paragraph 4.2.

4.2 Recoupment of Nondisability Severance Pay

DFAS must recoup lump-sum nondisability severance pay by deducting from retired pay each month an amount as specified in section 10.0 until the total deducted equals the amount of the nondisability severance pay received.

5.0 SEPARATION PAY

*5.1 General Provisions

Separation pay has replaced readjustment pay and nondisability severance pay for involuntary separation of all members of the active and reserve forces other than those separated for disability. For information on eligibility requirements for separation pay, see Volume 7A, Chapter 35. Specific administration of the Involuntary Separation Pay procedures is detailed in DoDI 1332.29, to include: eligibility; computation; repayment; and sole survivorship discharge.

5.2 Recoupment of Separation Pay

5.2.1. A member who received separation pay and who later qualifies for retired or retainer pay under Titles 10 or 14 of the U.S.C. will have a monthly installment deducted from payment of such retired or retainer pay. See section 10.0.

5.2.2. A member who receives separation pay, and who also is eligible for disability compensation from Department of Veteran Affairs (VA), will have an amount, equal to the total amount of separation pay received, deducted by the VA from the disability compensation awarded. The VA will not deduct separation pay from disability compensation if disability is based on service performed after receiving separation pay.

5.3 Collection of Separation Pay - Boards for Correction of Military Record Cases

Pursuant to ***10 U.S.C. § 1552***, the Secretary concerned may correct the military record of a member who was previously paid separation pay to reflect the member has been retired or has been restored to active duty and then retired. Based on the corrected record, the separation pay payment, which was proper when made, is now considered an erroneous payment. Thus, a debt must be established for any separation pay previously paid to the member and must be collected from the member. If the member is restored to active duty and then retired, the Correction of Records/Claims Directorate, Debt and Claims Management Office should coordinate with Retirement and Annuitant (R&A) Pay regarding the priority for the collection of the separation pay debt. Generally, the separation pay is first offset from any active pay due and then any military retired pay or Combat-Related Special Compensation (CRSC) payments due as a result of the record correction. If the separation debt cannot be fully collected from retroactive amounts due, then collection of the remainder of the debt must be made pursuant to the authority under Volume 16.

6.0 DISABILITY SEVERANCE PAY (DSP)

6.1 General Provisions

Upon determination by the Secretary concerned that a member of the Armed Forces is unfit to perform the duties of his office, grade, rank or rating because of physical disability rated less than 30 percent, the department may separate the member with disability severance pay. For information on eligibility requirements for disability severance pay, see Volume 7A, Chapter 35.

6.2 Recoupment of DSP

When the Secretary concerned approves a recommendation from the Physical Disability Board of Review (PDBR) to award military disability retirement, DFAS must take action to recoup any disability severance pay previously paid to that member. Recoupment will be consistent with the parameters established in section 10.0, except as noted in paragraph 6.3 and subparagraphs 6.2.1 and 6.2.2.

6.2.1. In most cases, members entitled to disability severance pay will also qualify for the VA disability compensation. In order to avoid duplicate collection, DFAS will reduce the recovery amount of disability severance pay by any amount already separately recovered by the VA through reduction of the VA disability compensation. In such cases, the amount deducted by the VA from the disability compensation will reduce the gross amount of disability severance pay to be recouped by the DoD.

6.2.1.1. To determine the retroactive entitlement of retired pay that is payable to the member, offset the entire VA disability compensation amount that is awarded (prior to any reduction of such VA disability compensation to offset the collection of disability severance pay) from the total retroactive retired pay entitlement. This will result in an amount of the VA disability compensation plus military retired pay paid to the member that is equal to that which the member would have been entitled to had he/she originally been retired instead of separated.

6.2.1.2. DFAS will first apply the entire amount of any retroactive retired pay and/or CRSC entitlement to any required recoupment of disability severance pay without regard to the percentage limitations specified in section 10.0. In determining the retroactive entitlement to retired pay, service members must be treated as though they were retired on the original date of separation, without regard to any disability severance payment received or any reduction in the VA disability compensation to recoup previously paid disability severance pay. In order to determine the amount subject to recoupment, as well as any amount payable to a member, DFAS will determine the amount of retired pay that would have been available had the member originally been retired instead of separated. The total amount to recoup will be the full gross amount of disability severance pay originally paid to the member.

6.2.1.3. As stated in subparagraph 6.2.1, the VA deducts disability severance compensation from any VA compensation for the same disability to which the member or member's dependents become entitled under any law administered by the VA. There are two exceptions:

6.2.1.3.1. The VA will make no deduction in the case of disability severance pay received by a member for a disability incurred in the line of duty in a combat zone or incurred during performance of duty in combat-related operations as designated by the Secretary of Defense.

6.2.1.3.2. The VA will make no deduction from any death compensation to which a member's dependents become entitled after the member's death.

6.2.2. Members must be promptly notified that future payments of disability retired pay will be subject to reduction until the gross amount of the disability severance pay has been recovered.

6.3 Collection of DSP – Board for Correction of Military Record Cases

The Secretary concerned may change a military record pursuant to the authority at 10 U.S.C. § 1552 in order to award military disability retirement to a member who has previously received DSP. If this occurs, any DSP previously paid to the member must be established as a debt and collected from the member. The DSP amount must first be offset from any military retired pay or CRSC payments due the military retiree as a result of the record correction. If the DSP debt cannot be fully collected from retroactive amounts due, then collection of the remainder of the debt must be made pursuant to the authority under Volume 16.

6.4 Survivor Benefit Plan (SBP) Participation

6.4.1. Members whose record is corrected to a military disability retirement under the PDBR process, and who were married on the retirement effective date, will receive automatic full spouse coverage under the SBP, unless the member makes an affirmative election on a DoD (DD) ***DD Form 2656***, Data for Payment of Retired Personnel, for less than full spouse coverage within 90 days of being provided a DD Form 2656. If the member elects less than full spouse coverage, including an election not to participate in SBP program or an election for child-only

coverage, the election must include a spousal concurrence signed by the person who was the member's spouse on the effective retirement date, as determined by the PDBR, unless such person is deceased. If the member was married on the effective retirement date, but has since divorced that spouse, the member must still submit a concurrence to elect less than full spouse coverage signed by the person who was the member's spouse on the effective retirement date, unless the whereabouts of the member's now former spouse are unknown and the member submits an affidavit verifying that the former spouse's whereabouts are unknown, along with a copy of the parties' divorce decree. The spouse's concurrence on the DD Form 2656 must be signed on or after the date of the member's signature and otherwise conform to an election regarding spouse coverage.

6.4.2. A spouse who was married to the member on the effective date of retirement, who was subsequently divorced from the member and who has not signed the spousal concurrence on DD Form 2656, has 1 year from the date of the approved PDBR recommendation authorizing disability retirement to make a deemed former spouse SBP election, provided there is already in effect a court-approved written agreement or court order requiring the member to elect to provide such an annuity to the former spouse.

6.4.3. If the member had a former spouse on the effective retirement date, the member may elect former spouse SBP coverage. There is no requirement for spousal concurrence for a former spouse election, although the member’s current spouse should be provided written notice of the former spouse election. A member who was not married and had no dependent child on the effective date of retirement, who remarries or acquires a dependent child subsequent to the effective date of retirement, may elect to participate in the SBP. The member has 1 year from either the date of acquiring a spouse or dependent child or the date of the approved PDBR recommendation authorizing disability retirement, whichever is later.

6.4.4. If the member had no spouse or dependent child on the effective retirement date and is not otherwise required to provide former spouse coverage, the member may elect to provide an annuity for an insurable interest person if such individual would have been qualified on the effective date of retirement.

6.4.5. Monthly SBP premiums for automatic or properly elected coverage must be charged from the effective retirement date, with the exception that no SBP premiums will be due if the member elects not to participate in the SBP program with proper spousal concurrence within 90 days of the PDBR action awarding a disability retirement or 90 days of the date that the member has been provided a DD Form 2656 to elect SBP participation.

6.4.6. If a member, who is retired for disability as a result of an approved PDBR action, had previously made a Reserve Component Survivor Benefit Plan (RCSBP) election, that RCSBP election will be considered of no effect if the PDBR action is approved prior to the date that the member would have become eligible for reserve retired pay under ***10 U.S.C., Chapter 1223***.

7.0 VOLUNTARY SEPARATION INCENTIVE (VSI)

7.1 General Provisions

Certain members who voluntarily separated before December 31, 2001, received annual payments of VSI based on their grade or rank at separation and number of years of service creditable for retirement purposes. See Volume 7A, Chapter 35 for eligibility requirements.

7.2 Beneficiary Payment Procedures

Upon the death of the member, DFAS Cleveland Site will pay all remaining VSI installments to the designated beneficiaries. DFAS will distribute VSI installment payments according to the legal order of precedence if there is no valid designation on file and maintained at DFAS Cleveland Site. See Chapter 23 for more information regarding beneficiary payment procedures.

7.3 Recoupment of VSI

7.3.1. A member who has received VSI, who later qualifies for retired or retainer pay under Titles 10 or 14 of the U.S.C., must have the amount of VSI deducted from each payment of such retired or retainer pay by a monthly installment not to exceed 40 percent of the member's gross retired pay as specified in paragraph 10.4. The gross retired pay amount paid does not include any amounts offset because of the member's receipt of military compensation between the date of separation which caused the VSI to begin and the date that he or she became eligible for receipt of retired pay.

7.3.2. In a case in which a member is receiving simultaneous VSI and retired pay, the member may elect to terminate the receipt of VSI. Such election is permanent and irrevocable. Under these circumstances, effective after such election to terminate VSI, DFAS will reduce the rate of monthly recoupment from retired pay of VSI received in accordance with subparagraph 7.3.1. The rate of recoupment will be reduced in accordance with the following formula: Divide the total number of months that would not be paid as a result of the member's election to terminate the VSI by the number of months that the VSI was scheduled to be paid. Multiply the resulting fraction, which is a percentage rate of reduction, by the percentage in subparagraph 7.3.1 to compute a percentage that is the proportionate rate of reduction; and, subtract the proportionate rate of reduction from the original rate of reduction in subparagraph 7.3.1 to determine the reduced rate of recoupment from retired pay.

7.3.3. A member who is receiving VSI payments will not be deprived of this incentive by reason of entitlement to disability compensation under the laws administered by the VA, but there will be deducted from VSI payments an amount equal to the amount of any such disability compensation concurrently received. Notwithstanding the preceding sentence, DFAS will make no deduction from VSI payments for any disability compensation received because of an earlier period of active duty if the member receives VSI because of discharge or release from a later period of active duty.

7.3.3.1. Any reduction in VSI as a result of receipt of the VA disability compensation will reduce the gross amount of VSI paid, as described in subparagraph 7.3.1, and will not be recovered through recoupment from retired pay.

7.3.3.2. In a case in which a member is receiving simultaneous VSI and retired pay, DFAS will reduce the VSI payment by the amount of any VA disability compensation. In addition, the member's election to waive retired pay, as described under Chapter 12, subparagraph 1.1.1.1, will also still apply. Furthermore, DFAS will reduce the member's retired pay as described in subparagraph 7.3.1.

8.0 SPECIAL SEPARATION BENEFIT (SSB)

8.1 General Provisions

Under conditions prescribed by the Secretary of the Military Department concerned (or designee), a member who separated voluntarily from a Military Service before December 31, 2001, could elect to receive an SSB.

8.2 Recoupment of SSB

If a member who has received an SSB payment later qualifies for retired or retainer pay under Titles 10 or 14 of the U.S.C., DFAS will recoup the gross amount of SSB received through a monthly installment from each payment of such retired or retainer pay as specified in section 10.0.

9.0 VOLUNTARY SEPARATION PAY (VSP)

*9.1 General Provisions

Certain members who voluntarily separate between October 17, 2006 and December 31, 2025, may receive a lump-sum VSP in an amount up to four times the full amount of the separation pay a member may receive. See Volume 7A, Chapter 35 for more information on separation pay. Specific administration of the VSP program procedures is detailed in DoDI 1332.43, to include: eligibility; ineligibility; application and approval; Ready Reserve obligations, benefits, and payment methods; repayment; deduction for disability compensation; and separation program designation codes and reentry codes.

9.2 Recoupment of VSP

9.2.1. A member who is paid VSP and who later qualifies for retired or retainer pay under Titles 10 or 14 of the U.S.C., will have deducted from each payment of such retired or retainer pay a monthly installment specified by the Secretary of the Military Department concerned (or designee). The total amount of retired or retainer pay deductions will equal the total amount paid to the member. See also Volume 7A, Chapter 35, paragraph 8.9.

9.2.2. The requirement to repay VSP following retirement from the Armed Forces does not apply to an officer who was eligible to retire at the time the officer applied and was accepted for VSP benefits.

9.2.3. The Secretary of the Military Department concerned (or designee) may waive the requirement to repay VSP if it is determined that recovery would be against equity and good conscience and would be contrary to the best interests of the United States. Upon approval, the Military Department concerned will forward a copy of all waivers to the Deputy Under Secretary of Defense, Military Personnel Policy.

9.2.4. Waivers by the Secretary of the Military Department concerned (or designee) must be determined on a case-by-case basis, which requires identification of the individual member, the amount of debt, and the circumstances of each case. The Principal Deputy Under Secretary of Defense, Personnel and Readiness, will review, in coordination with the DoD Office of General Counsel, any waiver by a Secretary of the Military Department (or designee) that applies to more than one individual. This review process will ensure a consistent consideration of the equities in such cases throughout DoD.

9.3 Repayment For Members Who Return to Active Duty

See Volume 7A, Chapter 35, paragraph 8.11.

10.0 RECOUPMENT OF SEPARATION PAY, NONDISABILITY SEVERANCE PAY, READJUSTMENT PAY, OR DISABILITY SEVERANCE PAY

10.1 Members Affected

Service members who received separation pay, nondisability severance pay, readjustment pay, or DSP under any provision of law based on service in the Armed Forces, or a member awarded disability retirement from the PDBR, as described in paragraph 6.2, who subsequently qualify under Titles 10 or 14 of the U.S.C. for retired or retainer pay will have deducted an amount equal to the total amount of separation pay, nondisability severance pay, readjustment pay, or DSP, without regard to any withholding for taxes. DFAS will make such deductions from each payment of retired or retainer pay until the total amount recouped is equal to the total amount of separation pay, nondisability severance pay, readjustment pay, or DSP. The member may authorize a deduction in an amount greater than that required by law.

10.2 VA Disability Compensation

10.2.1. In some cases, members entitled to disability retired pay will also qualify for the VA disability compensation. In such cases, the amount deducted to recoup the separation payment by the VA will reduce the gross amount of separation, severance or readjustment pay to be recouped by DoD.

10.2.2. DFAS will subtract the gross monthly amount of the VA disability compensation from the gross monthly amount of the retired pay subject to recoupment. DFAS will then use this

adjusted gross retired pay in place of gross retired pay for members with a VA waiver. In cases where the amount of the VA disability compensation award is greater than military retired pay, recoupment of disability severance pay will be suspended until, when or if, the amount of gross retired pay exceeds the monthly VA disability compensation except as provided in paragraph 10.3.

*10.3 Concurrent Receipt Programs

Members who meet all the eligibility criteria for the CRSC program or for Concurrent Military Retirement Pay and Department of Veterans Affairs Disability Compensation must have their CRSC or retired pay entitlement computed based on the full amount of retired pay and the full amount of the applicable VA disability compensation (i.e., before any reductions for recoupment of separation, nondisability severance, readjustment pay, or DSP). In other words, DFAS must compute the CRSC or retired pay entitlement amount without regard to the recoupment of separation, severance, or readjustment pay. DFAS must add the CRSC or retired pay entitlement to the adjusted gross retired pay remaining after the VA disability compensation offset in determining the amount of the monthly disability severance pay recoupment and must be, along with the adjusted gross retired pay, available for reduction.

10.4 Recoupment Rates

The maximum rate of recoupment will be no more than an amount equal to 40 percent of the member's gross retired pay.

10.4.1. DFAS will re-compute the monthly recoupment rate when there is an increase in gross or adjusted gross retired pay for cost-of-living adjustments, except when the member has authorized withholding at a higher monthly rate.

10.4.2. DFAS will make no income tax withholding from retired pay used for satisfying the recoupment of separation pay, nondisability severance pay, readjustment pay, or DSP. Neither is such pay included on Internal Revenue Service Form 1099-R, Distribution from Pensions, Annuities, Retirement Profit Sharing Plans, IRAs, Insurance Contracts, nor is it reported as taxable income. The gross taxable income is the difference between the amount of the recoupment and adjusted gross retired pay.

10.4.3. DFAS will provide written notification to members subject to recoupment. DFAS sends this notice 90 days in advance of the initial collection from the member's retired pay. The written notification will provide the current outstanding balance and the proposed monthly recoupment amount and explain the options of a more lenient repayment request if the member asserts that the maximum rate of recoupment imposes a financial hardship. See paragraph 10.6. The written notification will also explain the requirement for concurrent recoupment of the separation or nondisability severance pay by both DFAS and VA.

10.5 Exceptions

10.5.1. Those members whose recoupment rates were suspended in May 2009, by the direction of the Office of the Under Secretary of Defense (Comptroller) memorandum, dated May 18, 2009, and whose recoupment rates under the previous formula were less than the new maximum percentage will be reinstated at the previously established lower rate.

10.5.2. Members may, at their personal discretion, request to increase their recoupment to a rate greater than the maximum, in order to shorten the term of recoupment.

10.6 Financial Hardship

A member whose retired pay is subject to recoupment based on paragraph 10.1 may, at any time, request a review of the amount recouped based upon materially changed circumstances such as disability, divorce, or illness that results in the imposition of undue financial hardship on the member and the member's dependents. A member requesting such a review will submit the basis for claiming that the current rate of recoupment results in an undue financial hardship along with supporting documentation. DFAS will consider any information submitted and make a determination in accordance with the following procedures and standards.

10.6.1. A rate of recoupment results in an undue financial hardship for a member and his dependents if the recoupment amount prevents the member from meeting the costs necessarily incurred for essential subsistence expenses of the member and the member's dependents. These essential subsistence expenses include costs incurred for food, housing, necessary public utilities, clothing, transportation and medical care.

10.6.2. In determining whether the recoupment amount prevents the member from meeting the essential subsistence expenses described in subparagraph 10.6.1, DFAS will consider the following:

10.6.2.1. The income from all sources of the member, the member's spouse, and dependents;

10.6.2.2. Whether these essential subsistence expenses have been minimized to the greatest extent possible; and

10.6.2.3. The extent to which the member and the member's spouse and dependents have other exceptional expenses that DFAS should take into account and whether these expenses have been minimized to the greatest extent possible.

10.6.3. If there is an undue financial hardship, DFAS will reduce the recoupment rate based on the member's financial condition. Any reduction of the recoupment rate will be effective for 1 year. Upon the expiration of 1 year, the recoupment rate will revert back to 40 percent unless the member has reapplied for a reduction in rate and can again demonstrate financial hardship.

10.6.4. DFAS will adjust the rate of recoupment based on the following formula:

10.6.4.1. Subtract the total monthly living expenses from the total monthly income. The result is the net income available for monthly recoupment.

10.6.4.2. The net income available for monthly recoupment will be divided by the gross monthly retired pay to determine the actual recoupment percentage. If the result is 40 percent or greater, the recoupment is limited to 40 percent. A result of 10 percent or less limits the recoupment to 10 percent. DFAS will apply any factor within the range of 10 to 39 percent as the actual percentage with any fractional portions of a percentage point rounded down to the lower whole percentage point.

Figure 4-1. Financial Hardship Calculation Examples

EXAMPLE A:

Gross Monthly Income:		**Actual Monthly Expenses:**	
Retired Pay	$ 3,000.00	Rent/Mortgage	$ 1,500.00
Other income	460.00	Electric	$ 80.00
Spouse's income	$ 500.00	Natural Gas	$ 125.00
Total Income	$ 3,960.00	Telephone	$ 35.00
		Water	$ 20.00
		Food	$ 400.00
		Car Payment	$ 280.00
		Health Care	$ 500.00
		Total Expenses	$ 2,940.00

Total Income	$ 3,960.00	
Total Expenses	$ 2,940.00	
Net Income	$ 1,020.00	(Available for recoupment)

Divide the member's Net Income ($1,020.00) by the gross retired pay ($3,000.00) which equals .34 or a recoupment rate of 34%.

EXAMPLE B:

Gross Monthly Income:		**Actual Monthly Expenses:**	
Retired Pay	$ 2,000.00	Rent/Mortgage	$ 800.00
Spouse's income	$ 500.00	Electric	$ 80.00
Total Income	$ 2,500.00	Natural Gas	$ 125.00
		Telephone	$ 35.00
		Water	$ 20.00
		Food	$ 200.00
		Car Payment	$ 280.00
		Health Care	$ 900.00
		Total Expenses	$ 2,440.00

Total Income	$ 2,500.00	
less: Total Expenses	$ 2,440.00	
Net Income	$ 60.00	(Available for recoupment)

Divide the member's Net Income ($60.00) by the gross retired pay ($2,000.00) which equals .03. In this case, it defers to the minimum recoupment rate of 10% or $200.00 as referenced in subparagraph 10.6.4.2.

Table 4-1. Recoupment of Readjustment Pay Received Before September 15, 1981 (Note 1)

RULE	**If a member was a**	**and received before September 15, 1981 (note 1)**	**and later qualifies for retirement**	**then readjustment pay is**
1	Reserve member (or member of the Army or Air Force without component (temporary))	readjustment payment upon involuntary release after at least 5 years of continuous active service after June 28, 1962	after 20 years of active service (note 2)	recouped immediately upon retirement at the rate of 75 percent of the gross readjustment pay (note 3).
2	regular Army officer below the grade of O-4	readjustment payment upon involuntary release after at least 5 years of continuous active service because of a reduction in force for the period December 30, 1974 through December 30, 1977	after 20 years of active service (note 2)	recouped immediately upon retirement at the rate of 75 percent of the gross readjustment pay (note 3).
3	temporary officer on active duty and held a Reserve officer status	readjustment payment upon involuntary release after at least 5 years of continuous active service after June 28, 1962	for disability after a period of enlisted service and also qualifies for retirement for 20 years of active service	recouped immediately upon retirement at the rate of 75 percent of the gross readjustment pay (note 3).

NOTES:

1. For recoupment of readjustment pay received September 15, 1981, or later, see subparagraph 3.2.2.
2. Includes transfer to Fleet Reserve or Fleet Marine Corps Reserve with less than 20 years of active service if otherwise qualified.
3. Payment of readjustment pay before June 28, 1962 is not recouped from retired pay.

Table 4-2. Recoupment of Nondisability Severance Pay Received Before September 15, 1981 (Note)

RULE	If a member was	and was discharged	and received before September 15, 1981 (note)	and later qualifies for	then
1	a Regular commissioned Air Force or Army officer	because of failure of selection for promotion to grade O-3 or above	nondisability severance pay	retired pay	do not deduct nondisability severance pay.
2	a Regular commissioned Air Force or Army officer	because of moral or professional dereliction, or unsatisfactory performance	nondisability severance pay	retired pay	do not deduct nondisability severance pay.
3	a Regular commissioned officer of the Navy, Marine Corps, or Coast Guard	because of unsatisfactory performance with less than 20 years	nondisability severance pay	retired pay	deduct full amount of nondisability severance pay.
4	a Regular commissioned officer of the Navy, Marine Corps, or Coast Guard	because of failure of selection for promotion to grade O-3 or above	nondisability severance pay	retired pay	deduct full amount of nondisability severance pay.
5	a Regular warrant officer of any Military Service	because of unfitness or unsatisfactory performance of duty and did not reenlist	nondisability severance pay	retired pay	deduct full amount of nondisability severance pay.
6	a Regular warrant officer of any Military Service	because of failure of selection for promotion and did not reenlist or was not retained on active duty as a regular warrant officer	nondisability severance pay	retired pay	deduct full amount of nondisability severance pay.
7	an officer of the Navy or Marine Corps	because found not qualified from causes arising from own misconduct upon reexamination for promotion	nondisability severance pay	retired pay	do not deduct nondisability severance pay.
8	a female officer of the Regular Navy or Regular Marine Corps in grade O-3	because she is not on a promotion list and has completed 13 years of active service in the Navy or Marine Corps	nondisability severance pay		

Table 4-2. Recoupment of Nondisability Severance Pay Received Before September 15, 1981 (Note) (Continued)

RULE	If a member was	and was discharged	and received before September 15, 1981 (note)	and later qualifies for	then
9	a female officer of the Regular Navy or Regular Marine Corps in grade O-2	because she is not on a promotion list and has completed 7 years of active service in the Navy or Marine Corps	nondisability severance pay	retired pay	do not deduct nondisability severance pay.
10	an ensign in the Navy or a second lieutenant in the Marine Corps	because found not professionally qualified upon reexamination for promotion	nondisability severance pay	retired pay	do not deduct nondisability severance pay.
11	a Reserve member of any Military Service	without the member's consent before active duty agreement under 10 U.S.C. § 12311(a) expired	nondisability severance pay	retired pay	do not deduct nondisability severance pay.
12	a Regular commissioned officer of the Coast Guard	because performance is below standard or because of moral or professional dereliction	nondisability severance pay	retired pay	do not deduct nondisability severance pay.

NOTE: For recoupment of nondisability severance pay received September 15, 1981 or later, see paragraph 4.2.

*REFERENCES

CHAPTER 4 – RECOUPMENT OF SEPARATION PAYMENTS

2.0 – DEFINITIONS

2.1	Public Law 96-513, section 631, December 12, 1980 10 U.S.C. § 611 note
2.2	Public Law 96-513, section 631, December 12, 1980 10 U.S.C. §611 note
2.3	10 U.S.C. § 1174
2.4	10 U.S.C. § 1212
2.5	10 U.S.C. § 1175
2.6	10 U.S.C. § 1174a
2.7	Public Law 114-328, section 508, December 23, 2016 10 U.S.C. § 1175a(k) DoD Instruction 1332.43, November 28, 2017
2.8	Public Law 102-484, section 4416, October 23, 1992 10 U.S.C. § 1331 10 U.S.C. § 12732

3.0 – READJUSTMENT PAY

3.1.1	10 U.S.C. § 687(f) (repealed) Public Law 96-513, section 109, December 12, 1980 10 U.S.C. § 611 note 50 U.S.C. § 1016 (repealed) 43 Comptroller General (Comp Gen) 402 Public Law 96-513, December 12, 1980 10 U.S.C. § 611 note
3.1.2	Public Law 93-558, December 30, 1974 10 U.S.C. § 3814a (repealed) Public Law 96-513, section 631, December 12, 1980 10 U.S.C. § 611 note
3.1.3	46 Comp Gen 107 Public Law 96-513, December 12, 1980 10 U.S.C. § 611 note
3.1.4	Public Law 96-513, section 631, December 12, 1980 10 U.S.C. § 611 note 10 U.S.C. § 1174(h)(1)
3.2.1.2	10 U.S.C. § 1452
3.2.2	10 U.S.C. § 1174(h)

REFERENCES (continued)

4.0 – NONDISABILITY SEVERANCE PAY

4.2	53 Comp Gen 921, id: 923

5.0 – SEPARATION PAY

5.1	10 U.S.C. § 1174 DoD Instruction 1332.29, March 3, 2017
5.2.1	Public Law 96-513, section 631, December 12, 1980 10 U.S.C. § 611 note
5.2.2	10 U.S.C. § 1174(h)(2)
5.3	10 U.S.C. § 1552 Comptroller General Decision B-270349, December 17, 1996

6.0 – DISABILITY SEVERANCE PAY (DSP)

6.1	10 U.S.C. § 1212 Deputy Under Secretary of Defense, Military Personnel Policy ((DUSD (MPP)) Policy Memorandum, August 10, 2010
6.2	10 U.S.C. § 1554a(e)(2) DUSD (MPP) Policy Memorandum, August 10, 2010
6.2.1.2	10 U.S.C. § 1413a 10 U.S.C. § 1554a DUSD (MPP) Policy Memorandum, August 10, 2010
6.2.1.3	10 U.S.C. § 1212(d)(1)
6.2.1.3.1	10 U.S.C. § 1212(d)(2)
6.2.1.3.2	10 U.S.C. § 1212(d)(3)
6.3	10 U.S.C. § 1552(a) and (e) Comptroller General Decision B-270349, December 17, 1996
6.4	DUSD (MPP) Policy Memorandum, August 10, 2010
6.4.6	10 U.S.C., Chapter 1223 DUSD (MPP) Policy Memorandum, August 10, 2010

7.0 – VOLUNTARY SEPARATION INCENTIVE (VSI)

7.1	10 U.S.C. § 1175(d)(3)
7.2	10 U.S.C. § 1175(f) 10 U.S.C. § 2771(a)
7.3.1	10 U.S.C. § 1175(e)(3)(A)
7.3.2	10 U.S.C. § 1175(e)(3)(B)

REFERENCES (continued)

7.3.3	10 U.S.C. § 1175(e)(4) 38 U.S.C. § 5305

8.0 – SPECIAL SEPARATION BENEFIT (SSB)

8.1	10 U.S.C. § 1174a(g) 10 U.S.C. § 1174(h)

9.0 – VOLUNTARY SEPARATION PAY (VSP)

9.1	Public Law 114-328, section 508, December 23, 2016 10 U.S.C. § 1175a(k) DoD Instruction 1332.43, November 28, 2017 Principal Deputy Under Secretary of Defense for Personnel and Readiness ((PDUSD) (P&R)) Policy Memorandum, April 14, 2008
9.2	PDUSD (P&R) Policy Memorandum, April 14, 2008
9.3	10 U.S.C. § 1175a(j)

10.0 – RECOUPMENT OF SEPARATION PAY, NONDISABILITY SEVERANCE PAY, READJUSTMENT PAY, OR DISABILITY SEVERANCE PAY

10.1	10 U.S.C. § 1174(h)(1) DUSD (MPP) Policy Memorandum, March 19, 2010
10.2	10 U.S.C. § 1174(h)(2) DUSD (MPP) Policy Memorandum, March 19, 2010 Public Law 111-32, section 318, June 24, 2009 DUSD (MPP) Policy Memorandum, August 17, 2010
10.3	DUSD (MPP) Policy Memorandum, March 19, 2010 OUSD (Compt) Memo, May 18, 2009 DUSD (MPP) Policy Memorandum, August 17, 2010
10.4	DUSD (MPP) Policy Memorandum, March 19, 2010 Public Law 111-32, section 318, June 24, 2009
10.5	DUSD (MPP) Policy Memorandum, March 19, 2010 DUSD (MPP) Policy Memorandum, August 17, 2010
10.6	DUSD (MPP) Policy Memorandum, March 19, 2010 DUSD (MPP) Policy Memorandum, August 17, 2010

Table 4-1

Rule 1	10 U.S.C. § 687(f) (repealed) Public Law 96-513, section 631, December 12, 1980 10 U.S.C. § 611 note
Rule 2	10 U.S.C. § 3814a (repealed) Public Law 96-513, December 12, 1980

REFERENCES (continued)

Rule 3	46 Comp Gen 107 Public Law 96-513, December 12, 1980
Note 1	43 Comp Gen 402
Table 4-2	
Rules 1 & 2	10 U.S.C. § 3303 (repealed), 3786 (repealed), 3796 (repealed), 8303, 8786, 8796
Rules 3 & 4	10 U.S.C. § 6382(c) (repealed), 6383(f), 6384(b) (repealed) 14 U.S.C. § 286 (repealed)
Rules 5 & 6	10 U.S.C. § 564 (repealed), 1166, 1167(b)
Rule 7	10 U.S.C. § 5864 (repealed)
Rule 8	10 U.S.C. § 6401 (repealed)
Rule 9	10 U.S.C. § 6402 (repealed)
Rule 10	10 U.S.C. § 5865 (repealed)
Rule 11	10 U.S.C. § 12312
Rule 12	14 U.S.C. § 327 (repealed)

VOLUME 7B, CHAPTER 5: "CONFLICT-OF-INTEREST, CONVICTIONS AND FOREIGN GOVERNMENT EMPLOYMENT"

SUMMARY OF MAJOR CHANGES

Changes are identified in this table and also denoted by blue font.

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

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

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

The previous version dated December 2023 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated hyperlinks, renumbered, and formatted chapter to comply with current administrative instructions.	Revision
References	Updated references where applicable.	Revision

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CHAPTER 5

CONFLICT-OF-INTEREST, CONVICTIONS AND FOREIGN GOVERNMENT EMPLOYMENT

1.0 GENERAL

1.1 Purpose

This chapter addresses employment of personnel who are drawing military retired pay. This includes, but is not limited to foreign government employment, service in military forces of newly democratic nations, conflict-of-interest issues, and convictions of crimes affecting retired pay.

1.2 Authoritative Guidance

The pay policies and requirements established by the DoD in this chapter are derived primarily from and prepared in accordance with the United States Code (U.S.C.), including Titles 5, 10, 18, 37, and 42. Due to the subject matter in this chapter, the list of authoritative sources is extensive. The specific statutes, regulations, and other applicable guidance that govern each individual section are listed in reference section at the end of the chapter.

2.0 CONFLICT-OF-INTEREST

2.1 Statutes

2.1.1. Conflict-of-interest statutes are intended to safeguard the integrity of public administration and prevent government officials from using their positions and influence for personal gain. Some conflict-of-interest statutes apply to personnel who have left Government service.

2.1.2. A comprehensive digest of laws, including conflict-of-interest laws applicable to retired military personnel, is set forth in the ***DoD Regulation 5500.7-R***, Joint Ethics Regulation (JER).

2.2 Withholding Military Retired Pay

Military retired pay may be withheld or forfeited when the employment falls under certain categories of activities prohibited under conflict-of-interest laws.

3.0 CONVICTION FOR CRIMES AFFECTING RETIRED PAY

3.1 Entitlement

Entitlement to military retired pay is directly affected when a retired member is convicted of violating the law under ***5 U.S.C. §§ 8311 – 8322***.

3.2 Violation of Title 5 U.S.C. § 8312

The receipt of military retired pay by the retired member, or receipt of the annuity by the retired member's survivor or beneficiary is prohibited, subject to certain exceptions described in 5 U.S.C. § 8311(2) or (3):

3.2.1. If a retired member is convicted of any crime as described in 5 U.S.C. § 8312(b) before, on, or after September 1, 1954, payment is prohibited. The prohibition on payment applies to the period after the date of conviction or after September 1, 1954, whichever is later.

3.2.2. If a retired member is convicted of any crime as described in 5 U.S.C. § 8312(c) before, on, or after September 26, 1961, payment is prohibited. The prohibition on payment applies to the period after the date of conviction or after September 26, 1961, whichever is later.

3.2.3. If an individual, who was convicted of an offense named by 5 U.S.C. § 8312, or an offense constituting a violation of 5 U.S.C. § 8314 or § 8315, is pardoned by the President, in accordance with 5 U.S.C. § 8318, the right of the individual and his survivor or beneficiary to receive annuity or retired pay previously denied under this paragraph is restored as of the date of the pardon or the effective date of restoration prescribed by the President.

3.2.4. After January 6, 1996, the spouse of an individual, whose annuity or retired pay is forfeited under 5 U.S.C. § 8312 or § 8313, may have his or her rights to a spousal survivor benefit plan restored, if the U.S. Attorney General determines that the spouse fully cooperated with Federal authorities in the conduct of a criminal investigation and subsequent prosecution of the individual which resulted in the forfeiture. In no event will the spousal survivor benefit plan benefits be paid to the spouse before the retired member has passed away.

3.3 Convictions Under Other Statutes

3.3.1. An individual, or his or her survivor or beneficiary, may not be paid annuity or retired pay on the basis of the service of the individual, which is creditable toward the annuity or retired pay, subject to the exceptions in 5 U.S.C. § 8311 (2) and (3), if the individual before, on, or after September 1, 1954:

3.3.1.1. Refuses, or knowingly and willfully fails to appear, testify, or produce documents relating to his or her service as an employee, before a Federal grand jury, U. S. court, court-martial, or congressional committee, in a proceeding concerning:

3.3.1.1.1. Past or present relationship with a foreign government; or

3.3.1.1.2. A matter involving or relating to a plan or attempt to interfere with or endanger, the national security or defense of the United States, in accordance with 5 U.S.C. § 8314; or

3.3.1.1.3. The prohibition on payment of annuity or retired pay under subparagraph 3.3.1.1, applies to the period after the date of the failure or refusal of the individual, or after September 1, 1954, whichever is later.

3.3.1.1.4. The prohibition of payment of an annuity or retired pay under subparagraph 3.3.1.2 applies to the period after the statement, representation, or concealment of fact is made or occurs, or after September 1, 1954, whichever is later.

3.3.1.2. Knowingly and willfully makes false, fictitious, or fraudulent statements or representations, concealing material facts concerning his or her past or present membership, affiliation, association with, or support of the Communist Party, chapter, branch, or subdivision, in or outside the United States, or other organization, party, or group advocating:

3.3.1.2.1. The overthrow, by force, violence, or other unconstitutional means, of the Government of the United States;

3.3.1.2.2. The establishment, by force, violence, or other unconstitutional means, of a Communist totalitarian dictatorship in the United States; or

3.3.1.2.3. The right to strike against the United States; as stated in 5 U.S.C. § 8315.

3.3.2. Fines levied for convictions under other statutes may result in debts to the United States. However, they do not affect a convicted member's entitlement to receive retired pay.

3.4 Repayment of Annuity or Retired Pay Properly Paid; Waiver

An individual, to whom payment of retired pay is denied due to a conviction under 5 U.S.C. §§ 8311 – 8322, is not required to repay amounts received before the date of conviction. Any amounts of retired pay paid in error after the conviction that, but for the conviction, were otherwise proper, may be subject to repayment.

4.0 FOREIGN GOVERNMENT EMPLOYMENT AND/OR FOREIGN PAYMENTS

4.1 Background

4.1.1. Employment of retired members by a foreign government is restricted. The primary restriction is in Article I, section 9, clause 8 of the Constitution of the United States (known as the Emoluments Clause), which reads: "No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of Congress, accept any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State." The Comptroller General interpreted this to prohibit employment of all retired personnel, including members of the Fleet Reserve or Fleet Marine Corps Reserve, by a foreign government unless congressional consent is granted. In addition to the Emoluments Clause, there are other laws that may apply to restrict the foreign government employment of certain former DoD personnel. For example, 50 U.S.C. § 3073a places restrictions on post-service employment of

members of the intelligence community who previously held certain intelligence positions. The information in paragraph 4.0 only addresses the restrictions on retirees under the Emoluments Clause.

4.1.2. The conditions for accepting foreign employment were modified by Public Law ***(PL) 95-105, section 509(a)(1) and (2)***, codified in 37 U.S.C. § 908. The Congress granted consent for retired members to accept employment or compensation from foreign governments if the members obtain the approval of the Secretary of the Military Department concerned (or designee) and the Secretary of State before accepting employment or compensation. ***PL 116-283, section 641***, further amended 37 U.S.C. § 908 to permit retired members of the uniformed services to accept payment from foreign governments for speeches, travel, meals, lodging, registration fees, or non-cash awards (hereinafter "foreign payments"), if the payment and/or award is approved in advance by the Secretary concerned.

4.1.2.1. The approval to accept foreign employment/foreign payments is only effective prospectively from the date the approval is granted and may not be made retroactively to authorize foreign employment, compensation, or payments received before approval is granted. For foreign employment (and compensation for that employment) approval by both the Secretary of the Military Department concerned (or designee) and Secretary of State are required. For foreign payments (for speeches, travel, meals, lodging, or registration fees/non-cash awards described 10 U.S.C. § 908) approval by the Secretary of the Military Department concerned is required.

4.1.2.2. Compensation received from a foreign government without the required approval from both the Secretary concerned and Secretary of State is considered received by the retired member for the United States. A debt in favor of the government is created which is to be collected by withholding from military retired pay. The debt is an amount equal to the compensation received from the foreign government.

4.1.2.3. What constitutes compensation received from a foreign government in connection with a member's employment by that government must be given its broadest possible scope and includes (but is not limited to) salary, transportation, household goods shipments at employer's expense, housing allowances, consulting and other fees, proportionate profit-sharing, and gratuities. Value should be set fairly, considering the actual value or estimates of the compensation received.

4.2 Legislative History

4.2.1. The history of the constitutional provisions under consideration indicates that the condition intended to be avoided is the exercise of undue influence by a foreign government upon the United States Government.

4.2.2. In determining the existence of an employer-employee relationship between a retired member and a foreign government, or instrumentality thereof, the common law rules of agency are applied to determine whether such instrumentality has the right to control and direct an employee in performance of his or her work and the manner in which the work is done.

4.2.3. When determining whether the relationship of employer and employee exists, there are at least five criteria that may be considered:

4.2.3.1. The selection and engagement of the employee;

4.2.3.2. The payments of wages;

4.2.3.3. The power to discharge;

4.2.3.4. The power to control the employee's conduct; and

4.2.3.5. The relationship of the work to the employer's business, whether the work is a part of the regular business of the employer.

4.2.4. The decisive test to determine the existence of an employer-employee relationship is whether the employer has the right to control and direct the employee in the performance of his or her work and in the manner in which the work is to be done.

4.3 Types of Employment

4.3.1. Employment by educational or commercial institutions that are owned, operated, or controlled by a foreign government is included within the scope of this restriction.

4.3.2. Employment with a foreign government which requires foreign citizenship results in forfeiture of entitlement to retired pay. See Chapter 6 for additional information.

4.3.3. Employment by international agencies, such as the United Nations, is not prohibited.

4.4 Adjustment to Retired Pay

4.4.1. A member's military retired pay will not be suspended or adjusted unless the Secretary concerned makes a determination that a member has accepted foreign employment/foreign payments without first obtaining the required prior approval, prepares a memorandum advising DFAS of the determination, and requests that DFAS establish a debt (to include the amount of the debt to be established).

4.4.2. The Secretaries of the military departments are responsible to investigate any instances in which a retired member is believed to have accepted foreign employment/foreign payments without first obtaining the required prior approval. If substantiated, the Secretary concerned will:

4.4.2.1. Determine the dollar amount of compensation/foreign payments received from the foreign government without approval.

4.4.2.2. Prepare a memorandum to the Director DFAS advising of the determination that a violation has occurred and requesting that DFAS establish a debt for the amount of the

compensation/foreign payments received as determined by the Secretary concerned. The debt determined by the service will normally be an amount equal to the amount of compensation received from the foreign government without approval. The memorandum to DFAS should include a determination regarding the rate of collection of the debt as further explained by subparagraph 4.4.3.

4.4.2.3. Notify the member of the service determination that a violation has occurred, the amount of the debt owed to the United States, and the action the Secretary has taken to initiate the establishment and collection of the debt by DFAS.

4.4.3. Upon receipt of the memorandum from the Secretary concerned, DFAS will establish the debt in the amount specified by the service and provide the member with written notice of all due process rights prior to collection by offset pursuant to Volume 16. The notice will provide the member with the debt amount, the reason for the debt, repayment options, an explanation of the review process available to contest the validity and/or amount of the debt, an explanation and instructions on how the member may seek a waiver of the obligation to repay the debt under 10 U.S.C. § 2774, and any other information required by Volume 16.

4.4.4. Rate of Collection. In the event that the debt must be collected through administrative offset of retired pay, then the rate of collection will be established as follows:

4.4.4.1. If the service has determined that the member was at fault, then up to two-thirds (2/3) of a member's disposable monthly military/retired pay (as specified by the service) may be deducted and applied to the indebtedness. The service will specify the rate, but it may not exceed 2/3.

4.4.4.2. If the service has determined that the member was not at fault, (or if the service makes no finding), then the amount deducted may not reduce a member's disposable monthly retired pay by more than fifteen percent (15%).

4.4.5. Amounts of retired pay withheld from retired members of the uniformed services who accept foreign employment and/or foreign payments without congressional consent, as required by the United States Constitution, should be treated as though the retired member has no entitlement to them and should not be "held in trust" for them pending possible future congressional consent to their receipt.

5.0 SERVICE IN MILITARY FORCE OF NEWLY DEMOCRATIC NATIONS

5.1 Consent of Congress

5.1.1. Consent. Under 10 U.S.C. § 1060, Congress has consented to a retired member of the uniformed services accepting:

5.1.1.1. Employment by, or holding an office or position in, the military forces of a newly democratic nation as jointly determined by Secretary of the Military Department concerned (or designee) and the Secretary of State; and

5.1.1.2. Compensation associated with such employment, office, or position.

5.1.2. Approval Required. The consent provided for a retired member of the uniformed services to accept employment or hold an office or position applies to a retired member only if the Secretary of the Military Department concerned (or designee) and the Secretary of State jointly approve the employment or the holding of such office or position.

5.2 Continued Entitlement to Retired Pay and Benefits

The eligibility of retired members to receive retired or retainer pay and other benefits, arising from the retired member's status as a retired member of the uniformed services, may not be terminated by reason of employment or holding of an office or position consented to in paragraph 5.1. The eligibility of such retired member's dependents to benefits may not be terminated based on the retired member's status consented to in this section.

*REFERENCES

CHAPTER 5 – EMPLOYMENT

2.0 – CONFLICT-OF-INTEREST

2.1.1	10 U.S.C. § 207 Section 1045 of the National Defense Authorization Act for Fiscal Year 2018 39 Comptroller General (Comp Gen) 366, B-140581, November 9, 1959 PL 104-106, section 4304(b)(3), February 10, 1996 PL 100-180, December 6, 1987 PL 103-335, section 5001, October 13, 1994
2.1.2	DoD Regulation 5500.07-R, August 1993

3.0 – CONVICTION OF CRIMES AFFECTING RETIRED PAY

3.2	5 U.S.C. §§ 8311 - 8322 18 U.S.C. §§ 2151 - 2156 42 U.S.C. §§ 2272 - 2276
3.3	5 U.S.C. §§ 8311 - 8318 10 U.S.C. § 1450
3.4	5 U.S.C. § 8317

4.0 – FOREIGN GOVERNMENT EMPLOYMENT

4.1.2	37 U.S.C. § 908
4.1.2.2	Comp Gen B-178538, October 13, 1977 Comp Gen B-198557, July 17, 1980 61 Comp Gen 306, B-198557, March 25, 1982 61 Comp Gen 306, March 25, 1982 Comp Gen B-231498, June 21, 1989 69 Comp Gen 220, B-220860, February 2, 1990
4.1.2.3	Comp Gen B-178538, October 13, 1977
4.2.1	53 Comp Gen 753, B-178538, April 9, 1974 Comp Gen, B-152844, December 12, 1963
4.2.3	*Maloof v. United States,* 242 F. Supp. 175, 181 (1965)
4.2.4	41 Comp Gen 715, B-147777, May 1, 1962 44 Comp Gen 130, B-154213, September 11, 1964 53 Comp Gen 750, B-180419, April 8, 1974 62 Comp Gen 432, B-210346, June 2, 1983
4.3.1	Comp Gen, B-152844, December 12, 1963
4.4	5 U.S.C. § 7342

*REFERENCES (Continued)

	Comp Gen, B-178538, October 13, 1977
4.4.2	58 Comp Gen 487, B-193562, December 4, 1979

5.0 – SERVICE IN MILITARY FORCE OF NEWLY DEMOCRATIC NATIONS

10 U.S.C. § 1060

VOLUME 7B, CHAPTER 6: "FOREIGN CITIZENSHIP AFTER RETIREMENT"

SUMMARY OF MAJOR CHANGES

Changes are identified in this table and also denoted by blue font.

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

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

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

The previous version dated August 2022 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	This chapter is certified as current. No revision necessary.	Current

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CHAPTER 6

FOREIGN CITIZENSHIP AFTER RETIREMENT

1.0 GENERAL

1.1 Overview

The right to retired pay based on years of active service or disability for Regular or Reserve officers and Regular enlisted personnel is generally contingent upon the continuation of their military status.

1.1.1. Article I, section 9, clause 8 of the Constitution of the United States prohibits any person "holding any Office of Profit or Trust" under the United States from accepting any present, emolument, office or title, "of any kind whatever," from a foreign government without the consent of Congress. This provision prohibits employment by a foreign government of retired personnel with a continuing military status, including Fleet Reserve or Fleet Marine Corps Reserve, unless prior congressional consent is granted. Without prior congressional consent, it also subjects such persons to withholding of their retired pay in an amount equal to the amounts received from the foreign government. This constitutional provision also considers retired regular officer and enlisted members of regular components to hold an office under the U.S. military.

1.1.2. While receiving retired pay, a retired member remains subject to rules, regulations, and recall to active duty as required. A retired member of the armed forces who becomes a citizen of a foreign country by naturalization and who voluntarily renounces his or her U.S. citizenship loses the right to retired pay when entitlement to the retired pay depends upon the retiree's continued military status.

1.1.3. The effect of a retired member's loss of U.S. citizenship upon payment of retired pay must be determined by reviewing each case according to individual circumstances, governing laws, and regulations.

1.2 Purpose

The purpose of this chapter is to provide guidance to retired members who have lost their citizenship, have dual citizenship, or who are retired alien enlisted members living in foreign countries.

1.3 Authoritative Guidance

The pay policies and requirements established by the DoD in this chapter are derived primarily from, and prepared in accordance with the United States Code (U.S.C.), including Titles 8, 10, 18, and 37. Due to the subject matter in this chapter, the list of authoritative sources is extensive. The specific statutes, regulations, and other applicable guidance that govern each individual section are listed in a reference section at the end of the chapter.

2.0 FOREIGN RESIDENCE

A citizen of the United States may live outside the United States indefinitely without losing U.S. citizenship.

3.0 LOSS OF U.S. CITIZENSHIP

3.1 Loss of Citizenship

Generally, loss of U.S. citizenship requires a measure of voluntary positive action. A retired member cannot renounce U.S. citizenship on behalf of their minor child(ren) (see subparagraphs 3.1.5 and 3.1.6). After having attained age 18 years or older, a person who is a citizen of the United States loses that citizenship by voluntarily taking one of the following actions with the intention of relinquishing U.S. citizenship:

3.1.1. Obtaining citizenship in a foreign state upon the retired member's application or upon an application filed on his or her behalf by a duly authorized agent;

3.1.2. Taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof;

3.1.3. Entering, or serving in, the armed forces of a foreign state if:

3.1.3.1. Such armed forces are engaged in hostilities against the United States, or

3.1.3.2. Such persons serve as a commissioned or non-commissioned officer;

3.1.4. Accepting, serving in, or performing the duties of any office, post, or employment under the government of a foreign state or a political subdivision thereof, if:

3.1.4.1. The retired member has or acquires the nationality of such a foreign state, or

3.1.4.2. The acceptance of the office, post, or employment requires the retired member to take an oath, affirmation, or declaration of allegiance thereof;

3.1.5. Making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State;

3.1.6. Making a formal written renunciation of nationality in such form as may be prescribed by, and before such officer as may be designated by, the Attorney General, whenever the United States is in a state of war and the Attorney General approves such renunciation as not contrary to the interests of national defense; or

3.1.7. Committing any act of treason against, or attempting by force to overthrow, or bearing arms against, the United States, violating or conspiring to violate any of the provisions of ***18 U.S.C. § 2383***, or willfully performing any act in violation of ***18 U.S.C. § 2385***, or violating ***18 U.S.C. § 2384***, by engaging in a conspiracy to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, if and when convicted thereof by a court martial or by a court of competent jurisdiction.

3.2 Loss of Citizenship at Issue

If the loss of U.S. citizenship is put at issue in any action or proceeding commenced on or after September 26, 1961, the burden of proof is upon the person or party stating the claim. Any person who has renounced his or her citizenship or performs any act of expatriation under the provisions of ***8 U.S.C., Chapter 12*** or any other Act, is presumed to have done so voluntarily unless it can be proven otherwise by a preponderance of the evidence.

3.3 Comptroller General (Comp Gen) Decisions on Loss of Citizenship

See Table 6-1 for decisions of the Comptroller General pertaining to loss of U.S. citizenship upon acquisition of foreign citizenship.

4.0 CONDITIONS NOT SUBJECTED TO LOSS OF U.S. CITIZENSHIP AND/OR LOSS OF ENTITLEMENT TO RETIRED PAY

4.1 Retired Pay for Non-regular Service

Retired pay benefits authorized for non-regular members of the uniformed services in ***10 U.S.C., Chapter 1223*** are viewed as a pension and entitlement to retired pay under ***10 U.S.C. § 12731*** is not dependent on the continuation of military status.

4.1.1. A military member entitled to receive retired pay under 10 U.S.C. § 12731(a)(1), who acquires foreign citizenship and/or status in a foreign military service prior to becoming eligible to receive retired pay does not lose entitlement to retired pay at the age of eligibility. See Chapter 1 for information regarding entitlements to retired pay under 10 U.S.C. § 12731.

4.1.2. A retired member who receives retired pay pursuant to 10 U.S.C. § 12731 is not required to forfeit such pay upon becoming a citizen of a foreign country. Further, if the retiree enters the armed forces of the foreign country, then the retiree's entitlement to retired pay continues if:

4.1.2.1. The foreign country is not one that is engaged in hostile military operations against the United States, or

4.1.2.2. The retired member is not serving as a commissioned or non-commissioned officer of the foreign services.

4.1.2.3. A right to retirement pay for non-regular members retired for disability under the provisions of the Act of August 27, 1940 is not conditioned on their remaining in military service. Therefore, these non-regular members are entitled to retirement pay without regard to whether they remain citizens of the United States, since that retired pay is viewed in the nature of a pension.

4.2 Retired Alien Enlisted of the Armed Forces

A retired alien enlisted member of a Regular Component of the armed forces who lives in a foreign country does not lose the right to retired pay in the absence of some provision of law or regulation affecting the member's right in such circumstances.

5.0 DUAL CITIZENSHIP AND/OR SERVICE IN THE ARMED FORCES OF A FOREIGN COUNTRY

5.1 Dual Citizenship

A retired member of a Regular Component, who resides in a foreign country and acquires foreign citizenship by operation of that country's law, and who does not relinquish U.S. citizenship is considered to have dual citizenship. Dual citizenship alone does not require a member to lose entitlement to retired pay.

5.2 Service in the Armed Forces of a Foreign Country

5.2.1. Service in the military force of a foreign country by a retired member of the Regular Component is inconsistent with the obligations of regular retired status, as well as being prohibited without congressional consent under Article I, section 9, clause 8 of the Constitution. Conditional congressional consent to accept foreign government "civil employment" granted by ***37 U.S.C. § 908*** does not apply to foreign military service.

5.2.2. Retired pay must be discontinued when a retired member becomes a member of a foreign military service without legislation indicating congressional consent. The eligibility of a retired member to receive retired or retainer pay and other benefits arising from the retired member's status as a retired member of the uniformed services, and the eligibility of dependents of the retired member to receive benefits based on the retiree's status, may not be terminated by reason of employment or holding of an office or position consented to by Congress. See Chapter 5 for provisions regarding service in military forces of newly democratic nations.

Table 6-1. Comp Gen Decisions-Foreign Citizenship

COMP GEN Decision Number	Synopsis
1. 37 Comp Gen 207	Reserve officers of the Navy who retire for physical disability are entitled to disability retired pay regardless of whether they continue to hold a status as a commissioned officer in a Reserve component, and the right to disability retired pay does not terminate upon becoming a citizen of another nation. The right of a retired member of Regular Navy to receive disability retired pay is contingent upon continuation of a status in the Regular Navy and loss of U.S. citizenship by a member is inconsistent with continuation of military status. Therefore, the right to retired pay terminates if a member of the Regular Navy becomes a citizen of a foreign country.
2. 41 Comp Gen 715	a. Retired Reserve officers, receiving retired pay for length of service under laws other than 10 U.S.C. § 12731, who lose U.S. citizenship by acquiring foreign citizenship are no longer eligible for involuntary recall to active duty in times of war or national emergency, and the acquisition of foreign nationality would be inconsistent with the oath prescribed for Reserve officers to support and defend the Constitution of the United States. Therefore, in the absence of any law authorizing continuation of an officer's membership in a Reserve organization after the officer becomes a citizen of a foreign country, payment of retired pay may not be approved. b. A Reserve officer described above may not terminate retired status through resignation or other means, then acquire foreign citizenship and continue to receive retired pay. Resignation terminates the right to retired pay. c. Retired enlisted members of the Regular Components remain a part of the armed forces, and their right to retired or retirement pay is dependent on continuation of their military status.
3. 44 Comp Gen 51	a. A retired enlisted member of a Regular Component of the armed forces who loses U.S. citizenship when the retired member acquires citizenship in a foreign country has taken a voluntary action so inconsistent with the oath of allegiance to the United States and status as a member of the armed forces to warrant termination of retired pay. b. U.S. citizenship is not a prerequisite to receipt of retired pay; however, if a citizen of the United States by birth acquires foreign citizenship, then his or her retired pay may be terminated
4. 44 Comp Gen 227	A retired member who voluntarily loses U.S. citizenship by becoming a citizen of a foreign country is regarded as having taken a voluntary action so inconsistent with an oath of allegiance to the United States to warrant termination of retired pay.
5. 48 Comp Gen 699	Retired pay benefits authorized non-Regular service members under 10 U.S.C. § 12731, viewed as a pension, are not dependent on continuation of military status. Member acquiring foreign citizenship and/or status in a foreign military service before age 60 does not lose entitlement to retired pay at age 60. Neither is retired pay forfeited upon becoming a citizen of a foreign country, and/or entry in the armed forces of a foreign country, provided that country is not one engaged in hostile military operations against the United States.
6. 50 Comp Gen 269	Payment of retired pay to an alien who chooses to live outside the United States after retirement would not constitute a bar to the receipt of retired pay in the absence of some provision of law or regulation affecting retiree's right in such circumstances.
7. Manuscript (MS) Comp Gen B-144694, February 14, 1961	An alien who had met the statutory requirement for enlistment in the Regular Air Force by filing a legal intention to become a citizen of the United States, but who never acquired U.S. citizenship, was entitled to receive retired pay when placed on the Temporary Disability Retired List. In the absence of a provision of law barring the payment of retired pay to an alien or indicating the lack of citizenship is inconsistent with status as a retired member of the Regular Air Force, there was no basis to question the member's right to retired pay benefits.
8. MS Comp Gen B-157646, October 5, 1965	Member was a naturalized citizen who was an officer in the Army Reserve and called to active duty. He retired from active duty for disability under 10 U.S.C. § 1201 and returned to his country of birth. If he resumed former nationality, he would no longer be eligible for retired pay. There is a distinction between a retirement creating a status with an accompanying right to retired pay and a mere grant of retirement pay. This member received retired pay under a law providing for retirement, as distinguished from a grant of retirement pay. The member was transferred to the retired Reserve and was subject to recall to active duty. His continuing retired status would terminate if he became a citizen of another country, and he would not be eligible to receive retired pay.

Table 6-1. Comp Gen Decisions-Foreign Citizenship (Continued)

COMP GEN Decision Number	Synopsis
9. 58 Comp Gen 566	a. A retired Regular Army officer residing in Israel acquired Israeli citizenship by operation of Israeli law, but also remains a U.S. citizen. While the loss of U.S. citizenship is inconsistent with status as a retired Regular officer and thus results in loss of status as an officer and loss of entitlement to retired pay, dual Israeli/U.S. citizenship alone does not require loss of entitlement to retired pay. b. A retired Regular Army officer residing in Israel who has dual Israeli/U.S. citizenship is subject to service in the Israel Defense Forces, the Israeli armed force. Such service in a foreign armed force by a retired Regular officer appears inherently inconsistent with his position as a Regular Army officer, as well as being prohibited (without congressional consent) by Article I, section 9, clause 8 of the Constitution of the United States. Thus, service in the foreign armed force would make the status as a retired Army officer very doubtful. Retired pay may not be paid without authorizing legislation.
10. MS Comp Gen B-212481, February 2, 1984	A retired member of the armed forces who becomes a citizen of a foreign country by naturalization and who voluntarily renounces U.S. citizenship, loses the right to retired pay since entitlement to retired pay depends upon the continuation of the individual's status as a retired member of the military service available for service as required, and that status is incompatible with renunciation of U.S. citizenship. Such a person, however, who elected to participate in the Survivor Benefit Plan and from whose retired pay the required deductions were being made for coverage under the plan when U.S. citizenship is renounced, may continue coverage under the plan by making the required payments into the Treasury.

REFERENCES

CHAPTER 06 – FOREIGN CITIZENSHIP AFTER RETIREMENT

1.0 – General

1.1.1	Comp Gen (B-212481) February 2, 1984 58 Comp Gen 487 (B-193562) May 3, 1979 65 Comp Gen 382 (B-220860) March 10, 1986 40 Comp Gen 541 (B-120533) March 23, 1961
1.1.2	37 Comp Gen 207 (B-132458) September 24, 1957 41 Comp Gen 715 (B-147777) May 1, 1962
1.1.3	Comp Gen (B-159945) January 30, 1957 United States v. Tyler, 105 U.S. 244 (1882) MS Comp Gen (B-157646) October 5, 1965 48 Comp Gen 699 (B-166142) April 24, 1969

2.0 – Foreign Residence

	United States v. Gay, 264 U.S. 353 (1924) Schneider v. Rusk, 377 U.S. 163 (1964)

3.0 – Loss of U.S. Citizenship

3.1	8 U.S.C. § 1481(a) 18 U.S.C. §§ 2383, 2384, and 2385 Comp Gen (B-212481) February 2, 1984
3.2	8 U.S.C. § 1481(b)

4.0 – Conditions Not Subjected to Loss of U.S. Citizenship and/or Loss of Entitlement to Retired Pay

4.1	48 Comp Gen 699 (B-166142) April 24, 1969 10 U.S.C., Chapter 1223 10 U.S.C. § 12731 37 Comp Gen 207 (B-132458) September 24, 1957
4.2	44 Comp Gen 51 (B-154218) August 4, 1964 MS Comp Gen (B-144694) February 14, 1961

5.0 – Dual Citizenship and/or Service in the Armed Forces of a Foreign Country

5.2	37 U.S.C. § 908
5.2.2	10 U.S.C. § 1060

VOLUME 7B, CHAPTER 7: "ACTIVE/RESERVE DUTY AFTER RETIREMENT"

SUMMARY OF MAJOR CHANGES

Changes are identified in this table and also denoted by blue font.

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

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

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

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PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated hyperlinks and formatting to comply with current administrative instructions.	Revision
3.3.1	Renumbered from 3.3.2 and rephrased for clarity.	Revision
3.3.2	Renumbered from 3.3.1 and rephrased for clarity.	Revision
3.5.3	Rephrased to clarify a provision related to disability retirement computation on or after January 8, 2011.	Revision
Table 7-1	Updated with 2 percent multiplier for Blended Retirement System (BRS) to comply with subparagraph 3.3.3.	Revision
References	Updated references.	Revision

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CHAPTER 7

ACTIVE/RESERVE DUTY AFTER RETIREMENT

1.0 GENERAL

1.1 Purpose

The purpose of this chapter is to provide information for retired members who subsequently perform additional active/reserve duty and their entitlement to retired or retainer pay recomputation.

1.2 Authoritative Guidance

The pay policies and requirements established by the DoD in this chapter are derived primarily from and prepared in accordance with the United States Code (U.S.C.), including Title 10. Due to the subject matter in this chapter, the list of authoritative sources is extensive. The specific statutes, regulations, and other applicable guidance that govern each individual section are listed in a reference section at the end of the chapter.

2.0 ENTITLEMENT AND ELIGIBILITY

2.1 Entitlement to Recomputation of Retired Pay

A member of the Armed Forces who has become entitled to retired or retainer pay, and later serves on active duty (other than for training) is entitled to have retired or retainer pay recomputed upon the member's release from active duty to take into account any additional service. A retiree or member eligible for retired pay who serves in an active status in the Selected Reserve is entitled to elect recomputation of their Reserve (non-regular) retired pay, if the criteria described in paragraph 2.2 or 2.3 are met. The term "active duty" is defined under ***10 U.S.C., section 101(d)(1)*** to mean "full-time duty in the active military service of the United States. Such term includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. Such term does not include full-time National Guard duty." As used here, it does not include training.

2.2 Active Reserve (Non-Regular) Service After Regular Retirement or Eligibility for Regular Retirement

A member who served in an active status in the Selected Reserve of the Ready Reserve after becoming eligible for regular retired or retainer pay based on years of service, without regard to whether the member actually retired or received retired or retainer pay for regular service, may apply for Reserve (non-regular) retired pay if the member:

2.2.1. Has attained the Reserve (non-regular) pay eligibility age of 60 years or such other reduced eligibility age as provided for in ***10 U.S.C. § 12731(f)***;

2.2.2. Has performed at least 20 years of service for a Reserve (non-regular) retirement; and

2.2.3. After October 28, 2009, has completed two or more years of satisfactory service, as determined by the Secretary concerned, in an active status (excluding any period of active service) subsequent to the date upon which he or she previously became eligible for regular retired or retainer pay. The term "active status" means the status of a member of a reserve component who is not in the inactive Army National Guard or inactive Air National Guard, on an inactive status list, or in the Retired Reserve. See 10 U.S.C. § 101(d)(4). A member who was eligible for regular retired or retainer pay on or before October 27, 2009, whose service was determined to be satisfactory by the Secretary concerned, is not subject to the 2-year service requirement. See paragraph 2.4 for exceptions to the 2-year requirement subsequent to the date upon which he or she previously became eligible for regular retired or retainer pay.

2.3 Active Reserve Service After Reserve (Non-Regular) Retirement

The following subparagraphs address members of the Retired Reserve recalled to an active status in the Selected Reserve under ***10 U.S.C. § 10145(d)*** on or after October 28, 2009, and are subject to the exception in paragraph 2.4:

2.3.1. A member of the Retired Reserve is entitled to recomputation of Reserve (non-regular) retired pay if the member serves in such status for not less than 2 years; or

2.3.2. A commissioned officer of the Retired Reserve who completes not less than 2 years in an active status is entitled to an adjustment in the retired grade, subject to service requirements.

2.4 Exception to 2-Year Active Status Service

The Secretary concerned may reduce the minimum 2-year service requirement specified in subparagraph 2.2.3 and paragraph 2.3 in the case of an officer of the National Guard who:

2.4.1. Completes at least 1 year of service in a position of adjutant general or assistant adjutant general; and

2.4.2. Fails to complete the minimum 2 years of service solely because the appointment of the person to such position was terminated or vacated as provided by:

2.4.2.1. The laws of the State of whose National Guard he or she is a member; or

2.4.2.2. The laws of the Commonwealth of Puerto Rico, or the District of Columbia, Guam, or the Virgin Islands, of whose National Guard he or she is a member.

3.0 RECOMPUTATION FOR ACTIVE DUTY SERVICE OR ACTIVE STATUS IN THE SELECTED RESERVE AFTER RETIREMENT

3.1 Basic Recomputation Formula

A retired member who subsequently serves on active duty is generally entitled, after completion of that active duty, to retired pay recomputed by multiplying a revised retired or retainer pay base by a revised retired pay multiplier.

3.2 Revised Retired or Retainer Pay Base

The retired or retainer pay base for a recomputation of retired pay differs depending on the date the member first became a member of the uniformed services and whether the recomputation is for subsequent service in the Selected Reserve or subsequent active duty in a Regular Component.

3.2.1. Service in an Active Status in the Selected Reserve. A member, who after retirement or eligibility for retired or retainer pay serves in an active status in the Selected Reserve, as described in paragraph 2.2 or 2.3, is entitled, upon request, to elect to receive reserve retired pay computed using a revised retired pay base.

3.2.1.1. Before September 8, 1980. If the member first became a member of the uniformed service before September 8, 1980, the retired pay base is the monthly basic pay determined at the rates applicable on the date the member completes the qualifying active Reserve service.

3.2.1.2. After September 7, 1980. If the member first became a member of the uniformed service after September 7, 1980, the retired pay base used is the average of the member's high-36 months (whether or not consecutive) out of all the months before the member became entitled to retired pay by reason of election of retired pay under the provisions of this paragraph.

3.2.2. Service on Active Duty. A member entitled to retired or retainer pay, who subsequently serves on active duty, other than for training, is entitled to recomputed retired or retainer pay using a revised retired pay base.

3.2.2.1. Before September 8, 1980. For a member who first became a member of the uniformed service before September 8, 1980, the revised retired or retainer pay base is the monthly basic pay of the grade determined as follows. If the member served:

3.2.2.1.1. Less than 2 continuous years on subsequent active duty, the member's revised retired or retainer pay base is the rate of basic pay under which the member's previous retired or retainer pay was computed upon entrance to subsequent active duty; increased by any applicable cost-of-living adjustment (COLA) issued during that period of active duty; or

3.2.2.1.2. At least 2 or more continuous years on subsequent active duty, the member's revised retired or retainer pay base is the appropriate rate of basic pay of the grade and years of service to which eligible if retired (or transferred to the Fleet Reserve (FR) or Fleet Marine Corps Reserve (FMCR)) upon release from this period of active duty. The revised retired or retainer pay base is computed using the pay tables in effect immediately prior to the tables under which the member was paid during the period of that active duty, increased by any applicable COLA issued during this period of active duty. In the rare case when a member serves for two or more continuous years of subsequent active duty under the same pay table and that table is in effect at the time of the member's release from that period of active duty, use the appropriate basic pay from that table.

3.2.2.2. After September 7, 1980. For a member who first became a member of the uniformed service after September 7, 1980, the revised retired or retainer pay base is the high-36 month average of all service, including subsequent active duty, as though retiring or transferring to the FR or the FMCR for the first time.

3.2.2.3. Optional Pay Base. A retired member entitled to recomputation of retired pay (for other than disability) after subsequent active duty, may elect to substitute the retired pay base in use upon entry to such active duty which is increased by any applicable COLA issued during the period of the subsequent active duty.

3.3 Revised Retired Pay Multiplier

* 3.3.1. The years of service for determining the revised retired or retainer pay multiplier for a member described in paragraph 3.2.1 will be computed in accordance with ***10 U.S.C., Chapter 1223***, pertaining to Reserve (non-regular) retirement.

* 3.3.2. The years of service for determining the revised retired or retainer pay multiplier for a member described in paragraph 3.2.2 are those already credited in computing the original retired or retainer pay, plus all years of active service after having become entitled to retired or retainer pay.

3.3.2.1. Increase the years of service as follows:

	Year	Month	Day
Date released from active duty	2014	05	28
Date recalled to active duty	2011	09	09
Additional time on active duty	02	08	19 + 1
	(1 day added for inclusive dates)		
Service credited upon retirement	22	06	03
Plus additional active duty	02	08	20
Service credited for recomputation	25	02	23

3.3.2.2. After computing, convert to years and fraction of years by crediting each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month.

3.3.3. The percentage to apply to the years of service for determining the revised or retainer pay multiplier is determined by the member's applicable retirement system. For members who first entered service on or before December 31, 2017, and who did not opt to enroll in the Blended Retirement System (BRS), the retired pay multiplier is 2.5 percent for each year of service. However, such a member who accepted the post July 31, 1986, reduced retirement (REDUX) and Career Status Bonus (CSB) remains subject to a 1 percent reduction in the final multiplier for each year less than 30 years of service. This reduction to the final multiplier will be decreased as a result of the additional active service credited. For members who first entered service on or after January 1, 2018, or who opted to enroll in the BRS, the retired pay multiplier is 2.0 percent for each year of service.

3.4 Special Considerations for Recomputation

The following subparagraphs address special considerations for recomputation of retired pay for members who first became a member of the uniformed services before September 8, 1980 (Final Pay Members).

3.4.1. A retiree advanced in grade on the retired list while serving on active duty after retirement may decline advancement to the higher grade upon release from active duty if advancement results in a reduction in retired pay entitlement. The retiree is entitled to recomputation using either:

3.4.1.1. The higher grade based on the basic pay rates applicable at the time of retirement increased by the applicable COLA in that pay (see Chapter 8); or

3.4.1.2. The grade held before advancement based on the basic pay rates replaced by those in effect upon release from active duty if active duty after retirement was for a continuous period of at least 2 years.

3.4.2. It is not mandatory that a retiree be advanced on the retired list. Once advanced, the retiree has retired pay rights determined under the section governing such advancement.

3.4.3. A retired officer recalled to active duty (other than for training) in the grade held on the retired list, under any law that authorized advancement on the retired list based on a special commendation for the performance of duty in actual combat, may have retired pay recomputed upon release from active duty based on that grade as prescribed in Table 7-1, rule 1 and on the basis of the rate:

3.4.3.1. In effect upon release from active duty if the retiree received these rates for a continuous period of at least 3 years; or

3.4.3.2. Replaced by those in effect upon release from active duty if the retiree did not receive the current rates for a continuous period of at least 3 years.

3.4.4. A retiree recalled to active duty after retirement and promoted in grade while on active duty may elect, upon release from that active duty, to have retired pay recomputed based on either:

3.4.4.1. The higher grade to which promoted in which the retiree served satisfactorily, if the member met service time-in grade requirements; or

3.4.4.2. The lower grade held at initial retirement.

3.4.5. A retiree recalled to active duty after retirement and demoted in grade while on active duty may elect, upon release from that active duty, to have retired pay recomputed based on either:

3.4.5.1. The grade to which demoted; or

3.4.5.2. The retired pay to which entitled in the grade held at initial retirement, increased by the applicable COLA.

3.5 Special Considerations for Disability Retirees

3.5.1. A member who reverts to retired pay after active duty with a new or aggravated physical disability rated at 30 percent or more may elect to receive:

3.5.1.1. The retired pay to which they became entitled when previously retired, increased by any applicable subsequent COLA; or

3.5.1.2. Retired pay recomputed using a revised pay base and revised retired pay multiplier. The revised pay base for a member under high-36 rules is described in subparagraph 3.2.1. The revised pay base for a member under final pay rules is the highest monthly basic pay received while on active duty after retirement or after the date when placed on the Temporary Disability Retired List (TDRL). The revised retired pay multiplier is as the member elects either 2.5 percent for each year of service creditable for a disability retirement or the highest percentage of disability, not to exceed 75 percent, attained while on active duty after retirement or after the date when placed on the TDRL.

3.5.2. A member who was retired for physical disability or whose name is on the TDRL who reverts to the retired list after subsequent active duty, but who did not incur a new or aggravate any existing physical disability while on the subsequent active duty, may elect to receive either:

3.5.2.1. Retired pay to which they became entitled when previously retired, increased by any applicable COLA; or

3.5.2.2. Retired pay as computed for a non-disability reversion under the provisions of paragraphs 3.2 and 3.3.

* 3.5.3. The retired pay of a member who retired or became eligible to retire due to a physical disability on the Permanent Disability Retired List, or TDRL, on or before January 7, 2011, is limited to 75 percent of the retired pay base upon which the computation is based. A member who first becomes eligible to retire or retires for a physical disability on or after January 8, 2011, is entitled to the more favorable retired pay multiplier computed as either:

3.5.3.1. 2.5 percent of years of creditable service under ***10 U.S.C. § 1208***, or

3.5.3.2. The percentage of disability, not to exceed 75 percent, on date when retired (or placed on the TDRL).

3.5.4. A member placed on the TDRL may not have a retired pay multiplier less than 50 percent.

4.0 COST-OF-LIVING ADJUSTMENT (COLA)

4.1 Application of COLA Increases

Apply the COLA increases to recomputed retired pay in the same manner as for initial retirement. The first COLA after reversion to retired pay following a period of active duty may be a partial COLA depending upon the reversion date. When the recomputed retired pay is based on the original retired pay or the original retired pay base, apply all COLA increases from the date of initial retirement. See Figure 7-1 for application of the COLA increases to recompute retired pay. Chapter 8 contains the annual COLA rates.

4.2 Compare Basic Pay Rates to Tower Amendment Provisions

The Tower Amendment authorizes the use of the basic pay rates in effect on the day before the effective date of the rates of monthly basic pay on which the member's retired pay would otherwise be based. See the provisions in Chapter 3, regarding the Tower Amendment to determine if basic pay rates authorized under that provision afford greater retired pay entitlement than those computed under this chapter.

5.0 HEROISM PAY

5.1 Extraordinary Heroism

An enlisted member who has been credited by the Secretary concerned with extraordinary heroism in the line of duty during any period of active service in the armed forces and who is entitled to recomputation of retired pay based on subsequent active duty will have the recomputation of retired pay increased by 10 percent, subject to the limits listed in Chapter 1.

5.2 Extraordinary Heroism and the Retired Pay Multiplier

The addition of heroism pay is limited to certain maximum retired or retainer pay percentages. For details on heroism pay refer to Chapter 1.

6.0 RETIRED PAY AND ACTIVE SERVICE

A retired member who elects to receive compensation for periods of active duty or inactive duty training must waive 1 day of retired pay for each calendar day while serving on active duty, inactive duty training, or in an active Reserve status. See Chapter 12.

Figure 7-1. Recomputation After Recall to Active Duty

Examples of Retired Pay Recomputation After Recall to Active Duty

1. Final Basic Pay Method

E-7 retired 8/1/2006 with exactly 27 years of service

Retired Pay Entitlement	$4,113.60 (E-7 over 26/2006 pay rates) X 67.5% (27 years X 2.5%) = $2,776.00 (initial retired pay)

Recalled to active duty 6/1/2008 and released 5/31/2010

Pay Recomputation:

10 U.S.C. § 1402(a) E-7 with 29 years (Notes 1, 2, and 5)

$4,521.00 (E-7 over 28/2009 pay rates (Note 2))
X 72.5% (29 years X 2.5%) = $3,277.00 (recomputed retired pay)

10 U.S.C. § 1402(e) E-7 with 29 years (Notes 2, 3, and 5)

$4,113.60 (E-7 over 28/2006 pay rates)
X 72.5% (29 years X 2.5%) = $2,982.00)

12/2006 COLA	2.8%	$3,065.00 (2.8% X $2982.00 = $3,065.50) (partial COLA)
12/2007 COLA	2.3%	$3,135.00 (2.3% X $3065.00 = $3,135.50)
12/2008 COLA	5.8%	$3,316.00 (5.8% X $3135.00 = $3,316.83)
12/2009 COLA	0.0%	$3,316.00 (No COLA increase. Recomputed retired pay for 2009 remains the same as 2008)

Saved Pay (Notes 2, 4, and 5)

$2,776.00 (initial retired pay)

12/2006 COLA	2.8%	$2,853.00 (2.8% X $2776.00 = $2,853.73) (partial COLA)
12/2007 COLA	2.3%	$2,918.00 (2.3% X $2853.00 = $2,918.62)
12/2008 COLA	5.8%	$3,087.00 (5.8% X $2918.00 = $3,087.24)
12/2009 COLA	0.0%	$3,087.00 (No COLA increase. Recomputed retired pay for 2009 remains the same as 2008)

Notes:
1. The 1402(a) recomputation utilizes a more current active duty pay table and the new total years of service.
2. Use the active duty pay rates in effect on date of release only if the member received pay from that rate table for at least 2 years. If recalled for over 2 years, but did not receive pay from the same table for 2 years, the immediately preceding rates of active duty pay are utilized. If recall is less than 2 years, utilize the pay table in effect upon original retirement.

Figure 7-1. Recomputation After Recall to Active Duty (Continued)

Notes (Continued):
3. The 1402(e) recomputation utilizes the pay table in effect at retirement, but uses the new service totals and updated by applicable COLAs. See Chapter 8 for the COLA rates.
4. Saved Pay is the member's original retired pay entitlement, as updated by the COLA.
5. The highest option is paid.

Figure 7-1. Recomputation After Recall to Active Duty (Continued)

2. High-36 Average Method

E-7 retired 10/1/2006 with exactly 22 years of service

Retired Pay Entitlement — $3,408.08 (high-36 average base)
X 55% (22 years X 2.5%) = $1,874.00 (initial retired pay)

Recalled to active duty 6/1/2008 and released 5/31/2010 (Note 1)

Pay Recomputation:

10 U.S.C § 1402a(a) E-7 with 24 years (Note 2)
$3,963.75 (new high-36 with recall service)
X 60% (24 years X 2.5%) = $2,378.00

10 U.S.C § 1402a(e) E-7 with 24 years (Note 2)
$3,408.08 (original high-36 pay base)
X 60% (24 years X 2.5%) = $2,044.00

12/2006 COLA	0.0%	$2,044.00 (partial COLA)
12/2007 COLA	2.3%	$2,091.00 (2.3% X $2044.00 = $2,091.01)
12/2008 COLA	5.8%	$2,212.00 (5.8% X $2091.00 = $2,212.28)
12/2009 COLA	0.0%	$2,212.00 (No COLA increase. Recomputed retired pay for 2009 remains the same as 2008)

Note:
1. If the member's post-retirement service is not continuous, the recomputation will be done only after the period during which the member was permitted to serve expires.
2. The higher option is paid.

Figure 7-1. Recomputation After Recall to Active Duty (Continued)

3. High-36 Average with REDUX/CSB Method

E-7 retired 10/1/2006 with exactly 20 years of service

Pay Entitlement
$3,351.03 (high average base)
X 40% (20 years X 2.5% less 10% (Note 1)) = $1,340.00

Recalled to active duty 6/1/2008 and released 5/31/2010

Pay Recomputation:

10 U.S.C. § 1402a(a) E-7 with 22 years (Note 1)
$3,816.61 (recomputed high-36 average base using the 24 months of subsequent service)
X 47% (22 years X 2.5% less 8% (Note 2)) = $1,793.00

10 U.S.C. § 1402a(e) E-7 with 22 years (Note 1)
$3,351.03 (original high-36 pay base)
X 47% (22 years X 2.5% less 8% (Note 2)) = $1,574.00

12/2006 COLA	0.0%	$1,574.00 (partial COLA)
12/2007 COLA	1.3%	$1,594.00 (1.3% X $1,574.00)
12/2008 COLA	4.8%	$1,670.00 (4.8% X $1,594.00)
12/2009 COLA	0.0%	$1,670.00 (No COLA increase. Recomputed retired pay for 2009 remains the same as 2008)

Notes:
1. The higher option is paid.
2. Reduced by 1% for each year less than 30 years.

*Table 7-1. Computation of Retired Pay Following Active/Reserve Duty after Retirement or Eligibility for Retired Pay

RULE	If	and	take	multiply by	add	subtract (Notes 4 & 5)
1	a member previously retired for other than disability, reverts to retired status without a disability retirement (Note 1)	the member first became a member before September 8, 1980	monthly basic pay (note 2) of the grade in which member would be eligible: (1) to retire if retiring upon that release from active duty; or (2) to transfer to the FR or FMCR if transferring to either upon that release from active duty	2.5 percent of the sum of: (1) the years of service that may be credited to the retiree in computing retired pay or retainer pay; and (2) years of active service after becoming entitled to retired pay or retainer pay (Note 3)		the excess over 75 percent of pay upon which the computation is based, only if the member originally retired before January 1, 2007, with more than 30 years of service and did not serve at least 2 years on the recall to active duty.
2	a member previously retired for other than disability, reverts to retired status without a disability retirement (Note 1)	the member first became a member after September 7, 1980	retired pay base or retainer pay base to which member would be entitled to use if: (1) retiring upon release from that active duty; or (2) transferring to the FR or FMCR upon that release from active duty	the retired pay multiplier or the retainer pay multiplier for a high-36 retiree (with reduction described under paragraph 3.3 for post-August 1, 1986 members who elected the CSB with REDUX retirement) for the sum of: (1) the years of service that may be credited to the retiree in computing retired pay; and (2) years of active service after becoming entitled to retired or retainer pay		the excess over 75 percent of retired or retainer pay based upon computation only if the member originally retired before January 1, 2007, with more than 30 years of service and did not serve at least 2 years on the recall to active duty.

Table 7-1. Computation of Retired Pay Following Active/Reserve Duty after Retirement or Eligibility for Retired Pay (Continued)

RULE	If	and	take	multiply by	add	subtract (Notes 4 & 5)
3	a member reverts with a new or aggravated disability rating that qualifies for disability retirement (Note 6)	member first became a member before September 8, 1980	highest monthly basic pay that member received while on active duty after retirement or after date when member's name was placed on TDRL	as a member elects: (1) 2.5 percent of years of service credited under 10 U.S.C. § 1208 (Note 3); or (2) the highest disability percentage, not to exceed 75 percent, attained while on active duty after retirement or after the date member's name was placed on TDRL	the amount necessary to increase product of columns C and D to 50 percent of pay upon which computation is based, if member is on TDRL.	
4	a member reverts with a new or aggravated disability rating that qualifies for disability retirement (Note 6)	member first became a member after September 7, 1980	the retired pay base	as a member elects: (1) 2.5 percent for pre-BRS or 2 percent for BRS times years of service credited under 10 U.S.C. § 1208 (Note 3); or (2) the highest disability percentage, not to exceed 75 percent, attained while on active duty after retirement or after the date member's name was placed on TDRL	the amount necessary to increase product of columns C and D to 50 percent of pay upon which computation is based, if member is on TDRL.	
5	a member previously retired for disability, reverts to retired status without incurring any additional or aggravating disability that would qualify for disability retirement (Note 6)		either the highest monthly pay they received on active duty or the retired pay base as appropriate under rule 3 or 4	2.5 percent for pre-BRS or 2 percent for BRS times years of service credited under 10 U.S.C. § 1208 (Note 3).		

Table 7-1. Computation of Retired Pay Following Active/Reserve Duty after Retirement or Eligibility for Retired Pay (Continued)

RULE	If	and	take	multiply by	add	subtract (Notes 4 & 5)
6	a member entitled to or receiving regular retired pay based on years of service that has attained Reserve Retired pay eligibility and age and has performed at least 20 years of service qualifying for a Reserve retirement	served in an active status as a member of an Reserve Component on or after October 28, 2009, completing 2 or more years of satisfactory service after becoming eligible for regular retired pay based on years of service without regard to whether the member actually retired or received retired or retainer pay for regular service (Notes 7 & 8)	either the basic pay for the highest grade held while serving in the active status or the retired pay base computed through the new retirement date	2.5 percent for pre-BRS or 2 percent for BRS times the years of service credited for percentage purposes (Note 9).		
7	a member of Retired Reserve serves in active status in Selected Reserve on or after October 28, 2009	serves for not less than 2 years in such active status	either the basic pay for the highest grade held while serving in the active status or the retired pay base computed through the date of release from duty	2.5 percent for pre-BRS or 2 percent for BRS times the years of service credited for percentage purposes (Note 9).		

Table 7-1. Computation of Retired Pay Following Active/Reserve Duty after Retirement or Eligibility for Retired Pay (Continued)

Notes:
1. Alternatively, members eligible under rules 1 or 2 may elect to substitute the rate of basic or monthly retired pay base (high-36 average) under which the original retired pay was computed at the time of entering on this period of active duty (increased by any applicable adjustments in the COLA) for the amount in column C of the table.
2. For a member who has been entitled, for a continuous period of at least 2 years, to basic pay under the rates of basic pay in effect upon release from active duty, compute under those rates. For a member who has been entitled to basic pay for a continuous period of at least 2 years upon that release from active duty, but who is not covered by the preceding sentence**,** compute under the rates of basic pay replaced by those in effect upon that release from active duty. For any other member**,** compute under the rates of basic pay under which the member's retired pay or retainer pay was computed when member entered on that active duty.
3. Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year. Disregard any remaining fractional part of a month.
4. The amount computed, if not a multiple of $1, is rounded to the next lower multiple of $1. Any future adjustments to such pay must be made on the rounded figure. The rounded amount becomes the member's entitlement and any future adjustments is based on this rounded entitlement.
5. The reduction only applies to a member who retired before January 1, 2007, with more than 30 years of creditable service who is recalled to active duty and serves on active duty for a continuous period of less than 2 years that ends after January 1, 2007, per DoD Memorandum dated December 22, 2006.
6. Alternatively, members eligible under rules 3, 4, or 5 may elect to substitute the retired pay to which entitled when originally retired increased by any applicable adjustments in the COLA.
7. A member who was eligible for regular retired or retainer pay on or before October 27, 2009, whose service was determined to be satisfactory, is not subject to the 2-year requirement.
8. The 2-year service requirement may be reduced by the Secretary concerned if an officer of the National Guard completes at least 1 year of service in a position of adjutant general or assistant adjutant general and fails to complete the minimum years of service solely because the appointment to such position is terminated or vacated under applicable State or territorial law.
9. Total number of retirement points divided by 360. Carry the resultant figure to three decimal places, then round to two decimal places. Example: 4,735 retirement points divided by 360 = 13.152 or 13.15 years of service for percentage purposes (for the 10 U.S.C. § 12731 retiree only) to be multiplied by 2.5 percent for pre-BRS or 2 percent for BRS.

*REFERENCES

CHAPTER 07 — ACTIVE/RESERVE DUTY AFTER RETIREMENT

2.0 – ENTITLEMENT AND ELIGIBILITY

2.1	10 U.S.C. § 1402
	10 U.S.C. § 1402a
2.2	10 U.S.C. § 12731(a)
	10 U.S.C. § 12741(a)
	10 U.S.C. § 10145(d)
2.2.1	10 U.S.C. § 12731(a)(1)
	10 U.S.C. § 12731(f)
2.2.2	10 U.S.C. § 12731(a)(2)
2.2.3	10 U.S.C. § 12741
2.3.1	10 U.S.C. § 12739(e)(1)
2.3.2	10 U.S.C. § 12771(b)
	10 U.S.C. § 10145(d)
2.4.1	10 U.S.C. § 12739(e)(2)
	10 U.S.C. § 12771(b)(2)
2.4.2	32 U.S.C. § 324(b)

3.0 – RECOMPUTATION FOR ACTIVE DUTY SERVICE OR ACTIVE STATUS IN THE SELECTED RESERVE AFTER RETIREMENT

3.2.1	10 U.S.C. §12741
	10 U.S.C. § 1406
	10 U.S.C. § 1407
3.2.2	10 U.S.C. § 1402
	10 U.S.C. § 1402a
	10 U.S.C. § 1407(b)
	10 U.S.C., Chapter 1223
3.2.2.1	10 U.S.C. § 1402
3.2.2.1.1	Comptroller General (Comp Gen), B-234888, July 16, 1990
3.2.2.1.2	69 Comp Gen 141, B-236552, December 18, 1989
3.2.2.2	10 U.S.C. § 1402a
	10 U.S.C. § 1407
3.2.2.3	10 U.S.C. § 1402(e)
	10 U.S.C. § 1402a(e)
3.3	10 U.S.C. § 1402(a)
	10 U.S.C. § 1402a(a)
3.3.3	10 U.S.C. § 1409
3.4.1.2	51 Comp Gen 137, B-173293, August 31, 1971
3.4.2	44 Comp Gen 510, B-155940, February 23, 1965
3.4.3	10 U.S.C. § 1402(a)

REFERENCES (Continued)

3.4.4	47 Comp Gen 289, B-162676, November 22, 1967 10 U.S.C. § 1402(e)
3.4.5.2	10 U.S.C. § 1402(e)
3.5.1	10 U.S.C. § 1402(b)-(d) 10 U.S.C. § 1402a(b)-(d)
3.5.1.1	10 U.S.C. § 1402(d)(1) 10 U.S.C. § 1402a(d)(1)
3.5.1.2	10 U.S.C. § 1402(d)(2) 10 U.S.C. § 1402a(d)(2)
3.5.2	Comp Gen 178, B-204055, May 17, 1982
3.5.3	Public Law 111-383, Section 631, January 7, 2011 10 U.S.C. § 1208 10 U.S.C. § 1401(a)
3.5.4	10 U.S.C. 1402(d) 10 U.S.C. § 1402a(d)

5.0 – HEROISM PAY

5.1	10 U.S.C. § 1402(f), 1402a(f), 7361(a)(2), 8330(c)(3), 9361(a)(2), and 12739(b)

6.0 – RETIRED PAY AND ACTIVE SERVICE

Comp Gen B-179882, December 4, 1974

VOLUME 7B, CHAPTER 8: "BASIC PAY RATES, LEGISLATIVE CHANGES, AND COST-OF-LIVING ADJUSTMENTS (COLA) TO RETIRED PAY"

SUMMARY OF MAJOR CHANGES

Changes are identified in this table and also denoted by blue font.

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

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

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

The previous version dated May 2023 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated the hyperlinks and revised the chapter to comply with current administrative instructions.	Revision
5.16	Added COLA rates for retired pay, effective December 1, 2023.	Addition
5.16	Added Executive Order 14113, which provides monthly basic pay increase for members of the uniformed services, effective January 1, 2024.	Addition
5.17	Added COLA rates for retired pay, effective December 1, 2024.	Addition
5.17	Added Executive Order 14132, which provides monthly basic pay increase for members of the uniformed services, effective January 1, 2025.	Addition
Table 8-1	Updated Table 8-1, Full COLA Percentage Table.	Revision
References	Updated references.	Revision

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CHAPTER 8

BASIC PAY RATES, LEGISLATIVE CHANGES, AND COST-OF-LIVING ADJUSTMENTS (COLA) TO RETIRED PAY

1.0 GENERAL

1.1 Overview

Historical information on legislative actions for, the application of special provision in determining the accuracy of retired pay from October 1949 to Fiscal Year (FY) 2009, is located in the archived Chapter 8, dated July 2013, to include COLA rates for the period. Additionally, beginning with FY 1998, the COLA Memorandums are located at ***https://militarypay.defense.gov/Pay/Retirement/Cola.aspx***.

1.2 Purpose

This chapter provides information on legislative actions for the application of special provisions in determining the accuracy of retired pay. Pursuant to Title 10, United States Code (U.S.C.), ***section 1401a(b)***, COLA rates are listed in this chapter for the periods from FY 2010 to the present.

1.2.1. Accuracy of Retired Pay

The member's retired pay is determined through a history of basic pay rates, retired pay increases, and the application of special provisions. Retired pay for members who have entered a uniformed service after September 7, 1980, is computed using a retired or retainer pay base. See Chapter 3 for gross pay computation. This chapter explains the effect of legislation and COLA on retired pay that has been computed using a retired or retainer pay base.

1.2.2. The Use and Effect of Active Duty Pay Rate Increases on Retired Pay

Before June 1, 1958, all members (except the pre-October 1, 1949, "saved pay" accounts) received a direct percentage of the active duty basic pay rates in effect October 1, 1949 through May 31, 1958. With the enactment of Public Law 85-422, effective June 1, 1958, it became increasingly more difficult to prepare and maintain tables reflecting the pay of members on the retired rolls and, eventually, preparing such tables was no longer feasible. Public Law 85-422 prohibited the recomputation of retired pay based on changes in the active duty basic pay rates after retirement. The date of retirement was a factor in computing retired pay because the retired member's pay was fixed to the basic pay rate in effect on the date of retirement. The exceptions permitting members to use another basic pay rate under certain conditions and circumstances are outlined in later paragraphs. The applicable active duty pay tables now serve as the basis for determining the rate of retired pay.

1.2.3. Service After September 7, 1980

For members who have entered a uniformed service after September 7, 1980:

1.2.3.1. The amount of retired pay is individualized. Members who retire with the same grade and years of service for percentage and basic pay purposes may not receive the same amount of retired pay; and

1.2.3.2. The member's current retired pay can be verified from the retired or retainer pay base, years of service for percentage purposes or percentage of disability, retired pay increases, and the application of any special provisions in retired pay identified in this chapter.

1.3 Authoritative Guidance

The pay policies and requirements established by the DoD in this chapter are derived primarily from, and prepared in accordance with, the U.S.C., including Titles 5 and 10. Due to the subject matter in the chapter, the list of authoritative sources is extensive. The specific statutes, regulations, and other applicable guidance that govern each section are listed in a reference section at the end of the chapter.

2.0 DEFINITIONS

2.1 Base Index

The base index is the price index for the base quarter for the most recent adjustment under 10 U.S.C. § 1401a(b).

2.2 Base Quarter

Base Quarter is the calendar quarter ending on September 30 of each year.

2.3 Burchinal Decision

The Burchinal Decision is a Comptroller General (Comp. Gen.) decision ***53 Comp. Gen. 698 (1974)*** that retired pay is computed only under the current pay rates or the pay rates in effect immediately before the current rate pursuant to 10 U.S.C. § 1401a(e). Public Law 90-207, effective October 1, 1967, added subsection (e) under 10 U.S.C. § 1401a as a method to prevent pay inversion. See also paragraph 3.4. On October 7, 1975, ***Public Law 94-106*** added subsection (f) under 10 U.S.C. § 1401a, which superseded 10 U.S.C. § 1401a(e).

2.4 COLA

Percentage change increases are applied to retired pay based on laws using the Consumer Price Index (CPI), Urban Wage Earners and Clerical Workers-U.S. City Average (commonly referred to as CPI-W), as published by the Bureau of Labor Statistics, to determine the amount of the increase. Full COLA percentages appear in Table 8-1.

2.4.1. Full COLA. Members on the retired rolls receive the full COLA if their retired pay is computed using the basic pay rates which were effective before the previous COLA.

2.4.2. Partial COLA. Members whose retired pay is computed using the basic pay rates that become effective at the same time or after the previous COLA receive a partial COLA. This increase is effective from the later of the date of the full COLA or the date of retirement.

2.5 Legislative Increase

A legislative increase refers to any adjustment in retired pay authorized by legislation that identifies a percentage increase rather than based on the CPI.

2.6 Otherwise Qualified

This term refers to members, retired under a particular law, who are eligible for retirement under another law that may provide greater benefits. It pertains primarily to disability retirees when members have enough service to be retired for nondisability.

2.7 Pay Table Code

Pay table code refers to the designation by number (or other means) used by the Defense Finance and Accounting Service to identify active duty pay rates in effect during various periods.

2.8 Price Index

Price index refers to the CPI (all items, U.S. city average) published by the Bureau of Labor Statistics.

2.9 Price Index for a Quarter

For purposes of this chapter, the price index for a calendar quarter is the arithmetical mean (average) of the price index for the three months comprising that quarter.

2.10 Recomputation

Recomputation is the provision for recomputing retired pay using a pay table other than that used in the first computation of retired pay.

2.11 Retired Pay

The term "retired pay" includes retainer pay.

2.12 Retired Pay Base

The retired pay base is an average of the highest monthly basic pay rates applicable to a member, determined by the length of time the member was a member of a uniformed service (less than or at least 36 months) and/or the type of retirement (e.g., disability or voluntary). The retired pay base or retainer pay base applies to members who entered a uniformed service after September 7, 1980. It replaced the monthly basic pay rate formerly used to compute retired or retainer pay. See Chapter 3 for pre-September 8, 1980, members.

2.13 Uniform Retirement Date Act (URDA)

Pursuant to ***5 U.S.C. § 8301***, the URDA provides, under certain retirement laws, that members cannot be retired before the first day of the month after the date of first eligibility; and determines the pay table used in computing retired pay. This provision is especially significant when the retirement date coincides with the effective date of an active duty basic pay rate increase. There is an additional requirement to compute pay on the rates in effect by the date retirement would have occurred except for this restriction.

2.14 Years of Service for Basic Pay

Computation of service years creditable in determining the basic pay rate upon which retired pay is based may vary depending upon retirement law. See Volume 7A, Chapter 1.

2.15 Years of Service for Percentage Multiplier

The years of service for percentage multiplier refers to service years creditable in determining the percentage multiplier factor (applicable percentage rate described in Chapter 3, subparagraph 2.1.2 times years of creditable service) in retired pay computation. Computation of years of service may vary depending upon retirement law. For reserve retirements under ***10 U.S.C., Chapter 1223***, reserve service points are converted to years of service (i.e., total points divided by 360 equal years of service). See Chapter 1.

3.0 MAJOR CHANGES IN THE USE OF BASIC PAY RATES AND CONDITIONS APPLICABLE TO COMPUTATION OF RETIRED PAY

3.1 Retired Pay Based on the Consumer Price Index (CPI)

Effective October 1, 1963, 10 U.S.C. § 1401a, as added by Public Law 88-132, stipulated that future adjustments to retired pay would be based on the CPI. Each January, the Secretary of Defense was to review the CPI from the previous calendar year and, if it had increased 3 percent or more, then would affect a percentage increase in retired pay by April 1 using the percentages of increase in the CPI.

3.2 Effects of Public Law 90-207 on Retired Pay Computation

Public Law 90-207, effective October 1, 1967, added subsections (c) through (e) under 10 U.S.C. § 1401a. Subsections (c) and (d) stipulated that retired pay, when computed from the current basic pay rates, would increase at the later of the next COLA or retirement date by a partial adjustment. The partial adjustment represented the percent by which the new base index exceeded the index in effect on the day before the basic pay increase. Subsection (e), a saved pay provision, permitted computation of retired pay on the basic pay rates in effect immediately preceding those in effect on the retirement date if they were more favorable because of a COLA. Public Law 98-94, section 921, effective September 24, 1983, repealed the 1-year look-back provision that was under 10 U.S.C. § 1401a(e).

NOTE: For additional information on the repealed section, see paragraph 080213 in archived Chapter 8. Section 8(a) of Public Law 90-207 provided that, effective January 1, 1968, whenever the General Schedule of Compensation for Federal classified employees increased, an adjustment in the monthly basic pay to authorized members of the uniformed services immediately would become effective.

3.3 One Percent Increase to COLA

Public Law 91-179, effective October 31, 1969, stipulated that 1 percent would be added to the percentage increase each time there was a general COLA to retired pay. Partial COLA increases did not include the 1 percent. The add-on was provided to make up for the 3-month time lag between the rise in the CPI and the actual increase in retired pay. ***Public Law 94-440***, effective October 1, 1976, eliminated the 1 percent increase.

3.4 Pay Inversion

Public Law 85-422, effective June 1, 1958, prohibited recomputation of retired pay each time active duty pay was increased. Therefore, it was assumed that members of the same pay grade and years of service who retired under later active duty pay increases would receive greater retired pay. Beginning in 1971, there were instances where the cumulative COLA applied to retired pay was greater than the increases in the active duty pay rates, which was known as “pay inversion.” Pay inversion created some retention problems because, through early retirement, members could increase their retired pay rather than remaining on active duty. Under 53 Comp. Gen. 698 (1974), known as the “Burchinal Decision,” members were restricted to the greater amount of pay, based on two computations of retired pay, computed on the active duty pay rates in effect:

3.4.1. At the time of retirement using the pay grade and years of service for both basic pay and percentage multiplier at the time of retirement; or

3.4.2. Immediately before the active duty basic pay rates in effect on the date of retirement, plus the COLA in retired pay applicable to those basic pay rates. For this computation, the same pay grade and years of service for both basic pay and multiplier at the time of retirement were used even though the computation used the earlier basic pay rates.

3.5 Tower Amendment

3.5.1. Public Law 94-106, dated October 7, 1975, added subparagraph (f) to 10 U.S.C. § 1401a. The new provision stipulated another method to offset, in part, the effect of "pay inversion." This method involved computing pay based on any previous basic pay rates, on or after January 1, 1971, plus COLA, if the member was eligible for retirement at the time those rates were in effect. The computation was restricted to the pay grade and years of service at that earlier time (for retirements on October 5, 1994, or later, the computation may not be based on a grade higher than that held at the time of retirement). The statute applies to all members retired on or after January 1, 1971. There were no retroactive pay adjustments for the period before October 7, 1975.

3.5.2. Pursuant to ***Public Law 113-66***, dated December 26, 2013, for a retired member who first became a member of a uniformed service on or after September 8, 1980, and whose retired pay is computed using the high-three method, the Tower Amendment applies only at the time of retirement and not when the first COLA is announced. A member recalled to active duty after retirement is not entitled to recomputation of retired pay under the Tower Amendment upon release from that active duty. Pay recomputation upon that release is restricted to the methods prescribed in ***10 U.S.C. § 1402*** and covered in Chapter 7. The Tower Amendment did not repeal or modify those provisions.

3.6 Basic Pay Average

Public Law 96-342, dated September 8, 1980, as codified at ***10 U.S.C. § 1407***, established a retired pay base for use in computing retired or retainer pay. Title 10, U.S.C. § 1407 applies to members who have entered a uniformed service after September 7, 1980. The percentage of cost-of-living increases is determined by the most recent basic pay rate used in the computation of the retired or retainer pay base.

3.7 Modification of COLAs Applicable to Military Retired and Retainer Pay

Public Law 98-270, dated April 18, 1984, amended ***5 U.S.C. § 8340(a) and (b)*** to modify COLAs that also applied to military retired and retainer pay under 10 U.S.C. § 1401a(b). The effective date for COLAs was changed from March 1 to December 1. The COLA equaled the percentage change in the price index for the base quarter of the year over the price index for the base quarter of the preceding year. The price index is defined in paragraph 2.8. The partial COLA equaled the percentage increase of the average CPI for July, August, and September over the CPI for the preceding December.

3.8 The Military Retirement Reform Act of 1986

The Military Retirement Reform Act of 1986, Public Law 99-348:

3.8.1. Reduced the retired pay multiplier for any member who first became a member of a uniformed service after July 31, 1986, and who retired before age 62 with less than 30 years of creditable service (excluding retirements under ***10 U.S.C., Chapters 61*** and 1223). The multiplier was reduced by:

3.8.1.1. One percentage point for each full year that the member's years of creditable service were less than 30; and

3.8.1.2. One-twelfth of 1 percentage point for each month by which the member's years of creditable service (after counting all full years of such service) was less than a full year.

3.8.2. Stipulated cost-of-living increases for any member who first became a member of a uniformed service on or after August 1, 1986, when the increase in the CPI exceeded 1 percent. The cost-of-living increase was 1 percentage point less than the increase in CPI.

3.8.3. Restored the reduction in retired pay multiplier under subparagraph 3.8.1 at age 62 and provided a one-time restoral at age 62 for the reduction in cost-of-living increase under subparagraph 3.8.2.

4.0 PROVISIONS OF PAY CHANGES, EXCEPTIONS, AND SPECIAL COMPUTATIONS BETWEEN DECEMBER 1, 1949 AND DECEMBER 1, 2005

For historical information on legislative actions affecting retired pay from October 1949 to December 2005, see archived Chapter 8, dated July 2013 and July 2018.

5.0 PROVISIONS OF PAY CHANGES, EXCEPTIONS, AND SPECIAL COMPUTATIONS STARTING DECEMBER 2005

For historical information on legislative actions affecting retired pay from December 2005 to December 2008, see archived Chapter 8, dated July 2018.

5.1 COLA and Basic Pay Rates FY 2010

5.1.1. A COLA, effective December 1, 2009, provided:

5.1.1.1. For those who first became members of a uniformed service before September 8, 1980, the retired pay COLA is specified according to the effective date of their retirement as follows:

Retirement Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2009	0.0 percent	1401a(b)(2)
January 1 – December 31, 2009	0.0 percent	1401a(c) & 1401a(f)

5.1.1.2. For those who first became members of a uniformed service on or after September 8, 1980, the retired pay COLA is specified according to the effective date of their retirement as follows:

Retirement Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2009	0.0 percent	1401a(b)(2)
January 1 – March 31, 2009	0.0 percent	1401a(d) & 1401a(f)
April 1 – June 30, 2009	0.0 percent	1401a(d) & 1401a(f)
July 1 – September 30, 2009	0.0 percent	1401a(d) & 1401a(f)
October 1 – December 31, 2009	0.0 percent	1401a(d) & 1401a(f)

5.1.1.3. For those who first became members of the uniformed service on or after August 1, 1986, and who elected to receive a Career Status Bonus (CSB) under the provisions of ***37 U.S.C. § 322*** (as in effect before January 28, 2008) or ***37 U.S.C. § 354***, the retired pay COLA is specified according to their retirement as follows:

Retirement Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2009	0.0 percent	1401a(e)
January 1 – March 31, 2009	0.0 percent	1401a(e) & 1401a(f)
April 1 – June 30, 2009	0.0 percent	1401a(e) & 1401a(f)
July 1 – September 30, 2009	0.0 percent	1401a(e) & 1401a(f)
October 1– December 31, 2009	0.0 percent	1401a(e) & 1401a(f)

5.1.2. For basic pay rates effective January 1, 2010, ***Public Law 111-84*** and ***Executive Order 13525*** provided for:

5.1.2.1. Increased basic pay rates;

5.1.2.2. No increase for members retired before January 1, 2010; and

5.1.2.3. No entitlement to pay computed on the January 1, 2010 basic pay rates for members who retired on January 1, 2010, and who were:

5.1.3.1. Warrant officers;

5.1.3.2. Fleet Reservists or Fleet Marine Corps Reservists (December 31, 2009 transfers); or

5.1.3.3. Subject to the URDA. For additional information about the URDA, see Chapter 1. Additionally, URDA is defined at paragraph 2.13.

