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Exhibit A

10 U.S.C. § 1174

Westlaw.

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Effective: January 7, 2011

United States Code Annotated Currentness

Title 10. Armed Forces (Refs & Annos)

Subtitle A. General Military Law (Refs & Annos)

▣ Part II. Personnel (Refs & Annos)

▣ Chapter 59. Separation

→ § 1174. Separation pay upon involuntary discharge or release from active duty

(a) **Regular officers.**--(1) A regular officer who is discharged under chapter 36 of this title (except under section 630(1)(A) or 643 of such chapter) or under section 580 or 6383 of this title and who has completed six or more, but less than twenty, years of active service immediately before that discharge is entitled to separation pay computed under subsection (d)(1).

(2) A regular commissioned officer of the Army, Navy, Air Force, or Marine Corps who is discharged under section 630(1)(A), 643, or 1186 of this title, and a regular warrant officer of the Army, Navy, Air Force, or Marine Corps who is separated under section 1165 or 1166 of this title, who has completed six or more, but less than twenty, years of active service immediately before that discharge or separation is entitled to separation pay computed under subsection (d)(1) or (d)(2), as determined by the Secretary of the military department concerned, unless the Secretary concerned determines that the conditions under which the officer is discharged or separated do not warrant payment of such pay.

(3) Notwithstanding paragraphs (1) and (2), an officer discharged under any provision of chapter 36 of this title for twice failing of selection for promotion to the next higher grade is not entitled to separation pay under this section if either (or both) of those failures of selection for promotion was by the action of a selection board to which the officer submitted a request in writing not to be selected for promotion or who otherwise directly caused his nonselection through written communication to the Board under section 614(b) of this title.

(4) Notwithstanding paragraphs (1) and (2), an officer who is subject to discharge under any provision of chapter 36 of this title or under section 580 or 6383 of this title by reason of having twice failed of selection for promotion to the next higher grade is not entitled to separation pay under this section if that officer, after such second failure of selection for promotion, is selected for, and declines, continuation on active duty for a period that is equal to or more than the amount of service required to qualify the officer for retirement.

(b) **Regular enlisted members.**--(1) A regular enlisted member of an armed force who is discharged involuntarily or as the result of the denial of the reenlistment of the member and who has completed six or more, but less than 20, years of active service immediately before that discharge is entitled to separation pay computed under subsection (d) unless the Secretary concerned determines that the conditions under which the member is discharged do not warrant payment of such pay.

(2) Separation pay of an enlisted member shall be computed under paragraph (1) of subsection (d), except that such pay shall be computed under paragraph (2) of such subsection in the case of a member who is discharged under criteria prescribed by the Secretary of Defense.

(c) **Other members.**--(1) Except as provided in paragraphs (2) and (3), a member of an armed force other than a

regular member who is discharged or released from active duty and who has completed six or more, but fewer than 20, years of active service immediately before that discharge or release is entitled to separation pay computed under subsection (d)(1) or (d)(2), as determined by the Secretary concerned, if--

(A) the member's discharge or release from active duty is involuntary; or

(B) the member was not accepted for an additional tour of active duty for which he volunteered.

(2) If the Secretary concerned determines that the conditions under which a member described in paragraph (1) is discharged or separated do not warrant separation pay under this section, that member is not entitled to that pay.

(3) A member described in paragraph (1) who was not on the active-duty list when discharged or separated is not entitled to separation pay under this section unless such member had completed at least six years of continuous active duty immediately before such discharge or release. For purposes of this paragraph, a period of active duty is continuous if it is not interrupted by a break in service of more than 30 days.

(4) In the case of an officer who is subject to discharge or release from active duty under a law or regulation requiring that an officer who has failed of selection for promotion to the next higher grade for the second time be discharged or released from active duty and who, after such second failure of selection for promotion, is selected for, and declines, continuation on active duty--

(A) if the period of time for which the officer was selected for continuation on active duty is less than the amount of service that would be required to qualify the officer for retirement, the officer's discharge or release from active duty shall be considered to be involuntary for purposes of paragraph (1)(A); and

(B) if the period of time for which the officer was selected for continuation on active duty is equal to or more than the amount of service that would be required to qualify the officer for retirement, the officer's discharge or release from active duty shall not be considered to be involuntary for the purposes of paragraph (1)(A).

(d) Amount of separation pay.--The amount of separation pay which may be paid to a member under this section is--

(1) 10 percent of the product of (A) his years of active service, and (B) 12 times the monthly basic pay to which he was entitled at the time of his discharge or release from active duty; or

(2) one-half of the amount computed under clause (1).

(e) Requirement for service in ready reserve; exceptions to eligibility.--(1)(A) As a condition of receiving separation pay under this section, a person otherwise eligible for that pay shall be required to enter into a written agreement with the Secretary concerned to serve in the Ready Reserve of a reserve component for a period of not less than three years following the person's discharge or release from active duty. If the person has a service obligation under section 651 of this title or under any other provision of law that is not completed at the time the person is discharged or released from active duty, the three-year obligation under this subsection shall begin on the day after the date on which the person completes the person's obligation under such section or other provision of law.

(B) Each person who enters into an agreement referred to in subparagraph (A) who is not already a Reserve of an armed force and who is qualified shall, upon such person's discharge or release from active duty, be enlisted or appointed, as appropriate, as a Reserve and be transferred to a reserve component.

