



OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE  
4000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-4000

20 Dec 01

FORCE MANAGEMENT  
POLICY

MEMORANDUM FOR DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(MILITARY PERSONNEL MANAGEMENT AND EQUAL  
OPPORTUNITY POLICY)  
PRINCIPAL DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(MANPOWER & RESERVE AFFAIRS)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(FORCE MANAGEMENT AND PERSONNEL)  
DIRECTOR, DEFENSE FINANCE AND ACCOUNTING SERVICE


SUBJECT: Fiscal Year 2002 Adjustments to Military Retired and Retainer Pay, Survivor  
Annuities and Premiums, and Related Matters

This memorandum and attachments provide detailed guidance regarding Cost-of-Living Adjustments (COLAs) and other computation procedures applicable to military retired and retainer pay and survivor annuities. Finance centers must compute and adjust retired pay and survivor entitlements as prescribed herein. Services should advise personnel counselors of these adjustments and inform retirees and survivors through Service newsletters and/or other appropriate means.

Attachment 1 specifies COLAs for retired and retainer pay and for survivor annuities and premium determinations effective December 1, 2001, unless specified otherwise. These COLAs reflect the cost-of-living as measured by the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) through the third calendar quarter of 2001 (July, August, September 2001). Particular attention should be given to members who first entered service before September 8, 1980, who retired after June 30, 2001, and are entitled to retired pay based on rates of pay from the July 1, 2001, pay table. The pay table effective date for their retired pay is specified in attachment 1-2. This effective date determines which partial COLA to use to adjust their retired pay (see attachment 1, paragraph 1).

This year's COLA is complicated by a requirement for special adjustment to correct for the impact of certain errors in Consumer Price Index (CPI) values as published by the Bureau of Labor Statistics (BLS) for certain months of calendar year 1999. Attachment 2 provides detailed guidance to make the corrections required by the Consolidated Appropriations Act, 2001, Public Law 106-554. The plan to do this has been approved under guidance provided by the Office of Management and Budget (OMB). The prescribed adjustments must be applied to entitlement values before applying the COLAs that are effective December 1, 2001, as prescribed in attachment 1. These adjustments compensate members under the 1999 CPI-W values as they should have been. These values have not been issued as an actual CPI-W correction.

Attachment 3 prescribes guidance on the computation of the high-36 retired pay base for certain retirees under the provisions of section 1407, title 10, United States Code. This memorandum follows the intent of Congress as best as we can determine. Nevertheless, there is some discomfort with the current law in this area. I invite you to share any concerns of your Service along with any recommendations for legislation to improve the law with respect to high-36 computations. Comments are requested no later than March 1, 2002. If changes are appropriate, we will seek amending legislation or issue policy guidance where possible.

  
John A. Van Alstyne  
Lieutenant General, U. S. Army  
Deputy Assistant Secretary  
(Military Personnel Policy)

Attachments: As stated

cc:

Deputy Chief of Staff for Personnel, U.S. Army  
Deputy Chief of Naval Operations (Manpower and Personnel), U. S. Navy  
Deputy Chief of Staff, Personnel, U.S. Air Force  
Deputy Chief of Staff for Manpower and Reserve Affairs, U.S.M.C.  
Assistant Commandant for Human Resources, U.S. Coast Guard  
Director, Division of Commissioned Personnel, U.S. Public Health Service  
Director, National Oceanic and Atmospheric Administration Corps Operations-NC  
DoD Chief Actuary  
Deputy General Counsel (Fiscal)

**ADJUSTMENTS IN RETIRED/RETAINER PAY,  
SURVIVOR ANNUITIES AND PREMIUMS  
AND RELATED FACTORS**

The following Cost-of-Living Adjustments (COLAs) are effective December 1, 2001, based on the increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) through September 2001. The term "retired pay" includes retainer pay and the term "members" includes former members.

