

(a), the Secretary concerned may prorate the payment amount to reflect the duration of the member's actual qualifying service during the month.

(d) ADMINISTRATION AND RETROACTIVE PAYMENTS.—The effective date for the designation of a hostile fire area, as described in paragraph (1) of subsection (a), and for the designation of a foreign area as an imminent danger area, as described in paragraph (3) of such subsection, may be a date that occurs before, on, or after the actual date of the designation by the Secretary concerned.

(e) DETERMINATION OF FACT.—Any determination of fact that is made in connection with determining whether a triggering event has occurred for the provision of hazardous duty pay under subsection (a)(1) is conclusive. The determination may not be reviewed by any other officer or agency of the United States unless there has been fraud or gross negligence. However, the Secretary concerned may change the determination on the basis of new evidence or for other good cause.

(f) RELATIONSHIP TO OTHER PAY AND ALLOWANCES.—

(1) IN ADDITION TO OTHER PAY AND ALLOWANCES.—A member may be paid hazardous duty pay under this section in addition to any other pay and allowances to which the member is entitled. The regulations prescribed to administer this section shall address dual compensation under this section for multiple circumstances involving performance of a designated hazardous duty, as described in paragraph (2) of subsection (a), or for duty in certain designated areas, as described in paragraph (1) or (3) of such subsection, that is performed by a member during a single month of service.

(2) LIMITATION.—A member may not receive hazardous duty pay under this section for a month for more than three qualifying instances described in subsection (a)(2).

(g) PROHIBITION ON VARIABLE RATES.—The regulations prescribed to administer this section may not include varied criteria or rates for payment of hazardous duty for officers and enlisted members.

(h) TERMINATION OF AUTHORITY.—No hazardous duty pay under this section may be paid after December 31, 2015.

(Added Pub. L. 110-181, div. A, title VI, § 661(a)(2), Jan. 28, 2008, 122 Stat. 172; amended Pub. L. 110-417, [div. A], title VI, § 618(d), (e), Oct. 14, 2008, 122 Stat. 4486; Pub. L. 111-84, div. A, title VI, §§ 614(6), 618(b), Oct. 28, 2009, 123 Stat. 2354, 2356; Pub. L. 111-383, div. A, title VI, § 614(6), Jan. 7, 2011, 124 Stat. 4237; Pub. L. 112-81, div. A, title VI, §§ 614(6), 616(b), Dec. 31, 2011, 125 Stat. 1450, 1451; Pub. L. 112-239, div. A, title VI, § 614(6), Jan. 2, 2013, 126 Stat. 1777; Pub. L. 113-66, div. A, title VI, § 614(6), Dec. 26, 2013, 127 Stat. 781; Pub. L. 113-291, div. A, title VI, § 614(7), Dec. 19, 2014, 128 Stat. 3401.)

#### AMENDMENTS

2014—Subsec. (h). Pub. L. 113-291 substituted “December 31, 2015” for “December 31, 2014”.

2013—Subsec. (h). Pub. L. 113-66 substituted “December 31, 2014” for “December 31, 2013”.

Pub. L. 112-239 substituted “December 31, 2013” for “December 31, 2012”.

2011—Subsec. (c)(2). Pub. L. 112-81, § 616(b), substituted “receipt of hazardous duty pay—” for “receipt of hazardous duty pay, the Secretary concerned may prorate the payment amount to reflect the duration of the member's actual qualifying service during the month.” and added subpars. (A) and (B).

Subsec. (h). Pub. L. 112-81, § 614(6), substituted “December 31, 2012” for “December 31, 2011”.

Pub. L. 111-383 substituted “December 31, 2011” for “December 31, 2010”.

2009—Subsecs. (c) to (h). Pub. L. 111-84, § 618(b), added subsec. (c), redesignated former subsecs. (e) to (i) as (d) to (h), respectively, and struck out former subsecs. (c) and (d), which related to method of payment and reserve component members performing inactive duty training.

Subsec. (i). Pub. L. 111-84, § 618(b)(1), redesignated subsec. (i) as (h).

Pub. L. 111-84, § 614(6), substituted “December 31, 2010” for “December 31, 2009”.

