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Military Pay: Controversy Over Hostile Fire/Imminent Danger Pay and Family Separation Allowance Rates

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Summary

Recently, controversy has surfaced over the rate of pay for two specific types of military compensation: Hostile Fire/Imminent Danger Pay (HF/IDP) and the Family Separation Allowance (FSA). The rates for these forms of compensation were temporarily increased for FY2003 by the Emergency Wartime Supplemental Appropriations Act, 2003, and extended by a continuing resolution, H.J.Res. 69. If no further action is taken by Congress, the statutory authority for the higher rates will expire on October 31, 2003. However, both the House and Senate versions of the 2004 Emergency Supplemental Appropriations bill for Iraq and Afghanistan contain provisions to extend the higher rates of HF/IDP and FSA through September 30, 2004. Additionally, both the House and Senate versions of the National Defense Authorization Act for FY2004 have provisions that would permanently raise the rates for HF/IDP and FSA, although the House provision is targeted more narrowly.

The Department of Defense opposes continuing the higher rates for HF/IDP and FSA but has an alternative proposal to maintain total compensation for those serving in a combat zone, or in direct support of a combat zone, through increased use of Hardship Duty Pay (HDP).

This report describes the statutory authority for and purpose of these forms of compensation, recent legislative initiatives related to them, the Department of Defense (DOD) position on these matters, and some implications of the DOD position.

Background

Hostile Fire or Imminent Danger Pay. Hostile Fire or Imminent Danger Pay (HF/IDP) is authorized by 37 U.S.C. 310, which provides a special pay for "duty subject to hostile fire or imminent danger." Although DOD regulations distinguish between Hostile Fire Pay and Imminent Danger Pay, they are both derived from the same statute and an individual can only collect Hostile Fire Pay or Imminent Danger Pay, not both

simultaneously.[1] The purpose of this pay is to compensate service members for physical danger.[2] Iraq, Afghanistan, Kuwait, Saudi Arabia and many other nearby countries[3] have been declared imminent danger zones. Military personnel serving in such designated areas are eligible for HF/IDP. To be eligible for this pay in a given month, a servicemember must have served some time in one of the designated zones, even if only a day or less. The authorizing statute for HF/IDP sets the rate at $150 per month. However, in the Emergency Wartime Supplemental Appropriations Act, 2003,[4] Congress temporarily increased this rate to $225 per month for FY2003, and a continuing resolution, H.J.Res. 69,[5] extended this rate through the end of October 2003 . If no further action is taken by Congress, this statutory authority will expire on October 31, 2003.

Family Separation Allowance. Family Separation Allowance (FSA) is authorized by 37 U.S.C. 427, which provides a special pay for those service members *with dependents* who are separated from their families for more than 30 days. The purpose of this pay is to "partially reimburse, on average, members of the uniformed services involuntarily separated from their dependents for the reasonable amount of extra expenses that result from such separation...."[6] To be eligible for this allowance, U.S. military personnel must be separated from their dependents for 30 continuous days or more; but once the 30-day threshold has been reached, the allowance is applied retroactively to the first day of separation. The authorizing statute for FSA sets the rate at $100 per month. However, in the Emergency Wartime Supplemental Appropriations Act, 2003,[7] Congress temporarily increased this rate to $250 per month for FY2003, and H.J.Res. 69 extended this rate through the end of October 2003. If no further action is taken by Congress, this statutory authority will expire on October 31, 2003.

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[1] DOD regulations make clear a distinction between imminent danger pay (IDP) and hostile fire pay (HFP), which is only implicit in the statute. IDP is provided to service members serving in specifically designated places deemed to pose a threat of physical harm or imminent danger due to insurrection, war, or terrorism; HFP is provided to service members in any location where members of the uniformed services are actually exposed to hostile fire or explosion of hostile mines. IDP and HFP cannot be collected simultaneously. DOD Financial Management Regulation 7000.14-R, *Special Pay — Duty Subject to Hostile Fire or Imminent Danger*, August, 2002.

[2] Department of Defense, *Military Compensation Background Papers*, 5th edition, 1996, 173.

[3] For a partial list of designated areas where military personnel are eligible to receive imminent danger pay, see CRS Report RL31334, *Operations Noble Eagle, Enduring Freedom, and Iraqi Freedom: Questions and Answers About Military Personnel, Compensation and Force Structure*, by Lawrence Kapp.