**COLAs for Retired Pay**

1. The retired pay COLA for those who first became a member of a Uniformed Service before September 8, 1980, is specified according to the effective date of the active duty basic pay rate used to compute their retired pay as follows\*:

<u>Retired Pay Based on Rates of Pay Effective</u>	<u>Percent Increase</u>	<u>10 U.S.C. Authority</u>
Before January 1, 2001	<b>2.6 percent</b>	1401a(b)(2)
January 1, 2001**	<b>2.0 percent</b>	1401a(c)
July 1, 2001***	<b>None - 0.0 percent</b>	1401a(c)

- \* The effective date of a pay cell (i.e., a pay rate specified for a given grade and years of service) in the July 1, 2001, table is considered to be January 1, 2001, if the pay rate for that cell is unchanged from the January rate (see attachment 1-2).
- \*\* Includes those whose retired pay is computed on a pay cell of the July 1, 2001, pay table **unchanged from the rate for that pay cell in the January 1, 2001 pay table.**
- \*\*\* Includes those whose retired pay is computed on a pay cell of the July 1, 2001, pay table **changed from the rate for that pay cell in the January 1, 2001 pay table.**

2. The retired pay COLA for those who first became a member of a Uniformed Service on or after September 8, 1980, is specified according to the effective date of their retirement as follows:

<u>Retirement Effective:</u>	<u>Percent Increase</u>	<u>10 U.S.C. Authority</u>
Before January 1, 2001	<b>2.6 percent</b>	1401a(b)(2)
January 1 - March 31, 2001	<b>2.0 percent</b>	1401a(d)
April 1 - June 30, 2001	<b>1.1 percent</b>	1401a(d)
July 1 - September 30, 2001	<b>0.0 percent</b>	1401a(d)
October 1 - December 31, 2001	<b>0.0 percent</b>	1401a(d)

**COLAs for Survivor Annuities**

3. Retired Serviceman's Family Protection Plan annuities payable on November 30, 2001, under the provisions of subchapter I of chapter 73, title 10, United States Code, to the spouse or child of a member who died on or before March 20, 1974: **2.6 percent** (ref: 10 U.S.C. 1434 (e)).

4. Annuities under the Survivor Benefit Plan (SBP) and Reserve Component Survivor Benefit Plan (RCSBP) under the provisions of subchapter II of chapter 73, title 10, United States Code; Supplemental SBP annuities under the provisions of subchapter III of chapter 73, title 10, United States Code; and benefits payable under the provisions of section 5 of Public Law 96-402, will be increased by the same percentage specified in paragraphs 1 or 2 above by which the retired pay of the person providing the annuity would have been increased at such time if the person were alive and otherwise entitled to such pay. (ref: 10 U.S.C. 1451 (g) and 10 U.S.C. 1457(d)(1)).
5. COLAs for supplemental annuities paid to certain low income widows of members who were deceased before November 1, 1953: **2.6 percent** (ref: section 653 (c), Public Law 100-456).
6. Annuities for Certain Military Surviving Spouses (ACMSS) payable under the provisions of section 644, Public Law 105-85, November 18, 1997, are increased **2.6 percent** from \$180.88 to \$185.58 effective December 1, 2001. (ref: P.L. 105-85, sec 644).

#### **Increase in the SBP Low-Cost Premium Threshold**

7. Previous amounts with respect to which the 2.5 percent factor of the SBP premium (cost) formula apply are adjusted effective December 1, 2001, in conjunction with the adjustments in retired pay made under the provisions of section 1401a, title 10, United States Code (ref: 10 U.S.C. 1452(a)(4)(B)). A table of such amounts is included as attachment 1-1.
8. The amount with respect to which the 2.5 percent factor of the SBP premium (cost) is applied for participation upon retirement is increased **6.9% effective January 1, 2002**, from \$512 to \$547 (premium for this coverage would be \$13.67 -- the breakeven base amount at which the 6.5% formula is less costly is \$1,172.14) (ref: 10 U.S.C. 1452(a)(4)(A) and section 601(b), National Defense Authorization Act for FY 2002 (Presidential Signature and P.L. Number Pending)).

#### **Adjustments in Social Security Factors**

9. The so-called social security offset (reduction) in SBP and RC-SBP annuities under the provisions of section 1451(e)(4) of title 10 U.S.C. is based upon figures published by the Social Security Administration (SSA). This year's changes are published in the Federal Register, October 25, 2001 (Volume 66, Number 207), pages 54047-54052, or may be found online at <http://www.ssa.gov/OACT/COLA/BenForm.html>. The following changes affect the annuity computations of the SBP/RC-SBP social security offset for those individuals with an eligibility year of 2002 and later:
  - a. Average of total wages for 2000 is \$32,154.82.
  - b. The maximum taxable wages pertaining to Old Age Survivor and Disability Insurance (OASDI) benefits is increased from \$80,400 in 2001 to \$ 84,900 in 2002. There is no maximum taxable wage base for the Hospital Insurance (HI) portion (1.45

percent) of social security taxes. Earnings above \$84,900 will not be used to determine survivor benefits.

c. The Primary Insurance Amount (PIA) for benefit eligibility in 2002 is computed on the basis of the Average Indexed Monthly Earnings (AIME) as follows:

90 percent of the first \$592 of the AIME, plus  
32 percent of the AIME over \$592 and through \$3,567 plus  
15 percent of the AIME over \$3,567.

