

# ***Proposed BAH Cuts: Regressive, Discriminatory, and Costly***

*LCDR Ken Hockycko, USN*

*The following study was neither directed nor supported by any government agency. The views presented herein are those of the author and do not necessarily represent the views of the DoD or its Components.*

## **EXECUTIVE SUMMARY**

Senate Bill 1376 Section 604 cuts Basic Allowance for Housing (BAH) compensation by 25% for all cohabitating service members and cuts it entirely for the junior member of a dual-military marriage in most cases.

Section 604 is proposed as a cost-savings measure that targets unnecessary spending. An in-depth examination, however, reveals that its means are regressive, discriminatory, and costly.

The overwhelming majority of those affected by Section 604 are the service's junior most members, and those members are affected by a greater magnitude than seniors.

The bill discriminates against specific service member marital choices and penalizes female service members at a disproportionate rate.

Potential cost-savings depend exclusively upon a service member's willingness to continue working despite a significant compensation cut. Any associated attrition reduces cost-savings, and attrition beyond a certain minimal threshold increases costs.

Section 604 is not in keeping with the military's efforts to recruit and retain high quality people, and should it pass, the bill will negatively affect morale, recruitment, retention, and future budgets.

## **BACKGROUND**

On June 18, 2015 the U.S. Senate passed S. 1376, its version of the National Defense Authorization Act (NDAA) for fiscal year 2016.<sup>1</sup> Section 604 attempts to decrease spending by imposing compensation reductions for cohabitating single service members and members in dual-military marriages.<sup>2</sup> The provision is not part of H.R. 1735, the House version of the NDAA, nor is it part of the Department of Defense Budget Request.<sup>3,4</sup> Since the bill's proposal, Section 604 has endured intense scrutiny and has been publicly opposed by President Obama and senior Defense Department leaders.<sup>5</sup> Nevertheless, the provision remains the subject of contentious and emotional debate amongst interested parties, in and out of uniform, and has become the impetus for broader conversations pertaining to military compensation and demographics.<sup>6</sup> A review of

public comments, in favor of and in opposition to Section 604, reveals deep and broad misunderstandings of history, the law, and economics as they apply to these subjects.

## **PURPOSE**

To replace misinformation and conjecture with facts and realities, the following study defines relevant terms using source document lexicon, describes the evolution of military housing finance in response to changing family demographics from 1949 to 2015, challenges the assumptions inherent in S. 1376 Section 604, evaluates the bill's effectiveness as a cost-savings measure, and describes its likely impact on service members and the overall force.

## **RELEVANT TERMS DEFINED**

To properly evaluate any proposal involving military compensation and its components, one must understand the following terms as defined by U.S. law or Department of Defense policy.

**Pay-** The term "pay" includes basic pay, special pay, retainer pay, incentive pay, retired pay, and equivalent pay, but does not include allowances.<sup>7</sup>

**Allowance-** the term is not defined in Title 37, Chapter 1, "Definitions," nor is it defined in Chapter 7 "Allowances other than Travel and Transportation," Section 401, "Definitions," or anywhere else in U.S. Code Title 37 "Pay and Allowances of the Uniformed Services." "Allowance" is, however, referenced in sections covering Basic Allowance for Subsistence (BAS) and Basic Allowance for Housing (BAH) and the tax-free attribute commonly associated with allowances is described in the latter, "Federal tax advantage accruing to the aforementioned allowances because they are not subject to Federal income tax."<sup>8</sup>

**Regular Military Compensation-** The term "regular compensation" or "regular military compensation (RMC)" means "the total of the following elements that a member of a uniformed service accrues or receives, directly or indirectly, in cash or in kind every payday: basic pay, **basic allowance for housing**, basic allowance for subsistence; and Federal tax advantage accruing to the aforementioned allowances because they are not subject to Federal income tax."<sup>9</sup>

**Basic Allowance for Housing (BAH)-** the term is not explicitly defined in Title 37, Chapter 7, Section 403 "Allowances other than Travel and Transportation," of the U.S. Code, however, its construct is explained in detail:

(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.<sup>10</sup>

*(The “except as otherwise provided by law” is presumably included to account for those situations where members are not entitled to BAH due to specific training requirements (e.g. USMC Basic School mandated barracks utilization,) a member’s non-drilling reserve status or in situations in which a member is assigned to a location where government housing is available.”*

**Dependent-** Defined in Title 37 U.S.C. Section 401, a dependent is a spouse, an unmarried child under the age of 21 (or under the age of 23 if the child is a full-time student and dependent on the member for over one-half of financial support or if the child is incapacitated and dependent on the member for one-half of financial support), or a parent, if the parent is dependent on the member for over one-half of the parent’s financial support. A spouse, however, is considered a dependent regardless of employment status, income level or financial assets.

