

9. Member without dependents who is restrained in a status of arrest in assigned single-type government quarters, and therefore not entitled to BAH, is entitled to partial BAH unless forfeiture of allowances was directed.

10. Member without dependents permanently assigned to a hospital for treatment and assigned quarters in the hospital is entitled to partial BAH.

11. Member married to another member, neither having other dependents, who is assigned to sea duty and occupies government family quarters assigned to the spouse when vessel is in port, is a member without dependents assigned to quarters on the vessel and is not entitled to BAH but is entitled to partial BAH.

12. Member without dependents who is ordered PCS to confinement in a guard-house, brig, correctional barracks, or to additional training in a retraining or rehabilitation facility, is assigned to certain quarters therein and not entitled to BAH. Such member is entitled to partial BAH unless forfeiture of allowances was directed.

13. Member without dependents assigned to single-type government quarters between permanent duty stations and not entitled to BAH is entitled to partial BAH. This includes periods of temporary occupancy of government quarters in excess of 30 days without entitlement to BAH.

14. Effective April 20, 1999, a member without dependents is not entitled to partial BAH when assigned to government single-type quarters (including government-leased quarters) that exceed the minimum standards of single quarters for the member's grade.

★2603 MEMBERS WITH DEPENDENTS

260301. Entitlements

A. When Entitled To BAH. A member with dependents who is entitled to basic pay is entitled to BAH at the rates prescribed for members with dependents when:

1. Adequate government quarters are not furnished for the member and dependents without payment of rental charge.

2. Adequate government quarters are not furnished for the member's dependents, or all of the member's dependents are prevented by competent authority from occupying such quarters, even though quarters are assigned for the member's occupancy. This does not apply to the provisions of paragraph 260409.

3. Dependents are not enroute or do not accompany the member to the permanent duty station, or the vicinity thereof, so as to preclude assignment of family quarters. Under such circumstances, the mere availability of quarters which could have been assigned does not negate the right of a member to the BAH for dependents. See Table 26-9 for the location to be used in determining the member's BAH entitlement.

4. Effective February 2, 2005, a single or divorced member who maintains legal and physical custody of child(ren) before receipt of PCS orders to an unaccompanied tour may continue to be paid BAH at the with dependents rate, for last PDS, or designated place for certain periods if the requirements of this subparagraph are met. The divorce decree must be specific on the period(s) of time the member has legal and physical custody. Basic Allowance for Housing at the with dependents rate will be payable only for the period of time the member would have the custody of the child(ren) if not serving on the unaccompanied tour. The member must, for military necessity, place the child(ren) in the physical custody of a relative or designated care giver by the member, to be entitled to BAH at the with dependents rate.

B. Naval Aviation Cadets. A naval aviation cadet with dependents is entitled to BAH under the conditions and at the rates prescribed for an enlisted member in grade E-4 (over 4 years' service) with dependents.

C. Limitation on Quarters Occupied by Member. Effective April 20, 1999, when adequate quarters are not furnished for a member's dependents, the member may not occupy, either at the permanent or TDY station, government quarters which exceed the minimum standards for the member's grade without dependents without affecting the right to BAH unless:

1. These quarters are the only quarters available, and
2. The quarters are not suitable for joint occupancy; or
3. If suitable for joint occupancy, the quarters are jointly occupied with other members permanently assigned to the PDS.

D. Quarters Occupied During Special Duty Assignment. Effective April 20, 1999, a member, not accompanied by dependents, serving outside the United States, its territories, or possessions, in a duty assignment having official or diplomatic responsibilities involving officials of foreign governments, may be assigned to quarters that exceed the minimum standards for the member's grade without dependents, without affecting the member's right to BAH. The local Commander in Chief or major unit commander is the appropriate authority to decide whether an assignment entails "official or diplomatic" responsibilities involving officials of foreign governments. However, such quarters shall not be available on a continuing basis for single occupancy, if they are adequate for assignment as family housing to members of similar grade.

E. Additional Room Assigned to Chaplain. Assignment of an additional room to a chaplain for spiritual purposes does not affect the member's right to BAH. The room must be used for official duties and not as living quarters.

260302. Government Quarters Assigned or Occupied

A. Adequacy of Government Quarters. The term “government quarters or housing facilities” is in the “Definitions.” The base, post, or installation commander determines when government quarters are adequate and appropriate for assignment.

B. Quarters Not Designated as Family-Type Quarters. A member who is neither assigned to nor occupies government quarters is entitled to BAH or BAH-DIFF for dependents even though the dependents occupy government quarters not designated as family-type quarters. Examples of such quarters are:

1. One room occupied by a member’s spouse incident to employment as a domestic servant in quarters of a commissioned officer.