[4] P.L. 108-11, Section 1316, April 16, 2003.

[5] P.L. 108-84, Section 113, September 30, 2003.

[6] Department of Defense, *Military Compensation Background Papers*, 5th edition, 1996, 773. However, in cases where the separation is voluntary, FSA may not be payable. For instance, if a servicemember is offered the choice of an accompanied or an unaccompanied tour overseas, and elects the latter, then he or she is not entitled to FSA. Source: DOD Financial Management Regulation 7000.14-R, *Family Separation Allowance (FSA)*, February, 2002, table 27-4.

[7] P.L. 108-11, Section 1316, April 16, 2003.

Hardship Duty Pay. Hardship Duty Pay (HDP) is authorized by 37 U.S.C. 305. It is compensation for the exceptional demands of certain duty, including unusually demanding mission assignments or service in areas with extreme climates or austere facilities. The maximum amount of HDP permitted by the statute is currently $300 per month, and the current rate of HDP for Iraq and Afghanistan is $100 per month.[8] There is no bar to receiving HDP in addition to HF/IDP and FSA.

Recent Legislative Initiatives Regarding HF/IDP and FSA

Both the Senate and the House have included provisions affecting HF/IDP and FSA in their respective versions of H.R. 1588, the National Defense Authorization Act for FY2004. The Senate version sets the monthly rate for HF/IDP at $225 per month and the monthly rate for FSA at $250 for all service members eligible for these forms of compensation, effective October 1, 2003.[9] The House version, also effective October 1, 2003, sets the monthly rate for HF/IDP at $225 per month and the monthly rate for FSA at $250, but only for members of the uniformed services who serve "for any period of time during a month, in a combat zone designated for Operation Iraqi Freedom or Enduring Freedom."[10] Service members eligible for HF/IDP and/or FSA, but not serving in a combat zone associated with Operation Enduring Freedom (OEF) or Operation Iraqi Freedom (OIF), would receive the lower rates for these forms of compensation currently found in permanent law. The special rate for HF/IDP and FSA for those serving in an OEF or OIF combat zone would expire on the date the President terminates the specified operation.

The Department of Defense Appropriations Act for FY2004[11] did not contain any legislative language regarding HF/IDP or FSA, but the conference report that accompanied the bill contained language providing $128 million in funding for continuation of the higher rates of pay. The report language stated that the $128 million was "provided for increases in Family Separation Allowance and Imminent Danger Pay

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[8] For a partial list of designated areas where military personnel are eligible to receive hardship duty pay, see CRS Report RL31334, *Operations Noble Eagle, Enduring Freedom, and Iraqi Freedom: Questions and Answers About Military Personnel, Compensation and Force Structure*, by Lawrence Kapp.

[9] Sections 606 and 619 of H.R. 1588 (as passed by Senate).

[10] Section 622 of H.R. 1588 (as passed by House). The only combat zone that has been designated for Operation Enduring Freedom is Afghanistan and the airspace above it. Technically, no combat zone has been declared for Operation Iraqi Freedom; the combat zone designation that currently exists in the Persian Gulf area was designated for Operation Desert Shield and Desert Storm (the 1990-1991 Persian Gulf War) and has never been revoked. But, assuming that it is this combat zone which is being referred to, the higher rates would be effective in Iraq, Kuwait, Saudi Arabia, Bahrain, Qatar, United Arab Emirates, Oman, the waters of Persian Gulf, the Red Sea, the Gulf of Aden, the Gulf of Oman, and the Arabian Sea north of 10 degrees north latitude and west of 68 degrees east longitude, as well as the airspace above these regions.

[11] P.L. 108-87

as authorized by Public Law 108-11."[12] However, P.L. 108-11, as amended by P.L. 108-84, only authorizes the higher rates of pay through October 31, 2003.