**Dual-military Marriage-** a marriage in which each spouse is serving as a member of the military. All references to “dual-military” henceforth refer to those couples in which each member is serving as part of the Active Component (AC), as this is the relevant group to consider when discussing BAH.

## **THE EVOLUTION OF BAH, MILITARY INTEGRATION POLICIES, AND AMERICAN FAMILY DEMOGRAPHICS**

The Career Compensation Act of 1949 established “Basic Allowance for Quarters,” or “BAQ,” the predecessor to BAH, as a stipend paid to service members when government housing was unavailable.<sup>11</sup> At the time, a military family likely consisted of a male service member who had access to on-base housing and supported his female spouse and children. In the six and a half decades since, the American workforce, the American family, and the American military have undergone drastic changes, many of them due to equal rights movements. While often lagging, military compensation rates, policy initiatives, and family demographics have evolved along with those of America as a whole. The following timeline highlights significant shifts in each of the above, from 1949 to 2015.

### **1949**

- Career Compensation Act of 1949 established the “basic allowance for quarters,” which provided service members an allowance for housing equivalent to 75% of what civilians in a similar income bracket could afford. The allowance was based on grade and dependent status, where a dependent was a female spouse and/or a child.<sup>12</sup>

- Women made up less than 2% of the armed forces, as required by the Women Services Integration Act of 1948, which permitted women to serve in all branches of the military, but limited them to less than 2% of each branch.<sup>13</sup>
- According to U.S. Census data, women accounted for 31% of the overall U.S labor force.<sup>14</sup>

### **1973**

- Title 37 U.S.C. Section 401 was amended to remove the provision requiring a female service member to prove to the Federal Government, in order to qualify for the “with dependent” rate, that her spouse was dependent for more than one-half of his financial support.
- This change effectively ended any form of “means testing” in order to qualify for the housing allowance overall, or for the “with dependent” rate.

### **1973**

- The military draft ended, and the military transitioned to an all-volunteer force.
- Women made up 2% of the enlisted ranks, and 4% of the officer corps.<sup>15</sup>

### **1980**

- First co-ed class graduated from the United States Service Academies (1978 for USMMA).

### **1981**

- Congress increased BAQ rates by 14.3% and increased basic pay rates by 10-15% in order to “restore, in current dollars, the relative relationship of military compensation to pay in the private sector that existed in 1972” when Congress adopted the “all-volunteer force.”<sup>16</sup>
- All elements of RMC were raised to make compensation competitive with the civilian sector.

### **1991**

- Title 37 U.S.C. Section 401 was amended to remove “he” and “his” pronouns from the definition of a military dependent. This change replaced phrases such as “his spouse” with the gender neutral phrase “the service member’s spouse.”

### **1996**

- Defense of Marriage Act (DOMA) was enacted.

### **1998**

- Legislation was passed that established the modern “basic allowance for housing,” which factored grade, dependent status and geographic location into its calculation to provide service members with an allowance equal to 85% of housing costs for a civilian in a similar income bracket.<sup>17</sup>

**2001**

- The National Defense Authorization Act of Fiscal Year 2001 removed the formula that provided service members with BAH equal to 85% of housing costs, with the intention to have BAH cover 100% of the costs of what a civilian in a similar income bracket could afford. This formula did not account for any additional spousal income.<sup>18</sup>

**2003**

- Title 37 U.S.C. Section 403 was amended so that each member of a dual-military couple received BAH at the single rate, and if the couple had children, the senior member received BAH at the *with* dependent rate.