2. Dormitory quarters occupied by a member’s child at a school for dependents of military personnel.

3. A hospital room occupied by a dependent under the Dependents’ Medical Care Act (reference (aq)). However, a member is not entitled to BAH or BAH-DIFF when a sole dependent is hospitalized in a government or civilian hospital under the Dependents’ Medical Care Act (reference (aq)) and the member is assigned to and occupies government quarters (even though private quarters are maintained and occasionally occupied).

4. Off base housing, non-government quarters, occupied by member’s civilian spouse incident to employment overseas with Department of Defense Dependent Schools as a schoolteacher. NOTE: Member is separated from spouse by competent orders.

C. Quarters Furnished on Behalf of the United States. A member is not entitled to BAH or BAH-DIFF for dependents if the member and dependents are furnished adequate family quarters on behalf of the United States without rental charge. Examples of such quarters are:

1. Family quarters furnished a member in an official capacity by a foreign government.

2. Family-type quarters furnished by a state, county, municipal, or privately owned hospital to an officer serving on active duty as an intern or resident physician.

3. Family-type quarters furnished by a college, university, or research facility as part of a fellowship, scholarship, or grant.

D. Quarters Occupied by Dependents. A member furnished single-type quarters is not entitled to BAH on behalf of:

1. A spouse who is a sole dependent and who is furnished quarters in kind as a civilian employee at a government hospital.

2. A spouse who is a sole dependent and who is furnished government quarters while serving with the American Red Cross overseas.

3. A sole dependent who is a student nurse in training at a government hospital. However, BAH is payable on behalf of a dependent who is a student nurse in training at a civilian hospital.

4. A civilian spouse who is a sole dependent and who is furnished government quarters while assigned overseas with the Department of Defense Dependent Schools as a schoolteacher.

5. Dependents evacuated from a danger area, who occupy government housing facilities at a safehaven. (See subparagraph 260302.G for exception when member must continue to pay for private housing.)

6. Dependents alone or when accompanied by the member, who occupy government quarters assigned to another member for more than 30 days at any one duty station. Occupancy for more than 30 days is of a permanent nature and BAH entitlement does not accrue for any portion of the period of such occupancy. Visits of 30 or less days are social visits and do not cause loss of BAH. Movement from one unit of quarters to another or in and out of the same unit, with or without a break, does not establish a new 30-day period.

7. Any dependent(s), if one or more of the member's dependents occupy the quarters with the member on a permanent basis or on a social visit in excess of 30 consecutive days, unless other dependents are precluded by competent orders from residing with the member.

E. Quarters Occupied by Dependents During Member's Sea Duty or Field Duty. Effective June 1, 2003, a member whose dependents temporarily occupy government quarters while the member is on sea duty or field duty is entitled to BAH for a period not to exceed 30 days. (See Table 26-5, rule 2.)

F. Rental Quarters (Other Than Inadequate Quarters). A member and dependents who occupy the following facilities on a rental basis are entitled to BAH. (See "Definitions" for "rental charge.")

1. Any housing facilities, including trailers, under the jurisdiction of the government other than government quarters constructed or designated for occupancy without charge. The member may sublease such quarters to a temporary subleasee with or without charge and neither the sublessor nor subleasee will lose their right to BAH.

2. A hotel on the grounds of a Service Academy.

3. Quarters furnished a member in connection with service in a capacity other than that of a member.

G. Quarters at Safehaven Temporarily Occupied by Dependents. A member is entitled to BAH for dependents when:

1. The member's dependents occupy government-provided housing at a safehaven area after emergency evacuation from private housing at the permanent station; and

2. Due to conditions beyond the member's control, member is required to continue payment of rent for the private housing in order to house furnishings and belongings and to have quarters available upon return of the dependents.

3. This entitlement will continue until such time as dependents are authorized to return to member's permanent duty station or arrive at a designated place as contemplated by JFTR, paragraph U5240-A (reference (d)).

H. Lease on Private Rental Quarters. Effective December 8, 1997, when a member makes a local move from private, leased quarters to government housing, BAH is not payable for the remainder of the lease on the private quarters even though the member is required to honor the lease.

★ 260303. Quarters Designated as Inadequate. Effective January 1, 2006, members that are assigned to inadequate quarters will be paid BAH based on the permanent duty station location.

