

amendment by section 411 of Pub. L. 96-513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96-513, set out as a note under section 101 of Title 10, Armed Forces.

#### EFFECTIVE DATE OF 1974 AMENDMENT

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

#### TRANSFER OF FUNCTIONS

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

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

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

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

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

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

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

Pub. L. 105-85, div. A, title VI, § 602(c)-(f), Nov. 18, 1997, 111 Stat. 1772, as amended by Pub. L. 105-261, div. A, title VI, § 604(b), Oct. 17, 1998, 112 Stat. 2038; Pub. L. 106-398, § 1 [[div. A, title X, § 1087(e)(1)]], Oct. 30, 2000, 114 Stat. 1654, 1654A-293, which provided that a basic allowance for subsistence was to be paid to members of the uniformed services according to the conditions and at the rates provided in this note and not under the authority of this section during the period beginning on Jan. 1, 1998, and ending on the first day of the month immediately following the first month for which the monthly equivalent of the rate of basic allowance for subsistence payable to enlisted members of the uniformed services determined under this note was equal to or exceeded by the amount that would otherwise have been the monthly rate of basic allowance for subsistence under subsec. (b)(1) of this section, was repealed by Pub. L. 106-398, § 1 [[div. A, title VI, § 603(c)]], Oct. 30, 2000, 114 Stat. 1654, 1654A-145, effective Oct. 1, 2001.

#### INCREASE IN BASIC ALLOWANCE FOR SUBSISTENCE

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

#### Executive Documents

##### EXECUTIVE ORDER NO. 10119

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

#### REGULATIONS RELATING TO SUBSISTENCE ALLOWANCE

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

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

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

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

(3) In the case of a member described in subsection (b) who establishes to the satisfaction of the Secretary concerned that the allotment of the member’s household under the supplemental nutrition assistance program, calculated in the absence of the supplemental subsistence allowance, would exceed the amount established by the Secretary concerned under paragraph (2), the amount of the supplemental subsistence allowance for the member shall be equal to the lesser of the following:

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

(b) **MEMBERS ENTITLED TO ALLOWANCE.**—(1) Subject to subsection (d) and paragraph (4), a member of the armed forces with dependents is entitled to receive the supplemental subsistence allowance if the Secretary concerned determines that the member’s income, together with the income of the rest of the member’s household (if

any), is within the highest income standard of eligibility, as then in effect under section 5(c) of the Food and Nutrition Act of 2008 (7 U.S.C. 2014(c)) and without regard to paragraph (1) of such section, for participation in the supplemental nutrition assistance program.

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

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

(A) the amount of the supplemental subsistence allowance that is payable under this section;

(B) the amount of any special pay that is payable to the member under section 310 or 351 of this title, relating to duty subject to hostile fire or imminent danger; or

(C) the amount of any family separation allowance that is payable to the member under section 427 of this title.

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

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

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

(1) Payment of the supplemental subsistence allowance for 12 consecutive months.

(2) Promotion of the member to a higher grade.

(3) Transfer of the member in a permanent change of station.

(e) REAPPLICATION.—Upon the termination of the effective period of the supplemental subsistence allowance for a member, or in anticipation of the imminent termination of the allowance, a member may reapply for the allowance under subsection (c), and the Secretary concerned shall approve the application and resume payment of the allowance to the member, if the member continues to meet, or once again meets, the eligibility criteria described in subsection (b).

(f) ELIGIBILITY FOR OTHER FEDERAL ASSISTANCE.—(1) A child or spouse of a member of the armed forces receiving the supplemental subsistence allowance under this section who, except on account of the receipt of such allowance, would be eligible to receive a benefit described in paragraph (2) shall be considered to be eligible for that benefit notwithstanding the receipt of such allowance.

(2) The benefits referred to in paragraph (1) are as follows:

(A) Assistance provided under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.).

(B) Assistance provided under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

(C) A service provided under the Head Start Act (42 U.S.C. 9831 et seq.).

(D) Assistance under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858<sup>1</sup> et seq.).

(3) A household that includes a member of the armed forces receiving the supplemental subsistence allowance under this section and that, except on account of the receipt of such allowance, would be eligible to receive a benefit under the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621 et seq.) shall be considered to be eligible for that benefit notwithstanding the receipt of such allowance.