5.2 COLA and Basic Pay Rates FY 2011

5.2.1. A COLA, effective December 1, 2010, provided:

5.2.1.1. For those who first became members of a uniformed service before September 8, 1980, the retired pay COLA is specified according to the effective date of their retirement as follows:

Retirement Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2010	0.0 percent	1401a(b)(2)
January 1 – December 31, 2010	0.0 percent	1401a(c) & 1401a(f)

5.2.1.2. For those who first became members of a uniformed service on or after September 8, 1980, the retired pay COLA is specified according to the effective date of their retirement as follows:

Retirement Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2010	0.0 percent	1401a(b)(2)
January 1 – March 31, 2010	0.0 percent	1401a(d) & 1401a(f)
April 1 – June 30, 2010	0.0 percent	1401a(d) & 1401a(f)
July 1 – September 30, 2010	0.0 percent	1401a(d) & 1401a(f)
October 1 – December 31, 2010	0.0 percent	1401a(d) & 1401a(f)

5.2.1.3. For those who first became members of the uniformed service on or after August 1, 1986, and also elected to receive a CSB under the provisions of 37 U.S.C. § 322 (as in effect before January 28, 2008) or 37 U.S.C. § 354, the retired pay COLA is specified according to the date of their retirement, as follows:

Retirement Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2010	0.0 percent	1401a(e)
January 1 – March 31, 2010	0.0 percent	1401a(e) & 1401a(f)
April 1 – June 30, 2010	0.0 percent	1401a(e) & 1401a(f)
July 1 – September 30, 2010	0.0 percent	1401a(e) & 1401a(f)
October 1 – December 31, 2010	0.0 percent	1401a(e) & 1401a(f)

5.2.2. For basic pay rates effective January 1, 2011, ***Executive Order 13561*** provided for:

5.2.2.1. Increased basic pay rates;

5.2.2.2. No increase for members retired before January 1, 2011; and

5.2.2.3. No entitlement to pay computed on the January 1, 2011 basic pay rates for members who retired on January 1, 2011, and who were:

5.2.2.3.1. Warrant officers;

5.2.2.3.2. Fleet Reservists or Fleet Marine Corps Reservists (December 31, 2010 transfers); or

5.2.2.3.3. Subject to the URDA. For additional information about the URDA, see Chapter 1. Additionally, URDA is defined at paragraph 2.13.

5.3 Removal of the 75 Percent Cap Subject to Provision

A member who retired, or became entitled to retired pay, due to physical disability on or before January 7, 2011, may not have a retired pay multiplier more than 75 percent. Under Public Law 111-383, a member with more than 30 years of creditable service who first becomes entitled to retired pay due to physical disability, on or after January 8, 2011, will not have their multiplier reduced if it is more than 75 percent.

5.4 COLA and Basic Pay Rates FY 2012

5.4.1. A COLA, effective December 1, 2011, provided:

5.4.1.1. For those who first became members of a uniformed service before September 8, 1980, the retired pay COLA is specified according to the effective date of their retirement as follows:

Retirement Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2011	3.6 percent	1401a(b)(2)
January 1 – December 31, 2011	3.6 percent	1401a(c)

5.4.1.2. For those who first became members of a uniformed service on or after September 8, 1980, the retired pay COLA is specified according to the effective date of their retirement as follows:

Retirement Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2011	3.6 percent	1401a(b)(2)
January 1 – March 31, 2011	3.6 percent	1401a(d)
April 1 – June 30, 2011	2.4 percent	1401a(d)
July 1 – September 30, 2011	0.4 percent	1401a(d)
October 1 – December 31, 2011	0.0 percent	1401a(d)

5.4.1.3. For those who first became members of the uniformed service on or after August 1, 1986, and also elected to receive a CSB under the provisions of 37 U.S.C. § 322 (as in effect before January 28, 2008) or 37 U.S.C. § 354, the retired pay COLA is specified according to the date of their retirement, as follows:

Retirement Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2011	2.6 percent	1401a(e)
January 1 – March 31, 2011	2.6 percent	1401a(e)
April 1 – June 30, 2011	1.9 percent	1401a(e)
July 1 – September 30, 2011	0.1 percent	1401a(e)
October 1 – December 31, 2011	0.0 percent	1401a(e)

5.4.2. For basic pay rates effective January 1, 2012, ***Executive Order 13594*** provided for:

5.4.2.1. Increased basic pay rates;

5.4.2.2. No increase for members retired before January 1, 2012; and

5.4.2.3. No entitlement to pay computed on the January 1, 2012 basic pay rates for members who retired on January 1, 2012, and who were:

5.4.2.3.1. Warrant officers;

5.4.2.3.2. Fleet Reservists or Fleet Marine Corps Reservists (December 31, 2011 transfers); or

5.4.2.3.3. Subject to the URDA. For additional information about the URDA, see Chapter 1. Additionally, URDA is defined at paragraph 2.13.

NOTE: Members retiring in 2012 may be entitled to more retired pay using the 2011 pay rates increased by a partial COLA, instead of using the increased pay rates with more service credit. Under 10 U.S.C. § 1401a(f)(1), inversions to retired pay entitlements are prevented by allowing computation of retired pay based on retirement at an earlier date. In such computations, the grade and service credit must be those applicable on the earlier date being used. Also, the retiree must meet the retirement eligibility requirements by the earlier date.

5.5 COLA and Basic Pay Rates FY 2013

5.5.1. A COLA, effective December 1, 2012, provided:

5.5.1.1. For those who first became members of a uniformed service before September 8, 1980, the retired pay COLA is specified according to the effective date of their retirement as follows:

Retirement Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2012	1.7 percent	1401a(b)(2)
January 1 – December 31, 2012	1.7 percent	1401a(c)

5.5.1.2. For those who first became members of a uniformed service on or after September 8, 1980, the retired pay COLA is specified according to the effective date of their retirement as follows:

Retirement Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2012	1.7 percent	1401a(b)(2)
January 1 – March 31, 2012	1.7 percent	1401a(d)
April 1 – June 30, 2012	1.0 percent	1401a(d)
July 1 – September 30, 2012	0.2 percent	1401a(d)
October 1 – December 31, 2012	0.0 percent	1401a(d)

5.5.1.3. For those who first became members of the uniformed service on or after August 1, 1986, and also elected to receive a CSB under the provisions of 37 U.S.C. § 322 (as in effect before January 28, 2008) or 37 U.S.C. § 354, the retired pay COLA is specified according to the date of their retirement, as follows:

Retirement Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2012	0.7 percent	1401a(e)
January 1 – March 31, 2012	0.7 percent	1401a(e)
April 1 – June 30, 2012	0.5 percent	1401a(e)
July 1 – September 30, 2012	0.0 percent	1401a(e)
October 1 – December 31, 2012	0.0 percent	1401a(e)

5.5.2. For basic pay rates effective January 1, 2013, ***Executive Order 13641*** provided for:

5.5.2.1. Increased basic pay rates;

5.5.2.2. No increase for members retired before January 1, 2013; and

5.5.2.3. No entitlement to pay computed on the January 1, 2013 basic pay rates for members who retired on January 1, 2013, and who were:

5.5.2.3.1. Warrant officers;

5.5.2.3.2. Fleet Reservists or Fleet Marine Corps Reservists (December 31, 2012 transfers); or

5.5.2.3.3. Subject to the URDA. For additional information about the URDA, see Chapter 1. Additionally, URDA is defined at paragraph 2.13.

5.6 COLA and Basic Pay Rates FY 2014

5.6.1. A COLA, effective December 1, 2013, provided:

5.6.1.1. For those who first became members of a uniformed service before September 8, 1980, the retired pay COLA is specified according to the effective date of their retirement as follows:

Retirement Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2013	1.5 percent	1401a(b)(2)
January 1 – December 31, 2013	1.5 percent	1401a(c)

5.6.1.2. For those who first became members of a uniformed service on or after September 8, 1980, the retired pay COLA is specified according to the effective date of their retirement as follows:

Retirement Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2013	1.5 percent	1401a(b)(2)
January 1 – March 31, 2013	1.5 percent	1401a(d)
April 1 – June 30, 2013	0.9 percent	1401a(d)
July 1 – September 30, 2013	0.4 percent	1401a(d)
October 1 – December 31, 2013	0.0 percent	1401a(d)

5.6.1.3. For those who first became members of the uniformed service on or after August 1, 1986, and also elected to receive a CSB under the provisions of 37 U.S.C. § 322 (as in effect before January 28, 2008) or 37 U.S.C. § 354, the retired pay COLA is specified according to the date of their retirement, as follows:

Retirement Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2013	0.5 percent	1401a(e)
January 1 – March 31, 2013	0.5 percent	1401a(e)
April 1 – June 30, 2013	0.4 percent	1401a(e)
July 1 – September 30, 2013	0.0 percent	1401a(e)
October 1 – December 31, 2013	0.0 percent	1401a(e)

5.6.2. For basic pay rates effective January 1, 2014, ***Executive Order 13655*** provided for:

5.6.2.1. Increased basic pay rates;

5.6.2.2. No increase for members retired before January 1, 2014; and

5.6.2.3. No entitlement to pay computed on the January 1, 2014 basic pay rates for members who retired on January 1, 2014, and who were:

5.6.2.3.1. Warrant officers;

5.6.2.3.2. Fleet Reservists or Fleet Marine Corps Reservists (December 31, 2013 transfers); or

5.6.2.3.3. Subject to the URDA. For additional information about the URDA, see Chapter 1. Additionally, URDA is defined at paragraph 2.13.

5.7 COLA and Basic Pay Rates FY 2015

5.7.1. A COLA, effective December 1, 2014, provided:

5.7.1.1. For those who first became members of a uniformed service before September 8, 1980, the retired pay COLA is specified according to the effective date of their retirement as follows:

Retirement Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2014	1.7 percent	1401a(b)(2)
January 1 – December 31, 2014	1.7 percent	1401a(c)

5.7.1.2. For those who first became members of a uniformed service on or after September 8, 1980, the retired pay COLA is specified according to the effective date of their retirement as follows:

Retirement Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2014	1.7 percent	1401a(b)(2)
January 1 – March 31, 2014	1.7 percent	1401a(d)
April 1 – June 30, 2014	1.3 percent	1401a(d)
July 1 – September 30, 2014	0.1 percent	1401a(d)
October 1 – December 31, 2014	0.0 percent	1401a(d)

5.7.1.3. For those who first became members of the uniformed service on or after August 1, 1986, and also elected to receive a CSB under the provisions of 37 U.S.C. § 322 (as in effect before January 28, 2008) or 37 U.S.C. § 354, the retired pay COLA is specified according to the date of their retirement, as follows:

Retirement Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2014	0.7 percent	1401a(e)
January 1 – March 31, 2014	0.7 percent	1401a(e)
April 1 – June 30, 2014	0.7 percent	1401a(e)
July 1 – September 30, 2014	0.0 percent	1401a(e)
October 1 – December 31, 2014	0.0 percent	1401a(e)

5.7.2. For basic pay rates effective January 1, 2015, ***Executive Order 13686*** provided for:

5.7.2.1. Increased basic pay rates;

5.7.2.2. No increase for members retired before January 1, 2015; and

5.7.2.3. No entitlement to pay computed on the January 1, 2015 basic pay rates for members who retired on January 1, 2015, and who were:

5.7.2.3.1. Warrant officers;

5.7.2.3.2. Fleet Reservists or Fleet Marine Corps Reservists (December 31, 2014 transfers); or

5.7.2.3.3. Subject to the URDA. For additional information about the URDA, see Chapter 1. Additionally, URDA is defined at paragraph 2.13.

5.8 COLA and Basic Pay Rates FY 2016

5.8.1. A COLA, effective December 1, 2015, provided:

5.8.1.1. Retired pay COLA for those who first became members of a uniformed service before September 8, 1980, is specified according to the effective date of their retirement as follows:

Retirement Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2015	0.0 percent	1401a(b)(2)
January 1 – December 31, 2015	0.0 percent	1401a(c) & 1401a(f)

5.8.1.2. For those who first became members of a uniformed service on or after September 8, 1980, the retired pay COLA is set out according to the effective date of their retirement as follows:

Retirement Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2015	0.0 percent	1401a(b)(2)
January 1 – March 31, 2015	0.0 percent	1401a(d) & 1401a(f)
April 1 – June 30, 2015	0.0 percent	1401a(d) & 1401a(f)
July 1 – September 30, 2015	0.0 percent	1401a(d) & 1401a(f)
October 1 – December 31, 2015	0.0 percent	1401a(d) & 1401a(f)

5.8.1.3. The retired pay COLA for those who first became members of the uniformed service on or after August 1, 1986, and also elected to receive a CSB under the provisions of 37 U.S.C. § 322 (as in effect before January 28, 2008) or 37 U.S.C. § 354 is specified according to the date of their retirement, as follows:

Retirement Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2015	0.0 percent	1401a(e)
January 1 – March 31, 2015	0.0 percent	1401a(e) & 1401a(f)
April 1 – June 30, 2015	0.0 percent	1401a(e) & 1401a(f)
July 1 – September 30, 2015	0.0 percent	1401a(e) & 1401a(f)
October 1 – December 31, 2015	0.0 percent	1401a(e) & 1401a(f)

5.8.2. For basic pay rates effective January 1, 2016, ***Executive Order 13715*** provided for:

5.8.2.1. Increased basic pay rates;

5.8.2.2. No increase for members retired before January 1, 2016; and

5.8.2.3. No entitlement to pay computed on the January 1, 2016 basic pay rates for members who retired on January 1, 2016, and who were:

5.8.2.3.1. Warrant officers;

5.8.2.3.2. Fleet Reservists or Fleet Marine Corps Reservists (December 31, 2015 transfers); or

5.8.2.3.3. Subject to the URDA. For additional information about the URDA, see Chapter 1. Additionally, URDA is defined at paragraph 2.13.

5.9 COLA and Basic Pay Rates FY 2017

5.9.1. A COLA, effective December 1, 2016, provided:

5.9.1.1. For those who first became members of a uniformed service before September 8, 1980, the retired pay COLA is specified according to the effective date of their retirement as follows:

Retirement Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2016	0.3 percent	1401a(b)(2)
January 1 – December 31, 2016	0.3 percent	1401a(c)

5.9.1.2. For those who first became members of a uniformed service on or after September 8, 1980, the retired pay COLA is specified according to the effective date of their retirement as follows:

Retirement Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2016	0.3 percent	1401a(b)(2)
January 1 – March 31, 2016	0.3 percent	1401a(d)
April 1 – June 30, 2016	0.3 percent	1401a(d)
July 1 – September 30, 2016	0.3 percent	1401a(d)
October 1 – December 31, 2016	0.0 percent	1401a(d)

5.9.1.3. For those who first became members of the uniformed service on or after August 1, 1986, and also elected to receive a CSB under the provisions of 37 U.S.C. § 322 (as in effect before January 28, 2008) or 37 U.S.C. § 354, the retired pay COLA is specified according to the date of their retirement, as follows:

Retirement Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2016	0.3 percent	1401a(e)
January 1 – March 31, 2016	0.3 percent	1401a(e) & 1401a(f)
April 1 – June 30, 2016	0.3 percent	1401a(e) & 1401a(f)
July 1 – September 30, 2016	0.0 percent	1401a(e)
October 1 – December 31, 2016	0.0 percent	1401a(e)

5.9.2. For basic pay rates effective January 1, 2017, ***Executive Order 13756*** provided for:

5.9.2.1. Increased basic pay rates;

5.9.2.2. No increase for members retired before January 1, 2017; and

5.9.2.3. No entitlement to pay computed on the January 1, 2017 basic pay rates for members who retired on January 1, 2017, and who were:

5.9.2.3.1. Warrant officers;

5.9.2.3.2. Fleet Reservists or Fleet Marine Corps Reservists (December 31, 2016 transfers); or

5.9.2.3.3. Subject to the URDA. For additional information about the URDA, see Chapter 1. Additionally, URDA is defined at paragraph 2.13.

5.10 COLA and Basic Pay Rates FY 2018

5.10.1. A COLA, effective December 1, 2017, provided:

5.10.1.1. For those who first became members of a uniformed service before September 8, 1980, the retired pay COLA is specified according to the effective date of their retirement as follows:

Retirement Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2017	2.0 percent	1401a(b)(2)
January 1 – December 31, 2017	1.8 percent	1401a(c)

5.10.1.2. For those who first became members of a uniformed service on or after September 8, 1980, the retired pay COLA is specified according to the effective date of their retirement as follows:

Retirement Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2017	2.0 percent	1401a(b)(2)
January 1 – March 31, 2017	1.8 percent	1401a(d)
April 1 – June 30, 2017	1.0 percent	1401a(d)
July 1 – September 30, 2017	0.4 percent	1401a(d)
October 1 – December 31, 2017	0.0 percent	1401a(d)

5.10.1.3. For those who first became members of the uniformed service on or after August 1, 1986, and also elected to receive a CSB under the provisions of 37 U.S.C. § 322 (as in effect before January 28, 2008) or 37 U.S.C. § 354, the retired pay COLA is specified according to the date of their retirement, as follows:

Retirement Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2017	1.0 percent	1401a(e)
January 1 – March 31, 2017	1.0 percent	1401a(e)
April 1 – June 30, 2017	0.5 percent	1401a(e)
July 1 – September 30, 2017	0.2 percent	1401a(e)
October 1 – December 31, 2017	0.0 percent	1401a(e)

5.10.2. For basic pay rates effective January 1, 2018, ***Executive Order 13819*** provided for:

5.10.2.1. Increased basic pay rates;

5.10.2.2. No increase for members retired before January 1, 2018; and

5.10.2.3. No entitlement to pay computed on the January 1, 2018 basic pay rates for members who retired on January 1, 2018, and who were:

5.10.2.3.1. Warrant officers;

5.10.2.3.2. Fleet Reservists or Fleet Marine Corps Reservists (December 31, 2017 transfers); or

5.10.2.3.3. Subject to the URDA. For additional information about the URDA, see Chapter 1. Additionally, URDA is defined at paragraph 2.13.

5.11 COLA and Basic Pay Rates FY 2019

5.11.1. A COLA, effective December 1, 2018, provided:

5.11.1.1. For those who first became members of a uniformed service before September 8, 1980, the retired pay COLA is specified according to the effective date of their retirement as follows:

Retirement Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2018	2.8 percent	1401a(b)(2)
January 1 – December 31, 2018	2.4 percent	1401a(c)

5.11.1.2. For those who first became members of a uniformed service on or after September 8, 1980, including those members covered by the Blended Retirement System, the retired pay COLA is specified according to the effective date of their retirement as follows:

Retirement Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2018	2.8 percent	1401a(b)(2)
January 1 – March 31, 2018	2.4 percent	1401a(d)
April 1 – June 30, 2018	1.5 percent	1401a(d)
July 1 – September 30, 2018	0.3 percent	1401a(d)
October 1 – December 31, 2018	0.0 percent	1401a(d)

5.11.1.3. For those who first became members of the uniformed service on or after August 1, 1986, and also elected to receive a CSB under the provisions of 37 U.S.C. § 322 (as in effect before January 28, 2008) or 37 U.S.C. § 354, the retired pay COLA is specified according to the date of their retirement, as follows:

Retirement Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2018	1.8 percent	1401a(e)
January 1 – March 31, 2018	1.6 percent	1401a(e)
April 1 – June 30, 2018	1.0 percent	1401a(e)
July 1 – September 30, 2018	0.1 percent	1401a(e)
October 1 – December 31, 2018	0.0 percent	1401a(e)

5.11.2. For basic pay rates effective January 1, 2019, ***Executive Order 13856*** provided for:

5.11.2.1. Increased basic pay rates;

5.11.2.2. No increase for members retired before January 1, 2019; and

5.11.2.3. No entitlement to pay computed on the January 1, 2019 basic pay rates for members who retired on January 1, 2019, and who were:

5.11.2.3.1. Warrant officers;

5.11.2.3.2. Fleet Reservists or Fleet Marine Corps Reservists (December 31, 2018 transfers); or

5.11.2.3.3. Subject to the URDA. For additional information about the URDA, see Chapter 1. Additionally, URDA is defined at paragraph 2.13.

5.12 COLA and Basic Pay Rates FY 2020

5.12.1. A COLA, effective December 1, 2019, provided:

5.12.1.1. For those who first became members of a uniformed service before September 8, 1980, the retired pay COLA is specified according to the effective date of their retirement as follows:

Retirement Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2019	1.6 percent	1401a(b)(2)
January 1 – December 31, 2019	1.6 percent	1401a(c)

5.12.1.2. For those who first became members of a uniformed service on or after September 8, 1980, including those members covered by the High-3 or Blended Retirement System, the retired pay COLA is specified according to the effective date of their retirement as follows:

Retirement Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2019	1.6 percent	1401a(b)(2)
January 1 – March 31, 2019	1.6 percent	1401a(d)
April 1 – June 30, 2019	1.6 percent	1401a(d)
July 1 – September 30, 2019	0.2 percent	1401a(d)
October 1 – December 31, 2019	0.0 percent	1401a(d)

5.12.1.3. For those who first became members of the uniformed service on or after August 1, 1986, and also elected to receive a CSB under the provisions of 37 U.S.C. § 322 (as in effect before January 28, 2008) or 37 U.S.C. § 354, the retired pay COLA is specified according to the date of their retirement, as follows:

Retirement Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2019	0.6 percent	1401a(e)
January 1 – March 31, 2019	0.6 percent	1401a(e)
April 1 – June 30, 2019	0.6 percent	1401a(e)
July 1 – September 30, 2019	0.0 percent	1401a(e)
October 1 – December 31, 2019	0.0 percent	1401a(e)

5.12.2. For basic pay rates effective January 1, 2020, ***Executive Order 13901*** provided for:

5.12.2.1. Increased basic pay rates;

5.12.2.2. No increase for members retired before January 1, 2020; and

5.12.2.3. No entitlement to pay computed on the January 1, 2020 basic pay rates for members who retired on January 1, 2020, and who were:

5.12.2.3.1. Warrant officers;

5.12.2.3.2. Fleet Reservists or Fleet Marine Corps Reservists (December 31, 2019 transfers); or

5.12.2.3.3. Subject to the URDA. For additional information about the URDA, see Chapter 1. Additionally, URDA is defined at paragraph 2.13.

5.13 COLA and Basic Pay Rates FY 2021

5.13.1. A COLA, effective December 1, 2020, provided:

5.13.1.1. For those who first became members of a uniformed service before September 8, 1980, the retired pay COLA is specified according to the effective date of their retirement as follows:

Retirement Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2020	1.3 percent	1401a(b)(2)
January 1 – December 31, 2020	1.1 percent	1401a(c)

5.13.1.2. For those who first became members of a uniformed service on or after September 8, 1980, including those members covered by the High-3 or Blended Retirement System, the retired pay COLA is specified according to the effective date of their retirement as follows:

Retirement Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2020	1.3 percent	1401a(b)(2)
January 1 – March 31, 2020	1.1 percent	1401a(d)
April 1 – June 30, 2020	0.7 percent	1401a(d)
July 1 – September 30, 2020	1.3 percent	1401a(d)
October 1 – December 31, 2020	0.0 percent	1401a(d)

5.13.1.3. For those who first became members of the uniformed service on or after August 1, 1986, and also elected to receive a CSB under the provisions of 37 U.S.C. § 322 (as in effect before January 28, 2008) or 37 U.S.C. § 354, the retired pay COLA is specified according to the date of their retirement, as follows:

Retirement Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2020	0.3 percent	1401a(e)
January 1 – March 31, 2020	0.3 percent	1401a(e)
April 1 – June 30, 2020	0.2 percent	1401a(e)
July 1 – September 30, 2020	0.3 percent	1401a(e)
October 1 – December 31, 2020	0.0 percent	1401a(e)

5.13.2. For basic pay rates effective January 1, 2021, ***Executive Order 13970*** provided for:

5.13.2.1. Increased basic pay rates;

5.13.2.2. No increase for members retired before January 1, 2021; and

5.13.2.3. No entitlement to pay computed on the January 1, 2021 basic pay rates for members who retired on January 1, 2021, and who were:

5.13.2.3.1. Warrant officers;

5.13.2.3.2. Fleet Reservists or Fleet Marine Corps Reservists (December 31, 2020 transfers); or

5.13.2.3.3. Subject to the URDA. For additional information about the URDA, see Chapter 1. Additionally, URDA is defined at paragraph 2.13.

5.14 COLA and Basic Pay Rates FY 2022

5.14.1. A COLA, effective December 1, 2021, provided:

5.14.1.1. For those who first became members of a uniformed service before September 8, 1980, the retired pay COLA is specified according to the effective date of their retirement as follows:

Retirement Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2021	5.9 percent	1401a(b)(2)
January 1 – December 31, 2021	5.7 percent	1401a(c)

5.14.1.2. For those who first became members of a uniformed service on or after September 8, 1980, including those members covered by the High-3 or Blended Retirement System, the retired pay COLA is specified according to the effective date of their retirement as follows:

Retirement Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2021	5.9 percent	1401a(b)(2)
January 1 – March 31, 2021	5.7 percent	1401a(d)
April 1 – June 30, 2021	4.4 percent	1401a(d)
July 1 – September 30, 2021	1.8 percent	1401a(d)
October 1 – December 31, 2021	0.0 percent	1401a(d)

5.14.1.3. For those who first became members of the uniformed service on or after August 1, 1986, and also elected to receive a CSB under the provisions 37 U.S.C. § 322 (as in effect before January 28, 2008) or 37 U.S.C. § 354, the retired pay COLA is specified according to the date of their retirement, as follows:

Retirement Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2021	4.9 percent	1401a(e)
January 1 – March 31, 2021	4.9 percent	1401a(e)
April 1 – June 30, 2021	3.9 percent	1401a(e)
July 1 – September 30, 2021	1.5 percent	1401a(e)
October 1 – December 31, 2021	0.0 percent	1401a(e)

5.14.2. For basic pay rates effective January 1, 2022, ***Executive Order 14061*** provided for:

5.14.2.1. Increased basic pay rates;

5.14.2.2. No increase for members retired before January 1, 2022; and

5.14.2.3. No entitlement to pay computed on the January 1, 2022 basic pay rates for members who retired on January 1, 2022, and who were:

5.14.2.3.1. Warrant officers;

5.14.2.3.2. Fleet Reservists or Fleet Marine Corps Reservists (December 31, 2021 transfers); or

5.14.2.3.3. Subject to the URDA. For additional information about the URDA, see Chapter 1. Additionally, URDA is defined at paragraph 2.13.

5.15 COLA and Basic Pay Rates FY 2023

5.15.1. A COLA, effective December 1, 2022, provided:

5.15.1.1. For those who first became members of a uniformed service before September 8, 1980, the retired pay COLA is specified according to the effective date of their retirement as follows:

Retirement Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2022	8.7 percent	1401a(b)(2)
January 1 – December 31, 2022	7.0 percent	1401a(c)

5.15.1.2. For those who first became members of a uniformed service on or after September 8, 1980, including those members covered by the High-3 or Blended Retirement System, the retired pay COLA is specified according to the effective date of their retirement as follows:

Retirement Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2022	8.7 percent	1401a(b)(2)
January 1 – March 31, 2022	7.0 percent	1401a(d)
April 1 – June 30, 2022	4.4 percent	1401a(d)
July 1 – September 30, 2022	1.2 percent	1401a(d)
October 1 – December 31, 2022	0.0 percent	1401a(d)

5.15.1.3. For those who first became members of the uniformed service on or after August 1, 1986, and also elected to receive a CSB under the provisions of 37 U.S.C. § 322 (as in effect before January 28, 2008) or 37 U.S.C. § 354, the retired pay COLA is specified according to the date of their retirement, as follows:

Retirement Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2022	7.7 percent	1401a(e)
January 1 – March 31, 2022	6.2 percent	1401a(e)
April 1 – June 30, 2022	3.9 percent	1401a(e)
July 1 – September 30, 2022	1.0 percent	1401a(e)
October 1 – December 31, 2022	0.0 percent	1401a(e)

5.15.2. For basic pay rates effective January 1, 2023, ***Executive Order 14090*** provided for:

5.15.2.1. Increased basic pay rates;

5.15.2.2. No increase for members retired before January 1, 2023; and

5.15.2.3. No entitlement to pay computed on the January 1, 2023 basic pay rates for members who retired on January 1, 2023, and who were:

5.15.2.3.1. Warrant officers;

5.15.2.3.2. Fleet Reservists or Fleet Marine Corps Reservists (December 31, 2022 transfers); or

5.15.2.3.3. Subject to the URDA. For additional information about the URDA, see Chapter 1. Additionally, URDA is defined at paragraph 2.13.

*5.16 COLA and Basic Pay Rates FY 2024

5.16.1. A COLA, effective December 1, 2023, provided:

5.16.1.1. For those who first became members of a uniformed service before September 8, 1980, the retired pay COLA is specified according to the effective date of their retirement as follows:

Retirement Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2023	3.2 percent	1401a(b)(2)
January 1 – December 31, 2023	3.1 percent	1401a(c)

5.16.1.2. For those who first became members of a uniformed service on or after September 8, 1980, including those members covered by the High-3 or Blended Retirement System, the retired pay COLA is specified according to the effective date of their retirement as follows:

Retirement Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2023	3.2 percent	1401a(b)(2)
January 1 – March 31, 2023	3.1 percent	1401a(d)
April 1 – June 30, 2023	2.2 percent	1401a(d)
July 1 – September 30, 2023	0.9 percent	1401a(d)
October 1 – December 31, 2023	0.0 percent	1401a(d)

5.16.1.3. For those who first became members of the uniformed service on or after August 1, 1986, and also elected to receive a CSB under the provisions of 37 U.S.C. § 322 (as in effect before January 28, 2008) or 37 U.S.C. § 354, the retired pay COLA is specified according to the date of their retirement, as follows:

Retirement Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2023	2.2 percent	1401a(e)
January 1 – March 31, 2023	2.2 percent	1401a(e)
April 1 – June 30, 2023	1.7 percent	1401a(e)
July 1 – September 30, 2023	0.7 percent	1401a(e)
October 1 – December 31, 2023	0.0 percent	1401a(e)

5.16.2. For basic pay rates effective January 1, 2024, ***Executive Order 14113*** provided for:

5.16.2.1. Increased basic pay rates;

5.16.2.2. No increase for members retired before January 1, 2024; and

5.16.2.3. No entitlement to pay computed on the January 1, 2024 basic pay rates for members who retired on January 1, 2024, and who were:

5.16.2.3.1. Warrant officers;

5.16.2.3.2. Fleet Reservists or Fleet Marine Corps Reservists (December 31, 2023 transfers); or

5.16.2.3.3. Subject to the URDA. For additional information about the URDA, see Chapter 1. Additionally, URDA is defined at paragraph 2.13.

*5.17 COLA and Basic Pay Rates FY 2025

5.17.1. A COLA, effective December 1, 2024, provided:

5.17.1.1. For those who first became members of a uniformed service before September 8, 1980, the retired pay COLA is specified according to the effective date of their retirement as follows:

Retirement Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2024	2.5 percent	1401a(b)(2)
January 1 – December 31, 2024	2.5 percent	1401a(c)

5.17.1.2. For those who first became members of a uniformed service on or after September 8, 1980, including those members covered by the High-3 or Blended Retirement System, the retired pay COLA is specified according to the effective date of their retirement as follows:

Retirement Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2024	2.5 percent	1401a(b)(2)
January 1 – March 31, 2024	2.5 percent	1401a(c)
April 1 – June 30, 2024	1.4 percent	1401a(d)
July 1 – September 30, 2024	0.2 percent	1401a(d)
October 1 – December 31, 2024	0.0 percent	1401a(d)

5.17.1.3. For those who first became members of the uniformed service on or after August 1, 1986, and also elected to receive a CSB under the provisions of 37 U.S.C. § 322 (as in effect before January 28, 2008) or 37 U.S.C. § 354, the retired pay COLA is specified according to the date of their retirement, as follows:

Retirement Effective	Percent Increase	10 U.S.C. Authority
Before January 1, 2024	1.5 percent	1401a(e)
January 1 – March 31, 2024	1.5 percent	1401a(e)
April 1 – June 30, 2024	0.9 percent	1401a(e)
July 1 – September 30, 2024	0.0 percent	1401a(e)
October 1 – December 31, 2024	0.0 percent	1401a(e)

5.17.2. For basic pay rates effective January 1, 2025, ***Executive Order 14132*** provided for:

5.17.2.1. Increased basic pay rates;

5.17.2.2. No increase for members retired before January 1, 2025; and

5.17.2.3. No entitlement to pay computed on the January 1, 2025 basic pay rates for members who retired on January 1, 2025, and who were:

5.17.2.3.1. Warrant officers;

5.17.2.3.2. Fleet Reservists or Fleet Marine Corps Reservists (December 31, 2024 transfers); or

5.17.2.3.3. Subject to the URDA. For additional information about the URDA, see Chapter 1. Additionally, URDA is defined at paragraph 2.13.

*Table 8-1. Full COLA Percentage Table

No.	Date of COLA	Percent
1	Sep 1, 1965	4.4
2	Dec 1, 1966	3.7
3	Apr 1, 1968	3.9
4	Feb 1, 1969	4.0
5	Nov 1, 1969	4.3
6	Aug 1, 1970	5.6
7	Jun 1, 1971	4.5
8	Jul 1, 1972	4.8
9	Jul 1, 1973	6.1
10	Jan 1, 1974	5.5
11	Jul 1, 1974	6.3
12	Jan 1, 1975	7.3
13	Aug 1, 1975	5.1
14	Mar 1, 1976	5.4
15	Mar 1, 1977	4.8
16	Sep 1, 1977	4.3
17	Mar 1, 1978	2.4
18	Sep 1, 1978	4.9
19	Mar 1, 1979	3.9
20	Sep 1, 1979	6.9
21	Mar 1, 1980	6.0
22	Sep 1, 1980	7.7
23	Mar 1, 1981	4.4
24	Mar 1, 1982	8.7
25	Apr 1, 1983 (note 1)	3.3
		3.9
26	Dec 1, 1984	3.5
27	Dec 1, 1986	1.3
28	Dec 1, 1987	4.2 Pre-Aug 86 Member 3.2 Post-Aug 86 Member
29	Dec 1, 1988	4.0 Pre-Aug 86 Member 3.0 Post-Aug 86 Member
30	Dec 1, 1989	4.7 Pre-Aug 86 Member 3.7 Post-Aug 86 Member

Table 8-1. Full COLA Percentage Table (Continued)

No.	Date of COLA	Percent
31	Dec 1, 1990	5.4 Pre-Aug 86 Member 4.4 Post-Aug 86 Member
32	Dec 1, 1991	3.7 Pre-Aug 86 Member 2.7 Post-Aug 86 Member
33	Dec 1, 1992	3.0 Pre-Aug 86 Member 2.0 Post-Aug 86 Member
34	Dec 1, 1993 (note 2)	2.6 Pre-Aug 86 Member 1.6 Post-Aug 86 Member
35	Dec 1, 1994 (note 2)	2.8 Pre-Aug 86 Member 1.8 Post-Aug 86 Member
36	Dec 1, 1995 (note 2)	2.6 Pre-Aug 86 Member 1.6 Post-Aug 86 Member
37	Dec 1, 1996	2.9 Pre-Aug 86 Member 1.9 Post-Aug 86 Member
38	Dec 1, 1997	2.1 Pre-Aug 86 Member 1.1 Post-Aug 86 Member
39	Dec 1, 1998	1.3 Pre-Aug 86 Member 0.3 Post-Aug 86 Member
40	Dec 1, 1999 (note 3)	2.4 Pre-Aug 86 Member 2.4 Post-Aug 86 Member w/o CSB 1.4 Post-Aug 86 Member w/CSB
41	Dec 1, 2000 (note 3)	3.5 Pre-Aug 86 Member 3.5 Post-Aug 86 Member w/o CSB 2.5 Post-Aug 86 Member w/CSB
42	Dec 1, 2001 (note 3)	2.6 Pre-Aug 86 Member 2.6 Post-Aug 86 Member w/o CSB 1.6 Post-Aug 86 Member w/CSB
43	Dec 1, 2002 (note 3)	1.4 Pre-Aug 86 Member 1.4 Post-Aug 86 Member w/o CSB 0.4 Post-Aug 86 Member w/CSB
44	Dec 1, 2003 (note 3)	2.1 Pre-Aug 86 Member 2.1 Post-Aug 86 Member w/o CSB 1.1 Post-Aug 86 Member w/CSB
45	Dec 1, 2004 (note 3)	2.7 Pre-Aug 86 Member 2.7 Post-Aug 86 Member w/o CSB 1.7 Post-Aug 86 Member w/CSB

Table 8-1. Full COLA Percentage Table (Continued)

No.	Date of COLA	Percent
46	Dec 1, 2005 (note 3)	4.1 Pre-Aug 86 Member 4.1 Post-Aug 86 Member w/o CSB 3.1 Post-Aug 86 Member w/CSB
47	Dec 1, 2006 (note 3)	3.3 Pre-Aug 86 Member 3.3 Post-Aug 86 Member w/o CSB 2.3 Post-Aug 86 Member w/CSB
48	Dec 1, 2007 (note 3)	2.3 Pre-Aug 86 Member 2.3 Post-Aug 86 Member w/o CSB 1.3 Post-Aug 86 Member w/CSB
49	Dec 1, 2008 (note 3)	5.8 Pre-Aug 86 Member 5.8 Post-Aug 86 Member w/o CSB 4.8 Post-Aug 86 Member w/CSB
50	Dec 1, 2009 (note 3)	0.0 Pre-Aug 86 Member 0.0 Post-Aug 86 Member w/o CSB 0.0 Post-Aug 86 Member w/CSB
51	Dec 1, 2010 (note 3)	0.0 Pre-Aug 86 Member 0.0 Post-Aug 86 Member w/o CSB 0.0 Post-Aug 86 Member w/CSB
52	Dec. 1, 2011 (note 3)	3.6 Pre-Aug 86 Member 3.6 Post-Aug 86 Member w/o CSB 2.6 Post-Aug 86 Member w/CSB
53	Dec. 1, 2012 (note 3)	1.7 Pre-Aug 86 Member 1.7 Post-Aug 86 Member w/o CSB 0.7 Post-Aug 86 Member w/CSB
54	Dec. 1, 2013 (note 3)	1.5 Pre-Aug 86 Member 1.5 Post-Aug 86 Member w/o CSB 0.5 Post-Aug 86 Member w/CSB
55	Dec. 1, 2014 (note 3)	1.7 Pre-Aug 86 Member 1.7 Post-Aug 86 Member w/o CSB 0.7 Post-Aug 86 Member w/CSB
56	Dec. 1, 2015 (note 3)	0.0 Pre-Aug 86 Member 0.0 Post-Aug 86 Member w/o CSB 0.0 Post-Aug 86 Member w/CSB
57	Dec. 1, 2016 (note 3)	0.3 Pre-Aug 86 Member 0.3 Post-Aug 86 Member w/o CSB 0.3 Post-Aug 86 Member w/CSB
58	Dec. 1, 2017 (note 3)	2.0 Pre-Aug 86 Member 2.0 Post-Aug 86 Member w/o CSB 1.0 Post-Aug 86 Member w/CSB

Table 8-1. Full COLA Percentage Table (Continued)

No.	Date of COLA	Percent
59	Dec 1, 2018 (note 3)	2.8 Pre-Aug 86 Member 2.8 Post-Aug 86 Member w/o CSB 1.8 Post-Aug 86 Member w/CSB
60	Dec 1, 2019 (note 3)	1.6 Pre-Aug 86 Member 1.6 Post-Aug 86 Member w/o CSB 0.6 Post-Aug 86 Member w/CSB
61	Dec 1, 2020 (note 3)	1.3 Pre-Aug 86 Member 1.3 Post-Aug 86 Member w/o CSB 0.3 Post-Aug 86 Member w/CSB
62	Dec 1, 2021 (note 3)	5.9 Pre-Aug 86 Member 5.9 Post-Aug 86 Member w/o CSB 4.9 Post-Aug 86 Member w/CSB
63	Dec 1, 2022 (note 3)	8.7 Pre-Aug 86 Member 8.7 Post-Aug 86 Member w/o CSB 7.7 Post-Aug 86 Member w/CSB
***64**	Dec 1, 2023 (note 3)	3.2 Pre-Aug 86 Member 3.2 Post-Aug 86 Member w/o CSB 2.2 Post-Aug 86 Member w/CSB
***65**	Dec 1, 2024 (note 3)	2.5 Pre-Aug 86 Member 2.5 Post-Aug 86 Member w/o CSB 1.5 Post-Aug 86 Member w/CSB

NOTES:

1. Effective April 1, 1983, COLA provided a 3.3 percent or 3.9 percent adjustment for members whose pay was computed on basic pay rates in effect before October 1, 1982. Members under age 62 on March 1, 1983, were entitled to a 3.3 percent increase. Members who are age 62 or older on March 1, 1983, or who retired by reason of physical disability under ***10 U.S.C., Chapter 61***, were entitled to a 3.9 percent increase. There is no entitlement to a partial COLA on April 1, 1983, for members whose pay was computed on the basic pay rates effective October 1, 1982. (The CPI declined from 292.8 in September 1982 to 290.0 in December 1982.)

2. See the associated COLA paragraph in section 4.0 to determine whether member's COLA is delayed.

3. Separate retired pay COLA is applicable for those who first became members of a uniformed service on or after August 1, 1986, who elected to receive a CSB. See Volume 7A, Chapter 66 for information on CSB.

*REFERENCES

CHAPTER 8 - BASIC PAY RATES, LEGISLATIVE CHANGES, AND COST-OF-LIVING ADJUSTMENTS (COLA) TO RETIRED PAY

1.0 – GENERAL

1.2	10 U.S.C. § 1401a(b) Public Law 85-422, June 1, 1958

2.0 – DEFINITIONS

2.1	10 U.S.C. § 1401a(b)
2.3	53 Comp. Gen. 698 Public Law 94-106, October 7, 1975
2.10	10 U.S.C. § 1401a(h)
2.13	5 U.S.C. § 8301
2.15	10 U.S.C., Chapter 1223

3.0 - MAJOR CHANGES IN THE USE OF BASIC PAY RATES AND CONDITIONS APPLICABLE TO COMPUTATION OF RETIRED PAY

3.1	10 U.S.C. § 1401a Public Law 88-132, October 2, 1963
3.2	10 U.S.C. § 1401a 10 U.S.C. § 1401a(c) through (e) Public Law 90-207, October 1, 1967 10 U.S.C. § 1401a(e) Public Law 98-94, section 921, September 24, 1983
3.3	10 U.S.C. § 1401a Public Law 91-179, October 31, 1969 Public Law 94-440, October 1, 1976
3.4	Public Law 85-422, June 1, 1958 53 Comp. Gen. 698
3.5	10 U.S.C. § 1401a(f) Public Law 94-106, October 7, 1975 10 U.S.C. § 1402 Public Law 113-66, section 631, December 26, 2013
3.6	10 U.S.C. § 1407 Public Law 96-342, September 8, 1980
3.7	5 U.S.C. § 8301(a) and (b) Public Law 98-270, April 18, 1984
3.8	10 U.S.C., Chapters 61 and 1223

REFERENCES (Continued)

5.0 – PROVISIONS OF PAY CHANGES, EXCEPTIONS, AND SPECIAL COMPUTATIONS STARTING DECEMBER 2005

5.1.1	OUSD (P&R) Memo, November 17, 2009
5.1.2	Public Law 111-84, October 28, 2009 Executive Order 13525, December 23, 2009
5.2.1	OUSD (P&R) Memo, November 12, 2010
5.2.2	Executive Order 13561, December 22, 2010
5.3	Public Law 111-383, section 631, January 7, 2011
5.4.1	OUSD (P&R) Memo, November 22, 2011
5.4.2	Executive Order 13594, December 19, 2011
5.5.1	Office of the Assistant Secretary of Defense (OASD) (Manpower and Reserve Affairs (M&RA)) Memo, November 08, 2012
5.5.2	Executive Order 13641, April 5, 2013
5.6.1	OASD (M&RA) Memo, November 14, 2013
5.6.2	Executive Order 13655, December 23, 2013
5.7.1	OASD (M&RA) Memo, November 13, 2014
5.7.2	Executive Order 13686, December 19, 2014
5.8.1	OASD (M&RA) Memo, November 5, 2015
5.8.2	Executive Order 13715, December 18, 2015
5.9.1	OASD (M&RA) Memo, November 21, 2016
5.9.2	Executive Order 13756, December 27, 2016
5.10.1	OASD (M&RA) Memo, November 27, 2017
5.10.2	Executive Order 13819, December 22, 2017
5.11.1	OASD (M&RA) Memo, November 1, 2018
5.11.2	Executive Order 13856, December 28, 2018
5.12.1	OASD (M&RA) Memo, October 30, 2019
5.12.2	Executive Order 13901, December 26, 2019
5.13.1	OASD (M&RA) Memo, November 4, 2020
5.13.2	Executive Order 13970, December 31, 2020
5.14.1	OASD (M&RA) Memo, November 18, 2021
5.14.2	Executive Order 14061, December 22, 2021
5.15.1	OASD (M&RA) Memo, November 14, 2022
5.15.2	Executive Order 14090, December 23, 2022
5.16.1	OASD (M&RA) Memo, November 9, 2023
5.16.2	Executive Order 14113, December 26, 2023
5.17.1	OASD (M&RA) Memo, November 13, 2024
5.17.2	Executive Order 14132, December 23, 2024

REFERENCES (Continued)

Table 8-1

OSD (FMP) (Comp) Memo, December 10, 1999
OSD (FMP) (MPP) (Comp) Memo, November 9, 2000
OSD (FMP) (MPP) (Comp) Memo, December 20, 2001
OSD (FMP) (MPP) (Comp) Memo, March 24, 2003
OSD (FMP) (MPP) (Comp) Memo, December 8, 2003
OSD (FMP) (MPP) (Comp) Memo, December 2, 2004
OUSD (P&R) Memo, November 28, 2005
OUSD (P&R) Memo, November 8, 2006
OUSD (P&R) Memo, November 9, 2007
OUSD (P&R) Memo, October 29, 2008
OUSD (P&R) Memo, November 17, 2009
OUSD (P&R) Memo, November 12, 2010
OUSD (P&R) Memo, November 22, 2011
OASD (M&RA) Memo, November 8, 2012
OASD (M&RA) Memo, November 14, 2013
OASD (M&RA) Memo, November 13, 2014
OASD (M&RA) Memo, November 5, 2016
OASD (M&RA) Memo, November 21, 2015
OASD (M&RA) Memo, November 21, 2016
OASD (M&RA) Memo, November 27, 2017
OASD (M&RA) Memo, November 1, 2018
OASD (M&RA) Memo, October 30, 2019
OASD (M&RA) Memo, November 4, 2020
OASD (M&RA) Memo, November 18, 2021
OASD (M&RA) Memo, November 14, 2022
OASD (M&RA) Memo, November 9, 2023
OASD (M&RA) Memo, November 13, 2024

VOLUME 7B, CHAPTER 9: "ADVANCEMENTS ON RETIRED LIST"

SUMMARY OF MAJOR CHANGES

Changes are identified in this table and also denoted by blue font.

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

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

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

The previous version dated February 2023 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated hyperlinks and formatted chapter to comply with current administrative instructions.	Revision

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CHAPTER 9

ADVANCEMENTS ON RETIRED LIST

1.0 GENERAL

1.1 Overview

Enlisted Service members and warrant officers who held a higher grade than their retired grade can be advanced on the retired list. Title 10, United States Code (U.S.C.), sections 7344, 8334, and 9344 (***10 U.S.C. § 7344***, ***10 U.S.C. § 8334***, and ***10 U.S.C. § 9344***) entitle certain retired members who retired with less than 30 years of active service to be advanced to the highest grade satisfactorily held when their active service plus service on the retired list totals 30 years. The Secretary of the Military Department concerned (or designee) from which the member retired is responsible for determining whether to advance a member on the retired list. Chapter 1 covers grade at placement on the retired list.

1.2 Purpose

This chapter provides an overview of the requirements for advancements on the retired list of:

1.2.1. Retired members;

1.2.2. Fleet Reservists, and Fleet Marine Corps Reservists, who are retired and whose active service, inactive service (Navy or Marine Corps members only), and service on the retired list or in the Fleet Reserve or Fleet Marine Corps Reserve totals 30 years; and

1.2.3. Members who are found not physically qualified for retention in the Fleet Reserve or Fleet Marine Corps Reserve.

1.3 Authoritative Guidance

The pay policies and requirements established by DoD in this chapter are derived primarily from, and prepared in accordance with the U.S.C., including Title 10. Due to the subject matter in this chapter, the list of authoritative sources is extensive. The specific statutes, regulations, and other applicable guidance that govern each individual section are listed in a reference section at the end of the chapter.

2.0 ADVANCEMENTS

2.1 Air Force

A member of the Air Force who retires with less than 30 years of active service is entitled, when his active service plus his service on the retired list totals 30 years, to be advanced on the retired list to the highest grade in which the member served on active duty satisfactorily (or in the

case of the National Guard, in which he served on full-time duty satisfactorily), as determined by the Secretary of the Air Force. This applies to:

2.1.1. Warrant officers of the Air Force;

2.1.2. Enlisted members of the Air Force; and

2.1.3. Reserve enlisted members of the Air Force who, at the time of retirement, are serving on active duty (or, in the case of members of the National Guard, on full-time duty).

2.2 Army

2.2.1. A member of the Army who retires with less than 30 years of service is entitled, when his active service plus service on the retired list totals 30 years, to be advanced on the retired list to the highest grade served on active duty satisfactorily, as determined by the Secretary of the Army.

2.2.2. The Army Grade Determination Review Board (AGDRB) reviews each case individually to determine the highest grade served during active service satisfactorily. This is not an automatic advancement on the retired list and applies to warrant officers of the Army; enlisted members of the Regular Army; and Reserve enlisted members of the Army who, at the time of retirement, were serving on active duty.

2.2.3. Members who retired prior to July 12, 2002, without a grade determination review by the AGDRB, must apply to the AGDRB to initiate the grade determination process. Advancements will not occur until the member reaches the 30-year mark, in accordance with ***Army Regulation 15-80***. If an application is submitted after the 30-year mark, then the effective date of advancement and pay is retroactive to the date of the application to the AGDRB. This applies to:

2.2.3.1. Warrant officers of the Army;

2.2.3.2. Enlisted members of the Regular Army; and

2.2.3.3. Reserve enlisted members of the Army, who at the time of retirement, were serving on active duty (or, in the case of members of the National Guard, on full-time duty).

2.3 Navy and Marine Corps

2.3.1. A member of the naval service who retires with less than 30 years of active service, or who is transferred to the Fleet Reserve or Fleet Marine Corps Reserve, is entitled to be advanced on the retired list to the highest grade in which he served on active duty satisfactorily as determined by the Secretary of the Navy when:

2.3.1.1. The member's active service plus their service on the retired list; or

2.3.1.2. The member's service in the Fleet Reserve or the Fleet Marine Corps Reserve totals 30 years as determined by the Secretary of the Navy.

2.3.2. This applies to:

2.3.2.1. Warrant officers of the naval service;

2.3.2.2. Enlisted members of the Regular Navy and Regular Marine Corps; and

2.3.2.3. Reserve enlisted members of the Navy and Marine Corps who, at the time of retirement or transfer to Fleet Reserve or Fleet Marine Corps Reserve, are serving on active duty.

2.3.3. When a member of the Fleet Reserve or Fleet Marine Corps Reserve has completed 30 years of service, or when the member is found not physically qualified for retention in the Fleet Reserve or Fleet Marine Corps Reserve, as a result of the required quadrennial (every 4 years) physical examination under 10 U.S.C. § 8385, the member may be transferred to:

2.3.3.1. The retired list of the Regular Navy or Regular Marine Corps, if the member was a member of the Regular Navy or Regular Marine Corps at the time of the member's transfer to the Fleet Reserve or Fleet Marine Corps Reserve; or

2.3.3.2. The appropriate Retired Reserve, if the member was a member of the Navy Reserve or Marine Corps Reserve at the time of the member's transfer to the Fleet Reserve or Fleet Marine Corps Reserve.

3.0 EFFECTS ON PAY

3.1 Reduction in Pay Due to Advancement

There is no absolute requirement that a member of the armed forces be advanced on the retired list. If advancement and recomputation results in a reduction of retired pay for the member and is based solely on administrative determination, then, prior to the advancement, the member should be consulted by the military service and advised that the member's retired pay would be reduced if advanced.

3.1.1. If an enlisted member is advanced on the retired list, the retired pay must be recomputed even though a reduction of retired pay would result.

3.1.2. Warrant officers advanced on the retired list are entitled to use only years of active service in determining the percentage multiplier used in computing retired pay for the advanced grade.

3.2 Computation of Retired Pay

Retired pay may be computed at the higher grade in which a member had served satisfactorily without regard to whether the higher grade was temporary or permanent or if the Military Service in which the member held the higher grade is not the Military Service from which the member retired. Where required by statute, the Secretary of the Military Department (or designee) in which the member performed service at the higher grade must provide an administrative approval confirming the member's satisfactory performance at the higher grade.

3.3 Extraordinary Heroism

An enlisted member who was awarded a 10 percent increase in retired pay because of extraordinary heroism performed in the line of duty, is no longer eligible to continue receiving the additional 10 percent upon advancement to officer rank.

3.4 Recomputation of Retired Pay

A member of the armed forces advanced on the retired list is entitled to a recomputation of retired pay by:

3.4.1. Using the rate of monthly basic pay for the grade on the initial date of retirement or transfer if the member first entered a Uniformed Service prior to September 8, 1980, or using the high 36 months retired pay base if the member entered a Uniformed Service after September 7, 1980;

3.4.2. Multiplying the appropriate percentage under ***10 U.S.C. § 1409*** by the total number of years of active service using whole months actually served, in excess of whole years, as 1/12 of a year;

3.4.3. Reducing the percentage determined under subparagraph 3.4.2, in the case of a member who first entered a uniformed service after July 31, 1986, has elected to receive a bonus under ***37 U.S.C. § 354***, has less than 30 years of creditable service, and is under the age of 62 at the time of retirement by:

3.4.3.1. One percentage point for each full year that the member's years of creditable service are less than 30; and

3.4.3.2. One-twelfth of 1 percentage point for each month by which the member's years of creditable service (after counting all full years of such service) are less than a full year; and

3.4.4. Applying all applicable cost-of-living adjustments from the date of initial retirement or transfer

4.0 RESTORATION OF FORMER GRADE

Each retired warrant officer, enlisted member of the Regular Army or Air Force, or enlisted member retired from the Fleet Reserve or Fleet Marine Corps Reserve who has been advanced on

the retired list to a higher commissioned grade, within 3 months after advancement, may apply to the Secretary of the Military Department concerned (or designee) for restoration to the former warrant officer or enlisted grade. If the Secretary of the Military Department concerned (or designee) approves the request, then the member may be restored to the former warrant officer or enlisted grade. A member so restored thereafter is considered for all purposes to be a warrant officer or an enlisted member, as applicable.

REFERENCES

CHAPTER 9 – ADVANCEMENTS ON RETIRED LIST

1.0 – GENERAL

10 U.S.C. § 7344
10 U.S.C. § 8334
10 U.S.C. § 9344

2.0 – ADVANCEMENTS

2.1	10 U.S.C. §§ 7344 and 9344
2.2	10 U.S.C. § 7344 Army Regulation 15-80
2.3	10 U.S.C. § 8331 10 U.S.C. § 8334 10 U.S.C. § 8262(a)

3.0 – EFFECTS ON PAY

3.1	Comp Gen B-155940, February 23, 1965 Comp Gen B-156576, July 22, 1965
3.2	Comp Gen B-164281, March 23, 1970
3.3	10 U.S.C. § 12739 10 U.S.C. § 9361
3.4	10 U.S.C. § 9362 10 U.S.C. § 7362 10 U.S.C. § 8262
3.4.1	Public Law 96-342, section 813, September 8, 1980 10 U.S.C. § 1402a
3.4.2	10 U.S.C. § 1409
3.4.2.3	10 U.S.C. § 1409 10 U.S.C. § 1401a(f)

4.0 – RESTORATION OF FORMER GRADE

10 U.S.C. § 7345
10 U.S.C. § 9345
10 U.S.C. § 8262

VOLUME 7B, CHAPTER 10: "CORRECTION OF RECORDS"

SUMMARY OF MAJOR CHANGES

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PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated chapter and formatting to comply with administrative instructions.	Revision
3.2.1	Rephrased subparagraph for clarity.	Revision

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CHAPTER 10

CORRECTION OF RECORDS

1.0 GENERAL

1.1 Purpose

This chapter provides guidance on the payment of claims resulting from the correction of military records. The Boards for Correction of Military Records are the highest level of administrative review within the DoD with the mission to correct errors or remove injustices from military records.

1.2 Authoritative Guidance

The pay policies and requirements established by the DoD in this chapter are derived primarily from and prepared in accordance with the United States Code (U.S.C.), including Title 10. Due to the subject matter in the chapter, the list of authoritative sources is extensive. The specific statutes, regulations, and other applicable guidance that govern each individual section are listed in a reference section at the end of the chapter.

2.0 BACKGROUND

The Secretary of a Military Department concerned may correct any military record of the Secretary's department when the Secretary considers it necessary to correct an error or remove an injustice. The Secretary will establish procedures for the correction of a military record as approved by the Secretary of Defense. The Secretary of a Military Department, acting through a panel comprised of civilians (Board) of the executive part of that Military Department, will make such corrections. The responsibilities for the Correction of Records can be found under the ***DoD Directive (DoDD) 1332.41***, "Boards for Correction of Military Records (BCMRs) and Discharge Review Boards (DRBs)."

2.1 Final and Conclusive

Corrections of military records are final and conclusive on all officers of the United States except when such corrections were obtained through fraud.

2.2 Reaffirmation of Existing Facts

A reaffirmation of existing facts already in the original record does not constitute a proper correction of that record. A proper correction and a right to the payment of money must be a result of a change of facts from those already in the original record, or an addition or deletion of a fact. A recounting of existing facts does not avoid the application of the statute of limitations.

2.3 Statute of Limitations

If a payment is due as a result of a correction of record, the claim for such payment accrues on the date of the correction. A claimant has 6 years from the date of the correction of record to claim the payment owed as a result of the correction of record.

Example: A member of the Navy is transferred to the Fleet Reserve or the Fleet Marine Corps Reserve on May 1, 1999, with 21 years and 3 months of service. On January 2, 2008, his or her record is corrected to show that at the time of transfer the member had 22 years and 3 months of service. Upon correction, the member is entitled to additional retainer pay from the date of transfer in accordance with his or her grade and corrected number of years of creditable service. The claim for the additional payment begins accruing on the date of the Board's decision (January 2, 2008), not on May 1, 1999. The statute of limitation period starts from the date of the record correction rather than from the date of transfer.

3.0 PAY COMPUTATION

3.1 Amounts

Payments based on a correction of military records must be made in the amounts determined to be due by applying pertinent laws and regulations to all the material facts shown in the corrected record. Generally, the payments resulting from the correction of military records are based on the:

3.1.1. Pay entitlement the member had before the correction;

3.1.2. Actual payments made for these entitlements; or

3.1.3. New pay entitlements that accrue as a result of the correction. For specific computation, see Chapter 3 concerning the entitlement to and computation of retired or retainer pay, Chapter 37 for participation in and payment of survivor annuities under the Retired Serviceman's Family Protection Plan (RSFPP), and/or Chapter 46 for the Survivor Benefit Plan (SBP).

3.2 Settlement

The settlement of retired pay, retainer pay, or survivor annuities due as a result of the correction of a military record must be reduced, as applicable, by:

* 3.2.1. Pay and allowances previously received by a member for active duty military duty or reserve duty involving the same period of time for which the member is now entitled to retired or retainer pay given the record correction;

3.2.2. Prior payments of separation pay, readjustment pay, or disability severance pay;

3.2.3. Prior payments of disability compensation, pensions, or Dependency and Indemnity Compensation made by the Department of Veterans Affairs (DVA);

3.2.4. Federal income tax;

3.2.5. Cost of participation in the RSFPP and/or SBP;

3.2.6. Dual compensation, if a retired Regular officer was employed by the United States Government prior to October 1, 1999; or

3.2.7. Prior payments of the mother's benefit received from Social Security and the amount of the spouse's Social Security entitlement, if any, resulting from the retiree's active military service.

3.3 Deductions From Pay and Allowance

Earnings received from civilian employment, self-employment, or any income protection plan (including unemployment insurance) for such employment during any period for which active duty pay and allowances are payable will be deducted from the settlement. To the extent authorized by law and regulation, amounts found due must be reduced by the amount of any existing indebtedness to the government arising from military service.

3.4 Demand for Payment

When payment cannot be made to the member because of member's death, payment may be made to member's legal representative. In the absence of a demand for payment by the legal representative, payments are made:

3.4.1. To the surviving spouse, heir, or beneficiaries, in the order prescribed by the law applicable to that kind of payment; or

3.4.2. In the order of precedence in Chapter 30, subparagraph 2.4.1.

3.5 Claimants Acceptance

A claimant's acceptance of settlement fully satisfies the claim concerned. Settlement of this claim does not preclude payment of a separate and distinct claim and acceptance of settlement does not preclude computation and adjustment when there is a mutual mistake. Payments are not authorized for any claim compensated by private law before October 25, 1951.

4.0 TAX ADJUSTMENT

See Chapter 24, section 10.0.

5.0 APPROPRIATION CHARGES

Any amounts of retired pay, retainer pay, combat related special compensation, concurrent military retirement pay and DVA disability compensation, and SBP annuities that are due in the future as a result of the correction are charged to the DoD Military Retirement Fund. Any other amounts due and payable for past periods as a result of the correction (for a time period before the date of approval by the Secretary of the Military Department) are paid utilizing an applicable appropriation.

6.0 RESTRICTIONS

No payment resulting from a correction of records may be made for a benefit to which the claimant might later become entitled under the laws and regulations administered by the Secretary of Veterans Affairs.

REFERENCES

CHAPTER 10 – CORRECTION OF RECORDS

2.0 – BACKGROUND	
	10 U.S.C. § 1552(a)(2)
	DoDD 1332.41, February 2, 2022
2.1	10 U.S.C. § 1552(a)(4)
2.2	B-179467, May 2, 1974
	39 Comptroller General 178 (1959)
	Defense Office of Hearing and Appeals Claims Case Number 04090713, (December 8, 2004)
2.3	10 U.S.C. § 1552(a) and (b)
	31 U.S.C. § 3702
3.0 – PAY COMPUTATION	
3.4	10 U.S.C. § 1552(c)(2)
	10 U.S.C. § 2771
3.5	10 U.S.C. § 1552(c)(3)
5.0 – APPROPRIATION CHARGES	
	10 U.S.C. § 1552(c)(1)
6.0 – RESTRICTIONS	
	10 U.S.C. § 1552(e)

VOLUME 7B, CHAPTER 11: "REMOVAL FROM THE TEMPORARY DISABILITY RETIRED LIST (TDRL)"

SUMMARY OF MAJOR CHANGES

Changes are identified in this table and also denoted by blue font.

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

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

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

The previous version dated May 2022 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated hyperlinks and formatting to comply with current administrative instructions.	Revision
5.2, 5.3, and 5.4	Renumbered and rephrased paragraphs with reference to 10 U.S.C. § 1201, 10 U.S.C. § 1204, and 10 U.S.C. § 1210 for clarity.	Revision
6.5	Updated with clarification on the recoupment or collection as a debt for Disability Severance Pay subsequent to the entitlement of military retirement pay.	Revision
References	Updated references.	Revision

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CHAPTER 11

REMOVAL FROM THE TEMPORARY DISABILITY RETIRED LIST (TDRL)

1.0 GENERAL

1.1 Purpose

The purpose of this chapter is to provide information and guidance for the Secretary concerned and members who are on the TDRL or become eligible for placement on the TDRL because of physical disability in accordance with Title 10, United States Code (U.S.C.), Chapter 61. A Service member may be placed on the TDRL when the member meets the requirements for permanent disability retirement, except that the member's disability is not determined to be stable. A disability must be determined to be stable when the preponderance of medical evidence indicates the severity of the condition will probably not change. A determination on whether a disability is stable must occur within 5 years of the member being placed on the TDRL prior to January 1, 2017, or within 3 years for members placed on the TDRL on or after January 1, 2017. TDRL must be managed to meet the requirements under 10 U.S.C., Chapter 61 for periodic physical examination, suspension of retired pay, and prompt removal from the TDRL.

1.2 Authoritative Guidance

The pay policies and requirements established by Department of Defense (DoD) in this chapter are derived primarily from, and prepared in accordance with Title 10 of the U.S.C. Due to the subject matter in this chapter, the list of authoritative sources is extensive. The specific statutes, regulations, and other applicable guidance that govern each individual section are listed in a reference section at the end of the chapter.

2.0 TDRL

2.1 Placement on the TDRL

If the Secretary concerned determines that a member is unfit to perform the duties of his or her office, grade, rank, or rating because of physical disability that would qualify for disability retirement, except that the member’s disability is not determined to be stable, the member may be placed on the TDRL. For retired pay computations, see Chapter 3.

2.2 Members Eligible to be Placed on the TDRL

The following members are eligible upon determination by the Secretary concerned for placement on the TDRL:

2.2.1. A member of a regular component of the Armed Forces entitled to basic pay;

2.2.2. Any other member of the Armed Forces entitled to basic pay who has been called or ordered to active duty (other than for training under ***10 U.S.C., section 10148(a)***) for a period of more than 30 days; or

2.2.3. Any other member of the Armed Forces who is on active duty but is not entitled to basic pay by reason of ***37 U.S.C. § 502(b)*** due to authorized absence to participate in an educational program, or for an emergency purpose, as determined by the Secretary concerned.

2.3 Requirements While on the TDRL

A member may be placed on the TDRL upon a determination by the Secretary concerned that the member meets the requirements for permanent disability retirement, except that the member's disability is not determined to be stable. The following requirements under ***10 U.S.C. § 1210*** must be met by the member and/or the Secretary of the Military Department concerned (or designee), as applicable, in maintaining the TDRL.

2.3.1. A member on the TDRL must be given a physical examination at least once every 18 months to determine whether there has been a change in the disability, for which the member was temporarily retired.

2.3.2. The maximum period a member may be carried on the TDRL is:

2.3.2.1. Five years after the date the member's name was placed on the TDRL, if the member was placed on the TDRL prior to January 1, 2017; or

2.3.2.2. Three years after the date the member was placed on the TDRL, if the member was placed on the TDRL on or after January 1, 2017.

2.3.3. The Secretary of the Military Department concerned (or designee) may make a final determination as to the member's disability after a periodic physical examination and will make a final determination no later than the expiration date of the member's eligibility to be on the TDRL. If, at the time of that determination, the physical disability for which the member's name was carried on the TDRL still exists, it is considered to be of a permanent nature and stable.

3.0 TERMINATION DATE OF TEMPORARY DISABILITY RETIRED PAY

3.1 Final Determination by the Secretary of the Military Department Concerned

The Secretary concerned makes a final determination that a member on the TDRL is either fit for duty or unfit for duty. A qualified member found fit for duty may be returned to active duty, appointed, reappointed, enlisted or reenlisted in a reserve component, transferred to the inactive reserve, or transferred to the Fleet Reserve or the Fleet Marine Corps Reserve. If the member declines these options and is otherwise eligible, he or she may be retired or discharged without

disability. A qualified member found unfit for duty will be separated with either a disability severance or transferred to the Permanent Disability Retired List (PDRL).

3.2 Termination of Disability Retired Pay

Unless immediately transferred to the PDRL, the disability retired pay of a member terminates on the earlier of the following:

3.2.1. The date of recall to active duty;

3.2.2. The date of resumption of status in Fleet Reserve or Fleet Marine Corps Reserve;

3.2.3. The date of appointment, reappointment, enlistment, or reenlistment in the reserve forces, including the inactive reserve;

3.2.4. The date of discharge, if a qualified member declines any offer in subparagraphs 3.2.1 through 3.2.3;

3.2.5. The date a member's disability is determined to be less than 30 percent, if the member will be separated for physical disability;

3.2.6. Any date specified by the Secretary concerned in the event the member fails to report for a periodic physical examination; or

3.2.7. If a member is not otherwise removed from the TDRL for any of the reasons stated in subparagraphs 3.2.1 through 3.2.6, the member's disability retired pay will terminate upon expiration of:

3.2.7.1. The 5-year period after the date the member was placed on the TDRL, if the member was placed on the TDRL prior to January 1, 2017, or

3.2.7.2. The 3-year period after the date the member was placed on the TDRL, if the member was placed on the TDRL on or after January 1, 2017.

3.3 Notification to Department of Veterans Affairs (VA)

If a total or partial VA waiver of retired pay is in effect on the date of the retiree's discharge from the TDRL, Defense Finance and Accounting Service, Cleveland (DFAS-CL) must notify the appropriate VA office of the effective date of discharge. The notification, if applicable, should include the amount of Disability Severance Pay (DSP) entitlement, and whether the disability resulting in that pay incurred in the line of duty in a combat zone or from performance of duty in combat-related operations. When available, DFAS-CL will also provide the VA with the DoD assigned disability codes for which the DSP was paid.

4.0 FOUND FIT FOR DUTY

4.1 Determined to be Physically Fit for Duty

If, as a result of the physical examination or determination by the Secretary of the Military Department concerned (or designee), as referenced in section 2.0, it is determined that the member is physically fit to perform the duties of the office, grade, rank, or rating, the member will be removed from the TDRL. See Table 11-1.

4.2 Available Options for Member Found Fit for Duty

Any member removed from the TDRL may, with his or her consent, be recalled to active duty, appointed, reappointed, enlisted, or reenlisted; resume status in the Fleet Reserve or Fleet Marine Corps Reserve; or be placed on the non-disability retired list, if eligible. A member found fit for duty, who does not consent to recall, appointment, reappointment, enlistment, reenlistment, resumption of status, or placement on a retired list, must be discharged without disability as soon as practicable.

5.0 FOUND UNFIT FOR DUTY

5.1 Determined to be Physically Unfit for Duty

If it is established by the physical examination or determination by the Secretary of the Military Department concerned that the member is physically unfit to perform the duties of the office, grade, rank, or rating, and that the disability is of a permanent nature, the member will be removed from the TDRL (referenced in section 3.0). Except for members approved for permanent limited duty, a member who is found to be unfit will be retired, if eligible for retirement, or if not eligible for retirement, separated. DSP is described in Volume 7A, Chapter 35. See Table 11-1.

*5.2 Physical Disability of at Least 30 Percent

If the member's physical disability is determined to be at least 30 percent under the standard schedule of rating disabilities in use by the VA at the time of the determination, the member may be removed from the TDRL and will be retired by reason of permanent physical disability, pursuant to ***10 U.S.C. § 1201*** or ***10 U.S.C. § 1204*** with retired pay computed under ***10 U.S.C. § 1401***. See Table 11-1, Rule 3.

*5.3 Physical Disability Less Than 30 Percent and at Least 20 Years of Service

If the member's physical disability is determined to be less than 30 percent under the standard schedule of rating disabilities in use by the VA at the time of the determination, and the member has at least 20 years of service, the member may be removed from the TDRL and will be retired by reason of permanent physical disability, pursuant to 10 U.S.C. § 1201 or 10 U.S.C. § 1204, with retired pay computed under 10 U.S.C. § 1401. See Table 11-1, Rule 2.

*5.4 Physical Disability Less Than 30 Percent and Less Than 20 Years of Service

If the member's physical disability is determined to be less than 30 percent under the standard schedule of rating disabilities in use by the VA at the time of the determination, and the member has less than 20 years of service, the member may be separated by reason of permanent physical disability with DSP. See Table 11-1, Rule 1.

6.0 DISABILITY SEVERANCE PAY (DSP)

6.1 DSP

A member removed from the TDRL under subparagraph 5.4 may be separated with DSP as described in Volume 7A, Chapter 35.

6.2 Service Requirement for DSP

There is no minimum amount of service time required to be eligible for DSP. The maximum number of years of service for computing the DSP will be 19 years. The minimum number of years for computation purposes will be:

6.2.1. Six years in the case of a member separated from the Armed Forces for a disability incurred in the line of duty in a combat zone (as designated by the Secretary of Defense) or incurred during the performance of duty in combat-related operations as designated by the Secretary of Defense; or

6.2.2. Three years in the case of any other member.

6.3 Tax Requirement

To determine the taxability of the DSP, see Volume 7A, Chapter 35.

6.4 DSP and VA Disability Compensation

The amount of DSP received under ***10 U.S.C. § 1212*** may be subject to recoupment by the VA. The member should contact the applicable VA office for more information. Effective January 28, 2008 and later, no deduction is made in the case of DSP received by a member for a disability incurred in the line of duty in a combat zone or incurred during performance of duty in combat-related operations as designated by the Secretary of Defense. No deduction is made from any death compensation to which the former member's dependents become entitled after the member's death.

*6.5 Subsequent Entitlement to Retired Pay

DSP will be recouped or collected as a debt subsequent to the entitlement of military retired pay as follows:

6.5.1. In the event a member is separated due to physical disability and is paid DSP, and then subsequently becomes entitled to military retired or retainer pay under Chapters 71, 741, 841, 941, 1223 of Title 10 or any other provision of law, each payment of retired or retainer pay is subject to recoupment until the total amount recouped is equal to the total amount of DSP. See Chapter 4, Paragraph 6.2.

6.5.2. In the event a member is separated due to physical disability and is paid DSP, and then subsequently becomes entitled to military retired or retainer pay due to a change to his military record to show that he was retired rather than separated, the payment of DSP becomes erroneous and subject to collection as a debt. The full amount of the member's debt will be deducted from any retroactive retired pay entitlements that become due as a result of the retirement. The debt is subject to consideration for waiver under ***10 U.S.C. § 2774***. See Chapter 4, Paragraph 6.3.

Table 11-1. Removal From the TDRL

RULE	If the member's disability	the member may be	and is entitled to
1	is less than 30 percent and member has less than 20 years of service as determined by *10 U.S.C. § 1208*	discharged under *10 U.S.C § 1203* or *10 U.S.C. § 1206*	disability severance pay computed under 10 U.S.C. § 1212 and Volume 7A, Chapter 35.
2	is less than 30 percent and member has at least 20 years of service	removed from the TDRL and retired under 10 U.S.C. § 1201 or 10 U.S.C. § 1204	retired pay computed under 10 U.S.C. § 1401 and Chapter 3. The TDRL entitlement terminates on date of removal and transfer to PDRL (Notes 1 and 2).
3	is 30 percent or more	removed from the TDRL and retired under 10 U.S.C. § 1201 or 10 U.S.C. § 1204	retired pay computed under 10 U.S.C. § 1401 and Chapter 3. The TDRL entitlement terminates on date of removal and transfer to PDRL (Notes 1 and 2).
4	no longer exists and member is found fit for duty and is a member of the Army or Air Force (Note 3)	with his or her consent, recalled to active duty, appointed, reappointed, enlisted, or reenlisted	termination of disability retired pay, computed under 10 U.S.C § 1401 and Volume 7A, Chapter 35, on the date of appointment, reappointment, enlistment, reenlistment, or resumption of duties or status (Notes 1 and 2).
5	no longer exists and member is found fit for duty and is a member of the Navy, Marine Corps, or Coast Guard (Note 3)	with his or her consent, recalled to active duty, appointed, reappointed, enlisted, or reenlisted, or resume status in the Fleet Reserve or Fleet Marine Corps Reserve	termination of disability retired pay, computed under 10 U.S.C § 1401 and Volume 7A, Chapter 35, on the date of appointment, reappointment, enlistment, reenlistment, or resumption of duties or status (Notes 1 and 2).
6	no longer exists and member is found fit for duty (Note 3)	discharged without disability severance pay if member does not consent to be recalled, appointed, reappointed, enlisted, or reenlisted	no retired pay after effective date of separation under 10 U.S.C. § 1203 or 10 U.S.C. § 1206 (Note 3).

Notes:
1. The date the member completes 5 years on the TDRL supersedes this effective date. See subparagraph 2.3.2.1.
2. Effective January 1, 2017, this is the date the member completes 3 years if placed on the TDRL. See subparagraph 2.3.2.2.
3. If the member is fit, there is no disability percentage. See 10 U.S.C. § 1210(f).

*REFERENCES

CHAPTER 11 – REMOVAL FROM THE TEMPORARY DISABILITY RETIRED LIST (TDRL)

1.0 – GENERAL	10 U.S.C., Chapter 61 DoD Instruction (DoDI) 1332.18, August 5, 2014 (Incorporating Change 1, May 17, 2018)

2.0 – TEMPORARY DISABILITY RETIREMENT LIST (TDRL)

2.1	10 U.S.C. § 1202 10 U.S.C. § 1205
2.2	10 U.S.C. § 1201(c)
2.3.1	10 U.S.C. § 1210(a)
2.3.2.2	10 U.S.C. § 1210(h)
2.3.3	10 U.S.C. § 1210(b) National Defense Authorization Act (NDAA) for FY 2017, section 525

3.0 – TERMINATION DATE OF TEMPORARY DISABILITY RETIRED PAY

3.2	10 U.S.C. § 1210(c) and (d)
3.2.1	10 U.S.C. § 1211(d)(1)
3.2.2	10 U.S.C. § 1211(d)(2)
3.2.3	10 U.S.C. § 1211(d)(3)
3.2.4	10 U.S.C. § 1211(c)
3.2.5	10 U.S.C. § 1210(e)
3.2.6	10 U.S.C. § 1210(a)
3.2.7	10 U.S.C. § 1210(h) NDAA for FY 2017, section 525

4.0 – FOUND FIT FOR DUTY

4.1	10 U.S.C. § 1210(f)
4.2	10 U.S.C. § 1211(c)

5.0 – FOUND UNFIT FOR DUTY

5.1	10 U.S.C. § 1210(c), (d) and (e)
5.2	10 U.S.C. § 1201(b)(3)(B) 10 U.S.C. § 1204(4)(B) 10 U.S.C. § 1210(c) 10 U.S.C. § 1210(f)

REFERENCES (Continued)

5.3	10 U.S.C. § 1201(b)(3)(A) 10 U.S.C. § 1204(4)(A) 10 U.S.C. § 1210(d)
5.4	10 U.S.C. § 1210(e)

6.0 – DISABILITY SEVERANCE PAY

6.2	10 U.S.C. § 1212(c)
6.3	10 U.S.C. § 1212(d)
6.5	Comptroller General B-270349, Dec. 17, 1996 10 U.S.C. 1174(h)

VOLUME 7B, CHAPTER 12: "WAIVER OF RETIRED PAY"

SUMMARY OF MAJOR CHANGES

Changes are identified in this table and also denoted by blue font.

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

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

The previous version dated July 2023 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated chapter with hyperlinks and formatting to comply with current administrative instructions.	Revision
2.6	Language previously used to eliminate stigmatizing language replaced by the Office of the General Counsel with the word "incapacitated."	Revision

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CHAPTER 12

WAIVER OF RETIRED PAY

1.0 GENERAL

1.1 Purpose

This chapter provides guidance for the waiver of retired pay. It includes the member's rights to retired pay, explains the exception provisions as authorized by law to waive retired pay and the impact of Veterans benefits on retired pay.

1.1.1. Retired pay is a statutory right and, as such, cannot be waived except as authorized by law. The following statutes and regulations authorize a member to waive entitlement to retired pay:

1.1.1.1. Title 38, United States Code, section 5305 (***38 U.S.C. § 5305***) permits a member to waive military retired pay in order to receive compensation or pension from the Department of Veterans Affairs (VA).

1.1.1.2. ***Title 5, Code of Federal Regulations (CFR), section 831.301***, ***5 U.S.C. § 8332(c)***, *and* ***5 U.S.C. § 8411***, permit a member to include creditable military service in computing a civil service retirement annuity.

1.1.2. Generally, a member may not waive his or her right to retired pay. See subparagraphs 1.1.1.1 and 1.1.1.2 for exceptions. Even if retired pay is not being sent to a member on a monthly basis (for example, the member's whereabouts are unknown), the retired pay continues to accrue. Since, for income tax purposes, such retired pay is deemed to have been constructively received by the member once it is made available and can be drawn upon, it is subject to the tax withholding and reporting requirements of ordinary wages.

1.1.3. VA benefits are nontaxable income for federal, state, and local income taxation. See Chapter 24 for computation of taxable pay and Chapter 25 for federal income tax withholding.

1.1.4. VA benefits may exceed the retired pay entitlement.

1.2 Authoritative Guidance

The pay policies and requirements established by the DoD in this chapter are derived primarily from, and prepared in accordance with the U.S.C., including Titles 5, 10, 22, 31, 37, and 38. Due to the subject matter in this chapter, the list of authoritative sources is extensive. The specific statutes, regulations, and other applicable guidance that govern each individual section are listed in a reference section at the end of the chapter.

2.0 DEPARTMENT OF VETERANS AFFAIRS (VA) BENEFITS

2.1 Dual Benefits

In general, a retiree receiving retired pay who is also eligible to receive disability compensation/pension from the VA is barred from receiving concurrent payments of both retired pay and the VA benefit, unless the member elects to waive the portion of retired pay that is equal to the amount of the VA benefit awarded. However, effective January 1, 2004, pursuant to Public Law 108-136, section 641 (e), November 24, 2003, codified at ***10 U.S.C. § 1414***, certain retirees may receive both retired pay and the VA disability compensation concurrently. See Chapter 64 for additional information on concurrent receipt of both retired pay and VA disability compensation.

2.2 Improved VA Pension

A retiree receiving retired pay who also is eligible to receive an improved VA pension from the VA is not required to waive any retired pay, effective October 1, 1980.

2.3 Initial Award of VA Disability Compensation

2.3.1. The time frame for processing the initial waiver of military retired pay in favor of an initial award of VA disability compensation is in accordance with agreements set forth in the "Memorandum of Understanding (MOU) between the Department of Veterans Affairs (VA) and the Defense Finance and Accounting Service (DFAS) – Cleveland" for Retired Pay and Survivor Annuities, hereinafter referred to as "MOU".

2.3.2. Responsibility between the DFAS and the VA for recouping overpayments is in accordance with the MOU.

2.3.3. The Dual Compensation Act, ***5 U.S.C. § 5532***, which required a reduction in retired pay for military retirees employed in civil service positions, was repealed effective October 1, 1999. Prior to the repeal, when a regular retired officer employed by the Federal Government or instrumentality thereof waived his or her retired pay in lieu of VA benefits during the period of a retroactive initial award of VA benefits, all amounts classified as retired pay were subject to reduction under the dual compensation formula. Disability compensation payable by the VA is not retired pay. Payments equal to the VA compensation entitlement, and received after the effective date of the waiver, are classified as disability compensation and have never been subject to reduction under the Dual Compensation Act. If a member executes a retroactive waiver of retired pay for a period prior to October 1, 1999, then the DFAS Cleveland site must recompute any dual compensation reduction as of the retroactive effective date of the waiver. The member must authorize the VA in writing to pay any additional compensation due after deducting any retired pay overpayment. The VA will forward new pay data to the DFAS Cleveland site in accordance with the MOU.

2.4 Change in VA Disability Compensation Awards

2.4.1. For increased or reduced awards, or a statutory increase, see the MOU.

2.4.2. If a retiree is receiving Federal Employee Compensation Act benefits and is receiving VA benefits, the member will continue to receive both benefits unless the benefits are payable for the same injury.

2.5 Withdrawal of Waiver

A retiree who has waived retired pay in favor of VA benefits may withdraw the waiver and elect to receive retired pay at any time. The retiree must submit a notification of the withdrawal of the previous waiver of retired pay to the VA on VA Form 21-526, Veteran's Application for Compensation and/or Pension. The retiree will check the box on VA Form 21-526, Part V, Item 25, under the statement, "NO, I DO NOT WANT VA COMPENSATION IN LIEU OF MILITARY PAY." This renouncement of VA benefits does not preclude the retiree from filing a new waiver of retired pay at a later date, enabling the retiree to receive VA benefits again. The effective date or reinstatement of retired pay is determined by the VA procedures outlined in subparagraphs 2.5.1 and 2.5.2.

2.5.1. When the VA is the initial recipient of the request or withdrawal, the VA will notify the DFAS retired pay activity of the effective date of termination of VA benefits. The effective date is the first of the month after the month of the request for withdrawal or termination of VA benefits, whichever is later. See the MOU.

2.5.2. When the DFAS retired pay activity is the first recipient of the request for withdrawal, it will send the request to the appropriate VA office with a cover letter indicating the monthly gross retired pay. Upon receipt, the VA follows the procedure in subparagraph 2.5.1.

*2.6 Withdrawal When the Retiree is Ruled Incapacitated

The trustee or guardian may request withdrawal of a previously executed waiver of retired pay of a retired member who has been determined to be incapacitated. The VA will terminate VA benefits and the DFAS will restore retired pay. The effective date for the restoration of retired pay will be the first day of the month following the month of the termination of VA benefits. See the MOU.

2.7 Survivor Benefit Plan (SBP)

Any retiree participating in SBP who waives retired pay in favor of VA benefits may:

2.7.1. Authorize the VA to withhold the cost of the SBP from the benefits awarded and remit that amount to the cognizant retired pay activity (see Chapters 45 and 54);

2.7.2. Be subject to involuntary collection action by DFAS. Such collection action is subject to the provisions of ***31 U.S.C. § 3701(a)(1)*** and ***31 U.S.C. § 3716***; or

2.7.3. Directly remit the cost of the SBP to the cognizant retired pay activity.

3.0 CIVIL SERVICE RETIREMENT AND FEDERAL EMPLOYMENT RETIREMENT SYSTEM

3.1 Credit of Military Service for Computing Civil Service Annuity

A retiree receiving retired pay, pursuant to any provision of law authorizing such payments, who applies for a retirement annuity under the laws administered by the Office of Personnel Management (OPM), or the Foreign Service, may elect to waive their retired pay in order to obtain credit for their military service for the purpose of increasing their civil service annuity. To avoid a delay in adjudicating a civil service retirement claim, the member should execute a waiver and send it to the DFAS at least 60 days before the anticipated starting date of the annuity.

3.2 Creditable Service

If a member waives retired pay, then all periods of military service before the date of separation on which entitlement to military retired pay is based are creditable.

3.2.1. A member will receive credit for military service without waiver of retired pay, if the member was awarded retired pay:

3.2.1.1. On account of a service connected disability:

3.2.1.1.1. Incurred in combat with an enemy of the United States; or

3.2.1.1.2. Caused by an instrumentality of war and incurred in the line of duty during a period of war as defined by ***38 U.S.C. § 1101***. The term "period of war" includes, in the case of any veteran, any period of continuous service performed after December 31, 1946 and before July 26, 1947, if such period began before January 1, 1947.

3.2.1.2. For non-regular (reserve) service under ***10 U.S.C., Chapter 1223***.

3.2.2. A member who was awarded retired pay because of military service other than service described in subparagraph 3.2.1 will be required to waive retired pay in order to receive credit for military service for Civil Service Retirement.

3.3 Initial Waiver

A retiree may request waiver of retired pay so that military service may be used in establishing eligibility for and/or computation of civil service retirement annuity. The request for waiver of retired pay must contain the retiree's signature and the effective date of the waiver of retired pay. Certain civil service annuities, starting on or after October 1, 1982, commence the first day of the month after separation from civil service or when pay ceases and the service and age requirements for entitlement to annuity are met. Individuals retiring during the first 3 days of a month are excluded; their annuities begin the following day. Also excluded are survivor

annuities, disability annuities, or discontinued service annuities based on involuntary separation, death, or last day of pay. The member should also authorize the OPM to withhold amounts necessary from the civil service retirement annuity to repay amounts of retired pay paid beyond the effective date of the waiver. The retired pay activity notifies the OPM of the date retired pay is waived. The OPM, in turn, advises the retired pay activity of the actual date a member's civil service retirement annuity started, enabling the retired pay activity to make any final settlement that might be due the retired member.

3.4 Dual Waivers

3.4.1. Federal law prohibits the credit of military service for civil service retirement annuity purposes if the retiree is receiving retired pay based on any period of military service, except retired pay awarded in accordance with subparagraph 3.2.1.

3.4.2. A retiree who is in receipt of retired pay which bars credit for military service may elect to waive the retired pay and have the military service added to civilian service for civil service annuity computation purposes subject to deposit requirements established by civil service law.

3.4.3. Individuals whose civilian retirement is not based on disability need not renounce VA benefits to receive credit for military service if they waive their military retired pay for civil service annuity computation purposes.

3.5 Withdrawal of Waiver

The waiver of military retired pay to receive an increased civil service retirement annuity may be withdrawn and military retired pay reinstated under these conditions:

3.5.1. The waiver of military retired pay may be withdrawn when the member becomes a reemployed annuitant and the civil service annuity terminates.

3.5.2. A civil service retirement retiree, who becomes eligible for Social Security benefits based on the member's wages and/or self-employment income, must exclude their military service performed after 1956 from the computation of their civil service annuity. The waiver may be withdrawn, and retired pay must be reinstated, but only if the military service was not used to establish eligibility for a civil service retirement annuity.

3.5.3. A member may revoke a waiver of military retired pay at any time providing this will not produce dual retirement benefits based on the same period of service.

3.6 Relationship of Civil Service Survivor Annuity to Military SBP

When a retiree, who is participating in the survivor annuity program, elects to waive retired pay in favor of civil service retirement, the retiree is required to pay the SBP cost during the period the waiver is in effect unless the OPM notifies the DFAS that the member elected to provide spouse coverage under the civil service annuity program.

3.7 Address

The correspondence address for the OPM and the Foreign Service are:

U.S. Office of Personnel Management
Retirement Operations Center
Post Office Box 45
Boyers, PA 16017

Office of Retirement
Department of State, SA-1, H-620
2401 E. Street NW
Washington, DC 20522

4.0 WAIVER OF PAY FOR RESERVE DUTY AFTER RETIREMENT

4.1 Definitions

4.1.1. Retired member, as used in this section refers to a member of the Army, Navy, Air Force, Space Force, Marine Corps or Coast Guard who because of earlier military service is entitled to pension, retired or retainer pay, or disability compensation.

4.1.2. Active duty, as used in this section, does not include extended active duty (more than 30 days) where strength accountability passes from the Reserve Components to the active military establishment.

4.2 Reserve Training Category

Each Armed Forces Reserve Component is divided into three categories: Ready (active status), Standby (inactive status), and Retired (retired status).

4.2.1. Ready Reserve

4.2.1.1. A member of the Ready Reserve may, without consent, be ordered to active duty by the Secretary of the Military Department concerned (or designee) during a period of war or national emergency, or when otherwise authorized by law.

4.2.1.2. Retired personnel having Ready Reserve status may participate in active duty for training or inactive duty training required by virtue of their assignment in a Reserve Component. Each period of training must be at least 2 hours with a maximum of two training periods in 1 calendar day. Compensation for each regular period of instruction or period of appropriate duty is at the rate of 1/30 of the member's authorized monthly pay and allowance, including that performed on a Sunday or holiday. Where the duty performed is for a continuous period of less than 1 month, compensation for each day of the period is at the rate of 1/30 of the monthly pay and allowances. The 31st day may not be excluded from the computation. A member may perform inactive duty training without pay.

4.2.1.2.1. Active Duty for Training. This duty may include full-time training, annual training tours, or attendance at a school designated as a Military Service school by the Secretary of the Military Department concerned.

4.2.1.2.2. Inactive Duty Training. This training may include assemblies, additional flying training periods, and other additional duties as authorized by the Secretary of the Military Department concerned.

4.2.2. Standby Reserve. A member of the Standby Reserve may be called to active duty only in time of war or national emergency declared by the Congress or when otherwise authorized by law. This member does not participate in the duty referred to in subparagraphs 4.2.1.2.1 or 4.2.1.2.2.

4.2.3. Retired Reserve. A member of the Retired Reserve who is entitled to retired pay may not be placed in the Ready Reserve unless the Secretary of the Military Department concerned (or designee) makes a special finding that the member's services in the Ready Reserve are indispensable. The Secretary or designee may not delegate authority in this instance.

4.3 Entitlement Prior to June 30, 2021

Prior to June 30, 2021, a Reservist entitled to retired pay who performed Reserve training for compensation, except during a period of war or national emergency, may have elected to receive for that duty:

4.3.1. The retired pay to which the member was entitled because of earlier military service; or

4.3.2. The pay and allowances authorized for the duty being performed, if the member specifically waives retired pay. For periods of war or national emergency, see 10 U.S.C. § 12316.

4.4 Effect on Pay Prior to June 30, 2021

Prior to June 30, 2021, a retired member who elected to receive compensation for periods of active duty for training or inactive duty training was required to waive 1 day of retired pay for each calendar day on which the Reserve training was performed. Performance of more than one drill in one calendar day required the withholding of only 1 day of retired pay for that calendar day.

4.4.1. Waiver of Pay. The member must prepare in advance a waiver of retired pay for the entire or remainder of the fiscal year in which the training is to be performed. The waiver form should show, by month, the number of training periods for inactive duty and the inclusive dates of each anticipated active duty tour. Timely preparation of the waiver helped to prevent a possible overpayment of pay.

4.4.2. Supplemental Certificate of Waiver. The certificate is required when a member performed active or inactive duty not covered by the first declaration. This certificate showed the additional days of duty performed by month and was added to the first declaration.

4.4.3. Certificate of Recoupment. The certificate recovered previously waived benefits that exceed active or inactive duty training performed. This request for recoupment must have been signed by the unit commander and could not be submitted earlier than the last day of the fiscal year involved. The schedule for both the active and inactive duty for training could be shown on the same waiver form or certificate.

4.4.4. Adjustment of Pay. Pay is adjusted on an individual basis. Procedures for liquidating an outstanding debt or for collecting cash payment for SBP coverage are the same as for all other retired members.

5.0 PAYMENT OF CERTAIN RESERVES WHILE ON ACTIVE DUTY, PURSUANT TO PUBLIC LAW 116-283, SECTION 621, EFFECTIVE JUNE 30, 2021

5.1 Entitled to Retired or Retainer Pay

Except as provided by paragraph 5.3, a Reserve member of the Army, Navy, Air Force, Space Force, Marine Corps, or Coast Guard who because the Reserve member's earlier military service is entitled to a retired or retainer pay and who performs duty for which the Reserve member is entitled to compensation, may elect to receive for that duty either:

5.1.1. The pay and allowances authorized by law for the duty that the Reserve member is performing; or

5.1.2. If the Reserve member specifically waives those payments, the retired or retainer pay to which the Reserve member is entitled because of the Reserve member's earlier military service.

5.2 Entitled to a Pension or Disability Compensation

Except as provided by paragraph 5.3, a Reserve member of the Army, Navy, Air Force, Space Force, Marine Corps, or Coast Guard who because of the Reserve member's earlier military service is entitled to a pension or disability compensation, and who performs duty for which the Reserve member is entitled to compensation, may elect to receive for that duty either:

5.2.1. The pension or disability compensation to which the Reserve member is entitled because of the Reserve member's earlier military service; or

5.2.2. If the Reserve member specifically waives those payments, the pay and allowances authorized by law for the duty that the Reserve member is performing.

Note: Under 38 U.S.C. § 5304(c), a member is prohibited from receiving VA disability compensation for any period for which he receives active service pay.

5.3 Not Entitled to Retired or Retainer Pay When Ordered to Active Duty for More Than 30 Days in Time of War or National Emergency

A Reserve member ordered to active duty for a period of more than 30 days in time of war or national emergency and found physically qualified to perform that duty is not entitled to retired or retainer payments until the period of active duty ends, unless the retired or retainer payments are greater than the compensation prescribed by subparagraphs 5.1.1 or 5.2.2. Other rights and benefits of the Reserve member or the Reserve member's dependents are unaffected by this paragraph.

5.4 Regulations

The Secretary of Defense shall prescribe regulations under which a Reserve member of the Army, Navy, Air Force, Space Force, Marine Corps, or Coast Guard may waive the pay and allowances authorized by law for the duty the Reserve member is performing under subparagraphs 5.1.2 or 5.2.2.

REFERENCES

CHAPTER 12 – WAIVER OF RETIRED PAY

1.0 – GENERAL

1.1.1	38 U.S.C. § 5305 5 U.S.C. § 8332(c) 5 U.S.C. § 8411 5 CFR 831.301
1.1.2	26 U.S.C. § 3402

2.0 – DEPARTMENT OF VETERANS AFFAIRS (VA) BENEFITS

2.1	38 U.S.C. § 5304 38 U.S.C. § 5305 10 U.S.C. § 1414 Public Law 108-136, section 641(e) November 24, 2003
2.2	MOU between VA/DFAS, February 16, 2017 Public Law 96-385, section 503, October 7, 1980 38 U.S.C. § 5304 38 CFR 3.750
2.3	MOU between VA/DFAS, February 16, 2017
2.3.1	MOU between VA/DFAS, February 16, 2017
2.3.2	MOU between VA/DFAS, February 16, 2017
2.3.3	MOU between VA/DFAS, February 16, 2017 5 U.S.C. § 5532 55 Comptroller General (Comp Gen) 1402
2.4	5 U.S.C § 8116 Public Law 93-416, September 7, 1974 Manuscript (MS) Comp Gen B-222852, April 28, 1987 39 Comp Gen 321
2.5	MOU between VA/DFAS, February 16, 2017

REFERENCES (continued)

2.6	MOU between VA/DFAS, February 16, 2017 50 Comp Gen 80 Deputy Secretary of Defense memo, "Review of Policies to Eliminate Stigmatizing Language Related to Mental Health, dated November 7, 2022
2.7	MOU between VA/DFAS, February 16, 2017 MS Comp Gen B-188932, December 23, 1977 31 U.S.C. § 3701(a)(1) 31 U.S.C. § 3716

3.0 – CIVIL SERVICE RETIREMENT & FEDERAL EMPLOYMENT RETIREMENT SYSTEM

3.1	5 U.S.C., Chapter 83, 84 22 U.S.C., Chapter 14 25 Comp Gen 631 28 Comp Gen 367 43 Comp Gen 551 46 Comp Gen 404
3.2	5 U.S.C. § 8332 (CSRS) 5 U.S.C. § 8411 (FERS) 10 U.S.C., Chapter 1223 38 U.S.C. § 1101
3.3	Public Law 97-253, section 303 September 8, 1982 5 U.S.C. § 8334 and note 5 U.S.C. § 8342 and note 5 U.S.C. § 8348 Public Law 97-377, section 768 December 21, 1982 10 U.S.C. § 1210(c) and (d) 10 U.S.C., Chapter 61
3.4	5 U.S.C. § 8332(c) 5 U.S.C. § 8334 5 U.S.C. § 8411(c) 5 CFR 831.301 55 Comp Gen 684
3.5.1	49 Comp Gen 581

REFERENCES (continued)

3.5.2	5 U.S.C. § 8332(j) 49 Comp Gen 581 41 Comp Gen 460 52 Comp Gen 429 50 Comp Gen 80
3.5.3	41 Comp Gen 460

4.0 – WAIVER OF PAY FOR RESERVE DUTY AFTER RETIREMENT

4.1.1	10 U.S.C. § 12316(a)
4.2	10 U.S.C. § 10141(a) and (b) 32 CFR 64.4 32 CFR 101.5
4.2.1.2	10 U.S.C. § 12301 Volume 7A, Chapter 57 37 U.S.C. §§ 206, 1002, and 1004
4.2.2	10 U.S.C. § 12301 10 U.S.C. §§ 10145, 10146, and 12301 10 U.S.C. § 12316(a)
4.4	MS Comp Gen, B-179882, December 4, 1974 MS Comp Gen, B-207370, March 22, 1983

5.0 – PAYMENT OF CERTAIN RESERVES WHILE ON DUTY, PURSUANT TO PUBLIC LAW 116-283, SECTION 621, EFFECTIVE JUNE 30, 2021

	Public Law 116-283, enacted January 1, 2021, section 621, effective June 30, 2021 10 U.S.C. § 12316

VOLUME 7B, CHAPTER 13: "SUSPENSION OF PAY"

SUMMARY OF MAJOR CHANGES

Changes are identified in this table and also denoted by blue font.

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

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

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

The previous version dated June 2022 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated chapter and formatting to comply with administrative instructions.	Revision
4.2	Added the annual requirement for retirees having a foreign address to return a completed form for Foreign Address Update for Mailed Check.	Addition
References	Updated references.	Revision

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CHAPTER 13

SUSPENSION OF PAY

1.0 GENERAL

1.1 Purpose

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

1.2 Authoritative Guidance

The pay policies and requirements established by the DoD in this chapter are derived primarily from, and prepared in accordance with the United States Code (U.S.C.), including Titles 5, 10, 37 and 38. The specific statutes, regulations, and other applicable guidance that govern each individual section are listed in a reference section at the end of the chapter.

2.0 STATUTORY REQUIREMENTS

2.1 Failure to Comply With Statutes

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

2.2 Retired Pay Suspended

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

2.2.1. Is recalled to active duty, or is otherwise in receipt of active duty pay;

2.2.2. Requests waiver of retired pay because of:

2.2.2.1. An award of Department of Veterans Affairs disability compensation or pension payments, or

2.2.2.2. Military service being used for purposes of qualifying for a U.S. civil service retirement annuity;

2.2.3. Completes 5 years on the Temporary Disability Retired List (TDRL), subject to placement on the Permanent Disability Retired List, if placed on the TDRL prior to January 1, 2017;

2.2.4. Completes 3 years on the TDRL, subject to placement on the Permanent Disability Retired List, if placed on the TDRL on or after January 1, 2017;

2.2.5. Fails to report for a required physical examination while on the TDRL or while a member of the Fleet Reserve/Fleet Marine Corps Reserve;

2.2.6. Is employed by a foreign government (to include local government units within a foreign country, as well as the national government itself) without applicable congressional or secretarial approvals but only after an appropriate determination by the Secretary of the Service concerned; or

2.2.7. Is found to be mentally incapable of managing his or her affairs, and no guardian, trustee, or other legal representative has been appointed. See Chapter 16 for further information.

2.2.8. Is convicted of certain offenses as provided in ***5 U.S.C. § 8312***.

2.3 Retired Pay Suspended by Secretary of the Military Department Concerned

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

2.3.1.1. A felony warrant has been issued against the absent member by the United States:

2.3.1.1.1. Under the authority of ***18 U.S.C. § 1073***, "Flight to avoid prosecution or giving testimony," and the Department of Justice has sought extradition; or

2.3.1.1.2. For violation of the International Parental Kidnapping Act, ***18 U.S.C. § 1204***, or for a crime stated in 5 U.S.C. § 8312; and

2.3.1.2. The member is outside the United States and has willfully remained outside the United States to avoid criminal prosecution for 30 or more consecutive days subsequent to the date of issue of the felony warrant.

2.3.2. Upon receipt of an order issued by the Secretary of the Military Department concerned (or designee) that a retiree's pay be suspended:

2.3.2.1. The DFAS Cleveland site must immediately suspend retired pay. Payment of any amounts subject to involuntary withholding or paid as insurance premiums by previously established allotments must not be suspended, but must continue to be paid from the member's pay unless otherwise directed by the Secretary of the Military Department concerned (or designee).

2.3.2.2. Suspension continues until DFAS Cleveland site receives orders from the Secretary of the Military Department concerned (or designee) to resume monthly payments and to pay the balance of suspended payments. No interest may be paid on any suspended amounts.

3.0 REGULATORY REQUIREMENTS

Retired pay may be suspended if certain situations exist where regulations prohibit making payments. For example, retired pay is suspended if the retiree requests that their check be mailed to addresses outside the United States listed in ***Title 31, Code of Federal Regulations (CFR), part 211.1***. Retiree requests for international Electronic Fund Transfer (EFT) receive specialized processing. The DFAS Cleveland site will send an inquiry to the Federal Reserve Bank to ascertain if the EFT is permitted to the foreign country. The retiree will be advised if the EFT is not permitted.

4.0 ADMINISTRATIVE REQUIREMENTS

4.1 Failure to Provide Timely Administrative Actions and Declines Further Payments

In accordance with the requirements of the DoD Financial Management Regulation and DFAS Cleveland site, Office of Retired Pay procedures, the head of the retired pay activity may suspend retired pay if the retiree fails to take necessary administrative actions on time, or if the retiree declines further payments.

*4.2 Failure to Provide Proof of Existence and Address

Retired pay may be suspended if the retiree:

4.2.1. Fails to furnish the required proof of existence and address. Retiree's having a foreign address and receiving retired pay in the form of a mailed (paper) check will be required to return a Foreign Address Update for Mailed Check (***FAUMC***), to the Retired Pay Department, DFAS Cleveland on an annual basis. Failure to submit an annual receipt of FAUMC to the Retired Pay Department, DFAS Cleveland is a condition for suspension of payment. See also Chapter 15 for further information;

4.2.2. Fails to notify DFAS Cleveland site, Office of Retired Pay, of an address change and the retiree's current address is unknown; or

4.2.3. Refuses to accept further payments.

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

5.1 Taxable Income and Federal Income Tax Withheld

The suspension of a retiree's pay account for any reason cited in sections 2.0 through 4.0 may result in the suspension of reporting of taxable income and income taxes withheld as related to retired pay. See Chapter 24 regarding taxable income, tax withheld, and issuance of Internal Revenue Service Form 1099R, "Distribution From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc." The reporting of taxable income and taxes withheld resumes upon removal of the suspension of pay.

5.2 Allotment Deductions

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

5.3 Survivor Annuity Deductions

Generally, the retiree's cost for participation in the Retired Serviceman's Protection Plan and/or the Survivor Benefit Plan (SBP), while the retired pay is suspended, will be deducted from the accumulated retired pay or Combat Related Special Compensation (CRSC) (when deductions from the member's retired pay are insufficient to pay the full amount of the SBP premium) upon reinstatement of retired pay or CRSC, pursuant to ***10 U.S.C. § 1452(d)(2)***. See Chapter 63, paragraph 8.3. For special rules regarding SBP, also refer to Chapter 45, Table 45-4.

Table 13-1. Suspension of Retired Pay Statutory Requirements

SUSPENSION OF RETIRED PAY — STATUTORY REQUIREMENTS			
RULE	**If a member of the**	**has pay suspended for**	**then authority is**
1	Army	recall to active duty under ***10 U.S.C. § 688*** or ***10 U.S.C. § 688a***, or for otherwise being in receipt of active duty pay	***38 U.S.C. § 5304(c)*** and ***37 U.S.C. § 903***.
2	Air Force	recall to active duty under 10 U.S.C. § 688 or 10 U.S.C. § 688a, or for otherwise being in receipt of active duty pay	38 U.S.C. § 5304(c) and 37 U.S.C. § 903.
3	Navy or Marine Corps	recall to active duty under 10 U.S.C. § 688 or ***10 U.S.C. § 8385***, or for otherwise being in receipt of active duty pay	38 U.S.C. § 5304(c) and 37 U.S.C. § 903.
4	Armed Forces	waiver of retired pay in favor of Veterans Administration compensation or pension	***38 U.S.C. § 5305***.
5	Armed Forces	waiver of retired pay in favor of civil service annuity	***5 U.S.C. § 8332***.
6	Armed Forces	completion of 5 years on TDRL, if prior to January 1, 2017	***10 U.S.C. § 1210(b) and (h)***.
7	Armed Forces	completion of 3 years on TDRL, if on or after January 1, 2017	10 U.S.C. § 1210(b) and (h)
8	Armed Forces	failure to report for periodic physical for TDRL or while a member of the Fleet Reserve/Fleet Marine Corps Reserve	10 U.S.C. § 1210(a).
9	Armed Forces	employment by a foreign government without congressional or secretarial approvals	Article 1, section 9, clause 8, United States Constitution, ***37 U.S.C. § 908***.
10	Armed Forces	being mentally incapable of managing own affairs	***37 U.S.C., Chapter 11***.
11	Armed Forces	conviction of certain offenses as stated in 5 U.S.C. § 8312	5 U.S.C. § 8312.
12	Armed Forces	being absent from the United States to avoid prosecution for specified crimes.	***Public Law 104-201***, section 633, September 23, 1996; 18 U.S.C. § 1073; 18 U.S.C. § 1204; and 5 U.S.C. § 8312.

*REFERENCES

CHAPTER 13 – SUSPENSION OF PAY

1.0 – GENERAL

1.1	62 Comptroller General (Comp Gen) 211 (1983) 71 Comp Gen 107 (1991)

2.0 - STATUTORY REQUIREMENTS

2.2.1	10 U.S.C. § 688 10 U.S.C. § 688a 10 U.S.C. § 8385
2.2.2.1	38 U.S.C. § 5305
2.2.2.2	5 U.S.C. § 8332
2.2.3	10 U.S.C. § 1210(b) and (h)
2.2.4	10 U.S.C. § 1210(a)
2.2.5	10 U.S.C. § 908 Article 1, Section 9, Clause 8, United States Constitution Comp Gen Decision B-251084, October 12, 1993
2.2.6	37 U.S.C., Chapter 11
2.3	Office of the Under Secretary of Defense, Personnel and Readiness, Directive-Type Memorandum, issued May 29, 1997 Public Law (PL) 104-201, section 633, September 23, 1996
2.3.1	18 U.S.C. § 1073 5 U.S.C. § 8312 18 U.S.C. § 1204

3.0 - REGULATORY REQUIREMENTS

	31 CFR 211

REFERENCES (Continued)

4.0 – ADMINISTRATIVE REQUIREMENTS

4.2	PL 117-81, section 605, December 27, 2021

VOLUME 7B, CHAPTER 14: "PAYMENT RESTRICTIONS"

SUMMARY OF MAJOR CHANGES

Changes are identified in this table and also denoted by blue font.

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

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

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

The previous version dated June 2022 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated chapter and formatting to comply with administrative instructions.	Revision

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CHAPTER 14

PAYMENT RESTRICTIONS

1.0 GENERAL

1.1 Purpose

This chapter provides information for certain payment restrictions to military retirement pay. Amounts of retired pay and retainer pay due to a retired member of the uniformed services will be paid on the first day of each month beginning after the month in which the right to such pay accrues.

1.1.1. Payment Date Falls on Saturday, Sunday, or Legal Holiday

When the payment date falls on a Saturday, Sunday, or legal holiday, the Director of Defense Finance and Accounting Service (DFAS) may authorize the payment of retired pay and retainer pay on the preceding workday but not more than three days before last day of the pay period.