A. Entitlement to BAH. A member with dependents may be assigned quarters designated as inadequate on a rental basis without loss of BAH. This does not apply to bachelor officer quarters, visiting officer quarters, guest houses, and similar type facilities, or to assigned quarters undergoing ordinary repairs. Orders stating that quarters were inadequate while repairs were being made does not authorize BAH during the period involved.

B. Effect of Subleasing Inadequate Quarters. The member may share the quarters with others or permit occupancy by others while on leave. The member may also sublet the quarters on a rental basis without loss of BAH, the amount of rent being immaterial.

C. Rental Charge for Inadequate (Sub-standard) Quarters. Collect rent from the member at the fair rental value of the quarters, as established by base housing personnel. The rental charge for the quarters shall be the fair rental value of such quarters, not to exceed 75 percent of the member's with dependents BAH rate. Rental charge is independent of the amount and type of BAH being paid to the member. See also subparagraph 260303.G for assignment of inadequate quarters to members married to one another.

D. Effective Date of BAH and Rental Charge. Basic Allowance for Housing and rental charge begin on the date of the member's assignment to such quarters or on the date the determination of inadequacy is effective, whichever is later.

E. Computation of BAH and Rental Charge. Compute BAH and rental charge on a 30-day month basis and prorate at one thirtieth of the monthly rate for each day inadequate quarters are assigned. Do not pay BAH or charge rent for the 31st day of a month. Pay 3 days' BAH and charge 3 days' rent when inadequate quarters are assigned on the 28th of February. Do not charge rent for the day the assignment is terminated; however, BAH accrues for the day of termination.

F. Inadequate Quarters Redesignated Adequate. Rental charges and BAH cease on the date rehabilitated inadequate quarters are redesignated as adequate government quarters. If a member's assignment was continued during the period of rehabilitation, the redesignation of adequacy is effective as of the first day of the month following the month in which the rehabilitation was completed.

G. Husband and Wife Entitled to BAH. When a husband and wife are both members who jointly occupy inadequate family quarters on a rental basis, use Table 26-4 to determine their respective BAH entitlements. The rental charge for the quarters shall be the fair rental value of the assigned inadequate family-type quarters, but will never exceed 75 percent of the with dependents BAH rate which would be payable to a member of the same grade and rank as the member under whose eligibility the quarters are assigned. The BAH paid to the respective members does not affect the amount of rent charged, even where a member is receiving BAH at the with dependents rate. Collect BAH in accordance with Service regulations. For inter-Service marriages, the rental charge will be collected in accordance with the regulations of the Service furnishing the quarters.

260304. Dependent. The term "dependent" for BAH purposes is the same as defined in the "Definitions."

A. Member with Dependents. A member is not entitled to BAH on behalf of:

1. A minor child who is entitled to basic pay as a member on active duty in a Uniformed Service. This includes a minor child attending one of the Military Service academies where quarters are furnished by the United States.

2. A spouse who is on active duty in a Uniformed Service of the United States and entitled to basic pay and allowances. See Table 26-4 for guide to BAH entitlement when both spouses are in the Military Service and entitled to basic pay and allowances.

3. A dependent for whom the member has been absolved of the requirement to provide support; for example, desertion without cause.

4. A dependent whose whereabouts is unknown and whose absence or whereabouts remains unexplained.

5. A former spouse to whom the member is paying alimony.

6. A dependent who occupies government quarters as a permanent residence without payment of a rental charge. (See paragraph 260411 for exception.)

B. Dependent Spouse in Foreign Service. A member is entitled to BAH on behalf of a spouse in military service of a government other than the United States. This applies even though the member is furnished quarters or paid a monetary allowance in lieu of quarters by that government.

C. Dependency Approval. Dependency must be approved before entitlement to BAH is authorized. After initial approval, the Services must maintain adequate levels of internal audit to assure the legality, propriety, and correctness of all disbursements for BAH. See individual Service regulations for procedures.

D. Certification of Dependents Status. Effective April 20, 1999, each member who is entitled to BAH on behalf of dependents must provide recertification to the Secretary concerned indicating the status of each dependent of the member to support entitlement to BAH on behalf of dependents upon arrival at a new PDS. If a member fails to provide the certification in a timely manner, stop BAH on behalf of dependents at the end of the month in which the certification is due, but continue to pay BAH at the appropriate partial or without-dependent rate unless the member is not entitled to that allowance for some other reason. Resume paying BAH at the with-dependent rate effective the date the member provides proper certification. Do not pay the higher rate retroactively in the absence of certification from the member's commander that the failure to recertify timely was for reasons beyond control of the member.

E. Reserve Component Members. Effective April 20, 1999, after initial certification, Reserve Component members must recertify dependency status at least every third year from the previous certification or upon change in dependency status.

F. Dependency Redeterminations. Annual redetermination of dependency is required for members who claim BAH on behalf of:

1. Parents, parents-in-law, stepparents, parents-by-adoption, or in-loco-parentis.

2. Students 21 and 22 years of age.

3. Incapacitated children over 21 years of age.

4. Ward of a court.

260305. Entitlement During Leave, Travel Status, Separation, and Other Situations.
See Table 26-5.

260306. Dates To Start and Stop BAH. See Tables 26-6, 26-7, and 26-8.

2604 RULES FOR DETERMINING RELATIONSHIP AND DEPENDENCY

260401. Application of Rules. In determining relationship or dependency for BAH entitlement, the appropriate officials must apply the rules in Table 26-1 or 26-2.

260402. Lawful Spouse and Legitimate, Unmarried, Minor Children. A member's lawful spouse and legitimate, unmarried, minor children are at all times considered dependents for BAH purposes, except under the situations shown below and in subparagraphs 260304.A or 260406. When both members are entitled to BAH or BAH-DIFF on behalf of a child(ren) from a previous relationship, when they marry and are stationed in the same area, all of the children are considered as one class of dependents. Therefore, only one BAH at the with dependents rate (including BAH-DIFF) is payable. A determination of relationship is required, but usually a determination of dependency is not. In all instances of a member having a spouse on active duty, full details must be given showing full name, social security number, duty station, and branch of Service of that spouse.

A. When two members, with no other dependents, are married to each other, they may elect which member will receive BAH on behalf of their adopted children or children born of their marriage. Both members must agree to the election. If the members cannot agree, the senior member is entitled to BAH for their children. The members may subsequently elect to transfer BAH entitlement on behalf of adopted children and children born of the marriage from one member to the other. Such elections may not be applied retroactively.

B. When one of two members married to each other is already receiving BAH at the with dependents rate on behalf of an adopted child(ren), child(ren) from a previous marriage, or an illegitimate child(ren), then any child(ren) born of their marriage, or adopted by them, is within the same class of dependents for which the member is receiving BAH and the other member may not claim the children for BAH purposes. However, if the member elects to stop receiving BAH at the with dependents rate, then the other member may claim the child(ren) for BAH purposes.

C. Effective April, 15, 2003, when married members are assigned to different locations, pursuant to competent military orders, their entitlement to BAH at the with dependents rate or to government-furnished quarters should be determined separately, without regard to the general rule that all children and parents of the members are dependents of the same class for the purpose of determining BAH entitlements. Each member is required to have physical custody of a dependent if both members are claiming an entitlement to BAH at the with dependents rate.

D. When one of two members married to each other is receiving BAH at the with dependents rate, the class of dependents includes the parents of either member and only one member is entitled to BAH at the with dependents rate or BAH-DIFF on behalf of the common class of dependents when the members are assigned to the same or adjacent bases.

260403. Validity of Member's Marriage. Any case where the validity of a member's marriage is questioned is considered a case of doubtful relationship.

A. Remarriage Within Prohibited Period Following Divorce. Under the laws of some states, a marriage is not dissolved until a specified period has elapsed after granting of a divorce decree. Remarriage is prohibited within the specified period. Moreover, in all states that grant an interlocutory decree before they grant a final divorce decree, remarriage may not be contracted before the final decree is granted.

B. Marriage by Proxy. Proxy marriages are considered valid if performed in a jurisdiction which recognizes common-law marriages and has no statute or judicial determination prohibiting proxy marriages.

C. Marriage by Telephone. A marriage by telephone will be recognized as entitling a member to BAH on behalf of a "lawful spouse" only if a statute or court decision authorizes or recognizes telephone marriages in the jurisdiction where the marriage was performed.

D. Common-Law Marriages. Under laws of certain states, a common-law marriage may be entered into by persons who do not obtain a license to marry or go through certain other formalities. Common-law marriages entered into in those states are considered valid if they are contracted in accordance with state law.

E. Foreign Nation Divorce. A foreign nation divorce may or may not be recognized as valid in the United States depending on several factors. These factors include place of residence of the parties involved, whether they appeared in person to obtain the divorce, and applicable state laws. Any claim involving remarriage of a member following a foreign nation divorce and any claim by or on behalf of the spouse from whom the member has obtained a foreign nation divorce are cases of doubtful relationship. A claim based on a member's marriage to a person who has obtained a foreign nation divorce is also a doubtful case.

F. Purported Marriage

1. Void Marriage. If a member's marriage is void (because of a pre-existing marriage of the spouse, for example) the member has no lawful spouse and is not entitled to BAH as a result of the purported marriage. When invalidity of the marriage is discovered, no further BAH payments may be made for any period (see Table 26-7, rule 4). The member may retain payments already received if they are validated under section 5005 of this volume. When validity of a marriage is questionable, submit the case to the office shown in subparagraph 3 for a determination on validity of the marriage and, if necessary, validation of payments already made.

2. Annulled Marriage. If a member's marriage is annulled by court decree, no further BAH payments may be made for any period (see Table 26-7, rule 3). The member may retain payments received before the effective date of the decree. Since validation under section 5005 is required for retention of such payments in some annulment cases (based on legal factors), submit all annulment cases to the office shown in subparagraph 3 for review and, if necessary, validation of payments made.

3. Determination and Validations. Submit requests for determination on validity of a marriage (doubtful cases) or for validation of payments to the appropriate address shown below:

- a. Army:
DFAS-PMTEC-C/IN
8899 East 56th Street
Indianapolis, IN 46249-0855
- b. Navy:
DFAS-CL/PMMACB
1240 East 9th Street
Cleveland, OH 44199-2055
- c. Air Force:
DFAS-PMJPD/DE
6760 East Irvington Place
Denver, CO 80279-3000
- d. Marine Corps:
Commandant of the Marine Corps (MRP-1)
3280 Russell Avenue
Quantico, VA 22134

260404. Child of Legally Invalid Marriage. An unmarried minor child of an invalid marriage or a marriage annulled as void or voidable is considered a dependent for BAH purposes.

260405. Reserved

260406. Support of Dependent-General

A. Proof of Support. The statutory purpose of BAH on behalf of a dependent is to at least partially reimburse members for the expense of providing private quarters for their dependents when government quarters are not furnished, and not to pay BAH on behalf of a dependent as a bonus merely for the technical status of being married or a parent. Proof of support of a lawful spouse or unmarried, minor, legitimate child of a member is generally not required. However, when evidence (e.g., special investigation reports; record reviews; fraud,

waste and abuse complaints; sworn testimony of individuals; statement by member) or complaints from dependents of nonsupport or inadequate support of dependents are received, proof of adequate support as stated in subparagraph E is required.

B. Nonsupport. A member who fails to support a dependent on whose behalf BAH is received is not entitled to BAH on behalf of that dependent. Recoup for periods of nonsupport or inadequate support. Unless a period of nonsupport or inadequate support was caused as a result of mission requirements of the Service concerned (e.g., remote assignment, deployed, limited access to administrative support and/or financial networks, etc.), or the actions of outside agencies (such as financial institutions, postal service, etc.) over which the member has no control, as determined by Service regulations, the subsequent payment of arrears of support does not entitle a member to BAH on behalf of the dependent for the period of nonsupport or inadequate support. If a member is not entitled to BAH for dependents under any of the subsequent subparagraphs, consider entitlement to without dependents or partial rate BAH under section 2602. NOTE: A member does not avoid the legal responsibility to comply with a court order for support by forfeiting BAH.

C. Legal Separation Agreement or Court Decree, Judgment or Order Silent on Support, Not Stating Amount of Support, or Absolving Member of Support Responsibility. A legal separation agreement, court decree, judgment, or order that is silent on dependent support, does not state the amount of dependent support, or absolves the member of dependent support responsibility does not of itself affect a member's BAH entitlement. This is true regardless of the jurisdiction in which the decree, agreement or order was issued or in which the dependent is domiciled. The member is entitled to BAH on behalf of a dependent if the member contributes to the support of the dependent in an amount that is not less than the applicable BAH-DIFF rate.

D. Legal Separation Agreement or Court Order Stating Amount of Support. If there is a court order or legal separation agreement stating the amount of support, a member must contribute to the support of the dependent the amount specified therein, but in no case may the support payments be less than the applicable BAH-DIFF rate.

1. When a member is divorced from a nonmember, and they share joint legal custody of a child, and the ex-spouse is awarded primary physical custody, then the member is considered a noncustodial parent for the purpose of entitlement to BAH. If the member's court-ordered child support is less than the applicable BAH-DIFF rate, and the member is not residing in, or assigned to, government quarters, the member is entitled only to BAH at the without dependents rate. However, members who pay additional support to the ex-spouse having primary custody of the child(ren) so that the total child support provided is equal to or more than the BAH-DIFF rate, and who are not assigned to government quarters, are entitled to BAH at the without dependents rate and BAH-DIFF.

2. When a member has temporary custody of a child and they reside in private quarters, then the cost of maintaining a residence is not a factor in determining entitlement to with dependents rate of BAH and may not be used instead of or in addition to child support to qualify for increased allowances. The dependent child must reside with the member on a nontemporary basis (e.g., for a continuous period of more than 90 consecutive

days) to qualify for the with dependents rate BAH for the temporary period. The cost of maintaining a home may not be added to the child support amount to qualify for the increased allowances.

E. Adequate Support. If the support requirements are not established by court order or legal separation agreement, a member must provide support in an amount that is not less than the BAH-DIFF rate applicable to the member's grade. The amount of support required to retain or receive BAH on behalf of a dependent does not necessarily mean that such amount is adequate to meet the policy of the Service concerned as to what constitutes adequate support in the absence of a legal separation agreement or court order. See Table 26-12 for BAH-DIFF rates.

F. Increase in Support Required by Increase in BAH-DIFF Rates. Whenever there is an increase in BAH-DIFF rates, the minimum required support for BAH purposes increases to the new rate. Members receiving BAH on behalf of a dependent must increase the amount of support, when applicable, within 60 days of the increase in order to continue receiving the BAH on behalf of the dependent.

G. Voluntary Support Payments. Voluntary support payments will not be considered for purposes of determining BAH entitlement unless there is a mutual agreement between the member parents that the support payments will be accepted by the custodial member parent.

H. Settlement Agreement

1. Property settlements made under a court order or written agreement are not considered support for BAH purposes.

2. Payments made under a settlement in place of support are considered support for the period expressly provided in the written agreement or court order.

3. A lump-sum settlement in place of support made under written agreement or court order is considered support for the period the lump sum would reasonably cover support of the dependent.

I. Interlocutory Decree of Divorce. If an interlocutory decree of divorce does not provide for support to the spouse, the member is not entitled to BAH for the spouse after the date of the decree unless proof of support is furnished.

J. Doubtful Cases. Submit any doubtful cases involving support for determination to the offices listed in subparagraph 260403.F.

260407. Support of Dependent - Both Parents Are MembersA. Divorce or Legal Separation Effective or Amended Before July 1, 1992.

In addition to the provisions of paragraph 260406, the following subparagraphs apply when divorced or legally separated parents are both members and the divorce or separation occurred prior to July 1, 1992. These rules apply only when neither member is assigned to family-type government quarters, unless otherwise specified.

1. The noncustodial parent is entitled to BAH on behalf of the child(ren), provided the noncustodial parent pays adequate child support.

2. If the noncustodial member does not pay the required amount of child support, the custodial member is entitled to BAH on behalf of the child(ren).

3. The custodial member is entitled to BAH on behalf of the child(ren) if the noncustodial member declines to claim the child(ren). Such declination should be in writing if possible, may be revoked at anytime, and may not be retroactive. If the noncustodial member is entitled to BAH on behalf of another dependent, the custodial member is entitled to BAH on behalf of the child(ren) of the marriage.

4. Only one parent is entitled to BAH on behalf of children of the marriage when all of the children reside in one household; this applies even if child support payments are specifically for support of only some of the children.

5. When the child(ren) of the marriage are in the custody of a third party, only one member is entitled to BAH on behalf of the children, even if both members are paying sufficient child support to qualify for the entitlement. The senior member is entitled to BAH on behalf of the child(ren) when the two members do not agree on which person will claim the entitlement. If the members are of equal rank, date of rank determines which one receives BAH on behalf of the child(ren).

6. When each member has legal and physical custody of one or more of the children of the marriage, each member is entitled to BAH on behalf of those child(ren). If one member is paying adequate child support on behalf of the child(ren) in the other member's custody, the custodial member is not entitled to BAH on behalf of the child(ren) in that member's custody.

7. In cases of joint legal custody, when physical custody changes from one parent to another, each parent is entitled to BAH on behalf of the child(ren) during those periods the child(ren) are actually in that parent's physical custody.

8. When a noncustodial member pays child support to the custodial parent who also has another dependent who makes the member eligible for BAH, there is a presumption that the custodial parent's entitlement is based on the dependent(s) other than the child(ren) of the marriage. The BAH entitlement for the custodial and noncustodial parents is determined individually.

B. Divorce or Legal Separation Effective or Amended After June 30, 1992. In addition to the provisions of paragraph 260406, the following subparagraphs apply when the divorced or separated parents are both members and the divorce or separation occurred, or the decree or agreement was amended after June 30, 1992. These rules apply only when neither member is assigned to family-type government quarters, unless otherwise specified.

