

## Office of the Secretary of Defense

## § 47.3

and 18 U.S.C. 1001. False claims and claims supported by false statements will be denied.

(d) *Reports to the Defense Health Agency.* As provided in section 2733a(e), not later than 30 calendar days after a Final Determination of medical malpractice or the payment of all or a portion of a claim under this part, a report documenting that determination is sent to the Director, Defense Health Agency to be used for all necessary and appropriate purposes, including those actions undertaken as part of DoD's Clinical Quality Management Program.

(e) *Monitoring claims adjudications under this part.* The General Counsel of the Defense Health Agency will monitor the performance of the claims adjudications structures and procedures under this part, including accounting for the number of claims processed under this part and the resolution of each claim and identifying means to enhance the effectiveness of the claims adjudication process.

(f) *Authority for actions under this part.* To ensure consistency and compliance with statutory requirements, supplementation of the procedures in this part is not permitted without approval in writing by the General Counsel of the Department of Defense. The General Counsel of the Department of Defense, under DoD Directive 5145.01, "General Counsel of the Department of Defense," may delegate in writing authority for making Initial and Final Determinations, and other actions by DoD officials under this part. As used in this part, and at DoD's discretion, "DoD" or "DoD Components" may include, but is not limited to, Military Departments.

[86 FR 32208, June 17, 2021, as amended at 87 FR 52463, Aug. 26, 2022]

## PART 47—ACTIVE DUTY SERVICE FOR CIVILIAN OR CONTRACTUAL GROUPS

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AUTHORITY: 38 U.S.C. 106 note.

SOURCE: 54 FR 39993, Sept. 29, 1989, unless otherwise noted.

### § 47.1 Purpose.

This document:

(a) Revises 32 CFR part 47 and implements Public Law 95-202.

(b) Directs the Secretary of the Air Force to determine if an established group of civilian employees or contract workers provided service to the U.S. Armed Forces in a manner considered active military service for Department of Veterans Affairs (VA) benefits.

(c) Establishes the DoD Civilian/Military Service Review Board and the Advisory Panel.

(d) Establishes policy, assigns responsibilities, prescribes application procedures for groups and individuals, and clarifies the factors used to determine active duty (AD) service.

### § 47.2 Applicability and scope.

This part:

(a) Applies to the Office of the Secretary of Defense (OSD), the Military Departments, and by agreement with the Department of Transportation (DoT), the U.S. Coast Guard.

(b) Applies to any group application considered under Public Law 95-202 after September 11, 1989 and to any individual who applies for discharge documents as a member of a group recognized by the Secretary of the Air Force.

### § 47.3 Definitions.

*Armed conflict.* A prolonged period of sustained combat involving members of the U.S. Armed Forces against a foreign belligerent. The term connotes more than a military engagement of limited duration or for limited objectives, and involves a significant use of military and civilian forces.

(a) Examples of armed conflict are World Wars I and II, and the Korean and Vietnam Conflicts.

(b) Examples of military actions that are not armed conflicts are as follows:

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(1) The incursion into Lebanon in 1958, and the peacekeeping force there in 1983 and 1984.

(2) The incursions into the Dominican Republic in 1965 and into Libya in 1986.

(3) The intervention into Grenada in 1983.

*Civilian or contractual group.* An organization similarly situated to the Women's Air Forces Service Pilots (a group of Federal civilian employees attached to the U.S. Army Air Force in World War II). Those organization members rendered service to the U.S. Armed Forces during a period of armed conflict in a capacity that was then considered civilian employment with the Armed Forces, or the result of a contract with the U.S. Government, to provide direct support to the Armed Forces.

*Recognized group.* A group whose service the Secretary of the Air Force administratively has determined to have been "active duty for the purposes of all laws administered by the Department of Veterans Affairs"; i.e., VA benefits under 38 U.S.C. 101.

