

TITLE 37 - PAY AND ALLOWANCES OF THE UNIFORMED SERVICES

CHAPTER 7 - ALLOWANCES

§ 401. Definitions

(a) **Dependent Defined.**— In this chapter, the term “dependent”, with respect to a member of a uniformed service, means the following persons:

- (1) The spouse of the member.
 - (2) An unmarried child of the member who—
 - (A) is under 21 years of age;
 - (B) is incapable of self-support because of mental or physical incapacity and is in fact dependent on the member for more than one-half of the child’s support; or
 - (C) is under 23 years of age, is enrolled in a full-time course of study in an institution of higher education approved by the Secretary concerned for purposes of this subparagraph, and is in fact dependent on the member for more than one-half of the child’s support.
 - (3) A parent of the member if—
 - (A) the parent is in fact dependent on the member for more than one-half of the parent’s support;
 - (B) the parent has been so dependent for a period prescribed by the Secretary concerned or became so dependent due to a change of circumstances arising after the member entered on active duty; and
 - (C) the dependency of the parent on the member is determined on the basis of an affidavit submitted by the parent and any other evidence required under regulations prescribed by the Secretary concerned.
 - (4) An unmarried person who—
 - (A) is placed in the legal custody of the member as a result of an order of a court of competent jurisdiction in the United States (or Puerto Rico or a possession of the United States) for a period of at least 12 consecutive months;
 - (B) either—
 - (i) has not attained the age of 21;
 - (ii) has not attained the age of 23 years and is enrolled in a full time course of study at an institution of higher learning approved by the Secretary concerned; or
 - (iii) is incapable of self support because of a mental or physical incapacity that occurred while the person was considered a dependent of the member or former member under this paragraph pursuant to clause (i) or (ii);
 - (C) is dependent on the member for over one-half of the person’s support;
 - (D) resides with the member unless separated by the necessity of military service or to receive institutional care as a result of disability or incapacitation or under such other circumstances as the Secretary concerned may by regulation prescribe; and
 - (E) is not a dependent of a member under any other paragraph.
- (b) **Other Definitions.**— For purposes of subsection (a):
- (1) The term “child” includes—
 - (A) a stepchild of the member (except that such term does not include a stepchild after the divorce of the member from the stepchild’s parent by blood);
 - (B) an adopted child of the member, including a child placed in the home of the member by a placement agency (recognized by the Secretary of Defense) in anticipation of the legal adoption of the child by the member; and

- (C) an illegitimate child of the member if the member’s parentage of the child is established in accordance with criteria prescribed in regulations by the Secretary concerned.
- (2) The term “parent” means—
- (A) a natural parent of the member;
 - (B) a stepparent of the member;
 - (C) a parent of the member by adoption;
 - (D) a parent, stepparent, or adopted parent of the spouse of the member; and
 - (E) any other person, including a former stepparent, who has stood in loco parentis to the member at any time for a continuous period of at least five years before the member became 21 years of age.

(Pub. L. 87–649, Sept. 7, 1962, 76 Stat. 469; Pub. L. 93–64, title I, §§ 103, 104, July 9, 1973, 87 Stat. 148; Pub. L. 100–26, § 8(e)(7), Apr. 21, 1987, 101 Stat. 286; Pub. L. 102–190, div. A, title VI, § 621, Dec. 5, 1991, 105 Stat. 1377; Pub. L. 103–160, div. A, title VI, § 631(a), Nov. 30, 1993, 107 Stat. 1683; Pub. L. 103–337, div. A, title VII, § 701(b), Oct. 5, 1994, 108 Stat. 2797.)

