

11205; Ex. Ord. No. 11253, Oct. 20, 1965, 30 F.R. 13509; Ex. Ord. No. 11259, Dec. 3, 1965, 30 F.R. 15057; Ex. Ord. No. 11292, Aug. 1, 1966, 31 F.R. 10447; Ex. Ord. No. 11382, Nov. 28, 1967, 32 F.R. 16247; Ex. Ord. No. 11424, Aug. 29, 1968, 33 F.R. 12361; Ex. Ord. No. 11473, June 14, 1969, 34 F.R. 9485; Ex. Ord. No. 11511, Feb. 27, 1970, 35 F.R. 3877; Ex. Ord. No. 11591, Apr. 23, 1971, 36 F.R. 7833; Ex. Ord. No. 11716, Apr. 26, 1973, 38 F.R. 10621; Ex. Ord. No. 11728, July 12, 1973, 38 F.R. 18861; Ex. Ord. No. 11897, Jan. 13, 1976, 41 F.R. 2071; Ex. Ord. No. 11929, July 26, 1976, 41 F.R. 31159; Ex. Ord. No. 11939, Sept. 30, 1976, 41 F.R. 43705; Ex. Ord. No. 12094, Nov. 1, 1978, 43 F.R. 51379; Ex. Ord. No. 12243, Oct. 3, 1980, 45 F.R. 66439; Ex. Ord. No. 12274, Jan. 16, 1981, 46 F.R. 5855; Ex. Ord. No. 12337, Jan. 11, 1982, 47 F.R. 1367, eff. Sept. 15, 1981; Ex. Ord. No. 12380, Aug. 18, 1982, 47 F.R. 36605, eff. Jan. 1, 1981; Ex. Ord. No. 12394, Nov. 18, 1982, 47 F.R. 52405, eff. Oct. 1, 1981; Ex. Ord. No. 12420, May 11, 1983, 48 F.R. 21525, eff. Oct. 1, 1981; Ex. Ord. No. 12488, Sept. 27, 1984, 49 F.R. 38525, eff. Oct. 1, 1983; Ex. Ord. No. 12494, Dec. 6, 1984, 49 F.R. 48175; Ex. Ord. No. 12541, Dec. 30, 1985, 51 F.R. 585, eff. Jan. 1, 1986; Ex. Ord. No. 12573, Nov. 6, 1986, 51 F.R. 40954, eff. in part Oct. 1, 1985; Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617; Ex. Ord. No. 12762, June 4, 1991, 56 F.R. 25993; Ex. Ord. No. 12935, Oct. 28, 1994, 59 F.R. 54511, which related to regulations regarding incentive pay for hazardous duty, special pay for sea duty and duty at certain other locations, and basic allowances for subsistence and quarters, was revoked by Ex. Ord. No. 13294, § 2, Mar. 28, 2003, 68 F.R. 15919, set out below.

EX. ORD. NO. 13294. REGULATIONS RELATING TO HAZARDOUS DUTY INCENTIVE PAY, AVIATION CAREER INCENTIVE PAY, AND SUBMARINE DUTY INCENTIVE PAY

Ex. Ord. No. 13294, Mar. 28, 2003, 68 F.R. 15919, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 301, 301a, and 301c of title 37, United States Code, and section 301 of title 3, United States Code, it is hereby ordered as follows:

SECTION 1. The Secretary of Defense, the Secretary of Commerce, the Secretary of Health and Human Services, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, with respect to members of the uniformed services under their respective jurisdictions, are hereby designated and empowered to exercise, without approval, ratification, or other action by the President, the authority vested in the President by sections 301, 301a, and 301c of title 37, United States Code. The Secretaries shall consult each other in the exercise of such authority to ensure similar treatment for similarly situated members of the uniformed services unless the needs of their respective uniformed services require differing treatment.

SEC. 2. Executive Order 11157 of June 22, 1964, as amended, and Executive Order 11800 of August 17, 1974, as amended, are hereby revoked.

SEC. 3. This order is not intended to create, nor does it create, any right, benefit, or privilege, substantive or procedural, enforceable at law by a party against the United States, its agencies, officers, employees, or any other person.

GEORGE W. BUSH.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 301a, 304, 320, 552, 907, 1012 of this title.