*Similarly situated.* A civilian or contractual group is similarly situated to the Women's Air Forces Service Pilots when it existed as an identifiable group at the time the service was being rendered to the U.S. Armed Forces during a period of armed conflict. Persons who individually provided support through civilian employment or contract, but who were not members of an identifiable group at the time the services were rendered, are not "similarly situated" to the Women's Air Forces Service Pilots of World War II.

#### § 47.4 Policy.

(a) *Eligibility for consideration.* To be eligible to apply for consideration under Public Law 95–202 and this part, a group must:

(1) Have been similarly situated to the Women's Air Forces Service Pilots of World War II.

(2) Have rendered service to the United States in what was considered civilian employment with the U.S. Armed Forces either through formal Civil Service hiring or less formal hiring if the engagement was created under the exigencies of war, or as the

result of a contract with the U.S. Government to provide direct support to the U.S. Armed Forces.

(3) Have rendered that service during a period of armed conflict.

(4) Consist of living persons to whom VA benefits can accrue.

(5) Not have already received benefits from the Federal Government for the service in question.

(b) A determination of AD service that is considered to be equivalent to active military service is made on the extent to which the group was under the control of the U.S. Armed Forces in support of a military operation or mission during an armed conflict. The extent of control exerted over the group must be similar to that exerted over military personnel and shall be determined by, but not necessarily limited to, the following:

(1) *Incidents favoring equivalency*—(i) *Uniqueness of service.* Civilian service (civilian employment or contractual service) is a vital element of the war-fighting capability of the Armed Forces. Civilian service during a period of armed conflict is not necessarily equivalent to active military service, even when performed in a combat zone. Service must be beyond that generally performed by civilian employees and must be occasioned by unique circumstances. For civilian service to be recognized under this part, the following factors must be present:

(A) The group was created or organized by U.S. Government authorities to fill a wartime need or, if a group was not created specifically for a wartime need, but existed before that time, then its wartime mission was of a nature to substantially alter the organization's prewar character.

(B) If the application is based on service in a combat zone, the mission of the group in a combat zone must have been substantially different from the mission of similar groups not in a combat zone.

(ii) *Organizational authority over the group.* The concept of military control is reinforced if the military command authority determines such things as the structure of the civilian organization, the location of the group, the mission and activities of the group, and the staffing requirements to include

the length of employment and pay grades of the members of the group.

(iii) *Integration into the military organization.* Integrated civilian groups are subject to the regulations, standards, and control of the military command authority.

(A) Examples include the following:

(1) Exchanging military courtesies.

(2) Wearing military clothing, insignia, and devices.

(3) Assimilating the group into the military organizational structure.

(4) Emoluments associated with military personnel; i.e., the use of commissaries and exchanges, and membership in military clubs.

(B) A group fully integrated into the military would give the impression that the members of the group were military, except that they were paid and accounted for as civilians.

(C) Integration into the military may lead to an expectation by members of the group that the service of the group imminently would be recognized as active military service. Such integration acts in favor of recognition.

(iv) *Subjection to military discipline.* During past armed conflicts, U.S. military commanders sometimes restricted the rights or liberties of civilian members as if they were military members.

(A) Examples include the following:

(1) Placing members under a curfew.

(2) Requiring members to work extended hours or unusual shifts.

(3) Changing duty assignments and responsibilities.

(4) Restricting proximity travel to and from the military installation.

(5) Imposing dress and grooming standards.

(B) Consequences for noncompliance might include a loss of some privilege, dismissal from the group, or trial under military law. Such military discipline acts in favor of recognition.

(v) *Subjection to military justice.* Military members are subject to the military criminal justice system. During times of war, "persons serving with or accompanying an Armed Force in the field" are subject to the military criminal justice code. Those who were serving with the U.S. Armed Forces may have been treated as if they were military and subjected to court-martial jurisdiction to maintain discipline.

Such treatment is a factor in favor of recognition.

(vi) *Prohibition against members of the group joining the armed forces.* Some organizations may have been formed to serve in a military capacity to overcome the operation of existing laws or treaty or because of a governmentally established policy to retain individuals in the group as part of a civilian force. These factors act in favor of recognition.