(g) DEFINITIONS.—In this section:

(1) The term “Secretary concerned” means—

(A) the Secretary of Defense; and

(B) the Secretary of Homeland Security, with respect to the Coast Guard when it is not operating as a service in the Navy.

(2) The terms “allotment” and “household” have the meanings given those terms in section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012).

(3) The term “supplemental nutrition assistance program” means the program established pursuant to section 4 of the Food and Nutrition Act of 2008 (7 U.S.C. 2013).

(Added Pub. L. 106-398, § 1 [[div. A], title VI, § 604(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A-145; amended Pub. L. 107-107, div. A, title VI, § 604(d), Dec. 28, 2001, 115 Stat. 1134; Pub. L. 107-296, title XVII, § 1704(c), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 108-375, div. A, title VI, § 602(a), (b), Oct. 28, 2004, 118 Stat. 1943; Pub. L. 109-163, div. A, title VI, § 608, Jan. 6, 2006, 119 Stat. 3289; Pub. L. 109-364, div. A, title X, § 1071(c)(6), (e)(4), Oct. 17, 2006, 120 Stat. 2401; Pub. L. 110-234, title IV, § 4002(b)(1)(A), (B), (2)(T), May 22, 2008, 122 Stat. 1095-1097; Pub. L. 110-246, § 4(a), title IV, § 4002(b)(1)(A), (B), (2)(T), June 18, 2008, 122 Stat. 1664, 1857, 1858; Pub. L. 111-84, div. A, title VI, § 602(a), Oct. 28, 2009, 123 Stat. 2347; Pub. L. 112-81, div. A, title X, § 1063(a), Dec. 31, 2011, 125 Stat. 1586; Pub. L. 114-92, div. A, title VI, § 602, Nov. 25, 2015, 129 Stat. 836; Pub. L. 114-328, div. A, title VI, § 618(h)(2), Dec. 23, 2016, 130 Stat. 2160.)

<sup>1</sup> See References in Text note below.

**Editorial Notes**

## REFERENCES IN TEXT

The Richard B. Russell National School Lunch Act, referred to in subsec. (f)(2)(A), is act June 4, 1946, ch. 281, 60 Stat. 230, which is classified generally to chapter 13 (§ 1751 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of Title 42 and Tables.

The Child Nutrition Act of 1966, referred to in subsec. (f)(2)(B), is Pub. L. 89-642, Oct. 11, 1966, 80 Stat. 885, which is classified generally to chapter 13A (§ 1771 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of Title 42 and Tables.

The Head Start Act, referred to in subsec. (f)(2)(C), is subchapter B (§ 635 et seq.) of chapter 8 of subtitle A of title VI of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 499, which is classified generally to subchapter II (§ 9831 et seq.) of chapter 105 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of Title 42 and Tables.

The Child Care and Development Block Grant Act of 1990, referred to in subsec. (f)(2)(D), is subchapter C (§ 658A et seq.) of chapter 8 of subtitle A of title VI of Pub. L. 97-35, as added by Pub. L. 101-508, title V, § 5082(2), Nov. 5, 1990, 104 Stat. 1388-236, which is classified generally to subchapter II-B (§ 9857 et seq.) of chapter 105 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 9857(a) of Title 42 and Tables.

The Low-Income Home Energy Assistance Act of 1981, referred to in subsec. (f)(3), is title XXVI of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 893, which is classified principally to subchapter II (§ 8621 et seq.) of chapter 94 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 8621 of Title 42 and Tables.

## CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

## AMENDMENTS

2016—Subsec. (b)(3)(B). Pub. L. 114-328 inserted “or 351” after “section 310”.

2015—Subsec. (b)(1). Pub. L. 114-92, § 602(1), inserted “and paragraph (4)” after “subsection (d)”.

Subsec. (b)(4). Pub. L. 114-92, § 602(2), added par. (4).

2011—Subsecs. (f) to (h). Pub. L. 112-81 redesignated subsecs. (g) and (h) as (f) and (g), respectively, and struck out former subsec. (f). Prior to amendment, text of subsec. (f) read as follows: “Not later than March 1 of each year after 2001, the Secretary of Defense shall submit to Congress a report specifying the number of members of the armed forces who received, at any time during the preceding year, the supplemental subsistence allowance. In preparing the report, the Secretary of Defense shall consult with the Secretary of Homeland Security, with respect to the Coast Guard.”