2008—Subsec. (c). Pub. L. 110-417, § 618(d), substituted “paragraph (1) or (3) of subsection (a)” for “subsection (a)”.

Subsec. (f). Pub. L. 110-417, § 618(e), substituted “in connection with determining whether a triggering event has occurred for the provision of hazardous duty pay under subsection (a)(1)” for “in administering subsection (a)” and struck out at end “The regulations prescribed to administer this section shall define the activities that are considered hazardous for purposes of subsection (a)(2).”

#### § 352. Assignment pay or special duty pay

(a) ASSIGNMENT OR SPECIAL DUTY PAY AUTHORIZED.—The Secretary concerned may pay assignment or special duty pay under this section to a member of a regular or reserve component of the uniformed services who—

(1) is entitled to basic pay under section 204 of this title or compensation under section 206 of this title; and

(2) performs duties in an assignment, location, or unit designated by, and under the conditions of service specified by, the Secretary concerned.

(b) MAXIMUM AMOUNT AND METHOD OF PAYMENT.—

(1) LUMP SUM OR INSTALLMENTS.—Assignment or special duty pay under subsection (a) may be paid monthly, in a lump sum, or in periodic installments other than monthly, as determined by the Secretary concerned. If paid monthly, the Secretary concerned may prorate the monthly amount of the assignment or special duty pay for a member who does not satisfy the eligibility requirement for an entire month to reflect the duration of the member's actual qualifying service during the month.

(2) MAXIMUM MONTHLY AMOUNT.—The maximum monthly amount of assignment or special duty pay may not exceed \$5,000.

(3) MAXIMUM LUMP SUM AMOUNT.—The amount of a lump sum payment of assignment or special duty pay payable to a member may not exceed the amount equal to the product of—

(A) the maximum monthly rate authorized under paragraph (2) at the time the member

enters into a written agreement under subsection (c); and

(B) the number of continuous months in the period for which assignment or special duty pay will be paid pursuant to the agreement.

(4) **MAXIMUM INSTALLMENT AMOUNT.**—The amount of each installment payment of assignment or special duty pay payable to a member on an installment basis may not exceed the amount equal to—

(A) the product of—

(i) a monthly rate specified in the written agreement entered into under subsection (c), which monthly rate may not exceed the maximum monthly rate authorized under paragraph (2) at the time the member enters into the agreement; and

(ii) the number of continuous months in the period for which the assignment or special duty pay will be paid; divided by

(B) the number of installments over such period.

(5) **EFFECT OF EXTENSION.**—If a member extends an assignment or performance of duty specified in an agreement with the Secretary concerned under subsection (c), assignment or special duty pay for the period of the extension may be paid on a monthly basis, in a lump sum, or in installments, consistent with this subsection.

(c) **WRITTEN AGREEMENT.**—

(1) **DISCRETIONARY FOR MONTHLY PAYMENTS.**—The Secretary concerned may require a member to enter into a written agreement with the Secretary in order to qualify for the payment of assignment or special duty pay on a monthly basis. The written agreement shall specify the period for which the assignment or special duty pay will be paid to the member and the monthly rate of the assignment or special duty pay.

(2) **REQUIRED FOR LUMP SUM OR INSTALLMENT PAYMENTS.**—The Secretary concerned shall require a member to enter into a written agreement with the Secretary in order to qualify for payment of assignment or special duty pay on a lump sum or installment basis. The written agreement shall specify the period for which the assignment or special duty pay will be paid to the member and the amount of the lump sum or each periodic installment.

(d) **RESERVE COMPONENT MEMBERS PERFORMING INACTIVE DUTY TRAINING.**—A member of a reserve component entitled to compensation under section 206 of this title who is authorized assignment or special duty pay under this section may be paid an amount of assignment or special duty pay that is proportionate to the compensation received by the member under section 206 of this title for inactive-duty training.

(e) **RELATIONSHIP TO OTHER PAY AND ALLOWANCES.**—Assignment or special duty pay paid to a member under this section is in addition to any other pay and allowances to which the member is entitled.

(f) **REPAYMENT.**—A member who receives assignment or special duty pay under this section

and who fails to fulfill the eligibility requirements under subsection (a) for receipt of such pay shall be subject to the repayment provisions of section 373 of this title.

(g) **TERMINATION OF AUTHORITY.**—No agreement may be entered into under this section after December 31, 2015.

(Added Pub. L. 110–181, div. A, title VI, §661(a)(2), Jan. 28, 2008, 122 Stat. 173; amended Pub. L. 111–84, div. A, title VI, §§614(7), 618(c), Oct. 28, 2009, 123 Stat. 2354, 2356; Pub. L. 111–383, div. A, title VI, §614(7), Jan. 7, 2011, 124 Stat. 4237; Pub. L. 112–81, div. A, title VI, §614(7), Dec. 31, 2011, 125 Stat. 1450; Pub. L. 112–239, div. A, title VI, §614(7), Jan. 2, 2013, 126 Stat. 1777; Pub. L. 113–66, div. A, title VI, §614(7), Dec. 26, 2013, 127 Stat. 781; Pub. L. 113–291, div. A, title VI, §614(8), Dec. 19, 2014, 128 Stat. 3401.)

#### AMENDMENTS

2014—Subsec. (g). Pub. L. 113–291 substituted “December 31, 2015” for “December 31, 2014”.

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Pub. L. 112–239 substituted “December 31, 2013” for “December 31, 2012”.

2011—Subsec. (g). Pub. L. 112–81 substituted “December 31, 2012” for “December 31, 2011”.

Pub. L. 111–383 substituted “December 31, 2011” for “December 31, 2010”.

2009—Subsec. (b)(1). Pub. L. 111–84, §618(c), inserted at end “If paid monthly, the Secretary concerned may prorate the monthly amount of the assignment or special duty pay for a member who does not satisfy the eligibility requirement for an entire month to reflect the duration of the member’s actual qualifying service during the month.”

Subsec. (g). Pub. L. 111–84, §614(7), substituted “December 31, 2010” for “December 31, 2009”.

#### ADDITIONAL ASSIGNMENT PAY OR SPECIAL DUTY PAY AUTHORIZED FOR MEMBERS AGREEING TO SERVE IN AFGHANISTAN FOR EXTENDED PERIODS

Pub. L. 111–84, div. A, title VI, §619, Oct. 28, 2009, 123 Stat. 2357, provided that:

“(a) **AUTHORITY TO PROVIDE ADDITIONAL ASSIGNMENT PAY OR SPECIAL DUTY PAY.**—The Secretary of Defense may provide assignment pay or special duty pay under section 352 of title 37, United States Code, in excess of the maximum amount of monthly or lump sum assignment or special duty pay authorized under subsection (b) of such section, to members of the Armed Forces (particularly members who achieve language proficiency at levels and in languages specified by the Secretary of Defense) who agree to serve on active duty in Afghanistan for a minimum of three years. The assignment period required by the agreement shall provide for reasonable periods of leave.

“(b) **REPORTING REQUIREMENTS.**—The Secretary shall submit to Congress an annual report on the use of the authority provided under subsection (a) during the preceding year, including—

“(1) the number of members of the Armed Forces receiving assignment pay or special duty pay under section 352 of title 37, United States Code, in excess of the maximum amount otherwise authorized under such section; and

“(2) an assessment of the impact of the use of such authority on the effectiveness and efficiency in achieving the United States mission in Afghanistan.

“(c) **DURATION OF AUTHORITY.**—The authority provided by subsection (a) to offer additional assignment pay or special duty pay under section 352 of title 37, United States Code, expires on December 31, 2012. The expiration of such authority shall not affect the terms

or duration of any agreement entered into before that date to provide additional assignment pay or special duty pay under such section.”

### § 353. Skill incentive pay or proficiency bonus

(a) **SKILL INCENTIVE PAY.**—The Secretary concerned may pay a monthly skill incentive pay to a member of a regular or reserve component of the uniformed services who—

(1) is entitled to basic pay under section 204 of this title or compensation under section 206 of this title; and

(2) serves in a career field or skill designated as critical by the Secretary concerned.

(b) **SKILL PROFICIENCY BONUS.**—

(1) **AVAILABILITY; ELIGIBLE PERSONS.**—The Secretary concerned may pay a proficiency bonus to a member of a regular or reserve component of the uniformed services who—

(A) is entitled to basic pay under section 204 of this title or compensation under section 206 of this title or is enrolled in an officer training program; and

(B) is determined to have, and maintains, certified proficiency under subsection (d) in a skill designated as critical by the Secretary concerned or is in training to acquire proficiency in a critical foreign language or expertise in foreign cultural studies or a related skill designated as critical by the Secretary concerned.