(2) A member who is discharged or released from active duty is not eligible for separation pay under this section if the

member--

(A) is discharged or released from active duty at his request;

(B) is discharged or released from active duty during an initial term of enlistment or an initial period of obligated service, unless the member is an officer discharged or released under the authority of section 647 of this title;

(C) is released from active duty for training; or

(D) upon discharge or release from active duty, is immediately eligible for retired or retainer pay based on his military service.

(f) Counting fractional years of service.--In determining a member's years of active service for the purpose of computing separation pay under this section, each full month of service that is in addition to the number of full years of service creditable to the member is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded.

(g) Coordination with other separation or severance pay benefits.--A period for which a member has previously received separation pay under this section or severance pay or readjustment pay under any other provision of law based on service in the armed forces may not be included in determining the years of service that may be counted in computing the separation pay of the member under this section.

(h) Coordination with retired or retainer pay and disability compensation.--(1) A member who has received separation pay under this section, or separation pay, severance pay, or readjustment pay under any other provision of law, based on service in the armed forces, and who later qualifies for retired or retainer pay under this title or title 14 shall have deducted from each payment of such retired or retainer pay an amount, in such schedule of monthly installments as the Secretary of Defense shall specify, taking into account the financial ability of the member to pay and avoiding the imposition of undue financial hardship on the member and member's dependents, until the total amount deducted is equal to the total amount of separation pay, severance pay, and readjustment pay so paid.

(2) A member who has received separation pay under this section, or severance pay or readjustment pay under any other provision of law, based on service in the armed forces shall not be deprived, by reason of his receipt of such separation pay, severance pay, or readjustment pay, of any disability compensation to which he is entitled under the laws administered by the Department of Veterans Affairs, but there shall be deducted from that disability compensation an amount equal to the total amount of separation pay, severance pay, and readjustment pay received, less the amount of Federal income tax withheld from such pay (such withholding being at the flat withholding rate for Federal income tax withholding, as in effect pursuant to regulations prescribed under chapter 24 of the Internal Revenue Code of 1986). Notwithstanding the preceding sentence, no deduction may be made from disability compensation for the amount of any separation pay, severance pay, or readjustment pay received because of an earlier discharge or release from a period of active duty if the disability which is the basis for that disability compensation was incurred or aggravated during a later period of active duty.

(i) Special rule for members receiving sole survivorship discharge.--(1) A member of the armed forces who receives a sole survivorship discharge shall be entitled to separation pay under this section even though the member has completed less than six years of active service immediately before that discharge. Subsection (e) shall not apply to a member who receives a sole survivorship discharge.

(2) The amount of the separation pay to be paid to a member pursuant to this subsection shall be based on the years of active service actually completed by the member before the member's sole survivorship discharge.

(3) In this subsection, the term "sole survivorship discharge" means the separation of a member from the armed forces, at the request of the member, pursuant to the Department of Defense policy permitting the early separation of a member who is the only surviving child in a family in which--

(A) the father or mother or one or more siblings--

(i) served in the armed forces; and

(ii) was killed, died as a result of wounds, accident, or disease, is in a captured or missing in action status, or is permanently 100 percent disabled or hospitalized on a continuing basis (and is not employed gainfully because of the disability or hospitalization); and

(B) the death, status, or disability did not result from the intentional misconduct or willful neglect of the parent or sibling and was not incurred during a period of unauthorized absence.

(j) **Regulations; crediting of other commissioned service.**--(1) The Secretary of Defense shall prescribe regulations, which shall be uniform for the Army, Navy, Air Force, and Marine Corps, for the administration of this section.

(2) Active commissioned service in the National Oceanic and Atmospheric Administration or the Public Health Service shall be credited as active service in the armed forces for the purposes of this section.

CREDIT(S)

(Added Pub.L. 96-513, Title I, § 109(c), Dec. 12, 1980, 94 Stat. 2870, and amended Pub.L. 97-22, § 10(b)(10)(A), July 10, 1981, 95 Stat. 137; Pub.L. 98-94, Title IX, §§ 911(a), (b), 923(b), Title X, § 1007(c)(2), Sept. 24, 1983, 97 Stat. 639, 640, 643, 662; Pub.L. 98-498, Title III, § 320(a)(2), Oct. 19, 1984, 98 Stat. 2308; Pub.L. 101-189, Div. A, Title XVI, § 1621(a)(1), Nov. 29, 1989, 103 Stat. 1602; Pub.L. 101-510, Div. A, Title V, § 501(a) to (d), (g), (h), Nov. 5, 1990, 104 Stat. 1549 to 1551; Pub.L. 102-190, Div. A, Title XI, § 1131(6), Dec. 5, 1991, 105 Stat. 1506; Pub.L. 103-160, Div. A, Title V, § 501(a), Nov. 30, 1993, 107 Stat. 1644; Pub.L. 103-337, Div. A, Title V, § 560(c), Oct. 5, 1994, 108 Stat. 2778; Pub.L. 104-201, Div. A, Title VI, § 653(a), Sept. 23, 1996, 110 Stat. 2583; Pub.L. 105-85, Div. A, Title X, § 1073(a)(22), Nov. 18, 1997, 111 Stat. 1901; Pub.L. 105-261, Div. A, Title V, § 502(a), Oct. 17, 1998, 112 Stat. 2003; Pub.L. 106-398, § 1 [Div. A, Title V, § 508(a), (b), Oct. 30, 2000, 114 Stat. 1654, 1654A-107; Pub.L. 108-375, Div. A, Title V, § 501(c)(2), Oct. 28, 2004, 118 Stat. 1874; Pub.L. 110-317, § 3, Aug. 29, 2008, 122 Stat. 3527; Pub.L. 111-32, Title III, § 318(a), June 24, 2009, 123 Stat. 1873; Pub.L. 111-383, Div. A, Title X, § 1075(b)(17), Jan. 7, 2011, 124 Stat. 4370.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1980 Acts. House Report No. 96-1462, see 1980 U.S. Code Cong. and Adm. News, p. 6333.