LOW-COST THRESHOLD FOR SBP COST COMPUTATIONS  
EFFECTIVE AS OF DECEMBER 1, 2001

FOR THOSE WHO FIRST BECAME MEMBERS  
OF A UNIFORMED SERVICE

BEFORE SEPTEMBER 8, 1990

If Retired Pay Is Based On Rates	
Effective:	Amount In:
Pre 1 Oct 85	\$498.83
1-Oct-85	\$501.23
1-Jan-87	\$508.74
1-Jan-88	\$494.87
1-Jan-89	\$482.72
1-Jan-90	\$487.88
1-Jan-91	\$478.10
1-Jan-92	\$484.74
1-Jan-93	\$488.88
1-Jan-94	\$487.88
1-Jan-95	\$488.84
1-Jan-96	\$488.88
1-Jan-97	\$484.75
1-Jan-98	\$488.88
1-Jan-99	\$508.88
1-Jan-00	\$510.49
1-Jul-00	\$507.30
1-Jan-01	\$518.18
1-Jul-01	\$512.00

AFTER JULY 31, 1988

If Retired During The Period Of:		Amount In:
Aug - Sep 88	\$440.25	
Oct - Dec 88	\$440.25	
Jan - Mar 89	\$458.27	
Apr - Jun 89	\$448.98	
Jul - Sep 89	\$444.27	
Oct - Dec 89	\$439.03	
Jan - Mar 90	\$444.71	
Apr - Jun 90	\$463.39	
Jul - Sep 90	\$439.08	
Oct - Dec 90	\$434.28	
Jan - Mar 91	\$448.23	
Apr - Jun 91	\$444.73	
Jul - Sep 91	\$437.78	
Oct - Dec 91	\$435.81	
Jan - Mar 92	\$448.08	
Apr - Jun 92	\$441.58	
Jul - Sep 92	\$438.58	
Oct - Dec 92	\$432.00	
Jan - Mar 93	\$442.86	
Apr - Jun 93	\$441.54	
Jul - Sep 93	\$438.81	
Oct - Dec 93	\$437.59	
Jan - Mar 94	\$463.47	
Apr - Jun 94	\$463.12	
Jul - Sep 94	\$448.88	
Oct - Dec 94	\$448.75	
Jan - Mar 95	\$481.47	
Apr - Jun 95	\$458.21	
Jul - Sep 95	\$468.91	
Oct - Dec 95	\$465.99	
Jan - Mar 96	\$484.63	
Apr - Jun 96	\$483.70	
Jul - Sep 96	\$481.44	
Oct - Dec 96	\$488.22	
Jan - Mar 97	\$488.27	
Apr - Jun 97	\$485.35	
Jul - Sep 97	\$483.18	
Oct - Dec 97	\$482.28	
Jan - Mar 98	\$472.58	
Apr - Jun 98	\$469.32	
Jul - Sep 98	\$465.60	
Oct - Dec 98	\$464.68	
Jan - Mar 99	\$478.65	
Apr - Jun 99	\$475.23	
Jul - Sep 99	\$474.27	
Oct - Dec 99	\$473.81	
Jan - Mar 00	\$488.91	
Apr - Jun 00	\$487.38	
Jul - Sep 00	\$485.94	
Oct - Dec 00	\$485.45	
Jan - Mar 01	\$500.30	
Apr - Jun 01	\$498.93	
Jul - Sep 01	\$494.63	
Oct - Dec 01	\$490.80	
Jan - Mar 02	\$510.49	
Apr - Jun 02	\$505.52	
Jul - Sep 02	\$507.30	
Oct - Dec 02	\$503.77	
Jan - Mar 03	\$518.18	
Apr - Jun 03	\$514.80	
Jul - Sep 03	\$512.00	
Oct - Dec 03	\$512.00	