Finally, the current House and Senate versions of the 2004 Emergency Supplemental Appropriations bill for Iraq and Afghanistan both contain provisions to extend the higher rates of HF/IDP and FSA through September 30, 2004.[13] Additionally, the committee report that accompanied the Senate bill specifically rejected the DOD proposal, discussed below.[14]

The Department of Defense's Position

In July, 2003, the Department of Defense sent an appeal to Congress opposing the HF/IDP and FSA language in both the House and Senate versions of the National Defense Authorization Act, on equity and budgetary grounds.[15] Newspaper accounts of DOD's position generated considerable criticism of the Defense Department.[16] Subsequently, a news release sent out by DOD on August 14 seemed to indicate that the Department approved of maintaining the higher HF/IDP and FSA rates for those serving in Afghanistan and Iraq[17]; but a briefing that same day by David Chu, Under Secretary of Defense for Personnel and Readiness, indicated that while DOD remained opposed to the House and Senate provisions, the Pentagon would ensure that *total compensation* for those deployed to Iraq and Afghanistan would not drop.[18] Dr. Chu explained that the

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[12] H.Rept. 108-283, p. 62.

[13] The Senate provisions are located in S. 1689, Section 306. There was no House bill number at the time of this writing; the description of its HF/IDP and FSA provisions was based on a press release from the House Appropriations Committee entitled "Highlights of the Chairman's Mark of the Iraq Supplemental," dated October 6, 2003.

[14] S.Rept. 108-160, p. 4.

[15] The appeal stated the DOD position as follows: "The Department opposes both the House and Senate provisions. The House provision specifies that eligibility depends on assignment to duty in a particular military operation inside the combat zone. This restriction would nullify higher rates for personnel serving in direct support of those same operations, but outside the combat zone, such as Diego Garcia, Israel, etc. Also, specifying an increased rate solely for Operations IRAQI FREEDOM and ENDURING FREEDOM would create an inequity for those who subsequently face imminent danger or the hardships of family separation in other contingencies. The Senate provision would make the current temporary rate increases permanent, beginning in October 2003, but the Department has not budgeted for these increases. The Department urges the conferees to exclude these provisions." Department of Defense, *Department of Defense Appeal, FY2004 Defense Authorization Bill*, July 9, 2003, O-33.

[16] See for example, *Army Times*, "Fair Pay?", July 28, 2003, p. 8, and *San Francisco Chronicle*, "Troops in Iraq Face Pay Cut; Pentagon Says Tough Duty Bonuses are Budget-Buster," August 14, 2003, p. A1.

[17] Department of Defense News Release #600-03, *DOD Statement on Family Separation Allowance and Imminent Danger Pay*, dated August 14, 2003. News release available at [http://www.defenselink.mil/releases/2003/nr20030814-0368.html].

[18] DOD News Briefing with Lawrence Di Rita and David Chu , *Press Gaggle with Mr. Di Rita and Dr. Chu on Combat Pay Compensation*, August 14, 2003. Transcript available at

(continued...)

Department had other statutory authorities, such as Hardship Duty Pay, which could be used to maintain the total compensation of military personnel in Afghanistan and Iraq if the HF/IDP and FSA rates reverted back to their earlier rates of $150 and $100 per month, respectively.[19] Subsequently, President Bush submitted a supplemental appropriations request to Congress for ongoing operations in Iraq and Afghanistan.[20] That request included proposed language that would sustain the HF/IDP rate at $225 per month and the FSA rate at $250 per month through December 31, 2003. It also included proposed language that would increase the HDP rate from the current maximum of $300 per month to a maximum of $600 per month, beginning on January 1, 2004. In the written justification accompanying this request, DOD explained that:

> The estimate also includes funding for enhanced special pays, including Imminent Danger pay (IDP), Family Separation Allowance (FSA), and Hardship Duty Pay (HDP) for OIF and OEF deployed personnel in theater or in direct operational support...The Department intends to keep paying IDP and FSA at these [FY2003 rates] increased rates through December 31, 2003. Beginning on January 1, 2004, the Department's plan is to begin paying an additional $225 per month in HDP to military personnel serving in OIF/OEF in a combat zone.[21]

Though the language is a bit confusing as to the precise criteria for receiving the increased rate of HDP, it appears that DOD wants to provide it to those serving in a combat zone, or in direct support of a combat zone, associated with OEF or OIF.[22]

Implications of the DOD Proposal

If implemented, the DOD proposal would have a number of financial implications for service members. First, many service members who are currently receiving HF/IDP or FSA would see their total compensation drop, as they are not serving in a combat zone or in direct support of a combat zone associated with OEF or OIF.[23] On the other hand, almost all of those serving in a combat zone, or in direct support of a combat zone,

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[18] (...continued)
[http://www.defenselink.mil/transcripts/2003/tr20030814-0582.html].