1981 Acts. House Report No. 97-141, see 1981 U.S. Code Cong. and Adm. News, p. 24.

1983 Acts. Senate Report No. 98-174 and House Conference Report No. 98-352, see 1983 U.S. Code Cong. and Adm. News, p. 1081.

1984 Acts. Senate Report No. 98-280, see 1984 U.S. Code Cong. and Adm. News, p. 3909.

Exhibit B

Department of Defense Instruction 1332.29



Department of Defense

INSTRUCTION

NUMBER 1332.29

June 20, 1991

Incorporating Change 1, February 23, 1996

ASD(FM&P)

SUBJECT: Eligibility of Regular and Reserve Personnel for Separation Pay

- References:
- (a) DoD Directive 1332.29, "Eligibility of Certain Regular and Reserve Personnel for Separation Pay Upon Involuntary Discharge or Release from Active Duty," July 20, 1985 (hereby canceled)
 - (b) Deputy Secretary of Defense Memorandum, "Delegation of Authority Relating to Separation Pay," June 15, 1991
 - (c) Section 501 of Public Law 101-510, "National Defense Authorization Act for Fiscal Year 1991," November 5, 1990
 - (d) Title 10, United States Code
 - (e) through (j), see enclosure 1

1. REISSUANCE AND PURPOSE

This Instruction:

- 1.1. Reissues reference (a) under authorities delegated in reference (b).
- 1.2. Implements legislative changes (reference (c)) to reference (d) and updates policy, procedures, and responsibilities for determining eligibility for separation pay for Regular and Reserve members who are involuntarily separated from active duty (AD).

2. APPLICABILITY

This Instruction applies to the Office of the Secretary of Defense and the Military Departments. The term "Military Services," as used herein, refers to the Army, the Navy, the Air Force, and the Marine Corps.

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3. POLICY AND PROCEDURES

3.1. Full Separation Pay (Non-disability). Full payment of non-disability separation pay, computed as provided in paragraph 3.3., below, is authorized to members of the Regular and Reserve components involuntarily separated from AD who meet each of following four conditions:

3.1.1. The Service member meets one of the following criteria for active service:

3.1.1.1. The member is on AD or full-time National Guard duty and has completed at least 6 years, but fewer than 20 years, of active service. For Reserve members not on the AD list when separated, 6 years of continuous AD or full-time National Guard duty must have preceded immediately before such separation. A period of AD is continuous if any break in military service does not exceed 30 days.

3.1.1.2. The member (other than a Regular enlisted member) was on AD or full-time National Guard duty on November 5, 1990, and on that date had 5 or more, but less than 6, years of active service. For Reserve members not on the AD list when separated, 5 years of continuous AD or full-time National Guard duty must have preceded immediately before such separation. A period of AD is continuous if any break in active service does not exceed 30 days.

3.1.1.3. The member is a Regular officer, commissioned or warrant, who is being separated under Chapter 36 of 10 U.S.C. (except under Section 630(1)(A) or 643 of such Chapter) or under Section 564 or 6383 of 10 U.S.C. (reference (d)) and has completed at least 5 years, but fewer than 20 years of active service.

3.1.2. The Service member's separation is characterized as "Honorable" as defined in subparagraph E3.2.3.2.2.1., enclosure 3, of DoD Directive 1332.14 (reference (e)), and none of the conditions in paragraph 3.4., below, apply.

3.1.3. The Service member is being involuntarily separated by the Military Service concerned through either the denial of reenlistment or the denial of continuation on AD or full-time National Guard duty, under one of the following specific conditions:

3.1.3.1. The member is fully qualified for retention, but is denied reenlistment or continuation by the Military Service concerned. This includes a Service member who is eligible for promotion as established by the Secretary of the Military Department concerned, but is denied reenlistment or continuation on AD by the Military Service concerned under established promotion or high year of tenure policies.

3.1.3.2. The member is fully qualified for retention and is being involuntarily separated under a reduction in force by authority designated by the

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Secretary of the Military Department concerned as authorized under 10 U.S.C (reference (d)).

3.1.3.3. The member is a Regular officer, commissioned or warrant, who is being separated under Chapter 36 or Section 564, 1165, or 6383 of reference (d); a Reserve commissioned officer, other than a commissioned warrant officer, separated or transferred to the Retired Reserve under Chapters 361, 363, 573, 861, or 863 of reference (d); or a Reserve commissioned officer on the AD list or a Reserve warrant officer who is separated for similar reasons under Service policies.

3.1.3.4. The member, having been denied reenlistment or continuation on AD or full-time National Guard duty by the Military Service concerned under subparagraphs 3.1.3.1. through 3.1.3.3., above, accepts an earlier separation from AD.

3.1.4. The Service member has entered into a written agreement with the Military Service concerned to serve in the Ready Reserve of a Reserve component of the Armed Forces for a period of not less than 3 years following the separation from AD.

3.1.4.1. A member who enters into this written agreement and who is qualified for the Ready Reserves shall, upon such person's separation from AD, be enlisted or appointed, as appropriate, as a Reserve member by the Military Service concerned. If the person has a service obligation under Section 651 of reference (d) or any other law that is not completed at the time the member is separated from AD, the 3-year obligation shall begin on the day after the day on which the member completes his or her obligation under such section of law.

3.1.4.2. A member who enters into this written agreement and who is not qualified for appointment or enlistment in the Ready Reserves need not be enlisted or appointed by the Military Service concerned to be considered to have met this condition of eligibility for separation pay.

3.2. Half Separation Pay (Non-disability). Half payment of non-disability separation pay, computed as provided in paragraph 3.3., below, is authorized to members of the Regular and Reserve components involuntarily separated from AD who meet each of following four conditions: (In extraordinary instances, Secretaries of the Military Departments concerned may award full separation pay to members otherwise eligible for half separation pay when the specific reasons for separation and the overall quality of the member's service have been such that denial of such pay would be clearly unjust.)

3.2.1. The Service member meets one of the criteria for active service specified in subparagraph 3.1.1., above.

3.2.2. The Service member's separation is characterized as "Honorable" or "General" as defined in subparagraph E3.2.3.2.2. of DoD Directive 1332.14 (reference (e)), and none of the conditions in paragraph 3.4., below, apply.

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3.2.3. The Service member is being involuntarily separated by the Military Service concerned through either the denial of reenlistment or the denial of continuation on AD or full-time National Guard duty, *or the Service member is being separated instead of board action as provided in DoD Directive 1332.30 (reference (f)), under one of the following specific conditions:*

3.2.3.1. The member is not fully qualified for retention and is denied reenlistment or continuation by the Military Service concerned as provided for in reference (e) or DoD Directive 1332.30 (reference (f)) under any of the following conditions:

3.2.3.1.1. Expiration of service obligation.

3.2.3.1.2. Selected changes in service obligation.

3.2.3.1.3. Convenience of the Government.

3.2.3.1.4. Homosexuality.

3.2.3.1.5. Drug abuse rehabilitation failure.

3.2.3.1.6. Alcohol abuse rehabilitation failure.

3.2.3.1.7. Security.

3.2.3.2. The member is being separated under a Service-specific program established as a half-payment level by the Secretary of the Military Department concerned, as provided for in section 4., below.

3.2.3.3. The member, having been denied reenlistment or continuation on AD or full-time National Guard duty by the Military Service concerned under subparagraphs 3.2.3.1. and 3.2.3.2., above, accepts an earlier separation from AD.

3.2.4. The Service member has entered into a written agreement with the Military Service concerned to serve in the Ready Reserve as provided for in subparagraph 3.1.4., above.

3.3. Computation of Active Service and Separation Pay. Separation pay for Service members eligible for full payment shall be computed at 10 percent of 12 times the amount of monthly basic pay to which entitled at the time of separation from AD times the number of years and fractions of a year of active service when separated. Separation pay for Service members eligible for half payment shall be computed at one half times what the full payment would have been. Active service time shall be computed as follows:

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3.3.1. Qualifying years, except as noted in subparagraph 3.1.1., above, do not have to be continuous; however, the last phase of the qualifying term must end immediately before the separation from AD occurs.

3.3.2. Compute fractions of years in the following manner: Count each full month of military service that is in addition to the number of full years of active service as one-twelfth of a year. Disregard any remaining fractional part of a month.

3.3.3. Periods for which a Service member previously has received separation pay, severance pay, or readjustment pay may be counted for eligibility purposes (to ensure the member meets the minimum required years of AD), but may not be used in the multiplier to determine the amount of separation pay for a subsequent separation.

3.3.4. Count periods of active military service in a Regular or Reserve component. Include AD for training performed.

3.3.5. Do not include periods of absence without leave, confinement time awaiting trial that results in conviction, confinement time while serving a court-martial sentence, and time lost while not in the line of duty. Count time served to make good lost time.

3.3.6. Do not include service as a cadet or midshipman while in a Service academy or a Reserve officer training program.

3.4. Limitations on Eligibility for Separation Pay. Service members separated under the following circumstances are not eligible for separation pay:

3.4.1. The member is separated from AD at the member's own request. The following examples shall be considered to be a separation at the member's own request:

3.4.1.1. A member who declines training that the Military Service offers to qualify for a new skill or rating as a precondition to reenlistment or continuation on AD.

3.4.1.2. A member who requests separation as provided for in DoD Directives 1332.14 (*reference (e)*) or under regulations established by the Secretary of the Military Department concerned.

3.4.1.3. The member is a Reserve officer who declines a Regular appointment if offered at the mandatory integration point, when an all-Regular career force program is implemented by the Secretary concerned.

3.4.2. The member is separated from AD during an initial term of enlistment or an initial period of obligated service. The initial term of enlistment or initial period of obligated service is the active service obligation that the member incurred upon initial

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enlistment or upon enrollment in a commissioning program. This limitation also applies to a member who desires to reenlist or continue at the conclusion of the initial term of enlistment or an initial period of obligation and is denied by the Service concerned.

3.4.3. The member is released from AD for training or released from full-time National Guard for training.

3.4.4. The member is immediately eligible upon separation for retired or retainer pay based upon his or her military service.

3.4.5. The member is a warrant officer whose appointment is terminated and who then elects to enlist.

3.4.6. The member is separated as a result of execution of a court-martial sentence.

3.4.7. The member is being dropped from the rolls of the Military Service concerned.

3.4.8. The member is being separated under other than honorable conditions.

3.4.9. The member is an enlisted member who is separated for unsatisfactory performance or misconduct as specified in DoD Directive 1332.14 (reference (e)).

3.4.10. The member is an officer who is separated for substandard performance or acts of misconduct or moral or professional dereliction under Section 1166 or 1186 of 10 U.S.C. (reference (d)) or DoD Directive 1332.30 (reference (f)), except when half pay is allowed in paragraph 3.2., above.

3.4.11. The member is separated under a Service-specific program established as a no payment level by the Secretary concerned, as provided for in section 4., below.

3.4.12. Determination in extraordinary cases by the Secretary concerned that the conditions under which the member is separated do not warrant separation payment. It is intended that this discretionary authority to deny payment be used sparingly. This authority is not to be delegated.

3.5. Saving Provisions of Law for Readjustment Pay Severance Pay (Other than Disability) and Separation Pay (Other than Disability)

3.5.1. Service members on AD (other than for training) on September 14, 1981, who are involuntarily separated from AD under any provision of 10 U.S.C. (reference (d)), in effect after that date, *or are being separated instead of board action as provided in DoD Directive 1332.30 (reference (f))*, under one of the specific conditions in subparagraph 3.2.3., above, shall be entitled to receive any readjustment or severance

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pay to which they would have been entitled under laws and directives issued by the Military Departments before September 15, 1981. Service members entitled to readjustment or severance pay under this paragraph and separation pay under paragraph 3.1. or 3.2., above, may not receive both, but shall select the one they will receive. If no selection is made, Service members shall receive the amount that is more favorable to them.

3.5.2. Service members (including Regular enlisted members) on AD (other than for training) on November 5, 1990, who were involuntarily separated from AD before the effective date of this Instruction, shall be entitled to receive any separation pay to which they are entitled to under reference (d), as amended by Pub. L. No. 101-510, Section 501 (reference (c)), in accordance with the policies and procedures in DoD Directive 1332.29 (reference (a)) modified as follows:

3.5.2.1. For the purposes of subparagraphs 3.1.1. and 3.1.2. of reference (a), and subject to the conditions and limitations otherwise stated in reference (a), Regular enlisted members who are separated involuntarily or as the result of denial of reenlistment after having completed 6 or more but fewer than 20 years of AD shall receive separation pay.

3.5.2.2. The limitations concerning the maximum amount of separation pay that members may receive as stated in subparagraphs 3.1.1. and 3.1.2. and paragraph 3.2. of reference (a) shall not apply.

3.5.2.3. In addition to the disqualifying circumstances enumerated in paragraph 3.4. of reference (a), a member is not eligible for a separation payment if:

3.5.2.3.1. The member does not meet one of the criteria for active service in subparagraph 3.1.1., above.

3.5.2.3.2. The member has not entered into a written agreement with the Military Service concerned to serve in the Ready Reserve of a Reserve component of the Armed Forces for a period of not less than 3 years following the separation from AD under the same requirements and procedures stated in subparagraph 3.2.4., above.

3.5.2.3.3. The member is separated from AD during an initial term of enlistment or an initial period of obligated service. "Initial term of enlistment" and "initial period of obligated service" shall have the same meaning as in subparagraph 3.4.2., above.

3.6. Repayment of Separation Pay Severance Pay or Readjustment Pay

3.6.1. Service members who receive separation pay under this Instruction, or severance pay or readjustment pay under any provision of law based on service in the Armed Forces, and who subsequently qualify under 10 U.S.C. (reference (d)) or 14

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U.S.C. (reference (g)) for retired or retainer pay shall have deducted an amount equal to the total amount of separation pay, severance pay, and readjustment pay. This amount will be recouped from each payment of this retired or retainer pay until the total amount deducted is equal to the total amount of separation pay, severance pay, and readjustment pay received.

EXAMPLE:

Individual separated with 10 years, 2 months of active military service, and paid \$38,289.33 separation pay; member subsequently retires with 20 years of active military service:

$$\begin{aligned} \# \text{ years service at separation} &= 10.167 \\ \# \text{ years service at retirement} &= 20.000 = .508 \text{ (multiplier)} \end{aligned}$$

gross monthly retired pay	\$1,800.00
<u>times multiplier</u>	<u>x.508</u>
equals monthly recoupment rate	\$ 914.40

The monthly recoupment rate would be recomputed when gross retired pay is increased for cost-of-living adjustments. Only the difference between the recoupment and gross retired pay (\$885.60) is taxable.

3.6.2. Service members who receive separation pay under this Instruction, or severance pay or readjustment pay under any law based on active military service, and become eligible for disability compensation administered by the Department of Veterans Affairs shall have deducted from such disability compensation an amount equal to the total amount of separation pay, severance pay, or readjustment pay received. However, such reduction shall not apply to disability compensation in which the entitlement to that disability compensation is based on a later period of AD than the period of AD for which the separation pay, severance pay, or readjustment pay was received.

3.6.3. Notwithstanding subparagraphs 3.6.1. and 3.6.2., above, Service members who received readjustment or severance pay before September 15, 1981, and who, on or after September 15, 1981, become entitled to retired or retainer pay under 10 U.S.C. (reference (d)) or 14 U.S.C. (reference (g)) shall be required to repay that readjustment pay or severance pay in accordance with the laws in effect on September 14, 1981 (Pub. L. No. 97-22, Section 638 (reference (h))).

4. RESPONSIBILITIES

4.1. The Assistant Secretary of Defense (Force Management and Personnel):

4.1.1. Shall monitor and evaluate the implementation of this policy.

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4.1.2. Shall modify or reissue this Instruction, as required, under authorities delegated in the Deputy Secretary of Defense Memorandum (reference (b)).

4.2. The Comptroller of the Department of Defense shall prescribe implementing instructions (DoD Military Pay and Allowances Entitlements Manual (reference (i))) consistent with this Instruction.

4.3. The Secretaries of the Military Departments shall:

4.3.1. Establish with the concurrence of the Assistant Secretary of Defense (Force Management and Personnel) (ASD(FM&P)) separation payment levels consistent with the policies of this Instruction for Service-specific programs as provided for in DoD Directives 1332.14, 1332.30, and 1304.20 (references (e), (f), and (j)).

4.3.2. Prescribe implementing instructions within 180 days of the effective date of this Instruction that are consistent with the policies in this Instruction.

4.3.3. Provide an annual report to the ASD(FM&P) within 60 days of the end of each fiscal year that summarizes:

4.3.3.1. The number of payments, average payment, and overall payments, by grade, of the full payments awarded.

4.3.3.2. The number of payments, average payment, and overall payments, by grade, of the half payments awarded.

4.3.3.3. A summary, by reason, of those extraordinary cases in which a full separation payment was awarded as provided for in paragraph 3.2., above.

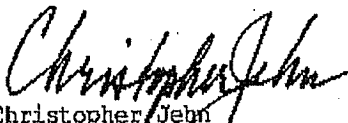
4.3.3.4. A summary, by reason, of the extraordinary cases in which a separation payment was denied as provided for in subparagraph 3.4.1., above.

4.4. The Assistant Secretary of Defense (Reserve Affairs) shall monitor separation pay policies for members of the National Guard and the Reserve who are not on the AD list of an Armed Force, and recommend Instruction changes to the ASD(FM&P), as appropriate.

DODI 1332.29, June 20, 1991

5. EFFECTIVE DATE AND IMPLEMENTATION

This Instruction is effective immediately. The Comptroller of the Department of Defense and the Secretaries of the Military Departments shall forward one copy of implementing documents to the Assistant Secretary of Defense (Force Management and Personnel) within 180 days.


Christopher Jehn
Assistant Secretary of Defense
(Force Management and Personnel)

Enclosures - 1

E1. References, continued

DODI 1332.29, June 20, 1991

E1. ENCLOSURE 1

REFERENCES, continued

- (e) DoD Directive 1332.14, "Enlisted Administrative Separations," January 28, 1982
- (f) DoD Directive 1332.30, "Separation of Regular Commissioned Officers for Cause," February 12, 1986
- (g) Title 14, United States Code
- (h) Public Law 97-22, "Defense Officer Personnel Management Act Technical Corrections Act," July 10, 1981
- (i) Department of Defense Military Pay and Allowances Entitlements Manual, March 9, 1987
- (j) DoD Directive 1304.20, "Enlisted Personnel Management System," December 19, 1984

ENCLOSURE 1

Exhibit C

Air Force Instruction 36-3208, Chapter 9, Separation Pay

Chapter 9

SEPARATION PAY

9.1. General Procedures. All the basic criteria below defining eligibility for separation pay must be met before a member is eligible for payment.

9.1.1. The member is on active duty (AD) and has completed at least 6 years, but fewer than 20 years of active service; active service does not have to be continuous.

9.1.2. The member must not separate at his/her own request. (However, after a member has been formally and officially denied reenlistment or continuation on active duty, the member may request an earlier separation from AD without loss of separation pay.) Consider as a separation at the member's own request, the following:

9.1.2.1. A member who declines training for a new skill as a precondition to reenlistment or continuation on AD.

9.1.2.2. A member who declines to test for promotion or declines the promotion and is subsequently separated under a high year of tenure program.

9.1.2.3. A member who requests voluntary separation under any of the provisions in **Chapter 2** or **Chapter 3** of this directive, except when member has been denied reenlistment or continuation on AD.

9.1.2.4. A member who declines to get the required retainability for permanent change of station.

9.1.3. The member must not separate during the initial enlistment. Members who complete their initial enlistment of 4 or 6 years and who are involuntarily separated while on an extension of their enlistment and have more than 6 years of active service are eligible for separation pay.

9.1.4. The member is not being dropped from Air Force rolls and is not eligible for retirement at time of separation.

9.1.5. The member is not separated for "misconduct" or "unsatisfactory performance" as defined in **Chapter 5, Section 5E** and **Section 5H**.

9.1.6. The member is not separated as a result of a court-martial sentence.

9.1.7. The member is not separated with a service characterization of under other than honorable conditions.

9.1.8. The member must agree in writing to serve in the Ready Reserve for at least 3 years following the separation from active duty. A member who qualifies for separation pay (see **Figure 9.1**), but is unqualified for the Ready Reserves still must agree in writing to serve in the Ready Reserve in order to receive separation pay (see **paragraph 9.1.8** second bullet and **Table 9.1**).