1.1.2. Payrolls Paid on October 1

For payrolls otherwise payable on October 1, the DoD Comptroller will determine if the payroll may be dated in September.

1.2 Authoritative Guidance

The pay policies and requirements established by DoD in this chapter are derived primarily from, and prepared in accordance with the United States Code (U.S.C.), including Titles 5, 10, 31, and 37. The specific statutes, regulations, and other applicable guidance that govern each individual section are listed in a reference section at the end of the chapter.

2.0 CHECKS

2.1 Mailing of Checks to Foreign Countries

The Secretary of the Treasury has determined that the mailing of checks is prohibited to the countries listed in ***Title 31, Code of Federal Regulations (CFR), section 211.1*** because postal, transportation, and banking facilities in general, or local conditions, are such that there is not a reasonable assurance that a retiree or annuitant in the listed countries will actually receive checks drawn against funds of the United States, or be able to negotiate checks for full value. Powers of attorney for receipt or collection of checks, or for the proceeds of checks included within the determination of the Secretary of the Treasury, will not be recognized.

2.2 Claims

Claims for the release of checks withheld from delivery, or for proceeds thereof, are filed with the DFAS site that originally authorized issuance.

3.0 ELECTRONIC FUNDS TRANSFER (EFT)

The prescribed method of payment within the DoD is EFT. See Volume 7A, Appendix C, for implementing DoD policy on EFT procedures for retirees and annuitants.

4.0 LOSS OF ENTITLEMENT TO RETIRED PAY

4.1 Conditions

Each of the following may result in a loss of entitlement to retired pay. See appropriate corresponding chapter for additional information.

4.1.1. Expiration of Allowable Duration on the Temporary Disability Retired List

See Chapter 11.

4.1.2. Loss of United States Citizenship

See Chapter 6.

4.1.3. Employment by Foreign Government

See Chapter 5.

4.1.4. Conflict of Interest

See Chapter 5.

4.1.5. National Security Violations

See ***5 U.S.C. §§ 8311-8322***.

NOTE: The Hiss Act, codified as 5 U.S.C. §§ 8311-8322 as amended, prohibited the payment of retired pay to military personnel who were convicted of any criminal offense enumerated in the statute. The Act did not prohibit the payment of retired pay if both the criminal offense and the award of retired pay occurred before September 1, 1954. Retired pay awarded on or after September 1, 1954, however, could not be paid regardless of the date on which the offense or conviction occurred. If the individual involved received a presidential pardon or later was cleared by decision of a higher court, the right to retired pay was restored. ***Public Law 87-299***, September 26, 1961, amended the Hiss Act and limited provisions to cases involving national security. Members convicted by court-martial or by Federal civil court of felony offenses or the equivalent of felonies but not involving national security, were no longer subject to the provisions of the Hiss Act.

4.1.6. Denial Upon Certain Punitive Discharges or Dismissals

The non-Regular service retired pay entitlement of a member is denied when his or her court-martial sentence includes death or separation by dishonorable discharge, bad conduct discharge, or dismissal effective with court-martial sentences adjudged after February 10, 1996.

4.2 Recall to Active Duty

A retiree who receives orders, issued by proper authority, for recall to active duty for an indefinite or definite period is not entitled to retired pay for the period of active duty. Members on active duty for training are covered in Chapter 12, section 4.0.

4.3 Prohibition Against Duplication of Benefits

A retired member who serves on active duty is not entitled to receive both active pay and retired pay simultaneously.

REFERENCES

CHAPTER 14 – PAYMENT RESTRICTIONS

1.0 – GENERAL

Public Law 111-383, section 632, January 7, 2011
10 U.S.C. § 1412
37 U.S.C. § 1006(h)
59 Comptroller General 219, B-193772, January 22, 1980
DoD Directive 5118.05, April 20, 2012

2.0 – CHECKS

2.1	31 U.S.C. § 3329 31 CFR 211.1
2.2	31 U.S.C. § 3329 31 CFR 211.2

3.0 – ELECTRONIC FUNDS TRANSFER (EFT)

31 U.S.C. § 3332

4.0 –LOSS OF ENTITLEMENT TO RETIRED PAY

4.1.1	10 U.S.C. § 1210(b), (h) and note Public Law 114-328, section 525, December 23, 2016
4.1.2	10 U.S.C. § 12731
4.1.5	Public Law 103-337, section 639, October 5, 1994 Public Law 87-299, September 26, 1961 5 U.S.C. §§ 8311-8322
4.1.6	Public Law 104-106, section 632, February 10, 1996 10 U.S.C. § 12740

VOLUME 7B, CHAPTER 15: "PROOF OF EXISTENCE"

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PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Replaced all references to Report of Existence and associated instructions with Foreign Address Update for Mailed Checks per section 605 of the National Defense Authorization Act for Fiscal Year 2022.	Revision
3.0	Stigmatizing language was modified in accordance with the Deputy Secretary of Defense memo, "Review of Policies to Eliminate Stigmatizing Language Related to Mental Health, " dated November 7, 2022.	Revision
All	Updated hyperlinks, statutes, and formatting in compliance with current administrative instructions.	Revision

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CHAPTER 15

PROOF OF EXISTENCE

1.0 GENERAL

1.1 Purpose

For the protection of the U.S. Government, certain safeguards are required for retired military paychecks mailed through the international postal system. The proof of existence protects the U.S. Government from continuing to issue payments to deceased retirees. Military retired pay and Combat-Related Special Compensation payment instruments may not be negotiated after the retiree's death.

1.2 Authoritative Guidance

The pay policies and requirements established by the DoD in this chapter are derived primarily from, and prepared in accordance with the United States Code (U.S.C.), including Titles 31 and 37. Due to the subject matter in this chapter, the list of authoritative sources is extensive. The specific statutes, regulations, and other applicable guidance that govern each individual section are listed in reference section at the end of the chapter.

2.0 COMPETENT RETIREE

2.1 Annual Submission of Foreign Address Update for Mailed Check (FAUMC)

In order to receive a paper military paycheck in a foreign country, through the international postal system, a retiree must submit an annual ***FAUMC*** to the Defense Finance and Accounting Service (DFAS) Indianapolis site. The FAUMC may be submitted either electronically or by mail.

Note: FAUMCs are not required for military retirees who reside in the United States or whose military pay is directly deposited by electronic funds transfer.

2.1.1. Electronic Submission. To submit the FAUMC electronically, the retiree may upload the completed and signed form online using the ***askDFAS online upload tool***.

2.1.2. Mail Submission. The fully executed paper FAUMC should be mailed to the following address:

DFAS
U. S. Military Retired Pay
8899 East 56th Street
Indianapolis, IN 46249-1200

2.2 FAUMC Not Required

An FAUMC is not required when:

2.2.1. A retiree resides in the United States and their retired military paycheck is mailed to an address other than that of a financial institution;

2.2.2. The retiree's military paycheck is mailed to an Army/Air Post Office, Fleet Post Office, or a finance or disbursing officer at an overseas address; or

2.2.3. The retiree's military paycheck is mailed to a financial institution in the United States. The financial institution's endorsement constitutes proof of existence for the retiree.

2.3 Exceptions

The Director, DFAS, or designee may suspend FAUMC requirements when a Federal or State disaster, a pandemic, or any other natural emergency is declared. The Director, DFAS, or designee may also determine the amount of time of the suspension, not to exceed 90 days. Upon expiration of the 90-day term, the suspension may be reviewed for further extension, but in no instance may the suspension exceed one year. The action to suspend the FAUMC requirement should take into consideration audit and risk management protocols including the ability to validate the identity of the annuitant from other government sources.

2.4 Restriction

Retired military paychecks must not be addressed to a U.S. Consulate, Embassy, or Military Attaché unless the retiree is employed by that particular agency.

*3.0 RETIREES DETERMINED TO LACK DECISION MAKING CAPACITY DUE TO PHYSICAL OR MENTAL ILLNESS OR DISABILITY

3.1 Checks to retirees determined to lack decision making capacity due to physical or mental illness or disability.

In the case of a retiree who has been found to be incapable of managing their affairs due to a mental incapacity, the retiree may not receive the check. Instead, checks may be made payable to a legal guardian, trustee, or other legal representative after receipt of proper documentation verifying the authority of the guardian, trustee, or other legal representative to receive such payments. See Chapter 16 for appointment or designation of legal representatives.

3.2 Legal Representative Requirement

The retired military paycheck may be mailed to the legal representative or to a financial institution established by the legal representative for the retiree (ward).

3.3 Department of Veterans Affairs (VA) Hospital Authority

In the absence of the appointment of a guardian, trustee, or other legal representative for a retiree determined to lack decision making capacity due to physical or mental illness or disability who is a patient of a VA hospital, payment may be made to the Administrator of the VA hospital to provide the retiree with health and comfort items. See Chapter 16.

4.0 MAILING OF RETIRED MILITARY PAYCHECKS

Retired military paper paychecks are normally mailed at the end of each month, provided a signed FAUMC, when required, has been received and certifies the retiree's continued existence. Failure to return the required FAUMC will result in suspension of retired pay.

*REFERENCES

CHAPTER 15 – PROOF OF EXISTENCE

1.0 – GENERAL

Comptroller General (Comp Gen) B-206129, June 28, 1982
Title 31, Code Federal Regulations (CFR), section 240.15

2.0 –COMPETENT RETIREE

2.1	Comp Gen B-206129, June 28, 1982

3.0 – RETIREES DETERMINED TO LACK DECISION MAKING CAPACITY DUE TO PHYSICAL OR MENTAL ILLNESS OR DISABILITY

3.1	31 CFR 240.14 31 CFR 240.15 44 Comp Gen 208, October 12, 1964
3.2	37 U.S.C. § 602

4.0 – MAILING OF RETIRED MILITARY PAYCHECKS

44 Comp Gen 208, October 12, 1964
Comp Gen B-206129, June 28, 1982
37 U.S.C. § 602 Comp Gen A-3551 Decisions, April 6, 1931; June 23, 1931; October 24, 1946; March 9, 1951; and February 3, 1964

VOLUME 7B, CHAPTER 16: "PHYSICAL OR MENTAL INCAPACITATION"

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PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
6.1 and 6.1.7	Added the annual requirement for an agent or trustee to return a completed form for Foreign Address Update for Mailed Check to replace the former requirement of a bi-annual Report of Existence for incapacitated retirees having a foreign address, pursuant to section 605 of the National Defense Authorization Act for Fiscal Year 2022.	Addition
3.2.2	Revised subparagraph to include a Doctor of Osteopathic Medicine as a qualified medical officer or physician, pursuant to Title 37, United States Code, section 602.	Revision
Table of Contents and 1.1, 2.6, 3.5.2.1, 3.5.2.2, 3.6, 3.7, 3.8, 4.2, 4.2.2, 6.1, 6.1.1, 6.1.3, 6.1.5, 6.1.6, 6.3, 7.1	Stigmatizing language was modified in accordance with the Deputy Secretary of Defense memo, "Review of Policies to Eliminate Stigmatizing Language Related to Mental Health, dated November 7, 2022.	Revision
References	Updated references.	Revision

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CHAPTER 16

PHYSICAL OR MENTAL INCAPACITATION

1.0 GENERAL

*1.1 Purpose

This chapter provides information and guidance on the duties and responsibilities performed on behalf of a retiree determined to be mentally and/or physically incapable of managing their affairs. This chapter applies to members of a uniformed service who are on a retired list of that Service and members of the Fleet Reserve or Fleet Marine Corps Reserve. Federal law provides legal authority for the payment of amounts due incapacitated retirees of the uniformed services to designated persons for their use and benefit, and for the use and benefit of their dependents where the state court has not appointed a committee, guardian, or legal representative.

1.2 Authoritative Guidance

The pay policies and requirements established by the DoD in this chapter are derived primarily from, and prepared in accordance with the United States Code (U.S.C.), including Title 37. Due to the subject matter in the chapter, the list of authoritative sources is extensive. The specific statutes, regulations, and other applicable guidance that govern each individual section are listed in a reference section at the end of the chapter.

2.0 DEFINITIONS

2.1 Physically or Mentally Incapacitated Retiree

A physically or mentally incapacitated retiree is an individual who is impaired by physical disability, mental illness, mental deficiency, advanced age, chronic use of drugs or alcohol, or other causes that prevent sufficient understanding or capacity to manage their own affairs competently.

2.2 Committee

A committee is a person, assembly, or board of persons to whom (or which) the consideration or management of any matter is committed or referred by a court as a person or persons having guardianship of the person and property of an insane person.

2.3 Competency Board

The competency board consists of at least three qualified medical officers or physicians, one of whom is specially qualified in the treatment of mental disorders. The Secretary of the Department having jurisdiction of the member appoints the board.

2.4 Conservator

A conservator is a guardian, protector, or preserver; a maintainer.

2.5 Court of Competent Jurisdiction

A court of competent jurisdiction has the power and authority of law at the time of acting to do the particular act; has jurisdiction both of the person and of the subject matter; is provided for in the Constitution of the United States; or created by the legislature and has jurisdiction of the subject matter and of the person.

*2.6 Guardian

A guardian is a person who legally has the care of the person or property (or both) of another person who has been determined by a court of competent jurisdiction to be incapacitated to act for themself.

2.7 Trustee

A trustee, as used in the legal sense, is:

2.7.1. A person who takes and holds the legal title to the trust property for the benefit of another,

2.7.2. One to whom another's property is legally committed in trust, or

2.7.3. A person holding the legal title to property under an expressed or implied agreement to apply it and the income arising from it, for the use and benefit of another person.

Note: As referenced in this chapter, a trustee is a person appointed by the Defense Finance and Accounting Service (DFAS) Cleveland (DFAS-CL) to receive payment of retired or retainer pay on behalf of a retiree determined to be mentally incapable of managing their affairs. The term "trustee" does not include an agent holding a valid and legally executed durable power of attorney pursuant to Title ***37 U.S.C. § 602(a)(2)***.

2.8 Durable Power of Attorney

The term "Durable Power of Attorney" means a writing or other record that grants authority to an agent to act in the place of the principal, where the authority of the agent is not terminated by the principal's incapacity. A durable power of attorney is distinctive from a regular power of attorney and allows the agent to act on the principal's behalf beyond the incapacity of the principal. There are two types of durable powers of attorney which are immediate and springing.

2.8.1. Immediate. The immediate power of attorney starts immediately after the durable power of attorney has been executed.

2.8.2. Springing. The springing power of attorney goes into effect after a specific event occurs (for example, when the person granting the power of attorney becomes mentally incapable of managing their affairs).

Note: DFAS-CL will accept either the immediate or a springing durable power of attorney, but will only honor either upon a showing of mental incompetency.

2.9 Principal

A principal is an individual who grants authority to an agent in a power of attorney.

2.10 Agent

An agent is a person granted authority to act for a principal under a power of attorney.

3.0 MENTAL INCAPACITY

3.1 Legally Appointed Representative

3.1.1. Legally Appointed Representative. When a court of competent jurisdiction appoints a legal committee, guardian, or other representative for the retiree, DFAS will normally accept such appointment and will not appoint a trustee or recognize an agent holding a durable power of attorney. For more information regarding court appointments see section 5.0.

3.1.2. Agent Holding a Valid and Legally Executed Durable Power of Attorney. Amounts due a retiree for retired or retainer pay, who is mentally incapable of managing their own affairs, may be paid for that retiree's use or benefit to an agent who presents a valid and legally executed durable power of attorney and also presents evidence showing that the retiree (principal) is incapable of managing their affairs in accordance with the process provided in paragraph 3.2.

3.1.3. No Legally Appointed Representative or Agent Holding a Valid and Legally Executed Durable Power of Attorney. When there is no legally appointed representative and no agent holding a durable power of attorney, amounts due a retiree for retired or retainer pay who, according to a board of medical officers or physicians, is mentally incapable of managing their own affairs, may be paid for that retiree's use or benefit to any person designated by the Director, DFAS-CL under paragraph 3.5 without the appointment in judicial proceedings of a committee, guardian, or other legal representative.

3.2 Effectiveness of a Durable Power of Attorney

In order for an agent holding a durable power of attorney to receive amounts due a retiree (principal) who is mentally and/or physically incapable of managing their own affairs, evidence of the retiree's (principal's) incapacity must be provided. Pursuant to Public Law 114-328, section 645, the evidence DFAS will accept to show that a member is incapable of managing their affairs must reflect the following:

3.2.1. A durable power of attorney, either immediate or springing; and

* 3.2.2. A medical statement with a current evaluation (within the past 4 months) prepared and signed by a Doctor of Medicine, Doctor of Osteopathic Medicine, or Psychiatrist, i.e., not a Psychologist, Nurse, Physician Assistant, Registered Nurse, or Clinical Social Worker. The statement must include:

3.2.2.1. A statement that the retiree is (at the time of evaluation) medically incapable of managing their affairs;

3.2.2.2. A description of the condition afflicting the retiree which led to this diagnosis;

3.2.2.3. A statement regarding the retiree's prognosis for possible improvement; and

3.2.2.4. A statement that the determination of incapacity was made based on both a physical examination and mental evaluation of the retiree.

Note: Upon presentation of the evidence as described in subparagraphs 3.2.1 and 3.2.2, the amounts due to the retiree may be paid to the agent. Amounts due may only be used for the use and benefit of the retiree. Neither accounting reports nor a surety bond will be required unless, in the discretion of the Director, DFAS-CL, special circumstances warrant. DFAS will not normally allow an agent holding a durable power of attorney to receive amounts due an incompetent retiree in a case in which a court of competent jurisdiction has appointed a legal committee, guardian, or other representative.

3.3 Authorized Mental Health Determination (in cases where there is no agent holding a durable power of attorney)

Federal agencies authorized to make determinations of the mental competency of a retired service member hospitalized in a facility under its jurisdiction are the:

3.3.1. Department of the Army,

3.3.2. Department of the Navy,

3.3.3. Department of the Air Force,

3.3.4. Department of Health and Human Services, and

3.3.5. Department of Veterans Affairs (VA).

3.4 Competency Board Determination

When there is no agent qualifying under paragraph 3.2, upon receipt of information that a retiree may be mentally incapacitated, a board of no fewer than three medical officers or physicians (including one specially trained in the treatment of mental disorders) is convened to determine whether the retiree is competent. The board also convenes when requested to do so by proper authority.

3.4.1. The convening authority ensures that three members of the board certify the board's findings.

3.4.2. The convening authority of the appropriate Military Service must send one copy of the board's findings, as applicable, to:

Defense Finance and Accounting Service
U.S. Military Retired Pay
8899 E. 56th Street
Indianapolis, IN 46249-1200

3.5 Appointment of Trustee (in cases where there is no agent holding a durable power of attorney)

3.5.1. Appointed Trustee Authority. The authority of the Secretaries of the Military Departments to appoint trustees under 37 U.S.C. § 602 has been delegated to the Director, DFAS-CL.

3.5.2. Persons Eligible for Appointment as Designated Trustee

* 3.5.2.1. If a competency board finds a retiree mentally incapacitated and the retiree has no court appointed legal committee, guardian, or other representative, when there is no agent qualifying under paragraph 3.2, the Director, DFAS-CL, may appoint a trustee to act on the retiree's behalf. The Director, DFAS-CL, may designate one of the following persons as trustee for all incompetent military retirees if the trustee is 21 years of age or over:

3.5.2.1.1. Lawful spouse (not subject to the age requirement);

3.5.2.1.2. Legitimate son or daughter or legally adopted son or daughter;

3.5.2.1.3. Parents;

3.5.2.1.4. Head of an institution, if the retiree is a patient; or

3.5.2.1.5. Any other person or persons if in the best interest of the retiree.

* 3.5.2.2. While next of kin or other relatives of the retiree ordinarily are preferred for designation as trustee, DFAS may designate any other person, willing and suitable to act, as a temporary or permanent trustee unless a court of competent jurisdiction appoints a committee, guardian, or other legal representative. If more than one qualified person applies to be trustee for a mentally incapacitated retiree, then the Director, DFAS-CL, will determine which applicant is the more appropriate trustee.

3.5.3. Submitting Application and Documentation for Appointment of Trustee

Submit all applications to appoint a trustee and related documentation to:

Defense Finance and Accounting Service
U.S. Military Retired Pay
8899 E. 56th Street
Indianapolis, IN 46249-1200

*3.6 Bond Requirement for Appointed Trustee

The trustee, designated to receive monies on behalf of the incapacitated retiree, must furnish a suitable bond in all cases when the amounts may exceed $25,000. The bond so required and furnished must have, as the surety, a company approved by the U. S. Government and must be in such amount as required by the Retired Pay Department, DFAS-CL. The person designated as trustee acts in this capacity without remuneration; however, if a bond is required, the trustee may pay the premium fee charged by the bonding company from the funds received on behalf of the mentally incompetent retiree. The trustee may not pay any other expenses incurred in securing the bond from the amount payable to the incompetent retiree.

*3.7 DFAS-Cleveland Appointed Trustee Authority

The trustee appointed by the Retired Pay Department, DFAS-CL, has the authority only to receive, expend, and account for monies received from the military. The appointment does not convey authority to act as a trustee in a civilian capacity without prior authority from a court of competent jurisdiction. The trustee must use the monies received for the benefit of the retiree who is mentally incapable of managing their affairs. Payment made to a person so designated under 37 U.S.C. § 602 discharges the obligation of the United States as to the amount paid. The Government may not appoint a trustee in any case in which a court of competent jurisdiction has appointed a legal committee, guardian, or other representative.

*3.8 Required Reports and Documents

The designated trustee submits accounting reports annually or at such times as directed by the Retired Pay Department, DFAS-CL. The reports must show all funds received, all expenditures made on behalf of the retiree who is mentally incapable of managing their affairs, and a statement of the condition of the trustee account. The trustee also may be required to provide

all receipts, canceled checks, voucher accounts, savings account passbooks or statements, and/or other records concerning the trustee account. If the trustee fails to report promptly at the end of the accounting period, then the appointing authority may either temporarily suspend or terminate further payments to the trustee and may designate a successor trustee.

4.0 PHYSICAL INCAPACITY

4.1 Physical Infirmity

4.1.1. Physical infirmity alone does not warrant the appointment of a guardian for the estate of a person. In some cases, incompetence to manage an estate or property has been found primarily from evidence of advanced age and physical infirmity, and a guardian or conservator has been appointed. In some jurisdictions, there are statutes, held to be constitutional, which authorize the appointment of guardians of the estates of those who, because of old age or physical incapacity, are incapable of managing their property.

4.1.2. In the case of a retiree suffering from a physical condition/infirmity that renders him or her mentally incapable of managing their affairs, see section 3.0 for guidance regarding the use of a durable power of attorney to receive amounts due the retiree, guidance in preparing and submitting the application for trustee in the absence of a durable power of attorney, and the DFAS-CL requirements in establishing and appointing a trustee.

*4.2 Conservator or Guardian

In several states, statutes authorize persons who, although of sound mind, believe themselves incapable of managing their own estates or of caring for their own property, to apply for, request, or consent to the appointment of a conservator or guardian of the estate or of their persons, or both. The conservator or guardian, when appointed, possesses over the estate substantially the same power and is subject to substantially the same duties as a guardian of a person who is incapable of managing their property. The following are examples for determining whether the appointment of a conservator may be necessary for a physically incapacitated retiree:

4.2.1. A person who is bedfast and physically incapacitated as the result of two strokes is not necessarily incompetent to require the appointment of a guardian.

* 4.2.2. A 77-year-old woman suffering from complete paralysis of the left side was unable to speak except for an occasional word, could not swallow, and could write only with difficulty and very briefly, but could hear, read, watch television, walk with assistance, and could be out of bed and sit up for short periods of time. According to medical testimony, she was mentally competent, but the evidence was sufficient to support a finding that she was incapable of managing her property as a result of her physical disability.

4.2.3. When an adult person has sufficient mental capacity to understand the nature and consequences of the application for a conservator, that person's wishes, if conducive to welfare and contentment of mind may properly be given great weight in determining whether a conservator (rather than a guardian) should be appointed.

4.2.4. The physical condition of the person for whom a conservator is required can be considered only insofar as it may affect the person's mental condition.

4.3 Court Orders

Because of the variety of county and state statutes regarding the appointment of legal representatives for physically incapacitated retirees, DFAS-CL accepts and processes court orders appointing such representatives. It is not the responsibility of DFAS-CL to authenticate each order.

5.0 COURT APPOINTMENT OF GUARDIAN OR OTHER LEGAL REPRESENTATIVE FOR PHYSICALLY OR MENTALLY INCAPACITATED RETIREE

5.1 Request for Incapacity Determination

The incapacitated retiree or any person interested in the welfare of the retiree may petition a court of competent jurisdiction for a finding of incapacity and appointment of a guardian or other legal representative.

5.2 Certification of Court Appointment

A copy of the appropriate court order certifying the appointment of the guardian, committee, or conservator is required before DFAS may make payments to the appointee.

5.3 No Requirement for Accounting Reports

Accounting reports, similar to those identified in paragraph 3.7, are not required. Such reports, if required by the court, are matters of concern between the court-appointed guardian or legal representative and the court.

6.0 TERMINATION OF PAYMENTS AND DISCHARGE OF TRUSTEE

*6.1 Conditions for Termination of Payments

DFAS will terminate payments that are due a retiree who has been determined incapable of managing their affairs and paid to a trustee appointed under paragraph 3.4 or an agent recognized under paragraph 3.2 upon notification receipt of the conditions listed in subparagraphs 6.1.1 through 6.1.6 or non-receipt of the annual requirement for the completed form, ***Foreign Address Update for Mailed Check (FAUMC)*** as defined in subparagraph 6.1.7.

* 6.1.1. Death of a retiree who has been determined incapable of managing their affairs;

6.1.2. Death or disability of the trustee or agent;

* 6.1.3. Appointment of a committee, guardian, or other legal representative for the retiree determined by a court of competent jurisdiction to lack decision-making capacity;

6.1.4. Failure of a trustee (or agent if required) to render required accounting reports;

* 6.1.5. Reasonable cause to believe that there is improper use of monies received on behalf of the retiree who has been determined incapable of managing their affairs;

* 6.1.6. Findings from a board of medical officers or other appropriate medical authorities indicating that the retiree is capable of managing their own affairs. The appointing authority may accept, at their discretion, the findings of a VA or Public Health Service medical facility, or the findings of other public or private medical facilities that a person formerly found incapable of managing their affairs is now found capable of managing their affairs; or

* 6.1.7. Agents for incapacitated retirees having a foreign address and receiving retired pay in the form of a mailed (paper) check will be required to return a FAUMC to the Retired Pay Department, DFAS-CL on an annual basis. Failure of an annual receipt of FAUMC in the Retired Pay Department, DFAS-CL is a condition for termination of payment. See Volume 7B, Chapter 15.

6.2 Discharge of Trustee Duties

6.2.1. When payments to the trustee terminate as described in paragraph 6.1, the trustee files a final accounting report with the Retired Pay Department, DFAS-CL. Upon approval of the final accounting report, the trustee is discharged and the surety is released of its bond.

6.2.2. If payment terminates for reasons described under subparagraphs 6.1.2, 6.1.4, or 6.1.5, then the Retired Pay Department, DFAS-CL, may appoint a successor trustee. Upon death or disability of a trustee, the trustee's legal representative makes the final accounting report.

*6.3 Death of Incapacitated Retiree

Upon the death of the incompetent retiree, any funds remaining in the fiduciary account, maintained on behalf of the incapacitated retiree by the trustee or agent, must be made payable to the deceased retiree's estate. A notification of death from any source is sufficient to suspend payments of retired pay to the trustee or agent. To settle (pay) the arrears of the member's retired pay, the following documentation must be on file:

6.3.1. A copy of the death certificate;

6.3.2. Completed ***Standard Form 1174***, Claim for Unpaid Compensation of Deceased Member of the Uniformed Services, from the beneficiary; and

6.3.3. Proof of recoupment of outstanding payments. All outstanding checks or direct deposits (not negotiated before the annuitant's death or forwarded past the date of entitlement) or the proceeds thereof must be returned to DFAS-CL before a settlement of arrears of military retired pay may be made.

7.0 COMFORT ITEMS DURING HOSPITAL STAY

*7.1 Hospital Stay of Incapacitated Retiree

The commanding officer of any military hospital or the director of a VA hospital may designate an officer under the command to receive and receipt for a sum of money from the accrued pay of a retiree who, as a patient at the hospital, is found physically or mentally incapacitated in a report of medical officers.

7.2 Money Received for Comfort Items

During the retiree's hospital stay, the designated officer may use the sum of money received from the accrued pay of a retiree only for the purchase of comfort items for the use and benefit of that retiree when all of the following conditions exist:

7.2.1. DFAS did not designate a trustee and a court of competent jurisdiction did not appoint a guardian or other legal representative;

7.2.2. There are no other funds available for use on behalf of the retiree; and

7.2.3. Competent medical authority agrees that the purchase of items will serve the comfort of the retiree.

*REFERENCES

CHAPTER 16 – PHYSICAL OR MENTAL INCAPACITATION

1.0 – GENERAL

1.1	37 U.S.C. § 601 Deputy Secretary of Defense memo, "Review of Policies to Eliminate Stigmatizing Language Related to Mental Health, dated November 7, 2022

2.0 – DEFINITIONS

	37 U.S.C. § 602 15A Corpus Juris Secundum (C.J.S.) Committee 15A C.J.S. Conservator 21 C.J.S. Courts 22 39 C.J.S. Guard and W2 89 C.J.S. Trusts 3
2.6	Deputy Secretary of Defense memo, "Review of Policies to Eliminate Stigmatizing Language Related to Mental Health, dated November 7, 2022

3.0 – MENTAL INCAPACITY

3.1	37 U.S.C. § 602
3.2	Public Law (PL) 114-328, section 645, December 23, 2016 37 U.S.C. § 602
3.3 – 3.4	37 U.S.C., Chapter 11 37 U.S.C. §§ 601-604
3.5	37 U.S.C. § 602
3.5.2.1	Deputy Secretary of Defense memo, "Review of Policies to Eliminate Stigmatizing Language Related to Mental Health, dated November 7, 2022
3.5.2.2	Deputy Secretary of Defense memo, "Review of Policies to Eliminate Stigmatizing Language Related to Mental Health, dated November 7, 2022

REFERENCES (Continued)

3.6 – 3.8	37 U.S.C. § 602(c) and (e) Deputy Secretary of Defense memo, "Review of Policies to Eliminate Stigmatizing Language Related to Mental Health, dated November 7, 2022

4.0 – PHYSICAL INCAPACITY

4.2	39 American Jurisprudence (Am Jur) 2d, Guardian and Ward, 21 and 22 Deputy Secretary of Defense memo, "Review of Policies to Eliminate Stigmatizing Language Related to Mental Health, dated November 7, 2022
4.2.1	In re (Latin for "In the matter of") Cass/Guardianship 155 Neb 792, 54 NW 2d 68, 1952
4.2.2	Loss vs. Loss, 251 12d 515, 185 NE 2d 228, 1962 Deputy Secretary of Defense memo, "Review of Policies to Eliminate Stigmatizing Language Related to Mental Health, dated November 7, 2022
4.2.3	Hogan's Appeal, 135, Me 249, 194A 854, 113 American Law Review 350, 1937
4.2.4	Shapter vs. Pillar, 28 Col 209, 63P 302, 1900
4.3	39 Am Jur 2d, Guardian and Ward, 21 and 22

6.0 – TERMINATION OF PAYMENTS AND DISCHARGE OF TRUSTEE

6.1	37 U.S.C. § 602(e) PL 117-81, section 605, December 27, 2021 Deputy Secretary of Defense memo, "Review of Policies to Eliminate Stigmatizing Language Related to Mental Health, dated November 7, 2022
6.1.1	Deputy Secretary of Defense memo, "Review of Policies to Eliminate Stigmatizing Language Related to Mental Health, dated November 7, 2022
6.1.3	Deputy Secretary of Defense memo, "Review of Policies to Eliminate Stigmatizing Language Related to Mental Health, dated November 7, 2022

REFERENCES (Continued)

6.1.5	Deputy Secretary of Defense memo, "Review of Policies to Eliminate Stigmatizing Language Related to Mental Health, dated November 7, 2022
6.1.6	Deputy Secretary of Defense memo, "Review of Policies to Eliminate Stigmatizing Language Related to Mental Health, dated November 7, 2022
6.1.7	PL 117-81, section 605, December 27, 2021
6.2	37 U.S.C. § 602(e)
6.3	Deputy Secretary of Defense memo, "Review of Policies to Eliminate Stigmatizing Language Related to Mental Health, dated November 7, 2022

7.0 – COMFORT ITEMS DURING HOSPITAL STAY

7.1	Deputy Secretary of Defense memo, "Review of Policies to Eliminate Stigmatizing Language Related to Mental Health, dated November 7, 2022

VOLUME 7B, CHAPTER 17: "BANKRUPTCIES"

SUMMARY OF MAJOR CHANGES

Changes are identified in this table and also denoted by blue font.

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

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

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

The previous version dated August 2022 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
1.1.2	Clarified coordination with Defense Finance and Accounting Service, Office of the General Counsel, Garnishment Law Directorate upon notification of bankruptcy.	Revision

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CHAPTER 17

BANKRUPTCIES

1.0 GENERAL

1.1 Purpose

This chapter applies to military retirees who have filed a bankruptcy petition under ***Title 11, United States Code (U.S.C.), Chapter 7*** or ***11 U.S.C., Chapter 13*** of the Bankruptcy Code. (Note: When hyperlinks to 11 U.S.C., Chapters 7 or 13 are opened, scroll down to access more information on bankruptcy). The law waives the U.S. Government's sovereign immunity for purposes of compliance with payroll deduction orders issued by the bankruptcy courts. Accordingly, the Defense Finance and Accounting Service (DFAS) will honor the bankruptcy withholding orders.

1.1.1. Voluntary Bankruptcy. Military retirees may seek protection of voluntary bankruptcy as "debtors."

* 1.1.2. Automatic Stay Provisions. Continued deduction from the retiree's pay of most types of debts, including debts owed to the United States, after the filing of a petition in a bankruptcy is improper and violates the automatic stay provisions of the bankruptcy statute. Any debt amounts withheld after the date the bankruptcy petition is filed must be refunded to the retiree's pay account. The automatic stay provisions of the bankruptcy statute do not preclude continued deductions based on court-ordered support obligations or divisions of retired pay unless the bankruptcy court orders otherwise. Coordinate with the DFAS Office of General Counsel, Garnishment Law Directorate when notified of a bankruptcy filing and prior to making a determination as to the collection of a debt, as there may be exceptions that affect the collection of a debt or refund due a debtor.

1.1.3. Proof of Claim. Upon notice or actual knowledge of the filing of a bankruptcy petition, when the retiree has listed the U.S. Government as a creditor, DFAS-Cleveland, Retired and Annuitant Pay Operations will file ***Official Form 410***, Proof of Claim, with the bankruptcy court concerned.

1.1.4. Post-Petition Debt. A new item of indebtedness incurred after the filing of the bankruptcy petition is known as a post-petition debt. Post-petition debt collection should be coordinated with the DFAS Office of the General Counsel, Garnishment Law Directorate prior to taking any action.

1.2 Authoritative Guidance

The pay policies and requirements established by the DoD in this chapter are derived primarily from, and prepared in accordance with the U.S.C., including Titles 11 and 31. Due to

the subject matter in the chapter, the list of authoritative sources is extensive. The specific statutes, regulations, and other applicable guidance that govern each individual section are listed in a reference section at the end of the chapter.

2.0 ADJUSTMENT OF DEBTS OF AN INDIVIDUAL WITH REGULAR INCOME, BANKRUPTCY, TITLE 11, UNITED STATES CODE (U.S.C.), CHAPTER 13 (THE PLAN)

2.1 Repayment Plan

A retiree may file a petition with the court to enter a Chapter 13 plan under the Bankruptcy Code (11 U.S.C., Chapter 13), henceforth called "the plan." Under 11 U.S.C., Chapter 13, a retiree must submit a proposed repayment plan to the bankruptcy court that provides, among other things, that all or a specified amount of future income, as is necessary to pay claims according to the plan, is under the control of the bankruptcy trustee. The plan will provide for the submission of such earnings or wages to the supervision and control of the court for the purpose of enforcing the plan.

2.2 Provisions

Generally, when the plan is confirmed by the court, its provisions are binding upon the debtor and all creditors of the debtor, whether they are affected by the plan, whether they have accepted it and have filed their claims, or whether their claims have been scheduled or allowed, or are allowable. Coordinate with the DFAS Office of General Counsel, Garnishment Law Directorate as there may be exceptions that do not bind creditors against the plan and/or discharge depending on the characterization of the indebtedness, the date the indebtedness was incurred, and/or the effectiveness of service of the bankruptcy notice to the creditor.

2.3 Authority

The court has authority to issue orders needed to implement the provisions of the plan including orders directed to an employer of the debtor.

2.4 Retired Pay

The retired pay of a retiree may be used to pay the plan and is payable to the trustee appointed by the court. The payment by DFAS of part of the retiree's pay in response to a court order issued in the plan does not conflict with ***31 U.S.C. § 3713*** (Priority of Government Claims). Compliance with such a court order gives the government a valid acquittance against the retiree since the court order is binding on the retiree.

Note: See ***11 U.S.C. § 101(10A)(B)(ii)(IV)***, for the definition of current monthly income which excludes any monthly compensation, pension, pay, annuity, or allowance paid under Titles 10, 37, or 38 in connection with a disability, combat-related injury or disability, or death of a member of the uniformed services. However, any retired pay excluded shall include retired pay paid under chapter 61 of Title 10 only to the extent that such retired pay exceeds the amount of retired pay to which the debtor would otherwise be entitled if retired under any provisions of Title 10 other than chapter 61 of that title. Additionally, the current monthly income in the definition section affects

the income that is used for determining the amount of payment for the plan. Once DFAS receives the court order issued in the plan, DFAS will withhold from all available sources to satisfy the court order obligation as the retiree voluntarily entered the plan.

2.5 Judicial Determination

If the U.S. Government is a creditor when the retiree files the plan, then Government's priority under 31 U.S.C. § 3713 may be asserted in the absence of a judicial determination to the contrary.

2.6 Delinquent Taxes

A retiree who is participating in the plan must pay the delinquent taxes which he or she owes that had not been assessed before the date of confirmation of the plan. The retiree is also responsible for all taxes that may become due. The United States may accept the provisions of any plan that includes the assumption, settlement, or payment of any such delinquent taxes.

2.6.1. When DFAS-Cleveland, Retired and Annuitant Pay Operations sends the entire amount of the retiree's pay to the court-appointed trustee, the Internal Revenue Service (IRS) Notice of Levy should be forwarded to the court-appointed trustee for disposition.

2.6.2. When DFAS-Cleveland, Retired and Annuitant Pay Operations sends part of the pay due the retiree to the court-appointed trustee, the IRS Notice of Levy should be processed in the normal manner against the amount due the retiree. The court-appointed trustee is provided a copy of the IRS Notice of Levy and notified of the action taken in establishing the liquidation procedures on a continuing Notice of Levy.

3.0 PROCEDURES

3.1 Bankruptcy Notices and Withholding Orders

3.1.1. All bankruptcy notices and withholding orders should be submitted or faxed to:

DFAS Office of General Counsel
Attn: Garnishment Law Directorate
P.O. Box 998002
Cleveland, OH 44199-8002

Toll Free Fax: (877) 622-5930
Commercial Fax: (216) 367-3675

3.1.2. DFAS Office of General Counsel, Garnishment Law Directorate is the designated agent for service of process for all military retiree bankruptcy notices and withholding orders.

3.1.3. The following information should be included with the withholding order:

3.1.3.1. Full name and

3.1.3.2. Full social security number.

3.1.4. The notice is effective when it is received in the office of the designated official.

3.1.5. When the notice does not sufficiently identify the retiree, it will be returned directly to the person who submitted the order with an explanation of the deficiency.

3.2 Case Review and Execution of Bankruptcy Withholding Order

Upon receipt of notice of a bankruptcy, together with all the required information, the office of the designated official will review the case to determine if there are any garnishments or debt collections that must be terminated as a result of the automatic stay (child support, alimony, child support arrears, alimony arrears, and division of property awards are not terminated unless the bankruptcy order requires it). If a bankruptcy withholding order is submitted, the office of the designated official will establish the withholding against the retiree's pay to comply with the bankruptcy order within 30 days. Withholdings will continue until the amount specified in the order is collected, or the order is modified or terminated, or the bankruptcy case is dismissed or discharged.

3.2.1. Within 30 calendar days after the date of receipt of the order, the designated official will send notice to the retiree.

3.2.2. The letter will inform the retiree the date that the bankruptcy withholding is scheduled to begin and the amount or percentage that will be deducted.

3.2.3. When the retiree identified in the order is found not to be entitled to money due from or payable by DFAS, the designated official will return the order to the person who submitted it and advise him or her that no money is due from or payable by DFAS to the named individual. When it appears that amounts are exhausted temporarily or otherwise unavailable, the authorized person must be told why and for how long any money is unavailable, if known.

REFERENCES

CHAPTER 17 – BANKRUPTCIES

1.0 – GENERAL

1.1.1	11 U.S.C. § 109
1.1.2	11 U.S.C. § 362
1.1.3	11 U.S.C. § 501
1.1.4	11 U.S.C. § 1305

2.0 – ADJUSTMENT OF DEBTS OF AN INDIVIDUAL WITH REGULAR INCOME, BANKRUPTCY, CHAPTER 13 (THE PLAN)

2.1	11 U.S.C. §§ 1301-1330
2.2	11 U.S.C. § 1327
2.3	11 U.S.C. § 105
2.4	11 U.S.C. § 101(10A)(B)(ii)(IV) 11 U.S.C. § 1326 31 U.S.C. § 3713
2.5	31 U.S.C. § 3713 47 Comptroller General (Comp Gen) 522, United States vs. Shannon, 342 US 288, 1951
2.6	31 U.S.C. § 3713 47 Comp Gen 522

VOLUME 7B, CHAPTER 18: "RELEASE OF INFORMATION"

SUMMARY OF MAJOR CHANGES

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PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated hyperlinks and formatting to comply with current administrative instructions.	Revision
4.2 4.3	Combined paragraphs to streamline the Air Force and Space Force administration and the Navy and Marine Corps administration.	Revision

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CHAPTER 18

RELEASE OF INFORMATION

1.0 GENERAL

1.1 Purpose

This chapter provides regulatory policy on the Freedom of Information and Privacy Acts. Guidance references are from United States Code (U.S.C.), Public Law (PL), DoD and agency regulations.

1.2 Authoritative Guidance

The pay policies and requirements established by the DoD in this chapter are derived primarily from and prepared in accordance with the United States Code (U.S.C.), including Title 5. Due to the subject matter in the chapter, the list of authoritative sources is extensive. The specific statutes, regulations, and other applicable guidance that govern each individual section are listed in a reference section at the end of the chapter.

2.0 FREEDOM OF INFORMATION ACT

PL 89-554, enacted September 6, 1966, commonly known as the Freedom of Information Act (FOIA) and codified in ***Title 5, U.S.C., section 552***, as amended, provides for openness in government and making information available to the public. ***DoD Directive (DoDD) 5400.07***, DoD Freedom of Information Act Program, provides guidance on 5 U.S.C. § 552, as amended, and prescribes uniform policies and procedures for the DoD implementation of the FOIA.

3.0 PRIVACY ACT

PL 93-579, enacted December 31, 1974, commonly known as the Privacy Act of 1974 and codified in 5 U.S.C. § 552a, as amended, safeguards individual privacy by governing the collection, safeguarding, maintenance, public notice, use, access, amendment, and dissemination of personal information. ***DoD Instruction (DoDI) 5400.11***, DoD Privacy and Civil Liberties Programs, provides guidance on 5 U.S.C. § 552a, as amended, and prescribes uniform procedures for implementation of the DoD Privacy Program.

4.0 ADMINISTRATION

Administration of the FOIA and the Privacy Act must be in accordance with the respective Component regulations and instructions.

4.1 Army

Army administration of the FOIA and the Privacy Act must be in accordance with ***Title 32, Code of Federal Regulations (CFR), part 286***, Army Regulations (AR) ***AR 25-55***, and ***AR 25-22***,

*4.2 Air Force and Space Force

Air Force and Space Force administration of the FOIA and the Privacy Act must be in accordance with ***DoDM 5400.07_Air Force Manual (AFMAN) 33-302*** and ***Air Force Instruction 33-332***.

*4.3 Navy and Marine Corps

Navy and Marine Corps administration of the FOIA and the Privacy Act must be in accordance with ***Secretary of the Navy Instructions (SECNAVINST) 5720.42G*** and ***SECNAVINST 5211.5F***.

4.4 Defense Finance and Accounting Service

The Defense Finance and Accounting Service (DFAS) FOIA and Privacy Act Office manages FOIA and Privacy Act requests received by DFAS to ensure compliance with the FOIA and Privacy Act of 1974.

REFERENCES

CHAPTER 18 – RELEASE OF INFORMATION

2.0 – FREEDOM OF INFORMATION ACT

PL 89-554, September 6, 1966
PL 90-23, June 5, 1967
PL 93-502, November 21, 1974
PL 94-409, September 13, 1976
PL 95-454, October 13, 1978
PL 98-620, November 8, 1984
5 U.S.C. § 552, as enacted by PL 89-554, thereafter, amended by PL 90-23, PL 93-502, PL 94-409, PL 95-454, and PL 98-620
DoDD 5400.07, January 2, 2008

3.0 – PRIVACY ACT

PL 93-579, December 31, 1974
5 U.S.C. § 552a, as amended
DoDI 5400.11, December 8, 2020

4.0 – ADMINISTRATION

AR 25-55
AR 25-22
32 CFR, part 286
DoDM 5400.07_AFMAN 33-302
Air Force Instruction 33-332
SECNAVINST 5720.42G
SECNAVINST 5211.5F

VOLUME 7B, CHAPTER 19: "GENERAL PROVISION GOVERNING ALLOTMENTS OF RETIRED PAY"

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PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated chapter formatting to comply with current administrative instructions.	Revision
Table 19-4	Added Space Force within the 5th column of the header.	Addition

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CHAPTER 19

GENERAL PROVISIONS GOVERNING ALLOTMENTS OF RETIRED PAY

1.0 GENERAL

1.1 Purpose

1.1.1. Allotments are designed for the convenience and privilege of retirees and are not to be exploited or abused. The retired pay activity acts solely as an agent of the retiree in the payment of the allotments and assumes no liability concerning any contract between the retiree and the allottee. Allotments paid erroneously through administrative error must be recovered from the allottee, if possible, or may be collected from the retiree if such payment provided a benefit to that retiree.

1.1.2. Voluntary allotments of retired pay or retainer pay for military retirees are limited to discretionary and nondiscretionary allotments. To aid personnel in the transition from active duty to retired status, all existing authorized allotments of members on active military service may be continued as approved allotments. Authorized allotments include a maximum of six discretionary allotments, as outlined in paragraph 2.1 and Volume 7A.

1.2 Authoritative Guidance

The pay policies and requirements established by DoD in this chapter are derived primarily from, and prepared in accordance with, the United States Code (U.S.C.). Due to the subject matter in this chapter, the list of authoritative sources is extensive. The specific statutes, regulations, and other applicable guidance that govern each individual section are listed in a reference section at the end of the chapter.

2.0 DISCRETIONARY ALLOTMENTS

2.1. Discretionary Allotments

Retirees are authorized no more than six discretionary allotments. A retiree may start a new allotment as long as the total number of discretionary allotments does not exceed six. Discretionary allotments are identified as “class D” allotments. The retiree must certify that the allotment is within the limits of the law (e.g., allotments may not be used to repay gambling debts in a state where gambling is not permitted). Discretionary allotments include, but are not restricted to, the allotments described in this section. A retired member may terminate a discretionary allotment upon request using the procedures set out in paragraph 4.3.

2.2 Allotments for Insurance Premiums

Allotments are authorized for paying various types of commercial insurance premiums. This includes payment for life, dental, health, and vehicle insurance. Premium payments are combined when a retiree has more than one life insurance allotment within the same company. All payments to an insurer are made via Electronic Funds Transfer (EFT). The insurer is responsible for

establishing an account for these payments. The start, change and stop dates for the insurance allotments are set out in Tables 19-1, 19-2, and 19-3.

2.2.1. Cash Deposit for Insurance. If a retiree's retired pay account is in a nonpay status due to full waiver of pay, failure to report for periodic physical examination, or the expiration of 3 years after the date the member's name was placed on the Temporary Disability Retired List, the member may request the Department of Veterans Affairs (VA) pay VA insurance premiums by deduction from disability compensation benefits, or the member may pay premiums by sending remittances directly to:

Department of Veterans Affairs
P.O. Box 7787
Philadelphia, PA 19101

2.2.2. Eligible Allottees. Eligible allottees include:

2.2.2.1. U.S. Government Life Insurance/National Service Life Insurance (USGLI/NSLI);

2.2.2.2. Navy Mutual Aid Association;

2.2.2.3. American Armed Forces Mutual Aid Association (AAFMAA);

2.2.2.4. Dental and Health Insurers;

2.2.2.5. Vehicle Insurers; and

2.2.2.6. Commercial Insurers.

2.3 Allotments to Dependents or Relatives

Voluntary payment may be made by allotment to a spouse, other dependent(s), or to a relative(s) not legally designated as a dependent(s). Allotments must be made payable to the allottee through a financial institution for credit to the account of the allottee. An allottee can be a state agency, court trustee, welfare agency, former spouse, or a child's guardian or custodian. The member or allottee must make satisfactory arrangements with the financial institution to accept EFT payment before starting the allotment.

2.4 Allotment Deposits to Financial Organizations

Retirees may authorize allotments of pay to financial organizations for credit to the account of the member. Allotments may be deposited to:

2.4.1. A financial organization for credit to a savings, checking, or trust account of the allotter; or

2.4.2. A mutual fund or other company or investment firm.

2.5 Allotments for Payment of Mortgage or Rent

Retirees may authorize allotments for mortgage or rent payment to a financial institution, mortgage company, realtor, or landlord.

2.6 Other Allotments

Retirees may authorize an allotment for payment of personal loans; however, the restrictions in paragraph 4.8 apply. Personal loans may include, but are not limited to the following:

2.6.1. Payment of a car loan; and

2.6.2. Payment of a loan to repay consumer credit, such as to a finance company.

2.7 Air Force Retired Members Only

Only retired Air Force members may authorize allotment payments to the Air Force Enlisted Members Widow's Home.

3.0 NONDISCRETIONARY ALLOTMENTS

3.1 Nondiscretionary Allotments

Nondiscretionary allotments of retired and retainer pay are limited to those described in this section.

3.2 Voluntary Liquidation of Indebtedness

An allotment for repayment of indebtedness to the United States is registered for a definite period required to liquidate the indebtedness. Retired members may make allotments for payment of:

3.2.1. Indebtedness incurred due to defaulted notes insured by the Federal Housing Administration or guaranteed by the VA;

3.2.2. Any other indebtedness to any department or agency of the U.S. Government (except DoD) debts, to include those assigned to a collection agency;

3.2.3. Delinquent Federal income taxes. A member may execute an agreement with the Internal Revenue Service (IRS) to pay delinquent taxes by monthly deductions from retired pay. Agreements are made by executing an ***IRS Form 2159***, Payroll Deduction Agreement;

3.2.4. Delinquent state or local income or employment taxes; and

3.2.5. Loan debt to Navy-Marine Corps Relief Society, Army Emergency Relief, Air Force Aid Society, or American Red Cross.

3.3 Charitable Contributions

Retirees are authorized to establish an allotment for making charitable contributions to any of the Service Relief Organizations including the Army Emergency Relief, Navy-Marine Corps Relief Society, or affiliates of the Air Force Assistance Fund. Payment of pledges for these specified charities is authorized. These payments are for a definite period. Individual organizations are responsible for identifying an account for receipt of payment.

3.4 Savings Bonds Allotments

3.4.1. Purchasing and Establishment of Savings Bonds by Nondiscretionary Allotment. As of October 1, 2010, the U.S. Treasury no longer issues paper savings bonds to federal employees (military, retired, and civilian personnel members) through payroll deduction. Retired members may purchase electronic savings bonds by establishing a personal TreasuryDirect account with the Treasury through TreasuryDirect. This account can be used to purchase multiple bonds. Members are authorized one nondiscretionary allotment for the purchase of bonds. For information on TreasuryDirect, go to ***www.treasurydirect.gov***.

3.4.2. Establishment of Savings Bonds Nondiscretionary Allotment. To establish an allotment to their TreasuryDirect account, members must either contact the Defense Finance and Accounting Service (DFAS) Retired and Annuitant Pay or create the allotment through myPay. The following information is required to initiate the allotment:

3.4.2.1. The routing transit number for TreasuryDirect: 051736158;

3.4.2.2. The TreasuryDirect account number provided by Treasury; and

3.4.2.3. The specific dollar amount to be deducted monthly.

NOTE: The myPay system also requires that the member designate the account type, either checking or savings, even though that designation is not applicable to an allotment to a TreasuryDirect account. Send written requests to begin Savings Bonds Allotments to:

Defense Finance and Accounting Service
U.S. Military Retired Pay
8899 East 56th Street
Indianapolis, IN 46249-1200

4.0 ALLOTMENT ADMINISTRATION

4.1 Definitions

4.1.1. Allotment. An allotment is a definite portion of the retired pay of a person retired from a Military Service, which the retiree authorizes to be paid to a person, institution, or agency. This payment may be for the purpose of supporting relatives or for any other purpose that the Secretary of the military department concerned considers proper.

4.1.2. Allottee. An allottee is a person, institution, or agency to whom the allotment is made payable.

4.1.3. Allotter. An allotter is the person from whose retired pay the allotment is made.

4.1.4. Financial Institution. A financial institution is a bank (to include a military banking facility), credit union, or thrift association.

4.2 Excluded Amounts in Retired Pay Allotment

The amount of retired pay which may be allotted can be limited administratively to exclude amounts required to be withheld for:

4.2.1. Tax purposes;

4.2.2. Liquidation of an indebtedness determined under applicable provisions of law to be chargeable against the member's retired pay account;

4.2.3. Cost of participation in the Retired Serviceman's Family Protection Plan and/or Survivor Benefit Plan;

4.2.4. Garnishments;

4.2.5. Continuing tax levies;

4.2.6. VA compensation; and

4.2.7. Payments to a former spouse.

4.3 Establishment, Discontinuance, and Changes to Existing Allotments

A properly executed DoD ***(DD) Form 2558***, Authorization to Start, Stop or Change an Allotment), a written request, or an automated data exchange (from specific organizations) may be used to establish, discontinue, or change an allotment. Automated computer programs that allow members to establish, discontinue, or change an allotment using a personal identification number are also permitted. In addition, requests may be accepted telephonically from members without written

documentation, but only after the member's identity has been validated. Requests for allotment actions should be provided to DFAS, Retired and Annuitant Pay. Normally, allotments are not established retroactively.

4.4 Administrative Changes

4.4.1. Changes beyond the control of the retiree are considered administrative in nature. These are dictated by events incidental to the purpose of the allotment. Examples include changes to the name, address, account number, and financial institution of the allottee. Other examples include amount changes due to contractual obligations existing at the time the allotment was executed (such as a mortgage payment changed because of variable rate mortgage or change in escrow requirement). Administrative changes may be made without the member's consent.

4.4.2. In addition to the situations described in subparagraph 4.4.1, upon notice and request from an insurance allottee, administrative changes may be made without the member's consent under the following circumstances:

4.4.2.1. Death of retired member;

4.4.2.2. Policy terminated;

4.4.2.3. Policy has been surrendered;

4.4.2.4. Policy changed;

4.4.2.5. Policy paid up, no premiums due;

4.4.2.6. Policy not in force; or

4.4.2.7. Lapsed policy.

Note: The allotment will be terminated or reduced at the insurance allottee's request; refund and notification of the returned premium must be forwarded to the retired member.

4.5 Duration of Allotments

Allotments are registered for an indefinite period except in the following circumstances:

4.5.1. Repayment of indebtedness to the United States, to include payment of delinquent Federal income taxes; and

4.5.2. Charitable contributions as specified in paragraph 3.3.

4.6 Allotment Overpayment Responsibilities

Any check issued and mailed to a recipient or transmitted via EFT to the recipient's financial institution for which an entitlement does not exist must be recovered immediately by the issuing office. If an allotment is made after deductions from retiree's retired pay have stopped, and the recipient does not return the amount of that payment, then the office of issuance must start a recovery action of an equal amount from the recipient, or the retiree, if that office determines that the retiree benefited from the payment. If the retiree is liable, then the overpayment must be recovered through deductions from the retired pay due the retiree.

4.7 Method of Payment

EFT is the method of payment required for all individual allotments. For a list of exceptions to this requirement see Title 31, Code of Federal Regulations (CFR), part 208.4 (***31 CFR 208.4***) and Volume 8, Chapter 1.

4.8 Restrictions

The following restrictions apply to allottees:

4.8.1. Minors. Allotments (except to purchase U.S. Savings Bonds) may not be made payable to children under 16 years of age. Allotments may be made payable to the child's guardian or custodian. Spouses of retirees may be named as allottees regardless of age.

4.8.2. Persons Lacking Decision-Making Capacity. Allotments are not payable to persons determined by a court to lack decision-making capacity. Such allotments are payable to a guardian or the institution where confined.

4.8.3. Multiple Allotments. See restrictions in paragraphs 1.1 and 2.1.

4.8.4. Special Power of Attorney. A special power of attorney may be used to establish, change, or stop an allotment. This special power of attorney must specifically grant the authority to establish, change or stop allotments. A general power of attorney is not acceptable to establish, change, or stop an allotment.

4.8.5. Reduced Retired Pay of Allotter. When a stoppage or reduction of retired pay does not leave enough funds for deduction of allotments in force, then those allotments are stopped administratively by the disbursing officer without the signature of the retiree, as described in section 4.0 and Figure 19-1.

4.8.6. Administrative Stops. Allotments may be stopped because of the required deductions from retired pay listed in paragraph 4.2. When possible, the retiree is allowed to determine the allotments to be stopped. However, if the retiree involved refuses or is unable to identify which allotments should be stopped, then the allotments of that retiree will be stopped involuntarily in accordance with the order of precedence contained in Figure 19-1.

5.0 RIGHT TO ALLOTMENTS IN CASE OF DEATH

5.1 Death of Retiree

Entitlements to allotments end with the death of the member. No further allotment payments may be made after receipt of notice of the allotter's death. Deductions made from the retiree's pay, but not paid to the allottee, become part of the arrears of retired pay. Allotments paid after the retiree's death may not be collected from the allottee, except:

5.1.1. Allotments erroneously established after notice of death of the retiree; and

5.1.2. Unearned insurance premiums (insurance premiums are paid 1 month before the day payment is actually due).

5.2 Death of Allottee

An allotment check, even though endorsed, does not become part of an allottee's estate if it is not cashed or negotiated before the allottee's death. Allotment checks are not subject to expenses incurred by or on behalf of the allottee before or after death. All unnegotiated allotment checks must be returned to the office that issued the check. The returned checks are then credited to the retiree's account.

Figure 19-1. Order of Precedence

Precedence	Type	Letter Designation
1	Charitable contributions to Army Emergency Relief, Navy-Marine Corps Relief Society, or Air Force Assistance Fund	See Table 19-4
2	Bonds	B
3	Savings	D
4	Loans to service organizations	L
5	Payment of delinquent state or local income or employment taxes	T
6	Dependents	D
7	Home loans	D
8	Commercial life insurance/ AAFMAA	D
9	Navy Mutual Aid Insurance	M
10	Government life insurance	N
11	Veterans Group Life Insurance	See Table 19-1
12	Deductions for court-ordered support	D
13	Repayment of indebtedness to the United States	T
14	Payment of delinquent Federal income taxes	T

Table 19-1. Effective Dates for Starting Insurance Allotments (D, M, V, or N)

RULE	If a retired member of	is authorized a class	and the	then start the allotment effective the first day of the month
1	any Military Service	N allotment		before the month in which insurance premium is due (note).
2	any Military Service	N allotment	insurance policy is dated back to save age	in which application is made. Retiree must pay the Reserve to cover previous months by direct payments to VA.
3	the Army, Air Force, or Space Force	D allotment		specified by retiree, if authorization reaches the servicing finance center before the date specified in Military Service procedural regulations.
4	the Navy or Marine Corps	D or M allotment		specified by retiree, if authorization reaches the servicing finance center before the date specified in Military Service procedural regulations
5	any Military Service	D or V allotment		submitted by the Veterans Group Life Insurance through the automated data exchange process.

NOTE: A U.S. Government or NSLI allotment deducted for 1 month pays the premium for the succeeding month. For example, if premium for July is paid by allotment, then allotment must be effective June 1.

Table 19-2. Effective Dates for Changing Insurance Allotments (D, M, V, or N)

RULE	If a retired member of	has a class	and	then stop the present allotment effective the last day of the month	and start the new allotment effective the first day of the month
1	the Army, Air Force, or Space Force	D or N allotment	the retiree, fiduciary, or guardian requests a change in allotment	specified in request if allotment change can be processed by the date specified in procedural regulations of the Military Service concerned	after the month old allotment is stopped.
2	the Navy or Marine Corps	D, M, or N allotment	the retiree, fiduciary, or guardian requests a change in allotment	specified in request if allotment change can be processed by the date specified in procedural regulations of the Military Service concerned	after the month old allotment is stopped.
3	any Military Service	N allotment	the allotment was authorized with an incorrect amount or effective date	before its effective date	specified in the original request or the date requested by the VA.
4	any Military Service	D or V allotment	the Office of Servicemembers' Group Life Insurance (OSGLI) automated data exchange provides a change in the allotment	specified by the automated data exchange process	specified by the automated data exchange process.

Table 19-3. Effective Dates for Stopping Insurance Allotments (D, M, V, or N)

RULE	If a retired member of	has a class	and	then stop the allotment effective the last day of the
1	the Army, Air Force, or Space Force	D or N allotment	the retiree requests the allotment be stopped	month specified by the retiree, if authorization reaches the servicing DFAS Site before the date specified in the procedural regulations of the Military Service concerned.
2	the Navy or Marine Corps	D, M, or N allotment	the retiree requests the allotment be stopped	month specified by the retiree, if authorization reaches the servicing DFAS Site before the date specified in the procedural regulations of the Military Service concerned.
3	any Military Service	N allotment	the application for insurance is disapproved by the VA	month before the effective start date of the allotment.
4	the Army, Air Force, or Space Force	D allotment	has insufficient "net" pay to satisfy an IRS Notice of Levy for delinquent income tax, and is determined by the IRS to be a "problem case"	month before the month in which the IRS levy is received (stop insurance allotments only if discontinuance of other voluntary allotments will not satisfy the levy).
5	the Navy or Marine Corps	D or M allotment	has insufficient "net" pay to satisfy an IRS Notice of Levy for delinquent income tax, and is determined by the IRS to be a "problem case"	month before the month in which the IRS levy is received (stop insurance allotments only if discontinuance of other voluntary allotments will not satisfy the levy).
6	the Army, Air Force, or Space Force	D or N allotment	has pay suspended (note 1) or insufficient pay	last month in which enough pay accrues to satisfy the deduction. Avoid stopping the allotment unnecessarily or earlier than required.
7	the Navy or Marine Corps	D, M, or N allotment	has pay suspended (note 1) or insufficient pay	last month in which enough pay accrues to satisfy the deduction. Avoid stopping the allotment unnecessarily or earlier than required.

Table 19-3. Effective Dates for Stopping Insurance Allotments (D, M, V, or N) (Continued)

RULE	If a retired member of	has a class	and	then stop the allotment effective the last day of the
8	the Army, Air Force, or Space Force	D or N allotment	dies	(note 1.)
9	the Navy or Marine Corps	D, M, or N allotment	dies	(note 1.)
10	any Military Service	D or V allotment	the retiree or OSGLI requests the allotment be stopped	month specified by the retiree, if authorization reaches the servicing DFAS Site before the date specified in Military Service procedural regulations. If OSGLI, stop specified by the automated data exchange process (note 2).

NOTES:
1. See procedural regulations of Military Service concerned.
2. Advise OSGLI immediately of reason for stoppage of allotment if it was discontinued by the automated data exchange process.

*Table 19-4. Allotments of Retired Pay – General

RULE	When the purpose of allotment is for	and Service's letter designation is			and member is not on active duty and has allotments (notes 1 and 2)		then the allotment period required is	
		Army	Navy/ USMC	Air Force/ Space Force	authorized for carryover from active duty	authorized for establish-ment from active duty	Indefinite	Definite
1	purchase of U.S. Savings Bonds	B	B	B	X	X	X	
2	payment to dependents (note 5)	D	D	D	X	X	X	
3	repayment of home loans	D	D	D	X		X	
4	commercial life insurance/ AAFMAA (note 3)	D	D	D	X	X	X	
5	repayment of loans to Navy-Marine Corps Relief Society, Army Emergency Relief, American Red Cross, or Air Force Aid Society	L	L	L	X	X		X
6	Navy Mutual Aid Insurance (note 2)	None	M	None	X	X	X	
7	USGLI and/or NSLI (note 4)	N	N	N	X	X	X	
8	repayment of loans on VA insurance (note 4)	N	N	N			X	
9	payment to financial institution or credit to account of retiree (note 6)	D	D	D	X		X	
10	payment of delinquent Federal income taxes and/or payment of indebtedness to the United States (note 7)	T	T	T		X		X
11	charitable contributions to the Army Emergency Relief, Navy-Marine Corps Relief Society, or affiliates of the Air Force Assistance Fund	L	C	F	X	X		X

Table 19-4. Allotments of Retired Pay - General (Continued)

RULE	When the purpose of allotment is for	and Service's letter designation is			and member is not on active duty and has allotments (notes 1 and 2)		then the allotment period required is	
		Army	Navy/ USMC	Air Force/ Space Force	authorized for carryover from active duty	authorized for establish-ment from active duty	Indefinite	Definite
12	payment of delinquent state or local income or employment taxes (note 8)	T	T	T	X			X
13	Veterans Group Life Insurance	D	D,V	D		X	X	

NOTES:

1. Includes members of the Fleet Reserve or Fleet Marine Corps Reserve when not on active duty.
2. In addition to allotments authorized, member may continue any other allotments in effect (except Combined Federal Campaign and aviation premiums payable to the Navy Mutual Aid Association) at the time of retirement.
3. On the life of the allotter, spouse, and/or child(ren).
4. Payment of allotments for insurance premiums and repayment of insurance loans are made by one NSLI or class N allotment.
5. Authorized to a spouse, former spouse, and/or child(ren) of the retired member having a permanent residence other than that of the retired member.
6. Includes credit unions within the United States, its possessions, Puerto Rico, and Panama Canal Zone operating under a Federal or state charter. Also includes credit unions authorized under Volume 12, Chapter 33 to operate on an overseas U.S. military installation.
7. Delinquent Federal income taxes are payable to the applicable District Director, IRS.
8. Delinquent state or local and employment taxes are payable to the applicable state or local tax authorities.

REFERENCES

CHAPTER 19 – GENERAL PROVISIONS GOVERNING ALLOTMENTS OF RETIRED PAY

1.0 GENERAL

1.1	Title 37, United States Code (U.S.C.), section 701

2.0 – DISCRETIONARY ALLOTMENTS

2.1	37 U.S.C. § 701
2.2.1	10 U.S.C. § 1210(b)

3.0 – NONDISCRETIONARY ALLOTMENTS

3.4	31 CFR 363

4.0 – ALLOTMENT ADMINISTRATION

4.1	37 U.S.C. § 701
4.7	31 U.S.C. § 3332

5.0 – RIGHT TO ALLOTMENTS IN CASE OF DEATH

5.1	Comptroller General B-225873.2 31 U.S.C. § 3727(e)(2)

DEPARTMENT OF DEFENSE

FINANCIAL MANAGEMENT REGULATION

CHAPTER 20: "ARCHIVED"

UNDER SECRETARY OF DEFENSE (COMPTROLLER)

DEPARTMENT OF DEFENSE

FINANCIAL MANAGEMENT REGULATION

CHAPTER 21: "ARCHIVED"

UNDER SECRETARY OF DEFENSE (COMPTROLLER)

VOLUME 7B, CHAPTER 22: "FUNERAL HONORS DETAIL STIPEND FOR RETIREES"

SUMMARY OF MAJOR CHANGES

Changes are identified in this table and also denoted by blue font.

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

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

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

The previous version dated May 2022 is archived

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated hyperlinks and formatting to comply with current administrative instructions.	Revision

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CHAPTER 22

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FUNERAL HONORS DETAIL STIPEND FOR RETIREES

1.0 GENERAL

1.1 Overview

The Secretary of a Military Department is authorized to provide support for persons participating in a funeral honors detail, including retired military members, in the form of either transportation allowances (or reimbursement for transportation allowances) and expenses, or a daily stipend as prescribed by the Secretary of Defense. The prescribed daily stipend must be set at a single rate designed to defray the typical costs of transportation and other miscellaneous expenses for persons participating in a funeral honors detail who are members of the Armed Forces in a retired status and other persons who are not members of the Armed Forces or employees of the United States. See Volume 9, Chapter 4 for information regarding reimbursement for transportation allowances and expenses.

1.2 Purpose

This chapter provides policy for the entitlement, funding, and amount payable for funeral honors detail stipends.

1.3 Authoritative Guidance

The pay policies and requirements established by the DoD in this chapter are derived primarily from and prepared in accordance with the United States Code (U.S.C.), including Titles 10 and 37. The specific statutes, regulations, and other applicable guidance that govern each individual section are listed in a reference section at the end of the chapter.

2.0 ENTITLEMENT TO STIPEND

Secretaries of Military Departments are asked to authorize stipend payments for retirees under ***10 U.S.C. § 1491(d)*** in lieu of authorizing an allowance under ***37 U.S.C. § 435(a)***. These stipends ensure uniform payments to all volunteers who assist in providing funeral honors. A member of the Armed Forces in a retired status, including a member of the Retired Reserves without pay, may receive a daily stipend payment, in addition to any payment of retired or retainer pay or other compensation to which they are entitled, for performing funeral honors detail. Only one daily stipend may be earned and paid for 1 calendar day.

2.1 Amount Payable

The Secretary of Defense is required to prescribe annually a flat rate daily stipend for certain individuals who volunteer to assist the active military in the delivery of funeral honors. The daily stipend payable to a member receiving retired or retainer pay, or a member of the Retired Reserves without pay, is currently $50.

2.2 Taxability

The daily stipend payment under 10 U.S.C. § 1491(d) is not reported as taxable income.

2.3 Funding

The approving Military Department must make the payment under this chapter from Operation and Maintenance funds for the fiscal year in which the payment is made.

2.4 Payments

2.4.1. Retirees considered for the stipend must be an authorized provider to participate in the specific honor detail and perform the honors as anticipated. The retirees that perform funeral honors should be a provider under the Authorized Provider Partnership Program (AP3). The DoD established the AP3 for the benefit of commanders who have the responsibility to provide funeral honors to active duty Service members, retirees, and veterans.

2.4.2. The Military Department concerned is responsible for processing claims for authorized providers (retirees). The authorized provider (retiree) must complete and submit Optional Form 1164, Claim for Reimbursement for Expenditures on Official Business, to the parent Service of the honored veteran.

REFERENCES

CHAPTER 22—FUNERAL HONORS DETAIL STIPEND FOR RETIREES

1.0 — GENERAL	DoDI 1300.15, December 27, 2017 10 U.S.C. § 1491(d)
2.0 — ENTITLEMENT TO STIPEND	10 U.S.C. § 1491(d) 37 U.S.C. § 435(a)
2.1	10 U.S.C. § 1491(d)(2)
2.2	Office of the Under Secretary of Defense Personnel and Readiness Memorandum, February 10, 2014
2.4	DoDI 1300.15, December 27, 2017

VOLUME 7B, CHAPTER 23: "SPECIAL SEPARATION BENEFITS (SSB) AND VOLUNTARY SEPARATION INCENTIVE (VSI) PAY"

SUMMARY OF MAJOR CHANGES

Changes are identified in this table and also denoted by blue font.

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

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

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

The previous version dated September 2022 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
1.1	Added clarifying language to include Voluntary Separation Pay superseded SSB and VSI.	Current

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CHAPTER 23

SPECIAL SEPARATION BENEFITS (SSB) AND VOLUNTARY SEPARATION INCENTIVE (VSI) PAY

1.0 GENERAL

*1.1 Purpose

The purpose of this chapter is to provide policy for the authorization, administration, and payment of the SSB and VSI programs to mid-career Service members of the military services in over-strength inventories. The applicable period for SSB and VSI was January 1992 through December 2001. Both programs required member affiliation with a Reserve Component. Voluntary Separation Pay (VSP) superseded SSB and VSI. The authority to separate a member in conjunction with VSP applies through December 31, 2025. See Chapter 4 and Volume 7A, Chapter 35 for more information on VSP.

1.2 Authoritative Guidance

The pay policies and requirements established by the DoD in this chapter are derived primarily from, and prepared in accordance with the United States Code (U.S.C.), including Titles 10 and 31. Due to the subject matter in this chapter, the list of authoritative sources is extensive. The specific statutes, regulations, and other applicable guidance that govern each individual section are listed in a reference section at the end of the chapter.

2.0 RESPONSIBILITIES

2.1 Defense Finance and Accounting Service (DFAS), Cleveland (CL)

DFAS-CL will:

2.1.1. Maintain the VSI account until all annual installments are paid, or until the death of the VSI member recipient. A member's entitlement to VSI is not transferable, except that the member may designate beneficiaries to receive the payments in the event of the member's death, in accordance with paragraph 5.0; and

2.1.2. Make all VSI annual beneficiary payments. Following the death of a VSI member recipient, DFAS-CL will provide customer service support for designated beneficiaries and be the primary source for VSI member beneficiary account assistance and maintenance.

2.2 Defense Manpower Data Center (DMDC)

DMDC will:

2.2.1. Maintain a personnel database that identifies and tracks participation in the VSI programs; and

2.2.2. Provide information concerning Reserve participation to DFAS-CL due to the requirement of Reserve affiliation.

2.3 Secretary of the Treasury

The Secretary of the Treasury administers the VSI Fund (hereafter referred to as the "Fund"). All VSI payments made by the Secretary of Defense after December 31, 1992, pursuant to ***10 U.S.C. § 1175***, are to be paid out of the Fund. The Fund is classified as a trust fund and has been designated as account number 97X8335. This fund consists of a receipt and expenditure account.

2.4 DoD Board of Actuaries

For each fiscal year (FY) after September 30, 1999, the Board:

2.4.1. Carries out an actuarial valuation for the Fund and determines any new unfunded liabilities arising from gains and losses to the Fund;

2.4.2. Determines an amortization schedule for liquidating these new unfunded liabilities; and

2.4.3. Determines for the upcoming FYs the amount of DoD contributions to the Fund necessary to comply with the amortization schedules for the Fund's original and new unfunded liabilities in sufficient time to be included in the FY budget requests.

3.0 PAYMENT PROCESSING

3.1 VSI Payments

3.1.1. Upon Separation. A Service member completed a DoD ***(DD) Form 2058***, State of Legal Residence Certificate, and Internal Revenue Service ***(IRS) Form W-4***, Employee's Withholding Allowance Certificate at the time of separation and a ***DD Form 2864***, VSI Beneficiary Designation in order to designate any beneficiaries if desired.

3.1.2. Annual Payments. DFAS-CL issues annual payments on the anniversary of the member's separation. In the event that the anniversary date falls on a weekend or holiday, DFAS-CL will make the payment according to the same rules followed for regular active-duty paydays. DFAS-CL will send annual VSI payments to the VSI recipient's bank via Electronic Funds Transfer (EFT). The Service member should complete an updated Standard Form ***(SF) 1199A***, Direct Deposit Sign-Up Form, as information changes. If an SF 1199A is not available, the VSI recipient must submit a signed and dated request with the address of the bank and a canceled check that shows account number and routing transit number.

3.2 Effect of Disability Compensation

A member receiving VSI must not be deprived of the VSI by reason of entitlement to

disability compensation under the laws administered by the Department of Veterans Affairs (VA).

3.2.1. Deduction. The amount of any such disability compensation concurrently received must be deducted from VSI payments.

3.2.2. No Deduction. No deduction is made from VSI for any disability compensation received because of an earlier period of active duty if the VSI is received because of discharge or release from a later period of active duty.

3.3 Withholding Requirements for Members

3.3.1. Federal Income Tax Withholding (FITW). FITW is withheld from VSI payments based upon the annual Percentage Method of Withholding Table. A valid IRS Form W-4 is required to compute the proper withholding amount under this method. If the member has not submitted an IRS Form W-4, the tax withholding is computed as if the member is single, with no withholding exemptions.

3.3.2. State Income Tax Withholding. VSI payments are subject to state income tax withholding for residents of states that have entered into an agreement with the Secretary of the Treasury. State withholding and reporting for the SSB and the initial VSI payment is based on the member's legal residence at the time of separation from active duty. For annual VSI payments, state income tax is withheld based upon the state of legal residence claimed on the member's DD Form 2058. See Volume 7A, Chapter 44 for those states that have entered into an agreement with the Secretary of the Treasury.

3.3.3. Withholding of Federal Insurance Contributions Act (FICA). FICA (or any other payroll taxes) is not withheld from VSI payments.

3.4 Recoupment of SSB or VSI

A member who has received SSB or VSI and who later qualifies for retired or retainer pay will have the amount of the SSB or VSI received deducted from each payment of such retired or retainer pay. SSB will also be deducted from disability compensation under the laws administered by the VA. See Chapter 4 for detailed information on recoupment.

4.0 DEBT COLLECTION

SSB and VSI initial payments were subject to offset for debt collection. If a Service member separated from active duty with debts due to the United States (including non-appropriated fund instrumentalities and non-DoD debts), the amount of the debt was subject to offset from the SSB and initial VSI entitlement. In the case of VSI, if the debt was greater than the initial payment, the remaining debt will be collected from subsequent installments. Collections are made according to the administrative offset provisions contained in ***31 U.S.C. § 3716*** and are subject to standard debt collection procedures and policies in Volume 16. Garnishment orders remain in effect for VSI recipients and must be transferred to DFAS-CL for administration.

5.0 BENEFICIARY PAYMENT

5.1 Designation of Beneficiaries

5.1.1. Service members may designate beneficiaries to receive VSI installments that remain unpaid after the death of the member using a DD Form 2864. The VSI recipient may designate different percentages for multiple recipients to receive. In the event percentage elections are not made, payments are divided evenly among the designated beneficiaries. The VSI recipient may change his/her beneficiary information by sending a signed and dated DD Form 2864 to DFAS-CL at any time after separation.

5.1.2. DFAS-CL will maintain beneficiary forms for all VSI accounts at least until the end of the VSI entitlement period. If the member dies before the end of the VSI entitlement period, the beneficiary forms will be retained and will not be disposed until after the settlement and payment of any claims made by beneficiaries and until after the retention periods in DFAS 5015.2M (Records Disposition Schedules for Administrative Records Manual) expire.

5.2 Notification of Death and Beneficiary Claim

5.2.1. DFAS-CL requires notification of a VSI recipient's death. Proof of death, such as a certified death certificate, is required. Upon receipt of proof of death, DFAS-CL will close out the member account and establish the beneficiary account. If the beneficiary is responsible for the death of the retiree, the annuity may not be paid to that person unless evidence is received which clearly absolves the beneficiary of any felonious intent.

5.2.2. No specific form is required for making a claim for beneficiary payments. A statement signed by the beneficiary claiming future VSI payments will be sufficient. A claim by a beneficiary for VSI payments will be settled in accordance with 31 U.S.C. § 3702 and therefore must be received within 6 years after the date the claim accrues in order to be timely. The statement should include the beneficiary's social security number. Mail beneficiary claims to DFAS-CL, Retired and Annuitant Pay (R&A):

DFAS Indianapolis
Attn: Voluntary Separation Incentive
8899 East 56th Street
Indianapolis, IN 46249-1300

5.3 Beneficiary Payment

5.3.1. Death of the Member. Upon the death of the member, DFAS-CL will make all remaining annual payments to the member's designated beneficiaries for the remainder of the deceased VSI recipient's entitlement period. If a valid designation was not made or received, payments will be distributed to the person highest on the list, living on the date of death (see ***10 U.S.C. § 2771***) as follows:

5.3.1.1. The Beneficiary designated by the member in writing, if the designation is received by the Military Department concerned before the member's death;

5.3.1.2. The surviving spouse;

5.3.1.3. The children and their descendants, by representation:

5.3.1.3.1. Adopted Child. An adopted child is a legal heir in every state and, therefore, is entitled to payment of unpaid pay and allowances, if otherwise proper. If others adopt the deceased member's child, the child is a beneficiary only in those states where an adopted child inherits from its natural parent.

5.3.1.3.2. Stepchild. A stepchild is not an eligible beneficiary unless adopted by the deceased retiree.

Note: In certain instances, evidence of paternity may be required to determine eligibility.

5.3.1.4. The father and mother in equal parts or, if either is dead, the survivor;

5.3.1.5. The legal representative; or

5.3.1.6. The person entitled under the law of the domicile of the deceased retiree.

5.3.2. Death of the Beneficiary. Upon presentation of a claim, payments will be distributed to a beneficiary's estate in the event a beneficiary dies after a VSI recipient's date of death. DFAS-CL will make such payments according to the laws governing the beneficiary's state of legal residence.

5.3.3. Withholding Requirements

5.3.3.1. A payment to a beneficiary is subject to FITW. The FITW is based upon the ***IRS Form W-4P***, Withholding Certificate for Pension or Annuity Payments, submitted by the recipient. If an IRS Form W-4P is not submitted, the DFAS site will calculate withholding as for a married person claiming three withholding allowances.

5.3.3.2. State income taxes or FICA will not be withheld from beneficiary payments.

5.3.3.3. DFAS-CL will issue an IRS Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., to each beneficiary recipient.

5.3.4. Garnishment of Beneficiary Payments. DFAS-CL will not honor garnishment orders against beneficiary payments.

5.3.4. Offset of Beneficiary Payments. Beneficiary payments generally are not subject to

offset. For instance, VSI beneficiary payments are not offset even though the beneficiary is entitled to receive Social Security on behalf of the deceased VSI recipient. However, if a beneficiary is indebted to the government, the debt may be collected from VSI installment payments.

REFERENCES

CHAPTER 23 – SPECIAL SEPARATION BENEFITS (SSB) AND VOLUNTARY SEPARATION INCENTIVE (VSI) PAY

1.0 – GENERAL

10 U.S.C. §§ 1174a and 1175

2.0 – RESPONSIBILITIES

1.2	10 U.S.C. § 1174a(h)(2) 10 U.S.C. § 1175
2.2.1	10 U.S.C. § 1175(f)
2.2.3 and 2.2.4	10 U.S.C. § 1175(h)

3.0 – PAYMENT PROCESSING

3.1	Comptroller General Decision, B-187743, July 7, 1977
3.2	10 U.S.C. § 1175(e)(4)
3.4	10 U.S.C. § 1175(e)(3)(A) 10 U.S.C. § 1174a(g) 10 U.S.C. § 1174(h)(1) 10 U.S.C. § 1175(e)(3) 10 U.S.C. § 1174(g) and 1174(h)

4.0 – DEBT COLLECTION

31 U.S.C. § 3716

5.0 – BENEFICIARY PAYMENT

5.3.1	10 U.S.C. § 2771

VOLUME 7B, CHAPTER 24: "COMPUTATION OF WAGES SUBJECT TO FEDERAL INCOME TAX WITHHOLDING (FITW)"

SUMMARY OF MAJOR CHANGES

Changes are identified in this table and also denoted by blue font.

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

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

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

The previous version dated August 2023 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated chapter formatting and hyperlinks to comply with administrative instructions.	Revision

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CHAPTER 24

COMPUTATION OF WAGES SUBJECT TO FEDERAL INCOME TAX WITHHOLDING (FITW)

1.0 GENERAL

1.1 Purpose

The purpose of this chapter is to provide information on retired pay subject to FITW. FITW is based on payments actually or constructively paid, regardless of the date earned. Retired pay is constructively paid (or received) when credited to the account for a retiree or set apart for a retiree to draw on it at any time, although it is not actually reduced to possession. Retired pay must also have been credited to or set apart for the retiree without any substantial limitations or restrictions as to the time and manner of payment or condition under which it is to be made and brought within the retiree's control and disposition.

1.2 Authoritative Guidance

The pay policies and requirements established by the DoD in this chapter are derived primarily from and prepared in accordance with the United States Code (U.S.C.), specifically Titles 10 and 26. Due to the subject matter in this chapter, the list of authoritative sources is extensive. The specific statutes, regulations, and other applicable guidance that govern each individual section are listed in a reference section at the end of the chapter.

2.0 GROSS RETIRED PAY AND FITW

2.1 Subject to FITW

Retired pay is income and constitutes wages subject to FITW, except as otherwise indicated in this chapter. See Title 26 of the Code of Federal Regulations, section 31.3401(a)-1(b) (***26 CFR 31.3401(a)-1(b)***) for more information on collection of income tax at the source.

2.2 Not Subject to FITW

The gross retired pay of a member may not be subject to FITW if the member is on the Temporary Disability Retired List (TDRL) or Permanent Disability Retired List (PDRL), receiving disability retired pay and if:

2.2.1. On or before September 24, 1975, the member was entitled to receive retired pay computed on the basis of percentage of disability in accordance with ***26 U.S.C. § 104(a)(4)*** and 26 U.S.C. § 104(b)(2)(A);

2.2.2. On September 24, 1975, he or she was a member of the Armed Forces (or Reserve Component thereof) or under a binding written commitment to become such a member (26 U.S.C. §§ 104(a)(4) and 104(b)(2)(B));

2.2.3. The member is receiving disability retired pay because of a combat-related injury. The term "combat-related injury" means personal injury or sickness incurred as a direct result of armed conflict, or while engaged in extra hazardous service, or under conditions simulating war, or caused by an instrument of war. See 26 U.S.C. §§ 104(a)(4) and 104(b)(2)(C). The applicable Service makes the determination at the time of discharge. See DoD Instruction ***(DoDI) 1332.18***, Disability Evaluation System (DES); or

Note: The amount of disability retired pay described in subparagraph 2.2.3 not subject to FITW is the amount related to the combat-related injury, but in no circumstances, will the nontaxable amount be less than the amount the member would be entitled to receive from the Department of Veterans Affairs (VA) for that injury.

2.2.4. The member would be entitled to disability compensation from the VA. See 26 U.S.C. §§ 104(a)(4) and 104(b)(2)(D). For those members who have waived all or a portion of retired pay in order to receive disability compensation from the VA, subtract the amount of retired pay waived from the gross retired pay to compute the member's taxable income. Subtract the waived retired pay amount prior to subtracting other income reducing amounts, such as Survivor Benefit Plan (SBP) premiums. For members who receive retired pay computed based upon years of service and have a portion of retired pay that is tax exempt due to their retirement for disability under ***10 U.S.C., Chapter 61***, taxable pay is determined by reducing the gross retired pay by either the VA disability compensation entitlement or by the retired pay that would be exempt due to the percentage of disability, whichever is greater.

3.0 DISABILITY COMPENSATION NOT SUBJECT TO FITW

A member is entitled to exclude the disability compensation, additional amount, and retroactive disability compensation from the taxable portion of retired pay. In order to exclude retroactive amounts, a member must follow applicable Internal Revenue Service (IRS) procedures. Amended 1099-Rs are not provided for the retroactive period.

3.1 Disability Compensation

Disability compensation is the maximum amount that a member would be entitled to receive upon application to the VA.

3.2 Additional Amount

An additional amount is the difference between a prospective VA disability compensation award and the amount excluded under section 2.0.

3.3 Retroactive Disability Compensation

The retroactive disability compensation is the amount of a VA disability compensation award not previously excluded from retired pay.

4.0 GROSS RETIRED PAY PARTIALLY TAXABLE

For members who are entitled to have their retired pay computed based on both percentage of disability and years of service, a portion of their retired pay may be subject to FITW. Any reduction of wages subject to FITW for disability retired pay must meet one of the conditions set forth in paragraph 2.2. See also ***26 CFR 1.104-1*** for more information on compensation for injuries or sickness.

4.1 PDRL

If the member is placed on the PDRL, subtract retired pay based on the percentage of disability from retired pay based on the years of service. The difference is the amount of wages subject to FITW.

4.2 TDRL

If the member is placed on the TDRL, use one of these methods:

4.2.1. If the member's disability rating is 50 percent or more, compute as in paragraph 4.1.

4.2.1. If the member's disability rating is less than 50 percent on the TDRL and the member is receiving retired pay computed based on years of service, subtract the amount of retired pay the member would have received if retired pay were computed solely on the basis of the member's actual percentage of disability from the gross retired pay the member is receiving. The difference is the amount of wages subject to FITW.

4.2.3. If a member with 20 years or less of service is placed on the TDRL, has a disability rating of less than 50 percent, and elects to receive disability retired pay based on the percentage of disability, the retired pay received is not subject to FITW.

5.0 FITW WAGE REDUCTIONS

Deductions that reduce the amount of wages subject to FITW include participation in the Retired Serviceman's Family Protection Plan (RSFPP), participation in the SBP, and VA Disability Compensation.

5.1 RSFPP Participation

The amount of the member's retired pay subject to FITW is reduced by the full amount of the RSFPP costs deducted from the member's retired pay in order to participate in the RSFPP. Effective January 1, 1966, tax laws changed to permit a dollar-for-dollar reduction in taxable income. Prior to January 1, 1966, deductions did not reduce taxable income. See section 9.0 for information on tax implications for a member who pays for this protection by direct remittance.

5.2 SBP Participation

The amount of the member's retired pay subject to FITW is reduced by the full amount of the SBP costs deducted from the member's retired pay in order to participate in the SBP. See section 9.0 for information on the tax implications for a member who pays for this protection by direct remittance.

5.3 VA Disability Compensation

There is a waiver of military retired pay when a member receives disability compensation or a pension from the VA, unless the member is entitled to concurrent retirement and disability pay on or after January 1, 2014, as provided under ***10 U.S.C. § 1414***.

5.3.1. If the member's gross retired pay is fully subject to FITW, subtract the amount of the retired pay waived applied to wages. The amount of retired pay waived reduces the member's retired pay entitlement.

5.3.2. If a member has retired due to physical disability, reduce wages subject to FITW, if any, by the amount of retired pay waived or the portion of the member's retired pay based on the actual percentage of disability, whichever is greater.

6.0 U.S. CITIZENS ABROAD

The retired pay of members who temporarily or permanently reside in a foreign country is subject to FITW the same as if they resided in the United States or its possessions. The same withholding rules from section 2.0 apply.

7.0 ARREARS OF PAY

For information on taxation policies that apply to deceased members and their beneficiaries, see Chapter 30.

8.0 DELINQUENT FEDERAL TAXES

8.1 Voluntary Withholding

A retiree may, with the consent of the IRS, have deductions made from his or her retired pay to satisfy a debt due to tax delinquency. The class T, nondiscretionary allotment, allows a member to make payments to the IRS for this purpose.

8.2 Involuntary Withholding

If a retiree neglects or refuses to pay his or her federal income tax liability within 10 days after receiving notice of liability, the IRS District Director may collect the amount by placing a levy on the member's retired pay. The IRS is required to give the member 10 days' notice prior to levy execution. This notice is normally included with the notification of liability. For additional information on the collection of delinquent federal tax debts by tax levy, see Chapter 28 and ***26 U.S.C. § 6331***.

9.0 SBP/RSFPP PREMIUMS

For more information on the taxation of SBP premiums, see Chapter 45.

9.1 Paid by Deduction From Retired Pay

SBP/RSFPP premiums are deducted from a retiree's gross pay. This method reduces the retiree's amount of taxable income.

9.2 Paid by Direct Remittance

SBP/RSFPP premiums paid by direct remittance do not reduce the retiree's taxable income.

10.0 MILITARY CORRECTION OF RECORDS PAYMENTS

If a correction of military records results in payment to the retiree, the payment is processed according to whether or not it is subject to FITW.

10.1 Amounts Previously Paid and Reported

When amounts previously paid and reported as FITW wages are not subject to FITW as a result of the correction of record pursuant to ***10 U.S.C. § 1552***, the member may be provided a corrected ***IRS Form 1099-R***, Distributions From Pension, Annuities, Retirement or Profit-Sharing Plans, Individual Retirement Accounts, Insurance Contracts, etc., for the 3 calendar years before the year that the correction action is made, if such correction is appropriate in accordance with the Internal Revenue Code. Alternatively, the member may be provided a letter citing the previous amount taxed and the amount that would have been withheld based upon the record as corrected. The member may seek to obtain a tax refund, if any is due, from the IRS based on his or her total tax liability. Any additional claims for tax liability may be treated as a claim for pecuniary benefits under 10 U.S.C. § 1552.

10.2 Subject to FITW

When the member's retired pay is subject to FITW, the payment is reported as FITW wages for the current year and paid out of the Military Retirement Fund.

11.0 DISABILITY SEVERANCE PAY

For information on the taxability and withholding of disability severance pay, see Volume 7A, Chapter 35.

12.0 RETIRED PAY FOR FLEET RESERVIST/FLEET MARINE CORPS RESERVIST (FR/FMCR) NOT PHYSICALLY QUALIFIED FOR RETENTION

The retired pay of a member of the FR/FMCR, who is transferred to the retired list after being found physically unqualified for retention in the FR/FMCR, is subject to FITW. See Chapter 2.

REFERENCES

CHAPTER 24 - COMPUTATION OF WAGES SUBJECT TO FEDERAL INCOME TAX WITHHOLDING (FITW)

2.0 – GROSS RETIRED PAY AND FITW

2.1	26 CFR 31.3401(a)-1(b)
2.2.1	26 U.S.C. § 104(a)(4) 26 U.S.C. § 104(b) 26 U.S.C. § 104(b)(2)(A)
2.2.2	26 U.S.C. § 104(a)(4) 26 U.S.C. § 104(b)(2)(B)
2.2.3	26 U.S.C. § 104(a)(4) 26 U.S.C. § 104(b)(2)(C) DoDI 1332.18, Disability Evaluation System (DES), November 10, 2022
2.2.4	26 U.S.C. § 104(a)(4) 26 U.S.C. § 104(b)(2)(D)

3.0 – EFFECT OF DISABILITY COMPENSATION AWARD ON FITW

	26 U.S.C. § 104(b)(4)
3.3	Strickland v Commissioner of Internal Revenue, 540 F.2d 1196 (1976)

4.0 – GROSS PAY PARTIALLY TAXABLE

	26 CFR 1.104-1

5.0 – FITW WAGE REDUCTIONS

5.3	10 U.S.C. § 1414

8.0 – DELINQUENT FEDERAL TAXES

8.2	26 U.S.C. § 6331

REFERENCES (Continued)

9.0 – SBP/RSFPP PREMIUMS

10 U.S.C. § 1448(g)(5)

10.0 – MILITARY CORRECTION OF RECORDS PAYMENTS

10.1	Ray v U.S., 453 F.2d 754, 197 Ct.Cl.2 (1972) 52 Comp Gen 420 10 U.S.C. § 1552

VOLUME 7B, CHAPTER 25: "COMPUTATION OF FEDERAL INCOME TAX WITHHOLDING (FITW)"

SUMMARY OF MAJOR CHANGES

Changes are identified in this table and also denoted by blue font.

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

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PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated chapter formatting and hyperlinks to comply with administrative instructions.	Revision

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CHAPTER 25

COMPUTATION OF FEDERAL INCOME TAX WITHHOLDING (FITW)

1.0 GENERAL

1.1 Purpose

This chapter provides information pertaining to Retired and Annuitant (R&A) pay that is subject to FITW and the computation of FITW.

1.2 Authoritative Guidance

The pay policies and requirements established by the DoD in this chapter are derived primarily from and prepared in accordance with Title 26 of the United States Code (U.S.C.). Due to the subject matter in this chapter, the list of authoritative sources is extensive. The specific statutes, regulations, and other applicable guidance that govern each section are listed in a reference section at the end of the chapter.

2.0 RATES FOR REGULAR AND ADDITIONAL WITHOLDING OF FITW

2.1 FITW

Federal income tax is withheld in accordance with the Department of the Treasury, Internal Revenue Service ***(IRS) Publication 15, (Circular E)***, Employer's Tax Guide. Taxable pay, as computed under provisions of Chapter 24, is subject to FITW.

2.2 Request Additional FITW

A member may authorize an additional monthly amount of federal income tax to be withheld.

2.3 FITW for an Annuitant

The gross monthly amount of the annuity, or the monthly amount of the Survivor Benefit Plan (SBP) annuity remaining after it has been reduced by a Dependency and Indemnity Compensation award and/or Social Security offset (as applicable), is taxable income and subject to FITW unless the annuitant elects no withholding. See also Chapter 37 for Retired Serviceman's Family Protection Plan Annuities and Chapter 46 for SBP Annuities.

2.4 Nonresident Alien

Federal income tax is withheld for a nonresident alien pursuant to ***26 U.S.C. § 871*** and Title 26, Code of Federal Regulations (CFR), section 1.861-4 (***26 CFR 1.861-4***). Taxable retired pay, as determined under Chapter 24, is subject to FITW at the rate of 30 percent, without being reduced by withholding allowances of personal exemptions, unless the member is a citizen of a country that has a tax treaty with the United States. Use the withholding rate specified in the treaty if the member files ***IRS Form W8BEN***, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals), with the Defense Finance and Accounting Service (DFAS), Military Retirement Pay.

Note: When a member files an income tax return, the IRS will refund any excess tax withheld. A member who is not a U.S. citizen or resident alien is responsible for reporting the income to the country of the member's citizenship and paying any tax owed on this income.

3.0 RATES OF FITW FOR ONE-TIME PAYMENTS

3.1 One-Time Payments

When DFAS Retired Pay pays a one-time payment concurrently with a regular monthly payment, it separately identifies the one-time payment from the regular payment. As such, the same FITW computation rules apply if the one-time payment is made concurrently with or separately from the regular monthly payment. There are two computation methods, and the method that may be used depends upon whether federal income tax was withheld from regular monthly payments of retired pay made to the member during the current or immediately preceding calendar year. (See IRS Publication 15, section 7.)

3.1.1. When federal income tax was not withheld from regular payments during the current or preceding calendar year, the one-time payment must be combined with the wages paid for the last pay period (in the same calendar year) or with the wages paid for the current pay period. The amount of withholding is then computed as if this was a single payment, taking into consideration the member's claimed withholding exemptions. Compute the aggregate withholding amount. Subtract the amount of federal income tax previously withheld or the amount scheduled to be withheld from the regular wages for the current period. The excess amount would then be deducted from the one-time payment.

3.1.2. When federal income tax was withheld from regular monthly payments made during either the current or immediately preceding calendar year, there are two alternatives:

3.1.2.1. Use the procedure described in subparagraph 3.1.1; or

3.1.2.2. Withhold a flat 22 percent of the taxable portion of the one-time payment without regard to the withholding exemptions claimed. (See Revenue Ruling 66-190, 1966-2 CB 457.)

3.2 Blended Retirement System (BRS) Lump Sum Payments

BRS lump sum payments made under ***10 U.S.C. § 1415(b)*** are treated as supplemental wages for tax purposes. Federal income tax is withheld from BRS lump sum payments in the same manner as described in paragraph 3.1.

REFERENCES

CHAPTER 25 – COMPUTATION OF FITW

2.0 – RATES FOR REGULAR AND ADDITIONAL WITHOLDING OF FITW

2.1	IRS Publication 15, (Circular E)
2.4	26 U.S.C. § 871 26 CFR 1.861-4 26 U.S.C. § 1441

3.0 – RATES OF FITW FOR ONE-TIME PAYMENTS

3.1	IRS Publication 15, (Circular E), Section 7 26 CFR § 31.3402(g)-1 Revenue Ruling 82-200
3.2	26 CFR § 31.3402(g)-1 Revenue Ruling 66-190, 1966-2 CB 457 10 U.S.C. § 1415(b)

VOLUME 7B, CHAPTER 26: "STATE TAXES"

SUMMARY OF MAJOR CHANGES

Changes are identified in this table and also denoted by blue font.

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

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

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

The previous version dated July 2020 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated this chapter with hyperlinks and formatting to comply with current administrative instructions.	Revision

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CHAPTER 26

STATE TAXES

1.0 GENERAL

1.1 Purpose

The state taxing authority of a member's residence(s) may tax the member's retired or retainer pay. The designated state must have a signed, standard written agreement with the DoD for the voluntary withholding of state income tax. This agreement will provide the Secretary concerned the authority to withhold state income tax from the member's monthly retired or retainer pay.

1.2 Authoritative Guidance

The pay policies and requirements established by the DoD in this chapter are derived primarily from and prepared in accordance with the United States Code (U.S.C.), including Title 10. The specific statutes, regulations, and other applicable guidance that govern each individual section are listed in a reference section at the end of the chapter.

2.0 WITHHOLDING

2.1 State Income Tax Withholding (SITW)

A retiree may request voluntary SITW from their retired or retainer pay. The request must include the member's full name, signature, Social Security number, the fixed amount withheld monthly from retired pay, the state designated to receive the withholding, and the member's current address of residence. The retiree may submit the request via letter, email, or fax to the address in section 4.0 or submit the request through the member's myPay account. If using myPay, the member's signature is not required. In the case of mental incompetence, the member's guardian or trustee must sign the request.

2.2 Amount

The withholding amount requested must be in a whole dollar amount and at least $10 or the state's minimum, if that amount is higher.

3.0 PAYMENTS AND REPORTS

3.1 Amounts Withheld

The Defense Finance and Accounting Service (DFAS) will disburse amounts withheld to the states in the month following the month of collection. Payment procedures and state income tax withholdings will follow the usual fiscal practices of the uniformed services.

3.2 Internal Revenue Service (IRS) Form 1099-R

The DFAS will provide each retiree an ***IRS Form 1099-R***, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., that indicates the total tax withheld for each state, following each calendar year end.

4.0 UNIFORMED SERVICES' RETIRED PAY OFFICE ADDRESSES

4.1 U.S. Military

The address and websites for the U.S. Military Retired Pay office follows:

Defense Finance and Accounting Service
U.S. Military Retired Pay
8899 East 56th Street
Indianapolis, IN 46249-1200

Phone: 800-321-1080
Fax: 800-469-6559

Website for general tax information:
https://www.dfas.mil/retiredmilitary/manage/taxes

Website for state withholding tax:
https://www.dfas.mil/retiredmilitary/manage/taxes/sitw

4.2 U.S. Coast Guard (USCG), National Oceanic Atmospheric Administration (NOAA), and Public Health Service (PHS)

Submit change requests (mail, email, telephone, or fax) for retired members of the USCG, NOAA, and PHS to:

Commanding Officer (RAS)
U.S. Coast Guard
Pay & Personnel Center
444 SE Quincy Street
Topeka, Kansas 66683-3591

Email: PPC-DG-RAS@uscg.mil
Phone: 1-800-772-8724 or 785-339-3415
Fax: 785-339-3770

USCG website: ***https://www.dcms.uscg.mil***
NOAA website: ***http://www.noaa.gov***
PHS website: ***https://dcp.psc.gov/ccmis/***

REFERENCES

CHAPTER 26 - STATE TAXES

1.0 – GENERAL	10 U.S.C. § 1045
2.0 – WITHHOLDING	10 U.S.C. § 1045
3.0 - PAYMENTS AND REPORTS	
3.1	Public Law 109-163, section 661, January 6, 2006 10 U.S.C. § 1045(a)

VOLUME 7B, CHAPTER 27: "GARNISHMENTS"

SUMMARY OF MAJOR CHANGES

Changes are identified in this table and also denoted by blue font.

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

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PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated chapter and formatting to comply with administrative instructions.	Revision

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Chapter 27

GARNISHMENTS

1.0 GENERAL

1.1 Purpose

The purpose of this chapter is to provide information unique to the collection of child support and/or alimony from military retired pay. The provisions of Title 42, United States Code (U.S.C.), section 659 (***42 U.S.C. § 659***) and Title 5, Code of Federal Regulations (CFR), part 581 (***5 CFR 581***) take precedence when in conflict with this chapter.

1.1.1. Pursuant to 42 U.S.C. § 659(h)(1)(A) and 5 CFR 581.103, remuneration for employment includes retired and retainer pay, including disability retired pay. These entitlements are hereafter referred to as "retired pay."

1.1.2. The processing of garnishment orders for child support and/or alimony from the pay of individuals receiving remuneration for employment from the United States is governed by 42 U.S.C. § 659 and 5 CFR 581.

1.2 Authoritative Guidance

The pay policies and requirements established by the DoD in this chapter are derived primarily from, and prepared in accordance with the U.S.C., including Titles 15, 26, and 42. Due to the subject matter in the chapter, the list of authoritative sources is extensive. The specific statutes, regulations, and other applicable guidance that govern each individual section are listed in a reference section at the end of the chapter.

2.0 DEFINITIONS

2.1 Alimony

Alimony is defined as periodic payments of funds for the support and maintenance of a spouse or former spouse. Subject to and in accordance with state law, alimony includes separate maintenance, alimony pending legal process, maintenance, and spousal support. It also includes attorney fees, interest, and court costs when, and to the extent that they are, expressly made recoverable as such by a decree, order, or judgment issued in accordance with applicable state law by a court of competent jurisdiction. Alimony, as used in this chapter and Chapter 29, excludes payments or transfers of property made in compliance with any community property settlement, equitable distribution of property, or other division of property between the spouse(s) or former spouse(s).

2.2 Child Support

Child support is defined as periodic payments of funds for the support and maintenance of a child or children. Subject to and in accordance with state law, child support includes (but is not limited to) payments to provide for health care, education, recreation, clothing, or other specific needs. It also includes related attorney fees, interest, court costs, and other relief. Child Support, as used in this chapter and Chapter 29, excludes payments made in compliance with the satisfaction of child abuse garnishments under Chapter 29, paragraph 3.6.

2.3 Disposable Earnings

Disposable earnings are defined as an individual's gross retired pay less deductions for the following items:

2.3.1. Amounts withheld in payment of debts owed to the United States, except that an indebtedness based on a levy for income tax under ***26 U.S.C. § 6331*** will not be excluded in complying with legal process for the support of minor children if the legal process was entered prior to the date of the levy;

2.3.2. Deductions required by law (e.g., Survivor Benefit Plan and Retired Serviceman's Family Protection Plan cost deductions and deductions for Department of Veterans Affairs waivers); and

2.3.3. Regular Federal income tax withholding (FITW) and state income tax withholding, if required or authorized by law and amounts withheld are not greater than would be the case if the individual claimed all dependents to which he/she were entitled.

2.4 Legal Process

Legal process is defined as any writ, order, summons, or other similar process in the nature of garnishment. Legal process may be issued by:

2.4.1. A court of competent jurisdiction within any state, territory, or possession of the United States;

2.4.2. A court of competent jurisdiction in any foreign country with which the United States has entered into an agreement that obligates the United States to honor such process; or

2.4.3. An authorized official according to an order of such a court of competent jurisdiction or pursuant to state or local law.

3.0 DESIGNATED AGENT

The Defense Finance and Accounting Service (DFAS), Office of General Counsel, Deputy General Counsel of Garnishment Law Directorate, or his or her representative, is responsible for receiving and implementing all legal process concerning retired members. Legal process may be served by regular mail or by fax to:

DFAS Office of General Counsel
Attn: Garnishment Law Directorate
P.O. Box 998002
Cleveland, OH 44199-8002
Fax: 216-367-3675; Toll-Free Fax: 877-622-5930

Any legal process served on DoD entities other than the designated agent, for the purpose of enforcing payment of child support and/or alimony, will be forwarded to the designated agent for processing. For additional information or assistance call:

Garnishment Law Directorate Customer Service
Toll-Free: 888-DFAS411 (888-332-7411)

4.0 IMPLEMENTING LEGAL PROCESS

4.1 Legal Review

Once legal process has been served on the designated agent, the designated agent will review the legal process to determine if it is regular on its face, appears to conform to the laws of the jurisdiction from which it was issued, was issued to enforce a member's legal obligation to provide child support and/or alimony, and contains sufficient information to accurately identify the member.

4.2 Written Notification

The designated agent will notify the member within 15 days after valid service of legal process. The written notification will explain the potential effect of the legal process on the member's pay, including allotments, and advise the member that the member has the burden of raising any available defenses, such as violation of the member's rights under the Servicemembers Civil Relief Act or lack of personal jurisdiction over the member, to the court who issued the order. A copy of the legal process will be included with the written notice. The notice will be sent to the member's address of record in the retired pay system. When the designated agent has the capability to make notification through electronic means such as email, the notice will be made using those electronic means.

4.3 Response

Within 30 days of effective service, or such longer period as may be allowed by applicable state law, the designated agent will:

4.3.1. Determine the amount of the member's disposable earnings, as defined in paragraph 2.3;

4.3.2. Where required, file an answer to the legal process with the court in which the proceeding was brought and answer any interrogatories regarding the disposable earnings due the member (the designated agent may use its standard answer form for this purpose); and

4.3.3. Establish deductions from the member's disposable earnings. In accordance with 5 CFR 581.305(f), governmental agencies, including DoD agencies, are not required to vary their pay or disbursing cycles to comply with the legal process.