[19] *Ibid.*

[20] George W. Bush, *Letter to the Speaker of the House*, dated September 17, 2003.

[21] Department of Defense, *FY2004 Supplemental Request For Operation Iraqi Freedom (OIF), Operation Enduring Freedom (OEF), and Operation Noble Eage (ONE)*, September, 2003, p. 10.

[22] The first sentence quoted refers to personnel in theater or in direct operational support, while while the last sentence refers only to personnel serving in a combat zone, without mentioning those serving in direct support. However, in light of other statements made by DOD officials, it appears that DOD wants to provide increased HDP to service members operating in direct support of a combat zone. See footnote 10 for a discussion of combat zones associated with OEF and OIF.

[23] For example, those serving in Bosnia are currently eligible for HF/IDP and are eligible for FSA if they have dependents. Those serving in South Korea are not currently eligible for HF/IDP but are usually eligible for FSA if they have dependents because Korea is frequently an "unaccompanied tour" (in other words, dependents are not authorized to move to the duty location at government expense).

associated with OEF or OIF would see their total compensation maintained or even increased. Specifically, those currently receiving both HF/IDP and FSA would see their compensation from these two sources drop by $225 per month, but would receive an additional $225 in HDP per month to offset that decrease. Those military personnel who have no dependents, and who therefore have not been receiving FSA, would see their HF/IDP payment decrease by $75 per month, but would see an increase of $225 per month increase in HDP, a net gain of $150 per month.[24]

The only people serving in a combat zone, or in direct support of a combat zone, associated with OEF or OIF who would suffer an slight adverse financial impact under the DOD proposal would be a relatively small group of officers who are both receiving FSA and have relatively high levels of total compensation. This is due to the tax implications of reducing compensation via an allowance (FSA) and replacing it with a pay (HDP), because allowances are not subject to federal income tax, while the various types of pay[25] are. All service members in Iraq and Afghanistan are serving in a combat zone and are therefore eligible for the "combat zone tax exclusion,"[26] but this exclusion is limited for some military officers. For enlisted personnel and warrant officers, all compensation for active military service in a combat zone is free of federal income tax.[27] For commissioned officers, compensation is free of federal income tax up to the maximum amount of enlisted basic pay plus any imminent danger pay received: just under $6,000 per month at current pay rates.[28] This means that for the typical officer in paygrade O-5 (Lieutenant Colonel or Commander) or above, and for lower ranking officers who receive a large amount of incentive or specialty pay,[29] replacing FSA with HDP means replacing non-taxable compensation with taxable compensation.

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[24] The DOD justification argues that this increase in pay for service members without dependents is a fairer way of compensating OEF and OIF participants, noting that "The additional $225 per month being paid to members in combat should be in recognition of the risk that they all face — not drawing any distinction as to their marital status or number of family dependents." Department of Defense, *FY2004 Supplemental Request For Operation Iraqi Freedom (OIF), Operation Enduring Freedom (OEF), and Operation Noble Eage (ONE)*, September 2003, p. 10.

[25] For example, Basic Pay, Hardship Duty Pay, Hostile Fire/Imminent Danger Pay, etc. There are several dozen distinct types of pay in the military compensation system, although many of them are targeted at comparatively small sub-populations of the armed forces (for example, only certain aviators can qualify for aviation career incentive pay and only pharmacy officers can qualify for pharmacy officer pay).

[26] 26 U.S.C. 112.

[27] While this combat zone tax-exclusion benefit applies only to federal income tax, almost all states have provisions extending the benefit to their state income tax as well. Department of Defense, *Military Compensation Background Papers*, 5th Edition, September 1996, 832-837.

[28] According to the Internal Revenue Service, "For 2002, the most an officer could earn tax-free each month was $5,532.90 ($5,382.90, the highest monthly enlisted pay, plus $150 hostile fire or imminent danger pay). The Emergency Wartime Supplemental Appropriations Act of 2003 (P.L. 108-11) raised the imminent danger pay to $225 per month through September 2003. Therefore, the 2003 combat pay exclusion for officers is $5,957.70 per month through September, and $5,882.70 per month for the remainder of the year." More information on this topic is available at [http://www.irs.gov/newsroom/article/0,,id=101262,00.html].

[29] For example, medical officers and pilots often receive comparatively large amounts of special or incentive pay in addition to their base pay.

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