§ 301a. Incentive pay: aviation career

(a)(1) Subject to regulations prescribed by the President, a member of a uniformed service who is entitled to basic pay is also entitled to aviation career incentive pay in the amount set forth in subsection (b) for the frequent and regular performance of operational or proficiency flying duty required by orders.

(2) Aviation career incentive pay shall be restricted to regular and reserve officers who hold, or are in training leading to, an aeronautical rating or designation and who engage and remain in aviation service on a career basis.

(3) Under regulations prescribed by the Secretary of Defense, the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, or the Secretary of Commerce and the Secretary of Health and Human Services with respect to members under their respective jurisdiction, an officer (except a flight surgeon or other medical officer) who is entitled to basic pay, holds an aeronautical rating or designation, and is qualified for aviation service under regulations prescribed by the Secretary concerned, is entitled to continuous monthly incentive pay in the amount set forth in subsection (b) that is applicable to him. A flight surgeon or other medical officer who is entitled to basic pay, holds an aeronautical rating or designation, and is qualified for aviation service under regulations prescribed by the Secretary concerned, is not entitled to continuous monthly incentive pay but is entitled to monthly incentive pay in the amounts set forth in subsection (b) for the frequent and regular performance of operational flying duty.

(4) To be entitled to continuous monthly incentive pay, an officer must perform the prescribed operational flying duties (including flight training but excluding proficiency flying) for 8 of the first 12, and 12 of the first 18 years of the aviation service of the officer. However, if an officer performs the prescribed operational flying duties (including flight training but excluding proficiency flying) for at least 10 but less than 12 of the first 18 years of the aviation service of the officer, the officer will be entitled to continuous monthly incentive pay for the first 22 years of aviation service of the officer. Entitlement to continuous monthly incentive pay ceases for an officer (other than a warrant officer) upon completion of 25 years of aviation service, but such an officer in a pay grade below pay grade O-7 remains entitled to monthly incentive pay under subsection (b)(1) for the performance of operational flying duty.

(5) If upon completion of either 12 or 18 years of aviation service it is determined that an officer has failed to perform the minimum prescribed operational flying duty requirements during the prescribed periods of time, his entitlement to continuous monthly incentive pay ceases. For the needs of the service, the Secretary concerned may permit, on a case by case basis, an officer to continue to receive continuous monthly incentive pay despite the failure of the officer to perform the prescribed operational flying duty requirements during the prescribed periods of time so long as the officer has performed those requirements for not less than 6 years of aviation service. The Secretary concerned may not delegate the authority in the preceding sentence to permit the payment of incentive pay under this subsection. If at the completion of 12 years of aviation service entitlement to continuous monthly incentive pay ceases, entitlement to that pay may again com-

mence at the completion of 18 years of aviation service upon completion of the minimum operational flying duty requirements, such pay to continue for a period of time as prescribed in accordance with this section. However, if entitlement to continuous monthly incentive pay ceases in the case of any officer at the completion of either 12 or 18 years of aviation service, such officer remains entitled to monthly incentive pay for the performance of subsequent operational or proficiency flying duties up to the maximum period of time prescribed in accordance with this section.

(6) In this section:

(A) The term "aviation service" means service performed by an officer (except a flight surgeon or other medical officer) while holding an aeronautical rating or designation or while in training to receive an aeronautical rating or designation.

(B) The term "operational flying duty" means flying performed under competent orders by rated or designated members while serving in assignments in which basic flying skills normally are maintained in the performance of assigned duties as determined by the Secretary concerned, and flying performed by members in training that leads to the award of an aeronautical rating or designation.

(C) The term "proficiency flying duty" means flying performed under competent orders by rated or designated members while serving in assignments in which such skills would normally not be maintained in the performance of assigned duties.

(D) The term "officer" includes an individual enlisted, and designated, as an aviation cadet under section 6911 of title 10.

(b)(1) A member who satisfies the requirements described in subsection (a) is entitled to monthly incentive pay as follows:

Years of aviation service (including flight training) as an officer:	Monthly rate
2 or less	\$125
Over 2	\$156
Over 3	\$188
Over 4	\$206
Over 6	\$650
Over 14	\$840
Over 22	\$585
Over 23	\$495
Over 24	\$385
Over 25	\$250

(2) An officer in a pay grade above O-6 is entitled, until the officer completes 25 years of aviation service, to be paid at the rates set forth in the table in paragraph (1), except that—

(A) an officer in pay grade O-7 may not be paid at a rate greater than \$200 a month; and

(B) an officer in pay grade O-8 or above may not be paid at a rate greater than \$206 a month.

(3) For a warrant officer with over 22, 23, 24, or 25 years of aviation service who is qualified under subsection (a), the rate prescribed in the table in paragraph (1) for officers with over 14 years of aviation service shall continue to apply to the warrant officer.

(4) An officer serving as an air battle manager who is entitled to aviation career incentive pay

under this section and who, before becoming entitled to aviation career incentive pay, was entitled to incentive pay under section 301(a)(11) of this title, shall be paid the monthly incentive pay at the higher of the following rates:

(A) The rate otherwise applicable to the member under this subsection.

(B) The rate at which the member was receiving incentive pay under section 301(c)(2)(A) of this title immediately before the member's entitlement to aviation career incentive pay under this section.

(c) In time of war, the President may suspend the payment of aviation career incentive pay.

(d) Under regulations prescribed by the President and to the extent provided for by appropriations, when a member of a reserve component of a uniformed service, or of the National Guard, who is entitled to compensation under section 206 of this title, performs, under orders, duty described in subsection (a) for members entitled to basic pay, he is entitled to an increase in compensation equal to $\frac{1}{30}$ of the monthly incentive pay authorized by subsection (b) for the performance of that duty by a member with corresponding years of aviation service who is entitled to basic pay. Such member is entitled to the increase for as long as he is qualified for it, for each regular period of instruction, or period of appropriate duty, at which he is engaged for at least two hours, including that performed on a Sunday or holiday, or for the performance of such other equivalent training, instruction, duty or appropriate duties, as the Secretary may prescribe under section 206(a) of this title. This subsection does not apply to a member who is entitled to basic pay under section 204 of this title.

[(e) Repealed. Pub. L. 101-510, div. A, title XIII, § 1322(c)(1), Nov. 5, 1990, 104 Stat. 1672.]

(f) The Secretary of Defense shall submit annually to Congress a report specifying for the year covered by the report—

(1) the total number of officers who were determined under subsection (a)(5) to have failed to perform the minimum prescribed operational flying duty requirements;

(2) the number of those officers who continued to receive continuous monthly incentive pay despite their failure to perform the minimum prescribed operational flying duty requirements and the extent to which they failed to perform those requirements; and

(3) the reasons for the exercise of the authority under the second sentence of subsection (a)(5) in the case of each officer specified pursuant to paragraph (2).

(Added Pub. L. 93-294, § 2(3), May 31, 1974, 88 Stat. 177; amended Pub. L. 94-273, § 3(21), Apr. 21, 1976, 90 Stat. 377; Pub. L. 96-343, § 2(b), Sept. 8, 1980, 94 Stat. 1124; Pub. L. 96-513, title V, § 516(6), Dec. 12, 1980, 94 Stat. 2938; Pub. L. 97-60, title I, § 112(a), (b), Oct. 14, 1981, 95 Stat. 994; Pub. L. 99-661, div. A, title VI, § 632(a), Nov. 14, 1986, 100 Stat. 3883; Pub. L. 100-26, § 8(e)(3), Apr. 21, 1987, 101 Stat. 286; Pub. L. 101-189, div. A, title VI, § 631(a)-(d), Nov. 29, 1989, 103 Stat. 1449, 1450; Pub. L. 101-510, div. A, title XIII, § 1322(c)(1), Nov. 5, 1990, 104 Stat. 1672; Pub. L. 102-25, title VII, § 702(b)(1), (2), (c),

Apr. 6, 1991, 105 Stat. 117; Pub. L. 103-35, title II, § 204(c), May 31, 1993, 107 Stat. 102; Pub. L. 104-106, div. A, title VI, § 616, Feb. 10, 1996, 110 Stat. 362; Pub. L. 105-85, div. A, title VI, § 615(a), (b), Nov. 18, 1997, 111 Stat. 1787; Pub. L. 105-261, div. A, title VI, § 615(a)(1), (b), (c)(1), (d), Oct. 17, 1998, 112 Stat. 2040, 2041; Pub. L. 106-65, div. A, title VI, § 614(a), Oct. 5, 1999, 113 Stat. 651; Pub. L. 107-296, title XVII, § 1704(c), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Subsec. (a)(3). Pub. L. 107-296 substituted “of Homeland Security” for “of Transportation”.