4.4 Maximum Percentage of Pay Subject to Garnishment

Unless a lower maximum garnishment percentage limitation is provided by applicable state or local law, the maximum part of disposable earnings for any pay period which is subject to legal process will not exceed:

4.4.1. Fifty percent of disposable earnings if the member concerned asserts by affidavit or other acceptable evidence that he or she is providing over half of the support for a spouse or dependent child (other than a spouse or dependent child with respect to whose support the legal process is issued);

4.4.2. Sixty percent if the member concerned is not supporting a spouse or dependent child as stated in subparagraph 4.4.1; or

4.4.3. If it appears from the face of the legal process that the member is in arrears for a period that is 12 weeks or greater, the maximum percentage under subparagraph 4.4.1 is 55 percent and under subparagraph 4.4.2 is 65 percent.

4.5 Allotments to be Discontinued

If the member does not have enough net pay available to comply with the legal process, then one or more of the member's allotments will be stopped in accordance with the order of precedence for items 1 through 14 in Figure 19-1 of Chapter 19.

4.6 Priority of Legal Obligation

If the designated official is served with legal process concerning more than one legal obligation owed by the same member, then the legal obligations will be satisfied from the available funds in the following order of priority:

4.6.1. Legal process to enforce current support will have priority over legal process to enforce support arrearages;

4.6.2. Legal process to enforce current child support will have priority over legal process to enforce current alimony; and

4.6.3. If the legal process is to enforce more than one child support obligation, and there are not enough funds available to fully satisfy all legal process served, then the available funds will be allocated among the obligations in proportion to the amounts of current child support due. Alimony obligations will be satisfied on a first-come, first-served basis.

5.0 APPEALS

Where notice is received that the member has appealed either the legal process or the underlying alimony and/or child support order, payment of money subject to the legal process will be suspended, i.e., money will continue to be withheld, but these amounts will be retained until the Government is ordered by the court, or other authority, to resume payments or otherwise disburse the suspended amounts. However, no suspension action will be taken where the applicable law of the jurisdiction wherein the appeal is filed requires compliance with the legal process while an appeal is pending.

6.0 GARNISHMENT OF RENOUNCED RETIRED PAY

6.1 Retired Pay Subject to Garnishment

Legal process, as defined in paragraph 2.4, must be honored even though the member has renounced receipt of retired pay. The member's refusal to receive retired pay does not permit the Government to deny satisfying a writ, order, summons, or other similar process in the nature of a garnishment. The entitlement to retired pay, even if renounced, continues to be treated as an amount "due from or payable by" the United States, which accrues to a member's retired pay account and is subject to garnishment.

6.2 Waiver of Retired Pay

The right to accrue retired pay may not be waived, except as authorized by law. See Chapter 12 concerning the waiver of retired pay.

7.0 INDEMNIFICATION

7.1 Liability for Payment

Neither the DoD, nor any disbursing officer or employee, will be liable for any payment made from money due from, or payable by, the DoD, to any individual pursuant to the legal process, if such payment is made in compliance with 42 U.S.C. § 659, 5 CFR 581, and this chapter.

7.2 Disciplinary Action, Civil or Criminal Liability, or Penalty for Disclosure of Information

DoD employees, whose duties include responding to relevant interrogatories, will not be subject to any disciplinary action, civil or criminal liability, or penalty for any disclosure of information made in connection with answering such interrogatories.

7.3 Liability for Failure to Comply With Legal Process

Neither the DoD, nor any disbursing officer or employee, will be liable to pay monetary damages for failure to comply with legal process.

REFERENCES

CHAPTER 27 – GARNISHMENTS

1.0	GENERAL	
		5 CFR 581 42 U.S.C. § 659
2.0	DEFINITIONS	
	2.3	26 U.S.C. § 6331
4.0	IMPLEMENTING LEGAL PROCESS	
	4.3.3	5 CFR 581.305(f)
	4.4	15 U.S.C. § 1673(b) 42 U.S.C. § 659(h) 42 U.S.C. § 666(b)
6.0	GARNISHMENT OF RENOUNCED RETIRED PAY	
		Manuscripts Comptroller General B-196839, April 24, 1980
7.0	INDEMNIFICATION	
	7.1	5 CFR 581 42 U.S.C. § 659

VOLUME 7B, CHAPTER 28: "COLLECTION OF NON-DOD DEBT AND DELINQUENT FEDERAL TAXES BY TAX LEVY"

SUMMARY OF MAJOR CHANGES

Changes are identified in this table and also denoted by blue font.

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PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated chapter and formatting to comply with administrative instructions.	Revision
3.2	Removed hyperlink to Internal Revenue Service (IRS) Form 668-W(c) because it is no longer available by IRS or a federal government website.	Revision

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CHAPTER 28

COLLECTION OF NON-DOD DEBT AND DELINQUENT FEDERAL TAXES BY TAX LEVY

1.0 GENERAL

1.1 Purpose

The purpose of this chapter is to provide guidance on the collection of non-DoD debt from the retired pay of members. Non-DoD debt discussed in this chapter include debts owed to other non-DoD federal creditor agencies and debt owed to the United States as a result of a civil judgment against a member. This chapter also provides guidance on tax levies issued by the Internal Revenue Service (IRS) in order to collect delinquent income tax debt from members. See Volume 16 for the collection of DoD debts from members.

1.2 Authoritative Guidance

The pay policies and requirements established by the DoD in this chapter are derived primarily from, and prepared in accordance with the United States Code (U.S.C.), including Titles 5, 26, 31, and 37. Due to the subject matter in this chapter, the list of authoritative sources is extensive. The specific statutes, regulations, and other applicable guidance that govern each individual section are listed in a reference section at the end of the chapter.

2.0 INVOLUNTARY COLLECTION

2.1 Recovery of Debt

Current pay is available for repayment of indebtedness without the member's consent only if such recovery is expressly authorized by statute.

2.2 Offsetting Retired Pay to Collect Debts Owed to Non-DoD Federal Creditor Agencies

Title 5, U.S.C., section 5514 provides authority to offset retired pay in order to collect debts owed to non-DoD federal creditor agencies.

2.2.1. Non-DoD Federal Creditor Agencies. A non-DoD federal creditor agency is a non-DoD federal agency to which an employee owes a debt. Examples of non-DoD federal creditor agency debts include debts owed by members for overpayments of civilian pay the member earned as an employee of a non-DoD federal agency or federal loan debts from non-DoD agencies. See section 3.0 for collection of delinquent federal tax by levy. See paragraph 2.4 for court judgments.

2.2.2. Offset Authority. Non-DoD federal creditor agency debts may be collected by offset of retired pay under 5 U.S.C. § 5514. When non-DoD federal creditor agencies identify members as having outstanding debts, those agencies must address their salary offset requests to the Secretary of Defense designee for such collection, which is the Defense Finance and

Accounting Service (DFAS). The following designated agent is responsible for receiving these collection requests:

Defense Finance and Accounting Service (DFAS)-AHADC
1240 E. 9th Street
Cleveland, OH 44199-8002

2.2.3. Due Process. A request for offset must include certification that due process rights have been afforded to an indebted employee by the non-DoD creditor agency. A federal tax levy takes precedence over other pay or salary offset deductions, pursuant to 5 U.S.C. § 5514. See also Volume 16, Chapter 3, paragraph 4.4.

2.2.4. Deduction Limitation. Collection may be made in monthly installments or at established pay intervals not to exceed 15 percent of disposable pay for any pay period, unless a greater percentage is authorized by written consent of the member. Unsatisfied debts at retirement must be deducted from subsequent payments of any nature due the member. See Volume 16, Chapter 3, subparagraph 3.6.2.

2.3 Administrative Offset of Debts Owed to Non-DoD Federal Creditor Agencies

Debts owed to non-DoD federal creditor agencies may be collected by administrative offset under ***31 U.S.C. § 3716***. See also Volume 16, Chapter 3, paragraph 4.4.2.3.

2.4 Collection of Other Debts

A member's retired pay may be subject to garnishment, tax levy, or a court judgment.

2.4.1. Garnishment or Levy

A retired member may not be deprived of pay by the civil process of garnishment or tax levy except as set out in Chapter 27 (garnishment of child support and alimony) or in section 3.0 (levy of delinquent federal taxes) of this chapter.

2.4.2. Judgments in Favor of the United States

Court judgments against a member, or retired member, in favor of the United States may not be collected under Public Law (P.L.) 97-276, section 124. However, such judgments in favor of the United States may be collected under 5 U.S.C. § 5514.

2.4.3. Judgments in Favor of Private Individuals

Court judgments ordered to be collected to pay private individuals are not debts owed to the United States government and cannot be collected by offset under 5 U.S.C. § 5514 or 31 U.S.C. § 3716.

3.0 COLLECTION OF DELINQUENT FEDERAL TAXES BY LEVY

3.1 General

When a member does not pay any federal income taxes due within 30 days after the IRS has issued a notice and demand for payment to the member, the IRS may collect the tax by levy on the member's salary or other income, including retired or retainer pay. IRS tax levies are requests on IRS Form 668-W, Notice of Levy on Wages, Salary, and Other Income, for a continuous levy from a member's retired pay to collect taxes owed. The effect of a levy on wages, salary, or other income payable to or received by the member will be continuous from the date such levy is first made until such levy is released by the IRS on Form 668-D, Release of Levy. Medal of Honor recipients are exempt from tax levy.

3.2 IRS Form 668-W

The IRS will transmit IRS Form 668-W or Form 668-W(c), in five parts (the letter "c" designates a computer-generated form which is the same as the version of the form without the "c"). The IRS Form 668-W will identify the member, specify the amount of the tax liability, give instructions for providing due process, show how to compute the levy based on input from the taxpayer, and give the payment address. The DFAS Retired and Annuitant Pay Office (hereinafter "Office") must follow the instructions on the IRS Form 668-W. In general, the Office must notify the taxpayer (see Figure 28-1 for an example of a sample letter), compute the amounts available for payment to the IRS, and make the payment. Currently, the IRS Form 668-W requires the employer to send to the IRS all of the taxpayer's net pay less what is exempt from levy. Net pay is gross retired pay less all deductions and allotments in effect as of the date of receipt of IRS Form 668-W. The Office must follow the instructions on IRS Form 668-W when computing exemptions.

3.3 Problem Cases

When the IRS has determined the taxpayer's case is a problem case, the taxpayer will be furnished with the IRS Form 668-W, a statement of the amount of delinquent taxes and a statement that "net pay" is not enough to pay the levy and that all available accrued pay should be sent to the IRS. Available accrued pay is gross retired pay less:

3.3.1 Withholding for current Federal taxes (statutory amounts only);

3.3.2. Amounts required to satisfy prior overpayments of pay;

3.3.3. Amounts waived in favor of compensation from the Department of Veterans Affairs;

3.3.4. United States Government Life Insurance/National Service Life Insurance premiums;

3.3.5. Deductions for Retired Serviceman's Family Protection Plan and/or Survivor Benefit Plan costs;

3.3.6. Voluntary child-support allotments to satisfy court orders, provided the court order is dated prior to the date of the levy from the IRS;

3.3.7. Pay attached or garnished for child support or alimony; and

3.3.8. The levy exemptions calculated under normal levy procedures.

NOTE: The main difference between a regular levy and a problem case levy is that, under the latter, the Office must stop the member's voluntary allotments of retired pay to satisfy the levy. If it is not necessary to stop all allotments, the Office should request the member elect which allotments to stop. If the member does not respond to the request, the Office must stop such allotments as are necessary, stopping any commercial insurance allotments last. See Chapter 19, Figure 19-1 for the order of precedence.

Figure 28-1. Example of Notification Letter for IRS Notice of Levy

Defense Finance and Accounting Service
Retired and Annuitant Pay

December 1, 20XX

CMSGT John Doe, U.S. Air Force (Retired)
1240 East 97th Street
Cleveland, OH 44199-2055

Dear CMSGT Doe,

The IRS has sent us the attached IRS Form 668-W, (Notice of Levy on Wages, Salary, and Other Income). Please read the IRS Form 668-W carefully, as it may be advisable to discuss it with your attorney or other tax adviser.

Complete the attached form and return it to us within 3 working days to claim your partial exemption. If we do not receive the completed form, we will compute your exemption for you, using the exemption for a married person filing separately with one personal exemption. Please note that the exemptions you claimed for tax withholding purposes are NOT the same and we will not use them to compute your exemption from levy.

This is a continuous levy against your retired pay to collect delinquent federal taxes. We will deduct the levy from your (month/year) retired pay. We will make a specified collection from your retired pay and continue the collection until the levy has been satisfied. This levy remains in force and effect until the IRS serves our office with IRS Form 668-D, (Release of Levy).

If you have been awarded the Medal of Honor, you are exempt from levy. Send us a copy of the citation awarding you the Medal of Honor to prevent the levy of your retired pay.

Please contact the IRS office that issued the levy for questions that you may have concerning the levy.

Sincerely,

Military Pay Technician
Retired and Annuitant Pay

Attachment:
As stated

REFERENCES

CHAPTER 28 – COLLECTION OF NON-DOD DEBT AND DELINQUENT FEDERAL TAXES BY TAX LEVY

2.0 –INVOLUNTARY COLLECTION

2.1	37 U.S.C. § 1007(c) 5 U.S.C. § 5514 31 U.S.C. § 3716
2.2	37 U.S.C. § 1007(c) 5 U.S.C. § 5514
2.3	31 U.S.C. § 3716
2.4	5 U.S.C. § 5514 31 U.S.C. § 3716 P.L. 97-276, section 124, October 2, 1982 Comptroller General, B-230865 (1990), United States v. Tafoya, 803 F.2d 140 (5th. Cir 1986)

3.0 – COLLECTION OF DELINQUENT FEDERAL TAXES BY LEVY

	26 U.S.C. § 6321(a) 26 U.S.C. §§ 6331 and 6334

VOLUME 7B, CHAPTER 29: "FORMER SPOUSE PAYMENTS FROM RETIRED PAY"

SUMMARY OF MAJOR CHANGES

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PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated hyperlinks and formatted chapter to comply with current administrative instructions.	Revision
7.2.3.1	Updated the table formatting in compliance with current administrative instructions.	Revision
7.2.3.2	Updated the table formatting in compliance with current administrative instructions.	Revision
8.0	Revised section for clarity.	Revision
Figure 29-2	Added a figure to illustrate sample court orders for all retired members who are divorced/legally separated after retirement and for clarification.	Addition
Figure 29-3	Added a figure to illustrate sample court orders for active-duty members who are divorced/legally separated on or before December 23, 2016, and for clarification.	Addition
Figure 29-4	Added a figure to illustrate sample court orders for active-duty members who are divorced/legally separated after December 23, 2016, and for clarification.	Addition
Figure 29-5	Added a figure to illustrate sample court orders for reserve members who are divorced/legally separated on or before December 23, 2016, and for clarification.	Addition
Figure 29-6	Added a figure to illustrate sample court orders for reserve members who are divorced/legally separated after December 23, 2016, and for clarification.	Addition

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CHAPTER 29

FORMER SPOUSE PAYMENTS FROM RETIRED PAY

1.0 GENERAL

1.1 Purpose

This chapter explains how a former spouse can apply for direct payments from a military member's military retired pay and how the former spouse's payments will be administered.

1.2 Authoritative Guidance

The pay policies and requirements established by DoD in this chapter are derived primarily from, and prepared in accordance with the United States Code (U.S.C.), including Titles 10, 15, 28, 31, 38, 42 and 50. Due to the subject matter in this chapter, the list of authoritative sources is extensive. The specific statutes, regulations, and other applicable guidance that govern each individual section are listed in a reference section at the end of the chapter.

2.0 DEFINITIONS

2.1 Alimony

Alimony is a legal obligation where a member is ordered to pay an amount for the support and maintenance of a spouse or former spouse. This definition includes attorney's fees, interest, and court costs. Alimony does not include child support, property settlement, equitable distribution of property, or any other division of property.

2.2 Child Support

Child support is a legal obligation where a member is ordered to pay an amount for the support and maintenance of a child. This definition includes costs for health care, arrearages, attorney's fees, interest, penalties, and other related relief.

2.3 Court

Court means any court of competent jurisdiction of any state (in the United States), the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands and any court of the United States, as defined in ***28 U.S.C. § 451***. Court also includes a court of a foreign country with which the United States has an agreement requiring the United States to honor any court order of such country.

2.4 Court Order

Court order means a final decree of divorce, dissolution, annulment, or legal separation issued by a court, or a property settlement incorporated into such an order. Court order also includes orders issued incident to a divorce, such as an order dividing military retired pay or a domestic relations order (DRO) that divides military retired pay.

Note: A DRO is not required but will be accepted. A court order also includes a support order as defined in section 453 of the Social Security Act (***42 U.S.C. § 653(p)***).

2.5 Creditable Service

Creditable service means years and full months of military service creditable for the purpose of computing a member's retired pay entitlement if the member is on active duty or the Reserve retirement points creditable if the member is a Reserve component member. See ***10 U.S.C. § 1405*** and ***10 U.S.C. §12733***, and Volume 7B, Chapter 1 and Chapter 3.

2.6 Designated Agent

Designated agent is the agent authorized to review applications for direct payments made. See section 4.0 for specific designations.

2.7 Disposable Retired Pay

Disposable retired pay is defined in paragraphs 7.1 and 8.2.

2.8 Entitlement

Entitlement is the legal right of a military member to receive military retired pay. The term refers to members who actually receive retired pay rather than those who qualify by completing the required years of service.

2.9 Final Decree

A final decree is an order from which no appeal may be taken or from which no appeal has been taken within the time allowed for taking such appeals under the laws applicable to such appeals, or a decree from which timely appeal has been taken and such appeal has been finally decided under the laws applicable to such appeals.

2.10 Former Spouse

Former spouse is the former husband or wife, or if the parties are legally separated, the current husband or wife, of a military member.

2.11 Formula Award

A formula award computes a former spouse's property interest in a military member's retired pay based on the relationship of a period of time (i.e., the length of the parties' marriage through the date of separation or total marriage through the date of divorce) during the member's creditable service (numerator) to the member's total service that is creditable toward retirement (denominator). A formula award is stated as a marital fraction in which the numerator and denominator are multiplied by a given percentage.

2.11.1. For members qualifying for an active duty (i.e., regular service) retirement, the numerator is the number of months the parties were married while the member was performing creditable military service, and the denominator is the number of months of the member's total creditable military service. The elements must be expressed in terms of whole months. The former spouse's award is usually calculated by multiplying the marital fraction by one-half or 50 percent, or any other given percentage amount. See paragraph 6.7 for acceptable active-duty formula award language.

2.11.2. For members qualifying for a Reserve (i.e., non-regular service) retirement, the numerator is the number of Reserve retirement points earned during the parties' marriage, and the denominator is the member's total number of Reserve retirement points. The elements must be expressed in terms of Reserve retirement points. The former spouse's award is usually calculated by multiplying the marital fraction by one-half or 50 percent, or any other given percentage amount. See subparagraph 6.7.2 for acceptable Reserve formula award language.

2.12 Garnishment Order

A garnishment order is an order directing the designated agent to issue payments from a member's pay to satisfy a legal obligation for child support, alimony, or division of property other than a division of military retired pay, or a monetary judgment rendered against a member for the physical, sexual, or emotional abuse of a child. See Public Law ***(PL) 115-91, section 534***.

2.13 Hypothetical Retired Pay Award

Hypothetical retired pay award is an award based on a percentage of retired pay that is calculated using variables provided in a court order that are different from the member's actual retirement variables (i.e., hypothetically what would the member's retired pay be if the member retired on this date). The retired pay calculated using the court ordered variables is called the member's hypothetical retired pay. A hypothetical award typically attempts to define the property interest in the retired pay as if the member had retired at the time the court divided the member's military retired pay based upon the member's rank, or high-3 amount, and years of service accrued to that point in time. Thus, the former spouse does not benefit from the member's pay increases due to promotions or increased service time after the divorce.

2.14 Member

A member is an individual who is on active duty, one who is a reservist, or one who is retired from military service.

2.15 Renounced Pay

Renounced pay is military retired pay to which a member is entitled, but which the member has waived receipt.

2.16 Retired Pay

Retired pay is the statutory entitlement due a member based on conditions of the retirement law, pay grade or high-3 pay amount, years of service, and the date of retirement. Retired pay includes "retainer pay."

Note: A Reserve member is generally not eligible to start receiving retired pay until they reach age 60. However, the National Defense Authorization Act (NDAA) for Fiscal Year 2008 enacted the Reduced Retirement Age for Reserve Component (RC) soldiers based on Active Duty (AD) performance. The NDAA for 2008 reduces the retirement age for RC members from 60 to a lesser age, but not below age 50, for those who have served on AD in an eligible status (qualifying service) after January 28, 2008.

2.17 Retired Pay Award

Retired pay award is a portion of a member's disposable military retired pay awarded to a former spouse or current spouse by a court of competent jurisdiction as a property division.

2.18 Standard Retired Pay Multiplier

The standard retired pay multiplier used to compute retired pay for members with a Date of Initial Entry into Military Service (DIEMS) prior to January 1, 2018, who have not elected to participate in the Blended Retirement System (BRS) is 2.5 percent times the member's years of creditable service. See Chapter 3. The retired pay or retainer pay multiplier for a member with a DIEMS on or after January 1, 2018, or a member with a DIEMS before January 1, 2018, who elected to enroll in the BRS, is 2 percent times the years of creditable service. See Chapter 3.

2.19 Uniformed Services Former Spouses' Protection Act (USFSPA)

PL 97-252, enacted on September 8, 1982, states that the section of Title 10 addressing former spouse protection may be cited as the "USFSPA." Therefore, USFSPA is used throughout and refers to the provisions of ***10 U.S.C. § 1408***.

3.0 AWARDS THAT CAN BE COLLECTED UNDER THE USFSPA

3.1 Child Support

A former spouse can collect child support if there is a court order that awards child support, and the former spouse and military member have ever been married to each other.

3.2 Child Support Arrearages

To collect child support arrearages, a former spouse must submit a recent court order that lists the total arrearages. The order cannot be older than two years from the date the designated agent receives it.

3.3 Alimony

A former spouse can collect current alimony under the USFSPA, but not alimony arrearages through the Defense Finance and Accounting Service (DFAS).

3.4 Retired Pay Award

A former spouse can collect current retired pay award payments, but not retired pay award arrearages through DFAS.

3.5 Property Other Than a Division of Retired Pay

A former spouse can collect a property division, other than a retired pay award, by garnishment if an order awards it to the former spouse and if the former spouse was also awarded alimony, child support, or a division of retired pay. A former spouse must be receiving at least one type of payment (i.e., division of property, alimony, or child support) from the designated agent and must provide the designated agent a garnishment writ to commence payments under this provision. See subparagraph 4.1.2 for more information.

3.6 Child Abuse Garnishments

Garnishment of a military retiree's retired pay in satisfaction of a judgment for physical, sexual or emotional abuse of a child under 18 years of age.

3.6.1. Subject to a court order, any payment of retired pay that would otherwise be made to a member shall be paid (in whole or in part) by the designated agent to another person as provided for in the terms of a child abuse garnishment order. The total amount payable under a child abuse garnishment order cannot exceed 25 percent of the member's disposable retired pay.

3.6.2. A court order providing for the payment of child support, alimony, or division of property, to the spouse or a former spouse of the member, is given priority over a child abuse garnishment order.

3.7 BRS Lump Sum Awards

3.7.1. A member who retires under the BRS has the option of electing to receive a lump sum of a portion of their retired pay (either 25 or 50 percent) as a "discounted present value of his or her retired pay." The lump sum amount is classified as retired pay and therefore is subject to division between a member and a spouse or former spouse pursuant to the provisions of a court order. A member has several options of how to receive the lump sum, including a number of annual payments. A spouse or former spouse who is entitled to receive a portion of those payments will be paid at the time the member receives each payment.

3.7.2. For a spouse or former spouse to receive a portion of lump sum payments made to a member pursuant to the member's election under the BRS, the designated agent must have received and approved the application for former spouse payments prior to the member's receipt of the lump sum amount. Lump sum payments will not be divided retroactively if the application for former spouse payments was not received prior to the members' receipt of the lump sum payment. For example, if the retiree elects to receive the lump sum amount in four annual payments, (June 2026, 2027, 2028, and 2029) but the former spouse does not submit an application for former spouse payments until January 2028, the designated agent upon approval of the application, will only divide the June 2028 and June 2029 annual lump sum payments. See ***10 U.S.C. § 1415*** and Chapter 3 for complete information on the BRS.

4.0 APPLICATION BY FORMER SPOUSE

4.1 Application Process

4.1.1. The former spouse must submit a completed ***DoD (DD) Form 2293***, Application for Former Spouse Payments From Retired Pay, and a certified copy of the court order awarding alimony, child support, or military retired pay. A court order for child support arrearages cannot be older than 2 years from the date the designated agent receives it. The court order must be certified by the clerk of the court that issued the order.

4.1.2. If the former spouse is applying for a property division other than a retired pay award, the former spouse must submit a garnishment order (writ of garnishment) in addition to the DD Form 2293 and the court order. To be eligible for payments under this section, a former spouse must be receiving at least one type of payment (i.e., division of property, alimony, or child support) from the designated agent.

4.1.3. The former spouse may mail the application to the appropriate designated agent given in paragraph 4.3 or may fax it to the number provided in paragraph 4.3. Please read the instructions and certification on the DD Form 2293 carefully.

4.2 Additional Documentation

4.2.1. A former spouse may need to provide additional documentation if the designated agent cannot determine whether the former spouse is eligible for USFSPA payments based solely on the DD Form 2293 and the court order. The designated agent may request additional

documentation to support the party's application or entitlement to continued eligibility for payment. Failure to timely submit additional documentation may result in suspension or termination of payments.

4.2.2. A person designated by the former spouse in a Power of Attorney (POA) form may assist the former spouse in completing the DD Form 2293 and in notifying the designated agent of address changes. However, a person designated in the POA form cannot change the payment account number. Only the former spouse can request such changes. Additionally, payments can only be made to the account in the name of the former spouse. A copy of a POA form that properly references entitlement of payments under USFSPA must be provided.

4.2.3. A person appointed by the court to hold fiduciary responsibilities over the estate and/or property of the former spouse may make address and account changes on behalf of the former spouse. A certified copy of the order (i.e., conservatorship and guardianship) must be provided within one year of the appointment or before the specified termination date.

4.3 Where to Send an Application for USFSPA Payments

The former spouse should send the application and all supporting documents to the following designated agent for the appropriate Uniformed Service.

4.3.1. For Army, Navy, Air Force, Space Force, and Marine Corps mail to:

DFAS Office of General Counsel
Attn: Garnishment Law Directorate
P.O. Box 998002
Cleveland, OH 44199-8002
Fax: 877-622-5930

4.3.2. For U.S. Coast Guard, Public Health Services, and National Oceanic and Atmospheric Administration mail to:

Commanding Officer (LGL)
Pay and Personnel Center
444 S.E. Quincy Street
Topeka, KS 66683-3591
Fax: 785-339-3788

4.4 When to Apply for USFSPA Payments

A former spouse may apply for payments any time after the court has issued a court order enforceable under the USFSPA. Although payments will not start under the USFSPA until after the member starts to receive retired pay, the designated agent can conditionally approve a former spouse's application prior to that, and retain the application pending the member's retirement.

4.5 Conditional Preapproval

4.5.1. If the former spouse applies prior to the member receiving retired pay, the designated agent will perform a legal review of the application, and may conditionally approve it based on information available at the time of the review concerning the member's duty status (active or Reserve).

4.5.2. At the time the member begins to receive retired pay, the designated agent will perform a second review prior to establishing the former spouse's direct payments. If the former spouse's award was based on a formula or hypothetical retired pay amount, and the member's status has changed since the initial legal review, it may be necessary to reject the application and require the former spouse to submit a clarifying order providing the necessary information. For example, if the formula or hypothetical award lists the Reserve retirement points, but the member retires from active duty, the designated agent will need a new court order that lists a valid active-duty formula. See paragraph 6.7 concerning formula awards and paragraph 6.8 concerning hypothetical retired pay awards.

5.0 NOTIFICATION

5.1 Notification to Former Spouse of Approval or Disapproval

Within 30 days of the date of receipt of a former spouse's application, the designated agent will notify the former spouse if his or her application has been approved or disapproved. If approved, the designated agent will state the month the former spouse's payments will tentatively begin. If the designated agent cannot approve the application, the notice will include an explanation regarding the reason(s) why.

5.2 Notification to the Member of Approval of an Application

If a former spouse's application is approved, the designated agent will notify the member affected within 30 days of the date of receipt of the application. The member will not be notified if the application is not approved.

5.3 Second Notice

If the designated agent notified the member as part of a conditional preapproval more than 90 days prior to the member's becoming entitled to receive retired pay, the designated agent will provide a second notice to the member when the designated agent establishes the former spouse's payments at the time the member begins to receive retired pay.

5.4 Contents of Notice to Member

5.4.1. The notice will explain that payments issued under the USFSPA cannot exceed 50 percent of the member's disposable retired pay (or 65 percent of the member's disposable pay when also withholding for an income withholding order issued pursuant to ***42 U.S.C. § 659***), and will contain the month that the payments will tentatively begin.

5.4.2. The notice will inform the member that he or she must notify the designated agent if the court order has been amended, superseded, or set aside.

5.4.3. The notice will inform the member that if he or she submits information in response to this notice, he or she consents to the disclosure of that information.

5.4.4. The notice will include a copy of the court order.

5.4.5. The notice will advise that the member's failure to respond within 30 days of the date that the notification is mailed may result in the payment of a portion of the member's retired pay to a spouse or former spouse as set out in the notice to the member.

5.5 How to Prevent USFSPA Payments From Starting

The member must provide documentary evidence that a former spouse's court order is legally defective or has been appealed, amended, or set aside. If the designated agent determines that the documentary evidence is sufficient to bar payments to a former spouse, the designated agent will not start the payments. The designated agent will then inform the former spouse that payments will not start and provide copies of the documentary evidence to the former spouse.

6.0 COURT ORDERS

6.1 Contents of Court Order

6.1.1. The court order must be regular on its face. This means that a court of competent jurisdiction issued the order and nothing on its face provides reasonable notice that it was issued without authority of law.

6.1.2. If the court order awarding child support or alimony appears on its face to conform to the laws of the jurisdiction from which it was issued, the designated agent will not be required to ascertain whether the court had obtained personal jurisdiction over the member.

6.1.3. The court order must award former spouse alimony, child support, or a retired pay award. There is no requirement in Federal law that specifies how military retired pay is to be divided.

6.1.4. If the order contains a retired pay award, that award must be expressed as a fixed dollar amount or as a percentage of disposable retired pay. A retired pay award expressed as a percentage will automatically receive a proportionate share of the member's cost-of-living adjustments (COLA), while one expressed as a fixed amount will not. There is no authority for a retired pay award to state a fixed dollar amount and also order COLAs. Retired pay awards phrased in that manner will be construed as a fixed dollar amount and will not receive COLAs.

6.1.5. The designated agent will construe percentage awards such as a percentage of gross retired pay, as a percentage of disposable retired pay regardless of the language in the order.

6.1.6. If the former spouse and the member were divorced before the member became entitled to receive military retired pay, the retired pay award may be expressed as a formula or hypothetical retired pay award in accordance with paragraphs 6.7 and 6.8. Since the computation of formula and hypothetical retired pay awards result in a percentage, they are considered a type of percentage award, and would automatically receive a proportionate share of the member's retired pay COLAs.

6.2 Divorces Finalized While the Member is Still on Active Duty

6.2.1. For court orders issued prior to December 19, 2003, the court order must show that the member's rights under the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. Appendix 501 et. seq.) were complied with.

6.2.2. For court orders issued on or after December 19, 2003, the court order must show that the member's rights under the Servicemembers Civil Relief Act ***50 U.S.C. § 3901*** et. seq. (formerly cited as 50 U.S.C. Appendix 501 et. seq.) were complied with.

6.3 Domestic Relations Order

There is no requirement in USFSPA that a former spouse submit a DRO, but the designated agent will accept one if it is submitted and if it meets the requirements of the USFSPA. If the divorce decree or dissolution order states a DRO was entered, it must be submitted to the designated agent unless a subsequent court order has been entered and provided.

6.4 Requirements Specific to a Retired Pay Award

6.4.1. In the case of a retired pay award, the designated agent must be able to determine from the court order that the court dividing military retired pay had jurisdiction over the member in one of the following ways:

6.4.1.1. The member resided in the territorial jurisdiction of the court at the time of the legal proceeding due to other than military assignment;

6.4.1.2. The court finds that member's domicile was in the territorial jurisdiction of the court at the time of the legal proceeding; or

6.4.1.3. The member consented to the jurisdiction of the court. If the court order does not "explicitly" state that the member consented to the court's jurisdiction, the designated agent will regard the member's participation in the legal proceeding, other than to contest the court's jurisdiction, as evidence of the member's consent to the court's jurisdiction in the proceeding dividing the member's military retired pay.

6.4.2. Also, in the case of a retired pay award, the designated agent must be able to determine from the application that the former spouse and the member were married for at least 10 years during which the member performed 10 years or more of service creditable toward retirement eligibility (the "10/10" requirement). The 10 years of creditable service is determined

exclusively by the designated agent upon the effective dates of marriage and divorce, dissolution, legal separation, or annulment. There is no "10/10" requirement for payment of alimony, child support awards, or child abuse garnishments under USFSPA.

6.5 State Law Jurisdiction

The satisfaction of state law jurisdictional requirements is not sufficient alone to satisfy the additional jurisdictional requirement stated in paragraph 6.4. If the court order states that it has USFSPA jurisdiction, it must state the basis for the finding, i.e., member's residence, member's domicile or member's consent. The designated agent will make a determination of whether the court order meets the additional jurisdictional requirements stated in paragraph 6.4.

6.6 Member's Consent to a Separation Agreement

If the member signed a separation agreement, the designated agent will presume that the member consented to the jurisdiction of any court that at any time incorporates the agreement into a court order.

6.7 Acceptable Formula Awards

6.7.1. If the former spouse's award is expressed in terms of a formula, all the variables needed to calculate the formula must be included in the court order, with the exception of a member's total number of months of creditable service or total number of Reserve retirement points, which the designated agent will provide in accordance with subparagraphs 6.7.2 and 6.7.3. If the order provides all the variables needed to do the calculation, including total months of military service or total Reserve retirement points, the designated agent will calculate the formula using the variables provided, even if the figure is different from the member's actual total. If the member disagrees with the number listed in the court order (i.e., the denominator), the member will have to petition the court to get the order corrected to show the member's actual total months or points of military service. If any needed variable besides the total number of months of creditable service or total number of Reserve retirement points is not provided in the order, the applicant will have to provide the designated agent with a clarifying court order, which provides the necessary variable. The designated agent will carry out any percentages derived from formulas to four decimal places.

6.7.2. If the court order requires the designated agent to supply the denominator of a marital or coverture fraction, and the member qualifies for an active duty (i.e., regular service) retirement, the formula award must be expressed in terms of whole months. The numerator of the formula fraction is the number of months of marriage during the member's creditable military service. This number must specifically be provided in the court order. The denominator of the formula is the member's total number of months of creditable military service. If needed, the designated agent will provide the denominator if the order states it represents the member's total number of months of creditable military service. If the denominator represents anything other than the member's total number of

months of creditable service at the time of retirement (for example, number of months of creditable service as of the date of the separation or divorce), the designated agent is unable to provide it. Any days or partial months of service will not be considered. If the award is expressed in terms of years instead of months, the designated agent will convert years into whole months by rounding down to the nearest month.

6.7.3. If the court order requires the designated agent to supply the denominator of a marital or coverture fraction, and the member qualifies for a Reserve (i.e., non-regular service) retirement, the formula award must be expressed in terms of Reserve retirement points. In the case of a Reserve retirement, the numerator of the formula is the number of Reserve retirement points earned during the marriage. The Reserve retirement points that are to be used for the numerator must be provided in the court order. The denominator of the formula is the member's total number of Reserve retirement points at the time of retirement. If needed, the designated agent will provide the denominator if the order states it represents the member's total number of Reserve retirement points at the time of retirement. If the denominator represents anything other than the member's total Reserve retirement points at the time of the retirement (for example, Reserve retirement points as of the date of divorce), the designated agent is unable to provide it. The designated agent cannot honor a formula award for a member that qualifies for Reserve retirement that is expressed in terms of whole months, even if both the numerator and denominator are provided.

6.7.4. The sample Military Retired Pay Division Orders (see Figures 29-1 and 29-2) provide examples of acceptable formula award language. All the blanks in the sample awards represent variables that must be provided in the court order. The sample language is not required, but any award expressed using the applicable sample language will be acceptable.

> Example of active-duty formula: The court order awarded the former spouse a percentage of the member's disposable retired pay calculated by multiplying 50 percent times a fraction, where the numerator is 144 months of marriage during creditable military service, and the denominator is the member's total months of active-duty service. The member later retired after 20 years (or 240 months) of creditable service. The former spouse's award would be computed as follows: 50% x 144 months/240 months = 30%. The designated agent would pay 30 percent of the member's disposable retired pay.

6.8 Hypothetical Retired Pay Awards

6.8.1. Military retired pay is computed at the time the member retires, and it is based on two possible methods depending on when the member initially enters service. It will either be computed by using the member's rank and total years of service at the time of retirement, or the member's retired pay base, also known as high-3 (highest 36 months of earnings), and total years of service at the time of retirement. For members who entered military service before September 8, 1980, the member's rank is used. For members who entered military service on or after September 8, 1980, the member's retired pay base (high-3) is used.

6.8.2. A hypothetical retired pay award determines the amount awarded to a former spouse by using retirement information different from what will exist at the time a member actually retires.

Typically, the court will use variables to determine the retired pay award as though the member had retired at the time of the court order dividing military retired pay or some other date prior to the member's actual retirement. In this manner, the former spouse is awarded a portion of the member's retirement without accounting for promotions or service completed after the date of the order.

6.8.3. The hypothetical retired pay amount is calculated by multiplying the hypothetical retired pay multiplier (see subparagraph 6.8.4) times the hypothetical retired pay base (i.e., the member's active duty pay based on their rank and years of service or the average of their monthly pay for their highest 36 months of pay; their "high-3"). If the initial retired pay computation is not a multiple of $1, it is rounded down to the next lower multiple of $1. See Chapter 3 for retired pay calculations.

6.8.4. Retired Pay Multiplier

6.8.4.1. The standard retired pay multiplier is 2.5 percent multiplied by the member's years of creditable service. This means that a member will receive 2 ½ (2.5) percent for every year served (unless the member entered under, or switched to, the BRS).

For example, the retired pay multiplier for an active-duty member who serves 20 years will be 50 percent (2.5% x 20 years = 50%).

In the case of a hypothetical retired pay award, the hypothetical retired pay multiplier is determined by multiplying 2.5 percent times the hypothetical years of creditable service provided in the court order. The hypothetical years of creditable service must only include years and full months. If the figure provided in the court order includes days of service, the designated agent will round down to the nearest month. For example, if the hypothetical years of service provided is 14.57, since this figure includes more than 14 years, 6 months of service but not enough for 14 years, 7 months of service, 14 years, 6 months (or 14.5) will be used for the calculation. See paragraph 2.5. The resulting percentage is rounded to two decimal places. See Chapter 3 for retired pay calculations.

6.8.4.2. For members who retire under the BRS, the retired pay multiplier is 2 percent multiplied by the member's years of creditable service.

6.8.4.3. A hypothetical retired pay award for a reservist must be expressed in terms of Reserve retirement points rather than years of creditable service. The Reserve retirement points are converted into years of creditable service by dividing the Reserve retirement points on which the award is based by 360. The resultant figure is carried to three decimal places; then rounded to two. (See Chapter 3.) This resultant figure is used to compute the hypothetical retired pay multiplier. For example: 5,258 Reserve retirement points would convert to 14.61 years of service for multiplier purposes (5,258 points/360 = 14.61 years).

6.8.5. Retired Pay Base

6.8.5.1. For members entering military service before September 8, 1980, the retired pay base is the member's basic pay at retirement based on the member's rank and years of service for basic pay purposes. See Chapter 3. When computing a hypothetical award for one of these members, their hypothetical retired pay base would usually be their basic pay as of the hypothetical retirement date.

6.8.5.2. For members entering military service on or after September 8, 1980, the retired pay base is the average of the member's highest 36 months of basic pay at retirement (high-3 amount). See Chapter 3. For these members, their hypothetical retired pay base would usually be their average basic pay for the most recent 36 months prior to the hypothetical retirement date. If the court order provides the annual amount of retired pay base (high-3), the designated agent will convert it to a monthly amount by dividing the yearly amount by 12 to arrive at the monthly average.

Note: The retired pay base is not the member's actual monthly military retired pay amount.

6.8.6. In order to enable the designated agent to calculate the hypothetical retired pay amount, the court order must provide:

6.8.6.1. The percentage the former spouse was awarded;

6.8.6.2. The hypothetical years of creditable service, or, in the case of a reservist, the Reserve retirement points on which the hypothetical retired pay is to be based;

6.8.6.3. The hypothetical retired pay base (high-3). In the case of members entering military service before September 8, 1980, the court order may provide either the member's hypothetical retired pay base or the member's hypothetical rank and years of service for basic pay purposes; and

6.8.6.4. The hypothetical retirement date.

6.8.7. For members whose divorce, dissolution, legal separation, or annulment was effective on or before December 23, 2016, (the effective date of the NDAA 2017), if the court intends that the hypothetical retired pay be calculated based on the pay tables in effect at the time the member becomes entitled to receive military retired pay, the designated agent will use as the retired pay base either the basic pay for the hypothetical rank and years of service as of the date the member becomes eligible to receive retired pay, or the member's actual retired pay base, whichever is lower. The court order must provide:

6.8.7.1. The percentage the former spouse is awarded;

6.8.7.2. The hypothetical years of creditable service, or, in the case of a reservist, the Reserve retirement points on which the hypothetical retired pay is to be based and the member's years of service for basic pay purposes;

6.8.7.3. The member's hypothetical rank; and

6.8.7.4. An unequivocal statement that the calculation is to be made as of the member's actual retirement date.

6.8.7.5. If the court order awards a Reserve hypothetical calculated as of the time the member attains age 60, but the reserve member begins to receive retirement pay earlier based upon the Reduced Retirement Age provision of NDAA 2008, the designated agent cannot pay the former spouse until the member turns age 60. Additionally, the designated agent cannot compute the award if the member has not turned 60 years of age because the pay tables for a future date are not published until that date.

The applicant will need to either wait until the member turns age 60 to start receiving the division of property award or obtain a clarifying court order.

6.8.8. If the award language is missing any necessary variables, the court will have to clarify the award. See the sample Military Retired Pay Division Order (Figures 29-1 and 29-2) for examples of acceptable hypothetical retired pay award language.

6.8.9. All percentage hypothetical retired pay awards will be converted into a percentage of a member's actual retired pay according to the following example:

> The court order awarded the former spouse 50 percent of the disposable retired pay the member would have received had the member retired with 17 years of creditable service, a retired pay base of $2,200.00 per month, and a hypothetical retirement date of June 1, 1999. The member actually retired on June 1, 2002, with 20 years of creditable service, a retired pay base of $2,400.00 per month, and an initial gross retired pay of $1,200.00 per month (2.5% x 20 years = 50%; 50% x $2,400.00 = $1,200.00).
>
> First, the designated agent will calculate the member's hypothetical retired pay multiplier, which in this example is 42.5 percent (2.5% x 17 years = 42.5%).
>
> Next, the designated agent will calculate the hypothetical retired pay amount, which in this example is $935.00 per month (42.5% x $2,200.00 = $935.00).
>
> Then, the designated agent will apply retired pay COLAs to the hypothetical retired pay amount from the hypothetical retirement date to the date the member became eligible to receive retired pay. COLAs will only be applied to computations in cases in which the parties' legal separation or divorce were effective January 1, 2009, or later, unless the court order specifically states that COLAs are not to be added to the hypothetical computation (with the exception of NDAA). COLAs are statutorily required to be included in all NDAA cases, regardless of what the court order states.
>
> This calculation will determine the present value of the hypothetical retired pay as of the member's actual retirement date. In this case, if the member had become eligible to receive

retired pay on June 1, 1999, the hypothetical retirement date, the hypothetical retired pay, after adding the COLAs, would have been $1,008 per month on June 1, 2002, the actual retirement date.

In these examples, the addition of the partial annual COLAs would be as follows:

Year	COLA	Formula
12/1/1999	1.7 percent	$935.00 x 1.017 = $950.00 (rounded down)
12/1/2000	3.5 percent	$950.00 x 1.035 = $983.00 (rounded down)
12/1/2001	2.6 percent	$983.00 x 1.026 = $1,008.00 (rounded down)

Finally, the designated agent will convert the former spouse's percentage of hypothetical retired pay to a percentage of the member's actual retired pay as follows: 50% x 1,008.00/$1,200.00 = 42%. (All percentages derived from hypothetical computations will be carried out to four decimal places if applicable without rounding). In this example, 42 percent is the amount that the designated agent would enter into the retired pay system as the spouse/former spouse's retired pay award.

6.8.10. The military retired pay of a post-July 1986 member who has accepted a Career Status Bonus (CSB) is calculated using a reduced multiplier. (See Chapter 3.) However, when computing a retired pay award based on a hypothetical, the CSB member's hypothetical retired pay will be calculated using the standard multiplier. The retired pay of a member who has accepted a CSB will be recomputed using a standard multiplier effective the first day of the month after the member attains age 62. The former spouse's percentage will also be adjusted at the same time in accordance with subparagraph 6.8.8, using the member's recomputed retired pay in the denominator of the conversion fraction. This adjustment will result in a lower percentage being applied to a higher disposable pay figure, and will ensure that the former spouse continues to receive the amount intended in the court order.

6.8.11. When computing hypothetical awards for members under the BRS the former spouse's hypothetical award (percentage) will be calculated in accordance with subparagraph 6.8.8. However, since the actual military retired pay for members who retire under the BRS is calculated using the 2 percent multiplier, the BRS member's hypothetical retired pay will also be calculated using the 2 percent multiplier. Additionally, the designated agent will use the unreduced gross retired pay in the denominator of the conversion fraction, even if the member elects to receive a lump sum payment. Using the unreduced gross retired pay for the denominator ensures that the numerator and denominator are computed in an equalized manner (i.e., the same variables are used and one is not reduced).

6.9 Orders Issued Before June 26, 1981, That Did Not Divide Retired Pay

Any court order that contains a retired pay award that was issued before June 26, 1981, will be honored if it otherwise satisfies the requirements and conditions shown in this chapter. If a pre-June 26, 1981 decree or property settlement incident to the decree did not divide the member's military retired pay, and did not reserve jurisdiction to divide it, the designated agent

cannot honor an application for payment based on a subsequent order issued on or after June 26, 1981 dividing retired pay as property.

6.10 Survivor Benefit Plan (SBP) Premium

6.10.1. Pursuant to ***10 U.S.C. § 1452***, the SBP premium must be deducted from the member's retired pay. The SBP premium cannot be deducted from the former spouse's portion of the member's retired pay. Any provision in a court order stating that the premium should be deducted from the former spouse's portion is unenforceable by the designated agent. Any adjustments between the parties for the SBP premium payment will need to be made outside of the stated procedures. However, those adjustments will not be considered by the designated agent when computing the retired pay award.

6.10.2. SBP premiums for members who elect a lump sum payment, or payments will not be collected from the lump sum payment. Premiums will be deducted from the portion of retired pay that the member receives as regular retired pay after the lump sum payment. For more information on SBP premiums and BRS see Chapters 3, 42, and 45.

Note: A court order associated with a divorce that requires a retired member to establish former spouse SBP coverage is not self-executing. If a former spouse seeks to be deemed as the former spouse SBP beneficiary (to commence or continue SBP coverage after a divorce) (s)he must complete a DD Form 2656-10 ("Survivor Benefit Plan (SBP) Former Spouse Request for Deemed Election")) and submit it along with a copy of the relevant court order, within one year of the order requiring the member to elect former spouse coverage. See Volume 7B, Chapter 43, subparagraph 4.4.3 and paragraph 5.2.

6.11 Conflicting Retired Pay Awards

6.11.1. If the designated agent is served with court orders issued by different jurisdictions which contain conflicting awards enforceable under the USFSPA, the designated agent will deduct an amount equal to the largest amount required to be paid to the former spouse by either order, but will pay to the former spouse the least amount directed to be paid. The designated agent will retain the difference between the upper and lower ordered amounts until served with an order certified by the member and former spouse to be valid, and then pay the retained funds in accordance with the order.

6.11.2. If the designated agent is served with a court order containing conflicting retired pay award language within the same court order, or two orders issued on the same date that do not contain a time stamp, the designated agent will pay the former spouse the lower award amount; if the orders contain a time stamp, the order issued last controls. If one of the parties disagrees with the amount being paid, that party must provide the designated agent with a new court order stating the correct amount.

6.12 Court Orders Modifying Retired Pay Awards

6.12.1. If the designated agent is served with a court order containing valid award language in accordance with this chapter and the USFSPA, that modifies or clarifies a retired pay award, the designated agent will implement the order issued most recently. The order with valid award language issued most recently supersedes all prior orders.

6.12.2. If the designated agent is served with a court order containing valid award language that modifies or clarifies a retired pay award that was issued by a court of a state other than the state that issued the prior court order, the designated agent may implement the new order containing valid award language only if the court issuing this order had jurisdiction over both the member and former spouse in the manner specified in subparagraph 6.4.1.

6.12.3. If the designated agent is served with a court order containing invalid award language that modifies or clarifies a retired pay award and the order does not vacate or set aside a prior order with valid award language, the designated agent will enforce or continue to honor the prior valid court order. If the designated agent is served with a subsequent court order containing invalid award language that vacates or sets aside a prior order with valid award language, the designated agent will terminate former spouse payments until served with a subsequent order containing valid award language.

6.13 Conditional Awards

The designated agent cannot honor a court order that makes the former spouse's payments conditional on the occurrence of some other event. There is no authority for the designated agent to ascertain whether a condition in a court order has been satisfied. The former spouse will need to obtain a modified court order without the condition.

6.14 Awards Based on Retired Pay Accrued During Marriage

The designated agent cannot honor awards based on the value of the member's retired pay that has "accrued" during the marriage because military retired pay does not accrue over time. Military retired pay is not a pension. Rather, it is a statutory entitlement computed at the time the member retires and it is based on the member's rank and total years of service at the time of retirement, or member's high-3 and total years of service.

6.15 Awards of a Percentage of the Marital Portion

The designated agent cannot honor an award of a percentage of the "marital portion" or "marital share" of a member's retired pay or as of a particular date or time period, unless the court order also provides all variables necessary for the calculation of the marital portion/share/time period. See paragraphs 6.7 and 6.8 for examples.

6.16 Factual Errors in Court Orders

If a party submits documentary evidence that shows a factual error in a court order, this will not be sufficient to modify or stop payments being made pursuant to the court order. Subject to compliance with existing law, if a court order provides elements needed to calculate a former spouse award, including but not limited to, formulas, hypotheticals, and/or NDAA awards, the designated agent will use the elements provided even if the elements vary from the member's actual figures and result in a different percentage (higher or lower) than the parties set forth in the court order. The party asserting the error must petition the court to correct the order. The designated agent does not have the authority to correct errors in court orders.

7.0 DISPOSABLE RETIRED PAY

7.1 Disposable Retired Pay for Regular and non-Regular Retirements

7.1.1. Disposable retired pay is defined by the USFSPA as a member's total monthly retired pay (gross pay) entitlement minus authorized deductions. See 10 U.S.C. § 1408(a)(4).

7.1.2. If the former spouse and member were divorced on or before February 2, 1991, then USFSPA authorizes the following deductions:

7.1.2.1. Amounts owed to the United States;

7.1.2.2. Amounts withheld as Federal and state income tax withholding, consistent with the member's current actual tax liability;

7.1.2.3. Fines and forfeitures ordered by a court-martial;

7.1.2.4. Amounts waived in order to receive compensation under Titles 5 or 38 of the U.S.C.;

7.1.2.5. SBP premiums paid, but only if the former spouse applying for a retired pay award payment under USFSPA is the beneficiary of the SBP; and

7.1.2.6. The amount of retired pay for a member retired under Title 10, Chapter 61 computed based on percentage of disability.

7.1.3. If the former spouse and member were divorced on or after February 3, 1991, then the USFSPA authorizes the following deductions:

7.1.3.1. Amounts owed to the United States due to the overpayment of retired pay, or amounts required to be recouped due to the member's entitlement to retired pay;

7.1.3.2. Fines and forfeitures ordered by a court-martial;

7.1.3.3. Amounts waived in order to receive compensation under Titles 5 or 38 of the U.S.C.;

7.1.3.4. SBP premiums paid but only if the former spouse applying for a retired pay award payment under USFSPA is the beneficiary of the SBP; and

7.1.3.5. The amount of retired pay for a member retired under Title 10, Chapter 61 computed based on percentage of disability.

7.2 Computing Disposable Retired Pay for Disability Retirements

7.2.1. Effective January 1, 2004, pursuant to Pub. L. 108-136, div. A, title VI, § 641(e) (Nov. 24, 2003), codified at 10 U.S.C. § 1414 certain retired members may receive both disability compensation from the Department of Veterans Affairs (VA) and military retired pay concurrently. When a retired member qualifies for concurrent payments, the military retired pay provided to the member must be included in the member's gross retired pay. The disposable retired pay may then be computed in accordance with paragraph 7.1 and section 8.0. The disposable pay is subject to division under the USFSPA. See Chapter 64 for additional information on concurrent receipt of both retired pay and VA disability compensation.

7.2.2. Members who were retired for disability under Title 10, Chapter 61 for being found unfit to perform the duties of their office because of physical disability are entitled to disability retired pay. The amount to which a member is entitled is determined by applying a percentage multiplier to the member's basic pay (or high 36-month average) at the time of retirement. There are two possible multipliers and the choice of which multiplier to use is made by the member. The percentage multiplier may be either:

7.2.2.1. The number of years of the member's creditable service, or

7.2.2.2. The disability percentage assigned by the Service.

7.2.3. In general, the disposable retired pay equals a member's total gross monthly retired pay entitlement minus certain authorized deductions. One of the authorized deductions is "[t]he amount of retired pay for a member retired under Title 10, Chapter 61 computed based on percentage of disability." Accordingly, to compute disposable retired pay for members retired for disability under Title 10, Chapter 61, it is necessary to segregate the portion of gross monthly retired pay attributable to the percentage of disability from that attributable to years of creditable service:

* 7.2.3.1. Example 1 – Disposable Retired Pay using years of creditable service. A disability retiree who selected disability retired pay computed using creditable service in the monthly amount of $900 and declined disability retired pay computed using the percentage of disability in the monthly amount of $700. In this case, no other deductions apply.

Assumption: Disability retiree (i.e., retired under Chapter 61 of Title 10, U.S.C.)* with an option between a retired pay multiplier based on years of service and a retired pay multiplier based on percentage of disability.

Member's Options	Entitlement Amount for Each Option	Member's Choice	Gross Retired Pay as Chosen by Member (Monthly)	Amount that may be deducted*	Disposable Retired Pay
Option 1: Retired Pay based on years of service	$900	Elect	$900	$700	$200 ($900 - $700)**
Option 2: Retired pay based on percentage of disability.	$700	Decline	$900	$700	$200 ($900 - $700)**

* 7.2.3.2. Example 2 – Disposable Retired Pay using percentage of disability. A disability retiree who selected disability retired pay using the percentage of disability in the monthly amount of $1000 and declined disability retired pay using years of creditable service in the monthly amount of $500. In this case, no other deductions apply.

Assumption: Disability retiree (i.e., retired under Chapter 61 of Title 10, U.S.C.)* with an option between a retired pay multiplier based on years of service and a retired pay multiplier based on percentage of disability.

Member's Options	Entitlement Amount for Each Option	Member's Choice	Gross Retired Pay as Chosen by Member (Monthly)	Amount that may be deducted*	Disposable Retired Pay
Option 1: Retired Pay based on years of service	$500	Decline	$1000	$1000	$0 ($1000 - $1000)**
Option 2: Retired pay based on percentage of disability.	$1000	Elect	$1000	$1000	$0 ($1000 - $1000)**

* Examples 1 and 2 include disability retirees who are entitled to receive both disability compensation from the VA and military retired pay concurrently. Under subparagraph 7.2.1, when a retired member qualifies for concurrent payments, the military retired pay provided to the member must be included in the member's gross retired pay.

** Examples 1 and 2 are computed assuming no other authorized deductions apply.

7.2.4. Only disposable retired pay is subject to division under the USFSPA. If a disability retiree is entitled to receive both military disability retired pay from the DoD and disability

compensation from the VA concurrently and the deduction under 10 U.S.C. § 1408(a)(4)(A)(iii) for "The amount of retired pay… computed based on percentage of disability" results in disposable retired pay of $0, then no direct payments from a military member's military retired pay will be made.

7.2.5. Under ***10 U.S.C. § 1414***, certain retired members may receive both disability compensation from the VA and military retired pay concurrently. When a member who was retired for disability under Title 10, Chapter 61, is in receipt of both disability compensation from the VA and military disability retired pay, the retired pay is still disability retired pay and it is no different than disability retired pay paid to a retired member who is not eligible for concurrent receipt under 10 U.S.C. § 1414. The nature of the Disability Retired Pay is not changed simply because the retiree is found by the VA to have a service-connected disability that entitles the member to receive both benefits concurrently under 10 U.S.C. § 1414 even though the amount of Disability Retired Pay that can be received concurrently with VA Disability Compensation may be limited. For more information about concurrent receipt of disability compensation from the VA and military disability retired pay, see Chapter 64.

7.3 Other Deductions Included in Court Order

If a court order directs the use of deductions other than those authorized in paragraph 7.1 to compute the former spouse's award, that provision of the court order is unenforceable. The designated agent will use only the deductions authorized in paragraph 7.1 for the computation of disposable retired pay.

*8.0 DISPOSABLE RETIRED PAY UNDER NDAA FY 2017

8.1 Application of section 641 of the NDAA FY 2017

The NDAA FY 2017, PL 114-328 section 641, amended the 10 U.S.C. § 1408(a)(4) by clarifying that the division of property is to be calculated based on the date of the divorce decree, dissolution, annulment, or legal separation. This provision applies to divorces, dissolutions, annulments, and legal separations effective after December 23, 2016, that award the former spouse a retired pay award and:

8.1.1. That occur prior to an active-duty member becoming entitled to military retirement pay, or

8.1.2. That occur prior to a reserve member becoming entitled to retired pay (generally 60).

Note: If a member retires from active duty and divorces after he/she retires, NDAA does not apply. Additionally, if a reserve member has started to receive retirement pay or is eligible to start receiving retired pay (generally age 60) and divorces after this date, NDAA does not apply.

8.2 NDAA FY 2017 Disposable Pay Limits

In addition to the definition of Disposable Retired Pay in paragraph 7.1, and the authorized deductions in subparagraph 7.1.2, section 641 of the NDAA FY 2017 also limits disposable retired pay as follows:

8.2.1. The amount of retired pay is limited to that which the member would have been entitled using the member's retired pay base (rank or high-3) and years of service on the date of the final decree of divorce, dissolution, annulment, or legal separation; and

Note: The statute limitation is "no later than the date of the final decree of divorce, dissolution, annulment, or legal separation. For example, if the parties were divorced on October 1, 2024, but the court order states "the member's high-3 was $5,540 and had 17 years of service as of June 1, 2022 (date the parties separated)" this is acceptable.

8.2.2. Increased by any COLA awards added from the effective date of divorce, dissolution, annulment, or legal separation to the member's date of retirement. A provision in a court order purporting to restrict COLAs from being applied to a former spouse's award of retired pay is not enforceable and will not be honored.

8.3 Variables Required to Calculate the NDAA FY 2017 Disposable Retired Pay

In order to enable the designated agent to calculate disposable retired pay amount in accordance with the NDAA FY 2017, the court order must provide the variables listed in subparagraphs 8.3.1 or 8.3.2. See Figures 29-1 and 29-2 for examples of acceptable NDAA FY 2017 required language.

8.3.1. If the member entered the service before September 8, 1980:

8.3.1.1. The fixed amount, the percentage, the formula, or the hypothetical award that the former spouse is granted;

8.3.1.2. The member's pay grade (rank) at the time of divorce, dissolution, legal separation, or annulment; and

8.3.1.3. The member's years of creditable service, on the date of divorce, dissolution, annulment, or legal separation. In the case of a reservist, the Reserve retirement points, on the date of divorce, dissolution, annulment, or legal separation and years of creditable service for basic pay purposes.

8.3.2. If the member entered the service on or after September 8, 1980:

8.3.2.1. The fixed amount, the percentage, the formula, or the hypothetical award that the former spouse is granted;

8.3.2.2. The member's retired pay base (high-3) amount at the time of divorce, dissolution, legal separation, or annulment (the actual dollar figure); and

8.3.2.3. The member's years of creditable service, on the date of divorce, dissolution, annulment, or legal separation. In the case of a reservist, the Reserve retirement points, on the date of divorce, dissolution, annulment, or legal separation.

8.4 Clarification Order

If the award language in the court order is missing any of the listed variables in paragraph 8.3, then the applicant will need to obtain a clarifying court order that provides the variables as described in paragraph 8.3.

9.0 STARTING PAYMENTS

9.1 Starting Payments

If the former spouse's application is approved, payments will start no later than 90 days after the date the designated agent received the former spouse's complete application, or no later than 90 days after the date the member becomes entitled to receive military retired pay, whichever is later.

9.2 Timing of Payments

Payments will be issued in conformity with normal pay and disbursement cycles, which mean that payments will be issued monthly. Payments will be deducted from the month's pay and paid on the first business day of the following month. For example, a payment issued for the month of March would be sent at the beginning of April.

10.0 PAYMENT AMOUNT

10.1 Limitations

10.1.1. If the spouse or former spouse applies for payments under the USFSPA only, the maximum amount a former spouse can receive is 50 percent of the member's disposable retired pay.

10.1.2. If the spouse or former spouse applies for payments under the USFSPA and there is also a garnishment order for support, the maximum amount that can be paid toward both obligations is 65 percent of the member's disposable earnings calculated in accordance with 42 U.S.C. § 659 (child and spousal support statute) and its implementing regulation.

10.1.3. For garnishments for property other than a retired pay award, the maximum amount payable is 25 percent of disposable earnings in accordance with ***15 U.S.C. § 1673***.

10.1.4. In the event a member receives a retroactive award for Disability Compensation (under Title 38 of the U.S. Code) or a retroactive award for Combat-Related Special Compensation (under ***10 U.S.C. § 1413a***), the payments of retired pay previously made to a former spouse pursuant to a valid court order that were proper when paid do not become erroneous overpayments.

10.2 COLA

If a retired pay award is expressed as a percentage of disposable retired pay, the former spouse will automatically receive a proportionate share of the member's COLAs regardless of any language in a court order to the contrary. Formula and hypothetical retired pay awards are considered a type of percentage award, and thus will automatically include a proportionate share of the member's COLAs. If the retired pay award is a fixed amount, COLAs cannot be added, even if awarded in the court order, and the former spouse's payments will remain fixed. In an NDAA applicable case, COLAs will be added to the disposable income calculation on all awards regardless of what the court order states. Also, the former spouse will automatically receive a proportionate share of the member's COLAs on all NDAA applicable cases in which the award is a percentage, formula, or hypothetical regardless of what the court order states.

10.3 Offset of Former Spouse's Payment for Garnishment or Other Obligation

A former spouse's payment cannot be offset or garnished by the designated agent for any legal obligation, including child support owed to the member.

11.0 PRIORITY OF PAYMENTS

11.1 Multiple Awards

If a court order includes multiple types of awards to a former spouse, the former spouse may designate the priority of payments on the DD Form 2293. If the former spouse does not specify otherwise, the designated agent will pay the retired pay award first, child support second and spousal support third.

11.2 Multiple Former Spouses

If the designated agent is served with applications from more than one former spouse, the designated agent will honor the applications on a first-come, first-served basis. Subsequently served USFSPA applications shall be satisfied out of the disposable retired pay that remains after the satisfaction of all previously served court orders, subject to the limitations of paragraph 10.1.

11.3 Garnishment Orders for Support and Applications Under USFSPA

If the designated agent is served with both a garnishment for support and an application under USFSPA, the designated agent will pay whichever is served first. If the garnishment is served first and is payable directly to the former spouse, the former spouse may reverse the priority of payments by instructing the designated agent to pay the division of property first and then pay the support under a non-IV-D agency order. The designated agent will not change the priority of

payments between a division of property award and a support garnishment if the garnishment was served by an IV-D agency unless the agency agrees to withdraw (terminate) the support order in order to allow the division of property award to have priority over the support order.

12.0 STOPPING PAYMENTS

12.1 Erroneous Payment Information From Former Spouse

The former spouse has a continuing duty to provide the designated agent with correct payment instructions and current contact information. If a former spouse's payments are returned due to erroneous payment instructions (i.e., invalid address or incorrect account number for direct deposit payments), the designated agent will send notice to the last known correspondence address that, unless new payment instructions are received within 30 days of the date of the notice, payments will stop. If the former spouse submits new payment instructions after the payments have terminated, the designated agent will restart the payments on a current basis, and will not make up any missed payments.

12.2 Termination and Suspension of Retired Pay Award Payments

12.2.1. Unless the court order specifies a termination date or event, payments will stop upon the designated agent's receipt of notice of the death of either party. Payments will be prorated for the month of the death of either party.

12.2.2. Unless the court order specifies that payments terminate upon the former spouse's remarriage, retired pay award payments will not stop upon the designated agent's receipt of notice of the former spouse's remarriage. Please note, this provision does not apply to circumstances where the former spouse is receiving payments under 10 U.S.C. § 1408(h).

12.2.3. If the designated agent is served with an order staying payments, the designated agent will stop the payments until served with an order indicating that the former spouse's payments are to resume.

12.2.4. If the designated agent has already started payments and is served with documentation showing that an appeal of the order has been filed within the forum state's appeal timeframe, payments will terminate. The designated agent will not recoup any payments already issued. A former spouse can provide documentation evidencing finality of the appeal and any subsequent court orders, if applicable, for reestablishment of payments.

12.2.5. A former spouse may stop payments under USFSPA by sending the designated agent a letter with his or her signature notarized withdrawing their application for payments under the USFSPA. A former spouse can later reapply for payments by submitting a new DD Form 2293 and a certified copy of the court order that awards him/her the division of military retired pay.

12.2.6. If the designated agent has already started payments and the member goes into a non-pay status (thus is no longer receiving pay from DFAS), payments will stop. If the member goes back into a pay status, payments will resume.

12.3 Termination of Child Support Payments Under USFSPA

Child support payments will stop in accordance with the provisions of the court order. If the court order is silent as to when the payments should stop, payments will stop in accordance with the law of the state that issued the court order. The member has the burden of providing sufficient documentation to justify stopping payments on or before a child's age of majority. The former spouse has the burden of providing sufficient documentation to justify continuing payments after a child's age of majority.

12.4 Termination of Alimony Payments Under USFSPA

Alimony payments will stop in accordance with the provisions of the court order. If the court order is silent as to when the payments should stop, payments will stop in accordance with the law of the state that issued the court order, or upon receiving a court order terminating the alimony payments. (NOTE: The law of some states does not provide that an alimony obligation automatically terminates upon a former spouse's remarriage. For such states, a court order terminating the alimony will need to be provided.) If the designated agent does not already have sufficient documentation to stop payments, additional evidence such as a marriage certificate will be required.

12.5 Payments and Bankruptcy

Absent a court order, there is no authority to stop a former spouse's retired pay award, current and arrearage child support payments, and current spousal support payments, if a member files bankruptcy.

12.6 Certification of Eligibility

The designated agent may request that a former spouse submit a signed certification of continued eligibility to receive payments under USFSPA. The certificate of eligibility should include notice of a change in status or circumstance that affects eligibility, if any such change exists. If the former spouse fails or refuses to comply with the certification requirement, the designated agent may stop the payments after notice to the former spouse.

13.0 RETIRED PAY ARREARS OWED A DECEASED FORMER SPOUSE

13.1 Applicability

This section applies to the settlement of arrears of a retired pay award that may be due a deceased former spouse pursuant to a previous application for direct payment completed under section 4.0. Arrears of a retired pay award may result from prorating a member's disposable retired pay for the month of the former spouse's death, from checks not negotiated before the former spouse's death, or the designated agent's failure to establish and/or make payments to the former spouse in the correct amount prior to the former spouse's death for a period that the former spouse was entitled to a property division.

13.2 Processing of Death Notice

To settle the arrears of retired pay owed a deceased former spouse, the following documentation must be on file:

13.2.1. Copy of Death Certificate. A notification of death from any source (next of kin, post office, or neighbor) is sufficient to suspend future payment of the retired pay award. However, an official copy of a certificate of death for the former spouse is required before the arrears of a retired pay award are paid under this section.

13.2.2. Written Claim. A written claim must contain the claimant's signature and address, or that of the claimant's authorized agent or attorney. A ***Standard Form 1174***, Claim for Unpaid Compensation of Deceased Member of the Uniformed Service, is not required, but may be used for this purpose, as long as the claim specifies the claimant's relationship to the deceased former spouse and documents other living relatives of the deceased former spouse.

13.2.3. Additional Documentation as Required. A claimant may be required to submit any additional documentation the designated agent deems necessary to establish the claimant's status and entitlement to the retired pay award arrears including, but not limited to, marriage certificates, birth certificates, divorce decrees, or other documentation that validates the living beneficiaries of a former spouse in any class of persons entitled to the arrears pursuant to paragraph 13.4.

13.3 Recoupment of Outstanding Payments

All outstanding checks or direct deposits (not negotiated before the former spouse's death or made after the former spouse's death) or the proceeds thereof must be returned to the designated agent before a settlement of arrears may be made.

13.4 Payment of the Arrears

Former spouse payments from retired pay are prorated for the month of the former spouse's death. When all documentation has been received and all outstanding payments have been recouped, payment of the arrears is made to the person living on the date of the former spouse's death who is highest on the order of precedence set forth in Chapter 30. For the purpose of payment of arrears under this paragraph, the provisions of Chapter 30, subparagraphs 2.4.3, 2.4.4, and 2.4.5 apply, and all references to a "retiree" in subparagraphs 2.4.1.2 through 2.4.1.6, 2.4.3, 2.4.4, and 2.4.5 should be considered as referring to a deceased former spouse rather than a retiree.

13.5 Indebtedness Resulting From Overpayment to a Former Spouse

Any indebtedness resulting from overpayment to a deceased former spouse must be liquidated before retired pay award arrears can be settled.

13.6 Claim for Arrears

A claim for arrears must be filed within the 6-year statute-of-limitation restriction. See ***31 U.S.C. § 3702(b)(1)***. Any claim received 6 years after the date of the former spouse's death is barred.

13.7 Taxability

In the case of deceased former spouses, one or more ***Treasury Department (TD) Forms 1099-R***, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., may be used. If no former spouse arrears are paid, one TD 1099-R will be issued in the former spouse's name to cover any entitlement through date of death. If arrears are paid, an additional TD 1099-R is issued to each claimant to whom the arrears were paid.

14.0 ADMINISTRATIVE APPEAL PROCESS

14.1 Either Party Disagrees

If either party disagrees with the designated agent's determination concerning a former spouse's entitlement to payments under the USFSPA, that party may request reconsideration by writing to the designated agent. If the party requesting reconsideration asserts that the designated agent has erroneously overpaid the other party, the request for reconsideration will be considered a claim against the designated agent. An attorney will review the request and issue a decision in writing.

14.2 Party Requesting Reconsideration Disagrees

If the party requesting reconsideration disagrees with the attorney's determination, that party may submit an appeal to the designated agent, which must be received within 30 days of the date of the initial determination. The designated agent will forward the appeal to the Defense Office of Hearings and Appeals for their decision.

14.3 Additional Information

Parties are referred to ***Department of Defense Instruction (DoDI) 1340.21*** for additional information concerning the submission of claims and appeals.

15.0 LIABILITY

15.1 Payments Made in Accordance With the USFSPA

Neither the United States nor any employee of the United States shall be liable regarding any payment made from retired pay to a retiree or former spouse pursuant to a court order that is regular on its face, if such payment is made pursuant to the USFSPA.

15.2 Designated Agent Liability

If the designated agent processes a former spouse's USFSPA application and administers the former spouse's payments in accordance with the USFSPA and in accordance with all documentation in its files, the designated agent is not liable for any former spouse payments issued after a former spouse's eligibility to receive payments has ended. Nor is the designated agent liable for any payments that the former spouse may have been entitled to prior to the designated agent's beginning direct payments pursuant to the former spouse's USFSPA application.

Figure 29 – 1. Sample Court Orders – Findings of Facts

STATE OF _____ COURT OF _____
COUNTY OF _____ Case No. _____

_____
Petitioner

_____
Respondent

MILITARY RETIRED PAY DIVISION ORDER

This cause came before the undersigned judge upon the petitioner/respondent's claim for a distribution of the respondent/petitioner's military retired pay benefits. The court makes the following:

FINDINGS OF FACT:

The Petitioner's Social Security Number is _____ and current address is _____.

The Respondent's Social Security Number is _____ and current address is _____.

The Parties were married on _____. Their marital status was terminated on _____ pursuant to a(n) _____entered in _____ County, State of _____. This current order is entered incident to the aforementioned order.

The parties were married for a period of ten or more years during which time the Petitioner/Respondent performed at least ten years of service creditable for retirement eligibility purposes.

If the military member was on active duty at the time of this order, Respondent/Petitioner's rights under the Service Members' Civil Relief Act, 50 U.S.C. App. 501-548 and 560-591, have been observed and honored.

This court has jurisdiction over the Respondent/Petitioner by reason of [**choose** those that apply] (A) his or her residence, other than because of military assignment, in the territorial jurisdiction of the court, during the [divorce, dissolution, annulment, or legal separation] proceeding, (B) his or her domicile in the territorial jurisdiction of the court during the [divorce, dissolution, annulment, or legal separation] proceeding, or (C) his or her consent to the jurisdiction of the court.

[Note: All awards expressed as a percentage of disposable retired pay, including formulas and hypothetical awards, will automatically include a proportionate share of the member's COLA regardless of any language in a court order to the contrary.

Additionally, if the former spouse is awarded a fixed dollar amount, she/he will not receive any cost-of-living-allowance (COLA) increases.

[The below examples apply to Decree of Divorce, Dissolution, Annulment, or Legal Separation]

*Figure 29 – 2. Retired Military Members Who are Divorced/Legally Separated After Retirements

All of the blank spaces represent variables that MUST be provided in the court order.

CONCLUSIONS OF LAW:

Petitioner/Respondent is entitled to a portion of Respondent/Petitioner's U.S. military retired pay as set forth herein.

IT IS THEREFORE ORDERED THAT:

The former spouse is awarded ___ percent (or $___dollar amount) of the member's disposable military retired pay.

This _____ day of _____, 20__. _____
JUDGE

*Figure 29 – 3. For Active-Duty Members Who are Divorced/Legally Separated on or Before December 23, 2016.

All of the blank spaces represent variables that MUST be provided in the court order. Choose and complete only ONE:

CONCLUSIONS OF LAW:

Petitioner/Respondent is entitled to a portion of Respondent/Petitioner's U.S. military retired pay as set forth herein.

IT IS THEREFORE ORDERED THAT:

Active-duty formula:

The former spouse is awarded a percentage of the member's disposable military retired pay, to be computed by multiplying ____ percent times a fraction, the numerator of which is _____ months of marriage during the member's creditable military service, divided by the member's total number of months of creditable military service.

Active-duty hypothetical calculated as of time of division, for all members regardless of service entry date:

The former spouse is awarded _____percent of the disposable military retired pay the member would have received had the member retired with a retired pay base (high-3) of _____and with _____years of creditable service on _____.

Active-duty hypothetical calculated as of time of division; may ***only*** be used for members entering service before September 8, 1980:

The former spouse is awarded _____percent of the disposable military retired pay the member would have received had the member retired with the rank of _____ and with _____ years of creditable service on _____

Active-duty hypothetical calculated as of member's actual retirement date:

The former spouse is awarded _____percent of the disposable military retired pay the member would have received had the member retired on his actual retirement date with the rank of _____ and with _____ years of creditable service."

This _____day of_____, 20__. _____
JUDGE

*Figure 29 – 4. For Active-Duty Members Who are Divorced/Legally Separated After December 23, 2026.

All of the blank spaces represent variables that MUST be provided in the court order. Choose and complete ONE:

CONCLUSIONS OF LAW:
Petitioner/Respondent is entitled to a portion of Respondent/Petitioner's U.S. military retired pay as set forth herein.

IT IS THEREFORE ORDERED THAT:

1 Fixed Award: **The former spouse is awarded $___ (dollar amount) of the member's disposable military retirement pay.**

2. Percentage Award: **The former spouse is awarded ___percentage of the member's disposable military retirement pay.**

3 Formula Award: **The former spouse is awarded a percentage of the member's disposable military retired pay, to be computed by multiplying _____ percent times a fraction, the numerator of which is _____months of marriage during the member's creditable military service, divided by the member's total number of months of creditable military service.**

4. Hypothetical Retired Pay Award for members entering military service:

A. BEFORE September 8, 1980: **The former spouse is awarded _____ percent of the disposable military retired pay the member would have received had the member retired with the rank of _____ and with _____ years of creditable service on _____.**

B. ON OR AFTER September 8, 1980: **The former spouse is awarded _____ percent of the disposable military retired pay the member would have received had the member retired with a retired base (high-3) of _____ and with _____ years of creditable service on _____.**

AND ONE OF THE BELOW SECTIONS MUST ALSO BE COMPLETED.

1. If the member entered the service BEFORE September 8, 1980

On the date of the decree of divorce, dissolution, annulment, or legal separation _____ (list the date), the member's military pay grade (rank) was_____, and the member had _____ years of creditable service (list amount of years and months).

2. If the member entered the service ON OR AFTER September 8, 1980:

On the date of the decree of divorce, dissolution, annulment, or legal separation _____ (list the date), the member's military retired pay base (high-3) was $_____ (must provide a dollar amount) and the member had _____ years of creditable service (list amount of years and months).

This _____ day of _____, 20__. _____
JUDGE

*Figure 29 – 5. For Reserve Members Who are Divorced/Legally Separated on or Before December 23, 2016

All of the blank spaces below represent variables that MUST be provided in the court order. Choose and complete ONE:

CONCLUSIONS OF LAW:
Petitioner/Respondent is entitled to a portion of Respondent/Petitioner's U.S. military retired pay as set forth herein.

IT IS THEREFORE ORDERED THAT:

Reservist formula:

The former spouse is awarded a percentage of the member's disposable military retired pay, to be computed by multiplying ____percent times a fraction, the numerator of which is _____ Reserve retirement points earned during the period of the marriage, divided by the member's total number of Reserve retirement points earned.

Reservist hypothetical calculated as of time of division, for all members regardless of service entry date:

The former spouse is awarded _____percent of the disposable military retired pay the member would have received had the member become eligible to receive military retired pay with a retired pay base (high-3) of _____ and with _____ Reserve retirement points on _____.

Reservist hypothetical calculated as of time of division; may be used for members entering service before September 8, 1980:

The former spouse is awarded _____percent of the disposable military retired pay the member would have received had the member become eligible to receive retired pay on _____, with the rank of _____, with _____ Reserve retirement points, and with _____ years of service for basic pay purposes.

Reservist hypothetical calculated as of the date the member becomes eligible to receive retired pay:

The former spouse is awarded _____percent of the disposable military retired pay the member would have received had the member become eligible to receive retired pay on the date he or she attained age 60, with the rank of _____, with _____ Reserve retirement points, and with _____ years of service for basic pay purposes."

This _____ day of _____, 20__. _____
JUDGE

*Figure 29 – 6. For Reserve Members Who are Divorced/Legally Separated After December 23, 2016 (Including Gray Area Members)

All of the blank spaces represent variables that MUST be provided in the court order. Choose and complete ONE:

CONCLUSIONS OF LAW:
Petitioner/Respondent is entitled to a portion of Respondent/Petitioner's U.S. military retired pay as set forth herein.

IT IS THEREFORE ORDERED THAT:

1. Fixed award: **The former spouse is awarded $_____ (dollar amount) of the member's disposable military retirement pay.**

2. Percentage award: **The former spouse is awarded _____ percentage of the member's disposable military retirement pay.**

3. Formula award: **The former spouse is awarded a percentage of the member's disposable military retired pay, to be computed by multiplying _____ percent times a fraction, the numerator of which is _____ Reserve retirement points earned during the period of the marriage, divided by the member's total number of Reserve retirement points earned.**

4. Reservist hypothetical retired pay award as of time of division;

A. May be used for members entering service BEFORE September 8, 1980: **The former spouse is awarded ____ percent of the disposable military retired pay the member would have received had the member become eligible to receive retired pay on _____, with the rank of _____, with _____Reserve retirement points, and with _____years of service for basic pay purposes.**

B. May be used for members entering service ON OR AFTER September 8, 1980: **The former spouse is awarded _____ percent of the disposable military retired pay the member would have received had the member become eligible to receive military retired pay with a retired pay base (high-3) of _____ and with _____Reserve retirement points on _____.**

AND ONE OF THE BELOW SECTIONS MUST ALSO BE COMPLETED.

1. If the member entered the service BEFORE September 8, 1980:

On the date of decree of divorce, dissolution, annulment, or legal separation_____(list the date), the member's pay grade (rank) was _____ and the member had Reserve retirement points _____ (enter amounts), and the member had _____years of service for basic pay purposes _____ (list amount of years and months).

2. If the member entered the service ON OR AFTER September 8, 1980:

On the date of the decree of divorce, dissolution, annulment, or legal separation_____(list the date), the member's military retired pay base (high-3) was $_____, (must provide a dollar amount) and the member had _____ Reserve retirement points (enter amount).

This _____day of _____, 20___.

_____
JUDGE

REFERENCES

CHAPTER 29 – FORMER SPOUSE PAYMENTS FROM RETIRED PAY

1.0 – GENERAL	USFSPA 10 U.S.C. § 1408 PL 114-328, section 641 10 U.S.C. § 1415 31 U.S.C. § 3702 DoDI 1340.21 50 U.S.C. § 3901 et. seq.
2.0 – DEFINITIONS	
2.12	PL 115-91, section 534
3.0 – AWARDS THAT CAN BE COLLECTED UNDER THE USFSPA	
3.6	10 U.S.C. § 1408 PL 115-91, section 534
3.7	10 U.S.C. § 1415

VOLUME 7B, CHAPTER 30: "DEATH OF A RETIRED MEMBER"

SUMMARY OF MAJOR CHANGES

Changes are identified in this table and also denoted by blue font.

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

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

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

The previous version dated July 2022 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated hyperlinks, statutes, and formatting in compliance with current administrative instructions.	Revision
2.9	Stigmatizing language was modified in accordance with the Deputy Secretary of Defense memo, "Review of Policies to Eliminate Stigmatizing Language Related to Mental Health," dated November 7, 2022.	Revision

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CHAPTER 30

DEATH OF A RETIRED MEMBER

1.0 GENERAL

1.1 Purpose

This chapter provides policy on the death of a retired member. This includes but is not limited to: required documentation, arrears of pay (AOP), death gratuity, and taxable income.

1.2 Authoritative Guidance

The pay policies and requirements established by the DoD in this chapter are derived primarily from, and prepared in accordance with the United States Code (U.S.C.), including Titles 10, 26, 31, and 38. Due to the subject matter in this chapter, the list of authoritative sources is extensive. The specific statutes, regulations, and other applicable guidance that govern each individual section are listed in a reference section at the end of the chapter.

2.0 ARREARS OF PAY

2.1 Basic Information

Entitlement to retired pay terminates on the date of the retired member's death. The AOP is the retired member's final month of prorated retired pay and all unencumbered amounts due the deceased retired member. If the retired member waived retired pay in favor of a civil service annuity, there is no AOP due. A retired member who waived retired pay in order to receive disability compensation from the Department of Veterans Affairs (VA) may be due retired pay for the month of death because VA disability compensation entitlement terminates on the last day of the month before death. Upon the Defense Finance and Account Service (DFAS) being notified of a retired member's death, a retired member's account is placed in a suspended status until the date of death can be verified. The DFAS must attempt to obtain proof of death before closing an account. Acceptable forms of proof of death documentation include:

2.1.1. Death certificate,

2.1.2. ***DoD (DD) Form 1300***, Report of Casualty,

2.1.3. Funeral Director's Report,

2.1.4. VA Cemetery Files,

2.1.5. The Defense Enrollment Eligibility Reporting System,

2.1.6. Social Security Reports, or

2.1.7. Other forms of official notification of death.

2.2 Related Inquiries

The Military Department concerned advises the surviving spouse to contact the VA or the Social Security Administration on matters relating to entitlement benefits payable by those agencies.

2.3 Responsibilities

When the Military Department concerned receives notification of the death of a retired member, they will notify DFAS-Cleveland. The DFAS-Cleveland site:

2.3.1. Terminates payment of retired pay,

2.3.2. Reclaims outstanding retired pay checks or direct deposit payments,

2.3.3. Discontinues and collects overpayments of allotments,

2.3.4. Pays death gratuity if applicable,

2.3.5. Collects debts,

2.3.6. Provides claim forms to prospective beneficiaries, and

2.3.7. Prepares vouchers and tax statements for final account settlement.

2.4 Eligible Beneficiaries

Each Military Service and DFAS periodically advise retired members of their right to designate a beneficiary or beneficiaries to receive any AOP amount that may be available upon the retired member's death, and the disposition of AOP when no beneficiary or beneficiaries have been designated. Any person or persons, or legal entity, including the estate or trust of the retired member, may be designated. In order for the retired member's estate to be an eligible beneficiary, the estate must be established pursuant to the laws of the retired member's domicile after the retired member's death. If the estate is not established, the designation to the estate will fail.

2.4.1. Pursuant to ***10 U.S.C., § 2771*** upon presentation of a ***Standard Form (SF) 1174***, Claim for Unpaid Compensation of Deceased Member of the Uniformed Services, arrears of retired pay are to be paid to the person highest on the following list, living on the date of the retired member's death in the following order of precedence:

2.4.1.1. Beneficiary designated by the retired member in writing, if received by DFAS-Cleveland or the Military Department concerned before the retired member's death;

2.4.1.2. Surviving spouse;

2.4.1.3. Children and their descendants, by representation:

2.4.1.3.1. Natural Child;

2.4.1.3.2. Adopted Child. An adopted child is a legal heir in every state and, therefore, is entitled to payment of unpaid pay and allowances, if otherwise proper. If another person(s) adopts the deceased retired member's natural child, the child is a beneficiary only in those states where an adopted child may still inherit from a natural parent;

2.4.1.3.3. Stepchild. A stepchild is not an eligible beneficiary unless adopted by the deceased retired member;

2.4.1.4. Father and mother in equal parts or, if either is dead, the survivor;

2.4.1.5. Legal representative; or

2.4.1.6. Person entitled under the law of the domicile of the deceased retired member.

2.4.2. The retired member may change a designated beneficiary either in writing or electronically via ***myPay*** as long as the change is received by DFAS-Cleveland before the retired member's death.

2.4.3. Where payment is to be made to the person entitled under the law of the domicile of the deceased individual in subparagraph 2.4.1.6, DFAS may require the claimant(s) to submit evidence of entitlement under state law. This includes, but is not limited to funeral expense receipts, small estate affidavit, trust documents, court orders granting summary administration and where necessary, the deceased person's will.

2.4.4. A person may not profit from their own wrongful acts. It is against public policy to permit payment by the government of arrears of pay, compensation or other such benefits to an heir or beneficiary who feloniously kills the person upon whose death such payments hinge. No payment is authorized if the beneficiary is involved in the member's death, even in cases where that beneficiary has not been convicted of criminal charges, if the facts do not reasonably establish a lack of felonious intent on that person's part. Where the beneficiary or heir causes the member's death, before any payment can be made, there must be a showing that the claimant is entitled to the payment notwithstanding the claimant's actions, as opposed to the record having to establish felonious intent before payment will be withheld. Any indication that the beneficiary feloniously or wrongfully participated in the death the retired member bars payment to that beneficiary. The arrears are not paid to that person unless evidence is received which clearly absolves the beneficiary of any felonious or wrongful intent. The burden of proving the absence of felonious or wrongful intent falls on the beneficiary.

2.4.5. If the beneficiary dies after the retired member but before receiving final settlement, upon presentation of a SF 1174 claim form, the AOP may be paid to the beneficiary's estate. If the beneficiary does not have an estate established and the AOP is $3,000 or less, the AOP may

be paid to the deceased beneficiary's survivors in the order of precedence set out in subparagraph 2.4.1.2 through 2.4.1.5. If the AOP is greater than $3,000, DFAS may pay the AOP in accordance with laws of the domicile of the deceased beneficiary. If doubt exists as to entitlement, the DoD will settle the claim.

2.5 Substantiating Documents and Collection of Overpayments

2.5.1. Substantiating Documents. To effect settlement of AOP, the following documents must be a matter of record:

2.5.1.1. Completed SF 1174, Claim for Unpaid Compensation of Deceased Member of the Uniformed Services, from the beneficiary;

2.5.1.2. DD Form 1300 or a copy of the death certificate;

2.5.1.3. Retirement orders; and

2.5.1.4. Miscellaneous documentation (e.g., adoption papers; court orders of appointment; custodianship papers; ***Internal Revenue Service Form W-8BEN***; Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals) (for individuals who are not United States citizens or resident aliens)) as required.

2.5.2. Collection of Overpayments. Every attempt should be made to recover all outstanding checks or direct deposits (not negotiated before the retired member's death or outstanding checks forwarded past the date of entitlement) or the proceeds thereof. Unrecovered funds are treated as erroneous payments to the retired member or the withdrawer of funds with the indebtedness subject to the debt collection authority.

2.5.2.1. If the funds are not recovered, there is no AOP due until the arrears due to the retired member exceed the erroneous payment. In situations where the recipient of the retired member's erroneous payment is also the beneficiary for the AOP, the amount of arrears due the individual is offset administratively by the erroneous payments received by the individual. The remaining erroneous payment, if any, is still subject to the debt collection authority.

2.5.2.2. If there has been an erroneous payment of AOP made to an individual not entitled to the retired member's AOP, and another individual is entitled to the retired member's AOP, the payment of the amount due as arrears must be made to the appropriate payee, regardless of whether collection has been made from the recipient of the erroneous pay.

2.6 Questionable Date of Death

2.6.1. When the date of death is shown as a "found date," DFAS-Cleveland will verify whether an autopsy was performed. If an autopsy was performed, the date of death determined by the coroner is used. If the results of the autopsy are reported on the death certificate, a copy of the autopsy report is not required. If an autopsy was not performed, but the state has certified the date of death on the death certificate, that date is used. If two dates are shown, such as the retired

member died between 11:00 p.m. June 10, 2008, and 4:00 a.m. June 11, 2008, use the earlier date since that was the last date the retired member was known to be alive. If neither is available, obtain a statement from one or more disinterested persons attesting to the last known date that the retired member was alive. When this statement is received, the AOP is settled based on that date.

2.6.2. In claims involving missing persons, provided there is no evidence to the contrary, assume the date of death to be the presumed date established by state court decree.

2.6.3. If evidence exists that a retired member died on a particular date several years before the date of presumptive death declared by a state court, the AOP is payable only through the earlier date of suspected death.

2.6.4. A judicial decree is not necessary to establish Retired Serviceman's Family Protection Plan or Survivor Benefit Plan annuity payments if a person has been missing for more than 30 days under circumstances from which a reasonably prudent person would conclude that such person is dead and the Secretary of the Military Department concerned (or designee) makes a determination that presumes the retired member is deceased. See Chapters 37 and 42.

2.7 Doubtful Claims

2.7.1. In accordance with ***Title 32, Code of Federal Regulations (CFR), part 282.5***, cases involving questions of fact or law are submitted to the Defense Office of Hearings and Appeals (DOHA) for resolution. These include cases when:

2.7.1.1. Doubt exists as to the amount or validity of the claim, or

2.7.1.2. Doubt exists as to the person or persons properly entitled to the payment. Upon receipt of a doubtful claim, notify the claimant that the claim has been forwarded to DOHA for approval of settlement.

2.8 Six Year Statute of Limitations

2.8.1. Title ***31 U.S.C. § 3702*** provides general authority for settling claims against the United States. Section 3702 provides that any claim against the U.S. Government is barred forever unless such claim, bearing the signature and address of the claimant or authorized agent or attorney is received by the responsible agency within 6 years after the date such claim first accrued. Under authority delegated from the Secretary of Defense, the Director, DOHA, may waive the time limitation for late claims involving the pay, retired pay, and survivor benefits of military personnel. Any claim that became payable as a result of waiver of time limitation is limited to $25,000.

2.8.2. In any case where two or more beneficiaries are entitled to share a retired member's AOP equally, each claimant/beneficiary will become entitled to their own proportional share upon presentation of a timely claim. In the event that one (or more) of the claimant/beneficiaries fails to make a timely claim within 6 years, such claimant/beneficiary's claim will be barred under

31 U.S.C. § 3702 as untimely; however, the time limitation may be waived by DOHA if appropriate. In no event will the share of the untimely claimant/beneficiary be paid to the claimant/beneficiary who submitted a timely claim.

*2.9 Death of Mentally Incapacitated Retired Member

If retired pay was waived in favor of VA compensation, but compensation was withheld because the retired member's estate exceeded $1,500, contact the VA to ascertain periods and reasons for nonpayment of VA compensation and verify whether withdrawal of the waiver was made by guardian or trustee before the retired member's death. See Chapter 12 regarding withdrawal of waiver.

Note: Nonpayment of compensation could occur at any time from the effective date of VA waiver through the month of death and is not limited to the month of death.

3.0 DEATH GRATUITY

3.1 Basic Information

3.1.1. Death gratuity is payable when the military member's death occurs within the 120-day period which begins on the day after release from active duty or active duty for training. The VA must certify entitlement to death gratuity. The Secretary of the VA must determine that the decedent was discharged or released under conditions other than dishonorable from the last period of the duty of training that he or she performed. The Secretary of the VA must also determine that death resulted from an injury or disease that was incurred or aggravated during the period of service of active duty, inactive-duty training or travel directly to or from such duty. See ***10 U.S.C. § 1476***.

3.1.2. Death gratuity is not payable for a member who retires for non-Regular service (age and service) unless the member was on active duty the day before retirement.

3.1.3. Submit the application for Death Gratuity on a ***DD 397***, Claim Certification and Voucher for Death Gratuity Payment.

Note: For detailed information on Death Gratuity, see Volume 7A, Chapter 36.

3.2 Eligible Beneficiaries

3.2.1. Eligible Beneficiaries Prior to July 1, 2008. Before May 25, 2007, payment of a death gratuity was made to or on behalf of the deceased member's living survivors as prescribed by the statute in effect at the time. Beginning on May 25, 2007, and ending on June 30, 2008, a qualified member was able to designate another person to receive not more than 50 percent of the death gratuity payable upon the death of the member with any remaining amount not designated paid in the order prescribed by statute. The designated amount of the death gratuity had to be specified in increments of 10 percent. Death gratuity payments were made to the

deceased member's living survivors as prescribed by the statute at the time. (For order of precedence prior to July 1, 2008, please see the archived version of Chapter 30, dated July 2008).

3.2.2. Eligible Beneficiaries on and After July 1, 2008. Effective July 1, 2008, a qualified member may designate up to 100 percent of their death gratuity entitlements, in 10 percent increments, to any person(s) of their choosing. If the qualified member has a spouse, but designates a person other than the spouse to receive all or a portion of the amount payable, the Secretary concerned must provide notice of the designation to the spouse. If a qualified person does not make a designation or designates only a portion of the amount payable, then pay the amount of the death gratuity not covered by a designation as follows:

3.2.2.1. To the surviving spouse of the person, if any;

3.2.2.2. If there is no surviving spouse, any surviving children of the person and the descendants of any deceased children by representation. Surviving children without regard to age or marital status include:

3.2.2.2.1. Legitimate children,

3.2.2.2.2. Adopted children,

3.2.2.2.3. Stepchildren who were a part of the decedent's household at the time of death, or

3.2.2.2.4. Illegitimate children of the decedent (see subparagraph 3.3.1.4);

3.2.2.3. If there is no surviving spouse or children, the decedent's surviving parents in equal shares or the survivor of them. Surviving parents as prescribed by the following:

3.2.2.3.1. Parents include fathers and mothers through adoption;

3.2.2.3.2. Only one father and one mother may be recognized in any case;

3.2.2.3.3. Those who exercised a parental relationship on the date, or most nearly before the date of the member's death are given preference;

3.2.2.3.4. If there is no surviving spouse, child, or parent of the decedent, the duly appointed executor or administrator of the estate of the decedent; or

3.2.2.3.5. If there are no survivors as prescribed in subparagraphs 3.2.2.1 through 3.2.2.4, other next of kin of the person entitled under the laws of domicile of the person at the time of the person's death.

3.3 Documentary Evidence

3.3.1. In some cases, the beneficiary must furnish proof of relationship:

3.3.1.1. Lawful Spouse. Documentation may be required to substantiate the marriage or proof of termination of prior marriages entered into by the beneficiary or deceased member;

3.3.1.2. Legally Adopted Child. A copy of adoption papers;

3.3.1.3. Stepchild. Information to prove that the child was a member of the deceased member's household;

3.3.1.4. Illegitimate Child. Documentation is required as proof that the member was the parent of the child and must include one of the following:

3.3.1.4.1. An acknowledgement in writing signed by the decedent;

3.3.1.4.2. A judicial determination made before the decedent's death that the claimant is a child of the decedent;

3.3.1.4.3. Evidence that the Secretary of VA has determined the claimant to be the child of the decedent; or

3.3.1.4.4. A copy of the court order that ordered the parent to contribute to the child's support; or

3.3.1.5. Designated Relative

3.3.1.5.1. Designated relative must provide documentary evidence that any marriage entered into by the deceased member has been terminated and a notarized statement that there are no living children.

3.3.1.5.2. Persons in loco parentis must furnish satisfactory evidence of the relationship as deemed necessary by the Military Department concerned.

3.3.2. Custodianship documents or court orders of guardianship appointments must support all payments made for minor children.

3.4 Death of Eligible Survivor Before Receipt of Death Gratuity

If a person entitled to all or a portion of a death gratuity under subparagraph 3.2.2 dies before the person receives the death gratuity, it will be paid to the living survivor next in the order prescribed in subparagraph 3.2.2.

3.5 Determinations Affecting Entitlement

3.5.1. Death as Lawful Punishment. No death gratuity is payable in the case of a military member whose death is the result of a lawful punishment for a crime or military offense, except when such death was inflicted by any hostile force with which the armed forces of the United

States was engaged in armed conflict.

3.5.2. Military Member Killed by Beneficiary. No death gratuity is payable to a beneficiary or survivor who kills a military member, unless there is evidence that clearly absolves the beneficiary or survivor of any felonious intent.

3.6 Amount Payable

3.6.1. Deaths On or After October 7, 2001. For deaths on or after October 7, 2001, the amount of death gratuity is $100,000.

3.6.2. Debt Collection. Do not collect debts from death gratuity payments.

3.7 Erroneous Payment

An erroneous payment of death gratuity is one made because of administrative error to a person clearly not entitled to that payment, rather than a payment made reliant on statements of record made by the member about matters such as marital status and dependency status. Make a second payment to the rightful beneficiary when the error resulted from improper maintenance of records or administrative negligence. This payment should not be delayed pending recovery of the erroneous payment from the ineligible recipient. The respective DFAS site will follow the prescribed collection procedures in an attempt to recover an erroneous payment.

4.0 TAXABLE INCOME

4.1 Taxability of AOP

4.1.1. The AOP due the deceased retired member at time of death is taxable to the beneficiary who receives payment if the AOP was taxable to the retired member. The tax liability is in accordance with the Internal Revenue Code of 1986, as amended.

4.1.2. If AOP is paid, a Treasury Department (TD) Form 1099-R is issued to each beneficiary using the tax identification number of the beneficiary. If no AOP is paid, the retired pay activity issues one TD Form 1099-R in the decedent's name.

4.2 Taxability of Death Gratuity

4.2.1. Death Occurred Between August 20, 1996, and September 10, 2001. The amount of death gratuity payments made to survivors of military members who died after August 20, 1996, that is excludable from income may not exceed $3,000, regardless of the number of beneficiaries. If there are multiple beneficiaries, apply proportionately the $3,000 exclusion. All death gratuity payments are reported separately, using TD Form 1099-R. The total amount of the gross distribution is entered in Box 1. The appropriate taxable amount is entered in Box 2a. For members who died on or before August 20, 1996, the maximum exclusion amount is $5,000.

4.2.2. Death Occurred on or After September 11, 2001. The total amount of death gratuity is excludable from gross income for tax purposes.

REFERENCES

CHAPTER 30 – DEATH OF RETIREE

2.0 – ARREARS OF PAY

2.4	10 U.S.C. § 2771
2.4.1.4	Comp Gen B-113031, July 6, 1960
	Comp Gen B-113240, October 5, 1961
	Comp Gen B-59917, May 31, 1961
	Comp Gen B-93772, December 2, 1963
2.4.1.5	Comp Gen B-151337, October 7, 1963
2.4.2	10 U.S.C. § 2771
2.4.4	Comp Gen B-187743, July 7, 1977
	Comp Gen B-191953, July 3, 1978
	Comp Gen B-233351, July 27, 1989
	Comp Gen B-245996, March 11, 1994
	DOHA Claims Case No. 2017-CL-0702101.2, May 24, 2021
2.4.5	Comp Gen B-69787-O.M.
2.5	31 U.S.C. § 3716
	Comp Gen B-132407, 37 Comp Gen 131
2.6.1	Comp Gen A-58284, 14 Comp Gen 411
	Comp Gen A-80384, 16 Comp Gen 384
	Comp Gen B-148485, 43 Comp Gen 503
2.6.2	Comp Gen B-243829, December 13, 1991
2.6.3	Comp Gen B-251968, July 22, 1993
2.6.4	10 U.S.C. § 1437
	10 U.S.C. § 1450
2.7	32 CFR 282, Appendix C, Submitting a Claim
2.8	31 U.S.C. § 3702(b) and (e)(3)
2.9	32 CFR 282, Appendix D, Processing a Claim
	31 U.S.C. § 3702(e)(2)
	38 U.S.C. § 5306
	Comp Gen B-156553, October 31, 1967
	Deputy Secretary of Defense memo, "Review of Policies to Eliminate Stigmatizing Language Related to Mental Health", dated November 7, 2022

3.0 – DEATH GRATUITY

3.1.1	10 U.S.C. § 1476
3.2.1	10 U.S.C. § 1477
3.2.2	10 U.S.C. § 1477
	Volume 7A, Chapter 36

REFERENCES (Continued)

3.4	10 U.S.C. § 1477
3.5.1	10 U.S.C. § 1480
3.5.2	Comp Gen B-172014, August 25, 1971 Comp Gen B-187743, July 7, 1977
3.6.1	10 U.S.C. § 1478
3.7	Comp Gen B-132407, 37 Comp Gen 131 August 22, 1957

4.0 – TAXABLE INCOME

4.2.1	Public Law 104-188, section 1402, August 20, 1996 26 U.S.C. § 134 Internal Revenue Service, Publication 3, Armed Forces' Tax Guide

VOLUME 7B, CHAPTER 31: "DEATH OF A SURVIVOR ANNUITANT"

SUMMARY OF MAJOR CHANGES

Changes are identified in this table and also denoted by blue font.

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

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PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
2.3	Clarification on documentation required to claim the arrears of an annuitant.	Revision

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CHAPTER 31

DEATH OF A SURVIVOR ANNUITANT

1.0 GENERAL

1.1 Purpose

This chapter addresses the settlement of the arrears of an annuity where the annuitant is a spouse (or former spouse) with no eligible child annuitant, the last remaining child annuitant, or a natural person with an insurable interest. In accordance with the procedures in section 2.0, the Defense Finance and Accounting Service (DFAS) pays the arrears of the annuity under Retired Serviceman's Family Protection Plan, Survivor Benefit Plan (SBP), and minimum income widow provisions of the SBP law.

1.2 Authoritative Guidance

The pay policies and requirements established by the DoD in this chapter are derived primarily from and prepared in accordance with the United States Code (U.S.C.), including Titles 10, 26 and 31. Due to the subject matter in this chapter, the list of authoritative sources is extensive. The specific statutes, regulations, and other applicable guidance that govern each individual section are listed in a reference section at the end of the chapter.

2.0 SETTLEMENT OF THE ARREARS

2.1 Documentation

A notification of death from any source is sufficient to suspend future payment of the annuity. To settle (pay) the arrears of an annuity, the following documentation must be on file:

2.1.1. A copy of the death certificate;

2.1.2. A written claim containing the signature and address of the claimant or of the claimant's authorized agent or attorney; and

2.1.3. Proof of recoupment of outstanding payments. All outstanding checks or direct deposits (not negotiated before the annuitant's death or forwarded past the date of entitlement) or the proceeds thereof must be returned to DFAS Cleveland before a settlement of arrears of annuity may be made.

Note: Refer to the DFAS website on how to ***Report an SBP Annuitants Death*** for more information.

2.2 Payment of the Arrears

The annuity is not prorated for the month of the annuitant's death. Entitlement stops as of the last day of the month before the date of the annuitant's death. When all documentation is

received, payment of the arrears is made to the person living on the date of the annuitant's death who is highest on the order of precedence set forth in Chapter 30. For the purpose of payment of the arrears of an annuity under this section, the provisions of Chapter 30, subparagraphs 2.4.3 through 2.4.5 apply, and all references to a "retiree" in Chapter 30, subparagraphs 2.4.1.2 through 2.4.1.6, and 2.4.4 through 2.4.5 should be considered as referring to the deceased annuitant rather than a retiree.

*2.3 Claim for Arrears

A claim for arrears of an annuity must be filed within the 6-year statute-of-limitation restriction. Any claim received 6 years after the date of the annuitant's death is barred. The Standard Form 1174, Claim for Unpaid Compensation of Deceased Member of the Uniformed Services, should be used to claim the arrears of an annuity under this section and all references to a "member of the uniformed services" on the form should be considered as referring to the deceased annuitant rather than a retiree.

3.0 TAXABILITY

In the case of deceased annuitants, one or more Department of Treasury – Internal Revenue Service ***(IRS) Form(s) 1099-R***, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., may be used. If no arrears of an annuity are paid, then one Form 1099-R will be issued in the annuitant's name to cover any payments received by the annuitant before death. If arrears of an annuity are paid, then an additional Form 1099-R is issued to each claimant to whom the arrears were paid.

REFERENCES

CHAPTER 31 – DEATH OF A SURVIVOR ANNUITANT

1.0 – GENERAL

1.1	Title 10, U.S.C. § 1450(b)(2)

2.0 – SETTLEMENT OF THE ARREARS

2.3	Title 31, U.S.C. § 3702(b)

3.0 – TAXABILITY

Title 26 U.S.C. § 3405

VOLUME 7B, CHAPTER 32: "RECOVERY OF PAYMENTS MADE TO A FINANCIAL ORGANIZATION"

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PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated hyperlinks and formatting to comply with administrative instructions.	Revision
References	Updated references.	Revision

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CHAPTER 32

RECOVERY OF PAYMENTS MADE TO A FINANCIAL ORGANIZATION

1.0 GENERAL

1.1 Purpose

This chapter provides information regarding the accountability of a financial organization for direct deposit payments returned to the Defense Finance and Accounting Service (DFAS) because of the death of a retiree or annuitant. By accepting a recurring benefit payment from the government, a receiving financial institution agrees to the provisions of ***Title 31, Code of Federal Regulations (CFR), Part 210***, including the reclamation actions and debiting of the financial institution's Federal Reserve Bank account for any reclamation for which it is liable. The government's right to reclaim funds is established in 31 CFR 210, section 210.10(a).

1.2 Authoritative Guidance

The pay policies and requirements established by the DoD in this chapter are derived primarily from, and prepared in accordance with the United States Code (U.S.C.), including Titles 5, 12, and 31. The specific statutes, regulations, and other applicable guidance that govern each individual section are listed in a reference section at the end of the chapter.

2.0 LIABILITY OF FINANCIAL INSTITUTIONS FOR DIRECT DEPOSIT PAYMENTS

2.1 Liability of Financial Institution

A financial institution is liable for all benefit payments received after the death or legal incapacity of a recipient, or death of a beneficiary, unless the financial institution meets the qualifications for limiting its liability under paragraph 2.3.

2.2 Reclamation

Upon the notification of the death of a military retiree or annuitant, the DFAS Cleveland Disbursing Officer (DO) will contact the decedent's financial institution to request the return of all payments made since the retiree's or annuitant's death via a Notice of Reclamation in the amount of all post death payments.

2.2.1. The DO must initiate reclamation within 120 days after actual or constructive receipt of notification of the death of a retiree or annuitant. The financial institution is not liable for payments made more than 6 years prior to date of reclamation.

2.2.2. Effective January 2, 2008, the Department of the Treasury, Financial Management Service (FMS) established a policy for the reclamation of federal payments disbursed electronically through the Automated Clearing House. On October 7, 2012, the FMS and the Bureau of the Public Debt were consolidated into the Bureau of the Fiscal Service. See the Department of the Treasury's ***Green Book*** for detailed instructions on the reclamation procedures.