AFTER SEPTEMBER 8, 1990  
BUT BEFORE AUGUST 1, 1998

If Retirement Effective During The Period Of:		Amount In:
Pre 1 Oct 85	\$498.83	
Oct 85 Thru 198	\$501.23	
During 1987	\$508.74	
During 1988	\$494.87	
During 1989	\$482.72	
During 1990	\$487.88	
During 1991	\$478.10	
During 1992	\$484.74	
During 1993	\$488.88	
During 1994	\$487.88	
During 1995	\$488.84	
Jan - Mar 96	\$488.88	
Apr - Jun 96	\$481.08	
Jul - Sep 96	\$478.33	
Oct - Dec 96	\$473.85	
Jan - Mar 97	\$484.75	
Apr - Jun 97	\$482.38	
Jul - Sep 97	\$480.46	
Oct - Dec 97	\$478.53	
Jan - Mar 98	\$488.30	
Apr - Jun 98	\$488.81	
Jul - Sep 98	\$487.38	
Oct - Dec 98	\$485.45	
Jan - Mar 99	\$500.00	
Apr - Jun 99	\$488.83	
Jul - Sep 99	\$484.63	
Oct - Dec 99	\$480.80	
Jan - Mar 00	\$510.49	
Apr - Jun 00	\$505.52	
Jul - Sep 00	\$507.30	
Oct - Dec 00	\$503.77	
Jan - Mar 01	\$518.18	
Apr - Jun 01	\$514.80	
Jul - Sep 01	\$512.00	
Oct - Dec 01	\$512.00	



## COLA Revision Process

### General:

The following procedures apply to the readjustment of retired and retainer pay values resulting from the BLS CPI values that were published in error in 1999. A Lump Sum refund is to be paid to retirees identified in the attached plan (attachment 2-1) which has been approved by the Office of Management and Budget. Due to the complexity of these adjustments, the procedures are defined by mathematical formulas with definitions of terms as described below. Any questions on these computations should be addressed to the Director of Compensation, Office of the Deputy Assistant Secretary of Defense (Military Personnel Policy).

### Definitions and Terminology Conventions:

A formula value containing the following letter(s)/number(s) has the characteristic described below for that letter(s)/number(s):

T - True, or corrected, value -- the one that should have been applied  
W - Was, or pre-correction value -- the one that was used originally  
00, 01, or 99 - Calendar year of payments ( e.g., 01 values are those paid in 01)  
CF -- COLA Factor -- e.g., if the prescribed COLA is 2.5%, then CF is 1.025  
ME -- Months of Entitlement - Number of months the member was entitled to retired pay  
RP -- Retired Pay (the gross entitlement)  
LS -- Lump Sum makeup payment

### Definition of Factors:

CF00W = COLA Factor that Was applied to 1999 entitlement to get entitlement for 2000  
CF01W = COLA Factor that Was applied to 2000 entitlement to get entitlement for 2001  
CF00T = COLA Factor that replaces CF00W  
CF01T = COLA Factor that replaces CF01W  
CF02 = COLA Factor to apply to revised 2001 entitlement to get entitlement for 2002  
ME00 = months of retired pay entitlement in 2000  
ME01 = months of retired pay entitlement in 2001

RP99W = Gross Retired Pay entitlement paid in 1999  
RP00W = Gross Retired Pay entitlement paid in 2000  
RP01W = Gross Retired Pay entitlement paid in 2001  
RP00T = Gross Retired Pay entitlement as revised for 2000  
RP01T = Gross Retired Pay entitlement as revised for 2001  
RP02 = Gross Retired Pay entitlement for 2002



**Lump Sum Determinations:** The Lump Sum makeup payment is the difference in the payments that should have been made versus those that were made in both CY 2000 and CY 2001, times the number of applicable months (normally 12 for each year).

$$LS = ME00 * (RP00T - RP00W) + ME01 * (RP01T - RP01W)$$

The LS computation and the new retired pay computation for CY 02 (RP02) are determined by working back from the member's existing gross retired pay entitlement as of November 2001 (RP01W) to compute a history of payments. These derived values are then adjusted forward to compute the corrected payments. All of these computed values are then used to compute the LS as well as the new retired pay entitlement for 2002.

ROUNDUP is the standard mathematical spreadsheet function for rounding up to the next higher dollar amount. TRUNC is the standard mathematical spreadsheet function for rounding down retired pay to the next lower whole dollar amount.

$$\begin{aligned} RP00W &= \text{ROUNDUP}(RP01W / CF01W) \\ RP99W &= \text{ROUNDUP}(RP00W / CF00W) \\ RP00T &= \text{TRUNC}(RP99W * CF00T) \\ RP01T &= \text{TRUNC}(RP00T * CF01T) \\ RP02 &= \text{TRUNC}(RP01T * CF02) \end{aligned}$$

T and W are not applied to the 2002 values as there is no difference.

**Detailed Specification of Adjustments** - Not all retirees will have a Lump Sum and Revised retired pay computation. Those who do have adjusted values do not all have the same values. Detailed provisions are prescribed below.

Those who first entered service before September 8, 1980 whose retired pay is based on pay tables of: January 2000, July 2000, January 2001, or July 2001, will not be recomputed.

Those who first entered service after September 7, 1980 who retired during the 2<sup>nd</sup>, 3<sup>rd</sup>, or 4<sup>th</sup> quarter of 1999 or any quarter of 2000, or 2001, will not be recomputed.

Those who first entered service before September 8, 1980, and whose retired pay is based on rates of basic pay of January 1998 or earlier, and those who first entered service after September 7, 1980 who retired in the 4<sup>th</sup> quarter 1998 or earlier will be recomputed using:

$$\begin{aligned} CF01W &= 1.035 \\ CF00W &= 1.024 \\ CF00T &= 1.025 \\ CF01T &= 1.035 \\ CF02 &= 1.026 \end{aligned}$$

Those who first entered service before September 8, 1980 whose retired pay is based on pay table of January 1999, or who first entered service after September 7, 1980, and who retired in the 1<sup>st</sup> qtr 1999, will be recomputed using:

CF01W = 1.035  
CF00W = 1.020  
CF00T = 1.021  
CF01T = 1.035  
CF02 = 1.026

Those who first entered service after September 7, 1980, and who retired in the 1<sup>st</sup> qtr 1999, will be recomputed using:

CF01W = 1.035  
CF00W = 1.020  
CF00T = 1.021  
CF01T = 1.035  
CF02 = 1.026

**Applying the COLA for 2002**

All members entitled to a COLA for pay in 2002 will have

$$RP02 = RP01T * CF02 \text{ (as applicable to their retired pay)}$$

**Department of Defense Report on the Impact of the CPI Computation Error**

Agency: Department of Defense  
Date: May 18, 2001

Prepared by: T.R. Tower  
Phone: 703-693-1059

<p><b>NAME OF FEDERAL BENEFIT PROGRAM:</b></p> <p><b>TREASURY ACCOUNT SYMBOL:</b></p>	<p>Department of Defense Military Retirement Fund (MRF), Retired Pay and Survivor Annuities</p> <p>97X8097</p>
<p><b>DOES THE CPI ERROR RESULT IN A SHORTFALL?</b></p>	<p>Yes</p>
<p><b>WHAT IS THE NATURE AND AMOUNT OF THE SHORTFALL?</b></p>	<p><i>Military retired pay and survivor annuities are adjusted in accordance with section 1401a and chapter 73 of title 10, USC. Retired pay is always rounded down to the next lower dollar amount as provided in these statutory authorities. Military retired pay and survivor annuities paid in calendar year 2000 were, for the vast majority of members, approximately \$1 less than they would have been for each \$1,024 of entitlement had the CPI not been in error. This applies to entitlements that predate 1999. Those first entitled during 1999 received approximately \$1 less than they would have for each \$1,020 of entitlement due to the use of partial COLAs for military retired pay and survivor annuities.</i></p> <p><i>Retirees who first became members after September 7, 1980, and retired on a High-3 base in April through December 1999 were unaffected.</i></p> <p><i>The Partial COLAs effective Dec 2000 should have been 2.7% versus the 2.8% granted for those retired using the January 2000 pay table on the final pay system as well as for those retired in the first quarter of 2000 under the High-3 system. This COLA error would not be corrected as the law provides only for correction of a shortfall. Those COLAs which were in excess of the amount they would have been using the revised numbers will be unadjusted under this provision.</i></p> <p><i>Each \$1 shortfall in 2000 becomes, on the average, about \$1.035 shortfall in 2001. However, because retired pay is rounded down to the next lower dollar amount, the shortfall is identical in both years for many retirees. Compounding would continue into future years.</i></p> <p><i>The average monthly shortfall per person is approximately \$1.39, or \$16.68 per year. The aggregate annual shortfall is estimated to be:</i></p> <p><i>FY 2000 -- \$31 million</i>  <i>FY 2001 -- \$32 million</i>  <i>FY 2002 -- \$33 million</i>  <i>FY 2003 -- \$34 million</i>  <i>FY 2004 -- \$35 million</i></p> <p><i>The shortfall would continue to grow with CPI adjustments in every subsequent year if no readjustment is made. The only changes would be increases due to future COLAs and decreases due to any reduction in numbers still entitled.</i></p>
<p><b>HOW DO YOU PROPOSE TO COMPENSATE FOR THE SHORTFALL?</b></p>	<p><i>DoD proposes to make the fullest possible readjustment of COLAs to what they would have been if the correct CPIs had been published. We propose to do this effective with the December 2001 entitlement, which will thus coincide with the COLA for 2002.</i></p>

