

member by a placement agency (recognized by the Secretary of Defense) in anticipation of the legal adoption of the child by the member; and

(C) an illegitimate child of the member if the member's parentage of the child is established in accordance with criteria prescribed in regulations by the Secretary concerned.

- (2) The term "parent" means—
- (A) a natural parent of the member;
  - (B) a stepparent of the member;
  - (C) a parent of the member by adoption;
  - (D) a parent, stepparent, or adopted parent of the spouse of the member; and
  - (E) any other person, including a former stepparent, who has stood in loco parentis to the member at any time for a continuous period of at least five years before the member became 21 years of age.

(Pub. L. 87-649, Sept. 7, 1962, 76 Stat. 469; Pub. L. 93-64, title I, §§103, 104, July 9, 1973, 87 Stat. 148; Pub. L. 100-26, §8(e)(7), Apr. 21, 1987, 101 Stat. 286; Pub. L. 102-190, div. A, title VI, §621, Dec. 5, 1991, 105 Stat. 1377; Pub. L. 103-160, div. A, title VI, §631(a), Nov. 30, 1993, 107 Stat. 1683; Pub. L. 103-337, div. A, title VII, §701(b), Oct. 5, 1994, 108 Stat. 2797.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
401 .....	37:231(g) (less last proviso of last sentence).	Oct. 12, 1949, ch. 681, §102(g) (less last proviso of last sentence), 63 Stat. 804; Sept. 8, 1950, ch. 922, §1, 64 Stat. 794; Mar. 23, 1953, ch. 8 (as applicable to §102(g)), 67 Stat. 6; June 30, 1955, ch. 250, §103 (as applicable to §102(g)), 69 Stat. 224; Mar. 23, 1959, Pub. L. 86-4, §3 (as applicable to §102(g)), 73 Stat. 13.

The words "lawful", "at all times and in all places", "except as hereinafter limited in this subsection", and "in addition to those persons otherwise defined as dependents in this subsection" are omitted as surplusage. In clause (1), the word "spouse" is substituted for words "wife" and "husband". Clause (2) is substituted for the 16th through 24th words of the first sentence of section 231(g) of existing title 37 and the third sentence (less last proviso) of section 231(g) of existing title 37. Clause (3) is substituted for the second sentence of section 231(g) of existing title 37 and the last sentence (less provisos) of section 231(g) of existing title 37. The second sentence is substituted for the last proviso of the third sentence of section 231(g) of existing title 37. The last sentence is substituted for the first proviso of the last sentence of section 231(g) of existing title 37.

AMENDMENTS

1994—Subsec. (b)(1)(B). Pub. L. 103-337 substituted "placement agency (recognized by the Secretary of Defense) in anticipation of the legal adoption of the child by the member" for "placement agency for the purpose of adoption".

1993—Subsec. (a)(4). Pub. L. 103-160 added par. (4).

1991—Pub. L. 102-190 amended text generally. Prior to amendment, text read as follows: "In this chapter, the term 'dependent', with respect to a member of a uniformed service, means—

- "(1) his spouse;
- "(2) his unmarried child (including any of the following categories of children if such child is in fact

dependent on the member: a stepchild; an adopted child; or an illegitimate child whose alleged member-father has been judicially decreed to be the father of the child or judicially ordered to contribute to the child's support, or whose parentage has been admitted in writing by the member) who either—

- "(A) is under 21 years of age; or
- "(B) is incapable of self-support because of a mental or physical incapacity, and in fact dependent on the member for over one-half of his support; and
- "(3) his parent (including a stepparent or parent by adoption, and any person, including a former stepparent, who has stood in loco parentis to the member at any time for a continuous period of at least five years before the member became 21 years of age) who is in fact dependent on the member for over one-half of his support; however, the dependency of such a parent is determined on the basis of an affidavit submitted by the parent, and any other evidence required under regulations prescribed by the Secretary concerned, and he is not considered a dependent of the member claiming the dependence unless—

"(A) the member has provided over one-half of his support for the period prescribed by the Secretary concerned; or

"(B) due to changed circumstances arising after the member enters on active duty, he becomes in fact dependent on the member for over one-half of his support.