2.3 Limiting Liability

A financial institution may qualify to limit its liability by full compliance with the regulations if it:

2.3.1. Certifies it had no actual or constructive knowledge of the death at the time of the deposit of any post-death benefit payments;

2.3.2. Returns all post-death benefit payments it receives after it learns of the death of a retiree or annuitant; and

2.3.3. Responds to the reclamation notice to ensure that it is received by the DO within 60 days of the date on the notice.

2.4 Calculating Limited Liability Amount

If a financial institution qualifies for limited liability, the amount which can be debited from the financial institution is the amount of the account balance at the time it first receives notice of death plus the lesser of the outstanding balance of the reclamation notice amount (after any collection from the withdrawers) or the 45-day amount. The 45-day amount is the dollar amount of the post-death benefit payments received within 45 calendar days following the death. See the Department of the Treasury's Green Book for examples of calculating the limited liability amount.

3.0 LIABILITY OF DISBURSING OFFICER

The accountability of the financial institution does not affect the liability of the DO for any amounts not recovered. The DO may be relieved of liability for amounts not recovered when the officer has shown that he or she did not know and could not have known of a retiree's or annuitant's death prior to making payments after the date of death.

*REFERENCES

CHAPTER 32 – RECOVERY OF PAYMENTS MADE TO A FINANCIAL ORGANIZATION

2.0 - LIABILITY OF FINANCIAL INSTITUTIONS FOR DIRECT DEPOSIT PAYMENTS (3202)

31 CFR Part 210
Department of the Treasury, Green Book,
Chapter 5 – Reclamations
(Revised February 1, 2023)

3.0 - LIABILITY OF DISBURSING OFFICER (3203)

59 Comptroller General 597 (1980)

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VOLUME 7B, CHAPTER 37: "RETIRED SERVICEMAN'S FAMILY PROTECTION PLAN (RSFPP) - ANNUITIES"

SUMMARY OF MAJOR CHANGES

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PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated hyperlinks and formatting to comply with current administrative instructions.	Revision
13.0	Removed outdated instructions for the annual certificate of eligibility and replaced with a redirection to the new Survivor Benefit Plan – Marriage Status Update instructions in Chapter 46.	Revision
13.0	Stigmatizing language was removed in accordance with the Deputy Secretary of Defense memo, "Review of Policies to Eliminate Stigmatizing Language Related to Mental Health", dated November 7, 2022.	Revision
14.0	Removed outdated instructions for the annual report of eligibility and replaced with a redirection to the new Foreign Address Update for Mailed Check for Annuitants.	Revision
References	Updated references.	Revision

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CHAPTER 37

RETIRED SERVICEMAN'S FAMILY PROTECTION PLAN (RSFPP) – ANNUITIES

1.0 GENERAL

1.1 Purpose

The purpose of the RSFPP was to permit members of the uniformed services who retired on or before September 20, 1972, to elect to receive a reduced amount of any retired pay in order to provide an annuity payable to eligible annuitant(s) upon that retired member's death. This election was subject to certain limitations specified in the law and elaborated in the regulations in this chapter. The Survivor Benefit Plan (SBP) replaced the RSFPP (see Chapters 42 through 49) as the primary military retired pay annuity protection plan on September 21, 1972. An annuity payable under the RSFPP is not assignable or subject to execution, levy, attachment, or garnishment, except for child support or alimony, or to collect a debt caused by an overpayment described in section 9.0. A debt to the United States or its instrumentalities incurred by the annuitant may be offset from the annuity. The annuity may be paid to a trustee through bankruptcy court proceedings.

1.2 Authoritative Guidance

The pay policies and requirements established by the DoD in this chapter are derived primarily from, and prepared in accordance with the United States Code (U.S.C.), including Titles 10, 11, 26, 31, and 42. Due to the subject matter in this chapter, the list of authoritative sources is extensive. The specific statutes, regulations, and other applicable guidance that govern each individual section are listed in a reference section at the end of the chapter.

2.0 EFFECTIVE DATE OF ANNUITY

2.1 Annuity Accrual

Each annuity payable normally accrues as of the first day of the month in which the retired member dies. If the Secretary concerned makes a determination that a participating retired member is presumed dead, the annuity accrues from the first day of the month in which retired or retainer pay was suspended on the basis of the retired member's missing status. For retired members who elected coverage for spouse and children (often referred to as "Option 3"), an annuity is payable to the eligible children on the first day of the month in which the widow or widower becomes an ineligible annuitant. For a child who is at least age 18, but under age 23, and pursuing a full-time course of study at a recognized educational institution (see section 12.0 for more information), the annuity accrues:

2.1.1. As of the first day of the month in which the retired member dies, if the eligible child's 18th birthday occurs in the same or a preceding month; or

2.1.2. As of the first day of the month in which the child's 18th birthday occurs, if the retired member died in the preceding month; or

2.1.3. As of the first day of the month in which the child becomes or again becomes eligible, if that child's 18th birthday and the retired member's death occurred in a preceding month or months.

2.2 Application

2.2.1. A completed application is required for payment of the annuity.

2.2.2. Payments are made in equal monthly installments thereafter as long as entitlement exists. If a properly completed application was received, the first payment must be made no later than:

2.2.2.1. The 15th of the month after the month in which the retired member dies, or

2.2.2.2. The 15th of the month after the month in which the Secretary of the Military Department concerned (or designee) has made a determination that the retired member is presumed dead.

2.3 Annuitant Eligibility

No annuity accrues or is paid for a month in which all annuitants lose eligibility.

2.4 Special Circumstance

If a member retires and dies during the same month, the annuity is payable for the full month.

3.0 ANNUITY PAYMENTS

3.1 Upon Death or Presumption of Death

Upon official notification of death or Secretarial determination that a participating retired member is presumed dead, annuity accounts are established in accordance with the provisions of the election made by or on behalf of the retired member using DoD ***(DD) Form 2656-7***, Verification for Survivor Annuity to validate the annuity account. Payment of annuity is barred when the member is retired for disability before completing 19 years of service (18 years of service before October 1968) if beneficiaries are eligible for Veterans Affairs (VA) Dependency and Indemnity Compensation (DIC). Payments for a representative payee of an RSFPP annuitant follow the same requirements as payment under the Survivor Benefit Plan. See Chapter 46 for more information.

3.2 Additional Annuity Information

Annuities payable are in addition to any pension(s) or other payment(s) to which the beneficiaries may now or later be entitled by law, and may not be considered income under any law administered by the VA, except when the annuitant is entitled to DIC as a parent of a veteran. For additional information affecting annuity payments, see Table 37-1.

3.3 Settlement of Arrears

For information concerning the settlement of arrears of annuities, see Chapter 31.

4.0 CLAIMS FOR ANNUITY

The claim for annuity payments must be properly completed and signed by the person(s) authorized to receive the annuity.

4.1 Power of Attorney

An individual holding a valid power of attorney may complete (including the signature element) and file the annuity application form on behalf of an annuitant provided:

4.1.1. The payments are to be made directly to the annuitant; and

4.1.2. The annuitant has not been determined to be incompetent of managing their own affairs by a state court, physician, or psychologist.

NOTE: For additional information on annuity payments, see Chapter 46. An annuitant whose application is signed with an "X" must be witnessed (by two disinterested persons), notarized, or countersigned by the person holding the power of attorney. A copy of the power of attorney and explanation why the annuitant required assistance must be submitted with the annuity application.

4.2 Court Order

A claim signed by a legal representative must be accompanied by a copy of the court order of appointment.

4.3 Custodianship

A claim signed by the custodian of a minor child or children must be accompanied by a document evidencing custodianship.

4.4 Doubtful Claim

A doubtful claim must be submitted to the Defense Office of Hearings and Appeals (DOHA) for certification before payment.

4.5 Limitation

4.5.1. The Barring Act. This act bars payment of any claim not received within 6 years from the date it accrues. See ***31 U.S.C. § 3702***.

4.5.2. Denial of Claim. A claim not received within 6 years of the retired member's death must be denied as untimely pursuant to the Barring Act and Department of Defense Instruction (DoDI) 1332.42.

5.0 ANNUITY AMOUNTS

5.1 Single Option

5.1.1. Retirements Before November 1, 1968. The monthly annuity payable, as elected by the retiree, is one-eighth, one-quarter, or one-half of the retired member's reduced retired pay as computed on the date of retirement or effective date of election, whichever is later.

5.1.2. Retirements From November 1, 1968, Through September 20, 1972. The monthly annuity payable as elected by the retired member is:

5.1.2.1. One-eighth, one-quarter, or one-half of the retired member's gross retired pay on date of retirement; or

5.1.2.2. A specific dollar amount of not more than 50 percent, nor less than 12.5 percent of the retired member's gross retired pay on date of retirement, but in no case less than $25.

5.2 Multiple Options

5.2.1. Retirements Before November 1, 1968. The monthly annuity payable for each option, as elected by the retired member, is one-eighth or one-quarter of the retired member's total reduced retired pay as computed on the date of retirement or effective date of election, whichever is later. The combined amount of annuities cannot exceed 50 percent of the retired member's total reduced retired pay.

5.2.2. Retirements From November 1, 1968, Through September 20, 1972. The monthly annuity payable for each option, as elected by the retired member, is:

5.2.2.1. One-eighth or one-quarter of the retired member's gross retired pay on date of retirement; or

5.2.2.2. A specific dollar amount of not more than 25 percent, nor less than 12.5 percent of the retiree's gross retired pay on date of retirement, but in no case less than $25.

5.3 Cost-of-Living Adjustments for Annuities

Whenever retired pay is increased through a COLA, each annuity payable on the day before the effective date of that increase to a spouse or child of a member who died on or before March 20, 1974, is increased at the same time by the same percentage. Annuities payable on September 30, 1978, to a spouse or child of a member who died on or before March 20, 1974, were increased by 66.1 percent, effective October 1, 1978. The 66.1 percent increase was the percentage change in retired and retainer pay authorized by 10 U.S.C. § 1401a from September 21, 1972, to September 30, 1978.

5.4 Rounding

All monthly annuities to which a survivor becomes entitled on or after October 1, 1983, if not a multiple of $1, is rounded to the next lower multiple of $1. Annuities to which survivors were entitled on September 30, 1983 were not rounded until there was an adjustment made in accordance with ***10 U.S.C. § 1401a***; then, and with each subsequent adjustment, the amount as adjusted, if not a multiple of $1, is rounded to the next lower multiple of $1. All subsequent adjustments are based on the rounded amount.

6.0 PAYMENTS

6.1 Payments to Widow(ers)

For unique conditions affecting entitlement of annuity payments to widow or widower, see Table 37-2 for Comptroller General (Comp Gen) decisions.

6.2 Payment to Children

6.2.1. Whom Payable. Annuities for a minor child or children are paid to the legal guardian or, if there is no legal guardian, to the natural parent who has care, custody, and control of the child or children as the custodian, or to a representative payee of the child or children.

6.2.2. Majority Age. Annuities may be paid directly to the child when the law governing the state of residence stipulates the child to be majority age. The child is considered an adult for annuity payment purposes, and a custodian or legal fiduciary is not required. See Appendix H for majority age.

6.2.3. Equal Shares. The annuity is payable in equal shares to or on behalf of all eligible children. If there are no other eligible children, the annuity entitlement terminates when the youngest child becomes an ineligible annuitant.

6.2.4. Unique Conditions. For unique conditions affecting entitlement and payment of annuities for a child or children, see Table 37-3 for Comp Gen decisions.

7.0 CAUSES OF OVERPAYMENTS

One or more of the following situations may cause overpayments in annuity payments:

7.1 Failure to Notify

Failure of the annuitant, custodian, or guardian to notify the Secretary of the Military Department concerned (or designee) of:

7.1.1. Remarriage of the annuitant, before age 60 or death;

7.1.2. Youngest child reaching age 18;

7.1.3. Marriage or death of a child annuitant;

7.1.4. Recovery of an incapacitated child;

7.1.5. Termination of student status;

7.1.6. Erroneous computation; or

7.1.7. Correction of member's military records.

7.2 Concurrent Payment

Concurrent payment of RSFPP annuity and DIC if the RSFPP was payable based on the service of a member who retired for disability before completing 18 years of service after October 5, 1961, or before completing 19 years of service after November 1, 1968.

7.3 Presumption of Death

A Secretarial determination that a retired member is alive after the Secretary of the Military Department concerned (or designee) previously determined that the retired member was presumed dead. The retired member is liable for any indebtedness created where the annuity payments were made based on the presumption of such retired member's death. The retired member's indebtedness cannot be considered for waiver under ***10 U.S.C. § 2774*** or ***10 U.S.C. § 1442***. If the retired member dies before those payments are fully recovered, the annuitant may be liable for the indebtedness if the annuitant was the recipient of the annuity payments made under the presumption of death. (See Volume 16, Chapter 3 and Table 3-7, for collection of indebtedness from retired or retainer pay.)

8.0 RECOVERY OF OVERPAYMENTS

Upon discovery of an overpayment, recovery action will begin immediately. The annuitant will be advised of the debt and the method in which the overpayment is being, or may be, recovered, in accordance with Volume 16.

9.0 METHOD OF RECOVERY

One of the following methods will be used to liquidate the debt resulting from an annuity overpayment:

9.1 Direct Remittance

Send a direct remittance to the Defense Finance and Accounting Service (DFAS), Cleveland (CL) Center.

9.2 Future Payment Amounts

The DFAS-CL Center reduces the later RSFPP annuity payments, or withholding of future annuity payments until debt has been liquidated.

10.0 WAIVER OF INDEBTEDNESS

When applicable, the DFAS-CL Center advises the annuitant of the right to request a waiver of indebtedness.

10.1 Overpayment Recovery

Recovery of an overpayment of the RSFPP annuity is not required if, in the judgment of the DFAS Director or the Director's designee, there was no fault by the person to whom the amount was erroneously paid and recovery would be contrary to the purpose of the plan or against equity and good conscience. Proof of hardship is not required if the waiver otherwise is in order. Suspension of collection action may be authorized on receipt of a waiver request. Refund of an amount withheld before receipt of a request for waiver is not authorized. When a waiver is granted, refund amounts collected after receipt of the waiver request.

10.2 Failure to Withhold

Failure to withhold the cost of coverage from retired pay of a member cannot be considered an overpayment of annuity to a designated beneficiary to authorize waiver of recovery of the overpayment.

10.3 Correction of Records

RSFPP annuitants who obtain a correction of records for entitlement to additional survivorship annuity under a second election may not retain the benefits of the original election. A correction made under ***10 U.S.C. § 1552***, except when procured by fraud is final and conclusive on all officers of the United States. Recovery of overpayments that occur in these instances may not be waived under 10 U.S.C. § 1442. Repayment may be made over a reasonable period-of-time as determined by the retired pay activity.

11.0 TERMINATIONS

11.1 Time of Termination

Entitlement to the RSFPP annuity terminates as of the end of the month that precedes the month in which eligibility ceases.

11.2 Reasons for Termination of the RSFPP Annuity

11.2.1. Death of Widow or Widower. Payments are terminated the last day of the month that precedes the month in which widow or widower dies. If children are involved, see paragraph 12.2 for further information.

11.2.2. Remarriage of Widow or Widower Before Age 60. Payments are terminated the last day of the month that precedes the month in which widow or widower, younger than age 60, remarries. If children are involved, see paragraph 12.2 for further information.

11.2.3. Loss of Eligibility by Child Annuitant. Reasons for loss are:

11.2.3.1. The youngest child reaching age 18 and not incapable of self-support (applicable to children of members who retired before November 1, 1968);

11.2.3.2. The youngest child reaching age 18 and not pursuing a full-time course of study nor incapable of self-support (applicable to children of members retiring on or after November 1, 1968);

11.2.3.3. The youngest child who is pursuing full-time course of study, reaching age 23 and not incapable of self-support (applicable to children of members who retired on or after November 1, 1968);

11.2.3.4. The marriage or death of child annuitant;

11.2.3.5. The recovery of an incapacitated child over age 18. Annuity may be suspended if the annuitant becomes independently capable of earning amounts sufficient for his or her own particular personal needs through substantial and sustainable gainful employment. The annuitant will receive advance written notice from DFAS prior to suspension. The annuitant will be given an opportunity to submit rebutting evidence. The annuity may be reinstated (see subparagraph 12.2.2);

11.2.3.6. The termination of student status of a child over age 18 and under age 23 (applicable only to retirees who retired on or after November 1, 1968); or

11.2.3.7. The reinstatement to widow or widower of annuity previously terminated.

11.2.4. Secretarial Determination. Payments are terminated the last day of the month preceding the month in which the Secretary of the Military Department concerned (or designee) determines that a participating member previously presumed to be dead is now alive.

11.3 Due and Unpaid Annuity

If, upon death of the annuitant, an amount remains payable to the annuitant but is unpaid because the annuity checks were not negotiated or because payments had not been established, the account is settled in accordance with Chapter 31. There is no designated beneficiary for settlement of arrears of an annuity.

12.0 REINSTATEMENTS

12.1 Remarriage Before Age 60

The RSFPP annuity is not reinstated.

12.2 Reinstatement on Behalf of Children

12.2.1. If an annuity was terminated because of the death or remarriage of the widow or widower before age 60, and the member's election also included coverage for children, then the full annuity is reestablished in equal shares in favor of the eligible children (see section 6.0). The effective date is the first day of the month in which the death or remarriage of the widow or widower occurred.

12.2.2. An annuity to an incapacitated child over 18 years of age may be reinstated upon either a recurrence of the original disability that rendered the annuitant incapable of self-support or upon receipt of evidence from the annuitant that, although engaged in substantial and sustainable gainful employment, wages are not sufficient to cover his or her particular needs.

12.3 Annulment

12.3.1. Annulment of a Void Marriage

12.3.1.1. The annuity may not be reinstated for any period earlier than the date of separation after the discovery that the marriage was void. A void marriage is invalid and never existed therefore; it requires no formal termination.

12.3.1.2. The annuity may not be reinstated for any period in which annuity payments were made on behalf of children under paragraph 12.2. When notice is received that the widow or widower's remarriage was void, payment to these children is suspended pending resolution of the issues involved.

12.3.1.3. In the absence of a judicial decree terminating the marriage as void, the case be sent to the DOHA for a decision.

12.3.2. Annulment of a Voidable Marriage. The annuity may not be reinstated when a voidable marriage is annulled.

12.4 Reinstatement After Age 60 Remarriage

If the annuity was terminated because of remarriage, and the widow or widower was 60 years of age or older, the annuity may be reinstated not earlier than October 1, 1978. The annuity will be increased by the COLA, if appropriate, in accordance with paragraph 5.3.

*13.0 ANNUAL CERTIFICATE OF ELIGIBILITY (COE)

Effective August 2023, the annual COE was replaced by the Survivor Benefit Plan - Marital Status Update (SBP-MSU). See ***FMR Archives*** to reference previous COE policy. See chapter 46 for details on SBP-MSU.

*14.0 REPORT OF ELIGIBILITY (ROE)

Effective August 2023, the annual ROE was replaced by the Foreign Address Update for Mailed Check - Annuitants (FAUMC- Annuitants). See FMR Archives to reference previous ROE policy. See chapter 46 for details on FAUMC-Annuitants.

15.0 FEDERAL INCOME TAX

Annuities paid under the RSFPP are taxable for Federal income tax purposes. Refunds for coverage premiums are taxable income to the annuitant. The refund of premiums may result from administrative error, corrections of record, late receipt of withdrawal request, or youngest child attaining age 18.

16.0 FEDERAL INCOME TAX WITHHOLDING (FITW)

16.1 General Provisions

RSFPP annuity payments are subject to FITW. An annuitant has the right to elect no withholding. In the absence of such an election, or if the annuitant does not otherwise submit a withholding certificate, the DFAS-CL Center will withhold on a "married-three exemptions" basis. See Internal Revenue Service (IRS) ***IRS Publication 15-A***.

16.2 Notice Requirements

The DFAS-CL Center must advise the annuitant of the withholding requirement and the right to elect "no withholding" when making the first payment to the annuitant. Thereafter, the DFAS-CL Center must send an annual notice to the annuitant of the right to elect no withholding, to revoke an election, or to submit a new withholding certificate. An annuitant also may submit a withholding certificate at any time to elect no withholding, revoke such election, or request any rate of withholding.

16.3 One-Time Payments

RSFPP annuity payments, other than the regular monthly entitlement, are subject to FITW at the rate of 22 percent unless the annuitant has elected no withholding.

17.0 INCOME EXCLUSION

17.1 Gross Income Exclusion

The annuitant may exclude from gross income:

17.1.1. Premiums for coverage deducted from retired pay before January 1, 1966, not previously excluded from the member's retired pay; and

17.1.2. The amount of direct remittance for any RSFPP premiums not previously excluded from the member's retired pay.

17.2 Special Exclusion

In addition, the annuitant may exclude from the RSFPP annuity gross income an amount not to exceed $5,000 if the member retired on disability and dies prior to attaining retirement age (Public Law (PL) 89-365). As of August 20, 1996, PL 104-188, section 1402(a) repealed the $5,000 exclusion.

18.0 FEDERAL ESTATE TAX

The value of the annuity at the time of the member's death may be subject to Federal estate tax if any portion of the cost was paid by direct remittance, or if the value of the annuity exceeds the amount that may be excluded from the gross estate. The DFAS-CL Center may furnish the annuitant the current annuity amount and/or a summary of annual payments, and total cost paid (separate totals for deductions and direct remittances). For more information on the computation of the amount of an annuity that will be subject to the tax, if any, the executor of the member's estate may go to the ***IRS Pension and Annuity tax page***.

19.0 STATE TAXATION

Whether RSFPP annuities are subject to state inheritance or income tax and the method of calculating such tax depends upon the laws of the state concerned; however, the IRS Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., information is furnished to the appropriate state tax authority.

20.0 FURTHER TAX INFORMATION

Survivors should be advised that further information concerning taxation of RSFPP annuities may be obtained from the District Director of Internal Revenue or the state tax authority (see Appendix J, for state tax reporting addresses).

Table 37-1. Comp Gen Decisions – Annuity Payments, General

#	Comp Gen Decision Number	Synopsis
1	35 Comp Gen 12 B-123191, July 13, 1995 and 41 Comp Gen 500 B-147403, February 1, 1962	Unpaid Cost for Coverage. Any unpaid RSFPP cost at time of a retiree's death, including nonpayment of direct remittance or erroneous computation of cost, must be collected before payment of any annuities.
2	34 Comp Gen 664 B-123189, June 8, 1995	Retired Pay Status Relinquished. Personnel who relinquish retired status (either voluntarily or involuntarily) are not permitted to pay RSFPP costs to entitle beneficiaries to annuities.
3	43 Comp Gen 125 B-151843, August 5, 1963	Effective Date of Payment. Annuity payments are paid under provisions of the RSFPP law as amended effective October 4, 1961, even though the election was made on October 4, 1961, before the hour in which the President signed the bill which amended the law.
4	34 Comp Gen 151 B-121144, October 4, 1954 and 38 Comp Gen 146 B-113387, August 25, 1958	Annuity Payment Adjustments. Annuity payments must be adjusted based on proper retired pay at the time the election became effective as though the member had actually been receiving such pay at that time. This applies to elections by members who elected while in a "saved pay" status, who later elected and received pay under the Career Compensation Act retroactive to October 1, 1949.
5	Comp Gen B-156862, June 30, 1965	Failure to Submit Valid Election Form. After a member's death, a copy of the RSFPP election is found in his personal effects. If it is not attested or notarized, and neither the original nor duplicate is located, it cannot be established that the member made an election. Based on information available, no annuity is payable.
6	43 Comp Gen 418 B-152520, October 25, 1963	Allocations of Annuity. The allocation of annuity payable under option 3 between the present spouse and the children of a former marriage applies to elections made before and after the October 4, 1961 RSFPP amendment. PL 90-485, August 13, 1968.
7	Comp Gen B-139217, June 29, 1959 and August 12, 1960	Withholding Annuity to Satisfy Members Indebtedness. Annuity payments may not be withheld to satisfy the member's indebtedness for overpayment of retired pay since the annuitant is under no obligation to the United States. However, the annuitant may voluntarily agree to repay the indebtedness by withholding from the annuity.

Table 37-1. Comp Gen Decisions – Annuity Payments, General (Continued)

	Comp Gen Decision Number	Synopsis
8	39 Comp Gen 481 B-141131, December 30, 1959	Valid Intent of Member to Elect Spouse and Child Coverage. Both the spouse and children are covered when it can be established that the member intended to cover the children listed on the election certificate even though the election was checked to show spouse only.
9	65 Comp Gen 621 B-221545, June 3, 1986	Annuity Payments. Should not be made payable to an agent acting under power of attorney when the annuitant is mentally incompetent even if a state statute had preserved the validity of a power of attorney executed before the annuitant was declared to be incompetent.
10	66 Comp Gen 340 B-226018, March 18, 1987	In the Absence of a Determination of Incompetence. Made by a state court, physician, or psychologist that an annuitant is incapable of managing his or her own affairs, payments may be made directly to the annuitant. An individual, in accordance with a valid power of attorney, may assist the annuitant in completing and filing the annuity application form. (65 Comp Gen 621, clarified).

Table 37-2. Comp Gen Decisions – Annuity Payments, Widow or Widower

#	Comp Gen Decision Number	Synopsis
1	Comp Gen B-158906, June 7, 1966	Validity of Annuitant's Marriage to the Member. Evidence must be of record to establish that a former marriage was legally ended. No annuity payments are authorized to be paid until legal proceedings are instituted to determine the validity of the marriage.
2	44 Comp Gen 480 B-155792, February 16, 1965	Foreign Divorce. The State of New York does not recognize a foreign divorce unless both parties appear personally or through authorized counsel in the country where the foreign divorce is obtained.
3	43 Comp Gen 567 B-153183, February 14, 1964	Foreign Divorce. A member's marriage to a woman who had previously obtained an illegal foreign divorce is not valid for annuity payment purposes.
4	Comp Gen B-154387, July 16, 1964	Interlocutory Decree of Divorce. An interlocutory decree does not end a marriage. A foreign divorce in the interim period is not valid. The final divorce decree terminates the marriage.
5	42 Comp Gen 112 B-149378, August 10, 1962	Divorce and Later Remarriage to Same Spouse. A spouse who divorces the member after retirement terminates eligibility for annuity. A later remarriage of the same people to each other does not reinstate eligibility to the annuity, even though deductions from pay are continued under terms of the member's election.
6	38 Comp Gen 208 B-136499, September 16, 1958	Annuity Elections at Time of Correction of Records. A member is regarded as having been in a retired status on November 1, 1953, effective date of the RSFPP law, if after that date a Correction of Records retired the member retroactive to a date before November 1, 1953. A spouse whom the member married after November 1, 1953 is not entitled to annuity since he or she was not the spouse on November 1, 1953.

Table 37-3. Comp Gen Decisions – Annuity Payments, Child or Children

#	Comp Gen Decision Number	Synopsis
1	47 Comp Gen 270 B-160939, November 14, 1967	Custodianship of Minor Child. Payment of RSFPP Annuity may be made to a natural parent having care and custody of minor child or children, without the appointment of a legal guardian, even though such payments might eventually exceed the sum of $1,000.
2	35 Comp Gen 521 B-126138, March 21, 1956	Custodianship of Minor Children. Payment can also be made to an adopting parent, as custodian of minor child since all rights and duties were acquired with the adoption.
3	47 Comp Gen 371 B-163102, January 18, 1968	Child Physically Incapacitated. A chiropractor's statement attesting to a child's physical incapacity is sufficient to substantiate eligibility as a beneficiary under RSFPP.
4	48 Comp Gen 167 B-165095, October 1, 1968	Ineligible Child. Child born May 1, 1950, became eligible for annuity benefits on May 1, 1968. Payment for month of April 1968 is proper.
5	Comp Gen, B-160876, April 18, 1967	Incapacitated Child. An incapacitated child does not have to meet that condition as of member's retirement date of November 1, 1953, if later (as required by Department of Defense Directive 1332.17, section 102c) to qualify as an eligible RSFPP beneficiary. In addition, proof of continued incapacitation of a child annuitant is required at least every 2 years after age 18.
6	Comp Gen B-158411, March 10, 1966	Mentally Incapacitated Child. Mentally incapacitated child who married and whose marriage was annulled is considered unmarried and an eligible contingent beneficiary.
7	44 Comp Gen 280 B-154831, November 10, 1964	Unmarried Child. The term "unmarried child" is defined as not having a husband or wife at time of member's retirement, and without regard to the fact that the child may have been previously married.
8	Comp Gen B-131677, June 3, 1957	Legitimate Child. Children born from illegal marriage (one spouse not legally divorced from prior marriage) may be considered legitimate children for RSFPP annuity payments.
9	Comp Gen B-132012, June 17, 1957	Clarification of Election Fraction. A member who elected option 2 with both 1/2 and 1/8 factors checked, who failed to clarify the fraction desired, and who later stated a wish not to participate in the plan, must be assumed to have elected the minimum of 1/8 rate.
10	36 Comp Gen 325 B-129194, October 18, 1956	Adoption of Child. Child of deceased retired member receiving annuity under option 2 who is adopted after death of a retired member, is entitled to continue receiving the annuity. An adoption before death of retired member, or divorce from wife in which member elected option covering stepchild constitutes basis for terminating reduction of retired pay if option 4 included, and likewise voids entitlement to annuity upon later death of retiree.

Table 37-3. Comp Gen Decisions – Annuity Payments, Child or Children (Continued)

#	Comp Gen Decision Number	Synopsis
11	35 Comp Gen 521 B-126138, March 21, 1956	Amendatory Birth Certificate. Amendatory birth certificate along with statement on election form is normally sufficient to substantiate date of birth and claimed relationship of adopted child.
12	62 Comp Gen 193 B-207764, February 8, 1983	Incapacitated Annuitant. Annuity payable to an incapacitated annuitant may not be suspended unless annuitant is capable of earning amounts sufficient for own particular personal needs through substantial and sustainable gainful employment. Advance written notice will be made prior to suspension and annuitant is given the opportunity to submit rebutting evidence.
13	62 Comp Gen 302 B-207626, April 13, 1983	Incapacitated Annuitant - Reinstatement of Annuity - Payment to Third Parties. An annuity may be reinstated upon the recurrence of original disabling condition. Annuity payments to incapacitated adult can be made to third parties only if appointed as guardian by court or under valid power of attorney. Power of attorney executed by mentally incapacitated annuitant may be invalid, even in absence of formal adjudication of incompetence. If annuitant suffering from mental illness has not been adjudged incompetent, and is considered by psychiatrist to be competent to manage annuity properly for personal maintenance, annuity may be paid directly to annuitant. If the annuity cannot be paid directly to annuitant or properly paid to third party, the annuity should accrue to annuitant's account until annuitant recovers or until guardian is appointed by court.

*REFERENCES

CHAPTER 37 – RETIRED SERVICEMAN'S FAMILY PROTECTION PLAN (RSFPP) – ANNUITIES

1.0 – GENERAL

	PL 98-525, October 19, 1984
	11 U.S.C., Chapter 13
1.1	PL 87-381, October 4, 1961
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2.2	PL 83-239, section 10, August 8, 1953
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3.0 – ANNUITY PAYMENTS

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	PL 102-190, December 5, 1991
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4.3	4 CFR 338
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5.0 – ANNUITY AMOUNTS

5.1.1	PL 83-239, August 8, 1953
5.1.2.2	PL 90-485, August 13, 1968
5.2.1	PL 83-239, August 8, 1953
	PL 87-381, October 4, 1961
5.2.2.2	PL 90-485, August 13, 1968
5.3	PL 95-397, September 30, 1978
5.4	10 U.S.C. § 1401a
	PL 98-94, September 24, 1983

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6.0 – PAYMENTS	
6.2	PL 90-485, August 13, 1968
7.0– CAUSES OF OVERPAYMENTS	
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7.1	PL 95-397, September 30, 1978
7.3	10 U.S.C. § 2774
	10 U.S.C. § 1442
7.4	10 U.S.C. § 1446
10.0 – WAIVER OF INDEBTEDNESS	
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11.0 – TERMINATIONS	
11.2	PL 98-525, October 19, 1984
11.2.1	PL 83-239, August 8, 1953
	PL 90-485, August 13, 1968
11.2.2	PL 83-239, August 8, 1953
	PL 90-485, August 13, 1968
	PL 95-397, September 30, 1978
11.2.3.5	62 Comp Gen 193 B-207764, February 8, 1983
12.0 – REINSTATEMENTS	
12.1	PL 95-397, September 30, 1978
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	PL 117-81, Section 605, NDAA FY 2022
13.1.1 - 6	10 U.S.C. § 1435
13.2.3.1	10 U.S.C. § 1435
13.2.6	36 Comp Gen 325

14.0 – REPORT OF EXISTENCE

	PL 117-81, Section 605, NDAA FY 2022
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18.0 – FEDERAL ESTATE TAX

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DEPARTMENT OF DEFENSE

FINANCIAL MANAGEMENT REGULATION

CHAPTER 38: "ARCHIVED"

UNDER SECRETARY OF DEFENSE (COMPTROLLER)

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CHAPTER 39: "ARCHIVED"

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CHAPTER 40: "ARCHIVED"

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FINANCIAL MANAGEMENT REGULATION

CHAPTER 41: "ARCHIVED"

UNDER SECRETARY OF DEFENSE (COMPTROLLER)

VOLUME 7B, CHAPTER 42: "SURVIVOR BENEFIT PLAN (SBP) – APPLICATION OF THE PLAN"

SUMMARY OF MAJOR CHANGES

Changes are identified in this table and also denoted by blue font.

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

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

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

The previous version dated July 2023 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	This chapter is certified as current.	Current

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CHAPTER 42

SURVIVOR BENEFIT PLAN (SBP) - APPLICATION OF THE PLAN

1.0 GENERAL

1.1 Purpose

This chapter provides an overview of the establishment of the SBP (also referred to as the Plan), eligibility and benefits, and specialized terminology and definitions used when referring to the Plan.

1.2 Authoritative Guidance

The pay policies and requirements established by DoD in this chapter are derived primarily from, and prepared in accordance with the United States Code (U.S.C.), including Titles 10 and 37. Due to the subject matter in this chapter, the list of authoritative sources is extensive. The specific statutes, regulations, and other applicable guidance that govern each individual section are listed in a reference section at the end of the chapter.

2.0 SBP OVERVIEW

2.1 Establishment of SBP

On September 21, 1972, Public Law ***(PL) 92-425*** established the SBP to provide a survivor benefit program for military personnel in retirement to complement the survivor benefits under Social Security laws. The Plan gives all retiring uniformed services retirees an opportunity to elect to have their retired pay reduced by a designated amount in order to provide their survivors an annuity payable after the retiree's death.

2.1.1. Under the Plan, a member who retired before September 21, 1972, and who had previously elected to participate in the Retired Serviceman's Family Protection Plan (RSFPP) had the option to retain or cancel the RSFPP coverage when electing to participate in the SBP.

2.1.2. The Plan provides, without cost, a minimum guarantee to an unmarried widow or widower of a member who died before March 21, 1974. For additional information, see Chapter 46. A surviving spouse of a member who died before November 1, 1953, is entitled to an annuity, which may be in addition to the annuity payable under the minimum income annuity provisions.

2.2 Additional Coverage

The Plan also includes:

2.2.1. Survivor benefits for the child, limited insurable interest, surviving spouse, or former spouse of a member who dies on active duty (See Chapter 46 regarding line of duty determinations);

2.2.2. A Reserve Component (RC) annuity on behalf of a member who is eligible to provide a Reserve Component Survivor Benefit Plan (RCSBP) Annuity and dies:

2.2.2.1. Before notification of retirement eligibility;

2.2.2.2. During the 90-day period following notification of retirement eligibility if the member had not made an election; or

2.2.2.3. After electing to participate in RCSBP following notification of retirement eligibility but before reaching the age of eligibility to receive retired pay; and

2.2.2.4. From an injury or illness incurred or aggravated in the line of duty during inactive duty for training.

2.2.3. An annuity calculated in the same manner as an annuity based on an active-duty death paid to the qualified survivors of a member who, under certain circumstances, dies in the line of duty during inactive duty training (IDT) (see Chapter 54); or

2.2.4. An annuity calculated in the same manner as an annuity based on an RC death paid to the qualified survivors of a member who, under certain circumstances, dies during IDT but not in the line of duty (see Chapter 54).

2.3 Death Presumption Authority

2.3.1. The Plan provides for annuity payments under a determination by the Secretary of the Military Department concerned (or designee) that a participating member is presumed dead. Upon application of the beneficiary of a participant in the Plan who is missing, the Secretary of the Military Department concerned may determine that the participant is presumed dead.

2.3.2. A determination of presumed death is a determination by the Secretary of the Military Department concerned (or designee) that a participating member is presumed dead if:

2.3.2.1. The member's retired or retainer pay has been suspended or would have been suspended had the member been in receipt of pay; and

2.3.2.2. The member has been missing at least 30 days under circumstances that lead to a reasonable conclusion that the member is dead.

2.4 Effects of Lump Sum Retirement Payment on SBP

A member covered under the Blended Retirement System (BRS) who chooses to receive a lump sum of retired pay, in accordance with ***10 U.S.C. § 1415***, will have their SBP premiums calculated using the full base amount of their unreduced retired pay without regard to a reduction in retired pay pursuant to the lump sum. The member may choose to lower the amount of coverage, with spousal concurrence, if married. Premiums are to be deducted from the portion of retired pay that the member continues to receive after the lump sum payment. For more information about SBP premiums, see Chapter 45.

3.0 ELIGIBLE MEMBERS

3.1 Members Eligible to Participate in the Plan

The following members are eligible to participate in the Plan:

3.1.1. Members entitled to retired pay; and

3.1.2. Members who would be eligible for non-regular retired pay, but have not yet become entitled to receive retired pay because of age. See Chapter 54.

3.2 Participants in the Plan

3.2.1. Standard Annuity Participants. The Plan applies to a person who is eligible to participate in the Plan under subparagraph 3.1.1 and who is married or has a dependent child when the member becomes entitled to retired pay, unless the member elects (with the spouse's concurrence, if required) not to participate in the Plan.

3.2.2. RCSBP Annuity Participants. The Plan applies to a person who is eligible to participate in the Plan under subparagraph 3.1.2 and is married or has a dependent child when the member is notified that he or she has completed the years of service required for eligibility for RC retired pay, unless the member elects (with spousal concurrence, if required) not to participate in the Plan. Note: If such member elects not to participate in the Plan (chooses option "A") upon becoming entitled to retired pay, the member may elect to participate in the Plan as a Standard annuity participant under subparagraph 3.2.1.

3.3 Exceptions

A member otherwise eligible according to subparagraph 3.2.1 or 3.2.2, except that:

3.3.1. The member does not have a spouse or dependent child and did not elect coverage for a former spouse (if applicable) at the time of eligibility for the program, may elect coverage for a person who has an insurable interest in the member; or

3.3.2. The member does not have a spouse or dependent child at the time of eligibility for the program, may elect SBP or RCSBP coverage upon notification to the Secretary concerned within the 1-year period after acquiring a spouse or dependent child. Such an election must be

written, signed by the person making the election, and received by the Secretary concerned. An election is effective as of the first day of the first month following the month in which the Secretary concerned receives the election.

3.4 Member on the Temporary Disability Retired List (TDRL)

A member's eligibility ends when the member is removed from TDRL without further entitlement to retired pay. The coverage continues when the member is transferred from TDRL to Permanent Disability Retired List (PDRL). If the member's retired pay is reduced to an amount less than the base amount originally elected, the full retired pay to which the member is entitled thereafter is considered the base amount.

3.5 Mentally Incompetent Member

If a person to whom the Plan applies is determined to be mentally incompetent, the Secretary of the Military Department concerned, upon request, may act on behalf of the member and elect other than the maximum automatic coverage. In the absence of an eligible spouse or children, the Secretary of the Military Department concerned, upon request, may elect coverage for a natural person with an insurable interest. The person applying to have an election made is not given preference in designation as the beneficiary.

3.6 Qualifying Member During an Open Enrollment Period

The Plan applies to any member who qualifies during an open enrollment period according to the provisions established by law. Open enrollment periods typically occur when there are major changes to the SBP program and must be specifically prescribed by law.

3.7 Retired Member After a Record Correction

3.7.1. A member whose military record is corrected on or after September 20, 1972, to show retirement before September 21, 1972, is not automatically covered under the Plan. Coverage may be established upon request of the member if the election is received within 18 months from the date of notification of the correction action.

3.7.2. A member who retroactively becomes entitled to retired pay on a date on or after September 20, 1972, generally, will be given automatic full SBP coverage. However, the member may elect reduced coverage or decline participation, (with proper concurrence of the eligible spouse, if applicable) within 18 months of the correction entitling the member to retired pay unless the member's Service Secretary or Service's Board for Correction of Military Records directs the member to do so within 12 months of the member's record correction.

4.0 DEFINITIONS

4.1 Base Amount

The base amount is the money amount selected by the member, with the concurrence of the member's spouse if required, or the amount selected on behalf of a member by the Secretary of the Military Department concerned (or designee), on which the annuity is based. The base amount may range from a $300 minimum up to full gross retired pay entitlement. The base amount is adjusted consistent with the cost-of-living increases in retired pay. For a member entitled to retired pay under a regular retirement, non-regular retirement, or disability retirement, the full base amount is the amount of money to which the member:

4.1.1. Was entitled to when he or she became eligible for retired pay without regard to any reduction in retired pay pursuant to:

4.1.1.1. An election of a lump sum of retired pay in accordance with ***10 U.S.C. § 1415***; or

4.1.1.2. An election of a Career Status Bonus (CSB) in accordance with ***10 U.S.C. § 1409(b)(2)*** and ***37 U.S.C. § 354***. NOTE: After December 31, 2017, CSB could not be elected. For more information concerning the selection of CSB refer to Volume 7A, Chapter 66; or

4.1.2. Later became entitled to by being advanced on the retired list, performing active duty subsequent to eligibility for retired pay, being transferred from the TDRL to the PDRL, or having his or her retired pay re-computed at age 62 due to credit for community service under Temporary Early Retirement Authority or a reduced retirement.

4.2 Change in Coverage

A change in coverage is an action taken because of a change in the retired member's family status that requires a change in beneficiaries.

4.3 Change in Election

A change in election is an authorized change in the type of beneficiary eligible for SBP coverage because of a change in the retired member's family status.

4.4 Consideration for Contract

The total amount of premiums paid by the participant member for the type of SBP selected is known as consideration for contract.

4.5 Cost of Coverage

The cost of coverage is the amount paid by deductions from retired pay, from the retired member's Combat-Related Special Compensation (CRSC), or by direct remittance when member is not receiving retired pay.

NOTE: Beginning April 2018, if a member's SBP premium cannot be deducted in the full amount required and the retired member has been awarded CRSC pay under ***10 U.S.C. § 1413a*** the deduction that would otherwise have been made from the retired pay will be taken from the retired member's CRSC for that period. See ***10 U.S.C. § 1452(d)(2)***. This new deduction is due to a change in the law (***PL 114-328, section 643***) which requires SBP premiums to be deducted from CRSC.

4.6 Cost Refund

A cost refund is the difference between cost paid by the member and the recalculated cost of the annuity after Dependency and Indemnity Compensation (DIC) reduction.

4.7 Date of Receipt

The date of receipt is the day of receipt of an election or election change by the office administering payment of retired pay. The postmarked date of an election may be considered as date of receipt when the validity of such election might be prejudiced because of a limited time factor.

4.8 Dependency and Indemnity Compensation (DIC) Offset

Prior to January 1, 2023, DIC offset reduced the SBP annuity due to compensation entitlement from the Department of Veterans Affairs to the widow or widower of a member who died from a service-connected or comparable disability. A multi-year phase out of the DIC offset of SBP annuities began January 1, 2021, and ended December 31, 2022. See Chapter 46 for details regarding the phase out periods and corresponding offset amounts.

4.9 Former Spouse

A former spouse is the surviving former husband or wife of a person who is eligible to participate in the Plan. For more information about former spouses, see Chapter 29.

4.10 Maximum Level

The maximum level is the full gross retired pay used as a base amount for coverage. For members who elect lump sums under the BRS, the full base amount will be equivalent to what full retired pay would have been without the lump sum. A member who elected to receive a CSB prior

to January 1, 2018, will, at the time of program election, have the maximum base amount computed as if that member had not been subject to the Military Retirement Reform Act of 1986 (referred to as REDUX) under 10 U.S.C. § 1409(b)(2).

4.11 Minimum Income Widow

A minimum income widow is a person who on September 21, 1972, was, or during the period beginning on September 22, 1972, and ending on March 20, 1974, became, the widow of a person who was entitled to retired or retainer pay when they died. This individual must have income below the threshold and meet the eligibility criteria in Chapter 46.

4.12 Natural Person With an Insurable Interest

A natural person with an insurable interest is a person who has a reasonable and lawful expectation of pecuniary benefits from the continued life of the participating member. For further information, see Chapter 44. Insurable interest for active duty or IDT death is limited to someone not otherwise covered by the law as an SBP beneficiary who has a Military Dependent Identification Card as the deceased member's dependent or would have qualified as the member's dependent in accordance with ***10 U.S.C. § 1072(2)***.

4.13 Pre- and Post-September 21, 1972, Retiree

A pre-September 21, 1972, retiree is a member who retired before September 21, 1972; a post-September 21, 1972, retiree is a member who retired on or after September 21, 1972.

4.14 Reduced Base Amount

The reduced base amount is an amount less than the member's full gross retired pay or what the full retired pay would have been if the CSB or lump sum retired pay had not been elected but not less than $300 unless the full gross retired pay (or what the full retired pay would have been) is less than $300.

4.15 Reduction Factor

The RCSBP reduction factor is a four-digit actuarially determined decimal used to compute the monthly cost for reservists who become entitled to receive retired pay before age 60.

4.16 RCSBP Annuity

The RCSBP Annuity is the annuity provided to the survivor(s) of a reservist, who completed the years of service required for eligibility for RC retired pay or was a member of a RC and died from an illness or injury incurred or aggravated in the line of duty during IDT. For additional information about the RCSBP, see Chapter 54.

4.17 Social Security Offset

Social Security offset means a reduction from the SBP annuity due to the widow's or widower's Social Security entitlements. Social Security offset was eliminated effective April 1, 2008.

4.18 Standard Annuity

The standard annuity is the annuity provided to a survivor(s) by virtue of eligibility of persons entitled to retired pay.

4.19 Supplemental Survivor Benefit Plan (SSBP)

An SSBP annuity is a type of annuity provided to a spouse or former spouse. SSBP was repealed effective April 1, 2008.

4.20 Surviving Spouse

A surviving spouse applies to:

4.20.1. The surviving husband or wife of a retired member:

4.20.1.1. Married to the member at the time the member became eligible for retired pay. Members of the RC become eligible for retired pay upon completion of the requisite years of service necessary to become entitled to retired pay at a later age; or

4.20.1.2. If not married to the member at the time the member became eligible for retired pay:

4.20.1.1.1. Was married to the member for at least 1 year before the member's death, or

4.20.1.1.2. Is the parent of issue by that marriage;

4.20.2. The surviving spouse of a member who dies on active duty or:

4.20.2.1. While in line of duty, on or after September 10, 2001; or

4.20.2.2. After becoming eligible to receive retired pay; or

4.20.2.3. After qualifying for retired pay except that the member has not applied for or been granted that pay; or

4.20.2.4. After completing 20 years of active service but before the member is eligible to retire as a commissioned officer, because the member has not completed the required years of active commissioned service (usually 10 years).

4.20.3. The surviving spouse of a member who is eligible to provide an RCSBP Annuity and dies:

4.20.3.1. Before being notified under ***10 U.S.C. § 12731(d)*** that the member has completed the years of service required for eligibility for RC retired pay, or

4.20.3.2. During the 90-day period beginning on the date the member receives notification under 10 U.S.C. § 12731(d) that they have completed the years of service required for eligibility for RC retired pay if an election to participate in the Plan was not made, provided:

4.20.3.2.1. That the parties were married at the time the member became eligible for retired pay; or

4.20.3.2.2. If not married at the time the member became eligible for retired pay, was married to the member for at least 1 year before the member's death, or is the parent of issue by that marriage.

4.20.4. The surviving spouse of a member of an RC not described in subparagraphs 4.20.2.1, 4.20.2.2, or 4.20.2.3 who dies before being eligible to elect to participate in the Plan from an injury or illness incurred or aggravated in the line of duty during IDT.

4.21 Threshold

The threshold amount is an alternative to the base amount that may be used to calculate the reduction in retired pay described in basic premiums. The original threshold amount was established on October 1, 1985, in the amount of $300. This amount has been increased by the same percentage as the annual increase in basic military pay for each year subsequent to 1985. The threshold increases at the same time and by the same percentage as the average increase in basic pay. Threshold increases are published in the annual ***DoD Retirement Cost of Living Adjustments (COLA) Memorandum***. For example, using the cost formula of 2.5 percent of the first $XXX.XX, plus 10 percent of the remainder of the base amount (see paragraph 4.1), the portion of the base amount upon which the member is charged 2.5 percent cost is the threshold. See Chapter 45, section 3.0.

REFERENCES

CHAPTER 42 - SURVIVOR BENEFIT PLAN (SBP) - APPLICATION OF THE PLAN

2.0 - SBP OVERVIEW

2.1	DoD Instruction 1332.42, December 30, 2020 10 U.S.C., Chapter 1223 10 U.S.C. § 1448 10 U.S.C. § 1448a 10 U.S.C. § 1449 10 U.S.C. § 1450 10 U.S.C. § 1451 10 U.S.C. § 1452 DoD Directive 1332.27, June 26, 2003 53 Comptroller General (Comp Gen) 847, B-179018, May 10, 1974 53 Comp Gen 971, B-179018, June 18, 1974
2.2	PL 107-107, Section 642, December 28, 2001 National Defense Authorization Act (NDAA) for Fiscal Year 2002 PL 108-136, Section 644, November 24, 2003 NDAA for Fiscal Year 2004 10 U.S.C. § 1448(f)
2.3	10 U.S.C. § 1450(l)(1)
2.4	PL 115-91, Section 622, December 12, 2017, NDAA for Fiscal Year 2018

3.0 - ELIGIBLE MEMBERS

3.1 – 3.4	10 U.S.C. § 1448 53 Comp Gen 971, B-179018, June 18, 1974
3.5	10 U.S.C. § 1449
3.6	10 U.S.C. § 1448
3.7	54 Comp Gen 116, B-180050, August 14, 1974

4.0 - DEFINITIONS

4.1	10 U.S.C. § 1447(6)
4.4	26 U.S.C. § 122(b)(2)
4.5	10 U.S.C. § 1452(d)(2) PL 114-328, section 643, December 23, 2016, NDAA for Fiscal Year 2017
4.8	10 U.S.C. §§ 1450(c) and 1451(c)(2)
4.9	10 U.S.C. § 1447(6)(A)
4.11	10 U.S.C. § 1448

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4.16	10 U.S.C. § 1447
4.18	10 U.S.C. § 1447
4.19	10 U.S.C. § 1451(e)(3) and (4)
4.20	10 U.S.C. § 1447 PL 107-107, Section 642, December 28, 2001 PL 108-136, Section 644, November 24, 2003
4.21	10 U.S.C. § 1448(d)(1)(A)(iii)

VOLUME 7B, CHAPTER 43: "SURVIVOR BENEFIT PLAN (SBP) - ELECTIONS AND ELECTION CHANGES"

Changes are identified in this table and also denoted by blue font.

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

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

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

The previous version dated June 2023 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated hyperlinks, references, and formatting to comply with current administrative instructions.	Revision
6.1.2.6	Clarified the consequences in declining to elect spouse or child coverage for any of the situations described in subparagraphs 6.1.2.1 – 6.1.2.4.	Revision
References	Updated references where applicable.	Revision

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CHAPTER 43

SURVIVOR BENEFIT PLAN (SBP) - ELECTIONS AND ELECTION CHANGES

1.0 GENERAL

1.1 Purpose

The purpose of this chapter is to provide information for SBP election options, changes to elections, coverage, and termination of coverage.

1.2 Authoritative Guidance

The pay policies and requirements established by the DoD in this chapter are derived primarily from, and prepared in accordance with the United States Code (U.S.C.), including Titles 5 and 10. The ***Department of Defense Instruction (DoDI) 1332.42*** establishes and administers the policy. Due to the subject matter in the chapter, the list of authoritative sources is extensive. The specific statutes, regulations, and other applicable guidance that govern each individual section are listed in a reference section at the end of the chapter.

2.0 ELECTION OPTIONS

2.1 Base Amount

A member who participates in SBP must elect a base amount of maximum coverage or reduced coverage. The base amount at any level is adjusted with each cost-of-living increase after retirement. See Chapter 42.

The annuity amount is 55 percent of the base amount elected. See Chapter 46.

2.2 SBP Elections

In the case of a member electing a standard SBP annuity, the member must make such election before retired pay becomes payable, or if there is no eligible beneficiary at that time, within 1 year of acquiring an eligible beneficiary. All elections are irrevocable once the member is placed on the retired list, unless otherwise provided by law. See paragraph 3.1.

2.3 Reserve Component SBP (RCSBP) Elections

In the case of a member electing a Reserve Component annuity, the member must select either an immediate or deferred annuity. In the case where a Reserve Component member has elected an immediate annuity, or dies while being eligible to make such an election, the annuity to the beneficiary will commence the day following the death of the member. In the case of a member electing a deferred annuity, the annuity commences the later of the day following the member's death, or the date the member would have been age 60. See Chapter 54.

2.4 Special Rules Concerning Elections

2.4.1. In the case of a member electing SBP or RCSBP coverage for a spouse who was not married to the member at the time the member became eligible for retired pay, the surviving spouse must have been married to the member for at least 1 year immediately before the member's death or be the parent of issue by that marriage to be an eligible beneficiary.

2.4.2. A member who did not elect child coverage for a dependent child, either at the time of becoming eligible for retired pay (if applicable) or within 1 year of acquiring the first dependent child, may not elect child coverage for subsequently acquired child or children unless otherwise provided by law.

2.4.3. A member who elected insurable interest coverage under Chapter 42 may upon death of such beneficiary, elect to cover a new beneficiary who is a natural person with an insurable interest in the member. Such an election must be made prior to the end of the 180-day period beginning on the date of the death of the previous beneficiary. The member is required to pay, if applicable, an additional amount and interest. The additional amount is equal to the difference in the amount of the reduction in the member's retired pay for the previous beneficiary and the reduction in retired pay that would have been made had the previous beneficiary not died and been a covered beneficiary through the date of the new election. The interest on the additional amount is computed from the date on which the retired pay would have been reduced and charged at such rate or rates as determined by the Secretary of Defense.

2.4.4. In the case of a member who is already participating in the SBP and elects to change spouse coverage or spouse and child coverage to former spouse coverage or former spouse and child coverage, any such election terminates any previous coverage under the SBP.

2.5 Beneficiaries

Coverage may be provided for:

2.5.1. Spouse and/or child(ren);

2.5.2. Former spouse and/or child(ren); or

2.5.3. Natural person with an insurable interest (at maximum level of coverage only).

3.0 IRREVOCABLE ELECTIONS AND EXCEPTIONS

3.1 Irrevocability and Exceptions

An election is irrevocable, except under the following circumstances:

3.1.1. A member retired March 1, 1986, or later, who elected and received less than maximum SBP coverage without the spouse's concurrence, will have such coverage changed to full coverage if the Secretary concerned later determines that the spouse's concurrence in such election was required, but not obtained;

3.1.2. The Secretary concerned may revoke an election when necessary to correct an administrative error. Revocation or correction based on administrative error is a Secretarial prerogative and, except when procured by fraud, is final and conclusive on all officers of the United States;

3.1.3. A mentally incapacitated member who is later determined to be mentally competent may revoke or change the SBP election within 180 days after such determination of competence.

4.0 ELECTION COVERAGE

4.1 Spouse and/or Child

4.1.1. A member may elect coverage at the maximum level or at a reduced amount with spouse's concurrence, if required, for:

4.1.1.1. An eligible spouse only;

4.1.1.2. An eligible spouse and dependent child(ren); or

4.1.1.3. Dependent child(ren) only.

4.1.2. Every retiring member who is married at retirement is automatically enrolled in SBP for full coverage unless the spouse concurs in writing with the member's election to decline participation in SBP, to elect a reduced annuity for the spouse, or to elect an annuity for a dependent child, but not for the spouse, before the first day of eligibility to receive retired pay. See subparagraph 4.1.4.

4.1.3. A member with an eligible spouse and dependent child on the date of retirement who has obtained the concurrence of their spouse:

4.1.3.1. Declines coverage is prohibited from electing into SBP, even after obtaining a new spouse, except under section 8.0;

4.1.3.2. Declines coverage for an eligible spouse, and chooses to elect coverage for child only, is prohibited from electing spouse coverage at a later date, even after obtaining a new spouse, except under section 8.0; or

4.1.3.3. Declines coverage for the member's dependent child, and elects coverage for spouse only, is prohibited from electing child coverage at a later date.

4.1.4. A married member who is eligible to provide SBP may not, without the concurrence of their spouse, decline participation in SBP, elect a reduced annuity for the spouse, or elect an annuity for a dependent child, but not for a spouse, unless the member establishes to the satisfaction of the Secretary concerned that:

4.1.4.1. The spouse's whereabouts cannot be determined, or

4.1.4.2. Due to exceptional circumstances, a requirement that the member seek the spouse's concurrence would otherwise be inappropriate.

4.1.5. A member with a dependent child, who was unmarried on the date of retirement, may elect spouse coverage upon subsequent marriage regardless of whether coverage was elected for their dependent child. The election must be received by the Secretary concerned within 1 year of the marriage date.

4.1.6. A member with an eligible spouse who did not have a dependent child on date of retirement later may elect coverage for a dependent child. The election must be received by the Secretary concerned within 1 year of the date of acquiring their first dependent child.

4.1.7. If a member elects to provide an SBP annuity for a former spouse or a former spouse and child after the member has remarried, the member's spouse must be notified of that election. The member may make this election without spousal concurrence.

4.2 Same-Sex Spouses

4.2.1. Any claims to SBP spouse coverage for same-sex spouses of eligible SBP participants for periods before June 26, 2013, are not valid as the Defense of Marriage Act was still the law and in effect prior to June 26, 2013. As a result, no SBP premiums for such coverage will be charged prior to June 26, 2013. Further, no SBP annuity payments for such coverage will be paid for deaths occurring before June 26, 2013.

4.2.2. Effective on June 26, 2013, a person who becomes eligible to participate under ***10 U.S.C. § 1448(a)(1)*** and is married to a same-sex partner has the SBP program applied as for any other married couple under 10 U.S.C. § 1448, including the requirements for spousal concurrence for less than full annuity coverage of the spouse.

4.2.3. A person who was married to a same-sex partner upon becoming eligible to participate in the plan prior to June 26, 2013, and who had married that same-sex partner before June 26, 2013, had 1 year from June 26, 2013, to make a spouse election under

10 U.S.C. § 1448(a)(3). Such person may not participate at less than maximum coverage described in 10 U.S.C. § 1448(a)(3) without the concurrence of the person's spouse unless they already had provided an annuity for a dependent child. If an election was not received on or before June 25, 2014, full spousal coverage was entered, and the member was responsible for payment of premiums effective from June 26, 2013.

4.2.4. A person who was not married upon becoming eligible to participate in the plan, but who married a same-sex partner before June 26, 2013, had 1 year from June 26, 2013, to make a spouse election under 10 U.S.C. § 1448(a)(5). The election must have been received on or before June 25, 2014, or the person was prohibited by law from making such election.

4.2.5. Generally, a person who is a participant in the plan and is providing coverage under SBP for a spouse, who later does not have an eligible spouse beneficiary may, under 10 U.S.C. § 1448(a)(6), elect not to provide coverage for a new spouse in the event of a remarriage.

4.2.5.1. For a person who enters into a same-sex marriage after June 26, 2013, the election to discontinue participation under 10 U.S.C. § 1448(a)(6) must be made within 1 year of the remarriage. If a member does not discontinue participation, pursuant to 10 U.S.C. § 1448(a)(6), spouse coverage will resume effective on the first anniversary of the marriage.

4.2.5.2. If the remarriage took place prior to June 26, 2013, the participant has 1 year from June 26, 2013, to elect out of SBP. If a member does not make such an election within 1 year of June 26, 2013, pursuant to 10 U.S.C. § 1448(a)(6), spouse coverage will resume effective no earlier than June 25, 2014.

4.2.5.3. Any such person falling within the parameters of 10 U.S.C. § 1448(g), had 1 year from June 26, 2013, or the date of any marriage subsequent to June 26, 2013, to elect to increase the level of coverage under 10 U.S.C. § 1448(g).

4.2.6. A person who is married to a same-sex partner on June 26, 2013, and has insurable interest coverage under 10 U.S.C. § 1448(b) may terminate the insurable interest coverage as provided for in that section and, if eligible, elect spouse coverage under 10 U.S.C. § 1448(a)(5) as described in subparagraph 4.4.3.

4.3 Natural Person With Insurable Interest

An election for a natural person with an insurable interest may be made only when the member is not married and does not have any dependent children upon becoming eligible to participate. The Secretary concerned must receive the election before the first day of eligibility for retired pay. A member must elect full coverage when electing for a natural person with an insurable interest. If the member is retired for reasons of disability under ***10 U.S.C., Chapter 61***, refer to paragraph 7.3.

4.4 Former Spouse or Former Spouse and Child

When a member elects former spouse coverage, the member and the former spouse must complete and sign an election statement indicating whether the election is being made pursuant to the requirements of a court order or by a voluntary written agreement. If the member entered into a voluntary written agreement as a part of, or incident to, a proceeding of divorce, dissolution or annulment, the member must indicate on the written statement whether the agreement has been incorporated in, ratified, or approved by a court order. If the member has a spouse or child, a former spouse election prevents an annuity to that spouse or child (other than the child beneficiary under an election for a former spouse and child). If there is more than one former spouse, the member must designate which former spouse is to receive the annuity:

4.4.1. Upon Retirement (Retiring Members)

4.4.1.1. If a member becomes eligible to participate and has a former spouse and dependent child, who resulted from that marriage, member may elect former spouse or former spouse and child coverage.

4.4.1.2. If the former spouse is the member's former spouse at the time the member becomes eligible to participate in SBP, an election for former spouse must take place at or before the member's retirement.

4.4.1.3. If the former spouse is the member's former spouse at the time the member becomes eligible to participate in RCSBP (date of Notice of Eligibility (NOE)), an election for former spouse coverage must take place at or before the end of the 90-day period following receipt of the NOE.

4.4.1.4. If a member has a former spouse upon becoming eligible to participate but is not required by a court order or court-approved agreement to provide former spouse coverage, any subsequent court order that requires former spouse coverage will not be honored.

4.4.2. Following Retirement (Retired Members)

4.4.2.1. A member with spouse or spouse and child coverage may, within 1 year of date of the decree of divorce, dissolution, or annulment, whichever is later, change that election to provide an annuity to a former spouse or to a former spouse and child.

4.4.2.2. A member may elect coverage for a former spouse who the member acquired after becoming eligible for retired pay. The member and former spouse must have been married at least 1 year, or the former spouse must be the parent of a child or children born of that marriage in order for the former spouse to be an eligible beneficiary. For provisions regarding the effective date of former spouse coverage, see subparagraph 4.4.4.

4.4.3. Deemed Elections. Deemed elections are applicable in cases where a member enters, incident to a proceeding of divorce, dissolution, or annulment, into a written agreement to elect to provide an SBP annuity to a former spouse, and such agreement has been incorporated in,

ratified or approved by a court order, or has been filed with the court of appropriate jurisdiction in accordance with applicable state law. Deemed elections are also applicable in cases where the member is required by a court order to make a former spouse election. If such member fails or refuses to make such election, the member is deemed to have made such election if the Secretary concerned receives a completed DoD ***(DD) Form 2656-10***, SBP Former Spouse Request for Deemed Election, from a former spouse or the former spouse's attorney on behalf of the former spouse. A copy of the pertinent court order or agreement referring to the SBP coverage must accompany the DD 2656-10. See subparagraph 4.4.3.1. Effective September 27, 2008, use of the DD 2656-10 to make a deemed election is mandatory.

4.4.3.1. The former spouse will provide a copy of the court order, regular on its face, which requires such election, or incorporates, ratifies, or approves the written agreement of the member; a statement from the clerk of the court (or other appropriate official) that such agreement has been filed with the court in accordance with applicable state law; or for a deemed SBP election only, a copy of the court order which requires the SBP election. A court order which requires the member to elect SBP for a former spouse or former spouse and child or an agreement to provide former spouse or former spouse child coverage must be issued on or after November 14, 1986. If the member was ordered by a court to elect former spouse coverage before November 14, 1986, a second court order, issued on or after November 14, 1986, enforcing the original order which requires a former spouse election, constitutes a modification of the previous order and establishes a new 1-year period during which a request for a deemed election may be filed.

4.4.3.2. The Secretary concerned must receive the request from the former spouse within 1 year of the date of the first court order or filing that:

4.4.3.2.1. Requires the member to make a former spouse SBP election, or

4.4.3.2.2. Shows that the member entered into a written agreement to elect to provide an SBP annuity to the former spouse. (See subparagraph 4.4.3).

If an election of former spouse coverage was agreed to or ordered by an earlier court order, a subsequent order or modification that merely restates the previous provision and imposes no new obligation on the member does not begin a new 1-year period. A subsequent court order holding a member in contempt of court for failing to fulfill the prior agreement is not the type of court order that can be used to begin a new 1-year period to deem an election.

4.4.3.3. No election may be deemed to have been made which could never have been made by the member concerned.

4.4.3.4. If a member dies before making an election, a former spouse's request, which is otherwise qualified, must be honored even if the date of the request is after the date of the member's death. However, if the request for a court order was initiated with the court after the member's death, the order will not be honored.

4.4.3.5. If a member has more than one former spouse, the first request for a deemed election received with complete documentation will be the one honored.

4.4.4. Death of Former Spouse. The National Defense Authorization Act (NDAA) Fiscal Year (FY) 2016, Public Law (PL) 114-92, section 641, effective November 25, 2015, amended the SBP law to allow for members to elect spouse coverage after the death of a former spouse.

4.4.4.1. Married on the Date of Death of Former Spouse. The following applies when a person who is married at the time of the death of the former spouse beneficiary and elects to provide coverage to their spouse:

4.4.4.1.1. The election must be received by the Secretary concerned within one year from the date of the death of the former spouse beneficiary;

4.4.4.1.2. The effective date of election will be the first day of the first calendar month following the death of the former spouse beneficiary;

4.4.4.1.3. The level of coverage on the annuity base amount cannot be changed; and

4.4.4.1.4. An election under this paragraph is irrevocable.

4.4.4.2. Marriage After Death of Former Spouse Beneficiary. The following applies when a person who married after the death of the former spouse beneficiary elects to provide coverage to their spouse:

4.4.4.2.1. The election must be received by the Secretary concerned within 1 year from the date on which that person marries;

4.4.4.2.2. The effective date of the election will be the first day of the first calendar month following the month in which the election is received by the Secretary concerned;

4.4.4.2.3. The level of coverage on the annuity base amount cannot be changed; and

4.4.4.2.4. An election under this paragraph is irrevocable.

4.5 Federal Civil Service Retiree

4.5.1. A member with SBP coverage who: (1) retires under the civil service retirement program; (2) waives military retired pay to combine civilian and military service credits; and (3) elects survivor coverage, at any level, under the civil service retirement, has SBP coverage suspended while the waiver is in effect. If the waiver is terminated for any reason, SBP coverage resumes concurrent with the resumption of retired pay. The type of coverage and level of participation, as adjusted by any changes in retired pay during the period of waiver, is as first

elected. If the retired service member dies while the waiver of military retired pay is in effect, no SBP annuity becomes due and payable to either the surviving spouse and/or child.

4.5.2. An election in SBP with concurrent cancellation of previous Retired Servicemen Family Protection Plan (RSFPP) coverage is without force or effect if retired pay previously was waived for civilian retirement and survivor coverage from the civilian annuity was elected.

4.5.3. A member who elects SBP coverage, and who does not waive military retired pay for civil service retirement, may have survivor coverage under both retirement plans.

4.5.4. Provisions in subparagraph 4.5.1 do not apply to a member who retired under ***10 U.S.C. § 12731*** or who retired due to a combat-incurred disability as determined by the service.

4.5.5. The survivor of a federal civil service employee who was awarded military retired pay based on any period of military service and whose death occurs before separation from civil service, will receive a survivor annuity computed using military service. The survivor annuity from civil service will be reduced by any military survivor benefits payable. The survivor may elect not to be covered by this provision, which automatically uses military service credit in computing the federal survivor annuity.

4.5.6. Except for participation in federal service survivor annuity programs, SBP coverage does not terminate when a member participates in other survivor benefit plans administered by the United States Government such as under the Foreign Service or Federal Judges Retirement systems.

5.0 ELECTION DATA

5.1 Elections by the Member

The ***DD Form 2656***, Data for Payment of Retired Personnel, ***DD Form 2656-1***, Survivor Benefit Plan (SBP) Election Statement for Former Spouse Coverage, ***DD Form 2656-2***, Survivor Benefit Plan (SBP) Termination Request, ***DD Form 2656-6***, Survivor Benefit Plan Election Change Certificate, are available, for use by the member. Unless otherwise provided, elections in writing signed by the member, other than a request for termination, which contain all information necessary for establishing or declining coverage, are acceptable. Spousal concurrence of certain elections has been required since March 1, 1986.

5.1.1. Former Spouse Elections (Retiring Members). A member who is retiring and is electing former spouse coverage should complete the former spouse election on a DD Form 2656. In addition to the former spouse election, the member must also provide a separate written statement on a DD Form 2656-1 (when applicable), that is signed by the member and the former spouse certifying whether the former spouse election is pursuant to court order or a voluntary written agreement. Information concerning content of the separate written statement and the proper court order appears in paragraph 4.4.

5.1.2. Change in Election Coverage Spouse to Former Spouse (Retired Members). Members who are already retired should complete changes from spouse coverage to former spouse coverage on a DD 2656-1.

5.2 Deemed Elections Requested by the Former Spouse

A former spouse or former spouse's legal representative requesting the Secretary concerned to deem on his/her behalf must request the deemed election by completing the DD Form 2656-10. The DD Form 2656-10 must be accompanied by the decree of divorce, dissolution, or annulment and the first court order incident to the divorce, dissolution, or annulment that:

5.2.1. Requires the member to make a former spouse SBP election, or

5.2.2. Shows that the member entered a written agreement to elect to provide an SBP annuity to the former spouse.

Note: The first court order may be the decree of divorce, dissolution, or annulment. See subparagraph 4.4.3.

The DD Form 2656-10, the decree of divorce, dissolution, or annulment, and applicable court order must be provided. Information concerning content of the request by the former spouse or the former spouse's attorney and the statement from the clerk of the court, where necessary, appears in subparagraph 4.4.3.

5.3 Election Data Requirements

The election data requirements are:

5.3.1. Identification. Enter the member's name, social security number, birth date, and date of retirement.

5.3.2. Base Amount. The election form must specify full coverage, in lieu of a dollar amount, when maximum coverage is selected. When a reduced base amount is chosen, the dollar amount must be specified on the election form. The reduced base amount must not be less than $300. When retired pay is less than $300, the election form must indicate full coverage.

5.3.3. Beneficiary. Provide the name, birth date, and social security number for each beneficiary named.

5.3.3.1. If coverage includes a spouse, or former spouse, the member must provide the date of marriage and date of divorce, as applicable.

5.3.3.2. When the beneficiary is a natural person with an insurable interest, the address and relationship must be shown. For the natural person with an insurable interest, the

member must provide a signed statement to show proof of financial benefit if the person designated is a first cousin or anyone more distantly related than a first cousin if such statement is requested.

5.3.3.3. If the beneficiary designation is for a former spouse, then, in addition to the former spouse election, the member must submit in writing whether the election is being made pursuant to a written agreement previously entered into voluntarily by the member as a part of or incident to a proceeding of divorce, dissolution, or annulment and (if so), whether that voluntary written agreement has been incorporated in, ratified or approved by, a court order. This information should be provided on a DD Form 2656-1.

5.3.4. Signature. The member must sign and date the election. If the document is signed with an "X", two impartial persons must witness the signature. Note: An election made on behalf of the member through a power of attorney is not valid. Such an election is not binding and is without force or effect of law.

5.3.5. Spousal Concurrence. Written spousal concurrence is required when the member elects to decline coverage or provide the spouse with less than the maximum SBP coverage available, include electing child-only coverage, and when a member eligible for RCSBP declines coverage or elects coverage that provides less than a maximum immediate spouse annuity. The signature of the spouse must be notarized and must be dated on or after the member's election date. The requirement to have the spouse's signature notarized is not to suggest that the spouse has received additional counseling regarding the option being selected. It simply provides certification that the spouse signed the form and acknowledges the election made on the form.

5.3.5.1. If all requirements for an election needing the spouse's concurrence have not been satisfied prior to retirement, full spouse costs and coverage will be implemented, regardless of any request by the member to do otherwise. In such cases, when the member has requested any form of child coverage, full spouse and child coverage will be implemented. Any change in SBP election subsequent to retirement will be done through an administrative correction of records as permitted by law. The requirements for spousal concurrence do not affect any obligation or right of the member to provide coverage for a former spouse. If former spouse coverage is elected or deemed, the spouse's concurrence is not required; however, the spouse will be notified of that election.

5.3.5.2. The Secretary concerned may waive the requirement for spousal concurrence when the spouse's whereabouts cannot be determined or, when due to exceptional circumstances, requiring the member to seek the spouse's concurrence would otherwise be inappropriate. Exceptional circumstances, such as mental or physical incapacitation of the spouse, require appropriate documentation such as a physician's statement attesting to the spouse's incapacity. Exceptional circumstances will be evaluated on a case-by-case basis.

5.3.5.3. The Secretary concerned notifies the member's current spouse when a member who is eligible to provide an annuity to that spouse elects former spouse or former spouse and dependent child coverage.

5.3.5.4. The Secretary concerned notifies the affected beneficiary when a member elects to discontinue coverage for a former spouse or insurable interest beneficiary.

6.0 CHANGES IN ELECTION AND COVERAGE

6.1 Later-Acquired Spouse and/or Child

A member who acquires a new spouse and/or child after retirement must make an election within 1 year of the event with the exception that there is no time restriction on the election period for a change under subparagraph 6.1.2.5.

6.1.1. A member who is participating with spouse or spouse and child coverage and who does not have an eligible spouse beneficiary may, upon remarriage: resume coverage, increase the level of coverage up to and including full retired pay, or elect not to have spouse coverage resumed. Unless a member elects not to cover the new spouse within 1 year after the marriage, spouse coverage automatically resumes at the first anniversary of the marriage.

6.1.1.1. The member may not add child coverage by virtue of remarriage alone if child coverage was previously bypassed; and

6.1.1.2. The level of SBP coverage may not be reduced nor may child coverage be eliminated.

6.1.1.3. SBP elections become effective when the new spouse becomes an eligible beneficiary, and any increase in premium, plus interest, has been paid. When the level of SBP coverage is increased, the member must pay the difference between the present premium and the premium that would have been incurred had the higher level of coverage been elected originally, plus interest. Interest is compounded monthly using a factor equal to the 12th root of one plus the current annual interest rate approved by the DoD Board of Actuaries to calculate the retirement accrual costs. Interest is to be compounded monthly on the accumulated difference existing prior to any computation month. If payment of cost, plus interest is not completed before the spouse becomes an eligible beneficiary, the election becomes null and void and a refund of cost and interest and reinstatement of original election coverage occurs. Cost plus interest will be paid to member's estate should the member die before refund is completed.

6.1.1.4. If a member has spouse or spouse and child coverage and elects not to resume SBP participation for the spouse, the spouse must be notified. An election to terminate spouse coverage is irrevocable. If the member elects to change the level of spouse coverage to an amount less than full retired pay, the spouse must be notified.

6.1.1.5. Any newly acquired dependent child is automatically covered if child or spouse and child coverage was previously elected.

6.1.2. If, on date of retirement the member:

6.1.2.1. Has no eligible beneficiaries and does not elect to participate; the member may, within 1 year of the acquisition of a spouse or child, elect for that spouse and/or child. However, if the member does not elect spouse coverage within 1 year of acquiring their spouse and later has a child with that same spouse, the member cannot add the spouse coverage within 1 year from the birth of the child with that spouse; or;

6.1.2.2. Has no eligible spouse and elected for child only; the member may, within 1 year after marriage or remarriage, include the spouse with coverage previously elected for the child;

6.1.2.3. Has no eligible child and elected for spouse only; the member may, within 1 year of acquisition of a child, include the child with coverage previously elected for the spouse;

6.1.2.4. Has no eligible spouse and declines coverage for an eligible child; the member may, within 1 year of the acquisition of a spouse, elect for that spouse; or

6.1.2.5. Has elected coverage for a former spouse or former spouse and child, or has elected coverage for a natural person with an insurable interest; the member may later change the election to spouse and/or child, if not otherwise prohibited. See paragraph 6.2. The member is not required to change the election to spouse and/or child; however, if such a change is made, it permanently terminates the eligibility of the former spouse or the natural person with insurable interest. It is not necessary that maximum level coverage be elected for the spouse and/or child. See subparagraph 6.2.2 and paragraph 6.3, for additional information concerning changes in former spouse coverage.

* 6.1.2.6. Declining to elect spouse or child coverage for any of the situations described in subparagraphs 6.1.2.1 – 6.1.2.4 terminates eligibility for that spouse and/or child and any future spouse(s)/children, unless otherwise provided by law.

6.2 Change From Spouse or Spouse and Child

A member who elected spouse or spouse and child coverage may terminate that election for that spouse or spouse and child and provide an SBP annuity for a former spouse or former spouse and child, provided the child resulted from the member's marriage to that former spouse. If the member is married when the former spouse election is made, that spouse must be notified. See subparagraph 4.1.7. A former spouse may request that an election be deemed by the Secretary concerned (or designee).

6.2.1. Notification

The Secretary concerned must notify the former spouse of any changes to the former spouse election.

6.2.2. Changes to a Former Spouse Election

6.2.2.1. If a member was required to elect former spouse coverage by a court order, incident to a proceeding of divorce, dissolution, or annulment, the member may change to spouse or child coverage if the member furnishes, to the Secretary concerned (or designee) a certified copy of a court order that permits such a change. The court order, regular on its face, must modify the provisions of all previous court orders relating to the former spouse election so that the member is permitted to change the election. The member must certify to the Secretary concerned that the court order is valid and in effect. These same restrictions apply to the member who elected former spouse coverage pursuant to a written agreement that was incorporated in, or ratified or approved by, a court order.

6.2.2.2. In the case of a written agreement that has not been incorporated, ratified or approved by a court order, the member must furnish, a statement signed by the member and the former spouse that evidences the former spouse's agreement to an election change. The statement must be furnished to the Secretary concerned in a format prescribed by that Secretary. The member must certify that the statement is current and in effect.

6.3 Change to Former Spouse Coverage Under Insurable Interest

A member was allowed to change an election for former spouse coverage under the insurable interest category to former spouse coverage under the spouse category during the period November 8, 1985, through November 7, 1986. A member also could add child coverage to former spouse coverage provided the child was the result of the member's marriage to that former spouse and if the member was providing coverage for the former spouse under the spouse category. These election changes apply to elections effective before March 1, 1986.

6.4 Changed Retirement Eligibility

If a member elects the RCSBP coverage and subsequently becomes eligible for retirement under another law, thereby losing eligibility under 10 U.S.C. § 12731, the RCSBP election remains effective until the member actually retires. A member may make a new election as any other retiring member.

6.5 Mental Incompetency

The Secretary of the Military Department concerned may make an SBP or RCSBP election on behalf of a member who is declared incompetent by medical officers of the armed force concerned, by the Department of Veterans Affairs (VA), or by a court of competent jurisdiction. In the event the member is later declared competent by one of these authorities, the member may elect to revoke that election within the 180-day period following a determination of competency. There are no refunds of premiums paid for coverage during a period of declared incompetence. The Comptroller General has held the authority to make a SBP election is a personal choice that is a matter of the member's own choosing, and that authority cannot be delegated to an agent (such as through a Power of Attorney).

6.6 Correction of Administrative Error

The Secretary of the Military Department concerned (or designee) may correct any election or any change or revocation of an election when the Secretary considers it necessary to correct an administrative error. See Chapter 42.

7.0 DISCONTINUANCE OF PARTICIPATION

7.1 Discontinuance of SBP Participation on Second Anniversary

7.1.1. An SBP participant may choose to voluntarily discontinue SBP participation during a 1-year period which begins on the second anniversary of the date of commencement of retired pay. The date of commencement of retired pay is defined as the date that the retiree becomes entitled to retired pay. A recall to active duty following retirement will not alter this date.

7.1.2. An SBP participant who is eligible to discontinue participation must send a written request to the Defense Finance and Accounting Services (DFAS) on a DD 2656-2. A request for information or a request for termination that is not on a DD 2656-2 is not considered a valid request to discontinue.

7.1.2.1. A married participant may not discontinue spouse coverage without the spouse's written concurrence, unless it is established that the spouse's whereabouts cannot be determined, or that, due to exceptional circumstances, obtaining the spouse's concurrence would be inappropriate. In exceptional circumstances, such as mental or physical incapacitation of the spouse, DFAS requires the appropriate documentation such as a physician's statement, which attests to the spouse's mental or physical incapacitation. Additionally, the incapacity must exist continuously since the date of the member's request.

7.1.2.2. If the SBP participant is providing former spouse coverage based on a court order, an amended court order should accompany the request, even if the former spouse concurs with the request.

7.1.3. If termination is not otherwise prohibited by ***10 U.S.C. § 1448***, a spouse or former spouse who concurs in the request for termination is considered notified in accordance with the law. A spouse or former spouse who changes his/her mind after concurrence has 30 days from the date of the first request to submit a letter withdrawing their concurrence. If concurrence is withdrawn within 30 days, the request to withdraw from SBP participation is void. The concurrence of the former spouse is applicable even though the coverage may be currently in a suspended status due to the former spouse's remarriage. Child concurrence is not required when a member elects to discontinue SBP participation for child coverage.

7.1.4. DFAS must ensure that a natural person or former spouse who is not required to concur in the request for termination is notified of the termination of SBP coverage by sending a letter to such beneficiary at the address in the retired member's file.

7.1.5. A member's participation terminates on the first day of the month following the month in which DFAS receives a request for discontinuance. Any premiums deducted for periods on or after the effective date must be refunded and the member notified of the final action concerning termination of coverage.

7.1.6. A member may withdraw the request to discontinue participation within 30 days of having submitted such request to DFAS. The 30-day period begins on the date that DFAS considers the withdrawal request received. Generally, this is the received date stamped on the DD 2656-2 by DFAS.

7.1.6.1. To withdraw the request to discontinue SBP participation, the member must notify DFAS by a legible, signed, written notice. The request must identify the member by name and social security number and state that the member no longer wants to discontinue SBP participation. When available, the request should include a photocopy of the original DD 2656-2.

7.1.6.2. If the member withdraws a request to discontinue participation within the prescribed 30-day period, the member's participation will not be discontinued. If the withdrawal notice is received after the prescribed date, it will have no effect, and the member must be so notified within 30 days. If the member provides proof of the date of mailing and such date is favorable to honoring the member's withdrawal request, the date of mailing serves as the date submitted.

7.1.6.3. If the member effectively withdraws a request to discontinue participation, that member must be so notified within 30 days. If participation had already been discontinued, it must be reinstated as though no break in coverage existed. Premiums not collected or paid, or that were refunded will be collected from the member's retired pay and the member notified of the final action concerning participation.

7.1.7. Once participation is discontinued under this provision, no benefits may be paid in conjunction with the member's previous participation. No refund of any premiums properly collected will be made.

7.1.8. A member who discontinues SBP participation pursuant to this paragraph may not later resume coverage or elect SBP coverage upon acquisition of another class of beneficiary.

7.2 Voluntary Termination of Coverage

7.2.1. A member who is participating in SBP with coverage for a natural person with an insurable interest (not a former spouse) may voluntarily terminate their participation in SBP.

7.2.2. A member considering termination of insurable interest coverage under RCSBP should contact the responsible agent at DFAS or the Military Service Reserve Component Personnel Center (or an appropriately determined office for non-DoD Uniformed Services).

7.2.3. A member who is eligible and wants to terminate coverage may send a written request to the responsible agent identified in subparagraph 7.2.2. The request, signed by the

member, must identify the member and state that the member wants to terminate SBP participation. A request for information is not a request to terminate SBP participation.

7.2.4. When the responsible agent receives a request from an SBP participant eligible to terminate coverage, the agent will determine whether the request is for information or actually is a request to terminate participation. In either case, the member will be mailed two fact sheets that explain the procedures for terminating participation, the advantages and disadvantages of participation, and the disadvantages of terminating participation. If the request is determined to be a request for termination, the member will be advised in the cover letter that a request for termination can be withdrawn within 30 days of the date of that letter.

7.2.5. No premiums are refunded as a result of terminating coverage. No premiums will be charged after the effective date of termination unless the member had RCSBP coverage. See Chapter 54, for recomputation of the original "add-on" portion of the RCSBP premium when member terminates coverage before age 60.

7.2.6. A member who wishes to withdraw the request to terminate participation must notify the Secretary concerned (or designee) using a legible, signed written notice to the member's responsible agent in subparagraph 7.2.2. The notice must identify the member's name and social security number and state that the member no longer wants to discontinue SBP participation. Such requests are handled in accordance with the provisions of subparagraphs 7.1.6.2 and 7.1.6.3.

7.2.7. The member may only resume SBP participation by electing coverage for a spouse or dependent child within 1 year of acquiring the family member.

7.3 Invalidation of Certain SBP Elections Made by Disability

7.3.1. The SBP elections for a natural person with an insurable interest, other than for a person who is a qualified dependent, is void for members who retired for reasons of disability under 10 U.S.C., Chapter 61, if they die within 1 year after the disability retirement date with the cause of death being related to the disability for which the member retired.

7.3.2. For voided election, SBP deducted from the member's retired pay is refunded to the person to whom the SBP annuity would have been paid pursuant to such election.

7.4 Withdrawal by a Totally Disabled Member

7.4.1. Any person who elects to participate in SBP with a service-connected disability rated by the VA as totally disabling and is so rated for 10 or more continuous years (or, if so rated for a lesser period, at least 5 years from the date of last discharge or release from active duty) may request to discontinue participation in the Plan by submitting a request to the Secretary concerned (or designee). The initial date for determining the 5- or 10-year period is the effective date of the VA rating of total disability. Validation must be obtained from the VA if not available from the individual.

7.4.1.1. The request for discontinuance must be with the written concurrence of the beneficiary or beneficiaries under the Plan. Should that beneficiary be a dependent child, written concurrence may be accepted from a parent, stepparent, foster parent, guardian, or an individual appointed by a court of competent jurisdiction.

7.4.1.2. The Secretary concerned must furnish to each person requesting discontinuance a written statement of the advantages of participating and the possible disadvantages of discontinuing participation in the plan.

7.4.1.3. A person may withdraw the discontinuance request within 30 days of submission to the Secretary concerned.

7.4.1.4. Participation in the Plan and cost of SBP coverage is discontinued on the first day of the month after receipt of the request by the Secretary concerned.

7.4.1.5. If a member dies after the date that the request for withdrawal has been received by the Secretary concerned, but before the effective date of that request, the beneficiary is entitled to the annuity.

7.4.2. Upon the death of a person who has discontinued participation in the Plan who is a totally disabled member, a refund of SBP amounts deducted from retired or retainer pay without interest will be made to the widow or widower.

7.4.3. Any person who has discontinued participation in the Plan may again elect to participate if the VA reduces the disability rating to less than total and the person applies within 1 year to participate in the Plan and includes the required information determined by the Secretary concerned.

7.4.3.1. Participation in the Plan and reduction in pay is effective the first day of the month after receipt of the application to the Secretary concerned on the DD 2656. Documentation attesting to the less than total disability rating must accompany the application.

7.4.3.2. If the member applies for resumption of participation, but dies before the effective date, the beneficiary is entitled to an annuity on the date the election would have been effective.

7.4.3.3. Resumption of participation is limited to the type and level of coverage initially elected allowing for beneficiary changes as otherwise provided for in Chapters 42 through 54.

8.0 OPEN SEASON PERIODS

8.1 Regular Recurring Open Season for Enrollment and Discontinuation

There are no regular recurring open season periods. Open seasons must be specifically prescribed by law. The most recent SBP open season, which was authorized by

section 643 of PL 117-263, began December 23, 2022, and ended January 1, 2024. This open season allowed eligible members to participate or discontinue participation. For this open season, an "eligible member" is a retired member or former member who, on December 22, 2022, were entitled to retired pay, or would be entitled to retired pay but for the member or former member was under the eligibility age to receive retired pay. In the absence of such a legislatively prescribed period, members may only enroll or disenroll as specified in this chapter.

8.2 NDAA FY 2023 SBP Open Season for Enrollment

The SBP Open Season allowed for eligible members who, on December 22, 2022, were not currently enrolled in SBP or RCSBP to enroll. For a member who enrolled during the SBP Open Season, the law generally required the member to pay retroactive SBP premium costs that would have been paid if the member had enrolled at retirement (or enrolled at another earlier date, depending on the member's family circumstances). See the ***Implementing and Procedural Guidance for Section 643 of PL 117-263, December 23, 2022, Survivor Benefit Plan Open Season***, dated March 9, 2023.

8.3 NDAA FY 2023 SBP Open Season for Discontinuation

The SBP Open Season also allowed eligible members who were currently enrolled in either SBP or RCSBP to permanently discontinue their SBP coverage. The law generally required the covered beneficiaries to concur on the ***SBP and RCSBP Open Season Election to Discontinue Participation*** form in writing with the election to discontinue. Previously paid premiums will not be refunded. See the Implementing and Procedural Guidance for Section 643 of PL 117-263, December 23, 2022, Survivor Benefit Plan Open Season, dated March 9, 2023.

*REFERENCES

CHAPTER 43: SURVIVOR BENEFIT PLAN (SBP) - ELECTIONS AND ELECTION CHANGES

1.0 - GENERAL

	DoD Instruction 1332.42, December 30, 2020
	10 U.S.C. § 1448(b)(3)(A)(ii)

2.0 - ELECTION OPTIONS

	10 U.S.C. § 1447(2)
	10 U.S.C. § 1448(a) and (b)
	DoD Directive 1332.27, paragraphs 201a, 201c, and 201d, January 4, 1974
2.3	10 U.S.C. § 1451
2.4.3	10 U.S.C. § 1452(c)(5)

3.0 - IRREVOCABLE ELECTIONS, CORRECTIONS, AND DISCONTINUED PARTICIPATION

	10 U.S.C. § 1452(g)
	10 U.S.C. § 1449
	10 U.S.C. § 1448(a)
	10 U.S.C. § 1454
3.1.3	10 U.S.C. § 1448(b)(1)(B)

4.0 - ELECTION COVERAGE

4.1.1	10 U.S.C. § 1448(a)
4.1.2	10 U.S.C. § 1448(a)
4.1.3	10 U.S.C. § 1448(a)(4)
	10 U.S.C. § 1454
4.1.4	10 U.S.C. § 1448(a)
	10 U.S.C. § 1458(a)
4.1.5	10 U.S.C. § 1448(a)(5)
4.1.6	10 U.S.C. § 1448
4.1.7	10 U.S.C. § 1448(b)(3)
4.3	10 U.S.C. § 1448(b)
4.3.2	10 U.S.C. § 1448(b)
4.3.3	10 U.S.C. § 1450(f)
4.4.4	PL 114-92, section 641, November 25, 2015
4.4.4.1.2	10 U.S.C. § 1448(b)(7)(B)(i) and (C)(i)
4.4.4.2.2	10 U.S.C. § 1448(b)(7)(B)(ii) and (C)(ii)

REFERENCES (Continued)

	PL 114-92, section 641, November 25, 2015
4.5.1	10 U.S.C. § 1450(d)
4.5.6	5 U.S.C. § 8332(c)

5.0 - ELECTION DATA

	PL 98-525, section 644, October 19, 1984
	10 U.S.C. § 1458(c)
5.1	10 U.S.C. § 1448(a)
5.3.5	DoDI 1332.42, December 30, 2020

6.0 - CHANGES IN ELECTION AND COVERAGE

	10 U.S.C. § 1450(f)
6.1.1	10 U.S.C. § 1448(a)(6)
6.1.2.4	10 U.S.C. § 1450(f)
6.1.2.6	DoDI 1332.42, December 30, 2020
6.2	10 U.S.C. § 1448(b)(4)
	10 U.S.C. § 1450(f)
6.5	Comp. Gen. B-135468 (August 19, 1959)
6.6	DoDI 1332.42, December 30, 2020

7.0 - DISCONTINUANCE OF PARTICIPATION

7.1	10 U.S.C. § 1448a
7.1.2	10 U.S.C. § 1448
7.1.3	10 U.S.C. § 1448(a)
7.2.1.2	10 U.S.C. § 1452(g)(3)
	10 U.S.C. § 1448(b)(1)
7.3	Office of the Under Secretary of Defense (Personnel and Readiness) Memo, April 27, 2004
7.4.2	10 U.S.C. § 1452(g)

8.0 - OPEN ENROLLMENT PERIODS

8.1	10 U.S.C. §1448
8.2	10 U.S.C. § 1452(g)
	PL 117-263, section 643, December 23, 2022
	10 U.S.C. § 12731

VOLUME 7B, CHAPTER 44: "SURVIVOR BENEFIT PLAN (SBP) - BENEFICIARIES"

SUMMARY OF MAJOR CHANGES

Changes are identified in this table and also denoted by blue font.

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

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

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

The previous version dated June 2022 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
2.2.2.2.	Revised section to add the definition of "recognized educational institution" for clarity.	Revision
All	Updated formatting to comply with current administrative instructions.	Revision

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CHAPTER 44

SURVIVOR BENEFIT PLAN (SBP) – BENEFICIARIES

1.0 GENERAL

1.1 Purpose

The eligible beneficiaries under the SBP (also referred to as the Plan) are the spouse and/or dependent children, a former spouse and/or dependent children, or a natural person with an insurable interest, providing they meet certain eligibility requirements. The election, if required, must be received within the time period allowed. An individual may not receive more than one annuity as the surviving spouse or former spouse of different members (see Chapter 46); however, an individual may be the recipient of two or more annuities concurrently, as long as only one is a spouse or former spouse annuity. For example, the child of two members could receive an annuity from each parent, or an individual who was a spouse beneficiary of one member could also be a beneficiary of another member under the insurable interest category.

1.2 Authoritative Guidance

The pay policies and requirements established by the DOD in this chapter are derived primarily from and prepared in accordance with the United States Code (U.S.C.), including Titles 10 and 38. Due to the subject matter in this chapter, the list of authoritative sources is extensive. The specific statutes, regulations, and other applicable guidance that govern each individual section are listed in a reference section at the end of the chapter.

2.0 ELIGIBLE BENEFICIARIES

2.1 Spouse (Including the Spouse of a Common-Law Marriage)

2.1.1. If the spouse is married to a retiree on the date of retirement, the spouse is an eligible beneficiary. The spouse is automatically designated as the beneficiary even if the beneficiary data is not received before the date of retirement. However, the spouse is not automatically the beneficiary if prior to retirement the member elects, with the spouse's written concurrence, to not participate in SBP or to provide child, but not spouse coverage.

2.1.2. If the member elected spouse coverage at retirement and the member’s previous spouse has become ineligible for SBP due to death or divorce, the spouse who marries the member after the date of retirement is the eligible beneficiary. Spouse coverage is resumed upon the first anniversary of remarriage or birth of a child of that remarriage, whichever is earlier, unless the member elects not to resume spouse coverage within 1 year of the remarriage.

2.1.3. If the spouse marries the member after the date of retirement, and the member did not have a spouse at retirement and did not elect insurable interest coverage, the spouse is an eligible beneficiary only if the member elects to provide spouse SBP coverage within 1 year of the marriage. The spouse coverage is effective on the first anniversary of the marriage or birth of a child of that marriage, whichever is earlier.

2.1.4. If the spouse is married to a retiree at the time of retirement and the member elected spouse coverage, then divorced (and no former spouse coverage is established), and later remarried the same spouse, the spouse becomes eligible immediately upon remarriage provided spouse coverage was resumed. However, the member may elect to decline the resumption of spouse coverage within one year of remarriage.

2.1.5. If the spouse marries a retiree after the date of retirement (and spouse coverage is elected), then divorces (and no former spouse coverage is established), and later remarries the member, the spouse becomes eligible upon the first anniversary of remarriage or date of the birth of a child of that remarriage. However, the member may elect to decline the resumption of spouse coverage within one year of remarriage.

2.1.6. A spouse who is married to a member who dies in the line of duty while on active or inactive duty, or to a retirement eligible member regardless of the line of duty determination, is an eligible SBP beneficiary. See Chapters 46 and 54.

2.1.7. A member may change election coverage from a natural person with insurable interest to coverage for a spouse within 1 year of marriage. The spouse becomes an eligible beneficiary upon the first anniversary of the marriage or the date of birth of a child of that marriage, whichever is earlier, provided the member changes to spouse coverage. Until the spouse and/or child are eligible, the previously elected class of beneficiary remains eligible.

2.1.8. A member may change election coverage from a former spouse to coverage for a spouse in accordance with Chapter 43, paragraph 6.2 at any time following remarriage, provided the former spouse is still living at the time the Secretary concerned receives the member's election. The spouse becomes an eligible beneficiary on the date of the election receipt and the associated premium is effective on the first day of the month following receipt of election.

2.2 Children (Including Children of a Common-Law Marriage)

2.2.1. Child is an Eligible Beneficiary. The child is an eligible beneficiary only if the child is:

2.2.1.1. Unmarried and:

2.2.1.1.1. Under age 18 (including a child serving on active duty in the Uniformed Services);

2.2.1.1.2. At least 18 but under 22 and pursuing a full-time course of study in a recognized educational institution; or

2.2.1.1.3. Incapable of self-support because of a physical or mental incapacity, which existed before the child's 18th birthday or was incurred before age 22 while pursuing a full-time course of study; and

2.2.1.2. A child of the member, which includes:

2.2.1.2.1. A child determined by a paternity test or a court of competent jurisdiction to be a child of the member (documentation will be required to substantiate a claim);

2.2.1.2.2. An adopted child; or

2.2.1.2.3. A stepchild, foster child, or recognized natural child, if that stepchild, foster child, or recognized natural child lived with the retiree in a regular parent-child relationship.

2.2.2. Special Eligibility Rules for Child Seeking Full-Time Course of Study

2.2.2.1. A child whose 22nd birthday occurs before July 1st or after August 31st of a calendar year, and while regularly pursuing such a course of study or training, is considered to have become 22 years of age on the first day of July after that birthday.

2.2.2.2. The eligibility of a child over the age of 18 terminates if the child does not maintain a certified program of full-time course of study or training in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution. A recognized educational institution means the high school, trade school, state law compliant home school (effective May 8, 2013), technical or vocational institute, junior college, college, university, or comparable educational institution. The term also includes home schools that operate in compliance with the compulsory attendance laws of the states in which they are located, whether treated as private schools or home schools under state law. The term "home school" is limited to courses of instruction for grades kindergarten through 12 only. If the child resumes schooling as described, eligibility is reinstated (see Chapter 46).

2.2.3. Special Eligibility Rules for Foster Child. A foster child must have resided with the retiree at time of death, received over one-half of his or her support from the retiree, and not be cared for under a social agency contract.

2.2.4. Relatives or Grandchildren. A relative of the member (such as a grandchild) may qualify as an eligible child beneficiary if a foster parent/foster child relationship exists. Adoption of a grandchild is not required for the member to designate that child as an eligible child beneficiary.

2.2.5. Child of Former Spouse. A child of the member and the former spouse is an eligible child beneficiary, if the member elects former spouse and child coverage. If a member who elected spouse and child coverage later divorces, the child coverage continues after the divorce. However, if the coverage is changed to provide coverage for the former spouse only, the child coverage will not continue. The election of former spouse coverage will terminate the child coverage unless the new coverage elected includes both former spouse and child coverage.

2.2.6. Active or Inactive Duty. A child of a member who died on active or inactive duty is an eligible beneficiary provided:

2.2.6.1. There is no eligible former spouse established by a court order;

2.2.6.2. There is no eligible surviving spouse; or

2.2.6.3. The Service Secretary has determined the annuity is payable to the child(ren) in lieu of the surviving spouse. See Chapters 46 and 54.

2.2.7. Termination by Marriage. Child eligibility terminates by marriage of the child, regardless of whether the child is an incapacitated child entering into a valid marriage with another incapacitated individual. The termination of a child's marriage by death or divorce does not serve as a basis for reinstating child coverage, regardless of age or school attendance. An annulment of the child's marriage which renders the marriage void or invalid, or a judicial decree by a court of competent jurisdiction declaring the marriage void, may serve as a basis for reinstating child coverage.

2.2.8. Child Entering Active Duty. The child of a deceased member who is under 18 years of age and serving on active duty in a uniformed service is an eligible beneficiary until their 18th birthday even though they are provided pay, quarters, and subsistence by the Government.

2.2.9. Child Serving as a Cadet or Midshipman at Service Academy or Scholarship Student. The child of a deceased member who is under age 22 and serving as a cadet or midshipman at a service academy, or are enrolled in an institute of higher learning under a military scholarship program, is an eligible beneficiary even though they provided pay, quarters, and subsistence by the Government.

2.3 Spouse and Children

Eligibility requirements are as shown in paragraphs 2.1 and 2.2.

2.3.1. General. The spouse is the primary beneficiary with coverage passing to the children if the spouse remarries before age 55, dies, or otherwise becomes ineligible. If the spouse again becomes eligible due to a remarriage ending in death or divorce, the annuity to the spouse resumes.

2.3.2. Death on Active or Inactive Duty. If the annuity is payable because the member dies on active or inactive duty, and there is no eligible spouse or former spouse, the annuity will be paid to any dependent children. In the case of a surviving spouse and children, the Service Secretary may pay the annuity to the member's dependent children in lieu of an annuity to the spouse. See Chapters 46 and 56 and subparagraph 2.2.6.

2.4 Former Spouse

A former spouse is an eligible beneficiary if:

2.4.1. The former spouse was the member's former spouse when the member became eligible to participate in the Plan and the member elected the former spouse as beneficiary or the former spouse submits a valid deemed election (see Chapter 43); or

2.4.2. The former spouse was not the member's former spouse at the time the member became eligible to participate in the Plan, and the prior spouse election is changed to provide coverage for the former spouse or the former spouse submits a valid deemed election pursuant to Chapter 43. A former spouse acquired after the member became eligible to participate in the Plan may only be an eligible beneficiary if married to the member for at least 1 year or the parent of an issue of the marriage.

2.4.3. See Chapter 46, paragraph 3.1 if the annuity is payable because the member dies on active or inactive duty.

2.5 Former Spouse and Child

If coverage includes child, then the former spouse is the primary beneficiary with coverage passing to the children if the former spouse remarries before age 55, dies, or otherwise becomes ineligible. The child is an eligible beneficiary provided the conditions in subparagraph 2.2.1 are met and the child resulted from the member and former spouse's marriage.

2.6 Natural Person with Insurable Interest

An eligible natural person with insurable interest is:

2.6.1. A person who has a reasonable and lawful expectation of pecuniary benefit from the continued life of the member. This category may include parents, stepparents, grandparents, grandchildren, aunts, uncles, sisters, brothers, half-sisters, half-brothers, dependent or non-dependent child or stepchild, or any other person more closely related than cousin;

2.6.2. Any individual having a reasonable and lawful basis, founded upon the relationship of parties to each other, either pecuniary or of blood or affinity, to expect some benefit or advantage from the continuance of the life of the retiree. Proof of financial benefit from the continuance of the life of the member is required for persons other than those listed in subparagraph 2.6.1; or

2.6.3. In the case of a member who dies on active or inactive duty and no other beneficiary is eligible to receive an annuity, a person who is, as determined by the Secretary concerned, a dependent of that member as defined in ***10 U.S.C. section 1072(2)***.

2.7 Special Needs Trust (SNT)

Service members and retirees who elect child coverage may direct payment of a SBP annuity for a dependent child to a SNT. If a SNT was not designated as a beneficiary prior to the death of the Service member or retiree who had previously elected child coverage, the disabled dependent child's surviving parent, grandparent, or court-appointed legal guardian or fiduciary may irrevocably elect to designate a SNT as beneficiary. A SNT is also known as a supplemental needs trust. A SNT is a legal instrument that can be established by certain individuals in order to ensure that assets are retained that can be used for the supplemental needs of a certain disabled individual, without disqualifying that individual from other Federal or State benefits which that person may be entitled to receive. To be an eligible beneficiary, the SNT must be for the benefit of a person considered disabled under ***42 U.S.C. § 1382c(a)(3)*** and in accordance with the SBP statute. The SNT must also comply with ***42 U.S.C. § 1396p(d)(4)***. See Chapter 46 for further information regarding qualifying a SNT as a beneficiary.

2.8 Exception

If the beneficiary is responsible for the death of the retiree, the annuity may not be paid to that person unless evidence is received which clearly absolves the beneficiary of any felonious intent.

REFERENCES

CHAPTER 44 – SURVIVOR BENEFIT PLAN (SBP) – BENEFICIARIES

1.0 – GENERAL

1.1	10 U.S.C. § 1447 10 U.S.C. § 1450(a) and (b)

2.0 – ELIGIBLE BENEFICIARIES

2.1.1	10 U.S.C. § 1448(a)(2)
2.1.2	Department of Defense Instruction (DoDI)1332.42, December 30, 2020
2.1.3	10 U.S.C. § 1447(7) and (8) 10 U.S.C. § 1448(a)(6)
2.1.4	10 U.S.C. § 1448(a)(6) 10 U.S.C. § 1447(7) and (8) 53 Comptroller General (Comp Gen) 470 B-180407, January 16, 1974 53 Comp Gen 847, B-179018, May 10, 1974
2.1.6	National Defense Authorization Act (NDAA), FY 2017, Public Law (PL) 114-328, section 642 10 U.S.C. § 1448
2.1.7	10 U.S.C. § 1447(7) and (8) 10 U.S.C. § 1448(a)(6)
2.1.8	10 U.S.C. § 1450(f)(1)(C)
2.2.2	DoDI 1332.42, December 30, 2020 10 U.S.C. § 1447(11)
2.2.6	NDAA, FY 2017, PL 114-328, section 642 10 U.S.C. § 1448
2.2.8	53 Comp. Gen. 420, B-178966, December 6, 1973
2.2.9	53 Comp. Gen. 420, B-178966, December 6, 1973
2.3	38 U.S.C. § 103 10 U.S.C. § 1448(d) 10 U.S.C. § 1448(f)
2.3.2	NDAA, FY 2017, PL 114-328, section 642 10 U.S.C. § 1448
2.4	10 U.S.C. § 1408 38 U.S.C. § 103 10 U.S.C. § 1448(b)
2.5	10 U.S.C. § 1448(b)(4)
2.6	Comp Gen, B-179465, July 19, 1974 52 Comp Gen 973, B-178270, June 26, 1973 10 U.S.C. § 1448(d)(6)(A)
2.7	NDAA for FY 2015, PL 113-291, section 624

REFERENCES (Continued)

	10 U.S.C. §§ 1448 and 1450
2.8	Comp Gen B-187743, July 7, 1977

VOLUME 7B, CHAPTER 45: "SURVIVOR BENEFIT PLAN (SBP) PREMIUMS"

SUMMARY OF MAJOR CHANGES

Changes are identified in this table and also denoted by blue font.

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

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

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

The previous version dated December 2022 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated hyperlinks, statutes, and formatting in compliance with current administrative instructions.	Revision
8.5	Updated to include open enrollment period of December 22, 2022, through January 1, 2024, and renumbered subsequent subparagraphs.	Revision
References	Updated references where applicable.	Revision

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CHAPTER 45

SURVIVOR BENEFIT PLAN (SBP) PREMIUMS

1.0 GENERAL

1.1 Purpose

The purpose of this chapter is to provide information on premiums for SBP coverage based on the type of coverage, as well as the computation and payment of these premiums.

1.2 Authoritative Guidance

The pay policies and requirements established by the DoD in this chapter are derived primarily from, and prepared in accordance with the United States Code (U.S.C.), including Title 10. Due to the subject matter in this chapter, the list of authoritative sources is extensive. The specific statutes, regulations, and other applicable guidance that govern each individual section are listed in the reference section at the end of the chapter.

2.0 PREMIUM

2.1 Premium Coverage

The Survivor Benefit Plan was designed as a contributory plan. In return for protection of their dependents upon their death, participating retirees contribute premiums normally through deductions from their retired pay. The amount of the monthly premium is based on the type of coverage and the base amount (maximum or reduced), as elected by or on behalf of the member. The types of SBP coverage are natural person with an insurable interest (also referred to as natural interest person or NIP), spouse, spouse and child, child only, former spouse, and former spouse and child. Coverage may also be directed to a Special Needs Trust for the sole benefit of certain dependent children. SBP premiums normally increase at the same time, and by the same percentage, as do increases for retired pay or retainer pay.

2.2 Premiums Not Specified

All premiums not specified in this chapter are calculated by the DoD using assumptions (as to mortality and economic conditions) consistent with those approved by the DoD Board of Actuaries for the Valuation of the Military Retirement Fund. The Director of Military Compensation approves these calculations and resulting premiums. For more information, refer to the ***Office of the Actuary*** site.

2.3 Effective Date of Premium

See Table 45-2 or Table 45-3 as applicable.

2.4 Cost of Living Adjustment (COLA)

SBP premiums normally increase at the same time, and by the same percentage, that retired pay increases by COLA. When the payment of increased retired pay resulting from a COLA is delayed, the increase to SBP premiums will occur at the same time the retired pay is increased rather than the effective date of the COLA increase (or the date that the retired pay would have increased if the retired member was currently in receipt of retired pay).

3.0 BASIC SPOUSE/FORMER SPOUSE PREMIUM CALCULATION

3.1 Initial Premium Calculation

There are two methods for calculating the initial premium for the standard SBP annuity coverage for a spouse or former spouse. These methods are:

3.1.1. An amount equal to 6.5 percent of the base amount (see Chapter 42, paragraph 4.1), and

3.1.2. An amount equal to 2.5 percent of a threshold-amount plus 10 percent of the difference between the base amount and the threshold-amount. The threshold-amount is adjusted at the same time and by the same percentage as the average increase in basic pay. See paragraph 3.4. The original threshold-amount of $300 has been increased by the same percentage increase as basic pay since October 1, 1985.

3.2 Premium Calculation Before March 1, 1990

3.2.1. A person who became a member before March 1, 1990, or who is entitled to disability or non-regular (Reserve) retirement, is entitled to whichever method is more favorable as described in subparagraphs 3.1.1 and 3.1.2.

3.2.2. For a person who first participates in SBP for spouse or former spouse coverage before March 1, 1990, the initial premium was computed on a standard cost formula of 2.5 percent of the threshold-amount, plus 10 percent of the base amount in excess of the threshold-amount. The threshold-amount is increased as set out in paragraph 3.4.

3.2.3. If the individual first became a member of a uniformed service before March 1, 1990, is providing spouse coverage, and the SBP premium exceeds 6.5 percent of the base amount, the SBP premium was recomputed effective March 1, 1990, on the flat-rate reduction formula of 6.5 percent.

3.3 Premium Calculation on or After March 1, 1990

Effective March 1, 1990, the initial SBP premium formula for spouse or former spouse coverage for a member who did not have a disability or non-regular (Reserve) retirement became 6.5 percent of the base amount as described in subparagraph 3.2.3.

3.4 Threshold-Amount Increase

The threshold-amount is increased by:

3.4.1. The same percentage as the increase in basic pay effective on or after October 1, 1985. The increase occurs at the same time. This applies to a retired member whose retired pay is computed on the basic pay rate in effect or after the effective date of such increase in basic pay; or

3.4.2. The same percentage as a COLA applied to the retired member's retired pay on or after October 1, 1985, if the retired member first participates in the SBP after the effective date of the COLA increase and after the effective date of the basic pay rates on which the retired member's retired pay is computed. This is in addition to the increase in subparagraph 3.2.1 and the increase occurs at the same time as the COLA increase.

4.0 COMPUTATION OF PREMIUMS

4.1 Spouse Only or Former Spouse Only

See Table 45-1, Rule 1.

4.2 Spouse and Child, Former Spouse and Child, or Child Only

If the SBP coverage is for spouse and child, former spouse and child, or child only, a formula must be applied against the base amount (or base amount times 55 percent before April 1983) to determine the charge for coverage of the child. The age of the youngest child is used to determine the premium. If there is an incapacitated child over 18 years of age and there also is a competent child over age 18 but younger than the incapacitated child, or there is an incapacitated child over age 22 who is eligible for SBP benefits and there are no other eligible children, then age 17 is used to determine the premium. The premium can be determined from the SBP Factor Tables by contacting Defense Finance and Accounting Service-Cleveland (DFAS-CL), Retired and Annuitant Pay Directorate. A cost computation can be obtained by contacting an SBP counselor at the nearest military installation. See Table 45-1, Rules 2 and 3.

4.2.1. The following steps are used to compute the premium:

4.2.1.1. Determine the age of the:

4.2.1.1.1. Retired member, spouse, and child for spouse and child coverage;

4.2.1.1.2. Retired member, former spouse, and child for former spouse and child coverage; or

4.2.1.1.3. Retired member and child for child coverage;

4.2.1.2. Determine the cost factor from the appropriate SBP Factor Tables;

4.2.1.3. Multiply the base amount by the factor to determine the child premium; then

4.2.1.4. Add the child premium to the spouse (or former spouse) premium.

4.2.2. The following are examples of computing premiums:

Example 1: A member retires on February 1, 2018, with 20 years of active service. The gross retired pay is $1,000.00. The retired member elects maximum coverage for spouse and child. Birth dates are February 1, 1979 (retired member); June 2, 1983 (spouse); and May 1, 2009 (child).

Step 1. Compute ages. Six months or more is considered a full year. Note: Months are computed in 30-day increments for pay purposes only.

Retired	20180201	Spouse	20180201	Child	20180201
Member	19790201		19830602		20090501
	390000		340729		80900
	(39)		(35)		(9)

Step 2. Using the SBP Factor Table as determined by the Department of the Actuary to locate the combination of a retired member age 39, spouse age 35, and child age nine. A cost computation can be obtained by contacting the DFAS-CL, Retired and Annuitant Pay Directorate or by contacting an SBP counselor at the nearest military installation.

Steps 3 and 4. Determine total premium:

Spouse premium:		
(Flat-rate formula)	$1,000.00	
	× .065	
	$ 65.00	$65.00
Child premium:	$1,000.00	
	x .00001	
	$ .01	+$ .01
Total Premium:		$65.01

Example 2: The spouse in Example 1 becomes an ineligible beneficiary on March 3, 2019. Coverage changes to child only.

Step 1. Recompute the ages for retired member and child.

Retired member	20190303	Child	20190303
	19790201		20090501
	400102		91002
	(40)		(10)

Step 2. The SBP Factor Table is used to locate the combination of a retired member age 40 and child age 10. The resulting factor is .0016.

Step 3. Determine total premium: $1,000.00 x .0016 = $1.60

Example 3a: The retired member elects spouse and child coverage (Example 1) at retirement on February 1, 2018. The spouse becomes an ineligible beneficiary (dies or divorces) and coverage changes to child only (Example 2) on March 3, 2019. The retired member marries a different spouse on May 14, 2019. The birth date for the new spouse is October 12, 1982. Spouse and child coverage resumes on May 14, 2020, unless the retired member elects not to resume spouse coverage. The new premium for spouse and child is effective on May 14, 2020. See Table 45-3, Rule 9 and Note 8.

Step 1. Recompute ages for retired member, spouse, and child.

Retired	20200514	Spouse	20200514	Child	20200514
Member	19790201		19821012		20090501
	410313		370702		110013
	(41)		(38)		(11)

Step 2. The SBP Factor Table is used to locate the combination of a retired member age 41, spouse age 38, and child age 11.

Steps 3 and 4. Determine the total premium:

Spouse premium:		
(Flat-rate formula)	$1,000.00	
	× .065	
	$ 65.00	$ 65.00
Child premium:	$1,000.00	
	× .00001	
	$ .01	+ $ .01
Total Premium		$ 65.01

Example 3b: The member elects spouse and child coverage at retirement on February 1, 2018 (Example 1). The spouse becomes an ineligible beneficiary and coverage changes to child only (Example 2) effective March 3, 2019. The retired member remarries on May 14, 2019. The birth date for the new spouse is October 12, 1982. Coverage would have resumed for the spouse and child on May 14, 2020, the first anniversary of the marriage; however, the spouse becomes the parent of issue by that marriage before the first anniversary. Coverage changes to spouse and child on the date the child is born of that marriage. The new premium is effective the first day of the month following the birth. See Table 45-3, Rule 9 and Note 8. Assume that the child is born March 27, 2019.

Step 1. Recompute ages for retired member, spouse, and child.

Retired	20190327	Spouse	20190327	Child	20190327
Member	19790201		19821012		20190327
	400126		360515		000000
	(40)		(36)		(00)

Step 2. The SBP Factor Table is used to locate the combination of a retired member age 40, spouse age 36, and child age 0.

Steps 3 and 4. Determine total premium:

Spouse premium:		
(Flat-rate formula)	$1,000.00	
	× .065	
	$ 65.00	$ 65.00
Child premium:	$1,000.00	
	× .00001	
	$.01	+ $.01
Total Premium		$ 65.01

Example 4: The retired member elects spouse and child coverage at retirement on February 1, 2018 (Example 1). The retired member divorces on March 3, 2019, and coverage changes to child only. See Example 2 for recomputation. The retired member elects coverage for former spouse and child based on a court order dated June 2, 2019, and received June 28, 2019. The premium for the former spouse and the child is effective July 1, 2018. The ages are recomputed on the date the election is received.

Step 1. Recompute ages.

Retired	20190628	Former	20190628	Child	20190628
Member	19790201	Spouse	19830602		20090501
	390427		350026		090127
	(40)		(35)		(10)

Step 2. Use The SBP Factor Table to locate the combination of a retired member age 40, spouse age 35, and child age 10.

Step 3. Determine the premium as in Example 1.

4.3 Natural Interest Person (NIP)

In some cases, the insurable interest category may include former spouse. The premium formula for the insurable interest category is 10 percent of retired pay plus 5 percent for each full 5 years the individual designated is younger than the retired member. However, the total insurable interest premium cannot exceed 40 percent and must be based on full retired pay. Refer to Table 45-1, Rule 4.

5.0 COLLECTION AND PAYMENT OF PREMIUM

Members electing SBP coverage must pay a premium for such coverage. Premiums are collected either through reduction of retired pay, deductions from the retired member's Combat-Related Special Compensation (CRSC), or direct remittance.

5.1 Payments

5.1.1. When Retired Pay is Sufficient. A retired member who receives enough retired pay to cover the premiums for SBP has those premiums withheld from his or her retired pay.

5.1.2. When Retired Pay is Not Sufficient or Not Paid

5.1.2.1. Not Sufficient. In the case of a person who has elected to participate in SBP and who has been awarded both retired pay and CRSC under 10 U.S.C. § 1413a, if a deduction from the person's retired pay for any period cannot be made in the full amount required, there shall be deducted from the person's CRSC in lieu of deduction from the person's retired pay the amount that

would otherwise have been deducted from the person's retired pay for that period. (See Chapter 42, paragraph 4.5).

5.1.2.2. Not Paid. If a person who has elected to participate in SBP has been awarded retired pay and is not entitled to that pay for any period, that person must remit the premium in the amount that would otherwise have been deducted from his pay for that period, except to the extent that the required deduction is made pursuant to subparagraph 5.1.2.1.

5.2 Waiver of Retired Pay

5.2.1. For any period in which the retired member is not receiving retired pay because of non-entitlement to or waiver of such pay or the pay received is not enough to cover the total cost of coverage, the payments are to be deducted from the retired member's CRSC or the retired member must remit the amount due to DFAS-CL. Premiums are due on the effective date of coverage. For example, member retires June 1; the first payment is due June 1, for the period June 1-30. A retired member who waives full retired pay for Veterans Affairs (VA) disability compensation may pay the premium by direct remittance or by deduction from the VA disability compensation payments (see Chapter 12, subparagraph 2.7.1).

5.2.2. If the retired member waives participation in the military SBP and elects participation in the civil service SBP, and the civil service waiver later becomes ineffective for any period for any reason, previous participation in the military SBP is resumed and military SBP premium is due from the retired member.

5.3 Emergency Officer's Retired List (EORL)

A retired member on the EORL may pay premiums by direct remittance or by deduction from EORL payments.

5.4 Active-Duty Recall

If a retired member is recalled to active duty for more than 30 days after a break in service, the retired member does not pay the premium while on active duty.

5.5 Active Judicial Duty

The retired member remains an SBP participant while on active judicial duty and is required to pay the SBP premiums while military retired pay is suspended.

6.0 SUSPENSION, CHANGE, AND TERMINATION OF PREMIUM

6.1 No Eligible Beneficiary

Premiums are suspended for spouse or former spouse coverage when there is no longer an eligible beneficiary. Premiums are also suspended for child coverage when there is no eligible child beneficiary (see Chapter 54 for Reserve Component Survivor Benefit Plan (RCSBP) child coverage).

6.2 School Nonattendance

If the SBP premium was adjusted or discontinued based on school nonattendance of the child beneficiary, the premium is adjusted retroactively to the first day of the month after the child resumed school attendance.

6.3 Premium Changes

The premium changes when:

6.3.1. Coverage is for spouse and child (or former spouse and child) and the last dependent child is no longer an eligible beneficiary. The premium for coverage is changed to spouse (or former spouse) only. The child coverage is suspended. See Table 45-3, Rule 8; or

6.3.2. Coverage is for spouse only, the covered spouse is no longer eligible, and the retired member remarries. Within 1 year after the retired member's remarriage, the retired member may:

6.3.2.1. Resume coverage;

6.3.2.2. Elect not to resume spouse coverage; or

6.3.2.3. Increase the base amount up to and including full retired pay for spouse or spouse and child coverage. The retired member may increase the base amount at any increment up to full coverage. An increase in level of coverage will result in an increased premium. When level of coverage is increased upon remarriage, a retired member must pay for premiums as if that level of spouse coverage had always been in effect. The retired member must pay for premiums which would have been charged had this level of coverage always been in effect less the amount of premiums already paid by the retired member. In addition, this amount owed will be charged with interest. Full coverage is based on full retired pay which means the spouse will receive 55 percent of the retirement pay. If lesser coverage is selected, then the spouse will receive 55 percent of the elected base amount. See Table 45-3, Rule 6;

Note: If no action is taken, coverage will resume at the same amount on the first day of the month following the first anniversary of the new marriage.

6.3.3. Coverage is for spouse and child and the spouse is no longer eligible or the coverage is for former spouse and child and the former spouse is no longer eligible. See Table 45-3, Rule 7, for computation for the child premium.

6.3.4. Coverage is for spouse at the time of the retired member's retirement (on or before March 21, 1974, for a pre-September 21, 1972, retired member), and the retired member subsequently divorces and then remarries that former spouse. The premium is effective the first day of the month following the remarriage, unless the remarriage is the first day of the month, then the premium is effective on the date of marriage;

6.3.5. Coverage is for spouse after date of retirement and the retired member subsequently divorces and then remarries that former spouse. The premium of coverage is resumed the first day of the month following the first anniversary unless the remarriage is the first day of the month, then the premium resumes on the first day of the first anniversary;

6.3.6. Coverage is for spouse or spouse and child and is changed to former spouse under Chapter 43. In the case of a person required to make the election by reason of a court order or the filing of which is after October 16, 1998, then the premium is effective the first day of the month after the date of that court order or filing. See Table 45-3, Rule 10; or

6.3.7. Coverage for spouse begins after the death of a covered former spouse. Upon electing coverage for a spouse after the death of a covered former spouse, the retired member may not increase or decrease the amount of coverage. The retired member must have been:

6.3.7.1. Married for at least 1 year on the date of former spouse's death. If the retired member had been married for at least 1 year on the former spouse's date of death, and the retired member makes a spouse election within 1 year of the former spouse's death, premiums will resume on the first day of the month following the death of the former spouse.

6.3.7.2. Married within the 1-year period preceding the date of death of the former spouse. If the retired member married within the 1-year period preceding the date of death of the former spouse and the retired member makes a spouse election within 1 year of the former spouse's death, premiums will resume on the first day of the month following the first anniversary of the marriage; or

6.3.7.3. Married after the death of the former spouse. If the retired member marries after the former spouse's date of death, and the retired member makes a spouse election within 1 year of the marriage, premiums will resume on the first day of the month following the first anniversary of the marriage.

6.4 Premium Termination

The SBP premium terminates for a NIP under the following circumstances:

6.4.1. When the beneficiary dies;

6.4.2. When the retired member terminates coverage for the NIP; or

6.4.3. On the date a spouse or child acquired after retirement becomes the eligible beneficiary if the retired member elected coverage for such spouse or child. The SBP premium is terminated as of the date shown in Table 45-4. See Chapter 43, section 7.0 for more information on termination procedures.

6.5 Voluntary Termination

If a retired member voluntarily discontinues SBP participation under Chapter 43, the premium terminates on the effective date of the election, which is the first day of the month following the date of the receipt of the request. Any premium deducted for periods on or after such effective date must be refunded and the retired member notified of the final action concerning termination of coverage.

6.6 Other Suspension and Termination Situations

See Table 45-4 for other suspension and termination of premium situations.

7.0 DELINQUENT SBP PREMIUMS

Interest is owed for any delinquent SBP premiums. The interest rate is a percentage that is compounded annually and based on assumptions approved by the DoD Board of Actuaries for the Valuation of the Military Retirement Fund. Any delinquent Retired Serviceman's Family Protection Plan (RSFPP) premiums existing on date of conversion to SBP continue with interest, until paid. Upon the death of a retired member, any delinquency, plus interest, is collected from the annuitant's benefits before payment of any annuity will commence.

8.0 PAID-UP SBP PREMIUMS AFTER 30 YEARS AND AGE 70

8.1 Paid-Up Premiums

8.1.1. Premiums for SBP participation are permanently paid up (no further reductions to retired pay or remittances) when a retired member attains age 70 and has paid 360 months of premium payments.

8.1.2. A retired member who became an SBP participant or increased the base amount coverage during April 1, 1992, through March 31, 1993, was required to pay the basic SBP premium and an additional premium, which was a percentage of the basic premium determined by the actuary. The additional premium accounted for the premiums the retired member would have paid if the

retired member had elected SBP at the earliest possible date. A retired member who paid the additional premium received credit towards the paid-up 360 months based upon the additional premium paid.

8.2 Coverage in Effect October 2008

Effective with the retired pay entitlement and SBP coverage in effect for the month of October 2008, SBP premium reductions will no longer be made if the retired member is a qualified SBP participant described in paragraph 8.3. Deposits of monthly SBP premiums made by an SBP participant during a period when the participant is not entitled to retired pay qualify as premium reductions.

8.3 Birthday Month

A retired member is a qualified participant for purposes of paid-up SBP coverage if the retired member is age 70 or older whose retired pay has been reduced for SBP coverage for 360 months or more. If the retired member's 70th birthday occurs later than the 360th month for which the retired member paid SBP premiums, no SBP premiums will be required for the month in which the member reaches age 70, regardless of the day on which that occurs in the month.

8.4 Effective Date

The first payment that can be affected is the payment for the period of retired pay entitlement beginning October 1, 2008 (due November 3, 2008).

*8.5 Open Season Buy-In Premium

8.5.1. A retired member who elected or changed SBP coverage during the open enrollment periods March 1, 1999, through February 29, 2000, and October 1, 2005, through September 30, 2006, was charged a one-time buy-in premium in addition to the prospective monthly premium. The buy-in premium was due and payable in a lump sum payment at the time the retired member filed the election. A retired member who paid the lump sum, buy-in premium received credit toward the 360 months as if the retired member's retired pay had been reduced monthly for SBP premiums.

8.5.2. A retired member who elected SBP coverage during the open enrollment period of December 23, 2022, through January 1, 2024, was charged a one-time buy-in premium in addition to the prospective monthly premium. The buy-in premium is the total amount by which the retired pay of the person would have been reduced if the person had elected to participate in the SBP at their first opportunity plus interest on such amount plus any additional amount necessary to protect the actuarial soundness of the DoD Military Retirement Fund. The buy-in premium was due and payable at the time a member filed an election to enroll in SBP, though members may have elected to pay a portion of the premium in installments over a 12-month period.

9.0 TAXABILITY OF PREMIUMS

A retired member whose pay is subject to tax reporting will, while in a pay status, receive the tax benefit through a reduction in the taxable income reported to the Internal Revenue Service. No reduction against the taxable income can be given for interest paid on the delinquent premiums.

10.0 INCOME EXCLUSION

For federal income tax purposes, premiums for SBP/RSFPP coverage are excluded from taxable income when they are directly withheld from the retired member's gross retired pay. Only premiums directly withheld from the retired member's pay qualify for this exclusion.

Table 45-1. Computation of SBP Premium on Establishment

RULE	If beneficiary is	the formula is
1	spouse or former spouse (spouse category)	6.5 percent of the base amount (Note 1) or 2.5 percent of the threshold-amount (Note 2), as adjusted, plus 10 percent of the remaining base amount. If gross retired pay is less than the threshold-amount, use 2.5 percent of gross retired pay.
2	spouse (former spouse-spouse category) and child (Notes 3 and 4)	determined under Rule 1, plus an additional premium for child computed by applying the factor from the SBP Factor Table against the base amount. See section 4.0 for examples.
3	child only (Notes 3 and 4)	shown in the SBP Factor Table, based on the ages of the retired member and youngest dependent child, against the base amount. See section 4.0 for example.
4	NIP or former spouse (NIP category)	10 percent of the retired member's gross retired pay if the age of the beneficiary is equal to or greater than retired member's age. If the beneficiary's age is less than retired member's age, the formula is 10 percent of the retired member's gross retired pay, plus an additional 5 percent of the gross retired pay for each full 5 years that the beneficiary is younger than retired member. Six months or more is not counted as an additional year. Total premium may not exceed 40 percent of gross retired pay.

NOTES:

1. Retired members who first became a member of a uniformed service on or after March 1, 1990, and receive a regular retirement will have their spouse premium computed under the flat-rate formula of 6.5 percent of the base amount. The following retired members are entitled to spouse premium computation under the formula that provides the lesser premium:
   a. A retired member who is entitled to retired pay based on disability;
   b. A retired member who is entitled to retired pay based on a non-regular service retirement; or
   c. A retired member who first became a member of a uniformed service before March 1, 1990.
2. The threshold-amount is subject to indexing equal to the percentage increases for active-duty basic pay rates.
3. Do not recalculate premiums when a child different from the child first established as the youngest child becomes the youngest eligible child.
4. For a dependent child the age of the youngest child is used in the formula. Exception: Use age 17 for an incapacitated child over 18 years of age when there is a competent child also over 18, but younger than the incapacitated child, or there is an incapacitated child over age 22 who is eligible for SBP benefits and there are no other eligible children.

Table 45-2. Effective Date of Premium - Initial Election

RULE	If on the date of election (pre-September 21, 1972, retired member) or date of retirement (post-September 21, 1972, retired member), the retired member has	the effective date of premium is first day of the month following			
		retirement	election by the Secretary of the Military Department concerned	receipt of the election	the first anniversary of the marriage
1	spouse, spouse and child, child only, or NIP (pre-September 21, 1972, retired member)			X	
2	spouse, spouse and child, child only, or NIP (post-September 21, 1972, retired member)	X			
3	no dependents, later marries (Note 1)				X (Note 4)
4	no dependents, later acquires dependent child (Note 1)			X (Note 2)	
5	no dependents, later marries and acquires dependent child (Note 1)			X (Note 3)	X (Note 5)
6	been declared mentally incompetent (Secretary may make election)		X		
7	former spouse (post-September 7, 1982, retired member) or former spouse and child (post-February 28, 1986, retired member)	X (Note 6)			

Notes:

1. Retired member must elect within 1 year of marriage or acquiring dependent child.
2. Compute the child premium using the ages of the retired member and the youngest child as of date of receipt of the election.
3. The child only premium is established and continues until the first of the month following the first anniversary of the marriage. Compute child only premium using the ages of the retired member and youngest child on date of receipt of the election. When the spouse becomes an eligible beneficiary, child only coverage is changed to spouse and child coverage and compute the new premium using the ages of the retired member, spouse, and the youngest child on the date the spouse becomes an eligible spouse beneficiary.
4. If the first anniversary is on the first day of the month, the premium is charged for that month.
5. If a child is born of that marriage before the first anniversary, the premium for spouse and child coverage is effective the first of the month following the birth of the child. If the birth or anniversary is the first day of the month, the premium is charged for that month.
6. The effective date of the premium for an election for a former spouse election made from September 8, 1982, through January 31, 1983, is February 1, 1983.

Table 45-3. Effective Date for Change of Premium

RULE	If on the date of election (pre-September 21, 1972, retired member) or date of retirement (post-September 21, 1972, retired member), the retired member has	the effective date of premium is first day of the month			
		following receipt of election.	following family status change.	following first anniversary of (re)marriage.	after the loss of eligibility or October 1, 1976, whichever is later.
1	spouse, no child, later acquires child (Notes 1 and 2)	X			
2	no spouse, child only, later acquires spouse (Notes 1, 7 and 8)			X	
3	NIP (or former spouse), later marries (Notes 1, 7, 8 and 11)			X	
4	NIP (or former spouse), later acquires child (Notes 1, 3, 8 and 11)	X			
5	NIP (or former spouse), later acquires spouse and child (Notes 1, 4, 7, 8 and 11)	X (child)		X (spouse)	
6	spouse, loses spouse, remarries (Notes 1, 7, 8 and 9)			X	
7	spouse and child (or former spouse and child), loses spouse (or former spouse), premium is recomputed for child (Notes 5 and 9)				X
8	spouse and child (or former spouse and child), loses child (Note 6)		X		X
9	(a) Spouse and child, loses spouse, premium recomputed for child, retired member later marries (Notes 4, 7, 8 and 11) (b) Spouse or spouse and child, divorces and changes to former spouse and child, loses former spouse, premium recomputed for child, retired member later marries (Note 12) (c) Former spouse and child, loses former spouse, premium recomputed for child, retired member later marries and was not married at retirement (Note 13)		X (child only until first anniversary)	X	X

Table 45-3. Effective Date for Change of Premium (Continued)

RULE	If on the date of election (pre-September 21, 1972, retired member) or date of retirement (post-September 21, 1972, retired member), the retired member has	the effective date of premium is first day of the month			
		following receipt of election.	following family status change.	following first anniversary of (re)marriage.	and after the loss of eligibility or October 1, 1976, whichever is later.
10	spouse and/or child, acquires former spouse, changes coverage to former spouse or former spouse and child	X			
11	former spouse or former spouse and child, loses former spouse, changes coverage to spouse or spouse and child	X			
12	elected former spouse deemed by Secretary concerned (Note 14).				
13	been declared mentally incompetent but later adjudged competent may, within 180 days, change a Secretarial election	X			

Notes:

1. Retired member must elect within 1 year of (re)marriage or acquiring the dependent child or child. If the election change is from former spouse coverage to spouse coverage, there is no time limitation on the election period so long as the former spouse is still living. If the retired member elects to change from former spouse to spouse coverage after 1 year of remarriage, the coverage is effective on the date of election receipt and the associated premium is effective on the first day of the month after election receipt.
2. Compute premium for additional child using ages of retired member, spouse, and youngest child as of date of receipt of election.
3. Compute premium for child using ages of retired member and youngest child as of date of receipt of election.
4. Child only premium is effective until the first of the month following the first anniversary of the (re)marriage. Compute child only premium using ages of retired member and youngest child on the date of receipt of the election or on the day after the date spouse eligibility is lost (Rules 5 and 8). When spouse becomes an eligible beneficiary, child only coverage is changed to spouse and child coverage and compute child premium using ages of retired member, spouse, and youngest child on date spouse becomes an eligible spouse beneficiary.
5. Compute child only premium using ages of retired member and youngest child as of the first date following the date the spouse (or former spouse) became an ineligible beneficiary or October 1, 1976, whichever is later. If eligibility was lost the first day of the month, the child only premium begins the following month.
6. If the retired member gives exact date of loss of last dependent child, the change in premium is effective the first of the month following date provided. If the exact date is not given, use first day of the month after receipt of notification.

Table 45-3. Effective Date for Change of Premium (Continued)

7. The premium for spouse coverage is effective on the first day of the month following the birth of the child of that marriage if earlier than first anniversary of the marriage.
8. If birth or anniversary is the first day of the month, the premium is effective that month.
9. Before enactment of PL 94-496, October 14, 1976, the deduction for spouse premium continued past the date spouse became an ineligible beneficiary.
10. The retired member must make election within 1 year of the date of a decree of divorce, dissolution, or annulment of marriage to spouse. Election for former spouse only may not be effective before September 24, 1983 (earliest day for premium is October 1, 1983). Election for former spouse and child may not be effective before March 1, 1986 (earliest date for premium is March 1, 1986).
11. An election to terminate coverage for a NIP premium, a former spouse, a spouse or spouse and child must be done in accordance with Chapter 43.
12. If a retired member elects former spouse (or former spouse and child) coverage, and if the retired member is married at the time the former spouse dies, the retired member may elect spouse coverage within 1 year of the death of the former spouse (10 U.S.C. § 1448(a)(7)(B)(ii)).
13. If a retired member elects former spouse or former spouse and child coverage at the time the retired member becomes eligible to participate (10 U.S.C. § 1448(b)(2)), but is not married when the retired member becomes eligible to participate and remarries after the former spouse dies, the retired member may elect spouse coverage within 1 year of the marriage to that spouse (10 U.S.C. § 1448(a)(5)).
14. The effective date of premium and coverage is on the later of: (a) retired member's retirement date; (b) the first day retired member could have voluntarily made such an election; or (c) the first day of month after the effective date of court order involved.

Table 45-4. Suspension and Termination of Premium

RULE	If a retired member	the premium is	with an effective date of the	and the retired member is
1	is deceased	terminated	date of the retired member's death.	
2	is recalled to active duty for more than 30 days	suspended	day before entry on active duty	not required to remit premium for coverage while on active duty.
3	waives retired pay for a civil service retirement	suspended	waiver as furnished by retired member	provided coverage elected under civil service retirement.
4	is removed from the Temporary Disability Retired List (TDRL) and retired pay is terminated (Note 1)	terminated	removal from the TDRL	not entitled to a refund of prior premiums.
5	elected for child and the last dependent child is no longer an eligible beneficiary (Note 2)	terminated	first of the month after loss of eligibility (Notes 3 and 4)	due a refund from first of month after loss of eligibility (Note 5).
6	who has been declared mentally incompetent is restored to competency and, within 180 days, revokes election made on his or her behalf	terminated	first of month after receipt of election	not due a refund for period of coverage.
7	elected for spouse (or former spouse) and spouse (or former spouse) becomes an ineligible beneficiary	suspended	first day of month after that in which spouse (or former spouse) became an ineligible beneficiary.	
8	elected coverage for a NIP (or former spouse in NIP category) who dies before the retired member	terminated	last day of month in which beneficiary dies.	
9	elected coverage for a NIP (not a former spouse) and retired member discontinues participation from the Plan (see Chapter 54, section 7.0 for the Reserve Component Survivor Benefit Plan participant).	terminated	first day of month after receipt of request.	

Table 45-4. Suspension and Termination of Premium (Continued)

RULE	If a retired member	the premium is	with an effective date of the	and retired member is
10	discontinues participation between the second and third anniversary of the date of retirement	Terminated	first day of month after receipt of request.	
11	is age 70 and has paid 360 monthly premiums	Terminated	later of: (a) The premium for October 2008; (b) First day of the month after the 360th monthly premium; or, (c) The first day of the month after the retired member reaches age 70.	
12	elected former spouse coverage (or former spouse coverage was deemed) after retirement or eligibility to participate and former spouse dies, and retired member did not change former spouse to spouse coverage while former spouse was still living (Note 6)	Terminated	last day of the month in which the beneficiary dies	no longer a participant in the SBP.
13	discontinues SBP participation due to a qualifying VA disability rating	Terminated	first day of the month following receipt of the retired member's request	not entitled to a refund of prior premiums. (However, after the member's death, prior premiums may be payable to a surviving spouse depending on the circumstances).

Notes:

1. If the retired member returns to active duty and is subsequently retired, a new election must be made. Any election in effect while on TDRL is void.
2. A child is no longer an eligible beneficiary when he or she dies, marries, is between ages 18 and 22 and not attending school, or has reached age 22 (see Note 3).

Table 45-4. Suspension and Termination of Premium (Continued)

3. A student whose 22nd birthday occurs before July 1st or after August 31st of any calendar year is considered age 22 on July 1st after that birthday and the premium is discontinued.
4. When the birthday is the first day of the month, the premium terminates the first day of that month.
5. If the retired member gives the exact date of loss of last dependent child, the cost is terminated the first of the next month. If the exact date is not given, use the first day of month after receipt of notification.
6. Once an election from spouse or spouse and child is changed to former spouse or former spouse and child, all previous coverage under the Plan terminates (10 U.S.C. § 1448(b)(3)). In that instance, if the retired member remarries, an election from former spouse coverage to spouse coverage can only be made while the former spouse is still living. However, if a retired member elects former spouse or former spouse and child coverage at the time the retired member becomes eligible to participate (10 U.S.C. § 1448(b)(2)), but is not married when the retired member becomes eligible to participate and remarries after the spouse dies, the retired member may elect spouse coverage within 1 year of the marriage to that spouse (10 U.S.C. § 1448(a)(5)).

*REFERENCES

CHAPTER 45 - SURVIVOR BENEFIT PLAN (SBP) PREMIUMS

1.0 - GENERAL

1.1	10 U.S.C. § 1452(h)
1.2	10 U.S.C. § 1452 DoD Instructions (DoDI) 1332.42, June 23, 2009 Office of the Under Secretary of Defense (OUSD) Personnel and Readiness (P&R) Memorandum (Memo), June 1, 2005

2.0 – PREMIUM

	10 U.S.C. § 183 10 U.S.C. § 1465 DoD Directive (DoDD) 1332.27, June 26, 2003 DoDI 1332.42, June 23, 2009 PL 102-190, section 653, December 5, 1991 OUSD P&R Memo, June 1, 2005 OUSD P&R Memo, August 1, 2005

5.0 – COLLECTION AND PAYMENT OF PREMIUM

	10 U.S.C. § 1452 10 U.S.C. § 1452(d)(1) 10 U.S.C. § 1452(d)(2) PL 114-328, section 643, December 23, 2016
5.1	DoDI 1332.42, June 23, 2009
5.2 & 5.3	10 U.S.C. § 1452(d) 10 U.S.C. § 1452(e) Comp Gen B-212481, February 2, 1984 Comp Gen B-244827, September 9, 1992
5.5	Comp Gen B-252391, October 22, 1993

6.0 - SUSPENSION, CHANGE, AND TERMINATION OF PREMIUM

6.1	10 U.S.C. § 1452(a)(3), (b)(2) DoDI 1332.42, June 23, 2009
6.2	10 U.S.C. § 1452 65 Comptroller General (Comp Gen) 767, B-221945, August 4, 1986
6.3	10 U.S.C. § 1448(a)(6)

*REFERENCES (Continued)

	10 U.S.C. § 1448(a)(7)
	10 U.S.C. § 1448(b)(3)
	10 U.S.C. § 1450(f)(3)
	10 U.S.C. § 1452
6.3.3	10 U.S.C. § 1450(f)(1)(C)
6.3.4 & 6.3.5	Comp Gen B-195349, January 10, 1980
	Defense Office of Hearings and Appeals, Case No. 96070219
6.4	10 U.S.C. § 1452(c)(3)
6.8	10 U.S.C. § 1452(a)(4)(B)
	10 U.S.C. § 1452(h)
	PL 104-201, section 635, September 23, 1996
	DoDI 1332.42, paragraph 13.L, June 23, 2009

7.0 - DELINQUENT SBP PREMIUMS

	DoDI 1332.42, June 23, 2009

8.0 – PAID-UP SBP PREMIUMS AFTER 30 YEARS AND AGE 70

	PL 105-261, section 641, October 17, 1998
	10 U.S.C. § 1436a
	PL 108-375, section 645, October 28, 2004
	PL 106-65, section 654, October 5, 1999
8.5	10 U.S.C. § 1452(j)
	OUSD P&R Memo, November 6, 2006
8.5.2	10 U.S.C. § 1452(g)
	PL 117-263, section 643, December 23, 2022
	10 U.S.C. § 12731

Table 45-1 Computation of SBP Premium on Establishment

Rules 1-4	10 U.S.C. § 1452
	DoDD 1332.27, January 4, 1974, Chapter 5
Notes 1-4	10 U.S.C. § 1452
	62 Comp Gen 553, B-210053, July 13, 1983

Table 45-2 Effective Date of Premium - Initial Election

Rule 1	10 U.S.C. § 1448
Rule 2	10 U.S.C. § 1448
Rule 3	10 U.S.C. § 1448
Rule 6	Comp Gen B-226018, March 18, 1987
Rule 7	10 U.S.C. § 1448(b)(4)

*REFERENCES (Continued)

Note 1	10 U.S.C. § 1448(a)(5)
Note 3	57 Comp Gen 847, B-192127, September 25, 1978
Note 4	57 Comp Gen 847, B-192127, September 25, 1978
Note 6	Comp Gen B-226018, March 18, 1987

Table 45-3 Effective Date for Change of Premium

Rules 2 & 3	10 U.S.C. § 1448
Rule 6	10 U.S.C. § 1448
Rules 7-9	57 Comp Gen 847, B-192127, September 25, 1978,
Rule 10	10 U.S.C. § 1448(b)
Rule 11	10 U.S.C. § 1448(b)
Rule 12	10 U.S.C. § 1449
Note 1	10 U.S.C. § 1448(a)(5)
	10 U.S.C. § 1450(f)(1)(C)
Notes 2-5	57 Comp Gen 847, B-192127, September 25, 1978
	62 Comp Gen 553, B-210053, July 13, 1983
Note 7	57 Comp Gen 847, B-192127, September 25, 1978
Note 8	48 Comp Gen 167
Note 10	10 U.S.C. § 1448(b)(3)
Note 14	10 U.S.C. § 1448
	10 U.S.C. § 1450

Table 45-4 Suspension and Termination of Premium

Rule 2	10 U.S.C. § 1452(d)
Rule 3	10 U.S.C. § 1452(e)
Rule 4	10 U.S.C. § 1448(c)
Rule 5	62 Comp Gen 553, B-210053, July 13, 1983
Rule 6	10 U.S.C. § 1449
Rule 7	10 U.S.C. § 1452
	PL 99-661, section 645, November 14, 1986
	PL 94-496, October 14, 1976
Rule 8	10 U.S.C. § 1452
	PL 94-496, October 14, 1976
Rule 10	10 U.S.C. § 1448a
Rule 12	PL 108-375, section 644, October 28, 2004
Note 1	53 Comp Gen 971
	10 U.S.C. § 1448(c)
Notes 2 & 3	10 U.S.C. § 1447(5)

VOLUME 7B, CHAPTER 46: "SURVIVOR BENEFIT PLAN (SBP) – ANNUITIES"

SUMMARY OF MAJOR CHANGES

Changes are identified in this table and also denoted by blue font.

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

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

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

The previous version dated June 2022 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated hyperlinks and formatting to comply with current administrative instructions.	Revision
2.0	Removed references to Dependency and Indemnity Compensation (DIC) since it is repealed effective January 1, 2023. Updated in-text citations.	Revision
3.2	Updated and added clarification for "Qualified Annuitants."	Revision
5.0	Removed details as the DIC offset has been repealed. Provided instruction for finding archived rates.	Revision
12.0	Renamed and provided updated instruction for the verification of certain annuitants prior to August 2023.	Revision
13.0	Renamed and provided updated instruction for the verification of certain annuitants effective August 2023.	Revision
16.0	Relocated the legislative changes from section "1.0 General" to a new section "16.0 Legislative Changes."	Revision
Table 46-1	Updated to reflect repeal of DIC.	Revision
Table 46-4	Reinserted the "Taxability of Survivor Benefit Plan/Retired Serviceman's Family Protection Plan – Nonresident Annuitants Residing Outside of the United States."	Addition
References	Updated references as needed.	Revision

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CHAPTER 46

SURVIVOR BENEFIT PLAN (SBP) – ANNUITIES

1.0 GENERAL

1.1 Overview

The SBP provides a monthly annuity of up to 55 percent of the annuity base amount with a cost-of-living adjustment (COLA), to an eligible spouse or children. The monthly annuity for a natural person with an insurable interest, which also includes a COLA, is 55 percent of the amount of the gross retired pay after the cost of participation is subtracted.

1.2 Purpose

The purpose of this chapter is to provide information for those eligible to receive annuities, how they are paid, and the amounts to be paid.

1.3 Authoritative Guidance

The pay policies and requirements established by the DoD in this chapter are derived primarily from and prepared in accordance with the United States Code (U.S.C.), including Titles 10, 26, and 38. Due to the subject matter in this chapter, the list of authoritative sources is extensive. The specific statutes, regulations, and other applicable guidance that govern each individual section are listed in a reference section at the end of the chapter.

*2.0 ANNUITIES

2.1 Eligible Annuitants

2.1.1. Spouse or Former Spouse Only. The surviving spouse or former spouse may be eligible. The surviving spouse and former spouse cannot both be simultaneously eligible for the same annuity. For amounts payable prior to January 1, 2023, the SBP annuity for the eligible surviving or former spouse may be reduced by a percentage of Dependency and Indemnity Compensation (DIC) if the annuity was payable on behalf of the same member. See section 16.0 for recent legislative changes.

2.1.2. Child Only. If there is more than one eligible child, the annuity is paid in equal shares.

2.1.3. Spouse and Child or Former Spouse and Child. The annuity is paid to the spouse or former spouse as long as eligibility exists. If the surviving spouse or former spouse dies, remarries before age 55, or otherwise loses eligibility, the annuity is paid to the child annuitant(s). An election for the former spouse and child includes only the children that resulted from the member/former spouse marriage. The annuity amount for the spouse or former spouse is shown on Table 46-l. The annuity for children is divided into equal shares.

2.1.4. Natural Person With an Insurable Interest. The annuity is payable only to the natural person with an insurable interest as designated by, or on behalf of, the member. The initial annuity amount is 55 percent of the member's gross retired pay less the SBP premium cost at the time of member's death.

2.2 Payment of Annuity

2.2.1. Payments in General. Payment of an SBP annuity is not automatic. Before any claim for an annuity can be considered, it is necessary for the claimant to submit a claim in writing. The claim must minimally contain a signature and an address. Before the annuity can be paid, the claimant must submit a ***DD Form 2656-7, "Verification for Survivor Annuity***." The information on that form allows Defense Finance and Accounting (DFAS) to verify information necessary to start annuity payments.

The SBP annuity is paid monthly to the eligible annuitant. The SBP payment is effective the first day after the death of a member unless death occurs on the 30th day of a 31-day month. In that case, the annuity starts on the first day of the next month. Annuity payments end effective the last day of the month before the month in which the annuitant becomes ineligible.

2.2.1.1. Payments subject to offset:

2.2.1.1.1. When the payment of premiums is in arrears, no annuity may be paid until the unpaid premiums, with interest accrued at the rate approved by the DoD Board of Actuaries under ***10 U.S.C. § 1465*** for the purpose of determining the retirement accrual cost, has been recovered. See ***Office of the Actuary*** and subparagraph 6.2.3. For the establishment and collection of a debt for unpaid SBP premiums, see Volume 16, Chapter 2.

2.2.1.1.2. Debts to the United States or any of its instrumentalities incurred by the annuitant may be offset from the annuity.

2.2.1.2. Debts of a deceased member, other than for delinquent premiums, are not the responsibility of the annuitant and may not be offset involuntarily against the annuity.

2.2.1.3. The annuity is neither assignable nor subject to execution, levy, attachment, or garnishment (except for alimony or child support).

2.2.1.4. If the Secretary of the Military Department concerned (or designee) determines that a participating member is presumed dead, the annuity accrues from the first day after retired or retainer pay was suspended or would have been suspended had the member been in receipt of pay on the basis that the member is missing.

2.2.1.5. Checks are not mailed to an annuitant living in a currency-blocked country. See ***Title 31, Code of Federal Regulations (CFR), section 211.1*** for specific conditions for withholding the delivery of checks to addresses outside the United States.

2.2.2. Third Party Payees

2.2.2.1. Trustees in Bankruptcy. The annuity may be paid on behalf of an annuitant to a trustee in bankruptcy pursuant to an order of the bankruptcy court in a proceeding under ***Chapter 13 of the Bankruptcy Code*** since such proceeding is voluntary.

2.2.2.2. Incapacitated Annuitants. An annuity may be paid to a third party on behalf of an incapacitated annuitant only if the third party has been appointed as guardian, custodian, or other fiduciary pursuant to a state court order or has been designated a representative payee under subparagraph 2.2.3. Otherwise, the annuity may be paid only to the annuitant unless the annuitant has been determined to be incompetent of managing his or her own affairs by a state court, physician, or psychologist. If the annuity cannot be paid directly to the annuitant or to a third party, amounts will remain unpaid and credited on account until the annuitant is determined to be competent or until a third party has been properly appointed to receive the annuity on behalf of the annuitant. The annuity payment will still be treated as income to the annuitant. Regardless of whether the Representative Payee is a trustee (unless a trustee of Special Needs Trust as described in subparagraph 2.2.3.6), an Internal Revenue Service (IRS) Form 1099, Miscellaneous Income, will be issued in the annuitant's name.

2.2.2.3. Power of Attorney. An eligible annuitant who is physically or mentally incapacitated (but who has not been determined to be mentally incompetent by a state court, physician, or psychologist) may accept assistance from a person holding a power of attorney in completing (including the signature element) and filing the annuity application form. Benefit payments based on an annuity application signed by the person holding the power of attorney must be made payable directly to the annuitant.

2.2.2.4. Minor Child Annuitants. An annuity for a minor child is paid to the legal guardian or, if there is no legal guardian, to the natural parent who has care, custody, and control of the child as the custodian, or to a representative payee of the child. An annuity may be paid directly to the child when the child is considered to be of majority age under the law in the state of residence. The child is considered an adult for annuity purposes and a custodian or legal fiduciary is not required. See Appendix H for age of majority by state.

2.2.2.5. Surety Bonds. In cases where it appears necessary to protect the annuitant, the Secretary of the Military Department concerned may require a person receiving payments on behalf of the annuitant to provide a surety bond in an amount sufficient to protect the interests of the annuitant. The payee may pay for such bond(s) out of the SBP annuity. This is part of the periodic financial accounting by the payee. The Secretary of the Military Department concerned will determine the amount necessary in the surety bond(s) based on the amount of the SBP annuity payable. A surety bond ordinarily will not be required if the payee is a close family member or a government or financial institution.

2.2.2.6. Special Needs Trusts (SNT). A special needs trust is also known as a supplemental needs trust. A SNT is a legal instrument that can be established in order to ensure that assets are retained that can be used for the supplemental needs of a certain disabled individual, without disqualifying that individual from other Federal or State benefits that the disabled

individual may be entitled to receive. The NDAA for FY 15, PL 113-291, amended 10 U.S.C. §§ 1448, 1450, and 1455, to give Military Service members and retirees the option to direct payment of an SBP annuity for a dependent child to an SNT. An SNT is a legal instrument specifically designed for the benefit of a person considered disabled under ***42 U.S.C. § 1382c(a)(3)***. State law governs an SNT. In accordance with the SBP statute, an SNT must also comply with ***42 U.S.C. § 1396p(d)(4)***. If an SNT was not designated as a beneficiary prior to the death of the Service member or retiree who had previously elected child coverage, the disabled dependent child's surviving parent, grandparent, or court-appointed legal guardian or fiduciary may irrevocably elect to designate an SNT as beneficiary. The following documentation is required to establish an SNT as beneficiary:

2.2.2.6.1. A written statement of the decision to have the annuity paid to the SNT;

2.2.2.6.2. An attorney's SNT Certification, or, in the case of a pooled trust, a copy of the non-profit organizations' agreement to handle the trust; and

2.2.2.6.3. The name and tax identification number for the SNT by or before the time the beneficiary applies for their annuity. Certified SNT paperwork must be submitted to the following Defense Finance and Accounting Service (DFAS) address:

DFAS
U.S. Military Annuitant Pay
8899 East 56th Street
Indianapolis, IN 46249-1300

There are two types of SNTs that comply with 42 U.S.C. § 1396p(d)(4), a "First-Party SNT" prepared in compliance with 42 U.S.C. § 1396p(d)(4)(A), and a "Pooled Trust" prepared in compliance with 42 U.S.C. § 1396p(d)(4)(C).

2.2.2.6.3.1. First-Party SNT. A First-Party SNT is a type of SNT that is established by a disabled dependent child's parent, grandparent, legal guardian, or a court for the benefit of the disabled dependent child. Transfers into a First-Party SNT do not prevent a person with special needs from accessing government benefits. See 42 U.S.C. § 1396p(d)(4)(A).

2.2.2.6.3.2. Pooled Trust. A pooled trust is a type of SNT established by a non-profit organization, with individual beneficiaries creating accounts within the larger trust. Thus, the assets of many people with special needs are "pooled." Transfers into a pooled trust, like transfers into a First-Party SNT, do not prevent a person with special needs from accessing government benefits. See 42 U.S.C. § 1396p(d)(4)(C).

2.2.2.7. Accounting. Any person receiving payment on behalf of the annuitant is required to maintain and, upon request by the Secretary of the Military Department concerned, provide a periodic accounting of expenditures and investments of amounts paid to the payee. If the payee is a close family member or a government or financial institution, a periodic

accounting will not be required, but may be requested. In situations where a periodic accounting is required, it ordinarily will be submitted annually, unless the Secretary of the Military Department concerned determines that a more frequent submission is required.

2.2.2.7.1. Final financial reporting will be required upon the loss of a beneficiary's eligibility, a change of representative payee, or the determination later that an annuitant is competent to manage their financial affairs.

2.2.2.7.2. Major expenditures (i.e., those in excess of $1,000 or the value of the annuity for 1 year, whichever is less) from the payee's bank account for the annuitant require prior written approval by the Secretary of the Military Department concerned.

2.2.2.7.3. If the Secretary of the Military Department concerned has evidence to suggest that the annuity funds have been or are being misused by the payee, the annuity may be suspended. An investigation will be conducted to determine if a new payee should be appointed or if payments may be resumed to the payee.

2.2.3. Representative Payee. The SBP annuity due a minor who is a mentally incompetent, or otherwise legally disabled person for whom a guardian or other fiduciary has not been appointed may be paid to a representative payee who, in the judgment of the Secretary of the Military Department concerned, is responsible for the care of the annuitant. The representative payee is required to spend or invest the amount paid on behalf of the annuitant solely for the benefit of the annuitant. The representative payee must certify that SBP payments received on the annuitant's behalf are used for the annuitant's benefit.

2.2.3.1. An annuitant is determined to be incompetent if the Secretary of the Military Department concerned receives an actual determination of incompetency made either by a state court or by a physician or psychologist. A representative payee will not be established solely on the basis of a letter from a third party that an annuitant is incapable of handling financial affairs. The annuitant will be notified of actions being taken to make a determination of incompetency and will be provided an opportunity to review the evidence being considered. The annuitant will also have the opportunity to submit additional evidence before a determination is made.

2.2.3.2. If a court order provides for payment of a fee to the representative payee, or if the Secretary of the Military Department concerned determines that payment of a fee is necessary in order to obtain the fiduciary services of a representative payee, a monthly fee will be allowed. In such circumstances, a fee of 4 percent of the monthly SBP annuity will be allowed, unless a court order dictates a lesser fee. In the case of a spouse or former spouse annuitant, the fee will be no more than 4 percent of the adjusted annuity (gross annuity less any DIC offset). Any court order that provides for a fee in excess of 4 percent will be limited to 4 percent. The representative payee will be notified of the fee percentage allowed. The fee is not a separate payment mailed to a representative payee, but can be withheld by the representative payee from the monthly annuity payment. The fee is part of the periodic financial accounting by the representative payee.

2.2.3.3. The selection of a representative payee will be made on the basis of the individual annuitant's circumstances. Generally, the order of preference for appointing a representative payee is:

2.2.3.3.1. Spouse,

2.2.3.3.2. Son or daughter or legally adopted son or daughter,

2.2.3.3.3. Brother or sister,

2.2.3.3.4. Parents,

2.2.3.3.5. Head of federal or state institution,

2.2.3.3.6. Trustee of a private trust, or

2.2.3.3.7. Any other individual whose appointment appears to be in the best interest of the annuitant.

Note: If more than one person or institution requests to be named the representative payee of the annuitant, the Secretary of the Military Department concerned will determine which applicant is a more appropriate payee.

2.2.3.4. In addition to SBP annuity payments (including payments to Minimum Income Widows covered under section 15.0), annuity payments under the Uniformed Services Contingency Option Act Retired Serviceman Family Protection Plan (RSFPP), and Reserve Component (RC) RCSBP may also be made to a representative payee.

2.2.3.5. The representative payee will be required to submit an Annuitant Foreign Address Update for Mailed Check (FAUMC) and/or a Survivor Benefit Plan-Marital Status Update (SBP-MSU) as specified in section 12.0 or 13.0.

2.2.3.6. An annuity paid to a person on behalf of the annuitant in accordance with these provisions discharges the obligation of the United States for the payment to the annuitant in the amount of the annuity paid.

2.2.4. Rounding. Monthly annuities, if not a whole dollar, are rounded to the next lower whole dollar (for example, if a monthly annuity is calculated to be $500.99 the annuity paid will be $500).

2.2.5. COLA

2.2.5.1. Normally, SBP annuities increase at the same time and by the same percentage that retired pay increases. Exception: When the payment of increased retired pay due to a COLA is delayed by law, the increased annuity due to a COLA is not delayed. The COLA applies to the monthly gross annuity amount before any reductions, such as DIC.

2.2.5.2. See subparagraph 15.2.1 regarding COLA for the minimum income widow annuity.

2.3 More than One Annuity

A spouse or former spouse who is a potential SBP or RC-SBP beneficiary due to marriages to more than one member who participated in SBP may not receive a double SBP benefit and must choose which annuity to receive. Therefore, a surviving spouse may not receive more than one annuity concurrently as:

2.3.1. The surviving spouse of two different members;

2.3.2. The surviving former spouse of two different members; or

2.3.3. The surviving spouse of one member and also the surviving former spouse of a different member.

Example 1: An individual is the surviving spouse of a member and the surviving former spouse of a different member. The individual may only receive one annuity. In that circumstance, the surviving spouse must choose which annuity to receive. However, an individual may be the recipient of two or more annuities concurrently, as long as only one is a spouse or former spouse annuity.

Example 2: A child of two members could receive an annuity from each parent, or an individual who was a spouse beneficiary of one member could also be a beneficiary of another member under the insurable interest category.

3.0 DEATH OF MEMBER ON ACTIVE DUTY

3.1 Active Duty Deaths

3.1.1. SBP Benefits. SBP benefits under this section may be payable as provided in section 1.0 for:

3.1.1.1. A member who dies while on active duty after:

3.1.1.1.1. Becoming eligible to receive retired pay;

3.1.1.1.2. Qualifying for retired pay, except that the member has not applied for or been granted that pay; or

3.1.1.1.3. Completing 20 years of service but before the member is eligible to retire as a commissioned officer, because the member has not completed the required years of active commissioned service (usually 10 years); or

3.1.1.2. A member who dies on active duty in the line of duty on or after September 10, 2001. Active duty includes members on active duty for annual training. Reserve members on active duty are included whether or not their orders specify a period of more than 30 days. Limited benefits may be payable under this section when the death is not in the line of duty in the case of a member who is eligible to receive retired pay prior to the date of death.

3.1.2. Death in the Line of Duty. If the member was on active duty at the time of death and death is in the line of duty, the death qualifies for SBP benefits under this section.

3.1.3. Death is Not in the Line of Duty

3.1.3.1. If the member was on active duty and retirement eligible at the time of death, as described in paragraph 3.1 and death is not in the line of duty, the SBP base amount is equal to the member's retired pay. The retired pay is computed as if the member were retired for length of service under applicable law of the respective service of the deceased member.

3.1.3.2. If the member was not on active duty, or was on active duty but was not eligible for retired pay and death is not in the line of duty, the member's death does not qualify for SBP benefits.

*3.2 Qualified Annuitants

The annuity payment will be made based on the following priority:

3.2.1. Former Spouse Based on a Court Order or a Deemed Election. The annuity is payable to a former spouse if any of the following three circumstances exist:

3.2.1.1. The member is required under a court order or spousal agreement to provide an annuity to a former spouse upon becoming eligible to be a participant in the Plan and that court order or spousal agreement was entered into prior to the member's death; or

3.2.1.2. Prior to the member's death, the member made an election to provide an annuity to a former spouse; or

3.2.1.3. The Secretary receives a written request from the former spouse prior to the member's death that the member be deemed to have made an election to provide an annuity to a former spouse and the request meets the requirements of 10 U.S.C. §1450(f)(3).

Note: A court order (or modification of a prior court order) that is entered after a member's death that requires an already deceased member to provide an annuity to a former spouse is not effective to permit payment of an annuity to a former spouse or to change the annuity from a spouse to a former spouse.

3.2.1.4. If, pursuant to subparagraph 3.2.1.1, the member was required under a court order or agreement to provide an annuity to a former spouse at the time of death, then the annuity is payable to the former spouse and no payment may be made to a surviving spouse. In

this circumstance the former spouse is not required to have submitted a request pursuant to 10 U.S.C. §1450(f)(3). Pursuant to 10 U.S.C. §1448(d)(3)(B), the issuance of the court order or spousal agreement alone is sufficient. If there are multiple court orders ordering the member to elect former spouse SBP coverage, the court order with the earliest date will take precedence.

3.2.2. Current Spouse. The annuity is payable to a surviving spouse unless the annuity is payable to a former spouse.

3.2.3. Child. The annuity is payable to the dependent children of the member when:

3.2.3.1. There is no eligible former spouse and either there is no eligible surviving spouse or the surviving spouse later dies; or

3.2.3.2. For a member who dies on or after October 7, 2001, but before January 1, 2023, the Secretary of the Military Department concerned, in consultation with the surviving spouse, determines it appropriate to provide an annuity for the dependent children instead of paying an annuity to the surviving spouse.

3.2.3.3. Effective January 1, 2023, if after consultation with the surviving spouse, the service previously determined it was appropriate to provide an annuity for the dependent child(ren) of the member instead of the surviving spouse, the annuity will be restored to the surviving spouse if still eligible. If the surviving spouse is ineligible to receive SBP, the annuity shall continue to be paid to the eligible child or children, unless and until the spouse regains SBP eligibility.

3.2.4. Insurable Interest Deemed Election. If no annuity is payable under subparagraphs 3.2.1, 3.2.2, or 3.2.3, the Secretary of the Military Department concerned may pay an annuity to a natural person with an insurable interest in the member, if the person is a dependent of the member as defined in ***10 U.S.C. § 1072(2)***.

3.3 Annuity Amount

3.3.1. Qualified Death in the Line of Duty. The SBP base amount is equal to the higher of the retired pay of the member based on length of service, or the retired pay as if the member retired with a total (100 percent) disability equal to 75 percent of the appropriate retired pay base. The annuity is computed at 55 percent of the SBP base amount. For members of the RC who die while serving on active duty, the retired pay base will be computed as if the member had been entitled to basic pay for the 36 months preceding retirement or the entire period the member was a member of a uniformed service (if less than 36 months), regardless of whether the member served the entire period on active duty.

3.3.2. Qualified Death Not in the Line of Duty. The SBP base amount will be computed as if the member retired for length of service based on the final basic pay or high-36 average as applicable. However, for members who elected to receive the Career Status Bonus (see Volume 7A, Chapter 66), the SBP base will be computed using the Reduced Retirement (REDUX)

method with the prescribed reduced COLA. The annuity is computed at 55 percent of the SBP base amount.

3.3.3. Insurable Interest Deemed Election. If an annuity is payable pursuant to subparagraph 3.2.4., the SBP base amount is equal to retired pay computed as if the member retired with a total (100 percent) disability, which is equal to 75 percent of the appropriate retired pay base, less the cost of participation. The annuity is computed at 55 percent of the SBP base amount.

3.4 Line of Duty Determination

3.4.1. Purpose. For the purpose of determining eligibility for SBP benefits, a member's death will generally be considered to have occurred in the line of duty unless the death:

3.4.1.1. Occurred while the member was not serving on active duty;

3.4.1.2. Was the result of the member's own intentional misconduct or willful negligence; or

3.4.1.3. Occurred during a period of unauthorized absence.

3.4.2. Investigation to Determine the Cause of Death. The Military Services will conduct an investigation and make a written finding as to whether a member's death was in the line of duty while the member was on active duty. The written finding must describe the circumstances under which the member died, and it also must address whether the death was caused by the member's own intentional misconduct or willful negligence, or whether the death occurred during a period of unauthorized absence.

3.5 Responsibilities

3.5.1. Military Services. The Military Services must review the death of each member who died on active duty to ascertain whether the death was in the line of duty and whether there are any qualified survivors entitled to an SBP annuity. The Military Services will inform DFAS-CL of their line of duty determinations using the ***DoD (DD) Form 1300***, Report of Casualty; section 10 of the ***DD Form 261***, Report of Investigation Line of Duty and Misconduct Status; or any other form authorized under individual Service regulations. All in the line of duty determinations must be supported by a written finding describing the circumstances of death that support the line of duty determination.

3.5.2. DFAS-CL. DFAS-CL does not require a copy of the written finding, only an official communication from the Military Service to indicate the Military Service's determination that death is in the line of duty, i.e., "YES" or "NO." Once DFAS-CL receives the determination, they will compute and pay SBP annuities to qualified survivors for qualified deaths.

4.0 DEATH OF MEMBER ON IN-ACTIVE DUTY TRAINING (IDT)

An RC member who dies from injuries or illness incurred or aggravated while performing IDT is entitled to coverage under the SBP program if the death is determined to have occurred in the line of duty. See Chapter 54.

*5.0 DIC OFFSETS AND SPECIAL SURVIVOR INDEMNITY ALLOWANCE (SSIA)

5.1 DIC

A multi-year phase-out of the DIC offset of SBP annuities began on January 1, 2021. Effective January 1, 2023, the DIC offset was fully phased out. See section 16.0 for details regarding the phase-out periods and corresponding offset amounts. See ***FMR Archives*** for details regarding prior DIC offset and SBP premium refund policy.

5.2 SSIA

Prior to January 1, 2023, a surviving spouse who was entitled to ***DIC*** under 38 U.S.C. § 1311 and who was not collecting the full amount of SBP due to receipt of DIC may be entitled to SSIA. See 10 U.S.C. § 1450(m). Effective January 1, 2023, SSIA was fully phased out. See FMR Archives for details regarding prior years.

6.0 CAUSES OF OVERPAYMENTS AND SUSPENSION OF PAYMENT

6.1 General Causes of Overpayment

Generally, SBP annuity overpayments are caused by:

6.1.1. Failure to reduce an annuity by the amount of DIC;

6.1.2. Non-termination of annuity because of ineligibility;

6.1.3. Erroneous computation;

6.1.4. Insufficient or untimely information; or

6.1.5. A determination by the Secretary of the Military Department concerned (or designee) that a participating member is alive after the Secretary of the Military Department concerned previously determined that the member was presumed dead.

6.2 General Reasons for Suspension of Payment

Generally, payments are suspended for:

6.2.1. Non-receipt of a SBP-MSU or FAUMC;

6.2.2. Non-receipt of verification of school attendance;

6.2.3. An annuitant will not receive annuity payments while there are still premiums owed on the SBP account. Once all premiums (with interest accrued at the rate approved by the DoD Board of Actuaries under 10 U.S.C. § 1465 for the purpose of determining the retirement accrual cost) that are owed have been recouped, payment of the annuity will commence/recommence;

6.2.4. Adjustment of the annuity due to administrative error; and/or

6.2.5. An incapacitated child over age 18 becomes independently capable of earning amounts sufficient for his or her own particular personal needs through substantial and sustainable gainful employment. Once suspended, payments can be reinstated. See paragraph 11.2.

7.0 LIABILITY AND OVERVIEW OF ANNUITANT INDEBTEDNESS

The annuitant is liable for debts created from the overpayment of an annuity. The member is liable for any indebtedness created because annuity payments were made based on the presumption of such member's death. The member's indebtedness cannot be considered for waiver under ***10 U.S.C. § 2774*** or ***10 U.S.C. § 1453***. If the member dies before such payments are fully recovered, the annuitant may be liable for the indebtedness if such annuitant was the recipient of the annuity payments made under the presumption of death. See Volume 16, Chapter 2 for the collection of member's indebtedness.

8.0 LIQUIDATION OF DEBT

8.1 Debt Liquidation

Upon discovery of an overpayment, the annuitant must be provided with due process notice in accordance with Volume 16, Chapter 2, or in other regulations pertaining to debt collection found elsewhere. The due process notice must include the amount of the debt and the method in which the overpayment is being, or may be, liquidated.

8.2 Direct Remittance

The annuitant may liquidate the overpayment by making direct remittance to DFAS-CL.

8.3 Reduced DIC

The Veteran's Affairs (VA) may reduce DIC and remit the amount collected to DFAS-CL.

8.4 Reduced SBP Annuity

DFAS-CL may reduce later SBP annuity payments.

9.0 WAIVER OF INDEBTEDNESS

9.1 Request a Waiver of Indebtedness

When applicable, DFAS-CL advises the annuitant of the right to request a waiver of indebtedness. The right to request a waiver does not constitute removal of the responsibility for repayment of the debt. If a waiver request is granted, repayment of the debt is not required.

9.2 Receipt of Waiver Request

Collection action is not routinely suspended pending waiver determination. If requested, the waiver determination will be made under the standards found in Volume 16, Chapter 4. Refund of an amount withheld before receipt of a request for a waiver is not authorized. When a waiver is granted, any amount collected after the receipt of the waiver request is refunded to the annuitant.

10.0 TERMINATION OF ANNUITY

10.1 Time of Termination

Entitlement to an SBP annuity terminates effective as of the first day of the month in which eligibility is lost. The annuity is terminated immediately if a determination is made by the Secretary of the Military Department concerned (or designee) that a participating member is alive after it was previously determined that the member was presumed dead.

10.2 Reasons for Termination

The SBP annuity is terminated when:

10.2.1. The spouse or former spouse (spouse category) annuitant remarries before age 55 or dies. If the member also provided coverage for children, the full annuity is payable, in equal shares, to the remaining eligible dependent children effective on the first day of the month in which the spouse or former spouse dies or remarries;

10.2.2. The child annuitant(s) lose eligibility because of:

10.2.2.1. Child's attaining age 18 and not pursuing a full-time course of study;

10.2.2.2. Marriage or death of child annuitant;

10.2.2.3. An incapacitated child over age 18 becomes independently capable of earning amounts sufficient for his or her own particular personal needs through substantial and sustainable gainful employment. This termination is not automatic; an annuitant will be given an opportunity to submit rebutting evidence. This annuity may be reinstated; see paragraph 11.2;

10.2.2.4. Termination of student status (child over age 18 and under age 22). If the student reaches age 22 before July 1 or after August 31 of a calendar year, the child's annuity

terminates on the first of July after the student's 22nd birthday. If a student reaches age 22 between July 1 and August 31 (inclusive) of a calendar year, the student loses eligibility and the annuity terminates on the first day of the month in which the age of 22 was reached; or

10.2.2.5. Reinstatement of a spouse or former spouse (spouse category) annuity following divorce or annulment;

10.2.3. A natural person with an insurable interest dies. The termination is final because there are no provisions for designating a contingent survivor annuitant; or

10.2.4. The Secretary of the Military Department concerned (or designee) determines that a participating member is alive after it was previously determined that the member was presumed dead.

10.3 Death of Annuitant

For the payment of any unpaid annuity amounts, see Chapter 31.

11.0 REINSTATEMENT OF ANNUITY

11.1 Reinstatement of Spousal Annuity

11.1.1. Remarriage Before Age 55 Terminated by Death of Spouse. Reinstatement of the annuity is effective the first day of the month in which the death occurs. If annuity entitlement from the terminated marriage exists, the spouse or former spouse may not receive both annuities but must elect the one desired. If the spouse or former spouse elects to receive the annuity that had formerly been terminated, the annuity is updated by any COLA increases that occurred after termination.

11.1.2. Remarriage Terminated by Divorce or Annulment. Reinstatement of the SBP annuity is effective the first day of the month in which the marriage terminated by divorce or annulment. Legal review is appropriate if discrepant information or annotations result in doubt or if the divorce or annulment was granted by a court in a foreign country. If the spouse or former spouse elects to receive the annuity that had formerly been terminated, the annuity is updated by any COLA increases that occurred after termination.

11.1.3. Loss of DIC Entitlement Because of Remarriage Between Ages 55 and 57. For periods prior to January 5, 2021, the annuity is reinstated effective as of the date of the loss of the DIC entitlement, adjusted to reflect all COLAs. Effective January 5, 2021, 38 U.S.C.§ 103(d)(2)(B) was amended by reducing the DIC remarriage provision from age 57 to 55.

11.2 Reinstatement of Child Annuity

11.2.1. Reinstatement of Annuity to Incapacitated Annuitant. An annuity to an incapacitated child over 18 years of age may be reinstated upon the recurrence of the original

disability rendering the annuitant incapable of self-support, or if the annuitant furnishes evidence that, although engaged in substantial and sustainable gainful employment, wages are not sufficient to cover his or her particular personal needs.

11.2.2. Child Resumes School Attendance. The child's eligibility for an annuity that was terminated for school nonattendance is reinstated effective the first day of the month that the child resumes school attendance.

11.2.3. Child's Marriage Terminated by Annulment. An annulment of a child's marriage which renders the marriage void or invalid, or by a judicial decree by a court of competent jurisdiction declaring the marriage void, would serve as a basis for reinstating a child's eligibility for annuity prospectively from the date of the judicial decree. The termination of a child's marriage by death or divorce does not serve as a basis for reinstatement of annuity eligibility.

*12.0 ELIGIBILITY VERIFICATION PRIOR TO AUGUST 1, 2023

12.1 Certificate of Eligibility (COE)

Effective August 1, 2023, the annual COE was replaced by the SBP-MSU. See ***FMR Archives*** to reference previous COE policy. See section 13.0 for details on SBP-MSU.

12.2 Report of Eligibility (ROE)

Effective August 1, 2023, the annual ROE was replaced by the Foreign Address Update for Mailed Check - Annuitants (FAUMC- Annuitants). See FMR Archives to reference previous ROE policy. See section 13.0 for details on SBP-MSU.

*13.0 ANNUAL ELIGIBILITY VERIFICATION EFFECTIVE AUGUST 1, 2023

13.1 SBP-MSU

The ***SBP-MSU*** replaces the COE effective August 1, 2023. The SBP-MSU is required annually to confirm the marital status and continued eligibility for the SBP. In general, the SBP-MSU is due the first day of the month of the annuitant's birthday.

13.1.1. Affected Annuitants:

13.1.1.1. A spouse or former spouse under the age of 55.

13.1.1.2. A child annuitant between the ages of 14 and 17 who have not been documented as being incompetent.

13.1.1.3. An annuitant who has been determined incapable of managing their affairs who receives payments through either a court-ordered legal representative or representative payee.

13.2 FAUMC - Annuitants

The ***FAUMC-Annuitants*** replaces the ROE effective August 2023. It is a requirement for any annuitants receiving a check in the mail outside the United States if they do not need to submit a School Certification or an SBP-MSU. In general, the FAUMC is due the first day of the month of the annuitant's birthday.

13.2.1. Affected Annuitants:

13.2.1.1. Spouse and former spouse annuitants aged 55 and over receiving a check in the mail outside the U.S.

13.2.1.2. Child SBP Annuitants under 14 years of age receiving a paycheck in the mail to a foreign address.

13.2.1.3. Child SBP Annuitants documented as incapacitated under age 14 years and receiving a paycheck in the mail to a foreign address.

13.2.1.4. Spouse and former spouse annuitants documented as incapacitated will need to fill out the SBP-MSU form regardless if they are receiving mail inside or outside of the U.S.

13.3 School Certification

A ***DD Form 2788, Child Annuitant's School Certification*** and a Child Annuitant's Certification for Previous Attendance Letter are required annually to confirm full-time school attendance and marital status for continued eligibility for the Survivor Benefit Plan. In general, the School Certification and Child Annuitant's Certification for Previous Attendance Letter are due the first day of the month the annuitant's school year ends.

13.3.1. Affected Annuitants:

13.3.1.1. Student Child SBP Annuitants turning 18.

13.3.1.2. Student Child SBP Annuitants ages 18-22.

13.4 Failure to Return Annual Eligibility Verification

If the annuitant fails to return completed verification when it is due, DFAS will suspend payment until a properly completed document is received.

13.5 Annuity Mailing Address

All completed annuitant verification forms must be sent by mail, fax, or upload to:

Mail:	Defense Finance and Accounting Service U.S. Military Annuitant Pay 8899 E 56th Street Indianapolis, IN 46249-1300
Annuitant/Survivor Fax:	1-800-982-8459
askDFAS upload:	***askDFAS***

Note: The Director, DFAS or designee may temporarily suspend annual eligibility verification requirements when a Federal or State disaster, a pandemic, or any other natural emergency is declared. The Director, DFAS, or designee may also determine the amount of time of the suspension. The action to suspend annual eligibility verification takes into consideration audit and risk management protocols including the ability to validate the identity of the annuitant from other government sources.

14.0 TAXABILITY OF ANNUITIES

14.1 Taxability of SBP Annuity Payments

SBP annuity payments are taxable for Federal income tax purposes. See ***IRS Publication 525*** for exceptions. In the case of a representative payee receiving an annuity payment on behalf of an annuitant, the income is attributable to the annuitant and an Internal Revenue Service (IRS) Form 1099 will be issued in the annuitant's name.

14.2 Taxability of SBP Cost Refunds

A refund of SBP costs (i.e., SBP premiums), resulting from an administrative error, correction of records, or award of DIC may or may not be taxable income to the member or the annuitant. The taxability of an SBP cost refund depends on the source from which it is made, as discussed in this section (also see Table 46-3). The SBP cost refund:

14.2.1. Constitutes taxable gross income to the retired member or the annuitant when it includes premium deductions taken from the retired member's taxable retired pay in order to pay for the cost of SBP coverage;

14.2.2. Does not constitute taxable gross income to the retired member or the annuitant when it is made from the retired member's direct remittance payments (by check or electronic mechanism, i.e., Pay.gov or Electronic Fund Transfer) to pay for the cost of SBP coverage; and

14.2.3. Does not constitute taxable gross income to the retired member or the annuitant when it is made from the retired member's VA disability compensation or by deduction from nontaxable military disability retired pay.

14.3 Federal Income Tax Withholding (FITW)

14.3.1. Monthly or Periodic Payments. Monthly or periodic SBP annuity payments are treated as income for FITW purposes. An annuitant, however, may elect no withholding of Federal income tax. In the absence of an annuitant election, or if the annuitant does not otherwise submit a withholding certificate, DFAS-CL will withhold on the basis of "married, three exemptions." The annuitant may use Form W-4P, Withholding Certificate for Pension and Annuity Payments, or any substitute form furnished by DFAS.

14.3.1.2. Annuitants Who are US Citizens. An annuitant who is a U.S. citizen may elect no withholding of Federal income tax. In the absence of an annuitant election, or if the annuitant does not otherwise submit a withholding certificate, DFAS-CL will withhold on the basis of the default rate established under the Secretary of Treasury and published by the IRS. The annuitant may use Form W-4P, Withholding Certificate for Pension and Annuity Payments, or any substitute form furnished by DFAS.

14.3.1.3. Foreign Annuitants. In order for an annuitant who is a citizen of a country other than the United States to receive the SBP annuity they must provide DFAS an Individual Tax Identification Number (ITIN). If the annuitant is a citizen of the United States and another country (dual) they may provide their SSN. If an SSN is provided, the rules in subparagraph 14.3.2 apply.

14.3.1.4. SBP Annuity Payments. The SBP annuity paid to foreign annuitant is still subject to Federal Income Tax Withholding. The required withholding rate set by the IRS is 30%. There are certain countries who have a lesser rate due to tax treaties (see Table 46-4). In order to qualify for the lesser rate for those countries, the annuitant must file a W-8BEN with DFAS.

14.3.2. Notice Requirements. DFAS-CL must advise the annuitant of the withholding requirement, as well as the right to elect that no tax be withheld, when making the first monthly or periodic payment to the annuitant. Thereafter, DFAS-CL must provide annual notice to the annuitant of the right to elect no withholding, to revoke an election, or to submit a new withholding certificate. An annuitant also may submit a withholding certificate at any time to elect no withholding, revoke an election, or request any rate of withholding.

14.3.3. Lump-Sum (One-Time) or Non-Periodic Distribution Payments

14.3.3.1. SBP Cost Refunds. An SBP cost refund is a refund of premiums rather than a distribution of benefits. As a non-periodic distribution, an SBP cost refund is subject to FITW at the rate of 10 percent. The annuitant, however, may elect no withholding of FITW. The annuitant has the right to make an FITW election for this refund separately from any election already in operation for all other SBP annuity payments.

14.3.3.2. Other. Retroactive SBP annuity payments paid in a lump sum constitute periodic distributions and are subject to the tax withholding rules of subparagraph 14.3.1. Likewise, if the lump-sum payment of an SBP annuity is the result of administrative error or delay

in the start of an annuity, the payment is treated as a periodic payment subject to the withholding rules of subparagraph 14.3.1.

14.4 Income Exclusion

14.4.1. Consideration for Contract. The SBP annuitant is entitled to an income exclusion when, upon the death of the participant member, the "consideration for contract" has been excluded in whole from the member's gross income. The member's survivor receiving the annuity may exclude from gross income such annuity payments received until the total exclusion equals the portion of the "consideration of contract" not previously excluded from the member's taxable income. DFAS-CL will accomplish the applicable direct reduction in taxable income for the annuitant and report the residual amount as taxable income on the annuitant's IRS Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit Sharing Plans, IRAs, Insurance Contracts, etc. Contact the IRS for further assistance.

> Example: When a member dies, and $1,000 of the total "consideration for contract" was not excluded from the member's non-disability retired pay, DFAS-CL will report the taxable annuity less $1,000, and the surviving spouse will use this reported residual amount in his or her income-tax computation for the calendar year.

14.4.2. Direct-Cost Payments. The tax-free benefit on SBP premiums is not available to members who waived military retired pay to receive disability compensation from the VA. See Chapter 12. Instead, upon the member's death, the annuity paid to the member's survivor may qualify to be exempt from Federal income tax until the amount excluded equals the total of the member's direct-cost payments, as explained in paragraph 14.2.

14.5 Amount of Annuity Subject to Federal Estate Tax

The value of the annuity at the time of the member's death may be subject to Federal estate tax if any portion of the cost was paid by direct remittance, or if the value of the annuity exceeds the amount that may be excluded from the gross estate. DFAS-CL may furnish the annuitant the current annuity amount and/or a summary of annual payments, and total cost paid (separate totals for deductions and direct remittances). For a computation of the amount of an annuity that will be subject to the tax, if any, the executor of the member's estate can contact the IRS for further assistance.

14.6 State Taxation

The IRS Form 1099-R information is furnished to the appropriate state tax authority regardless of whether SBP annuities are subject to state inheritance or income tax. The method of calculating such tax depends upon the laws of the state concerned.

15.0 MINIMUM INCOME WIDOW/SURVIVING SPOUSE

15.1 Eligibility Criteria

An annuity under the minimum income widow/surviving spouse provision of the SBP law (see Chapter 42) is payable to surviving spouses who meet all of the following conditions:

15.1.1. The surviving spouse is not otherwise entitled to an annuity under other provisions of the SBP, or to DIC from the VA;

15.1.2. The surviving spouse is eligible for a widow's non service-connected death pension from the VA;

15.1.3. The surviving spouse has annual income from all sources (including amount of RSFPP annuity entitlement, but excluding the amount of VA pension), as determined by the VA, that is less than the annual income rate in Appendix R. If the surviving spouse previously was denied an annuity because of income in excess of income limitations, entitlement may exist upon notice from the widow or from the VA that his or her current yearly income, as determined by the VA, is less than the income limitation; and

15.1.4. The surviving spouse is a person who, on September 21, 1972, was, or during the period beginning on September 22, 1972, and ending on March 20, 1974, became, a surviving spouse of a person who was entitled to retired or retainer pay when he or she died. Remarriage by the surviving spouse bars entitlement to an annuity under this provision of law unless the remarriage is terminated by an annulment. If there are questions as to whether an annuity should be reinstated after an annulment, refer the matter to the appropriate legal office.

Note: The DD 1885, Survivor Benefit Plan – Minimum Income Claim, and DD 1895, Request for Veterans Administration Pension and Annual Income Information, are used in administering the minimum income widow annuity. These forms are not currently available electronically. Hardcopies may be obtained by contacting the ***DoD Forms Management Program*** office.

15.2 Amount of Annuity

The maximum annuity payable is shown in Appendix R. The VA determines the yearly entitlement and advises DFAS-CL. This amount is prorated by DFAS-CL and is paid on a monthly basis.

15.2.1. The amount of the annuity is neither rounded nor increased to reflect retired pay COLA however, the annual income rates (Appendix R) is increased by the same amount and has the same effective date whenever there is an increase in the limitation on annual income for the purposes of eligibility for pension benefits.

15.2.2. The annuity is subject to Federal income tax.

15.2.3. The annuity is neither assignable nor subject to execution, levy, attachment, or garnishment (except for alimony or child support).

15.3 Effective Date of Entitlement

The effective date of entitlement is the date on which the requirements of law are met, subject to the 6-year statute of limitations.

15.4 Annuitant, Mentally or Physically Incapacitated

15.4.1. If, for any reason, a minimum income surviving spouse is mentally or physically incapable of applying for or negotiating the payment of the annuity, a court-appointed guardian may act on his or her behalf. If no guardian has or will be appointed, the person having care, custody, and control of the incapacitated annuitant is authorized to act on his or her behalf.

15.4.2. An FAUMC is required when the annuitant receives payments through foreign postal channels, or through a third party if the annuitant is incapacitated. See section 13.0.

15.4.3. The yearly certificate of continued eligibility is not required.

15.5 Changes and Termination

Changes in the amount of the annuity payable or termination of the annuity must be in accordance with the effective date of change or termination as shown by the VA. If termination is due to death of the annuitant, entitlement ceases as of the first day of the month in which death occurs. Any amounts that are due and payable at the time of annuitant's death may, upon receipt of a properly executed and documented claim, be paid to the person living on the date of the annuitant’s death who is the highest in the order of precedence. See Chapters 30 and 31.

15.6 Reopened Claim

DFAS-CL will reestablish an annuity that has been temporarily suspended because of the excessive income or net worth of the surviving spouse as of the first day of the month in which the surviving spouse meets the income level for an annuity as determined by the VA. Notification of any change in income is the responsibility of the surviving spouse.

15.7 Causes of Overpayment

The following are possible causes of overpayments of an annuity, but such list is not exhaustive:

15.7.1. The minimum income annuity for the surviving spouse was not timely terminated when his or her annual income exceeded the applicable rates shown in Appendix R;

15.7.2. Erroneous computation; or

15.7.3. Insufficient or untimely information.

15.8 Liability

The annuitant is liable for debts caused by overpayment of the annuity. The annuity may not be used as an offset against an indebtedness incurred by the member. The debt may be liquidated by:

15.8.1. The annuitant by making direct remittance to DFAS-CL;

15.8.2. The annuitant authorizing the VA to reduce the pension and remitting the amount collected to DFAS-CL; or

15.8.3. DFAS-CL by reducing later annuity payments to minimum income widows.

15.9 Waiver of Indebtedness

The request for waiver consideration is handled under the provisions of section 9.0.

*16.0 LEGISLATIVE CHANGES

16.1 Public Law (PL) 114-328, Section 642 for Fiscal Year (FY) 2017

Effective December 23, 2016, PL 114-328, Section 642 of the National Defense Authorization Act (NDAA) for FY 2017, amended Title 10, U.S.C, §§ 1448, 1450, and 1451. The amendments expanded entitlement to the SSIA and updated the amount of the annuity payable and the processes for paying an annuity to the survivors of RC members who die in the line of duty and RC members who die after completing the years of service to be eligible for a non-regular retirement. See Chapter 54.

16.2 PL 116-92, Section 622 of the NDAA for FY 2020,

PL 116-92, Section 622 of the NDAA for FY2020, signed into law on December 20, 2019, amended 10 U.S.C. §1450(c). This legislation created a multi-year phase out of the SBP-DIC offset, beginning in FY 2021, as follows:

16.2.1. For amounts payable for all periods prior to and including the period ending on December 31, 2020, the full amount of DIC paid by the VA to the surviving spouse and former spouse will continue to offset the SBP. The spouse or surviving spouse will continue to receive SSIA, if eligible.

16.2.2. For amounts payable for the period beginning on January 1, 2021, but ending on December 31, 2021, two-thirds of the amount of DIC paid by the VA to the surviving spouse or former spouse will offset the SBP annuity amount. The spouse or surviving spouse will continue to receive SSIA, if eligible.

16.2.3. For amounts payable for the period beginning on January 1, 2022, but ending on December 31, 2022, one-third of the amount of DIC paid by the VA the surviving spouse or former spouse will offset the SBP annuity. The spouse or surviving spouse will continue to receive SSIA, if eligible.

16.2.4. For amounts payable for all periods beginning on or after January 1, 2023, there will be no reduction.

Example: A surviving spouse who is entitled to a $1,200 SBP annuity and $1,500 DIC paid by VA, will continue to have his or her SBP fully offset in 2020. Because DIC is greater than the amount of SBP, it results in a net SBP payment of $0 after offset for all months of 2020. Beginning in 2021, this same spouse would receive a $200 SBP payment, because only $1,000 of the $1,500 DIC paid by VA (i.e., two-thirds of the $1,500 amount of DIC) would be used to offset the SBP. In addition, this spouse would receive SSIA because he or she remains subject to the SBP-DIC offset. In 2022, this same surviving spouse would receive $700 for SBP, because only $500 DIC paid by VA (i.e., one-third of the $1,500 amount of DIC) would be used to offset the SBP. This spouse would remain eligible for SSIA. In 2023, the offset is lifted and the surviving spouse receives both SBP and DIC in full. In 2023, SSIA is no longer payable.

16.2.5. The SBP annuity is restored on January 1, 2023, to any eligible surviving spouse for whom the service previously determined it was appropriate to provide an annuity for the dependent child(ren) of the member instead of the surviving spouse in accordance with subparagraph 3.2.3.

16.2.6. Effective January 1, 2023, SSIA is discontinued.

*Table 46-1. Annuity for Surviving Spouse or Former Spouse

RULE	If member dies or is declared dead	and	and the annuitant	then the annuity is (Notes 2 and 6)	and is offset by (Notes 9, 10 and 11)
1	in a retired status	the member elected to participate in the program	was married to member on date of election or on date of retirement and is married to member at time of member's death (Note 1)	55 percent of base amount of coverage on date of member's death	N/A effective January 1, 2023.
2	in a retired status	the member elected to participate in the program	was married to member a minimum of 1 year at time of member's death (Note 3)	55 percent of base amount of coverage on date of member's death	N/A effective January 1, 2023.
3	in a retired status	the member elected to participate in the program	is the parent of a "living issue" of the marriage which occurred after the date of retirement (Note 4)	55 percent of base amount of coverage on date of member's death	N/A effective January 1, 2023.
4	in a retired status	the member became eligible and elected to participate on or after September 8, 1982	is the former spouse of a member when member became eligible or the former spouse that a member acquired after becoming eligible to participate and who had been married to member at least 1 year or is the parent of issue of that marriage (Note 4)	55 percent of base amount of coverage on date of member's death	N/A effective January 1, 2023.
5	on active duty	the member's death was found to be in the line of duty	is married to member on member's date of death, or was the former spouse of a member required under a court order or spousal agreement to provide an annuity upon becoming eligible to participate	55 percent of retired pay base to which member would have been entitled had they been retired for a 100 percent disability on the date of death	N/A effective January 1, 2023.

*Table 46-1. Annuity for Surviving Spouse or Former Spouse (Continued)

RULE	If member dies or is declared dead	and	and the annuitant	then the annuity is (Notes 2 and 6)	and is offset by (Notes 9, 10 and 11)
6	on active duty and was entitled to retired or retainer pay,	the member's death was found to be NOT in the line of duty	is married to member on member's date of death, or was the former spouse of a member required under a court order or spousal agreement to provide an annuity upon becoming eligible to participate	55 percent of retired pay to which the member would have been entitled at date of death based upon the member's years of active service	N/A effective January 1, 2023.
7	on active duty and qualified for retired pay but had not yet applied for or been granted such pay or after completing 20 years of active service, but before member is able to retire as a commissioned officer because member has less than 10 years of active commissioned service (Note 7)	the member's death was found to be NOT in the line of duty	is married to member on member's date of death, or was the former spouse of a member required under a court order or spousal agreement to provide an annuity upon becoming eligible to participate	55 percent of retired pay to which the member would have been entitled at date of death based upon the member's years of active service, in the case of a member who first became a member before September 8, 1980, use the rate of basic pay in effect for the grade in which serving at time of death, unless, as determined by the Secretary of the Military Department concerned, the member would have been entitled to be retired in a higher grade	N/A effective January 1, 2023.

*Table 46-1. Annuity for Surviving Spouse or Former Spouse (Continued)

RULE	If member dies or is declared dead	and	and the annuitant	then the annuity is (Notes 2 and 6)	and is offset by (Notes 9, 10 and 11)
8	while eligible to provide an RC annuity but: (a) before being notified of retirement eligibility, or (b) during the 90-day period beginning when member receives notification of retirement eligibility	the member had not made an RCSBP election	is married to member on member's date of death, or was the former spouse of a member required under a court order or spousal agreement to provide an annuity upon becoming eligible to participate	55 percent of retired pay to which the member would have been entitled on the date of death based upon the member's years of creditable service	N/A effective January 1, 2023.
9	before becoming eligible to provide an RC annuity	the member's death is in the line of duty from injuries or illness incurred or aggravated while performing IDT (Note 9)	is married to member on member's date of death, or was the former spouse of a member required under a court order or spousal agreement to provide an annuity upon becoming eligible to participate	55 percent of retired pay to which the member would have been entitled on the date of death based upon the member's years of creditable service	N/A effective January 1, 2023.

*Table 46-1. Annuity for Surviving Spouse or Former Spouse (Continued)

RULE	If member dies or is declared dead	and	and the annuitant	then the annuity is (Notes 2 and 6)	and is offset by (Notes 9, 10 and 11)
10	and retired from both military and civil service	the member elected to participate in the program and did not waive military service for civil service purposes	is the spouse or former spouse of a member when member became eligible or the spouse or former spouse that a member acquired after becoming eligible to participate and who had been married to member at least 1 year or is the parent of issue of that marriage (Notes 1, 2, 3, and 4)	55 percent of base amount of coverage on date of member's death	N/A effective January 1, 2023.
11	and retired from both military and civil service	the member elected to participate in the program and waived military retired pay for civil service purposes, but did not elect survivor coverage at any level under the civil service retirement	is the spouse or former spouse of a member when member became eligible or the spouse or former spouse that a member acquired after becoming eligible to participate and who had been married to member at least 1 year or is the parent of issue of that marriage (Notes 1, 2, 3, and 4)	55 percent of base amount of coverage on date of member's death	N/A effective January 1, 2023.

Notes:

1. For a member married to the same spouse at time of retirement and date of death, the statute does not require that an intervening divorce be followed by 1 year of remarriage immediately before date of death.
2. An annuity ends for a spouse of former spouse if remarried before age 55. If the annuity is terminated because of remarriage, it is to be reinstated if the new marriage ends.
3. Minimum requirement for a marriage is 1 year.
4. "Living issue" means the "issue by that marriage" or a child of such marriage who dies shortly after birth (such child's birth is the criterion, not the duration of the child's life).
5. If member is required under a court order or spousal agreement to provide an annuity to a former spouse upon becoming eligible to participate in the SBP or if a member has made an election to provide former spouse annuity, the Secretary of the Military Department concerned may not pay the annuity to the surviving spouse.
6. All SBP monthly annuities if not a multiple of $1, is rounded to the next lower multiple of $1.
7. If the "forgotten widow" is entitled to an SBP annuity resulting from a subsequent marriage to a member, the individual may not receive the two annuities, but must elect in writing which to receive. The annuity for a "forgotten widow" is effective December 1, 1980.
8. An offset for DIC must be removed if, prior to January 5, 2021, an annuitant remarries subsequent to their 57th birthday. DIC offset must be removed when an annuitant remarries after 55 on or after January 5, 2021.
9. The Secretary of the Military Department concerned may determine, after consulting with the surviving spouse, if it is more advantageous to pay the annuity to the child instead of the spouse due to the DIC offset of spouse SBP. See 10 U.S.C. § 1448(f)(1) and (2), and Chapter 54 for additional information. Effective January 1, 2023, the option for a surviving spouse of a member who dies on active or inactive duty, in consultation with the Secretary concerned to transfer the annuity to a surviving child was discontinued. An eligible surviving spouse, who previously elected to transfer the annuity to a surviving child or children under the provisions of 10 U.S.C. § 1448(d)(2)(B), will have their eligibility restored. If the surviving spouse is ineligible to receive SBP, the annuity shall continue to be paid to the eligible child or children, unless and until the spouse regains SBP eligibility.
10. See 10 U.S.C. § 1448(f) for additional information.

11. Per the NDAA for FY 2020, SBP-DIC offset was phased out over multiple years beginning in FY 2021 and was fully phased out beginning January 1, 2023. See section 16.0 for specific details regarding the phase out.

Table 46-2. Refund of Monthly Premium for SBP Effective January 4, 1994

REFUND OF MONTHLY PREMIUM FOR SBP EFFECTIVE JANUARY 4, 1994 (See Note)

The refund of premiums due a spouse or former spouse is determined using the following defined values:

Current Basic Premium (CBP): The actual current premium amount for the basic SBP spouse coverage elected by the member. This does not include premiums for child coverage, SSBP premiums, open-enrollment premium additions, or any interest charges.

Current Recalculated Premium (CRP): The implied current premium associated with recalculated SBP basic annuity as reduced due to receipt of DIC. This does not include premiums for child coverage, SSBP premiums, open-enrollment premium additions, or any interest charges.

Total Premiums (TP): The Total Premiums paid by the member for basic SBP. (Lump sum open-enrollment buy-in premiums are not refundable). This does not include any premiums for child coverage, SSBP premiums, or interest charges. This amount may be obtained from historical pay files pertaining to the member and/or from a file of total spouse premiums to be produced under the Director of Compensation, Office of the Deputy Assistant Secretary of Defense (Military Personnel Policy) by the DoD Actuary and the Defense Manpower Data Center in coordination with DFAS-CL.

Premium Refund (PR): This is the premium refund amount. The premium refund is determined according to the following formula:

PR = (1 - CRP/CBP) X TP

For example: Member is a retired O-5, deceased July 1, 1993.
Data is for June 1994.

Retired Pay:	$2,297.00
Current Basic Premium (CBP):	149.31
SBP Spouse Annuity: .55 X 2,297 =	1,263.00 (Note 1)
DIC Annuity:	750.00 (Note 2)
Recalculated SBP Annuity	1,263.00 - 750.00 = 513.00
Implied Base Amount = $513.00/.55	= 932.73
Current Recalculated Premium (CRP)	= 60.63
Total Premiums (TP) from Data Files	= 10,153.08

Premium Refund (PR) is:

PR = (1 - 60.63/149.31) X 10,153.08
= (1 - .4060679) X 10,153.08
= .5939321 X 10,153.08 = 6,030.24

Table 46-2 is effective January 4, 1994 for deaths which occurred on or after January 1, 1993.

Notes:

1. SBP Spouse Annuity amount is rounded down.
2. Per the NDAA for FY 20, SBP-DIC offset was be phased out over multiple years beginning on FY 21 and was fully phased out beginning January 1, 2023. See section 16.0 for specific details.

Table 46-3. Taxability of SBP Cost Refunds

RULE	If the source of refunded cost is for	then it is taxable to the	
		member	annuitant
1	premium deductions from taxable retired pay	yes (Note 1)	yes (Note 2)
2	premiums paid from VA Disability compensation or premiums deducted from nontaxable military disability retired pay	no (Note 3)	no (Note 4)
3	premiums paid directly by member	no (Note 5)	no (Note 6)

Note:

1. Under ***26 U.S.C. § 122***, amounts deducted from military retired pay to fund an SBP annuity are excluded from income. Had the deducted amount been paid directly to the member instead, it would have been fully taxable. Consequently, refunded costs that were taken from military retired pay constitute gross income to the member.
2. Under ***26 U.S.C. § 691***, the refund is income in respect of a decedent. The tax status of the refund is the same to the annuitant as it would have been had it been refunded to the member. Since the refund of costs deducted from military retired pay would have been gross income to the member, it is also gross income to the annuitant.
3. VA disability compensation is exempt from taxation, as shown in ***38 U.S.C. § 5301***. Under certain circumstances, military disability retired pay is also nontaxable, as shown in ***26 U.S.C. § 104***. If the deducted amount had been paid directly to the member instead, it would have been exempt from taxation. Consequently, refunded costs that were taken from VA disability compensation or nontaxable military disability retired pay are also exempt from taxation.
4. Under 26 U.S.C. § 691, the refund is income in respect of a decedent. The tax status of the refund is the same to the annuitant as it would have been had it been refunded to the member. Since the refund of costs deducted from VA disability compensation or from nontaxable military disability retired pay would have been excluded from the gross income of the member, it is excluded from the gross income of the annuitant.
5. Amounts paid directly by the member to fund the SBP annuity were subject to tax before they were paid by the member. Direct payments by the member do not result in any tax benefit to the member. Consequently, refunds of premiums that were directly paid by the member constitute a nontaxable return of capital and do not constitute gross income.
6. Because the refund would have been a return of capital in the hands of the decedent (and would not have been includible in the decedent's gross income), it is also a return of capital to the decedent's beneficiary (and is not includible in the gross income of the beneficiary of the decedent).

*Table 46-4. Taxability of Survivor Benefit Plan/Retired Serviceman's Family Protection Plan – Nonresident Annuitants Residing Outside of the United States

RULE	If the SBP annuitant resides in the country of	and	then the SBP annuity is	at the rate of
1	Australia, Austria, Barbados, Cyprus, Czech Republic, Egypt, Greece, Israel, Kazakhstan, Morocco, New Zealand, Norway, Pakistan, Romania, Russia, Slovak Republic, South Korea, Sweden, Trinidad & Tobago, Tunisia, and Ukraine	is a citizen of the country in which residing	not taxable (note)	N/A
2	Bangladesh, Belgium, Bulgaria, China, Denmark*, Estonia, Finland, France, Germany, Hungary, Iceland, India, Ireland, Italy, Jamaica, Japan, Latvia, Lithuania, Luxembourg, Malta, Mexico, Netherlands, Portugal, South Africa, Slovenia, Spain, Switzerland, Thailand, Turkey, United Kingdom, and Venezuela	is a national of the country in which residing	not taxable (note)	N/A
3	Bangladesh, Belgium, Bulgaria, China, Denmark*, Estonia, Finland, France, Germany, Hungary, Iceland, India, Ireland, Italy, Jamaica, Japan, Latvia, Lithuania, Luxembourg, Malta, Mexico, Netherlands, Portugal, South Africa, Slovenia, Spain, Switzerland, Thailand, Turkey, United Kingdom, and Venezuela	is not a national of the country in which residing	taxable	30 percent
4	Canada	N/A	taxable	15 percent
5	South Africa	is a national of the country in which residing	not taxable (note)	N/A
6	South Africa	is not a national of the country in which residing	taxable	15 percent
7	Any country not listed above	N/A	taxable	30 percent

Note:
In order to claim entitlement to exemption from taxation based upon a tax convention or Treaty, a nonresident alien annuitant is required to file IRS Form W-8BEN (Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting).

*If the SBP annuitant is a national of or a resident of these countries, then the SBP annuity is not taxable.

*REFERENCES

CHAPTER 46 SURVIVOR BENEFIT PLAN (SBP) – ANNUITIES

1.0 – GENERAL

	10 U.S.C. § 1450

2.0 – ANNUITIES

2.1	10 U.S.C. § 1450
2.1.2	10 U.S.C. § 1450(a)(3)
2.1.3	10 U.S.C. § 1447(7)-(10) 10 U.S.C. § 1450(b)
2.1.4	DoD Instruction (DoDI) 1332.42, December 30, 2020
2.2	10 U.S.C. §1450(b) DoDI 1332.42, December 30, 2020
2.2.1	DoDI 1332.42, December 30, 2020 GAO Principles of Appropriations Law (1994), § 12-16
2.2.1.1.1	10 U.S.C. § 1465
2.2.1.4	65 Comptroller General (Comp Gen) 260, B-222190, February 17, 1987
2.2.1.5	61 Comp Gen 245, B-205176, February 8, 1982 31 CFR 211.1
2.2.2.1	10 U.S.C. § 1455 DoDI 1332.42, December 30, 2020
2.2.2.2 & 2.2.2.3	66 Comp Gen 340, B-226018, March 18, 1987 10 U.S.C. § 1455
2.2.2.6	10 U.S.C. §§ 1448, 1450, and 1455 DoDI 1332,42, December 30, 2020
2.2.3	10 U.S.C. § 1455(d)
2.2.4	10 U.S.C. § 1451(g)(2)
2.3	DoDI 1332.42, December 30, 2020 10 U.S.C. § 1450(b) Croteau v. United States, 823 F.2d 539 (Fed. Cir. 1987)

3.0 – DEATH OF MEMBER ON ACTIVE DUTY

3.1	10 U.S.C. § 1448(d)
3.2	10 U.S.C. § 1448(d)

REFERENCES (Continued)

3.2.1	Department of Hearings and Appeals, Appeals Board Reconsideration decision 2019-CL-012301.2 (June 25, 2019)
3.2.3.2	10 U.S.C. § 1448(d)(2)(B)
3.2.3.3	PL 116-92, Section 622, NDAA FY 2020
3.2.4	10 U.S.C. § 1448(d)(6)(A)
3.3	10 U.S.C. § 1451(c)
3.3.1	10 U.S.C. § 1407(c)(3) 10 U.S.C. § 1451(c)
3.3.2	10 U.S.C. § 1401a(b)(3)
3.3.3	10 U.S.C. § 1448(d)(6)(B)

4.0 – DEATH OF MEMBER ON INACTIVE-DUTY TRAINING (IDT)

4.1	10 U.S.C. § 1448(f)(1)(B) DoDI 1332.42, December 30, 2020

5.0 – DEPENDENCY AND INDEMNITY COMPENSATION (DIC) OFFSETS AND SPECIAL SURVIVOR INDEMNITY ALLOWANCE (SSIA)

5.1	10 U.S.C. § 1450(c) 38 U.S.C. § 1311(e) PL 116-315, Section 2009 Office of the Under Secretary of Defense, Personnel and Readiness, October 22, 2009
5.2	38 U.S.C. § 1311 38 U.S.C. § 5110(d) 38 U.S.C. § 5111(a) 10 U.S.C. § 1450(c) 63 Comp Gen 536, B-21446, August 20, 1984 10 U.S.C. § 1451(c) PL 116-92, Section 622, NDAA FY 2020 DoDI 1332.42, December 30, 2020
5.2.2	10 U.S.C. § 1450(e) 10 U.S.C. §1450(k) 61 Comp Gen 287, B-203380, March 2, 1982
5.2.3.1	10 U.S.C. § 1450(k) 61 Comp Gen 287, B-203380, March 2, 1982 54 Comp Gen 838, B-181712, April 7, 1975
5.2.3.2	10 U.S.C. § 1450(k) 31 CFR 901.2
5.2.4	56 Comp Gen 482, B-186504, April 6, 1977
5.2.5	10 U.S.C. § 1450(m)

REFERENCES (Continued)

5.3	PL 108-375, Section 644, October 28, 2004
6.0 – CAUSES OF OVERPAYMENTS AND SUSPENSION OF PAYMENT	
6.1.5	10 U.S.C. § 1450(l)(3)
7.0 – LIABILITY	
	10 U.S.C. § 1450(l)(3)
8.0 – LIQUIDATION OF DEBT	
8.1	31 CFR 901
9.0 – WAIVER OF INDEBTEDNESS	
9.1	10 U.S.C. § 1453
9.2	10 U.S.C. § 1453 54 Comp Gen 249, B-182704, July 2, 1976 Comp Gen B-185466, August 19, 1976
10.0 – TERMINATION OF ANNUITY	
10.2.2	10 U.S.C. § 1450
10.2.3.1 & 10.2.3.2	10 U.S.C. § 1447(11)
10.2.3.4	10 U.S.C. § 1447(11)
10.2.3.5	DoDI 1332.42, December 30, 2020 10 U.S.C. § 1450(b)
10.2.5	10 U.S.C. § 1450(1)(3)
11.0 – REINSTATEMENT OF ANNUITY	
11.1 – 11.3	10 U.S.C. § 1450(b) and (k) 38 U.S.C. § 103
12.0 –ELIGIBLITY VERIFICATION PRIOR TO AUGUST 2023	
	DoDI 1332.42, December 30, 2020 10 U.S.C. § 1447(11)
13.0 – ANNUAL ELIGIBILITY VERIFICATION EFFECTIVE AUGUST 2023	
	PL 117-81, Section 605, NDAA FY 2022
13.2 & 13.3	44 Comp Gen 208, A-3551, October 12, 1964

REFERENCES (Continued)

14.0 – TAXABILITY OF ANNUITIES

14.1	26 U.S.C. § 3405
14.2	26 U.S.C. § 3402(o)(3)
14.3	26 U.S.C. § 3405(a)(1) and (2) and (4) 26 CFR 35.3405-1T(b-8) 26 C.F.R. 31.3405(a)-1
14.4	26 U.S.C. § 101 26 CFR 1.122-1(b) 26 CFR 1.122-1(d) IRS Publications 575 and 939
14.5	IRS Publication 950

15.0 – MINIMUM INCOME WIDOW/SURVIVING SPOUSE

15.1.4	10 U.S.C. § 1448
15.2	10 U.S.C. § 1448 10 U.S.C. § 1450(i) 42 U.S.C. § 659
15.3	31 U.S.C. § 3702
15.5	10 U.S.C. § 1450(b)
15.6	54 Comp Gen 493, B-180545, December 17, 1974
15.8	54 Comp Gen 493, B-180545, December 17, 1974

16.0 – LEGISLATIVE CHANGES

	10 U.S.C. § 1448 10 U.S.C. § 1450(m) 10 U.S.C. § 1451 PL 114-328, Section 642, NDAA FY 2017 PL 116-92, Section 622, NDAA FY 2020

Table 46-1 – ANNUITY FOR SURVIVING SPOUSE OR FORMER SPOUSE

Rule 1	10 U.S.C. § 1447
Rule 2	10 U.S.C. § 1448(a)
Rule 4	10 U.S.C. § 1448
Rule 6	10 U.S.C. § 1451(c)(1)(A)(ii)
Rule 7	10 U.S.C. § 1451(c)(3)
Rule 10	10 U.S.C. § 1448(f)
Note 10	10 U.S.C. § 1448(f)

DEPARTMENT OF DEFENSE

FINANCIAL MANAGEMENT REGULATION

CHAPTER 47: "ARCHIVED"

UNDER SECRETARY OF DEFENSE (COMPTROLLER)

DEPARTMENT OF DEFENSE

FINANCIAL MANAGEMENT REGULATION

CHAPTER 48: "ARCHIVED"

UNDER SECRETARY OF DEFENSE (COMPTROLLER)

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CHAPTER 49: "ARCHIVED"

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CHAPTER 51: "ARCHIVED"

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CHAPTER 52: "ARCHIVED"

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FINANCIAL MANAGEMENT REGULATION

CHAPTER 53: "ARCHIVED"

UNDER SECRETARY OF DEFENSE (COMPTROLLER)

VOLUME 7B, CHAPTER 54: "RESERVE COMPONENT SURVIVOR BENEFIT PLAN (RCSBP)"

SUMMARY OF MAJOR CHANGES

Changes are identified in this table and also denoted by blue font.

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

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

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

The previous version dated June 2022 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated chapter and format to comply with administrative instructions.	Revision
6.4 6.5 6.6	Updated Open Enrollment Periods section with the SBP open enrollment and disenrollment period authorized by section 643 of Public Law 117-263.	Revision
References	Updated references.	Revision

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CHAPTER 54

RESERVE COMPONENT SURVIVOR BENEFIT PLAN (RCSBP)

1.0 GENERAL

1.1 Purpose

This chapter provides information for RCSBP. RCSBP extends eligibility to the Survivor Benefit Plan (SBP) to Reserve Component members who completed the years of service to be eligible to receive retired pay but have not yet reached retirement age. RCSBP allows members to provide an annuity based on their retired pay to qualified survivors.

1.2 Authoritative Guidance

The pay policies and requirements established by DoD in this chapter are derived primarily from, and prepared in accordance with the United States Code (U.S.C.). Due to the subject matter in this chapter, the list of authoritative sources is extensive. The specific statutes, regulations, and other applicable guidance that govern each individual section are listed in a reference section at the end of the chapter.

2.0 DEFINITIONS OF SPECIALIZED TERMS

2.1 Base Amount

The dollar amount selected by the member upon which the SBP premium and the annuity are calculated. A member may elect a full base amount or a reduced base amount. See paragraph 4.3 for base amount elections.

2.2 Date of Receipt of Election for RCSBP

The date of the receipt of the election by the member's records custodian, or the date of postmark on the envelope in which the records custodian received the election when the election intent may be prejudiced.

2.3 Date of Retirement

The first day the member is entitled to receive retired pay or the first day the member would have received pay if alive at retirement age.

2.4 The 90-Day Period

The 90-day period in which the member must complete an election for RCSBP begins on the date that the member receives notification that the member has completed the requisite years of service to be eligible for retired pay at a later age (usually age 60).

2.5 Eligible for Retired Pay

A member becomes eligible for non-regular retired pay upon completion of 20 qualifying years of satisfactory service. Often notification is provided by letter referred to as the "20-year letter" because it notifies the member that he or she has served the requisite years of service to be eligible for retired pay, but is not yet entitled to receive the pay because of his or her age. See Chapter 1, subparagraph 2.8.6.

2.6 Eligible to Participate in RCSBP

The date the member receives notice of eligibility for retired pay except for not having reached the age for entitlement to retired pay (usually age 60).

2.7 Entitled to Retired Pay

A person who has completed the requisite service and reached the requisite age (usually age 60) is entitled to receive retired pay for non-regular service.

2.8 Member

A member of a Reserve Component.

2.9 RCSBP

The RCSBP is a benefit plan that enables members who served in the Reserve Components to leave a benefit called an "annuity." An annuity is a monthly payment that normally lasts the lifetime of the beneficiary after the member passes away. The amount of the monthly payment is a percentage of the retired pay, and that percentage depends upon the election the member made when the member signed up for RCSBP.

2.10 SBP

The SBP is for members of the Uniformed Services. NOTE: SBP (see Chapter 42) and RCSBP share many of the same terms. Chapter 42, section 2.0 provides additional terms not specifically defined in this section.

2.11 SBP Premium

SBP Premium is the combination of the "Standard Premium," the "Reserve Component Premium," and the "Survivor's Annuity Premium Deduction."

2.12 Standard Premium

Standard Premium is the reduction in retired pay made to provide the member with SBP coverage for the period after a member becomes entitled to retired pay. The Standard Premium is

described in Chapter 45. It is distinct and separate from the Reserve Component Premium and the Survivor's Annuity Premium Deduction which are described in paragraphs 2.13 and 2.14.

2.13 Reserve Component Premium

When a Reserve member participates in the RCSBP after first becoming eligible based on 20 qualifying years of satisfactory service, coverage for the member's survivors commences but premiums are not paid until the member first becomes actually entitled to retired pay (usually age 60). Note: See also Chapter 1, subparagraphs 3.8.6.1 through 3.8.6.5 which reduces the eligibility age below 60 years of age for a reservist to receive retirement pay. At that time, reductions in the member's retired pay are made that are specifically related only to the RCSBP coverage that was already provided while the member awaited the requisite age of entitlement to retired pay. These reductions are the Reserve Component Premium. They are made after the member begins receiving retired pay for the RCSBP coverage that was provided before the member received retired pay. They are distinct from the Standard Premium (in paragraph 2.12) which are reductions made for the SBP coverage that is provided after the member becomes entitled to retired pay. They are also distinct from the Survivor's Annuity Premium Deduction.

2.14 Survivor's Annuity Premium Deduction

When an RCSBP participant dies, any annuity payable to a survivor is reduced for the RCSBP coverage provided while the member awaited the requisite age of entitlement to retired pay. This reduction is unique to RCSBP coverage. The DoD Office of the Actuary, herein referred to as the Actuary, sets the rate of the reduction of the survivor's annuity and the rate is currently set at .0001 of the base amount. The reduction in the annuity is known as the Survivor's Annuity Premium Deduction. The Survivor's Annuity Premium Deduction is distinct from the Standard Premium and Reserve Component Premium described in paragraphs 2.12 and 2.13.

2.15 Reserve Components

The following is a listing of the Reserve Components:

2.15.1. The Army National Guard of the United States,

2.15.2. The Army Reserve,

2.15.3. The Navy Reserve,

2.15.4. The Marine Corps Reserve,

2.15.5. The Air National Guard of the United States,

2.15.6. The Air Force Reserve, and

2.15.7. The Coast Guard Reserve.

3.0 ELIGIBLE BENEFICIARIES

Eligible beneficiaries under the RCSBP include spouse, child, former spouse, and natural person with an insurable interest. Members eligible to participate in RCSBP may elect coverage in one of the following coverage categories: spouse; spouse and child; child only; former spouse; former spouse and child; natural person with an insurable interest; or Special Needs Trust (SNT).

3.1 Spouse (Including the Spouse of a Common-Law Marriage)

A spouse is an eligible beneficiary if he or she:

3.1.1. Was married to the member on the date that the member became eligible to participate in RCSBP and was continuously married to the member through the date when the member died;

3.1.2. Married the member after the date the member became eligible to participate in RCSBP and, as set forth in Section 6.0:

3.1.2.1. The member had a spouse at the time the member became eligible to participate in RCSBP and elected spouse coverage;

3.1.2.2. The original spouse became ineligible due to divorce or death;

3.1.2.3. The member did not choose within one year of the marriage to not elect coverage for the new spouse and has no eligible former spouse beneficiary (i.e., defaulted to resuming spouse coverage); and

3.1.2.4. The spouse and member were continuously married for at least one year on the date the member died or the spouse is a parent of a child from that marriage.

3.1.3. Married to the member after the date the member became eligible to participate in RCSBP and, as set forth in Section 6.0:

3.1.3.1. The member had elected to participate in RCSBP when eligible (Option B or Option C);

3.1.3.2. The member had no spouse at the time of becoming eligible for RCSBP, but after marrying the spouse, the member elected spouse coverage within one year of the marriage (or, where former spouse coverage had been previously elected, within one year of the former spouse's death if occurring after the marriage, as set forth in Section 6.2); and

3.1.3.3. The spouse and member were continuously married for at least one year on the date the member died or the spouse is a parent of a child from that marriage.

3.1.4. Married to a member who completed the years of service required to be eligible for a non-regular service retirement but died before receiving notice of eligibility or during the 90-day period and had not made an RCSBP election.

3.2 Children (Including Children of a Common-Law Marriage)

Children are eligible beneficiaries if they are:

3.2.1. Children of a member who elected child coverage when he or she initially became eligible to participate in RCSBP. Note: Child age requirements are described in Chapter 44, paragraph 2.2;

3.2.2. Children of a member who elected child coverage within one year of first acquiring a dependent child after initially becoming eligible to participate in RCSBP;

3.2.3. Children of a member who died after meeting years of service requirements for a non-regular retirement, but before being notified of retirement eligibility or during the 90-day period immediately following such notification without having made an RCSBP election; or

3.2.4. Children of a member who elected spouse and child or former spouse and child coverage, if the spouse or former spouse dies, remarries before age 55 or otherwise becomes ineligible. If former spouse coverage is in place, only the child(ren) who resulted from the marriage to the former spouse are eligible beneficiaries.

3.3 Former Spouse

The former spouse is an eligible beneficiary if he or she:

3.3.1. Is the member's former spouse when the member becomes eligible to participate in RCSBP and was elected as the beneficiary by the member or an election of former spouse coverage was deemed to have been made by the Secretary concerned upon timely request by the former spouse;

3.3.2. Was not the member's former spouse when the member became eligible to participate in RCSBP and a prior spouse election is changed to provide coverage for a former spouse in accordance with subparagraph 7.2.3. A former spouse must have been married to the member for at least one year or be a parent of a child born of the marriage; or

3.3.3. Was the former spouse for whom coverage was provided under the insurable interest category for an election made before November 8, 1985. The former spouse will remain an eligible beneficiary following a remarriage, unless the remarriage is to a member who is providing the former spouse coverage.

3.4 Natural Person With Insurable Interest

A member may make an election for a natural person with an insurable interest only when there is no eligible spouse or dependent child(ren). A member must elect gross retired pay as the base amount under an election for a natural person with an insurable interest. Pursuant to 10 U.S.C. § 1448(b), any Reserve member who is not married and does not have a dependent child, may elect to provide RCSBP coverage for a natural person with an insurable interest. Additionally, a member

who is unmarried but who has one dependent child may provide coverage for that child under the insurable interest provision. The natural person with an insurable interest is an eligible beneficiary if the beneficiary that member designated is:

3.4.1. A person who has a reasonable and lawful expectation of pecuniary benefit from the continued life of the member. This may include parents, stepparents, grandparents, grandchildren, aunts, uncles, sisters, brothers, half-sisters, half-brothers, a dependent or non-dependent child or step-child, or any other person more nearly related than a cousin; or

3.4.2. Any individual having a reasonable and lawful basis, founded upon the relationship of parties to each other, either pecuniary or of blood or affinity, to expect some benefit or advantage from the continuance of the life of the retiree.

NOTE: Proof of financial benefit from the continuance of the life of the member may be required.

3.5 Special Needs Trust (SNT)

The National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015, Public Law (PL) 113-291, amended 10 U.S.C. §§ 1448, 1450, and 1455, to give Military Service members and retirees the option to direct payment of an annuity for a dependent child to an SNT. See Chapter 46.

3.6 Same-Sex Spouses

See ***DoD Instruction (DoDI) 1332.42***, Section 4.3(d), December 30, 2020 and Chapter 43, paragraph 4.2.

4.0 ELECTION TO PARTICIPATE

4.1 90-Day Period

Any member who is notified of his or her completion of the years of service required for retired pay eligibility for non-regular retirement may elect to participate in RCSBP before the end of the 90-day period. A member who is married or has a dependent child, and who receives notice of eligibility for retired pay, after January 1, 2001, is automatically an immediate participant in RCSBP unless the member elects (with spousal concurrence, if required) not to participate or to defer the decision or delay coverage before the end of the 90-day period. See subparagraph 5.2.7.

4.2 Annuity Options

A member electing to participate must designate an immediate election, a deferred election, or indicate a decision to delay the election until reaching retirement age. These are described as Options A, B, or C.

4.2.1. Option A. The member defers a survivor annuity election or declines coverage until retirement age. There is no coverage for the years between becoming eligible for retirement and

reaching retirement entitlement age. If a member dies before reaching retirement age, no survivor annuity is payable. At retirement age, regardless if that age is before age 60, the member may elect to participate in SBP as any other member becoming entitled to retired pay. If a married member chooses Option A, spousal concurrence is required. See subparagraph 5.2.7.

4.2.2. Option B. The member elects to provide a deferred survivor annuity that begins on the date that the member would have attained the age of 60, or on the day after the member's death, whichever is later. If a married member chooses Option B, spousal concurrence is required. See subparagraph 5.2.7.

4.2.3. Option C. The member elects to provide an immediate survivor annuity beginning on the day after the member's death, whether before or after reaching retirement age.

4.3 Base Amount

A member who receives a 20-year notification of eligibility and who elects to participate in RCSBP must elect to cover:

4.3.1. One hundred percent of retired pay or a given dollar amount which is greater than or equal to $300, but less than 100 percent of retired pay;

4.3.2. One hundred percent of retired pay, if member's full retired pay computed as of the effective date of election, is less than $300.00;

4.3.3. One hundred percent of retired pay, if the member elects to cover a dollar amount greater than 100 percent of his or her retired pay as of the effective date of election; or

4.3.4. An elected dollar amount of retired pay, but which is not less than $300.00. However, any dollar election is converted to a percentage of retired pay as of the effective date of the election. A member who elects less than full base amount should be advised that his or her election will be converted to a percentage of retired pay as would be payable if he or she were of retirement age on the date the RCSBP election becomes effective. The base amount is that same percentage of retired pay regardless of the changes in the retired pay that may occur because of pay rate increases, additional points accumulated, promotion or longevity step increases. Note: Spousal concurrence is required when member elects spousal coverage for less than the maximum coverage. See subparagraph 5.2.7.1.

5.0 ELECTION DATA

5.1 RCSBP Election Certificate

The ***DoD (DD) Form 2656-5***, Reserve Component Survivor Benefit Plan (RCSBP) Election Certificate, is required for making an RCSBP election and is also required if the member defers the election under Option A in subparagraph 4.2.1.

5.2 Contents of DD 2656-5

The contents of the election document should show:

5.2.1. The member's name, Social Security number, date of birth, and date of retirement (if known);

5.2.2. If participating, the member has elected coverage for:

5.2.2.1. Spouse and/or children,

5.2.2.2. Former spouse or former spouse and children, or

5.2.2.3. Natural person with an insurable interest (at maximum level of coverage only);

5.2.3. If participating, the member has elected coverage amount or percentage;

5.2.4. If participating, the member's election must contain an election for Option B or Option C. See subparagraphs 4.2.2 or 4.2.3;

5.2.5. If participating, the member's designated beneficiary. Show the name, birth date, and Social Security number for each beneficiary named. If the coverage includes spouse, the member must furnish the date of marriage. Show the address and relationship when the beneficiary is a natural person with an insurable interest. For a natural person with an insurable interest, the member must provide a signed statement to show proof of financial benefit if the person designated is more distantly related than a cousin;

5.2.6. The member must sign and date the election. The member's signature must be witnessed. The witness may not be the member's spouse or beneficiary. The witness should not be a minor, but minority of a witness will not necessarily invalidate the member's election. In the event a member is unable to complete his signature and instead makes his mark (such as an "X"), two disinterested persons must witness the election form. An addendum to the DD 2656-5 will suffice in such situations. NOTE: An election made on behalf of the member through a power of attorney is not valid. Such an election is not binding and is without force or effect of law; and

5.2.7. Spousal concurrence in certain elections is a requirement. The spouse signature must appear on the DD 2656-5, the spouse's signature must be notarized, and the spouse must sign after the member has signed the form. If the spouse and member are not co-located, exception to the use of the DD 2656-5 to record the concurrence may be approved in accordance with DoDI 1332.42, Subsection 4.2.a.(3).

5.2.7.1. A retirement eligible Reserve member who elects RCSBP spouse coverage for less than maximum coverage when the member becomes eligible to participate must obtain the concurrence of the spouse in writing. With respect to members who receive notification of retired pay eligibility pursuant to ***10 U.S.C., Chapter 1223*** after January 1, 2001, a retirement eligible

Reserve member must obtain the concurrence of the spouse in writing. Spousal concurrence is required if the member declines coverage (Option A), elects deferred coverage (Option B), elects coverage for spouse at less than the maximum level, or elects coverage for a dependent child but not for the spouse. Without spousal concurrence, an election for less than maximum coverage is invalid.

5.2.7.2. If a member marries during the 90-day period (see paragraph 4.1), spousal concurrence is not required, but the spouse must be notified of the member's election. Note: The failure to retain evidence that the spouse was notified of the member's election will not invalidate the member's election.

5.2.7.3. If former spouse coverage is elected or deemed, the spousal concurrence is not required; however, a reasonable attempt will be made to notify the spouse of the former spouse coverage. Note: The failure to retain evidence that the spouse was notified of an election for coverage for a former spouse will not invalidate the former spouse election.

5.2.7.3.1. To elect former spouse coverage, the member must complete a ***DD Form 2656-1***, Survivor Benefit Plan (SBP) Election Statement for Former Spouse Coverage. If the member elects former spouse coverage, the election must include information setting forth whether the election was made pursuant to the requirements of a court order, or a voluntary written agreement previously entered into by the member as part of, or incidental to, a proceeding of divorce, dissolution, or annulment, and, if so, whether such agreement was incorporated, ratified, or approved by a court order.

5.2.7.3.2. In order for a former spouse to deem an election, the former spouse must, within one year of the date of the court order involved, complete and send a ***DD Form 2656-10***, Survivor Benefit Plan (SBP)/Reserve Component (RC) SBP Request for Deemed Election, and a copy of the court order, regular on its face, which requires the former spouse SBP election, or which incorporates, ratifies, or approves the voluntary, written agreement of such a person or a statement from the clerk of the court (or other appropriate official) that such agreement has been filed with the court in accordance with applicable State law. A deemed election will fail unless both the DD 2656-10 and a copy of the court order or written agreement are received in accordance with the applicable instructions in the form.

6.0 CHANGES IN ELECTION AND COVERAGE

In some circumstances, a member may make a change in RCSBP election or coverage after first becoming eligible for RCSBP (at the time of receiving notice of eligibility (NOE) of meeting service requirements for a non-regular retirement) and making an initial election. See DoDI 1332.42, Section 4.4.

6.1 Later-Acquired Spouse and/or Child

6.1.1. Remarriage of Participating Member. If a member participating in RCSBP with spouse or spouse and child coverage loses the spouse beneficiary through death or divorce, the member may, within one year of remarriage, increase the level of coverage up to and including full-retired pay if a reduced base amount was previously elected, or elect not to resume spouse coverage (child coverage, if previously elected, remains irrevocable). If a member takes no action, spouse coverage will automatically resume upon the one-year anniversary of the remarriage at the coverage amount originally elected. If the member elects not to resume spouse coverage or provides spouse coverage at a less-than-maximum level, the spouse must be notified. Note: The failure to retain evidence that the spouse was notified of the member's election will not invalidate the member's election.

6.1.2. Marriage Where No Spouse at NOE. A member who had no eligible spouse at NOE (and was not required to elect former spouse coverage) and later marries may elect RCSBP spouse coverage as follows.

6.1.2.1. Member Participating. If the member elected to participate in RCSBP at NOE (i.e., elected Option B or C for a child or insurable interest), the member may elect to add spouse coverage to child coverage or terminate an insurable interest beneficiary coverage in favor of spouse coverage. The election must be made on a DD Form 2656-6 and received within one year of the marriage. The level of coverage cannot be changed. The member is not required to have the concurrence of the new spouse to elect not to add spouse coverage. Failure to make the election within one year terminates eligibility for that spouse and any subsequent spouse. See section 6.3 regarding spouse elections where a former spouse election was made and the former spouse subsequently dies.

6.1.2.2. Member Not Participating. If the member deferred the SBP election and declined RCSBP coverage for a child at NOE (i.e., elected Option A), the member cannot elect RCSBP coverage for the spouse upon marriage. The one-year election requirement in subparagraph 6.1.2.1 does not apply. The member cannot elect to cover the spouse until making an election for SBP coverage upon reaching the age of eligibility to receive retired pay. Once reaching eligibility age, the member may not without the concurrence of the spouse elect- (i) not to participate in the Plan; (ii) to provide an annuity for the spouse at less than the maximum level; or (iii) to provide an annuity for the dependent child but not for the spouse.

6.1.2.3. Member Not Participating Because There Was Neither a Spouse Nor a Dependent Child at NOE. If the member had neither a spouse nor a dependent child at NOE and made no election to participate in RCSBP at NOE, the member may elect to participate with spouse coverage. The election must be made on a DD Form 2656-6 and received within one year of the marriage. Failure to make the election within one year terminates eligibility for that spouse and any subsequent spouse. The decision to cover or not cover the new spouse is the member's unilateral decision; the new spouse is not required to concur.

6.1.3. Dependent Child After NOE. A member who had no eligible dependent child at NOE, but subsequently has a dependent child, may elect RCSBP child coverage as follows.

6.1.3.1. Member Participating. A member already participating in RCSBP (i.e., election Option B or C at NOE for a spouse) may elect to add child coverage using a DD Form 2656-6. The election must be received within one year of acquiring the dependent child. The level of coverage cannot be changed. Failure to make the election within one year terminates eligibility for that child and any subsequent child.

6.1.3.2. Member Not Participating. If the member deferred the SBP election and declined RCSBP coverage for a spouse at NOE (i.e., elected Option A), the member cannot elect RCSBP coverage for the newly acquired child and must wait to make an election for SBP coverage upon reaching the age of eligibility to receive retired pay. The one-year election requirement in subparagraph 6.1.3.1 does not apply.

6.1.3.3. Member Not Participating Because There Was Neither a Spouse Nor a Dependent Child at NOE. If the member had neither a spouse nor a dependent child at NOE and made no election to participate in RCSBP at NOE, the member may elect to participate with child coverage. The election must be made on a DD Form 2656-6 and received within one year of acquiring the child. Failure to make the election within one year terminates eligibility for that child and any subsequent child.

6.1.3.4. Member Who Had a Dependent Child at NOE. A member who had a dependent child at NOE and who did not elect child coverage at that time cannot later elect child coverage for subsequent dependent children. Except as provided for in subparagraph 6.1.3.2, a member with no dependent child at NOE who subsequently acquires a dependent child and does not elect child coverage within one year may not later elect child coverage for subsequent dependent children unless otherwise provided by law.

6.2 Former Spouse or Former Spouse and Child Elections

6.2.1. General Rules.

6.2.1.1. A former spouse election prevents an annuity to the member's current spouse and child (other than a child beneficiary under a former spouse and child election).

6.2.1.2. If the member is married at the time of the former spouse election, a reasonable attempt must be made to notify the spouse of the member's election for the former spouse. Note: The failure to retain evidence that the spouse was notified of an election for coverage for a former spouse will not invalidate the former spouse election.

6.2.2. Former Spouse Elections When the Member Becomes Eligible to Participate.

6.2.2.1. A member who has a former spouse and/or dependent child when becoming eligible to participate may elect former spouse or former spouse and child coverage provided the child is the result of the member-former spouse marriage.

6.2.2.2. If there is no court order or voluntary written agreement requiring the member to elect former spouse coverage in place at the time the member makes the election, the former spouse's ability to retain former spouse coverage could be affected at a later date.

6.2.3. Former Spouse Elections After the Member Becomes Eligible to Participate but Before the Member Meets Age Requirements.

A member who elected spouse or spouse and child coverage when becoming eligible to participate in the RCSBP, may within one year of the date of the decree of divorce, dissolution, or annulment of that marriage, change that election to provide the RCSBP annuity to the former spouse or the former spouse and child.

6.2.4. Deemed Former Spouse Elections.

Upon written request of a former spouse or their legal representative, the Secretary concerned may deem an election for former spouse coverage when a member is ordered by a court or voluntarily enters into a written agreement, incidental to a proceeding of divorce, dissolution, or annulment, to elect former spouse SBP coverage, and the agreement has been incorporated in, or ratified or approved by the court, and the member fails or refuses to make the election. The provisions for deemed former spouse elections for SBP coverage contained in Chapter 43, paragraph 5.2 apply to RCSBP deemed former spouse elections.

6.3 Electing Spouse Coverage Upon Death of Covered Former Spouse

In accordance with Section 1448(b) of Title 10, U.S.C., as amended by Section 641 of Public Law (PL) 114-92, a retiree who is participating in SBP or RC-SBP with former spouse coverage, may, upon the death of that former spouse, elect to cover his or her spouse under certain conditions described in subparagraph 6.4.1 through 6.4.3.

6.3.1. Remarried Before Death of Former Spouse on or After November 25, 2015.

6.3.1.1. If the covered participant was married to a new spouse before the death of his or her former spouse, the participant may elect to cover his or her spouse if the former spouse died on or after November 25, 2015.

6.3.1.2. The election to cover the new spouse must be made by the participant in writing to the Secretary concerned within 1 year of the death of the former spouse. Coverage is not automatic.

6.3.1.3. The covered participant may not change level of coverage already in place.

6.3.1.4. Coverage for the new spouse is effective as of the first day of the first month following the month of the death of the former spouse beneficiary, or the first anniversary of the marriage, whichever is later.

6.3.2. Remarried After Death of Former Spouse on or After November 25, 2015.

6.3.2.1. If the covered participant marries a new spouse after the death of his or her former spouse, the participant may elect to cover his or her spouse if the former spouse died on or after November 25, 2015.

6.3.2.2. The election to cover the new spouse must be made by the participant in writing to the Secretary concerned within 1 year of remarriage. Coverage is not automatic.

6.3.2.3. The covered participant may not change the level of coverage.

6.3.2.4. Coverage for the new spouse is effective as of the first day of the first month following the month in which the election is received by the Secretary concerned, or the first anniversary of the marriage, whichever is later.

6.3.3. Special Provisions When the Former Spouse Died Before November 25, 2015.

6.3.3.1. In the case of a covered participant who was already remarried before November 25, 2015, and whose former spouse beneficiary died before November 25, 2015, there is a 1-year window to designate the new spouse as beneficiary, in accordance with PL 114-92. The enrollment window for such participants ended on November 24, 2016. While the level of coverage was required to remain the same, the effective date of coverage depended on how long the covered participants was married to the new spouse in relation to the death of the former spouse:

6.3.3.1.1. If the covered participant was married to the new spouse for at least 1 year at the time of the death of the former spouse, the effective date of spouse coverage is the first day of the first month after the death of the former spouse.

6.3.3.1.2. If the covered participant married the new spouse within the year immediately before the death of the former spouse, or after the death of the former spouse, the effective date of spouse coverage is the first day of the first month following the first anniversary of the remarriage.

6.3.3.2. If the former spouse died before November 25, 2015, but the covered participant was not yet married to the new spouse as of November 25, 2015, that covered participant has 1 year from the date of marriage to elect coverage for the new spouse. Coverage is not automatic.

*6.4 Regular Recurring Open Season for Enrollment and Discontinuation

From time to time, Congress approves limited “open enrollment periods” during which time persons who are not participating are allowed to enroll in the plan and persons who are participating are allowed to disenroll. There are no regular recurring open season periods. Open seasons must be specifically prescribed by law and each open season is unique to the law

establishing the open season. In the absence of such a legislatively prescribed period, members may only enroll in the plan as specified in this chapter.

The most recent RCSBP open season, which was authorized by ***Section 643 of PL 117-263***, began December 23, 2022, and ended at midnight (EST) on January 1, 2024, and allowed eligible members to participate or discontinue participation. For this open season, an "eligible member" was a retired member or former member who, on December 22, 2022, was entitled to retired pay, or would be entitled to retired pay but for the member or former member being under the eligibility age to receive retired pay.

*6.5 NDAA FY 2023 SBP Open Season for Enrollment

The 2023 SBP Open Season allowed for eligible members who, on December 22, 2022, were not currently participating in SBP or RCSBP to enroll. For a member who enrolled during the SBP Open Season, the law required that the member responsible to pay retroactive SBP premium costs that would have been paid if the member had enrolled at retirement (or enrolled at another earlier date, depending on the member's family circumstances). See the Implementing and Procedural Guidance for Section 643 of PL 117-263, December 23, 2022, Survivor Benefit Plan Open Season, dated March 9, 2023.

Note: The terms "participating" includes those retired members who previously elected to participate in SBP and have not terminated participation in any way allowed under 10 U.S.C. Ch 73), even if they no longer have an eligible beneficiary. This can occur when a beneficiary who was previously elected undergoes a life change. For example, a (previously elected) child beneficiary may reach adulthood, a (previously elected) spouse beneficiary may obtain a divorce, or a (previously elected) beneficiary may die. Unless otherwise terminated under one of the provisions allowed by law (e.g., electing to discontinue participation under the provisions of 10 U.S.C. § 1448a), an SBP participant without an eligible beneficiary is placed in a "suspended" status. As participants (even in a suspended status), such members are not eligible to make an election to enroll during the 2023 open season. Reference: Deputy Assistant Secretary of Defense for Military Personnel Policy memorandum "Clarification of Policy — 2023 Survivor Benefit Plan Open Season" of November 6, 2023.

*6.6 NDAA FY 2023 SBP Open Season for Discontinuation

The 2023 SBP Open Season also allowed eligible members who are currently enrolled in either SBP or RCSBP to permanently discontinue their SBP coverage. The law required the covered beneficiaries to concur on the SBP and RCSBP Open Season Election to Discontinue Participation form in writing with the election to discontinue. Previously paid premiums will not be refunded. If a reserve member discontinued their RCSBP coverage before receiving retired pay, then upon receiving retired pay, they are still responsible for paying premiums for the period in which they had coverage. The cost would be the rate charged based on the member and their beneficiary's age, pro-rated to the amount of time they had RCSBP coverage. See the Implementing and Procedural Guidance for Section 643 of PL 117-263, December 23, 2022, Survivor Benefit Plan Open Season, dated March 9, 2023.

7.0 IRREVOCABLE ELECTIONS AND DISCONTINUED PARTICIPATION

7.1 90-Day Period

Elections filed during the 90-day period referred to in paragraph 4.1 are generally irrevocable unless revoked before the expiration of the 90-day period.

7.2 Exceptions

Exceptions to the general rule on irrevocability occur under the following circumstances:

7.2.1. The member discontinues participation as a totally disabled member as described in Chapter 43, paragraph 7.4.

7.2.2. A mentally incapacitated member is later determined to be mentally competent and revokes or changes the RCSBP election within 180 days after such determination of judgment. See Chapter 43, subparagraph 3.1.3;

7.2.3. The member elected less than maximum coverage without spousal concurrence and the member fails to establish to the Secretary of the Military Department concerned (or designee) that spousal concurrence was not required, either because the spouse's whereabouts cannot be determined or other exceptional circumstances prevent obtaining the spouse's concurrence. In this instance, the member's election is invalid. See subparagraph 5.2.7.1;

7.2.4. The Secretary concerned revokes an election when necessary to correct an administrative error. Revocation or correction based on administrative error is a Secretarial prerogative and, except when procured by fraud, is final and conclusive on all officers of the United States;

7.2.5. A member may change the beneficiary election to provide former spouse coverage or to remove former spouse coverage as described in section 6.0 and Chapter 43, section 6.0; or

7.2.6. The member voluntarily terminates RCSBP coverage for a natural person with an insurable interest who is not a former spouse.

7.3 Changed Retirement Eligibility

If a member elects RCSBP coverage and subsequently becomes eligible for retirement under another law, thereby losing eligibility, the RCSBP election remains effective until the member actually retires under the law. A member may at that time make a new election as any other retiring member.

8.0 PREMIUMS

The Government does not subsidize the cost of providing RCSBP coverage under the immediate or deferred annuity option, but the members and beneficiaries who potentially will benefit

from the coverage share the cost. The cost to the retiree, known as the Reserve Component Premium, is in the form of an additional deduction from his or her retired pay beyond the Standard Premium. The RCSBP, unlike SBP, requires a reduction in the survivor annuity. That reduction, known as the Survivor's Annuity Premium Deduction, begins when the survivor begins to receive an annuity. The Reserve Component Premium and the Survivor's Annuity Premium Deduction increase at the same time and by the same percentage that retired pay increases by cost-of-living adjustments.

9.0 RCSBP COST RATE TABLES

The Actuary provides RCSBP rate tables to reflect military-specific death rates, to include remarriage and divorce rates and to incorporate dynamic actuarial assumptions. The tables are built on a "years younger or older than member" concept. The ages at the nearest birthday to date of election receipt are used. When ages expressed in years are the same, the table is determined by comparing months and days. Note: The tables for child only rates use the ages of the member and child; not years younger or older. If a member elects spouse and child or former spouse and child, the premium is based only on the member and spouse ages in the RCSBP cost tables; i.e., there is no cost for the child coverage.

10.0 CALCULATION OF THE RESERVE COMPONENT PREMIUM AND THE SURVIVOR'S ANNUITY PREMIUM DEDUCTION

10.1 Premium Description

The SBP Premium consists of a Standard Premium, Reserve Component Premium, and a Survivor's Annuity Premium Deduction. The Standard Premium is the reduction in retired pay made to provide coverage for the period after a member becomes entitled to retired pay. The Reserve Component Premium is the reduction in retired pay made for the RCSBP coverage that was already provided while the member awaited the requisite age of entitlement to retired pay. The Survivor's Annuity Premium Deduction is a premium applied to the survivor's annuity for the RCSBP coverage provided while the member awaited the requisite age of entitlement to retired pay. The premiums described in paragraph 10.2 pertain only to the Reserve Component Premium and the Survivor's Annuity Premium Deduction. The method to compute the Standard Premium may be found in Chapter 45. The amount of the Reserve Component Premium depends on the type of beneficiary option elected, the annuity type elected, and the ages of the member and the beneficiary.

10.2 Calculating the Premiums Based on RCSBP Coverage Amount

10.2.1. The member must elect a given dollar amount or full retired pay as the base amount. Convert any dollar election to a percentage of gross retired pay as of the effective date of an election to guarantee full indexing in proportion to member's retired pay.

10.2.2. Address questions to the Actuary about the methods and assumptions used to determine the RCSBP rate in calculating the Reserve Component Premium. Go to ***http://actuary.defense.gov/*** and select "Contact Us" and then "Survivor Benefit Plan."

10.2.3. The following table serves as an example for calculating the premium based on the RCSBP coverage amount:

Information at RCSBP election:	Calculation:
Member's age =	52
Spouse's age =	45
Election type	Option C – Immediate Annuity, Spouse Coverage
Member's elected monthly base amount =	$300.00
Member's estimated current monthly retired pay =	$1,000.00
Ratio =	300/1000 = .30 (30 percent)
Eight years later:	
Member's monthly retired pay at age 60 =	$2,000.00
Member's base amount at age 60 =	.30 (30 percent) x $2,000.00 = $600.00
RCSBP rate from RCSBP table =	.0161
Reserve Component Premium at age 60 =	$9.66 ($600.00 x .0161)
Survivor's Premium rate (determined by Actuary)	.0001
Survivor's Annuity	$330.00 (.55 X $600.00)
Survivor's Annuity Premium	$0.03 (.0001 X $330.00)

10.2.3.1. If the dollar amount elected by the member as the base amount exceeds 100 percent of the member's retired pay on the effective date of the election, the base amount is 100 percent of the monthly retired pay. If the given dollar amount is less than 100 percent of gross retired pay, but greater than $300.00 when computed against the retired pay, use the ratio against the gross retired pay entitlement at age 60, assuming the member has met age and service requirements.

10.2.3.2. To calculate the Reserve Component Premium, multiply the member's base amount at age 60 by the ratio of the elected base/retired pay of .30 (30 percent) and then by the applicable rate from the Actuary RCSBP table for the election and coverage type, here of 1.61 percent. See also subparagraph 10.2.2. The example in subparagraph 10.2.3 provides the member's base amount at age 60 as $600.00 ($2,000.00 x .30). Therefore, the Reserve Component Premium would be computed as follows: $600.00 x .0161 = $9.66.

10.2.3.3. To calculate the Survivor's Annuity Premium Deduction, first multiply the member's base amount by .55 to compute the Survivor's Annuity, next multiply the Survivor's Annuity amount by the rate of .0001. The example in subparagraph 10.2.3 provides the calculation for the survivor's annuity and the survivor's annuity premium. Therefore, the survivor's annuity would be $600 x .55 = $330 and the Survivor's Annuity Premium would be $330.00 x .0001 = $0.03.

11.0 INITIAL PREMIUM AND EFFECTIVE DATE OF THE RESERVE COMPONENT PREMIUM

11.1 Beginning Date

If a member has eligible beneficiaries, the Reserve Component Premium begins on the first day of the month after the member meets the age and service requirements necessary to be entitled to non-regular retired pay even if the member meets those age and service requirements before age 60. The payment of premiums will be required if the member chose Option B or Option C from paragraph 4.2. If the member meets the age and service requirements on the first day of the month, the premium is effective that month. If the member specifies a retirement date which is after the date the member meets age and service requirements, or if the member delays application for retirement, the premium is retroactive to the date that the member meets age and service requirements.

11.2 Member's Death

If a member who elected RCSBP (Option B or Option C) dies before reaching the age required to receive retired pay, the Survivor's Annuity Premium Deduction for the pre-eligibility age coverage begins with the immediate or deferred annuity as an actuarial reduction of the survivor's annuity.

11.3 Coverage Change

In some instances, a member may change the type of coverage before retired pay and premiums begin. See section 6.0 for allowable election changes. The initial premium for election changes is effective on the first day of the month after the member meets age and service requirements (or, if the member meets age and service requirements on the first day of the month, the premium is effective that month).

12.0 RESERVE COMPONENT PREMIUM

12.1 Changes in Reserve Component SBP Coverage

A change in the type of Reserve Component SBP coverage elected can impact the Reserve Component Premium that will be deducted from a member's retired pay. There are an extensive number of possible changes available under the law depending on changes to a member's individual family circumstances. The most prevalent election options and changes, and the impact of those elections and changes are reflected in Tables 54-1 and 54-2. Note: The premium deduction rules reflected on those tables pertain only to the Reserve Component Premiums.

12.2 RCSBP Premium Deductions

The Reserve Component Premiums are the deductions from the member's retired pay that are made for RCSBP coverage provided while the member waits to attain the requisite age necessary to become entitled to retired pay. Tables 54-1 and 54-2 do not reflect the Standard

Premium which is the reduction in the member's retired pay made to provide coverage for the period after a member becomes entitled to retired pay. Chapter 45 provides the method to compute the Standard Premium. The tables also do not reflect the Survivor's Annuity Premium Deduction which is a further premium applied to the survivor's annuity for the RCSBP coverage provided while the member awaited the requisite age of entitlement to retired pay.

12.3 RCSBP Premium Deductions for Qualifying Reservist Retired Pay Before Age 60

Pursuant to ***10 U.S.C. § 12731(f)***, after January 28, 2008, the eligibility age for non-regular retiree's to receive retired pay may be reduced below 60 years of age. When this happens, a reduction factor at Figure 54-1 is applied to the RCSBP premium. See also Chapter 1, subparagraph 3.8.6.

13.0 DEATH OF MEMBER ON INACTIVE DUTY TRAINING (IDT)

Effective December 23, 2016, section 642 of the NDAA for FY 2017 amended 10 U.S.C. §§ 1448, 1450, and 1451. The amendments changed the calculation of SBP annuities paid to the survivors of Reserve Component members who die in the "line of duty" while performing IDT to align that benefit with the annuity paid to the survivors of Reserve Component members who die on active duty. Additionally, the amendments allow the payment of an RCSBP annuity in certain circumstances to dependent children of covered Reserve Component members who die in the line of duty on IDT or after completing the years of service required for a non-regular retirement and clarifies how retired pay is calculated for those Reserve Component members who die after completing the years of service but prior to notification or prior to electing RCSBP coverage. See also Table 54-3 and Table 54-4.

13.1 Entitlement

A Reserve Component member who dies from injuries or illness incurred or aggravated while performing IDT in which the death is determined to have occurred in the line of duty is entitled to automatic coverage under the SBP program whether or not the member is retirement eligible.

13.1.1. Death in the Line of Duty

13.1.1.1. The Secretary concerned will make a written determination as to whether the member's death occurred while in the line of duty while performing IDT. A member who is determined to have died in the line of duty is one who is in an authorized duty status and whose death is determined not to be the result of his or her own intentional misconduct or willful negligence. A member is considered to be in a duty status as set forth in ***37 U.S.C. § 204(g)(1)***. The finding must describe the circumstances under which the member died.

13.1.1.2. In accordance with PL 114-328, the survivor of a Reserve Component member who died in the line of duty while performing IDT will receive an RCSBP annuity calculated as if the member was a fully-disabled retiree on the date of his or her death. Survivors of Reserve Component members who died in the line of duty on IDT prior to December 23, 2016, are entitled to prospective recalculation of future benefits beginning December 23, 2016, or the date the survivor annuity commenced, whichever is later. Note: These calculations are not retroactive for any payments made prior to December 23, 2016.

13.1.2. Not in the Line of Duty Death Prior to Retirement Eligibility. The death of a Reserve Component member who is not retirement eligible and whose death is determined to have occurred "not in the line of duty" does not qualify under this section.

13.1.3. Not in the Line of Duty Death After Retirement Eligibility But Before Notification. The survivor of a Reserve Component member whose death is determined to have occurred "not in the line of duty," and who had completed 20 qualifying years of satisfactory service but had not yet been notified of such completion as required by 10 U.S.C. §12731(d), is eligible for an RCSBP annuity. The annuity is computed based upon that member's or former member's years of service in accordance with 10 U.S.C. § 12733.

13.1.4. Not in the Line of Duty Death Within 90 Days of Notification. The survivor of a Reserve Component member whose death is determined to have occurred "not in the line of duty" after completing 20 qualifying years of satisfactory service and within 90 days of notification of such completion as required by 10 U.S.C. § 12731(d) but before making an RCSBP election is eligible for an SBP annuity. The annuity is computed based upon that former member's years of service in accordance with 10 U.S.C. § 12733.

13.2 Qualified Annuitants

In order of precedence, qualified annuitants are former spouse by court order, current spouse, and children.

13.2.1. Former Spouse by Court Order. The annuity is payable to the former spouse if the member was required under a court order or spousal agreement to provide an annuity to the former spouse upon becoming eligible to participate in the RCSBP or if the member has made an election to provide an annuity to the former spouse. No deemed election under subparagraph 6.2.4 is necessary.

13.2.2. Surviving Spouse. The annuity is payable to the current surviving spouse unless the annuity is payable to the former spouse.

13.2.3. Dependent Children

13.2.3.1. In the case the surviving spouse becomes ineligible to receive an annuity, the Secretary concerned may pay an annuity to the dependent children of that person under 10 U.S.C. §§ 1448(f)(2) and 1450(a)(2).

13.2.3.1.1. For deaths occurring prior to December 23, 2016, dependent children were not considered eligible annuitants if a surviving spouse lost entitlement to an annuity for a reason other than death. Note: Pursuant to NDAA FY 2017 and PL 114-328, December 23, 2016, dependent children became eligible annuitants if the surviving spouse lost entitlement to an annuity for reasons other than death.

13.2.3.1.2. For deaths occurring on or after December 23, 2016, if the annuity was suspended because the spouse became ineligible due to remarriage, that annuity may resume and be paid to a dependent child or children, if any. These payments may resume no sooner than December 23, 2016, or the date the annuity suspended, whichever is later.

13.2.3.2. If, in consultation with an eligible surviving spouse who has an eligible dependent child or children, the Secretary concerned determines it is more appropriate for the dependent child or children to receive the RCSBP annuity rather than the surviving spouse, the RCSBP annuity may be paid directly to a dependent child or children in lieu of payment to the eligible spouse.

13.3 Line of Duty Determination

The Secretary concerned will make a written determination as to whether the member's death occurred while in the line of duty while performing IDT. For the purpose of determining eligibility for SBP benefits, a service member's death will be generally considered being in the line of duty unless:

13.3.1. The death occurred while the member was not serving on IDT;

13.3.2. The death was the result of the member's own intentional misconduct or willful negligence; or

13.3.3. The death occurred from injuries or illness incurred or aggravated during a period of unauthorized absence.

14.0 ANNUITY AMOUNT

14.1 General

14.1.1. RCSBP Annuity. Compute the amount of RCSBP annuity payable to a surviving spouse, former spouse, or dependent child beneficiary in the same manner as the SBP (see Chapter 46) except that the annuity amount is 55 percent of the difference between the base amount and the cost of the Survivor's Annuity Premium Deduction. Compute the monthly annuity for a natural person with an insurable interest or former spouse (insurable interest category) as 55 percent of the member's retired pay as reduced by both the Insurable Interest premium (which continues for the lifetime of the annuitant) and the Survivor's Annuity Premium Deduction. The Actuary determines amount of the Survivor's Annuity Premium Deduction. See section 10.0. Round monthly RCSBP annuities, if not a multiple of $1.00, to the next lower multiple of $1.00.

14.1.1.1. If a member dies before attaining the eligibility age applicable to that member to begin receiving retired pay and elected the immediate annuity option, Option C, the initial annuity amount is payable beginning immediately following death and is computed on the basis of what the member's retired pay would have been on the date of the member's death using the basic pay rates on that date. Note: If a member retires before age 60 pursuant to 10 U.S.C. § 12731, and subsequently dies before what would have been his 60th birthday, the initial annuity amount is payable beginning immediately following death.

14.1.1.2. If a member dies before attaining the eligibility age applicable to that member to begin receiving retired pay and elected the deferred annuity option, Option B, the initial annuity amount is payable beginning the first day of the month following the date the member would have attained the age of 60. Compute the initial annuity amount based on the retired pay the member would have received at age of eligibility.

14.1.2. RCSBP Annuity - Death in Line of Duty. An annuity paid to the survivor of a member who died or who dies in the line of duty while performing IDT will be 55 percent of the retired pay the member was or would have been entitled to on the day the member died, computed as if the member was retired with a total (100 percent) disability under 10 U.S.C. § 1201.

14.1.3. Age 62 Offset. Prior to March 31, 2008, a spouse or former spouse incurred a reduction of RCSBP at age 62 because of entitlement to Social Security benefits. The age 62 offset was eliminated effective April 1, 2008.

14.2 Eligible Annuitants and Amounts

14.2.1. Spouse or Former Spouse. See Chapter 46, Table 46-1. The RCSBP annuity may be less than 55 percent, depending on the Survivor's Annuity Premium Deduction, which is deducted in determining the annuity amount.

14.2.2. Children Only. If there is more than one eligible child, pay the annuity in equal shares. The annuity for children is not subject to Dependency and Indemnity Compensation (DIC) offset.

14.2.3. Spouse and Child or Former Spouse and Child. Pay annuity to the spouse or former spouse, as long as eligibility exists. If the surviving spouse or former spouse loses eligibility due to death or remarriage before age 55, or otherwise become ineligible, pay the annuity to the child annuitants. A former spouse and child election includes only the children of the member's marriage to the former spouse. See also Chapter 42 for definition of a surviving spouse.

14.2.4. Natural Person With an Insurable Interest. The annuity is payable only to the natural person with an insurable interest as designated by or on behalf of the member. The annuity is not transferable to another person.

14.3 Payment of Annuity

The provisions in Chapter 46 for making annuity payments to representative payees also apply to the RCSBP program.

15.0 OFFSETS TO THE ANNUITY

See Chapter 46 for DIC offsets paid to a surviving spouse by the Department of Veteran Affairs. Public Law (PL) 116-92, Section 622 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020, signed into law on December 20, 2019, amended 10 U.S.C. § 1450(c). This legislation created a multi-year phase out of the SBP-Dependency Indemnity Compensation (DIC) offset, beginning in FY 2021. Note: The information in Chapter 46, excluding the minimum-income annuitant material, applies to the RCSBP annuitant.

16.0 TAXABILITY OF ANNUITY

The provisions of Chapter 46 regarding the taxability of annuities also apply to annuities under RCSBP.

Figure 54-1. RCSBP Reduction Factors

Age	Spouse	Child
59	.8516	.8739
58	.7216	.7635
57	.6080	.6657
56	.5097	.5803
55	.4259	.5052
54	.3554	.4402
53	.2967	.3835
52	.2477	.3340
51	.2066	.2904
50	.1722	.2516

Table 54-1. Reserve Component Premiums for Spouse, Former Spouse, and Child Only Coverage

The Premium deduction rules reflected on this table pertain only to the Reserve Component Premiums. The Reserve Component Premiums are the deductions from the member's retired pay that are made for RCSBP coverage provided while the member waited to attain the requisite age necessary to become entitled to retired pay. This table does not reflect the Standard Premium which is the reduction in the member's retired pay made to provide coverage for the period after a member becomes entitled to retired pay. The method to compute the Standard Premium may be found in Chapter 45. This table also does not reflect the Survivor's Annuity Premium Deduction which is a further premium applied to the survivor's annuity for the RCSBP coverage provided while the member awaited the requisite age of entitlement to retired pay. The method to compute the Survivor's Annuity Premium Deduction may be found in section 10.0.

RULE	If the member made the below listed RCSBP election (Options B or C) when first eligible to participate in the RCSBP	and at the time the member met the age and service requirements to become actually entitled to receive retired pay, the below listed condition also existed:	then the below listed Reserve Component Premium deductions will be made from the member's retired pay:
1	Spouse Coverage	the spouse upon whom the initial election was based is still an eligible spouse beneficiary	full spouse premium deductions will be made until the earlier of: (a) the first day of the month in which the spouse is no longer eligible due to death, divorce, or annulment; or (b) the first day of the month following the month in which the member has retired pay reduced for a total of 360 months.
2	Spouse Coverage	the spouse upon whom the initial election was based is no longer an eligible beneficiary due to death	no spouse premium deductions will be made for spouse coverage previously provided before the spouse died, subject to Note 1 where the member remarried.

Table 54-1. Reserve Component Premiums for Spouse, Former Spouse, and Child Only Coverage (Continued)

RULE	If the member made the below listed RCSBP election (Options B or C) when first eligible to participate in the RCSBP	and at the time the member met the age and service requirements to become actually entitled to receive retired pay, the below listed condition also existed:	then the below listed Reserve Component Premium deductions will be made from the member's retired pay:
3	Spouse Coverage	the spouse upon whom the initial election was based is no longer an eligible spouse beneficiary due to divorce or annulment	no spouse premium deductions will be made for the period that spouse RCSBP coverage was previously provided before the marriage ended; subject to Notes 1 where the member remarried and Note 2 where former spouse coverage is elected.
4	Former Spouse Coverage	the former spouse upon whom the initial election was based is still an eligible former spouse beneficiary	full former spouse premium deductions will be made until the earlier of : (a) the first day of the month in which the former spouse is no longer eligible due to death, (b) the first day of the month in which the former spouse coverage is suspended due to remarriage before age 55, or (c) the first day of the month following the month in which the member has retired pay reduced for a total of 360 months. Note 3.
5	Former Spouse Coverage	the former spouse upon whom the initial election was based is no longer an eligible beneficiary due to death	no former spouse premium deductions will be made for the former spouse coverage previously provided before the former spouse died. Note 4.

Table 54-1. Reserve Component Premiums for Spouse, Former Spouse, and Child Only Coverage (Continued)

RULE	If the member made the below listed RCSBP election (Options B or C) when first eligible to participate in the RCSBP	and at the time the member met the age and service requirements to become actually entitled to receive retired pay, the below listed condition also existed:	then the below listed Reserve Component Premium deductions will be made from the member's retired pay:
6	Former Spouse Coverage	coverage for the former spouse upon whom the initial election was based was suspended due to remarriage before age 55	former Spouse premium deductions for the period that former spouse coverage was previously provided are suspended. No premium deductions are made during the period of suspension. Note 5.
7	Spouse and Child or Former Spouse and Child	the spouse or former spouse upon whom the initial election was based is no longer an eligible beneficiary	no spouse or former spouse premium will be deducted. Child premiums will be deducted. Child premiums will be deducted based on the ages of the member and youngest child at the time the spouse coverage was suspended until the earlier of: (a) the first day of the month in which all children for whom RCSBP child only coverage was previously provided are no longer eligible due to death, or (b) the first day of the month following the month in which the member has retired pay reduced for a total of 360 months. Note 6.

Table 54-1. Reserve Component Premiums for Spouse, Former Spouse, and Child Only Coverage (Continued)

RULE	If the member made the below listed RCSBP election (Options B or C) when first eligible to participate in the RCSBP	and at the time the member met the age and service requirements to become actually entitled to receive retired pay, the below listed condition also existed:	then the below listed Reserve Component Premium deductions will be made from the member's retired pay:
8	Child Only Coverage	the member has any child who is still an eligible child beneficiary	child premium deductions will be made until the earlier of: (a) the first day of the month in which all of the children for whom RCSBP child only coverage was previously provided are no longer eligible due to death, or (b) the first day of the month following the month in which the member has retired pay reduced for a total of 360 months. Note 6.
9	Child Only Coverage	the member has no living children for whom RCSBP coverage was provided	no child premium deductions will be made for the RCSBP child only coverage previously provided before the child(ren) died.

Table 54-1. Reserve Component Premiums for Spouse, Former Spouse, and Child Only Coverage (Continued)

RULE	If the member made the below listed RCSBP election (Options B or C) when first eligible to participate in the RCSBP	and at the time the member met the age and service requirements to become actually entitled to receive retired pay, the below listed condition also existed:	then the below listed Reserve Component Premium deductions will be made from the member's retired pay:
10	Child Only Coverage	all of the member's children have lost eligibility due to age or marriage	child premium deductions will be made until the earlier of: (a) the first day of the month in which all of the children for whom RCSBP child only coverage was previously provided are no longer eligible due to death, or (b) the first day of the month following the month in which the member has retired pay reduced for a total of 360 months. Note 6.

NOTES:

(a) If the member subsequently remarried (i.e., acquired a subsequent spouse) before meeting the age and service requirements to become actually entitled to receive retired pay and spouse coverage was established for the subsequent spouse, full spouse premium deductions will be made in accordance with Rule (1) in Table 54-1. The premium rate is based on the ages of the member and the spouse for whom the initial election is made. If the base amount was increased, the premium rate is applied against the increased base amount.

(b) If, after the divorce from the spouse upon whom the initial election was based, former spouse coverage is elected by the member (or deemed to be elected by the former spouse) before the member meets the age and service requirements to become actually entitled to receive retired pay, full former spouse premium deductions will be made from the member's retired pay in accordance with Rule (4) in Table 54-1.

Table 54-1. Reserve Component Premiums for Spouse, Former Spouse, and Child Only Coverage (Continued)

(c)If premiums are suspended because the former spouse loses eligibility due to remarriage before age 55, in the event that marriage ends due to death or divorce, the former spouse regains eligibility and deductions will be restarted and made until the earlier of (a) the first day of the month in which the former spouse is no longer eligible due to death; (b) the first day of the month that the former spouse coverage is suspended again due to remarriage before age 55; or (c) the first day of the month following the month in which the member has retired pay reduced for a total of 360 months.

(d) If, after the former spouse died and before the time the member met the age and service requirements to become actually entitled to receive retired pay, the member had a spouse for whom and spouse coverage was established, full spouse premium deductions will be made from the member's retired pay for the spouse in accordance with Rule 1.

(e)If premiums are suspended because the former spouse lost eligibility due to remarriage before age 55, in the event that the former spouse's marriage ends due to death or divorce, the former spouse regains eligibility and deductions will be started and made until the earlier of (a) the first day of the month in which the former spouse is no longer eligible due to death; (b) the first day of the month that the former spouse coverage is suspended again due to remarriage before age 55; or (c) the first day of the month following the month in which the member has retired pay reduced for a total of 360 months.

(f) As long as one of the children for whom RCSBP coverage was provided is still living, premium deductions will be made until member has retired pay reduced for a total of 360 months. The child only deductions are made even after the child(ren)'s eligibility is lost due to age or marriage. See the "Special Rule for Certain RCSBP Participants" in 10 U.S.C. § 1452(b)(3). If a member acquires a new youngest child, the original Reserve Component Premium will remain.

Table 54-2. Reserve Component Premiums for Insurable Interest Coverage

The Premium deduction rules reflected on this table pertain only to the Reserve Component Premiums. The Reserve Component Premiums are the deductions from the member's retired pay that are made for RCSBP coverage provided while the member waits to attain the requisite age necessary to become entitled to retired pay. This table does not reflect the Standard Premium which is the reduction in the member's retired pay made to provide coverage for the period after a member becomes entitled to retired pay. The method to compute the Standard Premium may be found in Chapter 45. This table also does not reflect the Survivor's Annuity Premium Deduction which is a further premium applied to the survivor's annuity for the RCSBP coverage provided while the member awaited the requisite age of entitlement to retired pay. The method to compute the Survivor's Annuity Premium Deduction may be found in section 10.0.

RULE	If the member made the below listed RCSBP election (Options B or C) when first eligible to participate in the RCSBP	and at the time the member met the age and service requirements to become actually entitled to receive retired pay, the below listed condition also existed:	and after the member started to receive retired pay, the below listed condition occurs:	then the below listed Reserve Component Premium deductions will be made from the member's retired pay:
1	Insurable Interest Coverage	the insurable interest beneficiary upon whom the initial election was based is still an eligible insurable interest beneficiary	no changes are made to the insurable interest coverage	full insurable interest premium deductions will be made until the earlier of: (a) the first day of the month in which the insurable interest beneficiary dies, or (b) the first day of the month following the month in which the member has retired pay reduced for a total of 360 months.

Table 54-2. Reserve Component Premiums for Insurable Interest Coverage (Continued)

RULE	If the member made the below listed RCSBP election (Options B or C) when first eligible to participate in the RCSBP	and at the time the member met the age and service requirements to become actually entitled to receive retired pay, the below listed condition also existed:	and after the member started to receive retired pay, the below listed condition occurs:	then the below listed Reserve Component Premium deductions will be made from the member's retired pay:
2	Insurable Interest Coverage	the insurable interest beneficiary upon whom the initial election was based is still an eligible insurable interest beneficiary	the insurable interest beneficiary dies	full insurable interest premium deductions will be made until the earlier of: (a) the first day of the month in which the insurable interest beneficiary dies, or (b) the first day of the month following the month in which the member has retired pay reduced for a total of 360 months.

Table 54-2. Reserve Component Premiums for Insurable Interest Coverage (Continued)

RULE	If the member made the below listed RCSBP election (Options B or C) when first eligible to participate in the RCSBP	and at the time the member met the age and service requirements to become actually entitled to receive retired pay, the below listed condition also existed:	and after the member started to receive retired pay, the below listed condition occurs:	then the below listed Reserve Component Premium deductions will be made from the member's retired pay:
3	Insurable Interest Coverage	the insurable interest beneficiary upon whom the initial election was based is still an eligible insurable interest beneficiary	the member voluntarily elected to terminate/discontinue insurable interest coverage under 10 U.S.C. § 1448(b)(1)(B)	full insurable interest premium deductions will be made until the earlier of: (a) the first day of the month in which the insurable interest beneficiary dies, or (b) the first day of the month following the month in which the member has retired pay reduced for a total of 360 months.

Table 54-2. Reserve Component Premiums for Insurable Interest Coverage (Continued)

RULE	If the member made the below listed RCSBP election (Options B or C) when first eligible to participate in the RCSBP	and at the time the member met the age and service requirements to become actually entitled to receive retired pay, the below listed condition also existed:	and after the member started to receive retired pay, the below listed condition occurs:	then the below listed Reserve Component Premium deductions will be made from the member's retired pay:
4	Insurable Interest Coverage	the insurable interest beneficiary upon whom the initial election was based is still an eligible insurable interest beneficiary	the member voluntarily elects to change the insurable interest election to provide an annuity to a spouse or dependent child under 10 U.S.C. § 1450(f).	full insurable interest premium deductions will be made until the earlier of: (a) the first day of the month following the month in which the member voluntarily elects to change the insurable interest election to provide an annuity to a spouse or dependent child under 10 U.S.C. § 1450(f), or (b) the first day of the month following the month in which the member has retired pay reduced for a total of 360 months.

Table 54-2. Reserve Component Premiums for Insurable Interest Coverage (Continued)

RULE	If the member made the below listed RCSBP election (Options B or C) when first eligible to participate in the RCSBP	and at the time the member met the age and service requirements to become actually entitled to receive retired pay, the below listed condition also existed:	and after the member started to receive retired pay, the below listed condition occurs:	then the below listed Reserve Component Premium deductions will be made from the member's retired pay:
5	Insurable Interest Coverage	the insurable interest beneficiary upon whom the initial election was based is no longer an eligible beneficiary due to death	no subsequent changes are made to the insurable interest coverage	no insurable interest premium deductions will be made for the RCSBP insurable interest coverage previously provided before the insurable interest beneficiary died.

Table 54-2. Reserve Component Premiums for Insurable Interest Coverage (Continued)

RULE	If the member made the below listed RCSBP election (Options B or C) when first eligible to participate in the RCSBP	and at the time the member met the age and service requirements to become actually entitled to receive retired pay, the below listed condition also existed:	and after the member started to receive retired pay, the below listed condition occurs:	then the below listed Reserve Component Premium deductions will be made from the member's retired pay:
6	Insurable Interest Coverage	the insurable interest beneficiary upon whom the initial election was based is no longer an eligible beneficiary because the member voluntarily elected to terminate/discontinue insurable interest coverage under 10 U.S.C. § 1448(b)(1)(B)	blank	prorated insurable interest premium deductions will be made until the earlier of: (a) the first day of the month in which the insurable interest beneficiary dies, or (b) the first day of the month following the month in which the member has retired pay reduced for a total of 360 months. The deductions will be prorated based on the number of months that coverage was in effect in accordance with the Note.

Table 54-2. Reserve Component Premiums for Insurable Interest Coverage (Continued)

RULE	If the member made the below listed RCSBP election (Options B or C) when first eligible to participate in the RCSBP	and at the time the member met the age and service requirements to become actually entitled to receive retired pay, the below listed condition also existed:	and after the member started to receive retired pay, the below listed condition occurs:	then the below listed Reserve Component Premium deductions will be made from the member's retired pay:
7	Insurable Interest Coverage	the insurable interest beneficiary upon whom the initial election was based is no longer an eligible beneficiary because the member voluntarily elected to change the insurable interest election to provide an annuity to a spouse or dependent child under 10 U.S.C. § 1450(f)	blank	premiums will be deducted for the spouse or dependent child coverage that was elected under 10 U.S.C. § 1450(f). The premiums will be established in accordance with Table 54-1 and will be based on the ages of the member, spouse and/or child at the time the coverage is elected. Additionally, deduction for Insurable Interest coverage will be deducted and prorated based on the number of months that coverage was in effect in accordance with the Note.

Table 54-2. Reserve Component Premiums for Insurable Interest Coverage (Continued)

Note: An RCSBP participant who voluntarily terminates coverage for a natural person with an insurable interest (not a former spouse) before the member meets the age and service requirements to become actually entitled to receive retired pay, will pay a prorated Reserve Component Premium based on the number of months for which coverage was effective. To calculate the prorated premium, multiply the original RCSBP rate by the number of full months during which the member had coverage, dividing the result by the number of full months the member would have had coverage if coverage had not terminated before age 60. The result, rounded to 4 decimal places, will serve as the member's prorated Reserve Component Premium.

Revised RCSBP Rate	=	Original RCSBP Rate	x	No. of months member had pre-age 60 coverage	÷	No. of months member would have had pre-age 60 coverage

Table 54-3. RCSBP – General Information

RULE	A reservist who is	and dies in the line of duty, then	dies not in the line of duty, then
1	serving on Active Duty with fewer than 20 creditable years of service	the RCSBP annuity is calculated as if the member is totally disabled in accordance with 10 U.S.C. § 1201, or	the member is not eligible to participate in the RCSBP.
2	serving on Active Duty with more than 20 creditable years of service	the RCSBP annuity is calculated as if the member is totally disabled in accordance with 10 U.S.C. § 1201, or	the RCSBP annuity is calculated based on years of active service in accordance with 10 U.S.C. § 1451 (c)(1)(A)(ii).
3	serving on Inactive Duty with fewer than 20 creditable years of service	the RCSBP annuity is calculated as if the member is totally disabled in accordance with 10 U.S.C. § 1201, or	the member is not eligible to participate in the RCSBP.
4	serving on Inactive Duty with more than 20 creditable years of service	the RCSBP annuity is calculated as if the member is totally disabled in accordance with 10 U.S.C. § 1201, or	the RCSBP annuity is calculated based on years of active service in accordance with 10 U.S.C. § 12733.

Table 54-4. Reservist Who Dies Not in the Line of Duty or Not in a Duty Status

RULE	If a reservist, who is not in the line of duty or not in a duty status, dies	and	then
1	after completing 20 years of service	has not yet received a letter of notification of eligibility to retire (NOE),	the RCSBP annuity is calculated based on years of active service in accordance with 10 U.S.C. § 12733.
2	after completing 20 years of service	within 90 days of receiving NOE, has not yet elected RCSBP coverage,	the RCSBP annuity is calculated based on years of active service in accordance with 10 U.S.C. § 12733.
3	after completing 20 years of service	received NOE and elected to participate in RCSBP,	the RCSBP annuity is calculated based on years of active service in accordance with 10 U.S.C. § 12733.
4	having not yet completed 20 years of service	blank	the member is not eligible to participate in RCSBP.

*REFERENCES

CHAPTER 54 - RESERVE COMPONENT SURVIVOR BENEFIT PLAN (RCSBP)

2.0 - DEFINITIONS OF SPECIALIZED TERMS

2.1	10 U.S.C. § 1447(6)(B) 10 U.S.C. § 101(c) 10 U.S.C. Chapter 1223

3.0 - ELIGIBLE BENEFICIARIES

	10 U.S.C. § 1450
3.1.1	Manuscript (MS) Comptroller (Comp) General (Gen) B-195349, January 10, 1980 Defense Office of Hearings and Appeals Claims Case No. 96070219 (1997) MS Comp Gen B-229248, December 19, 1989
3.1.2	10 U.S.C. § 1447(7),(8) 10 U.S.C. § 1448(a)(5) DoD Instruction (DoDI) 1332.42, Subsection 4.4.b, and 4.4.c, December 30, 2020
3.1.3	10 U.S.C. § 1447(7),(8) DoDI 1332.42, Subsections 4.4.d and 4.4.a.(4), December 30, 2020
3.2	10 U.S.C. § 1448(a)(5) 10 U.S.C. § 1448(a)(2)(B) 10 U.S.C. § 1450(f)(1)
3.3.1	10 U.S.C. § 1448(b)(2)
3.3.2	10 U.S.C. § 1448(b)(3)
3.3.3	10 U.S.C. § 1448, Note
3.4	10 U.S.C. §§ 1448, 1450, 1447(7)

4.0 - ELECTION TO PARTICIPATE

4.1	10 U.S.C. § 1448(a)(2)(B) PL 106-398, section 655, October 30, 2000
4.2	10 U.S.C. § 1448(a)(2)(B) 10 U.S.C. § 1448(e) DoDI 1332.42, Section 4.3, December 30, 2020
4.3	10 U.S.C. § 1447(6)(B)
4.4	10 U.S.C. § 1448(a)(5)
4.5	10 U.S.C. §1448(b) Comp Gen, B-179465, July 19, 1974

REFERENCES (Continued)

5.0 - ELECTION DATA

5.1	DoDI 1332.42, Subsection 1.3.b.(4), December 30, 2020
5.2.4	10 U.S.C. § 1448(e)
5.2.7	10 U.S.C. § 1448(a)(3)(B) DoDI 1332.42, Subsection 4.2.a, December 30, 2020 PL 106-398, section 655, October 30, 2000
5.2.7.3	DoDI 1332.42, Subsection 5.1.d, December 30, 2020
5.2.7.3.1	10 U.S.C. § 1448(b)(2)-(3) DoDI 1332.42, Subsection 5.3.a, December 30, 2020
5.2.7.3.2	10 U.S.C. § 1450(f)(3) DoDI 1332.42, Subsection 5.3(b), December 30, 2020

6.0 - CHANGES IN ELECTION AND COVERAGE

6.1	10 U.S.C. § 1448(a)(5) DoDI 1332.42, Subsection 4.4(c), December 30, 2020
6.1.1.	DoDI 1332.42, Subsection 4.4.d. and 4.4.e, December 30, 2020 10 U.S.C. §§ 1448(a)(6) and 1448(g)
6.1.2.	10 U.S.C. §§ 1448(a)(6) and 1448(g) DoDI 1332.42, Subsection 4.4.b.(3), December 30, 2020
6.1.2.1	DoDI 1332.42, Subsection 4.4. d(1)-(c), 4.4.a.(4), 3.1.d.(2), December 30, 2020
6.1.2.2	DoDI 1332.42, Subsection 4.4. d.(1)(d), December 30, 2020 10 U.S.C. § 1448(a)(2)
6.1.3.	DoDI 1332.42, Subsection 4.4.e.(2), December 30, 2020
6.1.5	10 U.S.C. § 1448(a)(6)
6.1.6	10 U.S.C. § 1450(f)
6.1.7	10 U.S.C. § 1450(f)
6.2	10 U.S.C. § 1450(f)(2)
6.2.1.1	10 U.S.C. § 1448(b)(2)(B)
6.2.2.1	10 U.S.C. § 1448(b)(2)

REFERENCES (Continued)

6.2.2.2	10 U.S.C. § 1450(f)(1)
6.2.3.1	10 U.S.C. § 1448(b)(3)
6.3	10 U.S.C. § 1448(b)(1)(A) 10 U.S.C. §1451(b)
6.4	DoDI 1332.42, Section 4.5, December 30, 2020 PL 117-263 Section 643, December 23, 2022

7.0 - IRREVOCABLE ELECTIONS AND DISCONTINUED PARTICIPATION

7.1	10 U.S.C. § 1448(a)(4)(B)
7.2.2	10 U.S.C. § 1449
7.2.4	10 U.S.C. § 1454
7.2.6	10 U.S.C. § 1448(b)(1)(B)

8.0 - PREMIUMS

10 U.S.C. §§ 1451, 1452
DoDI 1332.42, Section 9, December 30, 2020
10 U.S.C. § 1452(h)

9.0 - RCSBP COST RATE TABLES

9.1	DoDI 1332.42, Section 9, December 30, 2020

10.0 - CALCULATION OF THE RESERVE COMPONENT PREMIUM AND THE SURVIVOR'S ANNUITY PREMIUM DEDUCTION

10.1	10 U.S.C. §§ 1451, 1452 PL 101-189, section 1402, November 29, 1989
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11.0 - INITIAL PREMIUM AND EFFECTIVE DATE OF THE RESERVE COMPONENT PREMIUM

DoDI 1332.42, Section 9, December 30, 2020

12.0 - RESERVE COMPONENT PREMIUM

DoDI 1332.42, Section 9, December 30, 2020
10 U.S.C. § 1448(b)
10 U.S.C. § 1450(b)
10 U.S.C. § 1452(a)
10 U.S.C. § 12731(f)

REFERENCES (Continued)

13.0 - DEATH OF MEMBER ON INACTIVE DUTY TRAINING (IDT)

PL 114-328, section 642, December 23, 2016
10 U.S.C. § 1448
10 U.S.C. § 1450
10 U.S.C. § 1451
Assistant Secretary of Defense Memorandum, April 26, 2017, Subject: Amendments to Survivor Benefit Plan for Reserve Component Members

13.1.4 10 U.S.C. § 12731

14.0 - ANNUITY AMOUNT

14.1 DoDI 1332.42, Subsection 9.1.d, December 30, 2020
DoDI 1332.42, Section 10, December 30, 2020
10 U.S.C. § 1452(c)
DoDI 1332.42, Subsection 10.4.c, December 30, 2020
10 U.S.C. §1451(a)(B)
10 U.S.C. § 1451(f)

14.2 DoDI 1332.42, Section 10, December 30, 2020
10 U.S.C. § 1451

15.0 - OFFSETS TO THE ANNUITY

10 U.S.C. § 1450(c)
10 U.S.C. § 1450(e)

Table 54-1 RESERVE COMPONENT PREMIUMS FOR SPOUSE, FORMER SPOUSE, AND CHILD ONLY COVERAGE

DoDI 1332.42, Section 9, December 30, 2020
10 U.S.C. § 1448(b)
10 U.S.C. § 1450(b)
10 U.S.C. § 1452(a)

REFERENCES (Continued)

Table 54-2. RESERVE COMPONENT PREMIUMS FOR INSURABLE INTEREST COVERAGE

DoDI 1332.42, Section 9, December 30, 2009
10 U.S.C. § 1448(b)
10 U.S.C. § 1450(a)(4)
10 U.S.C. § 1452(c)(3)

Table 54-3 RCSBP – GENERAL INFORMATION

PL 114-328, section 642, December 23, 2016
10 U.S.C. § 1448
10 U.S.C. § 1450
10 U.S.C. § 1451
Assistant Secretary of Defense Memorandum, April 26, 2017, Subject: Amendments to Survivor Benefit Plan for Reserve Component Members

Table 54-4 RESERVIST WHO DIES NOT IN THE LINE OF DUTY OR NOT IN A DUTY STATUS

PL 114-328, section 642, December 23, 2016
10 U.S.C. § 1448
10 U.S.C. § 1450
10 U.S.C. § 1451
Assistant Secretary of Defense Memorandum, April 26, 2017, Subject: Amendments to Survivor Benefit Plan for Reserve Component Members

DEPARTMENT OF DEFENSE

FINANCIAL MANAGEMENT REGULATION

CHAPTER 55: "ARCHIVED"

UNDER SECRETARY OF DEFENSE (COMPTROLLER)

DEPARTMENT OF DEFENSE

FINANCIAL MANAGEMENT REGULATION

CHAPTER 56: "ARCHIVED"

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CHAPTER 57: "ARCHIVED"

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DEPARTMENT OF DEFENSE

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CHAPTER 58: "ARCHIVED"

UNDER SECRETARY OF DEFENSE (COMPTROLLER)

VOLUME 7B, CHAPTER 59: "VICTIMS OF ABUSE – RETIREMENT-ELIGIBLE MEMBERS"

SUMMARY OF MAJOR CHANGES

Changes are identified in this table and also denoted by blue font.

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

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

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

The previous version dated January 2023 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated chapter and formatting to comply with administrative instructions.	Revision

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CHAPTER 59

VICTIMS OF ABUSE - RETIREMENT-ELIGIBLE MEMBERS

1.0 GENERAL

1.1 Overview

Title 10, United States Code, section 1408(h) (***10 U.S.C. § 1408(h)***) authorizes various benefits for the spouses, former spouses, and dependent child(ren) of retirement-eligible members who lose eligibility for retired pay because of misconduct involving abuse of dependents. Generally, the spouses and former spouses are provided the same rights and benefits that they would have received had there been no abuse and the member had retired under normal circumstances.

1.2 Purpose

This chapter provides policy on benefits and payments of retired pay in compliance with a court order for spouses, former spouses, and dependent child(ren) of the retirement-eligible member or former member. A member or former member, while in the armed forces and after becoming eligible to retire from the armed forces on the basis of years of service, may have his or her eligibility to receive retired pay terminated as a result of misconduct involving abuse of a spouse and/or dependent child.

1.3 Authoritative Guidance

The pay policies and requirements established by the DoD in this chapter are derived primarily from, and prepared in accordance with the U.S.C., including Titles 10 and 42. Due to the subject matter in the chapter, the list of authoritative sources is extensive. The specific statutes, regulations, and other applicable guidance that govern each individual section are listed in a reference section at the end of the chapter.

2.0 DEFINITIONS

2.1 Court Order

A court order is:

2.1.1. A final decree of divorce, dissolution, annulment, or legal separation issued by a court;

2.1.2. A court ordered, ratified, or approved property settlement incident to such a decree (including a final decree modifying the terms of a previously issued decree of divorce, dissolution, annulment, or legal separation or a court ordered, ratified, or approved property settlement incident to such previously issued decree); or

2.1.3. A support order, as defined in ***Section 453(p) of the Social Security Act*** and ***42 U.S.C. § 653(p)***, which:

2.1.3.1. Is issued in accordance with the laws of the jurisdiction of that court; and

2.1.3.2. Provides for:

2.1.3.2.1. Payment of child support (as defined in ***42 U.S.C. § 659(i)(2)***);

2.1.3.2.2. Payment of alimony (as defined in 42 U.S.C. § 659(i)(3)); or

2.1.3.2.3. Division of property (including a division of community property), which specifically provides for the payment of an amount, expressed in dollars or as a percentage of disposable retired pay, from the disposable retired pay of a member to the spouse or former spouse of that member.

2.2 Dependent Child

In this chapter, dependent child means an unmarried legitimate child, including an adopted child or stepchild, of the member or former member who is:

2.2.1. Under 18 years of age;

2.2.2. Incapable of self-support because of a mental or physical incapacity that existed before 18 years of age and is dependent on the member or former member for over one-half of the child's support; or

2.2.3. Enrolled in a full-time course of study in an institution of higher education recognized by the Secretary of Defense for the purposes of this subparagraph, is less than 23 years of age and is dependent on the member or former member for over one-half of the child's support.

2.3 Disposable Retired Pay

Disposable retired pay is the total monthly retired pay to which a member is entitled, less amounts which:

2.3.1. Are owed by that member to the United States for previous overpayments of retired pay and for recoupments from entitlement to retired pay as required by law;

2.3.2. Are deducted from the retired pay of such member as a result of forfeitures of retired pay ordered by a court-martial or as a result of a waiver of retired pay required by law in order to receive compensation under Titles 5 or 38 of the U.S.C.;

2.3.3. Are equal to the amount of the member's retired pay under ***10 U.S.C., Chapter 61***, computed using the percentage of the member's disability on:

2.3.3.1. The date when the member was retired; or

2.3.3.2. The date on which the member's name was placed on the temporary disability retired list; or

2.3.4. Are deducted because of an election under ***10 U.S.C., Chapter 73*** to provide an annuity to a spouse or former spouse to whom payment of a portion of such member's retired pay is being made pursuant to a court order under section 2.0.

Note: Public Law (PL) 114-328, section 641, (National Defense Authorization Act, Fiscal Year 2017) and 10 U.S.C. § 1408(a)(4)(B), authorized a new definition of disposable retired pay which applies to divorces that occur after December 23, 2016, where the court awards the former spouse a division of property and the member has not yet retired. The disposable retired pay for these cases will be computed in accordance with Chapter 29, paragraphs 8.2 and 8.3. Since members under Chapter 59 would have been considered retirement eligible but for the court martial and revocation of retired pay, Public Law (PL) 114-328, section 641 will not apply.

2.4 Spouse or Former Spouse

The term spouse or former spouse means the husband or wife, or former husband or wife, respectively, of a member who, on or before the date of a court order, was married to that member.

2.5 Retired Pay

The term retired pay includes retainer pay.

3.0 ELIGIBILITY

3.1 Eligibility

The following individuals are eligible for payments by the Defense Finance and Accounting Service (DFAS):

3.1.1. Spouse or Former Spouse. A spouse or former spouse is eligible if the spouse or former spouse was married to the member for a period of 10 years or more, during which the member performed at least 10 years of service creditable in determining the member's eligibility for retired pay; and

3.1.1.1. Was the victim of the abuse and married to the member or former member at the time of that abuse; or

3.1.1.2. Is a natural or adopted parent of a dependent child of the member or former member who was the victim of the abuse.

3.1.2. Dependent Child. A dependent child is considered eligible if the other parent of the child died because of misconduct that resulted in the termination of the member's retired pay.

3.2 Court Order

3.2.1. The court order must specifically provide for the payment of an amount, expressed in dollars or as a percentage, from the disposable retired pay of a member to the spouse or former spouse of that member. The court order must satisfy the requirements of 10 U.S.C. § 1408(a)(2).

3.2.2. If a court order provides for the payment of child support from the disposable retired pay of a member or former member to an eligible dependent child of the member or former member, then the Secretary of the Military Department concerned (or designee) will:

3.2.2.1. Ensure payment of such amount is made to the dependent child; and

3.2.2.2. Ensure payments to the dependent child begin upon effective service of such court order.

3.3 Court-Martial

If a member of the armed forces receives a sentence by a court-martial that will terminate the member's eligibility to receive retired pay, then the member's eligibility to receive retired pay, as determined by the Secretary of the Military Department concerned (or designee), is terminated effective upon entry of judgment under ***10 U.S.C. § 860c*** (Article 60c of the Uniform Code of Military Justice).

3.4 Civilian Court Conviction

If a member of the armed forces is convicted by a civilian court of a crime involving abuse of a spouse or dependent child(ren), after becoming eligible for retirement on the basis of years of service, and the Secretary of the Military Department concerned (or designee) discharges the member from the armed forces as a result of that civilian court conviction, then the member's eligibility to receive retired pay is terminated effective upon the member's discharge from the armed forces.

4.0 APPLICATION FOR PAYMENT

An eligible spouse or former spouse must apply for payment from the supporting DFAS site in the same manner as an application for former spouse payments from retired pay, as described in Chapter 29, section 4.0.

5.0 CONDITIONS FOR PAYMENT

5.1 Payment

5.1.1. The court or an eligible spouse or former spouse, or an eligible dependent child, of a member or former member of the armed forces, may request the Secretary of the Military Department concerned (or designee) to provide certification of the amount of the monthly retired pay in connection with a civil action for the issuance of a court order.

The Secretary of the Military Department concerned (or designee) will determine and certify the amount of the monthly retired pay (including any cost-of-living increases to retired pay through the date of certification) to which the member or former member would have been entitled on the date of the certification if:

5.1.1.1. The member or former member's eligibility for retired pay had not been terminated as a result of misconduct involving abuse of a spouse or dependent child; and

5.1.1.2. In the case of a member or former member not receiving retired pay immediately before termination of eligibility for retired pay, the member or former member had retired on the effective date of that termination of eligibility.

5.1.2. When certifying retired pay of a member separated for misconduct involving abuse of a dependent, the Secretary of the Military Department concerned (or designee) will ignore reductions in grade and forfeitures of pay or retired pay resulting from the administrative separation or court-martial for the misconduct.

5.1.3. The amount certified by the Secretary of the Military Department concerned (or designee) will be deemed to be the disposable retired pay of the member for the purposes of this provision. The total amount payable under this provision may not exceed 50 percent of such disposable retired pay.

5.1.4. A court order may provide that whenever retired pay is increased under ***10 U.S.C. § 1401a*** (or any other provision of law), the amount payable under the court order to the spouse or former spouse will be increased at that time and by the percent retired pay would have increased if the member or former member were receiving retired pay.

5.1.5. Payments will not be made more frequently than once a month, and the Secretary of the Military Department concerned (or designee) will not be required to vary normal pay and disbursement cycles for retired pay in order to comply with a court order.

5.1.6. If a member's eligibility for retired pay is terminated as described in paragraph 3.3, then the effective date for computing retired pay will be the date that the sentence terminating eligibility for retired pay is approved by the appropriate official. If a member's retired pay eligibility is terminated as described in paragraph 3.4, then the effective date for computing retired pay will be the effective date of the member's discharge.

5.1.7. Payments made to an eligible spouse based on being the natural or adopted parent of a dependent child, who was the victim of abuse, will not cease solely because the dependent child is no longer considered a dependent child. Payment requires only that the child was dependent at the time of the abuse, and not necessarily at the time of payment.

5.1.8. Payments will be made from funds in the Department of Defense Military Retirement Fund or, in the case of the Coast Guard, out of funds appropriated to the Department of Homeland Security for payment of retired pay for the Coast Guard.

5.1.9. Payments under this chapter must be coordinated with Transitional Compensation benefits payable to an eligible spouse under Chapter 60, paragraph 4.1.

5.2 Termination of Payment

5.2.1. Payments from the disposable retired pay of a member will terminate pursuant to the terms of the applicable court order, on the date of death of the member or former member, or on the date of death of the spouse or former spouse to whom payments are made, whichever occurs first.

5.2.2. If a former spouse who is receiving payments under these conditions marries again after the payments begin, then his or her eligibility to receive further payments terminates on the date of the marriage. In the event of termination of that marriage by death, annulment, or divorce, payments resume as of the first day of the month in which the marriage is terminated. The monthly amount will be the amount that would have been paid if the continuity of the payments had not been interrupted by the marriage.

5.2.3. If the punishment that results in the termination of eligibility to receive retired pay is later remitted, set aside, or mitigated to a punishment that does not result in termination of eligibility, then benefits to the eligible dependent based on that punishment will cease. Such benefits cease on the first day of the first month after the month in which the Secretary of the Military Department concerned (or designee) notifies the recipient in writing that benefits will cease. The recipient will not be required to repay the benefits received prior to that effective date, excluding any erroneous payments.

5.3 Other Entitlements

5.3.1. A spouse or former spouse, while receiving payments under this chapter, will be entitled to receive medical and dental care, commissary and exchange privileges, and any other benefits a spouse or former spouse of a retired member may be entitled as if the member or former member was entitled to retired pay. This entitlement includes the right to the Survivor Benefit Plan if the spouse or former spouse is an eligible beneficiary pursuant to ***10 U.S.C. § 1448***.

5.3.2. A dependent child, who was a member of the household of the member or former member at the time of the misconduct, is entitled to receive medical and dental care, commissary and exchange privileges, and any other benefits provided to dependents of retired members of the armed forces in the same manner as if the member or former member was entitled to retired pay.

5.4 Accrual of Payments

No payments under this chapter will accrue for periods before October 23, 1992.

5.5 Taxability

The spouse or former spouse who receives payment under this chapter will be responsible for the tax liability. DFAS will withhold taxes and will issue the appropriate annual tax form, Form 1099-R, "Distribution From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRA's, Insurance Contracts, etc."

REFERENCES

CHAPTER 59 – VICTIMS OF ABUSE – RETIREMENT-ELIGIBLE MEMBERS

1.0 – GENERAL	10 U.S.C. § 1408
2.0 – DEFINITIONS	
2.1	10 U.S.C. § 1408(a)(2)
	42 U.S.C. § 653(p)
	42 U.S.C. § 659(i)
2.2	10 U.S.C. § 1408(h)(11)
2.3	10 U.S.C. § 1408(a)(4)
	PL 114-328, section 641, December 23, 2016
	10 U.S.C. § 1408(a)(4)(B)
2.4	10 U.S.C. § 1408(a)(6)
3.0 – ELIGIBILITY	
3.1.1	10 U.S.C. § 1408(d)(2)
3.3	10 U.S.C. § 860c
	10 U.S.C. § 1408(h)(10)(A)
5.0 – CONDITIONS FOR PAYMENT	
5.1.1	10 U.S.C. § 1408(h)(4)
5.1.4	10 U.S.C. § 1401a
	10 U.S.C. § 1408(h)(5)
5.2.2	10 U.S.C. § 1408(h)(7)
5.3.1	10 U.S.C. § 1408(h)(9)(A)
	10 U.S.C. § 1448
5.3.2	10 U.S.C. § 1408(h)(9)(B)

VOLUME 7B, CHAPTER 60: "VICTIMS OF ABUSE – NONRETIREMENT ELIGIBLE MEMBERS (TRANSITIONAL COMPENSATION)"

SUMMARY OF MAJOR CHANGES

Changes are identified in this table and denoted by blue font.

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

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

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

The previous version dated July 2022 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated hyperlinks and formatting to comply with administrative instructions.	Revision
1.1.1, 2.2.3, 3.2.4, 4.2.1, and 4.2.2	Added modification to Transitional Compensation for dependents of members separated for dependent abuse pursuant to National Defense Authorization Act (NDAA), Fiscal Year (FY) 2024, section 631.	Addition
3.3.4	Updated address to where Transitional Compensation applications are submitted.	Revision
4.5.1.2	Provided additional information for the entitlement to transitional compensation when a former spouse remarries.	Revision
4.5.2	Redesignated the Certificate of Eligibility form as the Transitional Compensation Certificate of Eligibility form.	Revision
5.4	Added the provision of lodging expense to dependent or former dependent entitled to payment of monthly Transitional Compensation due to dependent abuse, pursuant to NDAA, FY 2024, section 632.	Addition
Table 60-1, Table 60-2, and Table 60-3	Added the Dependency and Indemnity Compensation rates, effective December 1, 2022, and December 1, 2023.	Addition
References	Updated references.	Revision

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CHAPTER 60

VICTIMS OF ABUSE – NONRETIREMENT ELIGIBLE MEMBERS (TRANSITIONAL COMPENSATION)

1.0 GENERAL

1.1 Purpose

This chapter covers transitional compensation, a congressionally authorized program pursuant to ***Title 10, United States Code (U.S.C.), section 1059***, which provides temporary monetary payments and benefits to dependents or former dependents of Service members or former Service members who were separated from the military because they committed dependent-abuse offenses. It may be paid for a period of not less than 12 and not more than 36 months. For information on benefits for spouses and former spouses of retirement-eligible members who lose eligibility for retired pay because of misconduct involving abuse of dependents, see Volume 7B, Chapter 59.

* 1.1.1. Effective December 22, 2023, the existing transitional compensation provisions were expanded to additionally apply to members of the armed forces on active duty for a period of more than 30 days who are convicted of a dependent-abuse offense in a district court of the United States or a State Court and are separated from active duty pursuant to a sentence of a court martial or administratively separated from active duty, for an offense other than the dependent-abuse offense.

Note: For transitional compensation provisions prior to December 22, 2023, please see archived versions of Volume 7B, Chapter 60, which are publicly available at ***https://comptroller.defense.gov/fmr/archives.aspx***.

1.1.2. Transitional compensation is payable to dependents who qualify on or after November 30, 1993. No payment will be made for any period before November 30, 1993. In cases where a spouse or former spouse is receiving payments, and there is an eligible dependent child or children not residing in the same household as the spouse, former spouse, or member, transitional compensation is payable to the dependent children for periods on or after November 1, 1998. See paragraph 4.1 for detailed explanation.

1.2 Authoritative Guidance

The pay policies and requirements established by the DoD in this chapter are derived primarily from, and prepared in accordance with the U.S.C., including Titles 10 and 38. Due to the subject matter in the chapter, the list of authoritative sources is extensive. The specific statutes, regulations, and other applicable guidance that govern each individual section are listed in a reference section at the end of the chapter.

2.0 DEFINITIONS

2.1 Dependent-Abuse Offense

A dependent-abuse offense is conduct by a member of the Armed Forces, while on active duty for more than 30 days, that involves the abuse of a then-current spouse or dependent child of the member or an attempt or conspiracy to commit such abuse, and that is a criminal offense defined by ***10 U.S.C. §§ 801-940*** or other criminal code applicable to the jurisdiction where the act of abuse is committed. The term "involves the abuse of the then-current spouse or dependent child" means that the criminal offense is against the person of that spouse or a dependent child. Crimes that may qualify as dependent-abuse offenses include sexual assault, rape, sodomy, maiming, assault, battery, murder, and manslaughter. The aforementioned offenses are not an exhaustive or exclusive listing of dependent-abuse offenses.

2.2 Punitive or Other Adverse Actions

Effective December 22, 2023, punitive or other adverse actions are actions in which a member of the Armed Forces who has been on active duty more than 30 days is:

2.2.1. Convicted of a dependent-abuse offense that results in separation from active duty under a court-martial sentence or forfeiture of all pay and allowances under a court-martial sentence;

2.2.2. Administratively separated, voluntarily or involuntarily, from active duty according to applicable Military Service regulations, if the basis for separation includes a dependent-abuse offense; or

* 2.2.3. Who is:

2.2.3.1. Convicted of a dependent-abuse offense in a district court of the United States or State court; and

2.2.3.2. Separated from active duty pursuant to a sentence of court martial, or administratively separated, voluntarily or involuntarily, from active duty for an offense other than the dependent-abuse offense.

Note: For transitional compensation provisions prior to December 22, 2023, please see archived versions of Volume 7B, Chapter 60, which are publicly available at https://comptroller.defense.gov/fmr/archives.aspx

2.3 Cohabitation

Cohabitation is when the spouse, former spouse, or dependent child is residing in the same household as the former member after punitive or other adverse action is executed against the member or former member.

2.4 Dependent Child

A dependent child:

2.4.1. Is an unmarried child, including an adopted child or stepchild:

2.4.1.1. Who resided with the member or eligible spouse at the time of the dependent-abuse offense; or

2.4.1.2. As of January 2, 2013, a child who was carried during pregnancy at the time of the dependent-abuse offense and was subsequently born alive to the eligible spouse or former spouse. However, such child will not receive payment until after the child is born and is not entitled to payment for any period prior to the birth of the child; and

2.4.2. Meets one of the following age requirements:

2.4.2.1. Is under age 18;

2.4.2.2. Is age 18 or older and incapable of self-support due to a mental or physical incapacity that existed before age 18 and is (or, at the time a punitive or other adverse action was carried out in the case of the former member, was) dependent on the former member for over one-half of the child's support; or

2.4.2.3. Is age 18 or older, but less than age 23, is enrolled in a full-time course of study in an institution of higher learning approved by the Secretary of Defense, and is (or, at the time a punitive or other adverse action was carried out in the case of the former member, was) dependent on the former member for over one-half of the child's support.

2.5 Spouse or Former Spouse

The term spouse or former spouse refers to the individual who was legally married to the member at the time of the commission of the dependent-abuse offense resulting in separation from military service.

3.0 ELIGIBILITY FOR TRANSITIONAL COMPENSATION

3.1 Eligibility for Transitional Compensation Payment

The dependents of a member or former member who is separated on or after November 30, 1993, the basis for the separation which includes a dependent-abuse offense, are eligible for transitional compensation payments. If a recipient is incapable of handling his or her affairs, then payments are made only to a court-appointed guardian. In the case of a dependent child under 18 years of age, payments are made only to a court-appointed guardian or a parent who has legal custody of the dependent child and who is not also the abuser.

3.1.1. Spouse or Former Spouse

In the case of a separation from active duty under punitive or other adverse action, payments are made to the person who was the member's spouse at the time of the offense. The spouse or former spouse does not have to be the victim in order to receive transitional compensation.

3.1.2. Dependent Child

Payments may be made to a dependent child as prescribed in paragraph 4.1.

3.2 Exceptional Eligibility Authority

3.2.1. The Secretary of the Military Department concerned may authorize eligibility for transitional compensation benefits for a spouse, former spouse, or dependents of a member or former member of the Armed Forces who is not otherwise eligible for such benefits if the Secretary of the Military Department concerned determines that:

3.2.1.1. The member or former member engaged in conduct that is a dependent-abuse offense; and

3.2.1.2. The member or former member was separated from active duty in a manner other than those described in paragraph 2.2, on or after November 24, 2003.

3.2.2. The Secretary of the Military Department concerned may determine commencement and duration of payments in a manner similar to that described in paragraph 4.2.

3.2.3. For the purposes of the provision of benefits under this paragraph, a member will be considered separated from active duty upon the earliest of:

3.2.3.1. The date an administrative separation is initiated by the commander of the member;

3.2.3.2. The date the court-martial sentence is adjudged if the sentence, as adjudged, includes a dismissal, dishonorable discharge, bad-conduct discharge, or forfeiture of all pay and allowances; or

3.2.3.3. The date the member's term of service expires.

* 3.2.4. Effective December 22, 2023, the Secretary of the Military Department concerned may delegate exceptional eligibility authority to the first general or flag officer (or civilian equivalent) in the chain of command of the member.

3.3 Application

An individual can request transitional compensation through a Military Service representative. The Military Service representative:

3.3.1. Assists the applicant in filling out the ***DoD (DD) Form 2698***, Application for Transitional Compensation;

3.3.2. Approves payment;

3.3.3. Requests the applicant submit a ***Standard Form 1199A***, Direct Deposit Sign-up Form, completed by the applicant and the financial institution or a voided check/deposit slip with a written authorization for direct deposit of payments; and

* 3.3.4. Provides the Operation and Maintenance fund citation, and forwards the application and information for direct deposit to the Defense Finance and Accounting Service (DFAS) at the following address:

Defense Finance and Accounting Service
U.S. Military Retired Pay
8899 E. 56th Street
Indianapolis, IN 46249-1200

Facsimile Numbers:
DSN: 580-6470
Commercial Number: (216) 204-6470

4.0 PAYMENT

4.1 Recipients of Payments

Transitional compensation will be paid as follows:

4.1.1 If the member or former member was married at the time of the dependent-abuse offense, then compensation will be paid to the spouse or former spouse to whom the member or former member was married at that time. An amount will be included for each, if any, dependent child of the member or former member who resides in the same household as the spouse or former spouse.

4.1.2 If the spouse or former spouse is eligible to receive compensation and the member or former member has one or more dependent children who do not reside in the household of the spouse or former spouse, compensation is also paid to each of the dependent children who were residing in the household at the time of the abuse, but do not reside with the spouse or current spouse. This provision became effective November 1, 1998.

4.1.3. If a spouse or former spouse has forfeited his or her entitlement for reasons described in paragraph 4.5, then compensation will be paid only to each dependent child who was residing in the household at the time of the abuse, but does not reside with the spouse or former spouse.

4.1.4. If there is no eligible spouse or former spouse, then such compensation will be paid to each of the member's dependent children who do not reside in the member's or former member's household.

4.2 Commencement and Duration of Payment

* 4.2.1. Effective December 22, 2023, in the case of a member convicted due to a punitive or adverse action involving dependent abuse as defined in paragraph 2.2, payments begin:

4.2.1.1. As of the date that the court-martial sentence is adjudged if the sentence, as adjudged, includes a dismissal, dishonorable discharge, bad-conduct discharge, or forfeiture of all pay and allowances; or

4.2.1.2. If there is a pretrial agreement that provides for disapproval or suspension of the dismissal, dishonorable discharge, bad-conduct discharge, or forfeiture of all pay and allowances, as of the date entry of judgement under ***10 U.S.C. § 860(c)***, only if the sentence as approved, includes an unsuspended dismissal, dishonorable discharge, bad-conduct discharge, or forfeiture of all pay and allowances.

* 4.2.2. In the case of a member being considered for administrative separation due to a punitive or adverse action involving dependent abuse, as defined in paragraph 2.2, payment begins as of the date that the separation action was initiated by the commander under regulations determined by the Secretary of the Military Department concerned.

Note: For transitional compensation provisions prior to December 22, 2023, please see archived versions of Volume 7B, Chapter 60, which are publicly available at https://comptroller.defense.gov/fmr/archives.aspx

4.2.3. In the case of a total forfeiture of pay and allowances pursuant to a sentence of a court-martial, payment will not be made for any period for which an order:

4.2.3.1. Defers or suspends, in whole or in part, that part of a sentence that includes total forfeiture of the Service member's pay and allowance; or

4.2.3.2. Otherwise results in continuation, in whole or in part, of the Service member's pay and allowances.

4.2.4. Payments are made for a period of not less than 12 months, but cannot exceed 36 months, based on policies established by the Secretary of the Military Department concerned.

4.2.4.1. When the unserved portion of the member's obligated active duty service, as of the starting date of payment, is greater than 12 months and less than or equal to 36 months, the duration of payments will be no less than the unserved portion.

4.2.4.2. For enlisted members, the obligated active duty service is the time remaining on their term of enlistment. For officers, the obligated active duty service is indefinite unless the officer has a date of separation established, in which case it is the time remaining until the date of separation.

4.2.5. As long as the payee meets the eligibility criteria at the time payments begin, the payee is entitled to transitional compensation for the duration established by Service regulations even if the payee ceases to meet the definition of dependent child at some point during receipt of the compensation.

4.3 Amount of Payment

Use the monthly Dependency and Indemnity Compensation (DIC) rates to pay transitional compensation. The Veterans Affairs (VA) website provides information on DIC rates at ***http://benefits.va.gov/Compensation/current_rates_dic.asp***. DIC rates for prior years are located at the end of the VA webpage under "Historical Rate Tables."

4.3.1. A spouse or former spouse receives transitional compensation in an amount equal to the monthly rate currently in effect for DIC. See Table 60-1 for transitional compensation rates paid to a spouse or former spouse.

4.3.2. If the spouse or former spouse has custody of a dependent child or children of the member who resides in the same household as that spouse or former spouse, then transitional compensation is increased for each child by an amount equal to the monthly DIC amount payable for dependent children. See Table 60-2 for additional transitional compensation rates paid to spouse or former spouse with an eligible dependent child or children.

4.3.3. If transitional compensation is payable to a dependent child under paragraph 4.1, then payments are made in equal shares, in an amount equal to the monthly DIC amount payable for dependent children. When paying multiple children and the payment amount does not divide equally, the youngest child will receive the odd cent(s). See Table 60-3 for transitional compensation rates paid to an eligible child or children.

4.3.4. Payments will be prorated for months when payments start or stop in the middle of a month (e.g., if the former spouse receiving transitional compensation remarries, then compensation terminates effective as of the date of the marriage).

4.3.5. Transitional compensation payments will stop effective the date of death of the recipient. Arrears of compensation will not be paid.

4.3.6. Advance payment of transitional compensation benefits is not authorized.

4.4 Effect of Continuation of Military Pay

In the case of payment of transitional compensation by reason of a total forfeiture of pay and allowances pursuant to a sentence of a court-martial, payment of transitional compensation will not be made for any period for which an order, in whole or in part:

4.4.1. Suspends that part of a sentence that includes forfeiture of the member's pay and allowances; or

4.4.2. Otherwise results in the continuation of the member's pay and allowances.

4.5 Forfeiture Provisions

4.5.1. The following will result in the forfeiture of transitional compensation.

4.5.1.1. If, after a punitive or other adverse action has been executed, the former member resides in the same household as the spouse or former spouse or child who is receiving transitional compensation, compensation terminates as of the date the former member begins residing in the household. The spouse or former spouse must notify DFAS within 30 days of the date the member begins residing in the same household as them or any dependent children receiving compensation payments. Any compensation paid before the member resides in the household will not be recouped. Once terminated for cohabitation, the payments do not resume.

* 4.5.1.2. If the former spouse receiving compensation remarries, then compensation terminates effective as of the date of the former spouse's remarriage. If the former spouse remarries after the date of the dependent-abuse offense but prior to the date that transitional compensation payments would otherwise commence, the former spouse is not entitled to transitional compensation payments. The former spouse must notify DFAS within 30 days of the date of remarriage. Payments do not resume if the subsequent marriage is terminated. If the payments to the spouse terminate due to remarriage and there are dependent children not living in the same household as the spouse or member, payment will be made to each of those dependent children.

4.5.1.3. If the victim was a dependent child, and the competent authority designated by the Secretary of the Military Department concerned has found that the spouse was an active participant in the conduct constituting the dependent-abuse offense, or actively aided or abetted the member in such conduct against that dependent child, then the spouse or former spouse may not be paid transitional compensation.

* 4.5.2. To ensure compliance with subparagraphs 4.5.1.1 and 4.5.1.2, the following must be submitted to DFAS on an annual basis.

4.5.2.1. Spouse/Former Spouse Certification. A former spouse receiving transitional compensation must certify annually to DFAS that he or she has not remarried. A former spouse or spouse receiving transitional compensation must certify annually that he or she has not been cohabiting with the member. They must complete, sign, and return the Transitional Compensation Certificate of Eligibility (TC-COE) that was mailed to them. It can be submitted via mail to:

Defense Finance and Accounting Service
U.S. Military Retired Pay
8899 E. 56th Street
Indianapolis, IN 46249-1200

4.5.2.2. Parent or Court-Approved Guardian TC-COE. The parent or court-approved guardian will certify annually that the dependent child or children are not residing with the member or ineligible spouse via the TC-COE process. If the TC-COE is not received within 60 days of the date of the TC-COE, then payments will be suspended until verification of eligibility is received.

4.6 Termination of Payments

Transitional compensation is not payable when a member's court-martial sentence, which includes a dismissal, dishonorable discharge, or bad-conduct discharge, is remitted, set aside, or mitigated to a lesser punishment that does not include such punishment, or the administrative separation is disapproved. Any payment of transitional compensation that has started will stop effective the first day of the month after the Secretary of the Military Department concerned notifies the recipient in writing that payment will cease for such reason. The recipient is not required to repay transitional compensation received before the effective date of termination, excluding erroneous payments.

4.7 Taxability

Transitional compensation payments are considered benefits that are excludable from taxation and should not be reported on ***Internal Revenue Service Form 1099R***, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, Individual Retirement Accounts, Insurance Contracts, etc.

5.0 OTHER BENEFITS

5.1 Coordination of Benefits

5.1.1. Election of Benefits. A spouse or former spouse may not concurrently receive both payments of transitional compensation under 10 U.S.C. § 1059 and payments under ***10 U.S.C. § 1408(h)*** (see Chapter 59 for spouses and former spouses of retirement-eligible members who lost eligibility for retired pay as a result of misconduct involving abuse of dependents). If a spouse or former spouse has obtained a court order awarding compensation pursuant to 10 U.S.C. § 1408(h), then the spouse or former spouse will elect which benefit to receive. An application for payment under 10 U.S.C. § 1408(h), pursuant to the requirements of Chapter 59, will be considered an election to receive 10 U.S.C. § 1408(h) payments. See Chapter 59, section 4.0 for application requirements.

5.1.2. Effective Date. The election to receive benefits under 10 U.S.C. § 1408(h) is effective on the date that a complete application is received. If the applicant is not eligible to receive benefits under 10 U.S.C. § 1408(h) on the date the application is received, then the effective date will be the date the applicant becomes eligible for payments under 10 U.S.C. § 1408(h). Payments of transitional compensation under 10 U.S.C. § 1059 will be terminated and payments under 10 U.S.C. § 1408(h) will commence on the first day of the first month after the date the election to receive payments under 10 U.S.C. § 1408(h) is effective.

5.2 Commissary and Exchange Benefits

5.2.1. A recipient of transitional compensation payments is entitled to use commissary and exchange stores to the same extent and manner as a dependent of a member of the Armed Forces on active duty for a period of more than 30 days.

5.2.2. If the recipient is entitled to use commissary and exchange stores under another provision of law, then the entitlement is determined under the other provision of law rather than under this paragraph.

5.3 Medical Benefits

5.3.1. The Secretary concerned will determine appropriate medical and dental care eligibility for transitional compensation recipients and affected dependents. At a minimum, an abused dependent who is receiving transitional compensation, may receive medical and dental care, including mental health services, in facilities of the military services or through the TRICARE program as outlined in ***10 U.S.C. § 1076 - 1077***.

5.3.2. Dental care may be provided on a space-available basis in facilities of the Military Services.

5.3.3. Eligible dependents of a member who is retirement eligible, but who loses eligibility for retirement pay because of dependent-abuse misconduct, may receive medical and dental care in accordance with 10 U.S.C. § 1408(h).

*5.4 Lodging Expenses

Effective December 22, 2023, a dependent or former dependent entitled to payment of monthly transitional compensation is entitled to lodging expenses for a period not longer than 30 days.

*Table 60-1. Spouse or Former Spouse Transitional Compensation Rate

Effective Date	DIC Rate
December 1, 2014	$1,254.19
December 1, 2015	$1,254.19
December 1, 2016	$1,257.95
December 1, 2017	$1,283.11
December 1, 2018	$1,319.04
December 1, 2019	$1,340.14
December 1, 2020	$1,357.56
December 1, 2021	$1,437.66
December 1, 2022	$1,562.74
December 1, 2023	$1,612.75

*Table 60-2. Spouse or Former Spouse with Dependent Child Transitional Compensation Rate

Effective Date	DIC Rate
December 1, 2014	$310.71
December 1, 2015	$310.71
December 1, 2016	$311.64
December 1, 2017	$317.87
December 1, 2018	$326.77
December 1, 2019	$332.00
December 1, 2020	$336.32
December 1, 2021	$356.16
December 1, 2022	$387.15
December 1, 2023	$399.54

*Table 60-3. Dependent Child Transitional Compensation Rate

DIC Child Rates				
Effective Date	1 Child	2 Children	3 Children	Over 3 Children
December 1, 2014	$529.55	$761.80	$994.07	$994.07 plus $188.91 for each child over 3
December 1, 2015	$529.55	$761.80	$994.07	$994.07 plus $188.91 for each child over 3
December 1, 2016	$531.14	$764.09	$997.05	$997.05 plus $189.48 for each child over 3
December 1, 2017	$541.76	$779.37	$1,016.99	$1,016.99 plus $193.27 for each child over 3
December 1, 2018	$556.93	$801.18	$1,045.47	$1,045.47 plus $198.68 for each child over 3
December 1, 2019	$565.84	$814.01	$1,062.20	$1,062.20 plus $201.95 for the fourth child. Refer to rate table for additional children over four located at: http://benefits.va.gov/compensation/current_rates_dic.asp.
December 1, 2020	$573.20	$824.59	$1,076.01	$1,076.01 plus $320.12 for the fourth child. Refer to rate table for additional children over four located at: http://benefits.va.gov/compensation/current_rates_dic.asp.
December 1, 2021	$607.02	$873.24	$1,139.49	$1,139.49 plus $339.01 for the fourth child. Refer to rate table for additional children over four located at: http://benefits.va.gov/compensation/current_rates_dic.asp.
December 1, 2022	$659.83	$949.21	$1,238.63	$1,238.63 plus $368.50 for the fourth child. Refer to rate table for additional children over four located at: http://benefits.va.gov/compensation/current_rates_dic.asp.
December 1, 2023	$680.94	$979.58	$1,278.27	$1,278.27 plus $380.30 for the fourth child. Refer to rate table for additional children over four located at: http://benefits.va.gov/compensation/current_rates_dic.asp.

*REFERENCES

CHAPTER 60: VICTIMS OF ABUSE – NONRETIREMENT ELIGIBLE MEMBERS (TRANSITIONAL COMPESATION)

1.0 – GENERAL

1.1	10 U.S.C. § 1059 DoD Instruction 1342.24, September 23, 2019 Office of the Assistant Secretary of Defense/Force Management Memorandum, October 19, 1994
1.1.1.4	Public Law 118-31, section 631, December 22, 2023
1.1.1.5	Public Law 118-31, section 631, December 22, 2023

2.0 – DEFINITIONS

2.1-2.5	10 U.S.C. § 1059
2.2.3	10 U.S.C. § 1059(b)(3) Public Law 118-31, section 631, December 22, 2023
2.4	10 U.S.C. § 1059(n) Public Law 112-239, section 564, January 2, 2013 Public Law 113-181, section 2, November 13, 2014
2.4.1.1	Public Law 118-31, section 631, December 22, 2023
2.4.1.2	Public Law 118-31, section 631, December 22, 2023

3.0 – ELIGIBILITY FOR TRANSITIONAL COMPENSATION

3.1.2	10 U.S.C. § 1059(d)(2)
3.2	10 U.S.C. § 1059(l) Public Law 116-92, section 621, December 20, 2019 Fiscal Year 2020 National Defense Authorization Act, section 621, December 20, 2019
3.2.4	Public Law 118-31, section 631, December 22, 2023

4.0 – PAYMENT

4.1	10 U.S.C. § 1059(d)
4.1.2	DoD Instruction 1342.24, paragraph 3.1.b, September 23, 2019
4.2	10 U.S.C. § 1059(e)
4.2.1	Public Law 118-31, section 631, December 22, 2023
4.2.2	Public Law 118-31, section 631, December 22, 2023
4.2.3	DoD Instruction 1342.24, paragraph 3.2.a.(3), September 23, 2019

REFERENCES (Continued)

	Principal Deputy Under Secretary of Defense for Personnel and Readiness Policy Memorandum, June 14, 2004
4.2.5	DoD Instruction 1342.24, paragraph 3.2, September 23, 2019
4.3	38 U.S.C. § 1114 38 U.S.C. § 1115 38 U.S.C. § 1311(a)(1) 38 U.S.C. § 1311(b) 38 U.S.C. § 1313 38 U.S.C. § 1314 Public Law 112-53, sections 2(a) – (c), (e), November 9, 2011 Public Law 112-198, sections 2(a) – (c) and 3, November 27, 2012 Public Law 113-52, sections 2(a) – (c), (e), November 21, 2013 Public Law 113-181, sections 2(a) – (c), (e), September 26, 2014 Public Law 114-197, sections 2(a) – (c) and 3, July 22, 2016 Public Law 115-75, sections 2(a) – (c) and 3, November 2, 2017 Public Law 115-258, sections 2(a) – (c) and 3, October 9, 2018 Public Law 116-58, sections 2(a) – (c) and 3, September 26, 2019 Public Law 116-178, sections 2(a) – (c) and 3, October 20, 2020 Public Law 117-45, sections 2(a) – (c) and 3, October 8, 2021 Public Law 117-191, sections 2(a) – (c) and 3, October 10, 2022 Public Law 118-6, sections 2(a) – (c) and 3, June 14, 2023
4.3.1 and 4.3.2	38 U.S.C. § 1114 38 U.S.C. § 1115 38 U.S.C. § 1311(a)(1) 38 U.S.C. § 1311(b) 38 U.S.C. § 1314
4.3.3	38 U.S.C. § 1313
4.5	10 U.S.C. § 1059(f)(3) 10 U.S.C. § 1059(g)
4.6	10 U.S.C. § 1059(e)(3)(C)

REFERENCES (Continued)

4.7	Armed Forces Tax Council Memorandum, December 16, 1994
5.0 – OTHER BENEFITS	
5.1	10 U.S.C. § 1059(i)
5.2	10 U.S.C. § 1059(j)
5.3	10 U.S.C. § 1076(e) DoD Instruction 1342.24, paragraph 3.8, September 23, 2019
5.4	10 U.S.C. § 1059(k) Public Law 118-31, section 632, December 22, 2023

VOLUME 7B, CHAPTER 61: "ANNUITIES FOR CERTAIN MILITARY SURVIVING SPOUSES (ACMSS)"

SUMMARY OF MAJOR CHANGES

Changes are identified in this table and also denoted by blue font.