2009—Subsec. (a)(2), (3)(B). Pub. L. 111-84 substituted “\$1,100” for “\$500”.

2008—Subsec. (a)(1), (3). Pub. L. 110-246, § 4002(b)(1)(A), (2)(T), substituted “supplemental nutrition assistance program” for “food stamp program”.

Subsec. (b)(1). Pub. L. 110-246, § 4002(b)(1)(A), (B), (2)(T), substituted “Food and Nutrition Act of 2008” for “Food Stamp Act of 1977” and “supplemental nutrition assistance program” for “food stamp program”.

Subsec. (b)(2). Pub. L. 110-246, § 4002(b)(1)(B), (2)(T), substituted “Food and Nutrition Act of 2008” for “Food Stamp Act of 1977”.

Subsec. (b)(3). Pub. L. 110-246, § 4002(b)(1)(A), (B), (2)(T), substituted “supplemental nutrition assistance

program” for “food stamp program” and “Food and Nutrition Act of 2008” for “Food Stamp Act of 1977”.

2006—Subsec. (b)(3)(B). Pub. L. 109-364, § 1071(c)(6), substituted “title” for “section”.

Subsec. (f). Pub. L. 109-163, § 608(b), as amended by Pub. L. 109-364, § 1071(e)(4), substituted “Secretary of Homeland Security, with respect to the Coast Guard” for “Secretary of Transportation” and struck out at end “No report is required under this subsection after March 1, 2006.”

Subsec. (i). Pub. L. 109-163, § 608(a), struck out heading and text of subsec. (i). Text read as follows: “No supplemental subsistence allowance may be provided under this section after September 30, 2006.”

2004—Subsec. (b)(2). Pub. L. 108-375, § 602(a)(1), substituted “concerned” for dash after “Secretary” and struck out “(A) shall not take into consideration the amount of the supplemental subsistence allowance payable under this section; but” and subparagraph (B) designation before “shall take”.

Subsec. (b)(3). Pub. L. 108-375, § 602(a)(2), added par. (3).

Subsecs. (g) to (i). Pub. L. 108-375, § 602(b), added subsec. (g) and redesignated former subsecs. (g) and (h) as (h) and (i), respectively.

2002—Subsec. (g)(1)(B). Pub. L. 107-296 substituted “of Homeland Security” for “of Transportation”.

2001—Subsec. (b)(1). Pub. L. 107-107 inserted “with dependents” after “a member of the armed forces”.

**Statutory Notes and Related Subsidiaries**

## EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111-84, div. A, title VI, § 602(b), Oct. 28, 2009, 123 Stat. 2347, provided that: “The amendments made by subsection (a) [amending this section] shall take effect on October 1, 2009, and shall apply with respect to monthly supplemental subsistence allowances for low-income members with dependents payable on or after that date.”

## EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, except as otherwise provided, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 4002(b)(1)(A), (B), (2)(T) of Pub. L. 110-246 effective Oct. 1, 2008, see section 4407 of Pub. L. 110-246, set out as a note under section 1161 of Title 2, The Congress.

## EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-364, div. A, title X, § 1071(e), Oct. 17, 2006, 120 Stat. 2401, provided that the amendment made by section 1071(e)(4) is effective as of Jan. 6, 2006, and as if included in Pub. L. 109-163 as enacted.

## EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-375, div. A, title VI, § 602(c), Oct. 28, 2004, 118 Stat. 1944, provided that: “The amendments made by this section [amending this section] shall apply in determining, on or after the date of the enactment of this Act [Oct. 28, 2004], the eligibility of a person for a supplemental subsistence allowance under section 402a of title 37, United States Code, or for Federal assistance under a law specified in subsection (g) of such section, as so amended.”

## EFFECTIVE DATE OF 2002 AMENDMENT

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

## EFFECTIVE DATE

Pub. L. 106-398, § 1 [div. A], title VI, § 604(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-147, provided that: “Section

402a of title 37, United States Code, as added by subsection (a), shall take effect on the first day of the first month that begins not less than 180 days after the date of the enactment of this Act [Oct. 30, 2000].’’