**2005**

- Median rental housing costs were covered 100% by BAH nationwide.<sup>19</sup>

**2011**

- Don't Ask Don't Tell was repealed, allowing gay and lesbian service members to serve openly in the military.
- Women made up 14% of the enlisted ranks and 16% of the officer corps.<sup>20</sup>
- According to U.S. Census data, women accounted for 47% of the overall U.S. labor force.<sup>21</sup>

**2013**

- The Supreme Court declared DOMA unconstitutional. Immediately following, DoD afforded same-sex marriages the same benefits afforded to all other military marriages.

**2014**

- The DoD adjusted the BAH algorithm down by 1% and removed “renter’s insurance” as a variable. Spousal income remained a non-factor to the housing allowance algorithm.<sup>22</sup>

**2015**

- Supreme Court required all states to recognize same-sex marriages.

Contrary to 1949, today’s American military family may be supported by a matriarch, whose “stay-at-home” husband cares for the kids. It may consist of a male Sailor married to a female investment banker, or a female Soldier married to a female Airman. Each of these families may have children, and their children may have been adopted or carried by a surrogate. What defines a “typical” American family has changed along with the times. Therefore, BAH cannot be viewed through the same lens that was used over six decades ago.

## **EXISTING LAW (FY2003-2015)**

Since 2003, the National Defense Authorization Act and other precipitating Department of Defense Documents have consistently defined two BAH categories:

- 1) BAH *without* dependents- allowance entitled by law to eligible service members in an amount calculated by the Defense Travel Management Office in accordance with regulations. The allowance applies to service members who cannot claim a dependent as defined in Title 37, Chapter 7, Section 101 of the U.S. Code. In all geographies and across all ranks, this is the lower of two distinctive amounts offered to service members based on their dependency status.
- 2) BAH *with* dependents- Same as above with the exception that this allowance applies to service members who CAN claim a dependent as defined in Title 37, Chapter 7, Section 101 of the U.S. Code.

These two categories apply differently to four potential lifestyle scenarios relevant to this study (dependency scenarios beyond those affected by S. 1376, Section 604 exist but are beyond the scope of this study, and therefore, not listed):

- 1) A service member living either alone or with a non-dependent civilian receives BAH at the *without* dependent rate.
- 2) A service member who marries a civilian or has a child (or other dependent) or both, receives BAH at the *with* dependent rate, regardless of the spouse's employment status or income, and independent of the number of children (other dependents) in the household.
- 3) Two service members who cohabit (married or unmarried) each receive BAH at the *without* dependent rate.
- 4) In the case where each member of a married couple serves in the military, and has a child or children, the senior member receives BAH at the *with* dependent rate and the junior member receives BAH at the *without* dependent rate.

## **S. 1376 SECTION 604**

Senate Bill 1376 Section 604 amends Title 37, Chapter 7, Section 403 of the U.S. Code to reduce BAH for cohabitating military members eligible to receive the allowance "without dependents" to 75% of the prevailing rate and to eliminate BAH for the junior member of a cohabitating dual-military marriage residing within commuting distance to his/her workplace. The provision, if enacted, would take effect on October 1, 2015; however,

reductions in compensation would not apply until a member received orders requiring a Permanent Change of Station (PCS).<sup>23</sup>

As reported by the media, the Senate aims to curb overall Federal spending on BAH under the assumption that military gender integration and the repeal of Don't Ask Don't Tell (DADT) have accelerated DoD personnel spending.<sup>24</sup> The Senate Armed Services Committee's (SASC) view, according to the press, is that BAH is not compensation and was never intended as such, therefore, it is subject to reduction at discriminatory and disproportionate rates.<sup>25</sup> The following section examines the validity of SASC assumptions, stated and implied, from an analytical, economical, and historical perspective.

## **S. 1376 SECTION 604's ASSUMPTIONS TESTED**

***BAH is not compensation and should not be viewed as such.***

**False.** According to United States Code, Title 37, Chapter 1, Section 101, (25), BAH is part of Regular Military Compensation (RMC), a term that includes BAH by definition. The Defense department further articulates that RMC represents "a basic level of compensation which every service member receives, directly or indirectly, in-cash or in-kind, and which is common to all military personnel based on their pay grade, years of service, and family size."<sup>26</sup>