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9.1.8.1. A member who enters into this written agreement and who is qualified to serve in the ready reserve will be released to the Air Force Reserve and his/her agreement mailed to ARPC/ XPX, Denver CO 80280-5000. The only members who, otherwise qualify for ready reserve, will be accepted to enter into ready reserve are those who qualify for full separation pay or are separated for involuntary expiration of term of service. All other members will be discharged.

9.1.8.2. If the member has a military service obligation that is not completed at the time the member is released from AD, the 3-year obligation will begin on the day after the day on which the member completes his/her obligation.

9.1.8.3. A member who enters into this written agreement and is not qualified for continuation in the ready reserve will be discharged. A member need not be qualified for reserve duty to meet this condition of eligibility for separation pay.

9.2. Full Separation Pay (Nondisability). Members involuntarily separated from AD may be entitled to full separation pay (computation described in **paragraph 9.4**) if they meet the criteria in **paragraph 9.1** and the following conditions:

9.2.1. The member's characterization of service is "honorable" and the member fully qualified for retention, but is being involuntarily separated by denial of reenlistment or continuation on AD under one of the following specific conditions:

9.2.1.1. Member is denied reenlistment under an Early Release/Date of Separation rollback program.

9.2.1.2. Member is denied reenlistment under High Year of Tenure (HYT) policy. This applies only to the E-4 HYT program since members have 20 years or more of service in all other HYT programs.

9.2.1.3. Member is being involuntarily separated under a reduction in force program.

9.3. Half Separation Pay (Nondisability). Members involuntarily separated from AD may be entitled to half separation pay (computation described in **paragraph 9.4**), if they meet the criteria in **paragraph 9.1** and the following conditions:

9.3.1. The member's characterization of service is "honorable" or "under honorable conditions (general)" and the member is being involuntarily separated through either the denial of reenlistment or denial of continuation on AD under one of the following specific conditions:

9.3.1.1. **Expiration of Service Obligation:** Use expiration of term of service (ETS) separation program designators (SPD) with reenlistment codes 2, 3, or 4 with the following exceptions:

9.3.1.1.1. Reenlistment codes 4F, 4G, and 4N may be waived to permit reenlistment or extension of enlistment. Do not authorize separation pay if the member did not request a waiver to reenlist or extend, or receive an approved waiver. Use the voluntary ETS SPD. Authorize separation pay if the member requested a waiver to reenlist or extend and the waiver was denied. Use the involuntary discharge ETS SPD.

9.3.1.1.2. Reenlistment codes 2E, 2G, 2H, 2J, 2K, 2L, 4H, 4I, and 4J are authorized extensions of enlistment. If member does not request an extension, use voluntary ETS SPD; separation pay is not authorized. If the member requests an extension and is denied the extension then payment is authorized. Use the involuntary discharge ETS SPD.

9.3.1.1.3. Reenlistment codes 3D, 3E, and 3J or assignment availability codes 08 (declined training) and 09 (declined PCS) are not eligible for separation pay since the member took self-initiated action to cause the separation. Voluntary ETS SPD will be assigned in these circumstances.

9.3.1.2. Involuntary Convenience of the Government Separations (see Chapter 5, Section 5B).

9.3.1.3. Drug Abuse Treatment Failure (see paragraph 5.31).

9.3.1.4. Alcohol Abuse Treatment Failure (see paragraph 5.32).

9.3.1.5. Homosexual Conduct (see Chapter 5, Section 5G).

9.3.1.6. Discharge in Interest of National Security (see Chapter 5, Section 5I).

9.3.1.7. (DELETED)

9.4. Computation of Active Service and Separation Pay. Separation pay for members eligible for full payment will be computed at 10 percent of 12 times the amount of monthly basic pay to which entitled at the time of separation from AD, times the number of years and fractions of a year of active service when separated. Compute separation pay for members eligible for half payment at one half times what the full payment would have been. Compute active service time as follows:

9.4.1. Qualifying years do not have to be continuous; however, the last phase of the qualifying term must end immediately before the separation from AD occurs.

9.4.2. Compute fractions of years in the following manner: Count each full month of service that is in addition to the number of full years of active service as one-twelfth of a year. Disregard any remaining fractional part of a month.

9.4.3. Count periods for which a service member previously has received separation pay, severance pay, or readjustment pay for eligibility purposes (to ensure the member meets the minimum required years of AD), but do not use them in the multiplier to determine the amount of separation pay for a subsequent separation.

9.4.4. Count periods of active military service in a Regular or Reserve component. Include AD for training performed.

9.4.5. Do not include periods of absence without leave, confinement time awaiting trial that results in conviction, confinement time while serving a court martial sentence, or time lost while not in the line of duty. Count time served to make good time lost.

9.4.6. Do not include service as a cadet or midshipman while in a service academy or a Reserve officer training program.

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9.5. Repayment of Separation Pay:

9.5.1. Members who receive separation pay, based on service in the Armed Forces, and who subsequently qualify for retired pay will have deducted an amount equal to the total amount of separation pay. Recoup this amount from each payment of this retired pay until the total amount deducted is equal to the total amount of separation pay. Recompute the monthly recoupment rate when gross retired pay is increased for cost of living adjustments. **NOTE:** Only the difference between the recoupment and gross retired pay is taxable.