(vii) *Receipt of military training and/or achievement of military capability.* If a group employed skills or resources that were enhanced as the result of military training or equipment designed or issued for that purpose, this acts toward recognition.

(2) *Incidents not favoring equivalency—*

(i) *Submission to the U.S. Armed Forces for protection.* A group that seeks protection and assistance from the U.S. Armed Forces and submits to military control for its own well-being is not deemed to have provided service to the Armed Forces equivalent to AD military service, even though the group may have been as follows:

(A) Armed by the U.S. military for defensive purposes.

(B) Routed by the U.S. military to avoid the enemy.

(C) Instructed by the U.S. military for the defense of the group when attacked by, or in danger of attack by, the enemy.

(D) Otherwise submitted themselves to the U.S. military for sustenance and protection.

(ii) *Permitted to resign.* The ability of members to resign at will and without penalty acts against military control. Penalty may be direct and severe, such as confinement, or indirect and moderate, such as difficult and costly transportation from an overseas location.

(iii) *Prior recognition of group service.* Recognition of a group's service by agencies of State or local government does not provide support in favor of recognition under this part.

(3) *Status of group in international law.* In addition to other factors, consideration will be given to whether members of the group were regarded and treated as civilians, or assimilated to the Armed Forces as reflected in treaties,

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customary international law, judicial decisions, and U.S. diplomatic practice.

(c) *Reconsideration.* Applications by groups previously denied a favorable determination by the Secretary of the Air Force shall be reconsidered under this part if the group submits evidence that is new, relevant, and substantive. Any request that the DoD Civilian/Military Service Review Board established hereunder (see § 47.5(b)) determines does not provide new, relevant, and substantive evidence shall be returned to the applicant with the reasons for nonacceptance.

(d) *Counsel Representation.* Neither the Department of Defense nor Department of Transportation shall provide representation by counsel or defray the cost of such representation with respect to any matter covered by this part.

### § 47.5 Responsibilities.

(a) The Assistant Secretary of Defense (Force Management and Personnel) (ASD(FM&P)) shall:

(1) Appoint a primary and an alternate member in the grade of O-6 or GM-15 or higher to the DoD Civilian/Military Service Review Board.

(2) Exercise oversight over the Military Departments and the U.S. Coast Guard for compliance with this Directive and in the issuance of discharge documents and casualty reports to members of recognized groups.

(b) The Secretary of the Air Force, as the designated Executive Agent of the Secretary of Defense for the administration of Public Law 95-202 shall:

(1) Establish the DoD Civilian/Military Service Review Board and the Advisory Panel.

(2) Appoint as board president a member or employee of the Air Force in grade O-6 or GM-15 or higher.

(3) Request the Secretary of Transportation to appoint an additional voting member from the U.S. Coast Guard when the board is considering the application of a group claiming active Coast Guard service.

(4) Provide a recorder and an assistant to maintain the records of the board and administer the functions of this part.

(5) Provide nonvoting legal advisors and historians.

(6) Publish notices of group applications and other Public Law 95-202 announcements in the FEDERAL REGISTER.

(7) Consider the rationale and recommendations of the DoD Civilian/Military Service Review Board.

(8) Determine whether the service rendered by a civilian or contractual group shall be considered AD service to the U.S. Armed Forces for all laws administered by the VA. The decision of the Secretary of the Air Force is final. There is no appeal.

(9) Notify the following persons in writing when a group determination is made (if the Secretary of the Air Force disagrees with the rationale or recommendations of the board, the Secretary of the Air Force shall provide the decision and reasons for it in writing to these persons):

(i) The applicant(s) for the group.

(ii) The Secretary of the Department of Veterans Affairs.

(iii) The Secretary of the Army.

(iv) The Secretary of the Navy.

(v) The ASD (FM&P).

(vi) The Secretary of Transportation (when a group claims active Coast Guard service).