**§ 402b. Basic needs allowance for members on active service in the Armed Forces**

(a) ALLOWANCE REQUIRED.—The Secretary concerned shall pay to each member who is eligible under subsection (b) a basic needs allowance in the amount determined for such member under subsection (c).

(b) ELIGIBLE MEMBERS.—A member on active service in the armed forces is eligible for the allowance under subsection (a) if—

(1) the member has completed initial entry training;

(2)(A) the gross household income of the member during the most recent calendar year did not exceed an amount equal to 150 percent of the Federal poverty guidelines of the Department of Health and Human Services for the location of the member and the number of individuals in the household of the member for such year; or

(B) if the Secretary concerned determines it appropriate (based on location, household need, or special circumstance), the gross household income of the member during the most recent calendar year did not exceed an amount equal to 200 percent of the Federal poverty guidelines of the Department of Health and Human Services for the location of the member and the number of individuals in the household of the member for such year; and

(3) the member—

(A) is not ineligible for the allowance under subsection (d); and

(B) does not elect under subsection (g) not to receive the allowance.

(c) AMOUNT OF ALLOWANCE.—The amount of the monthly allowance payable to a member under subsection (a) shall be the amount equal to—

(1)(A) 150 percent (or, in the case of a member described in subsection (b)(2)(B), 200 percent) of the Federal poverty guidelines of the Department of Health and Human Services for the calendar year during which the allowance is paid based on the location of the member and the number of individuals in the household of the member during the month for which the allowance is paid; minus

(B) the gross household income of the member during the preceding calendar year; divided by

(2) 12.

(d) BASES OF INELIGIBILITY.—

(1) IN GENERAL.—The following members are ineligible for the allowance under subsection (a):

(A) A member who does not have any dependents.

(B) A cadet at the United States Military Academy, the United States Air Force Academy, or the Coast Guard Academy, a midshipman at the United States Naval Academy, or a cadet or midshipman serving elsewhere in the armed forces.

(2) HOUSEHOLD WITH MORE THAN ONE ELIGIBLE MEMBER.—In the event a household contains two or more members determined under subsection (f) to be eligible to receive the allowance under subsection (a), only one allowance may be paid to a member among such members as such members shall jointly elect.

(3) AUTOMATIC INELIGIBILITY OF MEMBERS RECEIVING CERTAIN PAY INCREASES.—A member determined to be eligible under subsection (f) for the allowance under subsection (a) whose monthly gross household income increases as a result of a promotion or other permanent increase to pay or allowances under this title to an amount that, on an annualized basis, would exceed the amount described in subsection (b)(2) is ineligible for the allowance. If such member is receiving the allowance, payment of the allowance shall automatically terminate within a reasonable time, as determined by the Secretary of Defense in regulations prescribed under subsection (j).

(4) INELIGIBILITY OF CERTAIN CHANGES IN INCOME.—A member whose gross household income for the preceding year decreases because of a fine, forfeiture, or reduction in rank imposed as a part of disciplinary action or an action under chapter 47 of title 10 (the Uniform Code of Military Justice) is not eligible for the allowance under subsection (a) solely as a result of the fine, forfeiture, or reduction in rank.

(e) APPLICATION BY MEMBERS SEEKING ALLOWANCE.—

(1) IN GENERAL.—A member who seeks to receive the allowance under subsection (a) shall submit to the Secretary concerned an application for the allowance that includes such information as the Secretary may require in order to determine whether or not the member is eligible to receive the allowance.

(2) TIMING OF SUBMISSION.—A member who receives the allowance under subsection (a) and seeks to continue to receive the allowance shall submit to the Secretary concerned an updated application under paragraph (1) at such times as the Secretary may require, but not less frequently than annually.

(3) VOLUNTARY SUBMISSION.—The submission of an application under paragraph (1) is voluntary.

(4) SCREENING OF MEMBERS FOR ELIGIBILITY.—The Secretary of Defense shall—

(A) ensure that all members of the armed forces are screened during initial entry training and regularly thereafter for eligibility for the allowance under subsection (a); and

(B) notify any member so screened who may be eligible that the member may apply for the allowance by submitting an application under paragraph (1).

(f) DETERMINATIONS OF ELIGIBILITY.—

(1) IN GENERAL.—The Secretary concerned shall—

(A) determine which members of the armed forces are eligible under subsection (b); and

(B) notify each such member, in writing, of that determination.