9.5.2. Members who receive separation pay based on active service, and become eligible for disability compensation administered by the Department of Veterans Affairs will have deducted from such disability compensation an amount equal to the total amount of separation pay received. However, such reduction will not apply to disability compensation in which the entitlement to that disability compensation is based on a later period of AD for which the separation pay was received.

9.6. Secretary of the Air Force (SAF) Determination:

9.6.1. A member may be separated under an Air Force specific program established as a one-half or no payment level by SAF.

9.6.2. Notwithstanding the provisions of this or any other directive, the SAF may direct, in extraordinary cases, because of the conditions under which a member is separated, that the member does not warrant separation pay. Use this discretionary authority sparingly and do not delegate it.

9.6.2.1. Requests for SAF to deny separation pay to an otherwise qualified member will originate with the unit commander. The request will be in memorandum format and contain justification for denial of separation pay.

9.6.2.2. Unit commanders requesting SAF action under this paragraph must notify the member of the request and justification for the request. The member will be given 3 workdays to submit a rebuttal with the assistance of military legal counsel.

9.6.2.3. The request and rebuttal will be reviewed by the SPCM's staff judge advocate and forwarded in original and one copy to HQ AFMPC/DPMARS2 with the concurrence of the SPCM and MAJCOM/DPA, for referral to the SAF (AFPC). Either the SPCM or MAJCOM/DPA may disapprove the request and return it to the unit commander.

Figure 9.1. Sample Individual Ready Reserve Statement, Conditional for Enlisted Separation Pay.

**SAMPLE
INDIVIDUAL READY RESERVE STATEMENT
CONDITIONAL FOR ENLISTED SEPARATION PAY**

PRIVACY ACT STATEMENT

AUTHORITY: Title 10 U.S.C., Section 8013 and Executive Order 9397

PURPOSE: To process separation pay

DISCLOSURE IS VOLUNTARY: If you do not furnish your SSN and address, we cannot process your separation pay.

As a condition to receiving separation pay, I agree to serve in the Ready Reserve for a period of not less than three years following my separation from active duty. I understand if I have not completed my military service obligation (MSO) at the time of my separation from active duty, the three-year period I have agreed to serve in the Ready Reserve will begin on the date after the date I complete my MSO.

I understand the Air Force is not under any obligation to offer me an enlistment in the Ready Reserve, and I understand that I may not necessarily be enlisted in the Ready Reserve.

I understand that I will not be enlisted in the Ready Reserve if I am separated for reasons that make me ineligible for enlistment.

I understand that if I later become eligible for retired or retainer pay under Title 10 or Title 14, U.S.C., based on active duty service for which I receive separation pay, I will have an amount deducted from each payment of that retired or retainer pay until the amount deducted equals the total amount of separation pay. I understand that if I later become eligible (as a result of the service upon which my separation pay amount is based) for disability compensation administered by the Department of Veterans Affairs (DVA), the DVA will withhold such payment until the amount withheld equals the gross amount of separation pay.

_____ (

Type or print name, grade, SSN, and date)

(Sign Above Name)

cc: Local FSO

(Forwarding Address, street, city, state, ZIP code)

NOTE: File in Unit Personnel Record Group (UPRG)

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Table 9.1. Types of Separations Authorized Payment (member must meet all qualifying criteria) (see notes 1 & 2)

R U L E	A	B	C	D
		Full Pay	Half Pay	No Pay
1	Denied reenlistment under an early release/separation program: Fully qualified for retention Not fully qualified for retention	X		
			X	
2	Denied reenlistment under E-4 HYT program: Fully qualified for retention Not fully qualified for retention	X		
			X	
3	Involuntary separation under a reduction in force program: Fully qualified for retention Not fully qualified for retention	X		
			X	
4	Drug abuse treatment failure		X	
5	Alcohol abuse treatment failure		X	
6	Homosexual conduct		X	
7	Discharge in the interest of national security		X	
8	Failure in Fitness Program			X
9	Involuntary Convenience of the Government Separation (paragraphs 5-9, 5-10, and 5-11)		X	
10	Expiration of term of service (ETS) when used with reenlistment code 2, 3, 4 - denied retention: (see note 1)		X	
10.1	Reenlistment codes 4F, 4G, and 4N are waivable and otherwise eligible for a waiver: When requested and denied When not requested		X	
				X
10.2	Reenlistment codes 2E, 2G, 2H, 2J, 2K, 2L, 4H, 4I and 4J are authorized extensions and otherwise eligible to extend: When requested and denied: When not requested		X	
				X
10.3	Reenlistment codes 3D, 3E, 3J (Assignment Availability codes 08 or 09). These codes render a member ineligible to request waiver or an extension as shown in Rules 10.1 and 10.2			X
11	Retirement eligible or dropped from rolls of the Air Force			X

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R U L E	A	B	C	D
		Full Pay	Half Pay	No Pay
12	Separated under other than honorable conditions (UOTHC)			X
13	Separated for misconduct or unsatisfactory performance			X
14	Does not agree to serve 3 years in the Ready Reserve			X
15	E-4 HYT member who refuses to test or accept promotion			X
16	Separated as a result of court - martial sentence			X
17	Voluntary request for separation under chapters 2 and 3			X

NOTES:

1. Member covered by rules 1, 2, 3, and 10 are released to the Reserve, except 10.1 and 10.2 who are discharged.
2. Members who have at least 16 years of active service and are not retirement eligible will not be separated for E-4 HYT.