Historical and Revision Notes

| Revised section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|-------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 401 | 37:231(g) (less last proviso of last sentence). | Oct. 12, 1949, ch. 681, § 102(g) (less last proviso of last sentence), 63 Stat. 804; Sept. 8, 1950, ch. 922, § 1, 64 Stat. 794; Mar. 23, 1953, ch. 8 (as applicable to § 102(g)), 67 Stat. 6; June 30, 1955, ch. 250, § 103 (as applicable to § 102(g)), 69 Stat. 224; Mar. 23, 1959, Pub. L. 86–4, § 3 (as applicable to § 102(g)), 73 Stat. 13. |

The words “lawful”, “at all times and in all places”, “except as hereinafter limited in this subsection”, and “in addition to those persons otherwise defined as dependents in this subsection” are omitted as surplusage. In clause (1), the word “spouse” is substituted for words “wife” and “husband”. Clause (2) is substituted for the 16th through 24th words of the first sentence of section 231(g) of existing title 37 and the third sentence (less last proviso) of section 231(g) of existing title 37. Clause (3) is substituted for the second sentence of section 231(g) of existing title 37 and the last sentence (less provisos) of section 231(g) of existing title 37. The second sentence is substituted for the last proviso of the third sentence of section 231(g) of existing title 37. The last sentence is substituted for the first proviso of the last sentence of section 231(g) of existing title 37.

Amendments

1994—Subsec. (b)(1)(B). Pub. L. 103–337 substituted “placement agency (recognized by the Secretary of Defense) in anticipation of the legal adoption of the child by the member” for “placement agency for the purpose of adoption”.

1993—Subsec. (a)(4). Pub. L. 103–160 added par. (4).

1991—Pub. L. 102–190 amended text generally. Prior to amendment, text read as follows: “In this chapter, the term ‘dependent’, with respect to a member of a uniformed service, means—

“(1) his spouse;

“(2) his unmarried child (including any of the following categories of children if such child is in fact dependent on the member: a stepchild; an adopted child; or an illegitimate child whose alleged member-father has been judicially decreed to be the father of the child or judicially ordered to contribute to the child’s support, or whose parentage has been admitted in writing by the member) who either—

“(A) is under 21 years of age; or

NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscprint.html>).

“(B) is incapable of self-support because of a mental or physical incapacity, and in fact dependent on the member for over one-half of his support; and

“(3) his parent (including a stepparent or parent by adoption, and any person, including a former stepparent, who has stood in loco parentis to the member at any time for a continuous period of at least five years before the member became 21 years of age) who is in fact dependent on the member for over one-half of his support; however, the dependency of such a parent is determined on the basis of an affidavit submitted by the parent, and any other evidence required under regulations prescribed by the Secretary concerned, and he is not considered a dependent of the member claiming the dependence unless—

“(A) the member has provided over one-half of his support for the period prescribed by the Secretary concerned; or

“(B) due to changed circumstances arising after the member enters on active duty, he becomes in fact dependent on the member for over one-half of his support.

For the purposes of this section, the relationship between a stepparent and his stepchild is terminated by the stepparent’s divorce from the parent by blood.”

1987—Pub. L. 100–26 inserted “the term” after “In this chapter,”.

1973—Cl. (2). Pub. L. 93–64, § 103(1), in revising cl. (1) of first sentence, substituted “unmarried child” for “unmarried legitimate child” and defined dependent to include an illegitimate child whose alleged member-father has been judicially decreed to be the father of the child or judicially ordered to contribute to the child’s support, or whose parentage has been admitted in writing by the member.

Cl. (3). Pub. L. 93–64, § 104, in revising cl. (3) of first sentence, substituted “five years before the member became 21 years” for “five years before he became 21 years”, struck out requirement of actual residence of parent in the member’s household, and inserted provision respecting determination of dependency of parent, including items (A) and (B), formerly contained in former section 2201 of Appendix to Title 50, War and National Defense.

Closing text. Pub. L. 93–64, § 103(2), struck out second sentence, following cl. (3) of first sentence, stating that a person is not a dependent of a female member unless he is in fact dependent on her for over one-half of his support.

Effective Date of 1993 Amendment

Section 631(b) of Pub. L. 103–160 provided that: “Section 401 (a)(4) of title 37, United States Code, as added by subsection (a), shall apply with respect to determinations of dependency made on or after July 1, 1994.”

Effective Date of 1973 Amendment

Section 206 of Pub. L. 93–64 provided that: “This Act [enacting section 1173 of Title 10, Armed Forces, amending this section and sections 302, 302a, 303, 308a, and 403 of this title, and repealing sections 2210 to 2212 of Title 50, Appendix, War and National Defense] shall become effective July 1, 1973.”