

2005—Pub. L. 109-13, div. A, title I, §1026(b)(2), May 11, 2005, 119 Stat. 254, substituted “illness or injury of members” for “the serious illness or injury of members” in item 411h.

2004—Pub. L. 108-375, div. A, title VI, §605(b)(3), Oct. 28, 2004, 118 Stat. 1945, substituted “continental United States” for “United States or in Hawaii or Alaska” in item 405.

2003—Pub. L. 108-136, div. A, title V, §541(b)(5)(B), title VI, §635(b), Nov. 24, 2003, 117 Stat. 1477, 1511, added item 404b and substituted “High-deployment allowance: lengthy or numerous deployments; frequent mobilizations” for “Per diem allowance for lengthy or numerous deployments” in item 436.

2000—Pub. L. 106-398, §1 [[div. A], title X, §1087(c)(1)(B)], Oct. 30, 2000, 114 Stat. 1654, 1654A-292, made technical amendment to directory language of Pub. L. 106-65, §586(c)(2). See 1999 Amendment note below.

Pub. L. 106-398, §1 [[div. A], title X, §1087(c)(1)(A)(ii)], Oct. 30, 2000, 114 Stat. 1654, 1654A-292, made technical amendment to directory language of Pub. L. 106-65, §578(k)(4). See 1999 Amendment note below.

Pub. L. 106-398, §1 [[div. A], title VI, §§604(a)(2), 645(b), title X, §1087(b)(4)], Oct. 30, 2000, 114 Stat. 1654, 1654A-147, 1654A-162, 1654A-292, added items 402a and 411i and redesignated item 435 “Per diem allowance for lengthy or numerous deployments” as 436.

1999—Pub. L. 106-65, div. A, title V, §586(c)(2), Oct. 5, 1999, 113 Stat. 639, as amended by Pub. L. 106-398, §1 [[div. A], title X, §1087(c)(1)(B)], Oct. 30, 2000, 114 Stat. 1654, 1654A-292, added item 435 “Per diem allowance for lengthy or numerous deployments”.

Pub. L. 106-65, div. A, title V, §578(k)(4), Oct. 5, 1999, 113 Stat. 631, as amended by Pub. L. 106-398, §1 [[div. A], title X, §1087(c)(1)(A)(ii)], Oct. 30, 2000, 114 Stat. 1654, 1654A-292, added item 435 “Funeral honors duty: allowance”.

1998—Pub. L. 105-261, div. A, title VI, §633(b)(2), Oct. 17, 1998, 112 Stat. 2044, substituted “rest and recuperative leave from certain stations” for “leave from certain stations” in item 411c.

1997—Pub. L. 105-85, div. A, title VI, §603(c)(4), Nov. 18, 1997, 111 Stat. 1782, substituted “housing” for “quarters” in item 403 and struck out item 403a “Variable housing allowance”.

1994—Pub. L. 103-337, div. A, title VI, §602(a)(2), Oct. 5, 1994, 108 Stat. 2781, added item 403b.

1992—Pub. L. 102-484, div. A, title VI, §623(a)(2), Oct. 23, 1992, 106 Stat. 2423, added item 434.

1990—Pub. L. 101-510, div. A, title V, §504(a)(1), title XIV, §1484(f)(1), Nov. 5, 1990, 104 Stat. 1559, 1717, revised chapter heading so as to appear in all capital letters and renumbered Pub. L. 95-561, §1407(c)(1)(B). See 1978 Amendment note below.

1989—Pub. L. 101-189, div. A, title V, §502(b)(2), title VI, §624(a)(2), Nov. 29, 1989, 103 Stat. 1437, 1448, added items 406c and 433.

1987—Pub. L. 100-180, div. A, title VI, §§611(a)(2), 614(a)(2), (d)(3), 615(a)(2), title XIII, §1314(c)(2), Dec. 4, 1987, 101 Stat. 1093-1096, 1176, substituted “leave between consecutive overseas tours” for “certain leave” in item 411b, added items 411g and 411h, inserted “and Vice Chairman” in item 413, added item 419, and redesignated former items 419 and 420 as 420 and 421, respectively.

Pub. L. 100-26, §8(b)(1), Apr. 21, 1987, 101 Stat. 285, redesignated item 431 “Travel and transportation: members escorting certain dependents” as item 432.

1986—Pub. L. 99-661, div. A, title VI, §615(a)(2), Nov. 14, 1986, 100 Stat. 3880, added item 431 “Travel and transportation: members escorting certain dependents”.

1985—Pub. L. 99-145, title VI, §§616(c)(2), 620(a)(2), title XIII, §§1302(b)(2), 1303(b)(7), Nov. 8, 1985, 99 Stat. 641, 643, 738, 740, substituted “allowances:” for “allowances;” in item 404 and “departure” for “evacuation” in item 405a, struck out “away from home port” after “inactivating” in item 406b, added item 411f, substituted “al-

lowances” for “allowance” in item 425, and added item 431 “Benefits for certain members assigned to the Defense Intelligence Agency”.