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

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

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

The previous version dated March 2023 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated hyperlinks and formatting to comply with current administrative instructions.	Revision
5.3	Replaced references to Report of Existence, Certificate of Eligibility and associated instructions with Foreign Address Update for Mailed Checks and Survivor Benefit Plan-Marital Status Update per section 605 of the National Defense Authorization Act for Fiscal Year 2022.	Revision
6.2.4	Removed references to Dependency and Indemnity Compensation offset since it is repealed effective January 1, 2023. Updated in-text citations.	Deletion
Table 61-1	Updated table to include new annuity amounts effective December 1, 2024.	Revision
References	Updated to include the memorandum from the Office of the Assistant Secretary of Defense for the "Fiscal Year 2024 Adjustments to Military Retired and Retainer Pay, Annuities and Premiums" dated November 14, 2024.	Revision

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CHAPTER 61

ANNUITIES FOR CERTAIN MILITARY SURVIVING SPOUSES (ACMSS)

1.0 GENERAL

1.1 Purpose

The purpose of this chapter is to provide guidance, policy, delegation of authority, and assignment of responsibilities, as they apply to ACMSS.

1.2 Authoritative Guidance

The pay policies and requirements established by DoD in this chapter are derived primarily from, and prepared in accordance with the United States Code (U.S.C.), including Title 10. Due to the subject matter in this chapter, the list of authoritative sources is extensive. The specific statutes, regulations, and other applicable guidance that govern each individual section are listed in the reference section at the end of the chapter.

2.0 ELIGIBILITY FOR PAYMENT

2.1 General

Effective November 18, 1997, ACMSS was established under Public Law (PL) 105-85 to provide annuity payments to certain qualified surviving spouses.

3.0 QUALIFIED SURVIVING SPOUSE AND DECEASED RETIRED MEMBER

3.1 Qualified Surviving Spouse

Only an individual who meets the following criteria qualifies for these annuity payments.

3.1.1. Is a surviving spouse of a deceased retired member, as defined in paragraph 3.2, who:

3.1.1.1. Was married to the retired member at the time the member became eligible for retired pay;

3.1.1.2. Had been married to the retired member for at least 1 year before the date of death; or

3.1.1.3. Is the parent of a child born of the marriage; and

3.1.1.4. Has not remarried.

3.2 Deceased Retired Member

A deceased retired member for the purpose of this annuity is one who:

3.2.1. Became entitled to retired or retainer pay before September 21, 1972, died before March 21, 1974, and was entitled to retired or retainer pay on the date of death; or

3.2.2. Died before October 1, 1978, and at the time of death, would have been entitled to retired pay under Title 10, U.S.C., Chapter 67 (renumbered to ***10 U.S.C., Chapter 1223*** by PL 103-337, effective December 1, 1994), but for the fact that he or she was under 60 years of age.

4.0 ANNUITY APPLICATION

4.1 General

An annuity application is required before payment will be made.

4.2 Application Procedure

4.2.1. Application. A ***(DD) Form 2769***, Application for Annuity Certain Military Surviving Spouses, must be submitted to the Military Service concerned.

4.2.2. Documentation. If information is unavailable from existing records, such as the Defense Enrollment Eligibility Reporting System, the applicant may be required to submit the following documentation to the Military Service concerned:

4.2.2.1. Certified copies of the retired member's death certificate and/or marriage certificate;

4.2.2.2. DD Form 214, Certificate of Release or Discharge from Active Duty;

4.2.2.3. Retirement order;

4.2.2.4. Retired pay statement; and

4.2.2.5. Any additional information needed to substantiate the claim.

4.2.3. Review and Approval. The Military Service concerned will then:

4.2.3.1. Review the claim and determine whether the applicant is qualified for an ACMSS annuity;

4.2.3.2. Notify the applicant on the disposition of the claim within 60 days; and

4.2.3.3. Forward approved claims to the Defense Finance and Accounting Service Cleveland site (DFAS-CL) for payment.

5.0 PAYMENT OF ANNUITY

5.1 Payment Effective Date

Payment to a qualified surviving spouse begins within 30 days upon receipt by DFAS-CL of a validated claim endorsed by the Military Service. The monthly payments begin not earlier than December 1, 1997, except where entitlement is under subparagraph 3.3.2, in which case entitlement begins not earlier than October 1, 1999.

5.2 Representative Payee

ACMSS payments due to a mentally incompetent or otherwise legally disabled person, for whom a guardian or other fiduciary has not been appointed, may be paid to a representative payee the same as the Survivor Benefit Plan (SBP). See Chapter 46.

*5.3 Report of Existence (ROE) and Certificate of Eligibility (COE)

The SBP-Marital Status Update (MSU) replaces the COE effective August 1, 2023, and is required annually to confirm the marital status and continued eligibility for the SBP, generally due the first day of the month of the annuitant's birthday. Similarly, the Foreign Address Update for Mailed Checks (FAUMC)-Annuitants replaces the ROE effective August 2023, requiring any annuitants receiving a check in the mail outside the United States, who do not need to submit a School Certification or an SBP-MSU, to submit the FAUMC, also generally due the first day of the month of the annuitant's birthday. The procedures for SBP-MSU and FAUMC-Annuitants on SBP annuity payments also apply to ACMSS payments. See Chapter 46.

5.4 Debt Collection

Overpayments of an annuity are subject to the same collection action as SBP. See Chapter 46.

5.5 Taxability

The taxability of ACMSS payments is similar to an SBP annuity. See Chapter 46.

5.6 Death of Annuitant

The annuity terminates the last day of the month before the date the annuitant dies. Any amounts that are due and payable at the time of the annuitant's death may be paid in accordance with the provisions of Chapter 31. The unpaid annuity will only be paid upon receipt of a properly executed and documented claim, approved by the Secretary of the Military Department concerned (or designee).

5.7 Remarriage

The annuity terminates the first day of the month in which the annuitant remarries, without regard to the age of the annuitant.

6.0 ANNUITY AMOUNT AND OFFSET

6.1 Amount

The annuity to a qualified surviving spouse was initially established at $165 per month. The amount is subject to the same cost-of-living adjustment (COLA) and effective at the same time as military retired pay increases. The first COLA was effective December 1, 1997, as shown on Table 61-1. The annual ***COLA memorandums*** are published to the Military Pay and Benefits Website that is sponsored by the Office of the Under Secretary of Defense for Personnel and Readiness. The provision for rounding monthly SBP annuity is not applicable.

6.2 Offset

The amount of annuity to which a surviving spouse is entitled under this section for any period is reduced (but not below zero) by any amount paid to the surviving spouse for the same period under any of the following:

6.2.1. Retired and Reserve Component SBP;

6.2.2. Retired Serviceman's Family Protection Plan;

6.2.3. Minimum Widows Income-SBP.

7.0 FUNDING

The approving Military Service must fund the annuities from operations and maintenance funds for the fiscal year in which the payment is made.

*Table 61-1. ACMSS ANNUITY AMOUNT
Table Revision Effective Date: December 1, 2024

Date of Increase	Percent	Amount
November 1, 1997		$165.00
December 1, 1997	2.1	$168.47
December 1, 1998	1.3	$170.66
December 1, 1999	2.4	$174.76
December 1, 2000	3.6	$181.05
December 1, 2001	2.6	$185.76
December 1, 2002	1.4	$188.36
December 1, 2003	2.1	$192.32
December 1, 2004	2.7	$197.51
December 1, 2005	4.1	$205.61
December 1, 2006	3.3	$212.40
December 1, 2007	2.3	$217.29
December 1, 2008	5.8	$229.89
December 1, 2009	0	$229.89
December 1, 2010	0	$229.89
December 1, 2011	3.6	$238.17
December 1, 2012	1.7	$242.22
December 1, 2013	1.5	$245.85
December 1, 2014	1.7	$250.03
December 1, 2015	0	$250.03
December 1, 2016	0.3	$250.78
December 1, 2017	2.0	$255.80
December 1, 2018	2.8	$262.96
December 1, 2019	1.6	$267.17
December 1, 2020	1.3	$270.64
December 1, 2021	5.9	$286.61
December 1, 2022	8.7	$311.55
December 1, 2023	3.2	$321.52
December 1, 2024	2.5	$329.56

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CHAPTER 61 – ANNUITIES FOR CERTAIN MILITARY SURVIVING SPOUSES (ACMSS)

2.0	Eligibility for Payment	
		10 U.S.C. § 1448, note, "Annuities for Certain Military Surviving Spouses"
		10 U.S.C., Chapter 1223
		10 U.S.C. § 12731
3.0	Qualified Surviving Spouse and Deceased Retired Member	
		10 U.S.C. § 1448, note, "Annuities for Certain Military Surviving Spouses"
	3.1.1	10 U.S.C. § 1447(7)-(9)
4.0	Annuity Application	
		10 U.S.C. § 1448, note, "Annuities for Certain Military Surviving Spouses"
5.0	Payment of Annuity	
		Public Law (PL) 105-85, November 18, 1997
	5.1	PL 106-65, October 5, 1999
6.0	Annuity Amount and Offset	
	6.1	10 U.S.C. § 1401a
	6.2.1	10 U.S.C., Chapter 73, Subchapter II
	6.2.2	10 U.S.C., Chapter 73, Subchapter I
	6.2.3	PL 92-425, section 4, September 21, 1972
	Table 61-1	PL 105-85, section 644, November 18, 1997
		Office of the Undersecretary of Defense (OUSD), Personnel and Readiness (P&R) Memorandum (Memo), December 8, 2003
		OUSD (P&R) Memo, November 9, 2007
		OUSD (P&R) Memo, October 29, 2008
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		OUSD (P&R) Memo, November 22, 2011

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OASD (M&RA) Memo, November 5, 2015
OASD (M&RA) Memo, November 21, 2016
OASD (M&RA) Memo, November 27, 2017
OASD (M&RA) Memo, November 01, 2018
OASD (M&RA) Memo, October 30, 2019
OASD (M&RA) Memo, November 4, 2019
OASD (M&RA) Memo, November 4, 2020
OASD (M&RA) Memo, November 18, 2021
OASD (M&RA) Memo, November 14, 2022
OASD (M&RA) Memo, November 9, 2023
OASD Military Personnel Policy (MPP) Memo, November 13, 2024

DEPARTMENT OF DEFENSE

FINANCIAL MANAGEMENT REGULATION

CHAPTER 62: "ARCHIVED"

UNDER SECRETARY OF DEFENSE (COMPTROLLER)

VOLUME 7B, CHAPTER 63: "COMBAT-RELATED SPECIAL COMPENSATION (CRSC)"

SUMMARY OF MAJOR CHANGES

Changes are identified in this table and also denoted by blue font.

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

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

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

The previous version dated May 2022 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated hyperlinks and formatting to comply with administrative instructions.	Revision
1.1.3	Subparagraph restructured to define CRSC relationship to other provisions for clarity.	Revision
3.2	Provided information to indicate that the member bears the responsibility to elect either CRSC or the Concurrent Military Retirement Pay and DVA Disability Compensation.	Revision
3.2 and 9.4	Updated the formerly used term, "Concurrent Retired and Disability Pay (CRDP)," to new term, "Concurrent Military Retirement Pay and DVA Disability Compensation."	Revision

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CHAPTER 63

COMBAT-RELATED SPECIAL COMPENSATION (CRSC)

1.0 GENERAL

1.1 Purpose

CRSC provides special compensation to members of the Uniformed Services who have retired pay reduced because of receiving U.S. Department of Veterans Affairs (DVA) disability compensation where a portion of such DVA disability compensation is the result of disabilities that are combat-related as determined by the Military Department.

1.1.1. Effective Date

The CRSC program became effective May 31, 2003. Payments are made on the first day of the first month following the month in which the compensation accrued, provided the member is receiving DVA disability compensation for a disability that has been determined to be combat-related by the Military Department. No CRSC is payable for any month prior to June 2003.

1.1.1.1. For a member who qualifies on May 31, 2003, compensation accrues beginning in June 2003.

1.1.1.2. For an eligible member whose disability percentage is less than 60 percent, compensation is effective January 1, 2004.

1.1.1.3. For an eligible member who is retired under Title 10, United States Code, Chapter 61 (***10 U.S.C. Chapter 61***) with less than 20 years of active duty or with less than sufficient service and age to qualify for retirement under ***10 U.S.C. § 12731***, compensation is effective January 1, 2008.

1.1.1.4. For a member who did not meet the qualifications on June 1, 2003, January 1, 2004, or January 1, 2008, but who later meets the qualifications, entitlement accrues the first day of the following month.

1.1.2. Funding and Payment

CRSC is not military retired pay. It is a monthly entitlement that is paid only in whole-month increments. Prior to October 1, 2003, CRSC was payable from funds appropriated for pay and allowances payable by the Secretary of the Military Department concerned (or designee) for that fiscal year (FY). Effective October 1, 2003, the source of funding is the DoD Military Retirement Fund.

* 1.1.3. Relationship to Other Provisions

CRSC is not retired pay, and it is not subject to the provisions of ***10 U.S.C. § 1408*** relating to payment of retired or retainer pay in compliance with court orders. Additionally, CRSC payments are not subject to Chapter 13 bankruptcy court orders to pay a Chapter 13 trustee. However, CRSC is subject to other provisions for recovering debt owed by the retiree.

1.1.3.1. CRSC is subject to a Treasury offset to recover a debt owed to the United States as well as to garnishment for child support or alimony. In addition, debts due the government may be collected from CRSC, including overpayments of retired pay or erroneous payments of CRSC, by means of an administrative offset. An administrative offset of CRSC to collect a debt due the government is subject to the due process requirements of ***31 U.S.C. § 3716*** and ***31 Code of Federal Regulations (CFR), part 901***. Claims for overpayments of CRSC may be considered for waiver in accordance with ***10 U.S.C. § 2774***

1.1.3.2. CRSC is subject to a deduction of Survivor's Benefit Plan (SBP) premium, when retired pay is not adequate, for a person who has elected to participate in the SBP. See paragraph 8.3.

1.1.4. Tax Consideration

CRSC payments are considered tax exempt from Federal income tax under provisions of ***26 U.S.C. § 104***.

1.2 Authoritative Guidance

The pay policies and requirements established by DoD in this chapter are derived primarily from, and prepared in accordance with the U.S.C., including Titles 10, 31, and 37. Due to the subject matter in this chapter, the list of authoritative sources is extensive. The specific statutes, regulations, and other applicable guidance that govern each individual section are listed in a reference section at the end of the chapter.

2.0 ENTITLEMENT

2.1 Monthly Entitlement

CRSC is a monthly entitlement. A retiree is entitled to CRSC for each month during which, for the entire month, the member:

2.1.1. Has applied for and elected CRSC under these provisions (section 3.0),

2.1.2. Meets preliminary CRSC criteria (section 4.0), and

2.1.3. Meets final CRSC criteria (section 5.0).

2.2 Expanded Eligibility in 2008

As of January 1, 2008, section 641 of the FY 2008 National Defense Authorization Act and ***10 U.S.C. § 1413a*** provide special rules for CRSC-eligible retirees with fewer than 20 years of service, to include members who have waived their retired pay in order to receive DVA disability compensation. This expanded authority includes both 10 U.S.C., Chapter 61 (10 U.S.C. §§ 1201-1222) disability retirees and Temporary Early Retirement Authority (TERA) retirees. However, a Reserve Component retiree who receives retired pay for early retirement with physical disabilities under ***10 U.S.C. § 12731b*** is specifically excluded from entitlement to CRSC by 10 U.S.C. § 1413a(c)(1).

3.0 APPLICATION AND ELECTION

3.1 Application and Election

A member may not be paid CRSC unless he or she has applied for and elected to receive compensation under the CRSC program by filing an application on DoD (DD) Form 2860, Claim For Combat-Related Special Compensation (CRSC), with the Military Department from which he or she retired. A member may submit an application for CRSC at any time and, if otherwise qualified for CRSC, compensation will be paid for any month after May 2003 for which all conditions of eligibility were met, subject to any legal limitations.

*3.2 Election of CRSC or Concurrent Military Retirement Pay and DVA Disability Compensation

The law states that a member eligible for both CRSC, under 10 U.S.C. § 1413a, and Concurrent Military Retirement Pay and DVA Disability Compensation, under ***10 U.S.C. § 1414***, may not receive both, but must elect which compensation to receive. The Defense Finance and Accounting Service (DFAS)-Cleveland site will advise the member which of the two payments is being paid pursuant to such election. In addition, the DFAS-Cleveland site will provide an annual notice to the member of their entitlements under both programs. If the gross amounts payable change under either program, a member may then change their election during the annual open season period (normally between January 1 and January 31) as set forth by DFAS each year. The member will have one opportunity annually to reverse the current election. This will allow the member to assess the impact of annual adjustments to retired pay, DVA disability compensation, CRSC, and Concurrent Military Retirement Pay and DVA Disability Compensation. The DFAS-Cleveland site will advise members of their options and the procedures to make such elections. The member bears the responsibility for electing which benefit to receive. If the member makes no request to change the current election during the annual open season, the current election will be continued. See also Chapter 64 for more information.

4.0 PRELIMINARY CRITERIA

A retired member of the Uniformed Services must satisfy the following applicable conditions to meet the preliminary criteria to receive CRSC.

4.1 Years of Service Requirement

4.1.1. June 1, 2003 Through December 31, 2003

A retired member must have had 20 or more years of service for the purpose of computing retired pay.

4.1.2. January 1, 2004 Through December 31, 2007

Beginning January 1, 2004, and prior to January 1, 2008, a retired member must have had 20 or more years of service for the purpose of computing retired pay or have been entitled to Reserve Component retired pay under 10 U.S.C. § 12731 (other than by reason of § 12731b) to be eligible for CRSC.

4.1.3. Before January 1, 2008

For the purposes of both subparagraphs 4.1.1 and 4.1.2 the following apply:

4.1.3.1. The 20 years of service required for computing retired pay may be inferred from the retired pay multiplier. Thus, a member who retired for years of service (not for disability under 10 U.S.C., Chapter 61) who has a retired pay multiplier of not less than 50 percent, or a member retired under the Military Retirement Reform Act of 1986 (referred to as REDUX) who is still under age 62 with a retired pay multiplier of not less than 40 percent, may be presumed to have at least 20 years of service for retired pay computation purposes. The Military Departments are not bound by such presumption if there is documentary information to the contrary. In such cases the Military Departments shall base their determinations on the documentary information available. A member who retired under 10 U.S.C., Chapter 61 should be evaluated in terms of what the multiplier would be if the member had not retired for disability. See subparagraph 4.1.3.4.

4.1.3.2. A member retired under the provisions of section 4403 of ***Public Law 102-484***, October 23, 1992, as amended, and by section 504 of ***Public Law 112-81***, December 31, 2011 (commonly known as the TERA program) is generally not eligible unless the member is credited with sufficient service for a 50 percent multiplier or has been recalled to active duty long enough to accumulate 20 years or more of service in the Uniformed Services for the purpose of computing retired pay. Service in Public and Community Service positions under the provisions of section 4403 of Public Law 102-484, October 23, 1992, that is creditable for re-computation of retired pay at age 62 does not count for these purposes. A TERA retiree who has a retired pay increase of 10 percent granted on the basis of extraordinary heroism is not eligible under these provisions if the retired pay multiplier would otherwise be less than 50 percent.

4.1.3.3. Prior to January 1, 2004, a retired reservist had to have at least 7,200 points to be eligible for CRSC. Effective January 1, 2004, a retired Reservist with retired pay computed under 10 U.S.C. § 12731 is eligible for CRSC unless retired for disability under 10 U.S.C. § 12731b with more than 15 but less than 20 years as required under 10 U.S.C. § 12731(a)(2). Specifically, those retired under the Reserve TERA provisions, as prescribed in ***10 U.S.C. § 12731a***, who served fewer than 20 years, but were considered to meet the criteria of 10 U.S.C. § 12731(a)(2) are eligible under these provisions.

4.1.3.4. CRSC is payable to otherwise qualifying applicants receiving retired pay based on the DoD-assigned percentage of disability under 10 U.S.C., Chapter 61. For such members, the CRSC payment is subject to reduction as explained in paragraph 8.5.

4.1.4. On or After January 1, 2008

A retired member who meets the criteria of paragraphs 4.2 through 4.4 satisfies the preliminary criteria to receive CRSC, without regard to having 20 or more years of creditable service for computing retired pay.

4.1.4.1. A member retired for disability under 10 U.S.C., Chapter 61**,** with less than 20 years of service is eligible to receive CRSC, subject to reduction under subparagraph 8.5.2.

4.1.4.2. A member retired under the provisions of section 4403 of Public Law 102-484, October 23, 1992, as amended, and by section 504 of Public Law 112-81, December 31, 2011, (commonly known as the TERA program) is entitled to CRSC. The monthly amount of CRSC payable to qualifying TERA retirees will not be reduced under the special rules for CRSC-entitled disability retirees with less than 20 years of service that are applicable only to Chapter 61 retirees.

4.2 Retired Status

A member must be in a retired status (i.e., on the retired rolls), or have been transferred to the Fleet Reserve or Fleet Marine Corps Reserve. A member who is recalled to, or retained on, active duty is not in a retired status and therefore is not entitled to CRSC for such period of active duty.

4.3 Entitled to Retired Pay

4.3.1. A member must be entitled to retired pay, notwithstanding that such retired pay may be reduced due to receipt of DVA disability compensation. A reservist who has not reached the requisite age to receive retired pay (generally age 60) is not eligible to receive CRSC payments. See Chapter 1, subparagraph 3.8.6, for when the eligibility age of a reservist will be reduced below 60 years of age and become eligible for retired pay.

4.3.2. A member who waives retired pay in order to credit military service for the purposes of establishing eligibility for a civil service retirement, or for any reason other than to receive disability compensation from the DVA, is not eligible to receive CRSC payments. A member who

combines his military time with his civil service time for the sole purpose of enhancing his civil service retirement may be eligible for CRSC if the member is still eligible to receive military retired pay. Members should consult the Civil Service Retirement System (CSRS) and Federal Employees Retirement System (FERS) ***Handbook for Personnel and Payroll Offices*** for further information on eligibility.

4.4 Qualifying Disability Ratings (Percentages)

A member must be entitled to compensation for service-connected disabilities under ***38 U.S.C.***, as rated by the DVA. The rating must be awarded prior to the member's date of death.

4.4.1. Disability ratings by the Secretary of the Military Department concerned (or designee), as of the date on which the member retired, may be used to help make determinations of whether the member meets preliminary CRSC criteria.

4.4.2. The actual computation of the amount of CRSC payable to an eligible retiree is based solely on DVA disability determinations and the amount of DVA compensation paid, without regard to any disability that is not combat-related. Military retirement decisions may be used to determine whether such disabilities are combat-related.

5.0 FINAL CRITERIA

In order for the member to be entitled to CRSC, the member must meet all four preliminary CRSC criteria (as prescribed in paragraphs 4.1 through 4.4), and the appropriate Service must determine that the member has a combat-related disability or disabilities, as defined by paragraphs 5.1 and 5.2, that are compensated by the DVA.

5.1 Purple Heart Disability

Purple Heart Disability is a disability with an assigned medical diagnosis code from the DVA Schedule for Rating Disability (VASRD) that was attributed to injuries for which the member was awarded a Purple Heart.

5.1.1. If the member meets the preliminary CRSC criteria and has been awarded a Purple Heart, then the Military Department must determine which disabilities of the member, if any, are attributed to Purple Heart injuries. If the member was not awarded a Purple Heart, then no such determination will be made.

5.1.2. Determination that a disability is a Purple Heart Disability requires documentary information that there is a sufficient causal relationship between the disability and injury for which a Purple Heart was awarded to conclude that the disability is attributable to such injury. Such a disability will be classified as a Purple Heart Disability and will be included in any other CRSC determinations based on combat-related disabilities.

5.2 Other Combat-Related Disabilities

A combat-related disability is a disability with an assigned medical diagnosis code from the VASRD and which a Military Department has determined is combat-related based on the following criteria:

5.2.1. The disability was incurred as a direct result of armed conflict,

5.2.2. The disability was incurred while engaged in hazardous service,

5.2.3. The disability was incurred in the performance of duty under conditions simulating war, or

5.2.4. The disability was incurred through an instrumentality of war.

NOTE: The Department will record for each disability determined to be combat-related which of the criteria provided at subparagraphs 5.2.1 through 5.2.4 qualifies the disability as combat-related. A determination of combat-relatedness (see section 6.0) will be made concerning each separate disability with an assigned medical diagnosis code from the VASRD. A retiree may have disabilities that are not combat-related. Such disabilities will not be considered in determining eligibility for CRSC or the amount of CRSC payable. An uncorroborated statement in a record that a disability is combat-related will not, by itself, be considered determinative for purposes of meeting the combat-related standards for CRSC prescribed herein. CRSC determinations must be made based on the program criteria.

6.0 DETERMINATIONS OF COMBAT-RELATEDNESS

The following criteria, terms, definitions, and explanations will apply to making combat-related determinations in the CRSC Program.

6.1 Direct Result of Armed Conflict

6.1.1. The disability is a disease or injury incurred in the line of duty as a direct result of armed conflict. To support a combat-related determination, it is not sufficient to only state the fact that a member incurred the disability during a period of war, in an area of armed conflict, or while participating in combat operations. There must be a definite causal relationship between the armed conflict and the resulting disability.

6.1.2. Armed conflict includes a war, expedition, occupation of an area or territory, battle, skirmish, raid, invasion, rebellion, insurrection, guerilla action, riot, or any other action in which Service members are engaged with a hostile or belligerent nation, faction, force, or with terrorists.

6.1.3. Armed conflict may also include incidents involving a member while interned as a prisoner of war, while detained against his or her will in the custody of a hostile or belligerent force, or while escaping or attempting to escape from such confinement, prisoner of war, or detained status.

6.2 While Engaged in Hazardous Service

Hazardous service is service that includes, but is not limited to, aerial flight, parachute duty, demolition duty, experimental stress duty, and diving duty. A finding that a disability is the result of hazardous service requires that the injury or disease be the direct result of actions taken in the performance of such service. Travel to and from such service, or actions incidental to a normal duty status not considered hazardous, are not included.

6.3 In the Performance of Duty Under Conditions Simulating War

In general, performance of duty under conditions simulating war covers disabilities resulting from military training, such as war games, practice alerts, tactical exercises, airborne operations, leadership reaction courses, grenade and live fire weapon practice, bayonet training, hand-to-hand combat training, repelling, and negotiation of combat confidence and obstacle courses. It does not include physical training activities such as calisthenics, jogging, formation running, or supervised sport activities.

6.4 Instrumentality of War

6.4.1. There must be a direct causal relationship between the instrumentality of war and the disability. It is not required that a member's disability be incurred during an actual period of war. The disability must be incurred incident to a hazard or risk of the service.

6.4.2. An instrumentality of war is a vehicle, vessel, or device designed primarily for Military Service and intended for use in such Service at the time of the occurrence or injury. It may also include such instrumentality not designed primarily for Military Service if use of or occurrence involving such instrumentality subjects the individual to a hazard peculiar to Military Service. Such use or occurrence differs from the use or occurrence under similar circumstances in civilian pursuits.

6.4.3. A determination that a disability is the result of an instrumentality of war may be made if the disability was incurred in any period of service as a result of such diverse causes as wounds caused by a military weapon, accidents involving a military combat vehicle, injury or sickness caused by fumes, gases, or explosion of military ordnance, vehicles, or materiel.

6.4.4. For example, if a member is engaging in a sporting activity while on a field exercise and falls and strikes an armored vehicle, the injury would not be considered the result of an instrumentality of war (armored vehicle) because it was the sporting activity that was the cause of the injury, not the vehicle. On the other hand, if the individual was engaged in the same sporting activity and the armored vehicle struck the member, then the injury would be considered the result of an instrumentality of war.

7.0 SPECIAL MONTHLY COMPENSATION (SMC)

7.1 General

SMC, under ***38 U.S.C. § 1114***, is payable for anatomical loss or loss of use of specific organs or parts of the body as a result of service-connected disabilities. SMC is payable in addition to the basic rate of compensation otherwise payable on the basis of degree of disability, provided that the combined rate of compensation does not exceed the monthly rate set forth in 38 U.S.C. § 1114(k).

7.2 Special Determination

Each Military Department will make a special determination regarding whether a member entitled to CRSC who also receives SMC from the DVA under 38 U.S.C. § 1114(k) through (s) could receive increased CRSC as a result of an SMC determination. The Military Department will first determine whether all the member's DVA-compensated disabilities have been determined to be combat-related disabilities under the CRSC program. For members with DVA-compensated disabilities that are both combat-related and non-combat-related, the Military Department will classify each award of SMC as either Combat-Related SMC (CR-SMC) or Non-Combat-Related SMC (Non-CR-SMC), consistent with the corresponding determination of the diagnostic codes on which the SMC is based. The DFAS-Cleveland site will be notified of all such determinations and will include any CR-SMC in CRSC computations.

7.3 Grades Not Requiring SMC Determinations

The Military Department need not make a combat-related determination for any member who would not receive added compensation even if SMC was determined to be combat-related. Any SMC on such member will be passed to DFAS as "undetermined combat-relatedness."

8.0 CRSC AMOUNT

The monthly amount of CRSC is equal to the full monthly amount prescribed in paragraph 8.1, reduced as prescribed in paragraph 8.5 and limited in accordance with paragraph 8.2.

8.1 Gross Monthly Amount

The monthly amount of disability compensation the member would be paid by the DVA under the provisions of 38 U.S.C. if compensated solely for the disabilities determined to be attributable to an injury for which the member received the Purple Heart or determined to be otherwise combat-related. Applicable compensation is set forth in ***38 U.S.C., Chapter 11***. See section 5.0.

Example: A member with a spouse and two children has qualifying combat-related disabilities rated at 100 percent by the DVA. The member's current monthly DVA benefit amount is $3,537.49 which is the prescribed rate for a 100 percent disability for a veteran with a spouse and two children as of December 1, 2020. The gross monthly amount for CRSC purposes is based on this full rate and not just the veteran-alone amounts as applied to CRSC for periods on or after January 1, 2004.

8.1.1. Compensation of Dependents

Additional compensation for dependents is to be included as part of any applicable CRSC compensation. DFAS will use the same dependency rates for the combat-related compensation as DVA uses to determine the member's full disability compensation. For example, if a member is compensated by DVA at the 100 percent disability rate for a veteran with spouse and one child and the combat-related percentage is 60 percent, then the gross CRSC will be determined as the 60 percent rate for a veteran with a spouse and one child. The rates of such compensation are set forth in ***38 U.S.C. § 1115*** and are also located at ***https://www.va.gov/disability/compensation-rates/veteran-rates***.

8.1.2. SMC

The amount of SMC will be considered as part of gross CRSC compensation only if the SMC is paid on the basis of disabilities determined by the Military Department to be combat-related. See section 7.0.

8.1.3. Retired Members Considered Unemployable

Under the laws governing the DVA, members who qualify for the Individual Unemployability supplement to DVA Disability Compensation under the provisions of ***38 CFR 4.16*** are entitled to receive monthly DVA disability compensation payment equal to the amount that they would receive if rated by the DVA as 100 percent disabled. In such cases, DFAS will coordinate with DVA to determine the amount of DVA Disability compensation actually provided to the member, irrespective of the DVA schedule rating percentage. CRSC entitlement will be determined based on the amount of DVA Disability compensation actually paid by the DVA and the amount of military retired pay waived to receive DVA Disability compensation, subject to the other criteria and limitations found in this chapter. See paragraphs 8.2 and 8.5.

8.2 Adjusted Amount

The CRSC payment may not exceed the current reduction in retired pay applicable to the retiree under ***38 U.S.C. § 5304*** and ***38 U.S.C. § 5305***. Thus, CRSC is not payable if there is no reduction because the member is not receiving any monthly disability compensation from DVA, or because the member is not receiving retired pay (such as a reserve member before reaching retirement age at 60 or other reduced retirement age), or for other reasons (such as a member who waives military retired pay in order to credit military service for a civil service retirement). The amount of a member's CRSC entitlement will be adjusted to be the lesser of the gross CRSC from paragraph 8.1 or the reduction to the retired pay entitlement.

Example: The member, described in paragraph 8.1 is retired after 22 years of service with a high-three pay base of $4,500, resulting in retired pay of $2,475 monthly (55 percent of $4,500). The potential retired pay of $2,475 is reduced to $0 by receipt of the DVA disability compensation. Thus, the adjusted amount of CRSC is the $2,475 reduction in retired pay since it is less than the DVA benefit amount of $3,537.49 determined in the example in paragraph 8.1.

8.3 Deduction From CRSC When Retired Pay Not Adequate

Pursuant to 10 U.S.C. § 1452(d)(2), if a deduction from the member's retired pay for any period cannot be made in the full amount required to satisfy the SBP premium, the premium will be deducted from the retiree's CRSC in lieu of deduction from the member's retired pay in the amount that would otherwise have been deducted from the member's retired pay for that period.

8.4 SBP Premium Deduction From CRSC When Dependency and Indemnity Compensation (DIC) Offset is Applicable

Pursuant to 10 U.S.C. § 1450(e), the SBP premium deducted from CRSC of the deceased will be refunded to the surviving spouse when DIC offset is applicable. See Chapter 46.

8.5 CRSC Payment Reduction for 10 U.S.C., Chapter 61 Disability Retirees

The adjusted monthly amount specified in paragraph 8.2 will be reduced according to the provisions of subparagraph 8.5.1 or 8.5.2, whichever is applicable.

8.5.1. Reduction for Periods Prior to January 1, 2013

Provisions for CRSC payment reduction for periods prior to January 1, 2013, follow:

8.5.1.1. Members retired for disability under 10 U.S.C., Chapter 61 with 20 years or more of creditable service computed under section ***10 U.S.C. § 1208*** will have the maximum CRSC payment reduced by the amount, if any, by which the amount of the member's gross retired pay under Chapter 61 exceeds the applicable retired pay to which the member would otherwise have been entitled under any other provisions of law. A retiree who accepted the Career Status Bonus will have the reduced amount calculated based on retired pay that would otherwise have been computed under ***10 U.S.C. § 1409(b)(2)***.

Example: The member described in paragraph 8.2, who would have received $2,475 in retired pay had he retired for his years of service, was retired under 10 U.S.C., Chapter 61 with a disability rated at 60 percent. Thus, the member receives retired pay of $2,700 monthly (60 percent of $4,500). However, in this case, the member has a combined DVA rating of 100 percent, but combat-related disabilities rated at 60 percent. The member's current monthly DVA benefit amount is $3,537.49, of which $1,380.39 is combat-related. The member has a total offset of retired pay. The maximum CRSC entitlement under paragraphs 8.1 and 8.2 is $1,380.39. The maximum CRSC entitlement will be reduced by the

difference in the Chapter 61 retirement and the longevity retirement amounts, or $225 ($2,700 less $2,475). This reduction reflects the amount by which the member's disability retired pay exceeds his or her longevity retired pay. The member's CRSC benefit of $1,380.39 is reduced by $225 to $1,155.39. In this case, the member will receive $3,537.49 from the DVA and $1,155.39 in CRSC from DoD.

8.5.1.2. Members retired for disability under 10 U.S.C., Chapter 61 with less than 20 years of creditable service computed under 10 U.S.C. § 1208 and who initially qualify for CRSC on or after January 1, 2008, will have the maximum CRSC payment reduced by the amount, if any, by which the amount of the member's gross retired pay under Chapter 61 exceeds the amount that is equal to 2½ percent of the member's years of creditable service multiplied by the member's retired pay base under ***10 U.S.C. § 1406(b)(1)*** or ***10 U.S.C. § 1407***, whichever is applicable to the member.

NOTE: A retired reserve member, retired under the provisions of 10 U.S.C., Chapter 61 is entitled to CRSC. The gross amount of CRSC determined under paragraph 8.1 will be adjusted as required under paragraph 8.2 and then further reduced under paragraph 8.5. For Reserve Component members with less than 20 years of service as determined under ***10 U.S.C. § 12733***, reduce the adjusted CRSC amount by the amount, if any, by which the disability retired pay exceeds the amount equal to 2½ percent times the years of creditable service determined under 10 U.S.C. § 12733 multiplied by the member's applicable retired pay base. For Reserve Component members with 20 or more years of service as determined under 10 U.S.C. § 12733, reduce the adjusted CRSC amount by the amount, if any, by which the disability retired pay exceeds the retired pay to which the member would be entitled if the member were 60 years old.

8.5.2. Reductions for Periods On or After January 1, 2013

Provisions for CRSC payment reduction for periods after January 1, 2013, follow:

8.5.2.1. Members retired for disability under 10 U.S.C., Chapter 61 with 20 or more years of creditable service computed under section 10 U.S.C. § 1208 will have the maximum CRSC payment restricted to the amount, which when combined with any remaining retired pay after DVA offset, will not exceed the applicable retired pay to which the member would otherwise have been entitled under any other provisions of law. A retiree who accepted the Career Status Bonus will have the reduced amount calculated based on retired pay that would otherwise have been computed under 10 U.S.C. § 1409(b)(2).

Example: The same member, as described in paragraph 8.2, was retired under 10 U.S.C., Chapter 61, with a disability rated at 60 percent. Thus, the member receives retired pay of $2,700 monthly (60 percent of $4,500). However, in this case, the member has a combined DVA rating of 100 percent, but combat-related disabilities rated at 60 percent. The member's current monthly DVA benefit amount is $3,537.49, of which $1,380.39 is combat-related. The member has a total offset of retired pay. Since there is no residual retired pay after offset of the full DVA benefit amount, the member's CRSC entitlement of $1,380.39, is fully

payable as it does not exceed the applicable retired pay to which the member would otherwise have been entitled under any other provisions of law. In this case, the member will receive $3,537.49 from the DVA and $1,380.39 in CRSC from DoD.

8.5.2.2. Members retired for disability under 10 U.S.C., Chapter 61, with less than 20 years of creditable service computed under 10 U.S.C. § 1208, and who are qualified for CRSC, on or after January 1, 2013, will have the maximum CRSC payment restrictions. The CRSC payment amount, which when combined with any remaining retired pay after DVA offset, will not exceed the amount that is equal to 2½ percent of the member's years of creditable service multiplied by the member's retired pay base under 10 U.S.C. § 1406(b)(1) or 10 U.S.C. § 1407, whichever is applicable to the member.

NOTE: A retired reserve member, retired under the provisions of 10 U.S.C., Chapter 61, is entitled to CRSC. The gross amount of CRSC determined under paragraph 8.1 will be adjusted as required under paragraph 8.2. For Reserve Component members with less than 20 years of service as determined under 10 U.S.C. § 12733, the CRSC amount when combined with the amount of retired pay payable to the retiree after reduction for the full DVA disability compensation, if any, may not exceed the disability retired pay amount that is equal to 2½ percent (2 percent if under Blended Retirement System) times the years of creditable service determined under 10 U.S.C. § 12733 multiplied by the member's applicable retired pay base. For Reserve Component members with 20 or more years of service as determined under 10 U.S.C. § 12733, the CRSC amount when combined with the amount of retired pay payable to the retiree after reduction for the full DVA disability compensation, if any, may not exceed the disability retired pay to which the member would be entitled if the member were 60 years old.

8.5.3. Chapter 61 Disability Retiree Out-Year Deductions

In all cases, once established (based on date the member was first placed on either the Permanent or Temporary Disability Retirement List), the CRSC reduction amount will be increased by each increase in the retired pay cost of living allowance. It will not be re-computed using current pay tables unless the member otherwise qualifies for re-computation of retired pay by reason of recall to duty or correction of official records.

9.0 COMBINED DISABILITY RATING PERCENTAGE

9.1 The DVA Combined Ratings Table

The combined disability rating table combines multiple disability ratings as set forth in ***38 CFR 4.25***. The table is based on the consideration of an individual's efficiency, as affected by the most disabling conditions, if any, in the order of severity. Thus, a person having a 60 percent disability is considered 40 percent efficient. Proceeding from this 40 percent efficiency, the effect of a further 30 percent disability is to leave only 70 percent of the efficiency remaining after consideration of the first disability (70 percent of 40 percent), leaving 28 percent efficiency altogether. The individual is thus 72 percent disabled.

9.2 Multiple Combined Disability Ratings

When a retiree has two or more disability ratings, use the following formula to determine the combined rating of multiple disabilities:

9.2.1. Subtract each disability percent from 100 percent to obtain the remaining efficiency,

9.2.2. Multiply the remaining efficiencies together,

9.2.3. Subtract the result from 100 percent, and

9.2.4. Round to the nearest 10 percent (round upward for 5 percent and up, down for 4 percent and below) to determine the combined disability rating.

Example 1: Consider a retiree having three disabilities from DVA, rated 50 percent, 40 percent, and 30 percent. If added together, then the total would be 120 percent. Instead, the member's combined rating is determined as follows:

1. The three disabilities leave efficiencies of 50 percent, 60 percent, and 70 percent respectively;

2. Multiply the three efficiencies together:

.50 x .60 x .70 = .21 or 21 percent;

3. The disability is 100 percent less 21 percent = 79 percent; and

4. Adjust the result upward to a combined disability rating of 80 percent.

Example 2: Now consider what happens if the Military Department determines that only the 40 percent and 30 percent disabilities are combat-related, then the member's combined disability rating for CRSC would be:

1. The two disabilities of 40 percent and 30 percent leave efficiencies of 60 percent and 70 percent;

2. Multiply the two efficiencies together:

.60 x .70 = .42 or 42 percent;

3. The disability is 100 percent less 42 percent = 58 percent; and

4. Adjust the result upward to a combined disability rating of 60 percent.

9.3 DVA Retroactive Increase

When DVA makes a retroactive increase in a member's DVA disability compensation pertinent to a member's combat-related disabilities under CRSC, DFAS and DVA will exchange data to determine the additional retroactive amount that the member is entitled to receive as the result of CRSC. DFAS will compute the additional CRSC entitlement and advise DVA in order for DVA to pay the member the appropriate additional authorized DVA disability compensation. Any increase affecting CRSC qualified disabilities in the current month requires that CRSC be re-computed. No retroactive CRSC may be paid to a deceased member or to a survivor based on a retroactive DVA Disability compensation increase that was awarded after a member died.

*9.4 Impact to Uniformed Services Former Spouse's Protection Act Payments When a Military Retiree is Retroactively Awarded Disability Compensation or CRSC

CRSC payments that become payable to a retiree as a result of a retroactive DVA or CRSC award will be reduced by all amounts of the retired pay or Concurrent Military Retirement Pay and DVA Disability Compensation previously paid from the retiree's account, including payments to his or her former spouse. Payments of retired pay to a former spouse pursuant to a valid court order, but prior to a retroactive DVA or CRSC award, were not and do not become erroneous overpayments.

10.0 REVIEW PROCESS

10.1 Basis for Determination

10.1.1. Determinations of whether a disability is combat-related will be based on the preponderance of available documentary information where quality of information is more important than quantity. All relevant documentary information is to be weighed in relation to known facts and circumstances, and determinations will be made on the basis of credible, objective documentary information in the records as distinguished from personal opinion, speculation, or conjecture.

10.1.2. The burden of proof that a disability is combat-related rests with the applicant, who is required to provide copies of documents in his or her possession to the best of his or her ability. A record submitted by a member may be used in support of his or her application if that record appears regular on its face and is consistent with Military Service documents and procedures in use at the time, based on the best information available. Military Departments may compile a list of typical documents used in various time periods. If necessary, the Military Departments, under agreement with DVA may request copies of certain documents (i.e., DD 214, "Certificate of Release or Discharge From Active Duty", medical records, final DVA ratings) from DVA to support CRSC determinations.

10.2 Processing of Applications

Each Military Department will receive and process applications submitted by members retired from that Military Department on DD 2860, Claim For Combat-Related Special Compensation (CRSC). Applications will be reviewed, and an application will be approved only if the applicant satisfies both preliminary and final CRSC criteria. An application must be received by the military department prior to the member's death in order to be considered. An application for CRSC submitted by a member's survivors will not be considered. The DFAS-Cleveland site will be notified of each approved application for payment.

10.2.1. Initial Review

Each Service Department will review the member's application to determine if the member meets the preliminary criteria in section 4.0. If a member does not satisfy each of the preliminary CRSC criteria, then the application will be denied and no further consideration is necessary. The member may reapply when his or her ratings satisfy the specified thresholds and meet all four preliminary CRSC criteria in section 4.0.

10.2.2. Final Review

If the member meets all four preliminary criteria in section 4.0, then the Military Department will determine whether the member's disabilities are qualifying combat-related disabilities, as prescribed in section 6.0. The Military Department will record each disability determined to be combat-related with assigned medical diagnosis code from VASRD. The Military Department will forward the approved claims with VASRD codes categorized as either combat or Purple Heart to the DFAS-Cleveland site for payment.

10.3 Denial and Appeal

Provisions for denial and appeal processes follow.

10.3.1. Denial

When a Military Department denies a CRSC application, they will provide a letter to the member specifying the reasons(s) for the denial. The Military Department will inform the member that he or she may seek reconsideration by submitting additional, clarifying, or new documentary information to the Military Department in support of his or her claim. The Military Department will review the additional or new information and will inform the member of the results of the review. The Military Department will also inform the member that CRSC is subject to the same appeals and correction processes applicable to military pay and allowances, including application to the appropriate Board for Correction of Military Records (BCMR) under the provisions of ***10 U.S.C. § 1552***.

10.3.2. Appeal

The Military Department will provide the member a ***DD 149***, Application for Correction of Military Record Under the Provisions of Title 10, U.S. Code, section 1552, and the address of the BCMR, including its website.

REFERENCES

CHAPTER 63 – COMBAT-RELATED SPECIAL COMPENSATION (CRSC)

1.0 – GENERAL

Public Law 107-314, section 636, December 2, 2002
Public Law 108-136, section 642, November 24, 2003
Principal Director for the Under Secretary of Defense (PDUSD) Personnel and Readiness (P&R) Memo, May 21, 2003
PDUSD (P&R) Memo, April 27, 2004
Public Law 110-181, section 641, January 28, 2008
Office of the Under Secretary of Defense (OUSD) (P&R) Memo, June 3, 2008
10 U.S.C. § 1413a

1.1	10 U.S.C. § 1413a OUSD (P&R) Memo, June 3, 2008
1.1.1	10 U.S.C., Chapter 61 10 U.S.C. § 12731 OUSD (P&R) Memo, June 3, 2008
1.1.3	10 U.S.C. § 1408 10 U.S.C., Chapter 73 10 U.S.C. § 2774 31 U.S.C. § 3716 31 CFR, part 901
1.1.4	26 U.S.C. § 104

2.0 – ENTITLEMENT

2.2	Public Law 110-131, section 641, January 28, 2008 10 U.S.C. § 1413a 10 U.S.C., Chapter 61 10 U.S.C. § 12731(b)(1)

3.0 – APPLICATION AND ELECTION

3.2	10 U.S.C. § 1414 10 U.S.C. § 1413a

REFERENCES (Continued)

3.3	Deputy Secretary of Defense Memo, January 27, 2022

4.0 – PRELIMINARY CRITERIA

4.1.2	10 U.S.C. § 12731 OUSD (P&R) Memo, June 3, 2008
4.1.3	PDUSD (P&R) Memo, April 27, 2004
4.1.3.1	10 U.S.C., Chapter 61
4.1.3.2	Public Law 102-484, section 4403, October 23, 1992 10 U.S.C. § 1293, note Public Law 112-81, section 504, December 31, 2011
4.1.3.3	10 U.S.C. § 12731 10 U.S.C. § 12731a 10 U.S.C. § 12731b 10 U.S.C. § 12731(a)(2)
4.1.3.4	10 U.S.C., Chapter 61
4.1.4.1	10 U.S.C., Chapter 61
4.1.4.2	Public Law 102-484, section 4403, October 23, 1992 10 U.S.C. § 1293, note Public Law 112-81, section 504, December 31, 2011
4.3.1	38 U.S.C. § 5305
4.3.2	38 U.S.C. § 5304
4.4	38 U.S.C.

5. 0 – FINAL CRITERIA

	10 U.S.C. § 1413[a] PDUSD (P&R) Memo, May 21, 2003

6. 0 – DETERMINATIONS OF COMBAT READINESS

	10 U.S.C. § 1413[a] PDUSD (P&R) Memo, May 21, 2003

REFERENCES (Continued)

7.0 – SPECIAL MONTHLY COMPENSATION (SMC)	
	PDUSD (P&R) Memo, April 27, 2004
7.1	38 U.S.C. § 1114 38 U.S.C. § 1114(k)
7.2	38 U.S.C. § 1114(k) through (s)
8.0 – CRSC Amount	
8.1	10 U.S.C. § 1413a 38 U.S.C., Chapter 11
8.1.1	38 U.S.C. § 1115 PDUSD (P&R) Memo, April 27, 2004
8.1.3	38 U.S.C. § 1114(j) 38 CFR 4.16 and 4.18 PDUSD (P&R) Memo, April 27, 2004
8.2	38 U.S.C. § 5304 38 U.S.C. § 5305 OUSD (P&R) Memo, June 3, 2008 OUSD (P&R) Memo, June 3, 2008
8.3	10 U.S.C. § 1452(d)(2)
8.4	10 U.S.C. § 1450(e)
8.5.1	10 U.S.C., Chapter 61 10 U.S.C. § 1208 10 U.S.C. 1409(b)(2) Public Law 112-239, section 643, January 2, 2013 10 U.S.C. § 1413a(b)(3)
8.5.1.1	OUSD (P&R) Memo, June 3, 2008
8.5.2	10 U.S.C., Chapter 61 10 U.S.C. § 1208 10 U.S.C. § 1406(b)(1) 10 U.S.C. § 1407 10 U.S.C. § 12733 Public Law 112-239, section 643, January 2, 2013

REFERENCES (Continued)

	10 U.S.C. § 1413a(b)(3)
8.5.2.1	10 U.S.C. § 1413a(b)(3)(B) as amended by Public Law 114-328, January 1, 2018
8.5.3	OUSD (P&R) Memo, June 3, 2008

9.0 – COMBINED DISABILITY RATING PERCENTAGE

9.1	38 CFR 4.25
9.4	DoD Office of the General Counsel (Fiscal) Memorandum, August 6, 2019

10.0 – REVIEW PROCESS

	PDUSD (P&R) Memo, May 21, 2003
10.3	10 U.S.C. § 1552 10 U.S.C. § 1556

VOLUME 7B, CHAPTER 64: "CONCURRENT MILITARY RETIREMENT PAY AND DEPARTMENT OF VETERANS AFFAIRS (DVA) DISABILITY COMPENSATION"

SUMMARY OF MAJOR CHANGES

Changes are identified in this table and also denoted by blue font.

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

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

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

The previous version dated February 2023 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated hyperlinks and formatting to comply with administrative instructions.	Revision
5.5	Added paragraph to provide the relation of payment of concurrent military retired pay and DVA disability compensation to Individual Unemployability pursuant to Title 10, United States Code (U.S.C.), Chapter 61, and 10 U.S.C., section 1414.	Addition
References	Updated references.	Revision

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CHAPTER 64
CONCURRENT MILITARY RETIREMENT PAY AND DEPARTMENT OF VETERANS AFFAIRS (DVA) DISABILITY COMPENSATION

1.0 GENERAL

1.1 Purpose

This chapter provides information on the implementation of ***Title 10 United States Code (U.S.C.), section 1414***. It includes the requirements for receipt of concurrent military retired pay and Disability Compensation from the Department of Veterans Affairs (DVA) (hereinafter "DVA Disability Compensation") pursuant to 10 U.S.C. § 1414. It establishes that except for certain Disability Retirees, qualifying members (and former members) who are entitled to military retired pay who are also entitled to DVA Disability Compensation are not required to waive military retired pay in order to receive DVA Disability Compensation. It clarifies the waiver requirement applicable to Career Disability Retirees with more than 20 years of service. To accurately represent the retired pay entitlement under Congress' express language of 10 U.S.C. § 1414, this chapter removes all prior statements suggesting that military retired pay paid concurrently with DVA Disability Compensation pursuant to 10 U.S.C. § 1414 is "restored" retired pay. The law provides authority for military retirees to receive military retired pay either without application of the waiver requirements set out in ***38 U.S.C. § 5304*** and ***38 U.S.C. § 5305*** or with only limited application of such waiver requirements. Additionally, this chapter provides examples clarifying the rule for determining disposable retired pay under ***10 U.S.C. § 1408*** when a qualified retiree receives concurrent military retired pay and DVA Disability Compensation.

1.2 Authoritative Guidance

The pay policies and requirements established by the DoD in this chapter are derived primarily from, and prepared in accordance with the U.S.C., including Titles 5, 10, and 38. Due to the subject matter in this chapter, the list of authoritative sources is extensive. The specific statutes, regulations, and other applicable guidance that govern each individual section are listed in a reference section at the end of the chapter.

1.3 Definitions

1.3.1. DVA Disability Compensation. A monthly tax-free benefit paid by the DVA to veterans (including retirees) found by the Secretary of Veterans Affairs to be at least 10 percent disabled per the DVA schedule for rating disabilities because of injuries or diseases that were incurred in or aggravated during active duty, active duty for training, or inactive duty training. The benefit amount is graduated according to the degree of the veteran's disability on a scale from 10 percent to 100 percent (in increments of 10 percent). This benefit is paid by the DVA.

1.3.2. Disability Retiree. This is a member who was retired under ***Title 10, U.S.C., Chapter 61*** by virtue of being unfit to perform the duties of his office, grade, rank, or rating because of physical disability.

1.3.3. Career Disability Retiree. This is a member who was retired under Title 10, U.S.C., Chapter 61 with 20 years or more of service creditable under ***10 U.S.C. § 1405***, or at least 20 years of service computed under ***10 U.S.C. § 12732***, at the time of the member's retirement.

1.3.4. Military Retired Pay. This is an amount computed under ***Title 10, U.S.C., Chapter 71*** and paid to those retired under Title 10, U.S.C., Chapter 61 (Disability), ***Title 10, U.S.C., Chapter 63*** (Age), ***Title 10, U.S.C., Chapter 65*** (Warrant Officers), ***Title 10, U.S.C., Chapter 741*** (Army), ***Title 10, U.S.C., Chapter 841*** (Navy) ***Title 10, U.S.C., Chapter 941*** (Air Force), or ***Title 10, U.S.C., Chapter 1223*** (Non-Regular Service). All references to military retired pay in this chapter, include the term Title 10, U.S.C., Chapter 61 Disability Retired Pay.

1.3.5. Title 10, U.S.C., Chapter 61 Disability Retired Pay. This is the type of military retired pay to which a member who was retired under Title 10, U.S.C., Chapter 61 is entitled. Disability Retired Pay is computed pursuant to Title 10, U.S.C., Chapter 71. It is determined by applying a percentage multiplier to the member's basic pay at the time of retirement. The percentage multiplier may be computed based on the number of years of creditable service or the disability percentage assigned by the Service (as elected by the member). See Chapter 3. It is paid by the DoD (or the Department who retired the member pursuant to Title 10, U.S.C., Chapter 61). It is not DVA Disability Compensation.

1.3.6. Hypothetical Longevity Retired Pay. This is the amount of retired pay to which the member would have hypothetically been entitled if the member had hypothetically been retired for reasons other than physical disability under Title 10, U.S.C., Chapter 61.

1.3.7. General Waiver Requirement. This is the general rule that a military retiree may not receive both DVA Disability Compensation and military retired pay simultaneously, but may waive military retired pay in order to receive DVA Disability Compensation. See 38 U.S.C. § 5304 and 38 U.S.C. § 5305. The General Waiver Requirement is always subject to the exception under 10 U.S.C. § 1414.

1.3.8. Exception to the General Waiver Requirement. This is the rule enacted in 10 U.S.C. § 1414 to make specific and limited exceptions to the General Waiver Requirement.

1.3.9. Qualified Retiree. This is a member or former member of the Uniformed Services who is entitled for any month to both retired pay and DVA Disability Compensation based on a service-connected disability (or combination of service-connected disabilities) that is rated by the Secretary of Veterans Affairs as not less than 50 percent disabling on the DVA schedule for rating disabilities. A Disability Retiree must be a Career Disability Retiree to be a Qualified Retiree.

1.3.10. Qualified Career Disability Retiree. This is a person who meets both the definition of Career Disability Retiree and Qualified Retiree.

2.0 ELIGIBILITY

2.1 Qualified Retiree

To qualify for the Exception to the General Waiver requirement and receive military retired pay concurrently with DVA Disability Compensation, the member must be a "Qualified Retiree" as defined in paragraph 1.3.9. Career Disability Retirees who are qualified retirees may receive concurrent Title 10, U.S.C., Chapter 61 Disability Retired Pay and DVA Disability Compensation, subject to certain limitations described in paragraph 2.3.4.

2.2 Qualifying Service-Connected Disability

A qualifying service-connected disability is a service-connected disability (or combination of service-connected disabilities) that is rated by the Secretary of Veterans Affairs as not less than 50 percent disabling on the DVA schedule for rating disabilities.

2.3 Physical Disability Retirement

2.3.1. Disability Retirees - Less Than 20 Years. Such members who do not have 20 years or more of service creditable under 10 U.S.C. § 1405, or 20 years of service computed under 10 U.S.C. § 12732, at the time of the retirement are not eligible to receive Title 10, U.S.C., Chapter 61 Disability Retired Pay and DVA Disability Compensation concurrently. Accordingly, such members are subject to the General Waiver Requirement and must waive Title 10, U.S.C., Chapter 61 Disability Retired Pay in order to receive DVA Disability Compensation.

2.3.2. Qualified Career Disability Retirees - 20 Years or More. Such members may receive concurrent Title 10, U.S.C., Chapter 61 Disability Retired Pay and DVA Disability Compensation but, in certain circumstances, may be required to waive a portion of the Title 10, U.S.C., Chapter 61 Disability Retired Pay.

2.3.3. Nature of the Payments. A Qualified Career Disability Retiree is entitled to be paid Title 10, U.S.C., Chapter 61 Disability Retired Pay concurrently with DVA Disability Compensation. The Qualified Career Disability Retiree continues to receive Title 10, U.S.C., Chapter 61 Disability Retired Pay. The nature of the Title 10, U.S.C., Chapter 61 Disability Retired Pay is not changed because Career Disability Retiree becomes a Qualified Retiree under 10 U.S.C. § 1414.

2.3.4. Special Rules for Qualified Career Disability Retirees. The law limits the amount of Chapter 61 Disability Retired Pay that remains subject to the General Waiver Requirement. Specifically, a Career Disability Retiree receiving Title 10, U.S.C., Chapter 61 Disability Retired Pay must waive Chapter 61 Disability Retired Pay, but only to the extent that the amount of Chapter 61 Disability Retired Pay exceeds the amount of hypothetical longevity retired pay to which the member would have been entitled under any other provision of law if the member had not been retired for disability under Title 10, U.S.C., Chapter 61. After application of the limited general waiver requirement, a Qualified Career Disability Retirees will receive their

Title 10, U.S.C., Chapter 61 Disability Retired Pay in an amount equal to the dollar amount of hypothetical longevity retired pay. In cases where a Qualified Career Disability Retiree's hypothetical retired pay computation exceeds their Title 10, U.S.C., Chapter 61 Disability Retired Pay (based on percentage of disability), the General Waiver Requirement does not apply.

Example 1. Qualified Career Disability Retiree Whose Title 10, U.S.C., Chapter 61 Disability Retired Pay Exceeds Hypothetical Longevity Retired Pay.

If a Qualified Career Disability Retiree who was retired for disability under Title 10, U.S.C., Chapter 61 is entitled to $1000 per month in Disability Retired Pay based on his/her percentage of disability, and that same retiree would hypothetically have been entitled to $800 per month in retired pay if (s)he had (hypothetically) been retired under Title 10, U.S.C., Chapter 741 (Army), Title 10, U.S.C., Chapter 841 (Navy) or Title 10, U.S.C., Chapter 941 (Air Force) based on completion of 20 years of service (i.e., length of service), then the amount of Disability Retired Pay that can be received concurrently with DVA Disability Compensation is $800. The remaining $200 in Disability Retired Pay is still subject to the General Waiver Requirement (i.e., the requirement that a member must waive military retired pay in order to receive DVA Disability Compensation). Assume DVA Disability Compensation paid by the DVA is $1,500. Table 64-1 illustrates this example.

Note: In the example, the $800 per month in Chapter 61 Disability Retired Pay is paid concurrently with the DVA Disability Compensation ($1,500). The nature of the Title 10, U.S.C., Chapter 61 Disability Retired Pay is not changed. Such a member is eligible to receive both the Title 10, U.S.C., Chapter 61 Disability Retired Pay and DVA Disability Compensation, but must waive $200 in Title 10, U.S.C., Chapter 61 Disability Retired Pay. Thus $200 is still subject to the General Waiver Requirement. The $800 per month in Title 10, U.S.C., Chapter 61 Disability Retired Pay is not "waived" and then "restored." It is Title 10, U.S.C., Chapter 61 Retired Pay paid concurrently with the DVA Disability Compensation.

Example 2. Qualified Career Disability Retiree Whose Hypothetical Longevity Retired Pay is Equal or Exceeds Chapter 61 Disability Retired Pay.

In some cases, a Qualified Career Disability Retiree's Hypothetical Longevity Retired Pay will either equal or exceed their Title 10, U.S.C., Chapter 61 Disability Retired Pay (based on percentage of disability). In such cases the General Waiver Requirement will not apply. Assume a Qualified Career Disability Retiree who was retired for disability under Title 10, U.S.C., Chapter 61 and who chooses the more favorable of the following two computation methods: either (a) $900 per month in Title 10, U.S.C., Chapter 61 Disability Retired Pay based on his/her percentage of disability, or (b) $1,500 per month in retired pay based on years of service. (As a reminder, for a Title 10, U.S.C., Chapter 61 retiree, the percentage multiplier may be based on the number of years of creditable service or the disability percentage assigned by the Service as elected by the member). Assume

that same retiree would hypothetically have been entitled to $1,500 per month in retired pay if the member had (hypothetically) been retired under Title 10, U.S.C., Chapter 741 (Army), Title 10, U.S.C., Chapter 841 (Navy) or Title 10, U.S.C., Chapter 941 (Air Force) based on completion of 20 years of service (i.e., length of service). In such an instance, the amount of Title 10, U.S.C., Chapter 61 Disability Retired Pay that can be received concurrently with DVA Disability Compensation is $1,500. There is no amount that is subject to the general waiver requirement. Table 64-2 illustrates this example. (Assume DVA Disability Compensation paid by the DVA is $1,500).

2.4 Non-Regular Retired Pay

Members eligible for retirement for non-regular service are not eligible to receive both military retired pay and DVA Disability Compensation concurrently until they reach retirement age and have applied for and have become entitled to receive military retired pay. A member is generally not eligible for non-regular retired pay until they reach age 60. The eligibility age may be reduced in certain cases based on qualifying active duty in response to a national emergency after January 28, 2008.

2.5 Retired Pay Waived (Other Than for DVA Disability Compensation)

A member who waives retired pay in order to credit military service for the purpose of establishing eligibility for a civil service retirement, or for any reason other than to receive VA disability compensation, is not eligible to receive both military retired pay and DVA Disability Compensation concurrently. A member who combines his military time with his civil service time for the sole purpose of enhancing his civil service retirement may be eligible to receive both military retired pay and DVA Disability Compensation concurrently. Members who are in receipt of a civil service retirement and believe they may be eligible to receive both benefits simultaneously should consult the Civil Service Retirement System and Federal Employees Retirement System Handbook for Personnel and Payroll Offices for further information on eligibility. See also ***https://www.opm.gov/retire/pubs/handbook/hod.htm***.

3.0 APPLICATION

A member who has already met the requirements to receive military retired pay is not required to submit an application to receive military retired pay and DVA Disability Compensation concurrently. The Defense Finance and Accounting Service (DFAS) will establish procedures to ensure that qualified retirees receive military retired pay to which they are entitled pursuant to 10 U.S.C. § 1414. Members who believe they are entitled to military retired pay, but are not receiving it, should submit a written claim to DFAS to ascertain the reason they are not currently receiving military retired pay. The claim should be sent to DFAS, U.S. Military Retired Pay, 8899 East 56th Street, Indianapolis, IN 46249-1200 or use the askDFAS Online Tools for Retirees at ***https://www.dfas.mil/retiredmilitary/retiree-askDFAS-Online-Tool***. Any survivors seeking retroactive military retired pay, owed a deceased member as arrears of pay, must submit a written claim on a completed Standard Form 1174. See Chapter 30, paragraph 2.5 for additional information.

4.0 PHASE-IN-PERIOD

4.1 Phase-In-Period – 10 Year Period

The law that first allowed retirees to receive military retirement pay and DVA Disability Compensation concurrently was effective on January 1, 2004. It provided for a 10-year phase-in period (January 1, 2004 through December 31, 2013) in which, for most retirees, the amount of military retired pay that was not subject to the General Waiver Requirement would increase gradually each year until the retiree began receiving full military retirement pay simultaneously with DVA Disability Compensation. There was no phase-in period for retirees with a VA disability rating of 100 percent. The limitations on Career Disability Retirees was applicable.

4.2 Phase-In-Period – Expired

The phase-in period ended on December 31, 2013. Effective on January 1, 2014, (with the exception of Career Disability Retirees who are still subject to the limitations in subparagraph 2.3.4), Qualified Retirees are eligible to receive military retired pay, in full, and concurrently with DVA Disability Compensation. For historical information on the computation of the amount of military retirement pay that could be paid concurrently with DVA Disability Compensation during the phase-in period, see the archived version of ***Chapter 64***, October 2020.

5.0 RELATION TO OTHER PROVISIONS

5.1 Relation to Combat-Related Special Compensation (CRSC)

Military retirees with disabilities that are attributable to a combat-related event may be eligible for CRSC under ***10 U.S.C. § 1413a***. Combat-related determinations are made by the branch of service from which the member retired. A retired member may receive either CRSC under 10 U.S.C. § 1413a or, in the alternative, military retirement pay and DVA Disability Compensation concurrently under 10 U.S.C. § 1414, but not both. If a retired member is already in receipt of military retirement pay and DVA Disability Compensation concurrently pursuant to 10 U.S.C. § 1414 and then subsequently receives a determination from the branch of service that the member has disabilities that are attributable to a combat-related event under 10 U.S.C. § 1413a, DFAS will compare the possible entitlements under both laws. Unless the member elects otherwise, the CRSC benefit under 10 U.S.C. § 1413a will be paid if it is found to exceed the gross military retired pay entitlement.

5.1.1. All members entitled to both (a) military retirement pay and DVA Disability Compensation concurrently pursuant to 10 U.S.C. § 1414 and (b) CRSC under 10 U.S.C. § 1413a, will be provided an annual open season period during which the member may elect to change between the two entitlement alternatives.

5.1.2. Eligible members will be notified of the opportunity to elect to change between the two alternative entitlements. The notification will be based on the entitlement information available at the time the notice is provided and will specify the date that an election change will be effective.

5.1.3. If a change in the entitlement amount under either alternative entitlement (under 10 U.S.C. § 1414 or 10 U.S.C. § 1413a) occurs after the close of an annual open season period, the change in the entitlement amount will not serve as a basis to alter the current election. The existing election may only be changed at the next annual open season period. This limitation applies to changes in a member's VA disability rating, which have a retroactive effective date specified by VA that precedes the date that DFAS is notified of the change.

Note: The limitation in the prior sentence does not apply if maintaining the member's most recent open season election would result in the establishment of a retired pay debt or result in the loss of the entitlement previously elected altogether.

5.2 Relation to Uniformed Services Former Spouses' Protection Act (USFSPA)

5.2.1. Title 10, U.S.C., section 1408, provides a mechanism for a former spouse to enforce a retired pay property award for direct payments from the member's disposable military retired pay. Disposable military retired pay is defined in Chapter 29 and equals a member's total monthly military retired pay (gross pay) entitlement minus certain authorized deductions. The disposable military retired pay of a retired member who is a Qualified Retiree (including Qualified Career Disability Retiree) is computed by taking the member's total monthly retired pay (gross pay) entitlement being received concurrently and reducing it by the authorized deductions pursuant to 10 U.S.C. § 1408.

5.2.2. Qualified Career Disability Retirees. Qualified Career Disability Retirees continue to receive Chapter 61 Disability Retired Pay. In computing, disposable retired pay, the pay received by the retiree must be considered as Chapter 61 Disability Retired Pay.

> Example. Assume a Qualified Career Disability Retiree who elected to receive Chapter 61 Disability Retired Pay computed based on the number of years of creditable service (in the amount of $900 per month) and in doing so elected to decline Chapter 61 Disability Retired Pay computed based on the percentage of disability (which, if elected, would have been $700 per month). Assume further that this same Qualified Career Disability Retiree is entitled to receive Title 10, U.S.C., Chapter 61 Disability Retired Pay and DVA Disability Compensation concurrently pursuant to 10 U.S.C. § 1414. When computing disposable military retired pay under Chapter 29, one of the authorized deductions is "The amount of retired pay for a member retired under Title 10, U.S.C., Chapter 61 computed based on percentage of disability." Assume that no other deductions apply. To compute the disposable military retired pay, take the member's total monthly retired pay (gross pay) entitlement being received concurrently ($900) and reduce it by the authorized deductions ($700). The disposable military retired pay in this example is $900 - $700 =$200.
>
> Note. The $700 deduction amount is equal to the amount of retired pay of the member under Title 10, U.S.C., Chapter 61 using the percentage of the member's disability on the date when the member was retired.

5.3 Relation to Other Laws and Processes

When a member is entitled to receive military retired pay and DVA Disability Compensation concurrently pursuant to 10 U.S.C. § 1414, the military retired pay that is paid is still military retired pay. As military retired pay, it remains subject to any other action or process, and to the same extent, that applies to military retired pay as described in law or this regulation. In all instances, when military retired pay is paid concurrently with DVA Disability Compensation pursuant to 10 U.S.C. § 1414 military retired pay, the nature of the military retired pay is not changed because the retiree is a Qualified Retiree under 10 U.S.C. § 1414.

5.3.1. Pursuant to ***10 U.S.C. § 1452***, premium deductions from military retired pay are made for participants in the Survivor Benefit Plan (SBP). Military retired pay which is paid concurrently with DVA Disability Compensation pursuant to 10 U.S.C. § 1414 is available for SBP premium deductions. If a member has sufficient military retired pay to cover SBP premium deductions, then SBP premiums will be deducted from the military retired pay. See Chapter 45.

5.3.2. The Treasury Offset Program allows military retired pay to be offset (reduced) to recover a debt owed to the United States. Military retired pay which is paid concurrently with DVA Disability Compensation pursuant to 10 U.S.C. § 1414 is available for collection of a debt through the Treasury Offset Program. See Volume 16.

5.3.3. Military retired pay which is paid concurrently with DVA Disability Compensation pursuant to 10 U.S.C. § 1414 is subject to any other action or process and is governed by the specific laws and regulations governing the other action or process, including but not limited to garnishment for child support or alimony allotments.

5.4 Taxability

5.4.1. A Qualified Retiree who is entitled to be paid Military Retired Pay concurrently with the DVA Disability Compensation is receiving Military Retired Pay. Military Retired Pay is taxable unless it qualifies for exemption to taxation under the Internal Revenue Code. See Chapter 24.

5.4.2. A Qualified Career Disability Retiree receiving Title 10, U.S.C., Chapter 61 Military Retired Pay concurrently with the DVA Disability Compensation pursuant to 10 U.S.C. § 1414, receives Title 10, U.S.C., Chapter 61 Military Retired Pay, which is subject to the taxation rules for Title 10, U.S.C., Chapter 61 Military Retired Pay found in ***10 U.S.C. § 1403*** and ***26 U.S.C. § 104***.

5.4.2.1. If a Qualified Career Disability Retiree's Title 10, U.S.C., Chapter 61 Disability Retired Pay exceeds Hypothetical Longevity Retired Pay, and the retiree is receiving Title 10, U.S.C., Chapter 61 Disability Retired Pay based upon percentage of disability, then all of Title 10, U.S.C., Chapter 61 Disability Retired Pay received concurrently with DVA Disability Compensation may be non-taxable if otherwise qualified to be excluded from gross income under 26 U.S.C. § 104. See Chapter 24, paragraph 2.2.

5.4.2.2. If a Qualified Career Disability Retiree has elected to receive Title 10, U.S.C., Chapter 61 Retired Pay based upon a percentage multiplier for number of years of creditable service because it exceeds the Title 10, U.S.C., Chapter 61 Disability Retired Pay they would have received based on percentage of disability, then only a portion of Title 10, U.S.C., Chapter 61 Disability Retired Pay received concurrently with DVA Disability Compensation may be non-taxable. In accordance with 10 U.S.C. § 1403, the amount of Title 10, U.S.C., Chapter 61 Disability Retired Pay that may qualify for tax exempt status cannot exceed the amount that equals Title 10, U.S.C., Chapter 61 Military Retired Pay based upon the disability percentage assigned by the Service at retirement. In order to be non-taxable, the Title 10, U.S.C., Chapter 61 Disability Retired pay received concurrently with DVA Disability Compensation must otherwise be qualified to be excluded from gross income under 26 U.S.C. § 104. See Chapter 24, Section 4.0.

> Example. Assume Qualified Career Disability Retiree is entitled to receive either $1,500 a month in Title 10, U.S.C., Chapter 61 Military Retired Pay based upon percentage multiplier for years of service or $900 a month based upon disability percentage and has elected to receive $1,500 a month in Title 10, U.S.C., Chapter 61 Disability Retired Pay. Only $900 a month of the $1,500 of Title 10, U.S.C., Chapter 61 Retired Pay of received concurrently with DVA disability compensation may be considered non-taxable if otherwise qualified to be excluded from gross income under 26 U.S.C. § 104. Thus, in this example, $600 of Title 10, U.S.C., Chapter 61 Disability Retired Pay received concurrently with DVA Disability compensation is taxable and cannot be excluded from gross income under 26 U.S.C. § 104.

*5.5 Relation to Individual Unemployability

5.5.1. Individual Unemployability (IU) is a supplement to the DVA's disability compensation program that allows the DVA to pay certain veterans disability compensation at the 100 percent rate, even though the DVA may not have rated the member’s service-connected disabilities at the total level. A veteran qualifying for the IU supplement receives a monthly VA disability compensation payment equal to the amount that he or she would receive if rated 100 percent disabled.

5.5.2. Subject to the exceptions for Disability Retirees explained in subparagraphs 5.5.2.1 and 5.5.2.2, a member or former member of the Uniformed Services who is entitled for any month to both military retired pay and DVA Disability Compensation based on a service-connected disability (or combination of service-connected disabilities) which the Secretary of Veterans Affairs determines qualifies the member for the IU supplement may receive concurrent military retired pay and DVA Disability Compensation.

5.5.2.1. Disability Retirees (Less than 20 years)

Disability Retirees with less than 20 years of service creditable under 10 U.S.C. § 1405 or less than 20 years of service computed under 10 U.S.C. § 12732 at the time of the retirement are not eligible to receive Title 10, U.S.C., Chapter 61 Disability Retired Pay and DVA Disability Compensation concurrently even if the Secretary of Veterans Affairs determines that the member qualifies for the IU supplement.

5.5.2.2. Disability Retirees (More than 20 years)

Disability Retirees with 20 years or more of service creditable under 10 U.S.C. § 1405 or 20 years or more of service computed under 10 U.S.C. § 12732 at the time of the retirement and for whom the Secretary of Veterans Affairs determines that the member qualifies for the IU supplement are eligible to receive Title 10, U.S.C., Chapter 61 Disability Retired Pay and DVA Disability Compensation concurrently. However, the Special Rule for Qualified Career Disability Retirees applies. As a result, the retiree must waive Chapter 61 Disability Retired Pay to the extent that the amount of Chapter 61 Disability Retired Pay exceeds the amount of hypothetical longevity retired pay to which the member would have been entitled under any other provision of law if the member had not been retired for disability under Title 10, U.S.C., Chapter 61.

Table 64-1. Example 1 - Illustration to subparagraph 2.3.4.

Entitlement Type	Amount	Amount payable from VA	Amount payable from DoD
Hypothetical Longevity Retired Pay	$800	Blank	Blank
Chapter 61 Disability Retired Pay Entitlement based on percentage of disability	$1,000	Blank	$800 (Note 1)
Amount Disability Retired Pay Exceeds Hypothetical Length of Service entitlement	$200 (Note 2) ($1,000- $800)	Blank	Blank
DVA Disability Compensation Entitlement	$1,500	$1,500	Blank

Note:
1. This $800 amount is Chapter 61 Disability Retired Pay paid concurrently and is not subject to General Waiver Requirement as it is not required to be waived to receive it concurrently with DVA Disability Compensation. It is paid as Chapter 61 Disability Retired Pay concurrently with the DVA Disability Compensation.

2. This $200 amount is subject to the General Waiver Requirement as it must be waived to receive DVA Disability Compensation concurrently.

Table 64-2. Example 2 - Illustration to subparagraph 2.3.4.

Entitlement Type	Amount	Amount payable from VA	Amount payable from DoD
Hypothetical Length of Service Entitlement	$1,500 (Note 1)	Blank	$1,500 (Note 2)
Chapter 61, Disability Retired Pay Entitlement computed based on years of service (Note 1)	$1,500	Blank	Blank
Chapter 61, Disability Retired Pay Entitlement computed based on percentage of disability (Note 1)	$900	Blank	Blank
Amount Chapter 61 Disability Retired Pay that Exceeds Hypothetical Length of Service entitlement	$0 (Note 3)	Blank	Blank
DVA Disability Compensation Entitlement	$1,500	$1,500	Blank

Note:
1. Pursuant to ***10 U.S.C. § 1401***, a member retired under Chapter 61 is entitled have their Chapter 61 Disability Retired Pay computed based upon their disability percentage or their years of service. Assume the member elected the more favorable computation of $1,500.

2. This $1,500 is Chapter 61 Disability Retired Pay paid concurrently with DVA Disability Compensation and is not subject to general waiver requirement, as members are not required to waive this compensation to receive it concurrently with DVA Disability Compensation. See Paragraph 5.4 for taxability.

3. The amount the Chapter 61 Disability Retired Pay based upon years of service ($1500) that exceeds the Hypothetical Length of Service entitlement ($1500) is $0. Thus, there is no amount that must be waived to receive DVA Disability Compensation concurrently.

*REFERENCES

CHAPTER 64 – CONCURRENT MILITARY RETIREMENT PAY AND DEPARTMENT OF VETERANS AFFAIRS (DVA) DISABILITY COMPENSATION

1.0	General	
		Public Law 108-136, section 641, November 24, 2003 10 U.S.C. § 1414 38 U.S.C. § 5304 38 U.S.C. § 5305
	1.3	38 U.S.C. § 5304 38 U.S.C. § 5305 Chapter 61 of Title 10 10 U.S.C. § 1414
2.0	Eligibility	10 U.S.C. § 1414
	2.3	10 U.S.C. § 1201(b)(3)(A) 10 U.S.C. § 1208 10 U.S.C. § 1405 10 U.S.C. § 12732
	2.4	10 U.S.C. § 12731
	2.5	5 U.S.C. § 8332 5 U.S.C. § 8411
4.0	Phase-in- Period	Public Law 108-136, section 641, November 24, 2004
5.0	Relation to Other Provisions	
	5.1	10 U.S.C. § 1413a 10 U.S.C. § 1414(d)
	5.2	10 U.S.C. § 1408
	5.3	10 U.S.C. § 1452
	5.4	Title 26, Code of Federal Regulation, section 1.104-1(e) 26 U.S.C. § 104(a)(4) 10 U.S.C. § 1403

REFERENCES (continued)

5.5	10 U.S.C. § 1414 10 U.S.C., Chapter 61

DEPARTMENT OF DEFENSE

FINANCIAL MANAGEMENT REGULATION

APPENDIX A: "ARCHIVED"

UNDER SECRETARY OF DEFENSE (COMPTROLLER)

DEPARTMENT OF DEFENSE

FINANCIAL MANAGEMENT REGULATION

APPENDIX B: "ARCHIVED"

UNDER SECRETARY OF DEFENSE (COMPTROLLER)

DEPARTMENT OF DEFENSE

FINANCIAL MANAGEMENT REGULATION

APPENDIX C: "ARCHIVED"

UNDER SECRETARY OF DEFENSE (COMPTROLLER)

DEPARTMENT OF DEFENSE

FINANCIAL MANAGEMENT REGULATION

APPENDIX D: "ARCHIVED"

UNDER SECRETARY OF DEFENSE (COMPTROLLER)

DEPARTMENT OF DEFENSE

FINANCIAL MANAGEMENT REGULATION

APPENDIX E: "ARCHIVED"

UNDER SECRETARY OF DEFENSE (COMPTROLLER)

VOLUME 7B, APPENDIX F: "SURVIVOR BENEFIT PLAN (SBP)/RETIRED SERVICEMAN'S FAMILY PROTECTION PLAN (RSFPP) COMPOUND INTEREST TABLE"

SUMMARY OF MAJOR CHANGES

Changes are identified in this table and also denoted by blue font.

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

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

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

The previous version dated April 2023 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Cancelled chapter since Compound Interest Table rates are published on the Office of the Actuary website along with prior Compound Interest Table rates. Prior Dependency Indemnity Compensation rates may also be found in Financial Management Regulation Archives and the Department of Veterans Affairs website.	Cancellation

DEPARTMENT OF DEFENSE

FINANCIAL MANAGEMENT REGULATION

APPENDIX G: "ARCHIVED"

UNDER SECRETARY OF DEFENSE (COMPTROLLER)

VOLUME 7B, APPENDIX H: "AGE OF MAJORITY BY STATE AND UNITED STATES' POSSESSIONS"

SUMMARY OF MAJOR CHANGES

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The previous version dated May 2022 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated formatting to comply with current administrative instructions.	Revision
All	Updated table to include when a state or United States possession has a different age of majority for purposes of child support.	Revision
Guam	Added Guam to the table.	Addition

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*AGE OF MAJORITY BY STATE AND UNITED STATES' POSSESSIONS

State	Age
Alabama	19
Alaska	18 (for the purpose of a parent paying child support, child support may be extended for an unmarried child, by order, until graduation from high school, or technical/vocational training or age 19, whichever comes first)
Arizona	18 (for the purpose of a parent paying child support, age 18; child support shall continue while the child is attending high school or equivalency program, but no later than age 19)
Arkansas	18 (for the purpose of a parent paying child support, age 18; if child is still attending high school at age 18, child support continues until high school graduation or end of the school year after child turns age 19, whichever comes first)
California	18 (for the purpose of a parent paying child support, age 18; if unmarried child is attending high school full-time, child support continues until child completes 12th grade, or age 19, whichever comes first)
Colorado	18 (for the purpose of a parent paying child support, age 19; if child is still in high school or equivalent program, support continues until the end of the month following graduation. If child ceases attending high school or equivalent program before graduation, and re-enrolls, child support continues until end of the month following graduation, but no later than age 21)
Connecticut	18 (for the purpose of a parent paying child support, age 18; if unmarried child is attending high school full-time, child support continues until child completes 12th grade, or age 19, whichever comes first)
Delaware	18 (for the purpose of a parent paying child support, age 18; if child is attending high school, support continues until graduation, or age 19, whichever comes first)
District of Columbia	18 (for the purpose of a parent paying child support, age 21, unless otherwise emancipated)
Florida	18*
Georgia	18 (for the purpose of a parent paying child support, age 18; or until the child graduates from high school or age 20, whichever comes first)

*AGE OF MAJORITY BY STATE AND UNITED STATES POSSESSIONS (Continued)

State	Age
Guam	18 (for the purpose of a parent paying child support, age 18 or graduation from high school, whichever comes later, not to exceed age 19)
Hawaii	18 (for the purpose of a parent paying child support, may be extended beyond age 18 if child is attending school full-time)
Idaho	18 (for the purpose of a parent paying child support, may be extended until the child discontinues high school education or age 19, whichever is sooner)
Illinois	18 (for the purpose of a parent paying child support, age 18; if child is 18 and attending high school, support terminates upon graduation or age 19, whichever comes first)
Indiana	18 (for the purpose of a parent paying child support, age 19; if age 19 and child is attending secondary school, support may be extended, upon petition, until graduation from secondary school)
Iowa	18 (for the purpose of a parent paying child support, age 19, if child is attending high school full-time and expected to graduate or obtain GED)
Kansas	18 (for the purpose a parent paying child support, age 18; if age 18 and child is still in high school, extended until June 30 of year child turns age 18)
Kentucky	18 (for the purpose of a parent paying child support, age18, but if child is not emancipated by marriage, child support will continue while child is in high school, but no later than end of the school year in which the child turns age19)
Louisiana	18*
Maine	18*
Maryland	18*
Massachusetts	18 (for the purpose of a parent paying child support, may be extended beyond age 18 if child is still in high school, or to age 21 or 23, under certain conditions)
Michigan	18 (for the purpose of a parent paying child support, may be extended to age 19.5 if the child is attending high school full-time with a reasonable expectation of graduating)

*AGE OF MAJORITY BY STATE AND UNITED STATES POSSESSIONS (Continued)

State	Age
Minnesota	18 (for the purpose of a parent paying child support, age 18 or until age 20, if child is attending secondary school)
Mississippi	21 (for the purpose of a parent paying child support, age 21, if child support order was issued by a Mississippi court)
Missouri	18 (for the purpose of a parent paying child support, 18, or until child completes secondary school program or age 21, whichever comes first. Child support may extend to age 21, if the child is enrolled in an institution of vocation or higher education and meets certain requirements)
Montana	18*
Nebraska	19**
Nevada	18*
New Hampshire	18 (for the purpose of a parent paying child support, age 18 or when the child graduates high school, whichever is later)
New Jersey	18 (unless otherwise emancipated, age 19, for the purpose of a parent paying child support)
New Mexico	18*
New York	18 (unless otherwise emancipated, age 21, for the purpose of a parent paying child support)
North Carolina	18 (up to age 20, for the purpose of a parent paying child support, if the child is still attending high school and has not graduated)
North Dakota	18 (for the purpose of a parent paying child support, child support continues beyond age 18 until child graduates from high school or age 19, whichever comes first)
Ohio	18 (for the purpose of a parent paying child support, child support continues beyond age 18 until child graduates from high school or age 19, whichever comes first)
Oklahoma	18 (for the purpose of a parent paying child support, if the child is attending high school, child support continues until graduation or age 20, whichever occurs first)
Oregon	18 (for the purpose of a parent paying child support, child support may be extended up to age 21 while the child is attending school)
Pennsylvania	18 (for the purpose of a parent paying child support, age 18 or until the child graduates from high school, whichever occurs later)
Puerto Rico	21 (for the purpose of a parent paying child support, age 21, unless otherwise emancipated)

*AGE OF MAJORITY BY STATE AND UNITED STATES POSSESSIONS (Continued)

State	Age
Rhode Island	18 (for the purpose of a parent paying child support, until high school graduation or age 19, whichever comes first)
South Carolina	18 (for the purpose of a parent paying child support, age 18 and has finished high school, or until the end of the school year after the child turns age 19, whichever is later)
South Dakota	18*
Tennessee	18 (for the purpose of a parent paying child support, age 18 and has graduated from high school, or until the class of which the child is a member when the child turned 18 graduates, whichever occurs first)
Texas	18 (for the purpose of a parent paying child support, age 18 or until graduation from high school, whichever occurs later)
Utah	18 (for the purpose of a parent paying child support, age 18, or graduation from high school during the child's normal and expected year of graduation, whichever occurs later)
Vermont	18 (for the purpose of a parent paying child support, age 18 or termination of secondary education, whichever occurs later)
Virginia	18 (for the purpose of a parent paying child support, child support continues until high school graduation or age 19, whichever comes first)
Virgin Islands	18
Washington	18 (for the purpose of a parent paying child support, support continues if child is participating full-time in a secondary school program and is under the age of 19)
West Virginia	18 (for the purpose of a parent paying child support, age 18 or until age 20 if enrolled in a secondary educational or vocational program)
Wisconsin	18*
Wyoming	18 (for the purpose of a parent paying child support, age 18, or until age 20 if attending high school or an equivalent program full-time)

*AGE OF MAJORITY BY STATE AND UNITED STATES POSSESSIONS (Continued)

Note: The age listed for the purpose of a parent paying child support is the age under the corresponding state's law, and presumes a child is not otherwise emancipated by military service, marriage, death, judicial decree, or self-support. Child support may also be extended due to disability.

*The age of majority in this state is age 18. However, for the purpose of a parent paying child support, this state dictates that child support is to continue until age 19 if the child is still attending high school or a secondary school.

**If a child under age 19 marries, child support ends.

DEPARTMENT OF DEFENSE

FINANCIAL MANAGEMENT REGULATION

APPENDIX I: "ARCHIVED"

UNDER SECRETARY OF DEFENSE (COMPTROLLER)

DEPARTMENT OF DEFENSE

FINANCIAL MANAGEMENT REGULATION

APPENDIX J: "ARCHIVED"

UNDER SECRETARY OF DEFENSE (COMPTROLLER)

DEPARTMENT OF DEFENSE

FINANCIAL MANAGEMENT REGULATION

APPENDIX K: "ARCHIVED"

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APPENDIX L: "ARCHIVED"

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APPENDIX M: "ARCHIVED"

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APPENDIX N: "ARCHIVED"

UNDER SECRETARY OF DEFENSE (COMPTROLLER)

DEPARTMENT OF DEFENSE

FINANCIAL MANAGEMENT REGULATION

APPENDIX O: "ARCHIVED"

UNDER SECRETARY OF DEFENSE (COMPTROLLER)

VOLUME 7B, APPENDIX P: "DATA FOR PAYMENT OF RETIRED PERSONNEL"

SUMMARY OF MAJOR CHANGES

Changes are identified in this table and also denoted by blue font.

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

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

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

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PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated hyperlinks and formatting to comply with current administrative instructions.	Revision

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APPENDIX P

DATA FOR PAYMENT OF RETIRED PERSONNEL

1.0 GENERAL

1.1 Purpose

This appendix provides for the administration and completion of the Department of Defense ***(DD) Form 2656***, Data for Payment of Retired Personnel, and ***DD 2656-1***, Survivor Benefit Plan (SBP) Election Statement for Former Spouse Coverage, if appropriate.

1.2 Authoritative Guidance

The pay policies and requirements established by the DoD in this chapter are derived primarily from and prepared in accordance with the United States Code (U.S.C.), Title 10. The specific statutes, regulations, and other applicable guidance that govern each individual section are listed in a reference section at the end of the chapter.

2.0 APPLICABILITY AND SCOPE

2.1 Establishing Retired/Retainer Pay Account

Those Service members requesting retirement, and former members who are entitled to retired pay under 10 U.S.C. Chapter 1223, must complete the DD 2656 and DD 2656-1, if appropriate, in order to be provided retired pay. The DD 2656 is the most important financial related document to complete in preparing for military retirement. The Defense Finance and Accounting Service Cleveland (DFAS-CL) will establish the Service member's retired/retainer pay account based on the data provided on the form(s) and retirement/transfer orders.

2.2 Required Data

The Service member's personnel office and SBP counselor will assist them in the proper completion and submission of the DD 2656 and DD 2656-1, if appropriate. See section 3.0. The data provided is required to establish a retired/retainer pay account, including:

2.2.1. The retirement plan under which the Service member is covered;

2.2.2. Direct deposit/electronic funds transfer information;

2.2.3. Designation of beneficiaries for unpaid retired pay;

2.2.4. Federal and state tax withholding information;

2.2.5. Information on dependents;

2.2.6. An election of SBP coverage; and

2.2.7. Lump sum payment election, when applicable.

Note: The DD 2656 replaced Navy Comptroller Form 2272, Department of Army Form 4240, and Air Force Form(s) 1266, 1267, and 1268.

3.0 RESPONSIBILITIES

3.1 DFAS Responsibilities

DFAS-CL is the primary source for information and technical guidance concerning the DD 2656 and DD 2656-1. DFAS-CL processes the documents for military retirement submitted by the Military Services.

3.2 Military Service Responsibilities

Each respective personnel activity will provide pre-retirement counseling to prospective retirees. As part of the counseling process, each personnel activity will ensure that the prospective retirees properly complete the DD 2656 and DD 2656-1, if appropriate. The personnel activity will forward the forms and appropriate documentation to DFAS-CL electronically, or mail to:

DFAS
U.S. Military Retired Pay
8899 E. 56th Street
Indianapolis, IN 46249-1200

3.3 Service Member Responsibilities

Members requesting retirement and former members who qualify under 10 U.S.C., Chapter 1223, will complete the DD 2656 and DD 2656-1, if appropriate. Completion of these forms is necessary to establish the retired/retainer pay account. See paragraph 2.2.

REFERENCES

APPENDIX P – DATA FOR PAYMENT OF RETIRED PERSONNEL

1.0 – GENERAL

10 U.S.C., Chapter 73, subchapter II

2.0 – APPLICABILITY AND SCOPE

10 U.S.C., Chapter 1223
DoD Instruction 1332.42, Survivor Benefit Plan (current version)

DEPARTMENT OF DEFENSE

FINANCIAL MANAGEMENT REGULATION

APPENDIX Q: "ARCHIVED"

UNDER SECRETARY OF DEFENSE (COMPTROLLER)

VOLUME 7B, APPENDIX R: "ANNUAL INCOME RATES FOR MINIMUM INCOME ANNUITIES UNDER SURVIVOR BENEFIT PLAN (SBP)"

SUMMARY OF MAJOR CHANGES

Changes are identified in this table and also denoted by blue font.

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

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All	Updated hyperlink and formatting to comply with current administrative instructions.	Revision
Table R-1	Updated appendix to reflect the maximum and minimum annual income rate changes, effective December 1, 2024.	Revision

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APPENDIX R

ANNUAL INCOME RATES FOR MINIMUM INCOME ANNUITIES UNDER SURVIVOR BENEFIT PLAN (SBP)

1.0 GENERAL

1.1 Purpose

A minimum income widow (MIW) is a person who on September 21, 1972, was, or during the period beginning on September 22, 1972, and ending on March 20, 1974, became, the widow of a member who was entitled to retired or retainer pay when they died. This individual must have income below the threshold and meet the eligibility criteria in Chapter 46. The widow's annual income from all sources (including the amount of Retired Serviceman's Family Protection Plan annuity entitlement, but excluding the amount of disability pension), as determined by the Department of Veterans Affairs (VA), must be less than the annual income rate reflected in the SBP/MIW Annuity Limitation table as determined by the VA. Annually, the VA will publish the most current ***SBP/MIW Annuity Limitation*** to the VA website. This amount, divided by 12, represents the maximum monthly payable to MIW annuitants. See Chapter 46.

1.2 Authoritative Guidance

The pay policies and requirements established by the DoD in this chapter are derived primarily from and prepared in accordance with the United States Code (U.S.C.), Title 10. The specific statutes, regulations, and other applicable guidance that govern each individual section are listed in a reference section at the end of the chapter.

*Table R-1. ANNUAL INCOME RATES FOR MINIMUM INCOME ANNUITIES UNDER SURVIVOR BENEFIT PLAN (SBP) (See Notes 1 and 2)
Table Revision Effective Date: December 1, 2024

MAXIMUM MONTHLY ANNUITY PAYABLE	MINIMUM ANNUAL INCOME	EFFECTIVE DATE
$948.33	$11,380	December 1, 2024
925.17	11,102	December 1, 2023
896.42	10,757	December 1, 2022
824.67	9,896	December 1, 2021
778.67	9,344	December 1, 2020
768.67	9,224	December 1, 2019
756.50	9,078	December 1, 2018
735.83	8,830	December 1, 2017
721.33	8,656	December 1, 2016
719.17	8,630	December 1, 2015
719.17	8,630	December 1, 2014
707.08	8,485	December 1, 2013
696.58	8,359	December 1, 2012
684.92	8,219	December 1, 2011
661.08	7,933	December 1, 2010
661.08	7,933	December 1, 2009
661.08	7,933	December 1, 2008
624.83	7,498	December 1, 2007
610.75	7,329	December 1, 2006
591.17	7,094	December 1, 2005
567.83	6,814	December 1, 2004
552.83	6,634	December 1, 2003
541.42	6,497	December 1, 2002
533.92	6,407	December 1, 2001
519.75	6,237	December 1, 2000
502.17	6,026	December 1, 1999
490.33	5,884	December 1, 1998
484.00	5,808	December 1, 1997
470.75	5,649	December 1, 1996
457.33	5,488	December 1, 1995
445.58	5,347	December 1, 1994
433.33	5,200	December 1, 1993
422.25	5,067	December 1, 1992
409.83	4,918	December 1, 1991
395.08	4,741	December 1, 1990
374.67	4,496	December 1, 1989
357.67	4,292	December 1, 1988
343.75	4,125	December 1, 1987
329.75	3,957	December 1, 1986

Table R-1. ANNUAL INCOME RATES FOR MINIMUM INCOME ANNUITIES UNDER SURVIVOR BENEFIT PLAN (SBP) (Continued)
Table Revision Effective Date: December 1, 2024

MAXIMUM MONTHLY ANNUITY PAYABLE	MINIMUM ANNUAL INCOME	EFFECTIVE DATE
325.42	3,905	December 1, 1985
315.50	3,786	December 1, 1984
304.67	3,656	December 1, 1983
294.25	3,531	June 1, 1982
273.75	3,285	June 1, 1981
245.83	2,950	June 1, 1980
214.67	2,576	June 1, 1979
195.00	2,340	October 1, 1978
175.00	2,100	October 1, 1976
116.67	1,400	September 21, 1972

Notes:
1. The rate remained unchanged from December 1, 2008, through November 30, 2011.
2. The rate remained unchanged from December 1, 2014, through November 30, 2016.

REFERENCES

APPENDIX R – ANNUAL INCOME RATES FOR MINIMUM INCOME ANNUITIES UNDER SURVIVOR BENEFIT PLAN (SBP)

1.0 GENERAL

1.1 OVERVIEW 10 U.S.C. § 1448

VOLUME 7B, "DEFINITIONS"

SUMMARY OF MAJOR CHANGES

Changes are identified in this table and also denoted by blue font.

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

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

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The previous version dated September 2023 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated hyperlinks and formatting to comply with current administrative instructions.	Revision
Combat-Related Special Compensation (CRSC)	Revised acronym for the Department of Veterans Affairs from DVA to VA.	Revision

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DEFINITIONS

1.0 General

The following list defines general terms of significance or importance relating to military retired pay policies for the DoD that are discussed in various chapters. These definitions are provided for general information; it is by no means an exhaustive list of all financial management terms, and it does not define terms when standard dictionary definitions apply.

2.0 List of Definitions

Active Duty

Fulltime duty in the active service of a uniformed service, including fulltime training duty, annual training duty, and attendance while in the active service at a school designated as a military service school by law or by the Secretary of the Military Service concerned (or designee).

Active Duty List (ADL)

A single list for the Army, Navy, Air Force, Space Force, or Marine Corps which contains the names of all officers of that Armed Force, other than officers described in Title 10, United States Code, section 641 (***10 U.S.C. § 641***), who are serving on active duty.

Active Service

Service on active duty or full-time National Guard duty.

Active Status

The status of a member of a Reserve Component (RC) who is not in the inactive Army National Guard or inactive Air National Guard, on an inactive status list, or in the Retired Reserve.

Actuarial

Relating to actuaries and their work.

Actuary

A professional with expertise in the measurement of future contingent events and risk relating to financial outcomes. An actuary is skilled in the application of mathematics, statistics, and economics.

Amendatory Birth Certificate

A birth certificate that has been corrected, changed, or revised.

Annuitant

The person receiving a monthly payment as a result of a Service member's specific survivorship plan.

Annuity

A monthly payment made to a person as a result of a specific survivorship plan.

Annuity Base Amount

The amount of retired pay that determines annuity payable to Survivor Benefit Plan (SBP) beneficiaries.

Armed Forces of the United States

A term used to denote collectively all components of the Army, Marine Corps, Navy, Air Force, Space Force, and the Coast Guard when mobilized to augment the Navy.

Basic Pay

The active duty pay rates prescribed for an officer or enlisted member according to pay grade and years of service.

Beneficiary

The term beneficiary means the recipient of certain benefits due as a result of a relationship to or designation by a member.

*Combat-Related Special Compensation (CRSC)

CRSC is special compensation to members of the Uniformed Services who have their retired pay reduced due to receiving Department of Veterans Affairs (VA) disability compensation where a portion of such VA compensation is the result of disabilities that are combat related as determined by the Service.

Common-Law Marriage

A marriage recognized by state law that is not solemnized by religious or civil ceremony as defined in pertinent state law.

NOTE: Marriages are legal relationships that are governed by state law. Most states no longer recognize marriages under common law. Merely being in a relationship with a member does not mean that a common law marriage exists. To have a common law marriage, there must be clear and convincing evidence that a common law marriage exists under the governing state law.

Concurrent Military Retirement and VA Disability Pay

Formerly known as Concurrent Retirement and Disability Pay. Regular or reserve members who are entitled to military retired pay based on either length of service or disability, and who are also entitled to disability compensation paid by the VA-based on a combined VA disability rating of 50 percent or greater and not subject to the waiver requirements of 38 U.S.C. §§ 5304 and 5305, may receive both military retired pay and VA disability pay concurrently. See ***10 U.S.C. § 1414***. Members retired under military disability provisions under 10 U.S.C., Chapter 61 must have at least 20 years of creditable service and otherwise be entitled to receive retired pay under another provision of law in order to be eligible for concurrent military retired pay and VA disability compensation.

Constructive Payment (or Receipt)

An accounting or tax term used for federal income tax purposes that provides that income is received by the taxpayer in the taxable year in which it is set aside for the taxpayer or credited to his/her account, regardless of whether or not it has been physically received or when it was earned. A constructive payment must be available to the taxpayer for use without substantial limitations or restrictions. See ***26 CFR 1.451-2***.

Cost-of-Living Adjustment (COLA)

The percentage change applied to retired pay and SBP annuities based on laws using the Consumer Price Index, Urban Wage Earners, and Clerical Workers-U.S. City Average, as published by the Bureau of Labor Statistics.

Currency-Blocked Country

A country specified by the U.S. Department of Treasury to which dollar instruments may not be transmitted.

Dependency and Indemnity Compensation (DIC)

Tax-exempt compensation paid by the VA to the eligible survivors of Military Service members who died after December 31, 1956, from a service-connected or compensable disability.

Entitlement

Legally established benefits available to any person meeting eligibility requirements established by law.

Fiduciary

A person, legally designated, who holds something in trust for another person.

Fleet Reserve or Fleet Marine Corps Reserve

A Component of the Regular Service to which members may be transferred and released from active duty after obtaining 20 or more years of active Federal service.

Foreign Address

An address outside of the United States, its possessions and territories, is a foreign address.

Former Member

See definition of Member. A person who was previously appointed or enlisted in, or conscripted into a uniformed service and who has been permanently separated from that service to civilian status is no longer in the service and is considered a former member.

NOTE: Former members may be entitled to retired pay for non-regular service under ***10 U.S.C., Chapter 1223***, if they have met the required age and service requirements. Deceased former members, who met the age and service requirements of 10 U.S.C., Chapter 1223, are not entitled to retired pay.

Inactive Duty Training

Inactive duty training refers to:

1. Duty prescribed for members of an RC by the Secretary of the Military Service concerned (or designee); or

2. Special additional duties authorized for members of an RC by an authority designated by the Secretary of the Military Service concerned and performed by them on a voluntary basis in connection with prescribed training or maintenance activities of the units to which they are assigned.

Member

A person is either in the service or out of the service. A person who was previously appointed or enlisted in, or conscripted into a uniformed service and has not been permanently separated from that service to civilian status is still in the service and is considered a member. Members who become entitled to retired pay do not lose their status as members of the service simply because they are entitled to retired pay. Member status is only lost through permanent separation from the service to civilian status. For purposes of retired pay, a member is a person who was previously appointed or enlisted in, or conscripted into a uniformed service, who has not been permanently separated from that service, who is entitled to retired pay and who is still living. Deceased members are not entitled to retired pay. See 10 U.S.C., Chapter 1223.

Military Departments

The Department of the Army, the Department of the Navy, and the Department of the Air Force. See ***10 U.S.C. § 101(a)(8)***.

Military Retired Pay (Includes Fleet Reserve and Fleet Marine Corps Reserve Retainer Pay)

The gross entitlement for a member based on conditions of the retirement law, pay grade, years of service for basic pay, years of service for percentage multiplier, percentage of disability (if applicable), and date of retirement (transfer).

Missing Status

Includes missing, missing-in-action, interned in a foreign country, captured, beleaguered, besieged by a hostile force, or detained in a foreign country against a member's will.

National Defense Authorization Act (NDAA)

The NDAA authorizes appropriations each fiscal year for military activities of the DoD, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

Non-Service Connected

With respect to disability or death, that such disability was not incurred or aggravated, or that the death did not result from a disability incurred or aggravated, in line of duty in the active military, naval, air, or space service (VA definition only).

Office of the Actuary

The Office of the Actuary provides actuarial expertise on matters relating to military benefits.

Overpayment

An amount paid to a retiree, annuitant, or legal fiduciary, which is more than that to which entitlement exists.

Parent of Issue

The biological parent, other than the member, of a child.

Pay Grade

The step or degree in a graduated scale to which members of the Uniformed Services are assigned or distributed for military pay and allowances purposes. See Volume 7A, "Comparable Grades."

Representative Payee

A person or organization designated to receive payments for a minor or an individual who is mentally incompetent or under other legal disability, for whom a guardian or other fiduciary has not been appointed.

Reserve Component (RC)

With respect to the Armed Forces, the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air Force Reserve, the Coast Guard Reserve, the National Guard of the United States, and the Air National Guard of the United States.

Retainer Pay

Pay received by a member of the Fleet Reserve/Fleet Marine Corps Reserve.

Retired List

Any one of several lists of military members retired from active duty or a RC of the Armed Forces.

Retirement Date

The first day of entitlement to retired pay, not a day of active duty.

Saved Pay

Special pay provisions that allow retired members, under certain conditions, to retain entitlement to pay under prior laws when beneficial to the member.

Service Connected

With respect to disability or death, such disability was incurred or aggravated, or the death resulted from a disability incurred or aggravated in the line of duty in the active military, naval, air, or space service (VA definition only).

Surviving Spouse

A person who was legally married to the decedent on the date of the decedent's death and who survived the decedent is the surviving spouse. There may be additional requirements in order to qualify as a surviving spouse for certain entitlements.

Tower Amendment

A law providing that a member retiring after January 1, 1971, may not receive less retired pay than the monthly retired or retainer pay to which he or she would be entitled if the member had become entitled to retired or retainer pay at an earlier date. A member who fully qualifies for retirement on a date earlier than the actual retirement date receives the most favorable rate of pay as though the member actually retired on the earlier date.

Transfer Date (Fleet Reservists, Fleet Marine Corps Reservists)

Date of release from active duty (a day of entitlement to active duty pay and allowances).

Uniformed Services

The Army, Navy, Air Force, Space Force, Marine Corps, Coast Guard, National Oceanic and Atmospheric Administration, and Public Health Service comprise the Uniformed Services.

United States (U.S.)

The country includes the 50 states and the District of Columbia, unless otherwise qualified.