1999—Subsec. (b)(4). Pub. L. 106-65 added par. (4).

1998—Subsec. (a)(4). Pub. L. 105-261, § 615(c)(1)(A), substituted “22 years of aviation service of the officer” for “22 years of the officer’s service as an officer” and “25 years of aviation service” for “25 years of service as an officer (as computed under section 205 of this title)”.

Subsec. (a)(6). Pub. L. 105-261, § 615(a)(1), added subpar. (A) and redesignated former subpars. (A) to (C) as (B) to (D), respectively.

Subsec. (b). Pub. L. 105-261, § 615(d), repealed section 615 of Pub. L. 105-85. See 1997 Amendment note below.

Pub. L. 105-261, § 615(b), amended subsec. (b) generally, substituting pars. (1) to (3) for former pars. (1) and (2).

Subsec. (d). Pub. L. 105-261, § 615(c)(1)(B), substituted “subsection (b) for the performance of that duty by a member with corresponding years of aviation service” for “subsection (b)(1) or (2), as the case may be, for the performance of that duty by a member of corresponding years of aviation or officer service, as appropriate.”

1997—Subsec. (b)(1). Pub. L. 105-85, § 615(b), substituted “22 years” for “18 years” in two places in provisions after phase II table.

Pub. L. 105-85, § 615(a), which directed amendment by inserting at the end of phase I of the table the following:

“Over 14 840”;

and by striking out phase II of the table and inserting in lieu thereof the following:

“Phase II

“Years of service as an officer:	“Monthly rate
“Over 22	585
“Over 23	495
“Over 24	385
“Over 25	250”.

was repealed by Pub. L. 105-261, § 615(d).

1996—Subsec. (a)(4). Pub. L. 104-106, § 616(a), substituted “8” for “9” before “of the first 12”.

Subsec. (a)(5). Pub. L. 104-106, § 616(b), inserted “The Secretary concerned may not delegate the authority in the preceding sentence to permit the payment of incentive pay under this subsection.” after second sentence.

1993—Subsec. (a)(4). Pub. L. 103-35 made technical amendment to directory language of Pub. L. 101-189, § 631(a)(1). See 1989 Amendment note below.

1991—Pub. L. 102-25 struck out “of this section” whenever appearing and struck out “of this subsection” in subsec. (b)(2).

1990—Subsec. (e). Pub. L. 101-510 struck out subsec. (e) which read as follows: “The Secretary of Defense shall report to Congress before October 1 each year the number of rated members by pay grade who—

“(1) have 12 or 18 years of aviation service, and of those numbers, the number who are entitled to continuous monthly incentive pay under subsection (a) of this section; and

“(2) are performing operational flying duties, proficiency flying, and those not performing flying duties.”

1989—Subsec. (a)(4). Pub. L. 101-189, § 631(a), as amended by Pub. L. 103-35, § 204(c), substituted “9 of the first

12, and 12 of the first 18 years of the aviation service of the officer” for “6 of the first 12, and 11 of the first 18, years of his aviation service”, “at least 10 but less than 12 of the first 18 years of the aviation service of the officer, the officer” for “at least 9 but less than 11 of the first 18 years of his aviation service, he”, and “the officer’s service as an officer” for “his officer service”.

Subsec. (a)(5). Pub. L. 101-189, § 631(b), inserted after first sentence “For the needs of the service, the Secretary concerned may permit, on a case by case basis, an officer to continue to receive continuous monthly incentive pay despite the failure of the officer to perform the prescribed operational flying duty requirements during the prescribed periods of time so long as the officer has performed those requirements for not less than 6 years of aviation service.”

Subsec. (b)(1). Pub. L. 101-189, § 631(c)(1), in phase I table, substituted “650” for “400” in item relating to over 6 years, and in phase II table, struck out “as computed under section 205” after “an officer” in table heading, substituted “\$585” for “\$370”, “495” for “340”, and “385” for “310”, in items relating to over 18 years, over 20 years, and over 22 years, respectively, and struck out item relating to a monthly rate of \$280 for over 24 years.

Subsec. (b)(2). Pub. L. 101-189, § 631(c)(2), in table, substituted “650” for “400” in item relating to over 6 years.

Subsec. (f). Pub. L. 101-189, § 631(d), added subsec. (f).

1987—Subsec. (a)(6). Pub. L. 100-26, which directed that par. (6) of this section be amended, was executed to par. (6) of subsec. (a) of this section, to reflect the probable intent of Congress by substituting “In this section:” for “For the purposes of this section, the term—”, inserting “The term” at beginning of subpars. (A) to (C), and substituting period for semicolon at end of subpar. (A) and period for “; and” at end of subpar. (B).

1986—Subsec. (a)(6)(C). Pub. L. 99-661, § 632(a)(1), added subpar. (C).

Subsec. (b)(1). Pub. L. 99-661, § 632(a)(2), substituted “a member” for “an officer in pay grades O-1 through O-10”.

1981—Subsec. (a)(4). Pub. L. 97-60, § 112(a), inserted provision that entitlement to continuous monthly incentive pay ceases for an officer (other than a warrant officer) upon completion of 25 years of service as an officer (as computed under section 205 of this title), but such an officer in a pay grade below pay grade O-7 remains entitled to monthly incentive pay under subsection (b)(1) of this section for the performance of operational flying duty.

Subsec. (b)(1), (2). Pub. L. 97-60, § 112(b), amended table to reflect an upward adjustment in monthly incentive pay.

1980—Subsec. (a)(3). Pub. L. 96-513 substituted “Health and Human Services” for “Health, Education, and Welfare”.

Subsec. (b)(1). Pub. L. 96-343, § 2(b)(1), (2), substituted in phase I table, “\$125”, “\$156”, “\$188”, “\$206”, and “\$306” for “\$100”, “\$125”, “\$150”, “\$165”, and “\$245” in items relating to 2 or less years, over 2 years, over 3 years, over 4 years, and over 6 years, respectively, in phase II table, “\$281”, “\$256”, “\$231”, and “\$206” for “\$225”, “\$205”, “\$185”, and “\$165” in items relating to over 18 years, over 20 years, over 22 years, and over 24 but not over 25 years, respectively, and “\$200” and “\$206” for “\$160” and “\$165”, respectively.

Subsec. (b)(2). Pub. L. 96-343, § 2(b)(3), substituted “\$125”, “\$138”, and “\$250” for “\$100”, “\$110”, and “\$200” in items relating to 2 or less years, over 2 years, and over 6 years, respectively.

1976—Subsec. (e). Pub. L. 94-273 substituted “October” for “July”.

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.

“TABLE

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-65, div. A, title VI, §614(b), Oct. 5, 1999, 113 Stat. 651, provided that: “The amendment made by subsection (a) [amending this section] shall take effect on October 1, 1999, and shall apply with respect to months beginning on or after that date.”

EFFECTIVE DATE OF 1997 AMENDMENT

Section 615(c) of Pub. L. 105-85, which provided that the amendments made by section 615(a) of Pub. L. 105-85 to this section were to take effect on Jan. 1, 1999, and were to apply with respect to months beginning on or after that date, was repealed by Pub. L. 105-261, div. A, title VI, §615(d), Oct. 17, 1998, 112 Stat. 2041.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 204(c) of Pub. L. 103-35 provided that the amendment made by that section is effective Nov. 29, 1989.

EFFECTIVE DATE OF 1989 AMENDMENT; TRANSITION

Section 631(e), (f) of Pub. L. 101-189 provided that:

“(e) EFFECTIVE DATE.—(1) Except as provided in paragraph (2), the amendments made—

“(A) by subsection (c) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 29, 1989]; and

“(B) by subsections (a), (b), and (d) [amending this section] shall take effect on October 1, 1991.

“(2) The Secretary of a military department may delay, subject to the approval of the Secretary of Defense, the implementation of the amendments made by subsection (c) with respect to the department of that Secretary until such time as the Secretary concerned determines that implementation of those amendments is necessary to meet the needs of that department.

“(3) If the Secretary of a military department delays under paragraph (2) the implementation of the amendments made by subsection (c) beyond October 1, 1991, the Secretary may also delay implementation of the amendments made by subsections (a), (b), and (d) until the date on which the Secretary implements the amendments made by subsection (c). During the delay in implementation, the provisions of section 301a of title 37, United States Code, as in effect on the day before the date of the enactment of this Act, shall continue to apply in the case of such department to the payment of aviation career incentive pay under such section.

“(f) TRANSITION.—(1) An officer of a uniformed service who, as of the date the amendments made by subsections (a), (b), and (d) take effect with regard to the officer's uniformed service—

“(A) has completed years of aviation service in an amount equal to one of the number of years of aviation service specified in column 1 of the following table; and

“(B) has performed, or subsequently performs, the prescribed operational flying duties (including flight training but excluding proficiency flying) during the number of years of aviation service specified in column 2 of such table and corresponding to the number of years of aviation service applicable to the officer under column 1,

shall be entitled to continuous monthly incentive pay at the rates provided in section 301a(b) of title 37, United States Code (as amended by this section)[.] until the officer completes the years of service as an officer specified in column 3 of such table and applicable to the officer.

COLUMN 1	COLUMN 2	COLUMN 3
Number of years of aviation service	Number of years performing operational flying duty	Entitlement to continuous monthly incentive pay through the following year of officer service
6 or more	At least 6 of the first 12 years of aviation service	18
6 or more	At least 9 but less than 11 of the first 18 years of aviation service	22
6 or more	At least 6 of the first 12 and at least 11 of the first 18 years of aviation service	25
At least 6 but less than 12	Less than 6 and subsequently completes 6 of the first 12 and 9 of the first 15 years of aviation service	18
At least 12 but less than 18	Less than 9 and subsequently completes 9 of the first 18 years of aviation service	22
At least 12 but less than 18	Less than 11 and subsequently completes 11 of the first 18 years of aviation service	25

“(2) For purposes of this subsection, the terms ‘operational flying duty’ and ‘proficiency flying duty’ have the meaning given to such terms in section 301a(a)(6) of title 37, United States Code.”

EFFECTIVE DATE OF 1986 AMENDMENT

Section 632(b) of Pub. L. 99-661 provided that: “The amendments made by subsection (a) [amending this section] shall apply only with respect to those members of the Armed Forces who are aviation cadets on or after the date of the enactment of this Act [Nov. 14, 1986]. Service as an aviation cadet before that date shall not be counted for any purpose under section 301a of title 37, United States Code.”

EFFECTIVE DATE OF 1981 AMENDMENT

Section 112(c) of Pub. L. 97-60 provided that: “The amendments made by this section [amending this section] shall take effect as of October 1, 1981.”

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96-513, set out as a note under section 101 of Title 10, Armed Forces.

EFFECTIVE DATE

Section 6 of Pub. L. 93-294 provided that: “This Act [enacting this section, amending section 301 of this title, and enacting provisions set out as notes under this section] becomes effective on the first day of the first month after enactment [May 31, 1974].”

DELEGATION OF FUNCTIONS

For delegation of authority under this section to Secretaries of Defense, Commerce, Health and Human

Services, and Homeland Security when Coast Guard not serving as part of Navy, see section 1 of Ex. Ord. No. 13294, Mar. 28, 2003, 68 F.R. 15919, set out as a note under section 301 of this title.

MONTHLY INCENTIVE PAY FOR CERTAIN OFFICERS ENTITLED TO INCENTIVE PAY UNDER SECTION 301(a)(1) OF THIS TITLE ON MAY 31, 1973

Section 4 of Pub. L. 93-294 provided that: "Notwithstanding the amendments made by this Act [enacting this section and amending section 301 of this title], an officer who was entitled to incentive pay under section 301(a)(1) of title 37, United States Code, on May 31, 1973, or on the day before the effective date of this Act [June 1, 1974], if otherwise qualified on the day before the effective date of this Act, is entitled to monthly incentive pay as prescribed in either clause (1) or (2) of this section, as follows:

"(1) If he is credited with 6 or less years of aviation service as an officer, and with less than 12 years of service as an officer, he is entitled to monthly incentive pay either—

"(A) in the amount he was receiving under section 301(b) of that title on May 31, 1973, or on the day before the effective date of this Act [June 1, 1974], but with no entitlement after either of those dates, as applicable, to any longevity pay increases or increases resulting from promotion to a higher grade until such time as the rate to which he is entitled under section 301a(b) of that title, as added by this Act, is equal to or greater than the amount he was receiving under that section on May 31, 1973, or on the day before the effective date of this Act, and thereafter his entitlement is as prescribed by that section as added by this Act; or

"(B) at the rate prescribed by section 301a(b) of that title, as added by this Act;

whichever is greater. However, an officer who is promoted and assigned to pay grade O-7 or above during the 36-month period following the effective date of this Act [June 1, 1974] may not receive more than the rate which existed for that pay grade, as appropriate, prior to June 1, 1973.