1984—Pub. L. 98-525, title VI, §§602(d)(2), 612(a)(2), Oct. 19, 1984, 98 Stat. 2536, 2539, struck out “; variable housing allowance” after “Basic allowance for quarters” in item 403, and added item 403a, and substituted “personal emergencies for certain members and dependents” for “certain emergencies for members performing temporary duty” in item 411d.

1983—Pub. L. 98-94, title IX, §§910(a)(2), 932(e)(2), Sept. 24, 1983, 97 Stat. 639, 650, struck out item 421 “Contract surgeons” and added item 430.

1981—Pub. L. 97-60, title I, §§122(a)(2), 126(b), Oct. 14, 1981, 95 Stat. 1003, 1005, added items 404a, 411c, 411d, and 411e.

Pub. L. 97-22, §11(b)(3)(B), July 10, 1981, 95 Stat. 138, substituted “uniformed services” for “Uniformed Services” in item 406b.

1980—Pub. L. 96-343, §4(a)(3), Sept. 8, 1980, 94 Stat. 1125, substituted “for quarters; variable housing allowance” for “for quarters” in item 403.

Pub. L. 96-342, title VIII, §808(a)(2), Sept. 8, 1980, 94 Stat. 1097, substituted “house trailers and mobile homes” for “trailers” in item 409.

1978—Pub. L. 95-561, title XIV, §1407(e)(1)(B), formerly §1407(c)(1)(B), Nov. 1, 1978, 92 Stat. 2367, renumbered §1407(d)(1)(B) by Pub. L. 101-510, div. A, title V, §504(a)(1), Nov. 5, 1990, 104 Stat. 1559, renumbered §1407(e)(1)(B) by Pub. L. 107-107, div. A, title III, §353(1), Dec. 28, 2001, 115 Stat. 1063, added item 429.

1973—Pub. L. 93-213, §1(2), Dec. 28, 1973, 87 Stat. 910, added item 411b.

Pub. L. 93-170, §1(2), Nov. 29, 1973, 87 Stat. 689, substituted “overhauling or inactivating” for “overhauling” in item 406b.

1971—Pub. L. 92-129, title II, §205(b), Sept. 28, 1971, 85 Stat. 359, added item 428.

1970—Pub. L. 91-210, §1(2), Mar. 13, 1970, 84 Stat. 53, added item 406b.

1968—Pub. L. 90-377, §9, July 5, 1968, 82 Stat. 288, struck out item 426 “Prisoners in naval confinement facilities”.

1967—Pub. L. 90-207, §9(2), Dec. 16, 1967, 81 Stat. 655, inserted item 411a.

1965—Pub. L. 89-26, §1(2), May 22, 1965, 79 Stat. 117, inserted item 405a.

1964—Pub. L. 88-647, title II, §202(6), Oct. 13, 1964, 78 Stat. 1071, substituted “Cadets and midshipmen” for “Cadets, midshipmen, and naval officer candidates” in item 422.

1963—Pub. L. 88-238, §1(2), Dec. 23, 1963, 77 Stat. 476, inserted item 406a.

Pub. L. 88-132, §11(2), Oct. 2, 1963, 77 Stat. 217, added item 427.

## § 401. Definitions

(a) DEPENDENT DEFINED.—In this chapter, the term “dependent”, with respect to a member of a uniformed service, means the following persons:

- (1) The spouse of the member.
- (2) An unmarried child of the member who—
  - (A) is under 21 years of age;
  - (B) is incapable of self-support because of mental or physical incapacity and is in fact dependent on the member for more than one-half of the child’s support; or
  - (C) is under 23 years of age, is enrolled in a full-time course of study in an institution of higher education approved by the Secretary concerned for purposes of this subparagraph, and is in fact dependent on the member for more than one-half of the child’s support.
- (3) A parent of the member if—

(A) the parent is in fact dependent on the member for more than one-half of the parent's support;

(B) the parent has been so dependent for a period prescribed by the Secretary concerned or became so dependent due to a change of circumstances arising after the member entered on active duty; and

(C) the dependency of the parent on the member is determined on the basis of an affidavit submitted by the parent and any other evidence required under regulations prescribed by the Secretary concerned.

(4) An unmarried person who—

(A) is placed in the legal custody of the member as a result of an order of a court of competent jurisdiction in the United States (or Puerto Rico or a possession of the United States) for a period of at least 12 consecutive months;

(B) either—

(i) has not attained the age of 21;

(ii) has not attained the age of 23 years and is enrolled in a full time course of study at an institution of higher learning approved by the Secretary concerned; or

(iii) is incapable of self support because of a mental or physical incapacity that occurred while the person was considered a dependent of the member or former member under this paragraph pursuant to clause (i) or (ii);

(C) is dependent on the member for over one-half of the person's support;

(D) resides with the member unless separated by the necessity of military service or to receive institutional care as a result of disability or incapacitation or under such other circumstances as the Secretary concerned may by regulation prescribe; and

(E) is not a dependent of a member under any other paragraph.

(b) OTHER DEFINITIONS.—For purposes of subsection (a):

(1) The term “child” includes—

(A) a stepchild of the member (except that such term does not include a stepchild after the divorce of the member from the stepchild's parent by blood);

(B) an adopted child of the member, including a child placed in the home of the 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 pe-

riod 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 CIRCUMSTANCES.—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 sub-