(c) The Secretary of the Army, Secretary of the Navy, Secretary of the Air Force, and Commandant of the Coast Guard shall:

(1) Appoint to the board a primary and an alternate member in the grades of O-6 or GM-15 or higher from their respective Military Services.

(2) Process applications for discharge documents from individuals claiming membership in a recognized group in accordance with applicable laws, Directives, the Secretary of the Air Force rationale and instrument effecting a group determination, and any other instructions of the board.

(3) Determine whether the applicant was a member of a recognized group after considering the individual's evidence of membership and verifying the service against available Government records.

(4) Issue a DD Form 214, "Certificate of Release or Discharge from Active Duty," and a DD Form 256, "Honorable Discharge Certificate," or a DD Form 257, "General Discharge Certificate,"

as appropriate, consistent with DoD Instruction 1336.1<sup>1</sup> and DoD Directive 1332.14<sup>2</sup> and the implementing documents of the appropriate statutes of the Military Department concerned or the DoT and the instructions of the DoD Civilian/Military Service Review Board.

(5) Issue a DD Form 1300, "Report of Casualty," in accordance with DoD Instruction 1300.9<sup>3</sup> if a verified member was killed during the period of AD service.

(6) Ensure that each DD Form 214, "Certificate of Release or Discharge from Active Duty," and each DD Form 1300, "Report of Casualty," have the following statement entered in the "Remarks" section:

This document, issued under Public Law 95-202 (38 U.S.C. 106 Note), administratively establishes active duty service for the purposes of Department of Veterans Affairs benefits.

(7) Determine the equivalent military pay grade, when required by the Department of Veterans Affairs. For VA benefits, a pay grade is needed only in cases when an individual was killed or received service-connected injuries or disease during the recognized period of AD service. A DD Form 1300 shall be issued with the equivalent pay grade annotated for a member who died during the recognized period of service. A DD Form 214 shall not include pay grade, unless the Department of Veterans Affairs requests that a grade determination be given. Determinations of equivalent grade shall be based on the following criteria in order of importance:

(i) Officially recognized organizational grade or equivalent rank.

(ii) The corresponding rank for civilian pay grade.

(iii) If neither of the criteria in paragraphs (c)(7) (i) and (ii) of this section, and applies, only one of three grades may be issued; i.e., O-1, E-4, or E-1. Selection depends on the nature of the job performed, the level of supervision

exercised, and the military privileges to which the individual was entitled.

(8) Adjudicate applicant challenges to the period of AD service, characterization of service, or other administrative aspects of the discharge documents issued.

#### § 47.6 Procedures.

(a) *Submitting group applications.* Applications on behalf of a civilian or contractual group shall be submitted to the Secretary of the Air Force using the instructions in appendix A to this part.

(b) *Processing group applications.* (1) When received, the recorder shall review the application for sufficiency and either return it for more information or accept it for consideration and announce acceptance in the FEDERAL REGISTER.

(2) The recorder shall send the application to the appropriate advisory panel for historical review and analysis.

(3) When received, the recorder shall send the advisory panel's report to the applicant for comment. The applicant's comments shall be referred to the advisory panel if significant disagreement requires resolution. Additional comments from the historians also shall be referred to the applicant for comment.

(4) The DoD Civilian/Military Service Board shall consider the group application, as established, in paragraph (a) and paragraphs (b) (1) through (3) of this section.

(5) After the Secretary of the Air Force makes a decision, the recorder shall notify the applicant of the decision and announce it in the "FEDERAL REGISTER."

(c) *Submitting individual applications.* When a group is recognized, individual members may apply to the appropriate Military Department or to the Coast Guard for discharge documents. Submit applications on DD Form 2168, "Application for Discharge of Member or Survivor of Member of Group Certified to Have Performed Active Duty with the Armed Forces of the United States." An application on behalf of a deceased or incompetent member submitted by the next of kin must be accompanied by proof of death or incompetence.

<sup>1</sup>Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, Attn: 1053, 5801 Tabor Avenue, Philadelphia, PA 19120.