For the purposes of this section, the relationship between a stepparent and his stepchild is terminated by the stepparent's divorce from the parent by blood."

1987—Pub. L. 100-26 inserted "the term" after "In this chapter,".

1973—Cl. (2). Pub. L. 93-64, §103(1), in revising cl. (1) of first sentence, substituted "unmarried child" for "unmarried legitimate child" and defined dependent to include an illegitimate child whose alleged member-father has been judicially decreed to be the father of the child or judicially ordered to contribute to the child's support, or whose parentage has been admitted in writing by the member.

Cl. (3). Pub. L. 93-64, §104, in revising cl. (3) of first sentence, substituted "five years before the member became 21 years" for "five years before he became 21 years", struck out requirement of actual residence of parent in the member's household, and inserted provision respecting determination of dependency of parent, including items (A) and (B), formerly contained in former section 2201 of Appendix to Title 50, War and National Defense.

Closing text. Pub. L. 93-64, §103(2), struck out second sentence, following cl. (3) of first sentence, stating that a person is not a dependent of a female member unless he is in fact dependent on her for over one-half of his support.

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103-160, div. A, title VI, §631(b), Nov. 30, 1993, 107 Stat. 1684, provided that: "Section 401(a)(4) of title 37, United States Code, as added by subsection (a), shall apply with respect to determinations of dependency made on or after July 1, 1994."

EFFECTIVE DATE OF 1973 AMENDMENT

Pub. L. 93-64, title II, §206, July 9, 1973, 87 Stat. 149, provided that: "This Act [enacting section 1173 of Title 10, Armed Forces, amending this section and sections 302, 302a, 303, 308a, and 403 of this title, and repealing sections 2210 to 2212 of the former Appendix to Title 50, War and National Defense] shall become effective July 1, 1973."

§ 402. Basic allowance for subsistence

(a) ENTITLEMENT TO ALLOWANCE.—(1) Except as provided in paragraph (2) or otherwise provided by law, each member of a uniformed service who

is entitled to basic pay is entitled to a basic allowance for subsistence as set forth in this section.

(2) An enlisted member is not entitled to the basic allowance for subsistence during basic training.

(b) RATES OF ALLOWANCE BASED ON FOOD COSTS.—(1) The monthly rate of basic allowance for subsistence to be in effect for an enlisted member for a year (beginning on January 1 of that year) shall be equal to the sum of—

(A) the monthly rate of basic allowance for subsistence that was in effect for an enlisted member for the preceding year; plus

(B) the product of the monthly rate under subparagraph (A) and the percentage increase in the monthly cost of a liberal food plan for a male in the United States who is between 20 and 50 years of age over the preceding fiscal year, as determined by the Secretary of Agriculture each October 1.

(2) The monthly rate of basic allowance for subsistence to be in effect for an officer for a year (beginning on January 1 of that year) shall be the amount equal to the monthly rate of basic allowance for subsistence in effect for officers for the preceding year, increased by the same percentage by which the rate of basic allowance for subsistence for enlisted members for the preceding year is increased effective on such January 1.

(3) For purposes of implementing paragraph (1), the monthly rate of basic allowance for subsistence that was in effect for an enlisted member for calendar year 2001 is deemed to be \$233.

(c) ADVANCE PAYMENT.—The allowance to an enlisted member may be paid in advance for a period of not more than three months.

(d) SPECIAL RATE FOR ENLISTED MEMBERS OCCUPYING SINGLE QUARTERS WITHOUT ADEQUATE AVAILABILITY OF MEALS.—The Secretary of Defense, and the Secretary of the department in which the Coast Guard is operating, may pay an enlisted member the basic allowance for subsistence under this section at a monthly rate that is twice the amount in effect under subsection (b)(1) while—

(1) the member is assigned to single Government quarters which have no adequate food storage or preparation facility in the quarters; and

(2) there is no Government messing facility serving those quarters that is capable of making meals available to the occupants of the quarters.

(e) SPECIAL RULE FOR CERTAIN ENLISTED RESERVE MEMBERS.—Unless entitled to basic pay under section 204 of this title, an enlisted member of a reserve component may receive, at the discretion of the Secretary concerned, rations in kind, or a part thereof, when the member's instruction or duty periods, as described in section 206(a) of this title, total at least 8 hours in a calendar day. The Secretary concerned may provide an enlisted member who could be provided rations in kind under the preceding sentence with a commutation when rations in kind are not available.

(f) SPECIAL RULE FOR HIGH-COST DUTY LOCATIONS AND OTHER UNIQUE AND UNUSUAL CIRCUM-

STANCES.—The Secretary of Defense may authorize a member of the armed forces who is not entitled to the meals portion of the per diem in connection with an assignment in a high-cost duty location or under other unique and unusual circumstances, as determined by the Secretary, to receive any or all of the following:

(1) Meals at no cost to the member, regardless of the entitlement of the member to a basic allowance for subsistence under subsection (a).

(2) A basic allowance for subsistence at the standard rate, regardless of the entitlement of the member for all meals or select meals during the duty day.

(3) A supplemental subsistence allowance at a rate higher than the basic allowance for subsistence rates in effect under this section, regardless of the entitlement of the member for all meals or select meals during the duty day.

(g) POLICIES ON USE OF DINING AND MESSING FACILITIES.—The Secretary of Defense, in consultation with the Secretaries concerned, shall prescribe policies regarding use of dining and field messing facilities of the uniformed services.

(h) NO PAYMENT FOR MEALS RECEIVED AT MILITARY TREATMENT FACILITIES.—(1) A member of the armed forces who is undergoing medical recuperation or therapy, or is otherwise in the status of continuous care, including outpatient care, at a military treatment facility for an injury, illness, or disease described in paragraph (2) shall not be required to pay any charge for meals provided to the member by the military treatment facility.

(2) Paragraph (1) applies with respect to an injury, illness, or disease incurred or aggravated by a member while the member was serving on active duty—

(A) in support of Operation Iraqi Freedom or Operation Enduring Freedom; or

(B) in any other operation designated by the Secretary of Defense as a combat operation or in an area designated by the Secretary as a combat zone.

(i) REGULATIONS.—(1) The Secretary of Defense shall prescribe regulations for the administration of this section. Before prescribing the regulations, the Secretary shall consult with each Secretary concerned.

(2) The regulations shall include the specific rates of basic allowance for subsistence required by subsection (b).

(Pub. L. 87-649, Sept. 7, 1962, 76 Stat. 470; Pub. L. 89-444, §2(2), June 9, 1966, 80 Stat. 198; Pub. L. 93-419, §3(1)-(5), Sept. 19, 1974, 88 Stat. 1152; Pub. L. 96-513, title IV, §411, Dec. 12, 1980, 94 Stat. 2905; Pub. L. 98-94, title IX, §908(a), Sept. 24, 1983, 97 Stat. 637; Pub. L. 98-525, title VI, §605, Oct. 19, 1984, 98 Stat. 2537; Pub. L. 98-557, §17(d), Oct. 30, 1984, 98 Stat. 2868; Pub. L. 99-145, title XIII, §1303(b)(5), Nov. 8, 1985, 99 Stat. 740; Pub. L. 102-25, title VII, §702(b)(1), (c), Apr. 6, 1991, 105 Stat. 117; Pub. L. 104-106, div. A, title VI, §602(a)-(c)(1), Feb. 10, 1996, 110 Stat. 356, 357; Pub. L. 105-85, div. A, title VI, §602(a), Nov. 18, 1997, 111 Stat. 1771; Pub. L. 105-261, div. A, title VI, §604(a), Oct. 17, 1998, 112 Stat. 2037; Pub. L.

106-398, § 1 [[div. A], title VI, § 603(a), (b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-144, 1654A-145; Pub. L. 107-107, div. A, title VI, § 604(a), Dec. 28, 2001, 115 Stat. 1133; Pub. L. 107-296, title XVII, § 1704(c), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 107-314, div. A, title VI, § 603, Dec. 2, 2002, 116 Stat. 2566; Pub. L. 108-136, div. A, title VI, § 604, title X, § 1045(b)(2), Nov. 24, 2003, 117 Stat. 1499, 1612; Pub. L. 109-163, div. A, title VI, § 607(a), Jan. 6, 2006, 119 Stat. 3288; Pub. L. 109-364, div. A, title VI, § 603(a), Oct. 17, 2006, 120 Stat. 2245; Pub. L. 110-181, div. A, title VI, § 614(h), Jan. 28, 2008, 122 Stat. 149; Pub. L. 110-417, [div. A], title VI, § 602, Oct. 14, 2008, 122 Stat. 4483.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
402(a) .....	37:251(a) (1st sentence).	Oct. 12, 1949, ch. 681, § 301, 63 Stat. 812; May 19, 1952, ch. 310, § 1(d), 66 Stat. 80; Aug. 10, 1956, ch. 1041, § 20(b), 70A Stat. 627; Sept. 2, 1958, Pub. L. 85-861, § 10, 72 Stat. 1556.
402(b) .....	37:251(a) (2d and last sentences). 37:251(b). 37:251(c).	63 Stat. 812; May 19, 1952, ch. 310, § 1(d), 66 Stat. 80; Aug. 10, 1956, ch. 1041, § 20(b), 70A Stat. 627; Sept. 2, 1958, Pub. L. 85-861, § 10, 72 Stat. 1556.
	37:251a.	Aug. 1, 1953, ch. 305, § 617, 67 Stat. 352.
	37:301(a) (45 words before proviso).	Oct. 12, 1949, ch. 681, § 501(a) (45 words before proviso), (e) (less applicability to basic pay, incentive pay, administrative pay, and duty without pay), 63 Stat. 825, 827; July 9, 1952, ch. 608, § 244, 66 Stat. 494; June 30, 1960, Pub. L. 86-559, § 8, 74 Stat. 282.
	37:301(e) (less applicability to basic pay, incentive pay, administrative pay, and duty without pay).	
402(c) .....	37:251(a) (less 1st, 2d, and last sentences).	
402(d) .....	37:251(e).	
402(e) .....	37:251(f).	
402(f) .....	37:251(d).	

In subsection (a), the words “in the amount set forth in subsection (d)” are substituted for the words “in such amounts . . . as are provided in this section”.

In subsection (b), the words “on a daily basis” are substituted for the last sentence of section 251(a) of existing title 37. The words “United States” are substituted for the word “Government”, in the 2d sentence of section 251(a) of existing title 37, section 251(b) of existing title 37, and section 251(e) of existing title 37. The word “confined” is substituted for the word “sick” for clarity. The last 16 words of the third sentence are substituted for section 251(b) (proviso) of existing title 37. The fourth sentence is substituted for section 251(a) of existing title 37. The last sentence is substituted for section 301(a) (45 words before proviso) of existing title 37 and section 301(e) (less applicability to basic pay, incentive pay, administrative pay, and duty without pay). In that sentence, the words “of a reserve component of a uniformed service, or of the National Guard” are substituted for the enumeration of the organizations concerned.

In subsection (c), the words “who are entitled to basic pay” are inserted to reflect the 1st sentence of section 251(a) of existing title 37.

In subsection (d), the reference in section 251(a) of existing title 37 to the allowance of \$1.05 per day for enlisted members granted permission to mess separately is omitted as superseded by section 251a.

In subsection (e), the words “Effective April 15, 1955,” are omitted as executed. The words “United States” are substituted for the word “Government”. The words “messing facilities” are substituted for the word “messes” to conform to subsections (b) and (d).

AMENDMENTS

2008—Subsec. (h)(1). Pub. L. 110-417, § 602(1), struck out before period at end “during any month covered by paragraph (3) in which the member is entitled to a basic allowance for subsistence under this section”.

Subsec. (h)(3). Pub. L. 110-417, § 602(2), struck out par. (3) which read as follows: “This subsection shall apply

to months beginning during the period beginning on October 1, 2005, and ending on December 31, 2008.”

Pub. L. 110-181 substituted “December 31, 2008” for “December 31, 2007”.

2006—Subsec. (h). Pub. L. 109-163, § 607(a)(2), added subsec. (h). Former subsec. (h) redesignated (i).

Subsec. (h)(3). Pub. L. 109-364 substituted “December 31, 2007” for “December 31, 2006”.

Subsec. (i). Pub. L. 109-163, § 607(a)(1), redesignated subsec. (h) as (i).

2003—Subsec. (b)(1). Pub. L. 108-136, § 1045(b)(2)(A)(i)-(iii), redesignated par. (2) as (1), substituted “The” for “On and after January 1, 2002, the”, and struck out former par. (1) which read as follows: “Through December 31, 2001, the monthly rate of basic allowance for subsistence to be in effect for an enlisted member for a year (beginning on January 1 of that year) shall be the amount that is halfway between the following amounts, which are determined by the Secretary of Agriculture as of October 1 of the preceding year:

“(A) The amount equal to the monthly cost of a moderate-cost food plan for a male in the United States who is between 20 and 50 years of age.”

“(B) The amount equal to the monthly cost of a liberal food plan for a male in the United States who is between 20 and 50 years of age.”

Subsec. (b)(2). Pub. L. 108-136, § 1045(b)(2)(A)(ii), redesignated par. (3) as (2). Former par. (2) redesignated (1).

Subsec. (b)(3), (4). Pub. L. 108-136, § 1045(b)(2)(A)(ii), (iv), redesignated par. (4) as (3) and substituted “paragraph (1)” for “paragraph (2)”. Former par. (3) redesignated (2).

Subsec. (d). Pub. L. 108-136, § 1045(b)(2)(B), substituted “subsection (b)(1)” for “subsection (b)(2)”.

Subsecs. (f) to (h). Pub. L. 108-136, § 604, added subsec. (f) and redesignated former subsecs. (f) and (g) as (g) and (h), respectively.

2002—Subsec. (d). Pub. L. 107-314 amended heading and text of subsec. (d) generally. Prior to amendment, text read as follows:

“(1) In areas prescribed by the Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, an enlisted member described in paragraph (2) is entitled to not more than the pro rata allowance in effect under paragraph (1) or (2) of subsection (b) for each meal the member buys from a source other than a messing facility of the United States.

“(2) An enlisted member referred to in paragraph (1) is a member who is granted permission to mess separately and whose duties require the member to buy at least one meal from a source other than a messing facility of the United States.”

Pub. L. 107-296, which directed amendment of subsec. (d) by substituting “of Homeland Security” for “of Transportation”, could not be executed because the words “of Transportation” did not appear subsequent to amendment by Pub. L. 107-314, see above and Effective Date of 2002 Amendment note below.

2001—Subsec. (b)(4). Pub. L. 107-107 added par. (4).

2000—Subsec. (b)(1). Pub. L. 106-398, § 1 [[div. A], title VI, § 603(a)(1)], substituted “Through December 31, 2001, the monthly rate” for “The monthly rate” in introductory provisions.

Subsec. (b)(2), (3). Pub. L. 106-398, § 1 [[div. A], title VI, § 603(a)(2), (3)], added par. (2) and redesignated former par. (2) as (3).

Subsec. (d)(1). Pub. L. 106-398, § 1 [[div. A], title VI, § 603(b)], substituted “in effect under paragraph (1) or (2) of subsection (b)” for “established under subsection (b)(1)”.

1998—Subsecs. (e) to (g). Pub. L. 105-261 added subsec. (e) and redesignated former subsecs. (e) and (f) as (f) and (g), respectively.

1997—Pub. L. 105-85 amended section generally. Prior to amendment, section consisted of subsecs. (a) to (e) relating to basic allowance for subsistence for members of the uniformed services.

1996—Subsec. (b). Pub. L. 104-106, §602(a), (b), designated first sentence as par. (1), redesignated former pars. (1), (2), and (3) as subpars. (A), (B), and (C), respectively, of par. (1), designated second to fourth sentences as par. (2), designated fifth and sixth sentences as par. (3), and added par. (4).

Subsec. (e)(1). Pub. L. 104-106, §602(c)(1)(A), substituted “subsection (b)(2)” for “the third sentence of subsection (b)”.

Subsec. (e)(2). Pub. L. 104-106, §602(c)(1)(B), substituted “subsection (b)(2)” for “subsection (b)”.

1991—Subsec. (e). Pub. L. 102-25 struck out “of this section” after “subsection (b)” in pars. (1) and (2).

1985—Subsec. (b). Pub. L. 99-145 inserted “or as otherwise prescribed by law” after “title” at end of fourth sentence.

1984—Subsec. (b). Pub. L. 98-525 inserted “The Secretary concerned may provide an enlisted member who could be provided rations in kind under the preceding sentence with a commutation when rations in kind are not available.”

Subsec. (d). Pub. L. 98-557 inserted provisions relating to Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

1983—Subsec. (e). Pub. L. 98-94 designated existing provisions as par. (1) and added par. (2).

1980—Subsec. (b). Pub. L. 96-513, §411(a), inserted provisions authorizing an allowance while performing travel under orders, and struck out provisions prohibiting an allowance while being subsisted at the expense of United States.

Subsec. (e). Pub. L. 96-513, §411(b), inserted reference to definitions of “field duty” and “sea duty”.

1974—Subsec. (a). Pub. L. 93-419, §3(1), struck out “this section or by another” after “otherwise provided by” and substituted “as set forth in this section” for “in the amount set forth in subsection (d) of this section”.

Subsec. (b). Pub. L. 93-419, §3(2), substituted provisions for allowance for enlisted members authorized to receive basic allowance for subsistence under this subsection by reference to section 1009 of this title for provisions for allowance for enlisted members on leave or were authorized to mess separately at an amount equal to the cost of ration to be determined by the Secretary of Defense.

Subsec. (c). Pub. L. 93-419, §3(3), inserted reference to section 1009 of this title in provisions relating to the amount of basic allowance for subsistence.

Subsecs. (d) to (f). Pub. L. 93-419, §3(4), (5), struck out subsec. (d) which related to basic allowance for subsistence for members of the uniformed services, and redesignated subsecs. (e) and (f) as (d) and (e), respectively.

1966—Subsec. (c). Pub. L. 89-444 extended to aviation cadets of the Coast Guard the entitlement to the same basic allowance for subsistence as is provided for an officer of the Coast Guard.

#### EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-181 effective as of Dec. 31, 2007, and subject to various special provisions, see section 610 of Pub. L. 110-181, set out as a Correction of Lapsed Authorities for Payment of Bonuses, Special Pays, and Similar Benefits for Members of the Uniformed Services note under section 2130a of Title 10, Armed Forces.

#### EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107-296, set out as a note under section 101 of Title 10, Armed Forces.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-85, div. A, title VI, §602(g), Nov. 18, 1997, 111 Stat. 1775, provided that: “This section [amending

this section, section 404 of this title, and section 6081 of Title 10, Armed Forces, and enacting provisions set out as a note below] and the amendments made by this section shall take effect on January 1, 1998.”

#### EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-525, title VI, §605, Oct. 19, 1984, 98 Stat. 2537, provided that the amendment made by that section is effective Oct. 1, 1984.

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by section 411 of Pub. L. 96-513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96-513, set out as a note under section 101 of Title 10, Armed Forces.

#### EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-419 effective Sept. 19, 1974, see section 9 of Pub. L. 93-419, set out as an Effective Date note under section 1009 of this title.

#### TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

#### RATE FOR ENLISTED MEMBERS WHEN MESSING FACILITIES NOT AVAILABLE

Pub. L. 107-107, div. A, title VI, §604(b), Dec. 28, 2001, 115 Stat. 1133, provided that:

“(1) Notwithstanding section 402 of title 37, United States Code, the Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, may prescribe a rate of basic allowance for subsistence to apply to enlisted members of the uniformed services when messing facilities of the United States are not available. The rate may be higher than the rate of basic allowance for subsistence that would otherwise be applicable to the members under that section, but may not be higher than the highest rate that was in effect for enlisted members of the uniformed services under those circumstances before the date of the enactment of this Act [Dec. 28, 2001].

“(2) Paragraph (1) shall cease to be effective on the first day of the first month for which the basic allowance for subsistence calculated for enlisted members of the uniformed services under section 402 of title 37, United States Code, exceeds the rate of the basic allowance for subsistence prescribed under paragraph (1).”

#### TRANSITIONAL AUTHORITY TO PROVIDE BASIC ALLOWANCE FOR SUBSISTENCE

Pub. L. 107-107, div. A, title VI, §604(c), Dec. 28, 2001, 115 Stat. 1134, provided that: “Notwithstanding the repeal of subsections (c) through (f) of section 602 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105-85; 37 U.S.C. 402 note) by section 603(c) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106-398; 114 Stat. 1654A-145) [see below], the basic allowance for subsistence shall be paid in accordance with such subsections for October, November, and December of 2001.”

Pub. L. 105-85, div. A, title VI, §602(c)-(f), Nov. 18, 1997, 111 Stat. 1772, as amended by Pub. L. 105-261, div. A, title VI, §604(b), Oct. 17, 1998, 112 Stat. 2038; Pub. L. 106-398, §1 [[div. A, title X, §1087(e)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A-293, which provided that a basic allowance for subsistence was to be paid to members of the

uniformed services according to the conditions and at the rates provided in this note and not under the authority of this section during the period beginning on Jan. 1, 1998, and ending on the first day of the month immediately following the first month for which the monthly equivalent of the rate of basic allowance for subsistence payable to enlisted members of the uniformed services determined under this note was equal to or exceeded by the amount that would otherwise have been the monthly rate of basic allowance for subsistence under subsec. (b)(1) of this section, was repealed by Pub. L. 106-398, § 1 [div. A, title VI, § 603(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A-145, effective Oct. 1, 2001.

#### INCREASE IN BASIC ALLOWANCE FOR SUBSISTENCE

Pub. L. 96-343, § 7, Sept. 8, 1980, 94 Stat. 1128, provided that: "Effective September 1, 1980, the rates of basic allowance for subsistence authorized by section 402 of title 37, United States Code, as in effect on the day before the date of the enactment of this Act [Sept. 8, 1980] (as prescribed by the President under section 1009 of such title), are increased by 10 percent."

#### REGULATIONS RELATING TO SUBSISTENCE ALLOWANCE

Regulations relating to basic allowance for subsistence, see Ex. Ord. No. 11157, June 22, 1964, 29 F.R. 7973, formerly set out as a note under section 301 of this title.

#### EXECUTIVE ORDER NO. 10119

Ex. Ord. No. 10119, Mar. 30, 1950, 15 F.R. 1767, as amended by 1953 Reorg. Plan No. 1, §§ 5, 8, Apr. 11, 1953, 18 F.R. 2053; Ex. Ord. No. 10605, Apr. 22, 1955, 20 F.R. 2747, which related to regulations governing basic allowance for subsistence, was revoked by Ex. Ord. No. 11157, June 22, 1964, 29 F.R. 7973, formerly set out as a note under section 301 of this title.

#### § 402a. Supplemental subsistence allowance for low-income members with dependents

(a) SUPPLEMENTAL ALLOWANCE REQUIRED.—(1) The Secretary concerned shall increase the basic allowance for subsistence to which a member of the armed forces described in subsection (b) is otherwise entitled under section 402 of this title by an amount (in this section referred to as the "supplemental subsistence allowance") designed to remove the member's household from eligibility for benefits under the supplemental nutrition assistance program.

(2) The supplemental subsistence allowance may not exceed \$1,100 per month. In establishing the amount of the supplemental subsistence allowance to be paid an eligible member under this paragraph, the Secretary shall take into consideration the amount of the basic allowance for housing that the member receives under section 403 of this title or would otherwise receive under such section, in the case of a member who is not entitled to that allowance as a result of assignment to quarters of the United States or a housing facility under the jurisdiction of a uniformed service.

(3) In the case of a member described in subsection (b) who establishes to the satisfaction of the Secretary concerned that the allotment of the member's household under the supplemental nutrition assistance program, calculated in the absence of the supplemental subsistence allowance, would exceed the amount established by the Secretary concerned under paragraph (2), the amount of the supplemental subsistence al-

lowance for the member shall be equal to the lesser of the following:

- (A) The value of that allotment.
- (B) \$1,100.

(b) MEMBERS ENTITLED TO ALLOWANCE.—(1) Subject to subsection (d) and paragraph (4), a member of the armed forces with dependents is entitled to receive the supplemental subsistence allowance if the Secretary concerned determines that the member's income, together with the income of the rest of the member's household (if any), is within the highest income standard of eligibility, as then in effect under section 5(c) of the Food and Nutrition Act of 2008 (7 U.S.C. 2014(c)) and without regard to paragraph (1) of such section, for participation in the supplemental nutrition assistance program.

(2) In determining whether a member meets the eligibility criteria under paragraph (1), the Secretary concerned shall take into consideration the amount of the basic allowance for housing that the member receives under section 403 of this title or would otherwise receive under such section, in the case of a member who is not entitled to that allowance as a result of assignment to quarters of the United States or a housing facility under the jurisdiction of a uniformed service.

(3) In determining whether a member meets the eligibility criteria under paragraph (1), the Secretary concerned shall not take into consideration—

- (A) the amount of the supplemental subsistence allowance that is payable under this section;
- (B) the amount of any special pay that is payable to the member under section 310 or 351 of this title, relating to duty subject to hostile fire or imminent danger; or
- (C) the amount of any family separation allowance that is payable to the member under section 427 of this title.

(4) After September 30, 2016, a member is eligible for a supplemental subsistence allowance under this section only if the member is serving outside the United States, the Commonwealth of Puerto Rico, the United States Virgin Islands, or Guam.

(c) APPLICATION FOR ALLOWANCE.—To request the supplemental subsistence allowance, a member shall submit an application to the Secretary concerned in such form and containing such information as the Secretary concerned may prescribe. A member applying for the supplemental subsistence allowance shall furnish such evidence regarding the member's satisfaction of the eligibility criteria under subsection (b) as the Secretary concerned may require.

(d) EFFECTIVE PERIOD.—The entitlement of a member to receive the supplemental subsistence allowance terminates upon the occurrence of any of the following events, even though the member continues to meet the eligibility criteria described in subsection (b):

- (1) Payment of the supplemental subsistence allowance for 12 consecutive months.
- (2) Promotion of the member to a higher grade.
- (3) Transfer of the member in a permanent change of station.