*In addition, DoD would pay a one-time lump sum payment to only those members in receipt of retired pay at the time the payment is made to make up for the missed retired pay from December 1, 1999, through November 30, 2001. The DASD(MPP) will provide a formula to compute the lump sum and to compute the new retired pay entitlement beginning in December 2001. The intent of the DoD plan is to compensate members the difference of what should have been paid over what was paid. The truncation of retired pay to the next lower whole dollar amounts causes inversions in this difference as retired pay increases. Members having entitlements within a few dollars of each other may have the loss over the two years vary significantly. Thus, adjustments must be done on an individual basis to equitably make the lump sum payments and compute the pay for next year. No interest will be included.*

*DoD proposes that if a member's retired pay has a taxable balance the lump sum would be taxable. If it were entirely tax exempt, the lump sum would be tax exempt.*

*Similarly, if the member has any retired pay balance due after offset for disability compensation from the VA, the lump sum would be available for offset against any lump sum paid by VA under their program to compensate for the revised COLA. A member with no retired pay balance due after offset for disability will not be paid a lump sum makeup payment.*

*Divisions of retired pay under a property settlement will apply to lump sums if, and only if, awarded as a percentage of retired pay.*

*TERA retirees will be paid from whatever source of funds they are under at the time the payment is made.*

*No estates of members who die/have died before the lump sum is paid will be paid. Survivor annuities will receive lump sums and COLA readjustments.*

*Any member whose actual COLA should have been a lesser percentage will not receive a lump sum makeup nor will their new retired pay will be recalculated with the proper COLA before applying the COLA for next year.*

*Survivor Benefit Plan (SBP) base amounts and premiums will be similarly adjusted but no lump sum adjustments will be made for premiums. No lump sum adjustments will be made to account for the effects of Social Security offsets to SBP annuities.*

### **Computation of High-36 for Certain Retirees**

**General** - In light of the following guidance, Services and finance centers should identify any members whose retired pay was not properly determined, and recalculate their entitlement. Notices should be published informing retirees of these determinations to make members aware of this information and offer affected persons the opportunity to have their retired pay re-determined as prescribed herein.

**High-36 Months of Pay for Officers Reverting to Enlisted Status** - The provisions of 10 USC 1407(e) specify how the High-36 average basic pay base is to be computed for an enlisted member retired voluntarily for length of service of at least 20 years, but fewer than 30 years. This provision applies to persons who first became a member of a Uniformed Service on or after September 8, 1980. It provides that the High-36 average specified in 10 USC 1407 shall be computed using only rates of basic pay applicable to months of active duty of the member as an enlisted member. This provision is intended to disallow the member's retired pay based on rates of pay applicable to an officer, but it is not intended to be punitive. Thus, the rates applicable are not necessarily the highest 36 months of actual enlisted pay this member received. Instead, for purposes of this paragraph, the high-36 average basic pay shall be computed using a "constructed" pay history. This history shall use the enlisted pay rates that would have applied to this member if serving in their retired enlisted grade during any period of service as an officer. This effectively requires a day-by-day review to select the pay rates from the pay table in effect at each point in time, as applicable to the member's length of service at that time for the enlisted grade in which the member is to be retired.

**High-36 Months of Pay for Officers Retired in a Grade Lower Than the Grade in Which Served** - The provisions of 10 U.S.C. 1407(f)(2)(B) apply to an officer retired in a grade lower than the highest grade in which served by reason of denial of a determination or certification under 10 U.S.C. 1370, that the officer served on active duty satisfactorily in that grade. This determination is to be applied only in those circumstances where such determination is the result of conduct occurring after October 30, 2000. Conduct, for purposes of this provision shall not include failure to complete the time necessary for certification under 10 U.S.C. 1370, absent any other conduct bearing on such certification.

**Attachment 3**