<sup>2</sup>See footnote 1 to § 47.5(c)(4).

<sup>3</sup>See footnote 1 to § 47.5(c)(4).

APPENDIX A TO PART 47—INSTRUCTIONS  
FOR SUBMITTING GROUP APPLICATIONS  
UNDER PUBLIC LAW 95–202

*A. In Submitting a Group Application:* 1. Define the group to include the time period that your group provided service to the U.S. Armed Forces.

2. Show the relationship that the group had with the U.S. Armed Forces, the manner in which members of the group were employed, and the services the members of the group provided to the Armed Forces.

3. Address each of the factors in §47.4.

4. Substantiate and document the application. (The burden of proof rests with the applicant.)

*B. Send Completed Group Applications To:* Secretary of the Air Force (SAF/MRC), DoD Civilian/Military Service Review Board, Washington, DC 20330–1000.

APPENDIX B TO PART 47—THE DoD CIVILIAN/MILITARY SERVICE REVIEW BOARD AND THE ADVISORY PANEL

*A. Organization and Management*

1. The board shall consist of a president selected from the Department of the Air Force and one representative each from the OSD, the Department of the Army, the Department of the Navy, the Department of the Air Force, and the U.S. Coast Guard (when the group claims active Coast Guard service). Each member shall have one vote except that the president shall vote only to break a tie. The board's decision is determined by majority vote. The president and two voting members shall constitute a quorum.

2. The advisory panel shall act as a non-voting adjunct to the board. It shall consist of historians selected by the Secretaries of the Military Departments and, if required, by the Secretary of Transportation. The respective Military Departments and the DOT shall ensure that the advisory panel is provided with administrative and legal support.

*B. Functions*

1. The board shall meet in executive session at the call of the president, and shall limit its reviews to the following:

a. Written submissions by an applicant on behalf of a civilian or contractual group. Presentations to the board are not allowed.

b. Written report(s) prepared by the advisory panel.

c. Any other relevant written information available.

d. Factors established in this part for determining AD service.

2. The board shall return to the applicant any application that does not meet the eligibility criteria established in §47.4(a). The board only needs to state the reasons why

the group is ineligible for consideration under this part.

3. If the board determines that an application is eligible for consideration under §47.4(a), the board shall provide, to the Secretary of the Air Force, a recommendation on the AD service determination for the group and the rationale for that recommendation that shall include, but not be limited to, a discussion of the factors listed in §47.4.

a. No factors shall be established that require automatic recognition. Neither the board nor the Secretary of the Air Force shall be bound by any method in reaching a decision.

b. Prior group determinations made under Public Law 95–202 do not bind the board or the Secretary of the Air Force. The board and the Secretary of the Air Force fully and impartially shall consider each group on its own merit in relation to the factors listed in section D. of this Directive.

PART 49—IMPLEMENTATION OF THE  
HAVANA ACT OF 2021

Sec.

49.1 Purpose and authority.

49.2 Definitions.

49.3 Eligibility for payments by the Department of Defense.

49.4 Consultation with the Department of State.

49.5 Procedures.

AUTHORITY: 5 U.S.C. 301; Pub. L. 117–46, 135 STAT. 391; 22 U.S.C. 2680b.

SOURCE: 89 FR 80394, Oct. 3, 2024, unless otherwise noted.

**§ 49.1 Purpose and authority.**

(a) Under 22 U.S.C. 2680b(i), the Secretary of Defense may provide a payment for a qualifying injury to the brain to a covered employee or covered dependent, as defined in this part, who incurred a qualifying injury to the brain on or after January 1, 2016. The authority to provide such payments is at the discretion of the Secretary of Defense or the Secretary's designees.

(b) These regulations are issued in accordance with 22 U.S.C. 2680b(i)(4) and apply to covered employees of the Department of Defense (current and former employees) and covered dependents.

**§ 49.2 Definitions.**

For purposes of this part, the following definitions apply: