SEC. ___. BASIC ALLOWANCE FOR HOUSING FOR TWO-MEMBER COUPLES WHEN ONE IS ON SEA DUTY.

(a) IN GENERAL.—Subparagraph (C) of section 403(f)(2) of title 37, United States Code, is amended to read as follows:

"(C) Notwithstanding section 421 of this title, a member of a uniformed service in a pay grade below pay grade E-6 who is assigned to sea duty and is married to another member of a uniformed service is entitled to a basic allowance for housing subject to the limitations of subsection (e).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on January 1, 2011.

Section-by-Section Analysis

This section would allow military members to receive a Basic Allowance for Housing (BAH) while on sea duty when married to another military member, regardless of the other member's sea duty status, pay grade, or dependency status, if each member would otherwise, under law and regulation, be entitled to receive BAH but for the assignment to sea duty. These changes would be effective on January 1, 2011.

Currently, the law authorizes a BAH for each member of a married military couple (who have no other dependents) when each member is in pay grade E-5 or below and when the couple is simultaneously assigned to sea duty. In this case, each of the members receives BAH at the without-dependents rate for the location of the home port of the ship to which each is assigned.

Under the current statute, the three qualification requirements (i.e., that the members of the couple must be simultaneously assigned to sea duty, that they each have no other dependents, and that each must be serving in a pay grade below E-6) create inequities for our military members. Members may individually meet all the requirements above; however, if their military spouses do not meet those requirements, then the member who does meet those requirements will be unfairly denied a BAH entitlement. In addition, each member's entitlement to BAH is put at risk if any of the conditions required by the statute to qualify for the entitlement change. For example, if one member of the couple is transferred to shore duty and the other isn't, the member remaining on sea duty could lose his/her entitlement to BAH; similarly, if the couple has a child, one member of the couple will gain an entitlement to BAH at the with-dependents rate, but the other member could lose his or her entitlement to BAH. This proposal seeks to amend

the statute to eliminate the created inequities for each member of a dual military couple simply because of a difference or change in assignment, pay grade or dependency status.

Because members of military couples are not considered to be each other's "dependents", each member of a military couple, with no other dependents, is considered a single member for housing allowance purposes. Subparagraph (f)(2)(A) of title 37, U.S. Code, section 403, specifically prohibits single members on sea duty, who are below the pay grade of E-6, to receive a housing allowance (with the Service secretary concerned given the ability to authorize BAH for E-5 and E-4 members under subparagraph (f)(2)(B) of the section). Because of the effect of this paragraph, members of a military couple, without any other dependents, who are below the pay grade of E-4 would not be authorized a housing allowance. The provisions in title 37 U.S. Code section 403(f)(2)(C) were meant to address this inequity and allow those members to receive a housing allowance. However, the language of the law has, in addition, created further inequities that need to be addressed. A change to this section of the law would eliminate these inequities. The paragraphs below explain the three cases in which the current law creates inequities.

The first inequity created by the current law involves the pay grade requirement for this entitlement. The law states military to military couples that are simultaneously assigned to sea duty and have no other dependents must both be below the pay grade of E-6 in order to each receive BAH at the without dependents rate applicable to their pay grade. Because of this, and the additional limitations in subparagraphs (2)(A) and (2)(B) of subsection (f), an E-3 member on sea duty who is married to an E-6 or above member on sea duty would be ineligible to receive a BAH. However, if that same E-3 were instead married to a member of the pay grade E-5 or below on sea duty, and each member still did not have dependents, then the E-3 member would be eligible to receive BAH.

The second inequity created by this law involves the requirement for simultaneous assignment to sea duty in order to receive this entitlement. The law states military to military couples that are below the pay grade of E-6 and have no other dependents must both be simultaneously assigned to sea duty in order to each receive BAH at the without-dependents rate applicable to their pay grade. Because of this, an inequity is created between shore duty and sea duty sailors. If two married E-3 sailors with no other dependents are both assigned to sea duty, they each will receive BAH at the single rate. If two married E-3 sailors with no other dependents are both assigned to shore duty, they each would be authorized to live off base and receive BAH if government quarters were not available for them to reside together. However, if there is a married E-3 couple with no other dependents, where one member is on shore duty and the other member is on sea duty, only the member on shore duty can be authorized a BAH and the member on sea duty is prohibited by law from receiving BAH. Further, if the E-3 couple had both been assigned to sea duty and both had received BAH, but one member of the couple transfers to shore duty in the same locale, while the other remains on sea duty, the BAH for the member that remains on sea duty must be stopped, even though the couple's residence and housing costs have not changed.

The third inequity involves the requirement for married military couples to have no other dependents. The law states that military to military couples, who are simultaneously assigned to sea and are below the pay grade of E-6, must have no other dependents in order to each receive

BAH at the without-dependents rate applicable to their pay grade. Because of this, an inequity is created between E-5 and below couples on sea duty who have a dependent, and E-5 and below members on sea duty who do not have a dependent. If two married E-3 sailors with no other dependents are both assigned to sea duty, they each will receive BAH at the without-dependents rate. However, if that same couple had a dependent, only one of the members would be eligible to receive a BAH at the with-dependents rate, and the other member would not be eligible to receive any BAH. Additionally, if one of the members of an E-3 couple, where both members are assigned to sea duty, has a child from a previous relationship (a dependent) where the member pays child support for that child, the only entitlement for BAH for that member is BAH-Differential (BAH-DIFF, i.e., the amount that is the difference between BAH at the with-dependents rate and BAH at the without-dependents rate), but only if that member resides in government quarters (an unlikely situation). The other member of the couple (the one with no dependents) would not be entitled to any BAH. If this same couple were to reside "on the local economy," they would do so without any entitlement to BAH. Since the member of this E-3 couple now has a "dependent", the couple cannot be considered a couple without dependents, and therefore their eligibility for BAH is lost. This would be a particularly egregious circumstance if an E-3 couple had been receiving BAH under the provisions of subparagraph (f)(2)(C), but then one member of the couple lost his or her entitlement because they had a baby.

These inequities, and other potential ones, can be eliminated by the proposed revision to subparagraph (2)(C) of subsection (f). The intent of the subparagraph is to allow military couples on sea duty to receive a BAH and be able to obtain housing "on the local economy" (on par with other "dual military couples"), but at the same time prohibit single E-3 and below members on sea duty from receiving BAH. By eliminating the requirements to have each member assigned to sea duty, below pay grade of E-6 and have "no other dependents", the law will be consistent with its intentions and at the same time eliminate the inequities/risks created by the current language.

Budgetary Implications: Navy estimates that there is no additional cost incurred as a result of this section. This legislative proposal is intended to rectify an oversight in the existing legislation which had the unintended consequence of excluding a small population of members. Because Navy's intent has been to provide BAH for the affected personnel, the associated cost of $17.981 million across the Future Years Defense Program (FYDP) is already accounted for programmatically in the Military Personnel, Navy accounts. The personnel affected for Navy are reflected in the following tables:

NUMBER OF PERSONNEL AFFECTED								
	FY 2011	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**Appropriation To**	**Budget Activity**	**Line Item**
Army	0	0	0	0	0	N/A	N/A	N/A
Navy	200	200	200	200	200	MILPERS, Navy	1,2	080010
Marine Corps	0	0	0	0	0	N/A	N/A	N/A
Air Force	0	0	0	0	0	N/A	N/A	N/A
Total	200	200	200	200	200			

RESOURCE REQUIREMENTS ($MILLIONS)								
	FY 2011	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**Appropriation From**	**Budget Activity**	**Line Item**
Army	0	0	0	0	0	N/A	N/A	N/A
Navy	3.3	3.442	3.59	3.744	3.905	MILPERS, Navy	1,2	080010
Marine Corps	0	0	0	0	0	N/A	N/A	N/A
Air Force	0	0	0	0	0	N/A	N/A	N/A
Total	3.3	3.442	3.59	3.744	3.905			

Cost Methodology: The projected population that would be affected by this change, including pay grade and location, has been identified. Using an estimated BAH rate based on the location and pay grade of the affected members, the annual BAH cost attributable to this population is estimated at $17.981 million across the FYDP. However, because the exclusion of this population was an unintended consequence, this cost has already been accounted for in the programmatic planning process. Therefore the additional cost to the Navy is estimated to be zero dollars across the FYDP. It is further anticipated there will be no additional costs to the uniformed services other than Navy, or if there are, that those costs will be negligible.

Changes to Existing Law: This proposal would make the following changes to section 403 of title 37, United States Code:

§403. Basic allowance for housing

(a) GENERAL ENTITLEMENT.—(1) Except as otherwise provided by law, a member of a uniformed service who is entitled to basic pay is entitled to a basic allowance for housing at the monthly rates prescribed under this section or another provision of law with regard to the applicable component of the basic allowance for housing. The amount of the basic allowance for housing for a member will vary according to the pay grade in which the member is assigned or distributed for basic pay purposes, the dependency status of the member, and the geographic location of the member. The basic allowance for housing may be paid in advance.

(2) A member of a uniformed service with dependents is not entitled to a basic allowance for housing as a member with dependents unless the member makes a certification to the Secretary concerned indicating the status of each dependent of the member. The certification shall be made in accordance with regulations prescribed by the Secretary of Defense.

(b) BASIC ALLOWANCE FOR HOUSING INSIDE THE UNITED STATES.—(1) The Secretary of Defense shall prescribe the rates of the basic allowance for housing that are applicable for the various military housing areas in the United States. The rates for an area shall be based on the costs of adequate housing determined for the area under paragraph (2).

(2) The Secretary of Defense shall determine the costs of adequate housing in a military housing area in the United States for all members of the uniformed services entitled to a basic allowance for housing in that area. The Secretary shall base the determination upon the costs of adequate housing for civilians with comparable income levels in the same area. After June 30, 2001, the Secretary may not differentiate between members with dependents in pay grades E-1 through E-4 in determining what constitutes adequate housing for members.

(3) The total amount that may be paid for a fiscal year for the basic allowance for housing under this subsection may not be less than the product of—

(A) the total amount authorized to be paid for such allowance for the preceding fiscal year; and

(B) a fraction—

(i) the numerator of which is the index of the national average monthly cost of housing for June of the preceding fiscal year; and

(ii) the denominator of which is the index of the national average monthly cost of housing for June of the second preceding fiscal year.

(4) An adjustment in the rates of the basic allowance for housing under this subsection as a result of the Secretary's redetermination of housing costs in an area shall take effect on the same date as the effective date of the next increase in basic pay under section 1009 of this title or other provision of law.

(5) On and after July 1, 2001, the Secretary of Defense shall establish a single monthly rate for members of the uniformed services with dependents in pay grades E-1 through E-4 in the same military housing area. The rate shall be consistent with the rates paid to members in pay grades other than pay grades E-1 through E-4 and shall be based on the following:

(A) The average cost of a two-bedroom apartment in that military housing area.

(B) One-half of the difference between the average cost of a two-bedroom townhouse in that area and the amount determined in subparagraph (A).

(6) So long as a member of a uniformed service retains uninterrupted eligibility to receive a basic allowance for housing within an area of the United States, the monthly amount of the allowance for the member may not be reduced as a result of changes in housing costs in the area or the promotion of the member.

(7)(A) Under the authority of this paragraph, the Secretary of Defense may prescribe a temporary increase in the rates of basic allowance for housing otherwise prescribed for a military housing area or a portion of a military housing area if the military housing area or portion thereof—

(i) is located in an area covered by a declaration by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) that a major disaster exists; or

(ii) contains one or more military installations that are experiencing a sudden increase in the number of members of the armed forces assigned to the installation.

(B) The Secretary of Defense shall base the amount of the increase to be made in the rates of basic allowance for housing for an area on a determination by the Secretary of the amount by which the costs of adequate housing for civilians have increased in the area by reason of the disaster or the influx of military personnel, except that the increase may not exceed the amount equal to 20 percent of the rate of basic allowance for housing otherwise prescribed for the area.

(C) A member may be paid a basic allowance for housing at a rate increased under this paragraph only if the member certifies to the Secretary concerned that the member has incurred increased housing costs in the area by reason of the disaster or the influx of military personnel.

(D) Subject to subparagraph (E), an increase in the rates of basic allowance for housing in an area under this paragraph shall remain in effect until the effective date of the first adjustment in rates of basic allowance for housing made for the area pursuant to a redetermination of

housing costs in the area under this subsection that occurs after the date of the increase under this paragraph.

(E) An increase in the rates of basic allowance for housing for an area may not be prescribed under this paragraph or continue after December 31, 2009.

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(f) INELIGIBILITY DURING INITIAL FIELD DUTY OR SEA DUTY.—(1) A member of a uniformed service without dependents who makes a permanent change of station for assignment to a unit conducting field operations is not entitled to a basic allowance for housing while on that initial field duty unless the commanding officer of the member certifies that the member was necessarily required to procure quarters at the member's expense.

(2)(A) Except as provided in subparagraphs (B) and (C), a member of a uniformed service without dependents who is in a pay grade below pay grade E-6 is not entitled to a basic allowance for housing while the member is on sea duty.

(B) Under regulations prescribed by the Secretary concerned, the Secretary may authorize the payment of a basic allowance for housing to a member of a uniformed service without dependents who is serving in pay grade E-4 or E-5 and is assigned to sea duty. In prescribing regulations under this subparagraph, the Secretary concerned shall consider the availability of quarters for members serving in pay grades E-4 and E-5.

(C) Notwithstanding section 421 of this title, ~~two members of the uniformed services~~ a member of a uniformed service in a pay grade below pay grade E-6 who ~~are married to each other, have no other dependents, and are simultaneously assigned to sea duty are each entitled to a basic allowance for housing during the period of such simultaneous sea duty. The amount of the allowance payable to a member under the preceding sentence shall be based on the without dependents rate for the pay grade of the member.~~ is assigned to sea duty and is married to another member of a uniformed service is entitled to a basic allowance for housing subject to the limitations of subsection (e).

(3) The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Department of the Navy, shall prescribe regulations defining the terms "field duty" and "sea duty" for purposes of this section.