

### Payment of \$100,000 Death Gratuity during the Shutdown

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#### 9.0--Miscellaneous

I am sure that readers are well aware that our Federal Government is in a “partial shutdown” mode because Congress has not enacted and the President has not signed appropriations laws (neither full-fledged appropriations nor continuing resolutions that authorize continued funding at last year’s level) for Fiscal Year 2014, which began on October 1, 2013. In an attempt to ameliorate the most serious effects of this situation, the House of Representatives has passed several piecemeal bills addressing very specific situations. The Senate has rejected most but not all of those House-passed bills.

One bill that did pass the Senate as well as the House, and that was signed into law by President Obama, is the Pay our Military Act, Public Law 113-39.<sup>1</sup> Section 2(a)(1) of this new law appropriates “such sums as are necessary to provide pay and allowances to *members of the Armed Forces* ... who perform active service during such period” [without enacted appropriations]. (Emphasis supplied.)

This language is clearly sufficient to provide authority to pay salaries and benefits to active duty service members. But what about the death gratuity? Under section 1475 of title 10 of the United States Code (10 U.S.C. 1475), a death gratuity (currently \$100,000) is paid to the survivors of a person who dies while on active duty.<sup>2</sup> These payments are normally made very quickly, within 48 or 72 hours after the death of the service member.

On advice of the Department of Defense (DOD) General Counsel, the DOD Comptroller has taken the position that section 2(a)(1) of the Pay our Military Act does not authorize the payment of the death gratuity to the survivors of the fallen service member. Section 2(a)(1) authorizes the expenditure of funds to pay *members of the Armed Forces*. The death gratuity is not paid to a member of the Armed Forces—the service member is dead.

On October 8, 2013, Representative Howard P. “Buck” McKeon (Chairman of the House Armed Services Committee) issued a press release in which he said, “Last week Congress unanimously passed the Pay our Military Act with the express intent that all military pay and allowances would be dispersed during a government shutdown. Judging by the Department of Defense’s own summary of those programs, we believed that ‘death gratuities’ would continue to go to the families of those heroes who made the ultimate sacrifice. Without question, that was our clear intent. However, we can never let the welfare of our troops and their families become pawns in a political contest. If the Pentagon believes they need more explicit authority to disburse these payments, I am sure that the House will provide it in very short order.”

On October 9, Representative Ron Barber of Arizona introduced H.R. 3274, the “Fallen Heroes and Family Assistance Act” and he is lining up co-sponsors of both parties. ROA has formally endorsed this bill and is working feverishly to get it enacted.

If enacted, this bill would amend the Pay our Military Act and would explicitly appropriate funds to pay the death gratuity, the payment of a service member’s pay and allowances that were due at the time of his or her death, the

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<sup>1</sup> This number means that this is the 39<sup>th</sup> Public Law enacted by the 113<sup>th</sup> Congress, which began in January of this year. Congress is a giant funnel. Thousands of bills are introduced, but only a few dozen new laws are enacted.

<sup>2</sup> Most of the controversy about this situation deals with service members recently killed in action in Afghanistan, but the death gratuity is paid in the case of the death of anyone on active duty, to include automobile accidents, heart attacks, etc.

payment or reimbursement for authorized funeral and burial expenses, the payment or reimbursement of authorized funeral travel and travel related to the dignified transfer of remains and unit memorial services, and the continuation of a basic allowance for dependents of service members dying on active duty. We will keep the readers informed of developments on this important matter.

ROA's Service Members Law Center (SMLC) is working overtime (at no additional expense to ROA) to address all the shutdown questions, on top of the 800 or so inquiries that come in each month under normal circumstances. As the SMLC Director, I am here at my post answering telephone calls and e-mails during regular business hours on weekdays, and also until 10 pm Eastern Time on Mondays and Thursdays.<sup>3</sup> During the emergency, I am here other weekday evenings as well and also on weekends.

On October 8, we sent out a special appeal for funds by e-mail. Thank you to all those who responded so quickly and generously.

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<sup>3</sup> Ordinarily, about half of the inquiries are about the rights of Reserve Component (RC) members with respect to their civilian employers. I stay late two nights per week in order to make it possible for RC members to call me from the privacy of their own homes, outside their civilian work hours. If you are calling or e-mailing to complain about your employer, please do not use the employer's telephone, computer, or time.