"(2) If he is credited with more than 6 years of aviation service as an officer, or less than 6 years of aviation service but more than 12 years of service as an officer, he may receive monthly incentive pay at the rate prescribed in the table in section 301a(b) of title 37, United States Code, as added by this Act, that is applicable to him, or \$165, whichever is greater, for not more than 36 months after the effective date of this Act [June 1, 1974], notwithstanding the provisions of section 301a(a) of that title, as added by this Act, with respect to prescribed operational flying duties (including flight training but excluding proficiency flying). However, under this clause, an officer who is assigned to the pay grade O-7 on the effective date of this Act, or is promoted to the pay grade O-7 during the 36-month period following the effective date of this Act, may not receive more than \$160 per month while assigned to that grade.

The amount to which a reserve officer who is entitled to compensation under section 206 of title 37, United States Code, is entitled under this section is governed by the provisions of section 301a(d) of that title, as added by this Act."

ANNUAL REPORT BY DEPARTMENT OF DEFENSE

Section 5 of Pub. L. 93-294 provided that: "A yearly report containing such data as necessary to monitor the progress of this bill [Pub. L. 93-294] shall be made by the Department of Defense in cooperation with the Senate and House Armed Services Committees and released publicly."

EXECUTIVE ORDER NO. 11800

Ex. Ord. No. 11800, Aug. 17, 1974, 39 F.R. 30103, as amended by Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R.

34617; Ex. Ord. No. 13286, §58, Feb. 28, 2003, 68 F.R. 10629, which delegated authority vested in President by this section to Secretaries of Defense, Commerce, Health and Human Services, and Homeland Security with respect to Coast Guard when not operating as part of Navy, was revoked by Ex. Ord. No. 13294, §2, Mar. 28, 2003, 68 F.R. 15919, set out as a note under section 301 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 301, 301b, 312c of this title.

§ 301b. Special pay: aviation career officers extending period of active duty

(a) **BONUS AUTHORIZED.**—An aviation officer described in subsection (b) who, during the period beginning on January 1, 1989, and ending on December 31, 2004, executes a written agreement to remain on active duty in aviation service for at least one year may, upon the acceptance of the agreement by the Secretary concerned, be paid a retention bonus as provided in this section.

(b) **COVERED OFFICERS.**—An aviation officer referred to in subsection (a) is an officer of a uniformed service who—

(1) is entitled to aviation career incentive pay under section 301a of this title;

(2) is in a pay grade below pay grade O-7;

(3) is qualified to perform operational flying duty; and

(4) has completed any active duty service commitment incurred for undergraduate aviator training or is within one year of completing such commitment.

(c) **AMOUNT OF BONUS.**—The amount of a retention bonus paid under this section may not be more than \$25,000 for each year covered by the written agreement to remain on active duty.

(d) **PRORATION.**—The term of an agreement under subsection (a) and the amount of the bonus under subsection (c) may be prorated as long as such agreement does not extend beyond the date on which the officer making such agreement would complete 25 years of aviation service.

(e) **PAYMENT OF BONUS.**—Upon the acceptance of a written agreement under subsection (a) by the Secretary concerned, the total amount payable pursuant to the agreement becomes fixed and may be paid by the Secretary in either a lump sum or installments.

(f) **ADDITIONAL PAY.**—A retention bonus paid under this section is in addition to any other pay and allowances to which an officer is entitled.

(g) **REPAYMENT OF BONUS.**—(1) If an officer who has entered into a written agreement under subsection (a) and has received all or part of a retention bonus under this section fails to complete the total period of active duty specified in the agreement, the Secretary concerned may require the officer to repay the United States, on a pro rata basis and to the extent that the Secretary determines conditions and circumstances warrant, all sums paid under this section.

(2) An obligation to repay the United States imposed under paragraph (1) is for all purposes a debt owed to the United States.