1. Unless the members agree to the contrary, the custodial parent is entitled to BAH on behalf of the child(ren) regardless of the amount of child support received by that member. In addition to the court order, a separate notarized agreement between the members must be provided in order for the noncustodial member to receive BAH on behalf of the child(ren).

2. When the members each have legal and physical custody of one or more of the children of the marriage, they are each entitled to BAH on behalf of the children in their individual custody, regardless of child support payments from one member to the other.

3. When the child(ren) are in the custody of a third party, the rule in subparagraph 260407.A.5 applies.

4. In cases when there is joint legal custody, with physical custody changing from one parent to the other, the rule in subparagraph 260407.A.7 applies.

5. When the dependents are not a common class, the rule in subparagraph 260407.A.8 applies.

260408. Child Living With Former Spouse Remarried to Another Service Member

A. When a member's child resides in government quarters not assigned to the divorced member parent, that member is not entitled to BAH on behalf of the child.

B. Basic Allowance for Housing may not be paid on behalf of a child to both the stepparent and the natural parent at the same time. The natural parent has priority to BAH on behalf of that child if providing adequate support.

260409. Child(ren) Living With Former Spouse-Member Remarries

A. Subparagraph 260301.A.2 does not apply in the case of a member who is required to support a child in the custody of a former spouse when the member remarries and is assigned to or occupies government family quarters. The member is not entitled to BAH on behalf of the child living with the former spouse. This rule also applies when, upon remarriage, the member marries a member.

B. If a member is required to support a child in the custody of a former spouse and the noncustodial parent marries another member and children are born of this marriage, and the member paying child support vacates government quarters on PCS assignment with quarters being reassigned to the new spouse, the member reassigned PCS is entitled to BAH on behalf of the child(ren) of the former marriage.

260410. Child(ren) Living With Former Spouse or Estranged Spouse Who Is A Member Assigned Family Quarters. When the member parent having custody of the child(ren) is assigned to, or occupies, adequate family-type quarters with the child(ren) while receiving child support, the member parent paying child support is not entitled to BAH on behalf of the child(ren).

260411. Child Living With Former or Estranged Spouse in Family Quarters Visits Member. When a child(ren) who normally resides in government family quarters with a member's former or estranged spouse (custodial parent) visits the member in private quarters for more than 90 days, the visit is considered nontemporary and the member is entitled to BAH on behalf of the child(ren) from the first day of the visit. If the visit is 90 days or less, BAH on behalf of the child(ren) is not payable for any part of the visit.

260412. Adopted, Illegitimate, and Stepchild(ren). Adopted children, illegitimate children, and stepchild(ren) are primary dependents. As a result, dependency is no longer required for these dependents.

A. Proof of Parentage. A member who claims BAH on behalf of an adopted child, stepchild, or a child born out of wedlock (parents are not married to each other at the time of the child's birth) must provide proof of parentage as follows:

1. For an adopted child, document showing the member is the child's legal parent.

2. For a stepchild, a marriage license showing the member is married to the child's legal parent and documentation showing that the member's spouse is the parent of the child.

3. For a child born out of wedlock, a birth certificate with the member name cited is required. If the member name is not stated on the birth certificate, or a court-order, obtain a signed statement of parentage from the member. If the illegitimate child(ren) is (are) not in the custody of the member parent, the case is treated in accordance with the rules for BAH-DIFF. The same rules apply when applicable to a member-mother not having custody.

B. Support Requirements. The member-parent may claim a dependent child(ren), adopted child(ren), illegitimate child(ren), and stepchild(ren) for BAH purposes. Proof of support for dependents is generally not required. The provisions of subparagraph 260406.A will be applied. The member is entitled to BAH if the member contributes to the support of the dependent(s) and that support is not less than the BAH-DIFF. This includes members entitled to BAH-DIFF and members assigned to single type quarters when the child(ren) is in the physical custody of another person.

260413. In Fact Dependency Determinations for Secondary Dependents. An incapacitated child over age 21, a ward of the court, or an unmarried child over age 21 and under age 23 (fulltime in college), requires an in fact dependency in accordance with the regulations of the Service concerned. The child must be dependent upon the member for over one-half of the child's support. This means:

A. The child's income, not counting the member's contributions, must be less than one-half of the child's living expenses, and

B. The member's contribution must be more than one-half of the child's monthly living expenses.

260414. Dependent Child Adopted by a Third Party. A member is not entitled to BAH for a child after the child is adopted by a third party and final order or decree of adoption has been entered. Entitlement to BAH continues after an interlocutory decree has been entered if the decree does not change the legal relationship between the child and the member, and the member supports the child.

260415. Confinement in Penal or Correctional Institution

A. Basic Allowance for Housing Payable. Confinement of a member's spouse or unmarried minor child in a penal or correctional institution does not affect member's right to BAH on the dependent's behalf, unless:

1. The member refuses to support the dependent.
2. The member has been absolved from supporting the dependent.
3. The period of confinement may extend beyond 5 years.

4. The case is otherwise doubtful.

B. Doubtful Cases. Submit cases involving a sentence extending beyond 5 years, and doubtful cases to the addresses shown in subparagraph 260403.F.3. Do not pay BAH pending decision.

260416. Limitation on the Amount of BAH Payable to a Member Entitled to BAH Solely on the Basis of the Member's Payment of Child Support

A. Except as provided in subparagraph B, if a member is assigned to single-type quarters of the United States or a housing facility under the jurisdiction of a Uniformed Service and is authorized BAH solely by reason of the member's payment of adequate child support, the member is entitled to BAH-DIFF.

B. A member who was assigned to single-type government quarters and entitled to BAH at the with dependents rate solely on the basis of the member's payment of child support on December 4, 1991, is entitled to BAH-II at the with-dependent rate until such time as the member becomes entitled to receive BAH on behalf of a dependent for a reason other than, or in addition to, the member's payment of child support. If a member moves out of single-type government quarters, or has a PCS on or after January 1, 1998, the member is no longer entitled to BAH-II under the preceding sentence. Basic Allowance for Housing entitlement in such cases will be determined under the normal rules.

C. A member not assigned to government quarters, who is entitled to BAH on behalf of a dependent solely on the basis of payment of child support, is entitled to BAH at the without dependents rate and BAH-DIFF.

260417. Dependent Parent

A. Basis of Determination. Dependency of a parent is determined on the basis of an affidavit submitted by the parent, and any other evidence required under applicable regulations. Determination of dependency is made by applicable authority listed in subparagraph 260403.F.3. A legal guardian may complete the form for a mentally incompetent parent.

B. Dependency Requirement. A member is entitled to BAH on behalf of parents if the parents are dependent upon the member for over one-half of their support. This means:

1. The parents' income, not counting the member's contribution, must be less than one-half of their monthly living expenses, and

2. The member's contribution must be more than one-half of the parent's monthly living expenses.

C. Change in Status of Dependent. A member is entitled to BAH for any active duty period during which dependency of the parent is shown to exist, whether the dependency arose before or after the member entered service. If dependency arises because of changed circumstances, and the facts show the member has started to contribute over one-half of the parents' support, BAH is authorized from the date the contribution began.

D. Stepparent. A stepparent/stepchild relationship ends upon divorce from the blood parent, but not necessarily upon death of the blood parent. Basic allowance for housing on behalf of a stepparent may be established after death of the blood parent.

260418. Factors Used in Dependency Determinations for Parents

A. Family Unit Rule. In determining dependency of a parent, the total income and expenses of the family unit of which the parent is a member must be considered. Normally, the member's contribution to the expenses of the unit must exceed one-half of the unit's total expenses before any one person in the unit can be considered dependent on him or her. For example, a mother cannot be considered dependent if she is a member of a family unit in which her husband is supporting himself but is not providing sufficiently for the mother's individual needs.

B. Equity and Good Conscience. When application of the family unit rule results in manifest injustice, any other available evidence of dependency is considered, and determination made according to principles of equity and good conscience.

C. Charity. Effective April 20, 1999, contributions made to parents by charitable organizations are considered income of the parent.

D. Charitable Institution. Residence of a parent in a charitable institution, public or private, is not a bar to entitlement if the member claims BAH on behalf of the parent and other conditions of entitlement are met.

E. Social Security, Unemployment Compensation, and Pensions. Effective April 20, 1999, payments made to the parent from the Social Security Administration, unemployment compensation, and financial assistance from governmental agencies, are considered income. Pensions received by the parent are also considered income.

F. Capital Assets. Unliquidated capital assets are not considered income, and parents are not required to deplete their capital assets in order to establish dependency on a member for BAH purposes. However, proceeds derived from the liquidation of capital assets are considered income. Amounts placed in reserve for depreciation of property held for income normally are considered available for current living expenses of a parent, are therefore, income.

G. Rate of Return Rule. In determining dependency of parents who possess uninvested capital, compute the income return on the basis of 5.25 percent per annum.