(2) **INCLUSION OF CERTAIN SENIOR ROTC MEMBERS.**—A proficiency bonus may be paid under this subsection to a student who is enrolled in the Senior Reserve Officers' Training Corps program even though the student is in the first year of the four-year course under the program. During the period covered by the proficiency bonus, the student shall also be entitled to a monthly subsistence allowance under section 209(c) of this title even though the student has not entered into an agreement under section 2103a of title 10. However, if the student receives incentive pay under subsection (g)(2)<sup>1</sup> for the same period, the student may receive only a single monthly subsistence allowance under section 209(c) of this title.

(c) **MAXIMUM AMOUNTS AND METHODS OF PAYMENT.**—

(1) **SKILL INCENTIVE PAY.**—(A) Skill incentive pay under subsection (a) may not exceed \$1,000 a month.

(B) If a member does not satisfy the eligibility requirements specified in paragraphs (1) and (2) of subsection (a) for an entire month for receipt of skill incentive pay, the Secretary concerned may prorate the payment amount to reflect the duration of the member's actual qualifying service during the month. A member of a reserve component entitled to compensation under section 206 of this title who is authorized skill incentive pay under subsection (a) may be paid an amount of such pay that is proportionate to the compensation received by the member under section 206 of this title for inactive-duty training.

(2) **PROFICIENCY BONUS.**—A proficiency bonus under subsection (b) may be paid in a lump sum at the beginning of the proficiency certification period or in periodic installments during the proficiency certification period. The amount of the bonus may not exceed \$12,000 for each 12-month period of certification. The Secretary concerned may not vary the criteria or rates for the proficiency bonus paid for officers and enlisted members.

(d) **CERTIFIED PROFICIENCY FOR PROFICIENCY BONUS.**—

(1) **CERTIFICATION REQUIRED.**—Proficiency in a designated critical skill for purposes of subsection (b) shall be subject to annual certification by the Secretary concerned.

(2) **DURATION OF CERTIFICATION.**—A certification period for purposes of subsection (c)(2) shall expire at the end of the one-year period beginning on the first day of the first month beginning on or after the certification date.

(3) **WAIVER.**—Notwithstanding paragraphs (1) and (2), the regulations prescribed to administer this section shall address the circumstances under which the Secretary concerned may waive the certification requirement under paragraph (1) or extend a certification period under paragraph (2).

(e) **WRITTEN AGREEMENT.**—

(1) **DISCRETIONARY FOR SKILL INCENTIVE PAY.**—The Secretary concerned may require a member to enter into a written agreement with the Secretary in order to qualify for the payment of skill incentive pay under subsection (a). The written agreement shall specify the period for which the skill incentive pay will be paid to the member and the monthly rate of the pay.

(2) **REQUIRED FOR PROFICIENCY BONUS.**—The Secretary concerned shall require a member to enter into a written agreement with the Secretary in order to qualify for payment of a proficiency bonus under subsection (b). The written agreement shall specify the amount of the proficiency bonus, the period for which the bonus will be paid, and the initial certification or recertification necessary for payment of the proficiency bonus.

(f) **FOREIGN LANGUAGE STUDIES IN OFFICER TRAINING PROGRAMS.**—

(1) **AVAILABILITY OF INCENTIVE PAY.**—The Secretary concerned may pay incentive pay to a person enrolled in an officer training program to also participate in an education or training program to acquire proficiency in a critical foreign language or expertise in foreign cultural studies or a related skill designated as critical by the Secretary concerned.

(2) **INCLUSION OF CERTAIN SENIOR ROTC MEMBERS.**—Incentive pay may be paid under this subsection to a student who is enrolled in the Senior Reserve Officers' Training Corps program even though the student is in the first year of the four-year course under the program. While the student receives the incentive pay, the student shall also be entitled to a monthly subsistence allowance under section 209(c) of this title even though the student has not entered into an agreement under section

<sup>1</sup> See References in Text note below.