Not only is BAH defined as compensation, it has been treated as such for decades. Since 1964, military pay raises have been distributed amongst each of the three components of RMC.<sup>27</sup> In 1980, and again in the early 1990s, Congress created new initiatives to keep RMC competitive with private sector compensation, acknowledging the need to do so to retain members serving in an ever more educated and technical all-volunteer force.<sup>28</sup> The House Armed Services Committee articulated its philosophy in 1991 when proposing a 4.1% increase in EACH component of RMC:

The committee remains committed to preserving a *total military compensation* package that will continue to attract and retain the high quality young men and women in the nation's armed forces today. The committee is determined to maintain a competitive level of compensation in the future and to protect the quality of life for service members and their families.<sup>29</sup>

This well-known principle is used in military recruitment and retention materials, which routinely urge current and future service members to include the value of housing and other allowances when deciding whether or not to join or stay. An example from the Navy Web Page states:

When considering salary, be sure to take into account the value of housing and other allowances – plus outstanding Navy health-care benefits – which adds thousands of dollars to the value of your compensation.<sup>30</sup>

While the relationship between military and civilian compensation has fluctuated throughout the years, using all-components of RMC to compare the two has remained a constant.<sup>31</sup>

Finally, leaders at the highest levels, from those in the DoD to the Commander-in-Chief, recognize, “BAH is a part of every member’s regular military compensation . . .”<sup>32</sup>

***BAH should only be used for housing.***

**False.** The Defense Management Travel Office (DTMO), the Federal agency responsible for determining BAH rates in accordance with U.S. Code and for publishing their analysis via an annual “BAH Primer” states:

The Department of Defense and the Services designed the Basic Allowance for Housing program to provide accurate housing allowances based on the market price of rental housing rather than member-reported rents. . .

The BAH program measures rental-housing costs in the civilian market rather than measuring how much members spend on housing. This method ensures a more accurate correlation between allowance payments and rental prices. . . A member’s actual expenses may be higher or lower based on a member’s actual choice of housing and where they live. . .

The opportunity for service members to choose their off-base housing is important to DoD. Each member has the freedom to decide how to allocate his or her income (including housing allowance) without a penalty for deciding to conserve some dollars on rent to pay other expenses.<sup>33</sup>

***Section 604 includes a “grandfather” clause.***

**True and False.** The original proposal did not include any provision to delay compensation cuts beyond October 1, 2015. Such a delay would allow affected military members to prepare their finances. An amendment sponsored by Montana Senator, Steve Daines, added language that enforces the BAH reduction for affected members when one cohabitating member receives Permanent Change of Station orders outside the normal commuting distance of his/her current station.<sup>34</sup> In some sense, then, the provision is “grandfathered.” Practically, however, any military member is no more than 36 months away from his/her next PCS. Therefore, it is reasonable to presume that a large number of affected members will see pay cuts in the immediate or near future, if the bill is passed.

As a point of comparison, the President, Congress and the Department of Defense have repeatedly supported a “grandfathering” approach to military retirement compensation reform.<sup>35</sup> Their commitment is based on “keeping faith with military members” recruited and retained on a particular expectation of retirement compensation. Yet, despite the fact that the same representatives have collectively voted in favor of (or supported in DoD’s

case) current BAH laws 13 times since 2003, and military members have been recruited and retained based on a particular expectation of BAH compensation, the same commitment to keeping faith seemingly does not apply here.

***BAH provides excessive and unearned income to dual-military marriages.***

**False.** Title 37, Chapter 7, Section 403, (2) of the U.S. Code states, “The Secretary shall base the (BAH rate) determination upon the costs of adequate housing for civilians with comparable income levels in the same area.”<sup>36</sup> Logically, a civilian household in which each spouse is employed produces twice as much income as a civilian household in which only one spouse is employed, assuming all are similarly qualified. Since military BAH rates are differentiated by pay grade, and since fraternization policies prohibit members to marry well outside their pay grade, it is reasonable to use similarly qualified civilian dual-income households to determine “comparable income levels” for dual-military couples. In other words, a comparable income level for two O-3s should be a local household comprised of two working adults who each have bachelor’s degrees and 4-9 years of professional experience.

It is also logical that a senior military couple, like any other dual-employed and similarly qualified civilian couple, would earn what some may consider a high standard of living. Consider that an O-6 is guaranteed to hold a bachelor’s degree and have approximately 22 years of professional experience, and he/she is highly likely to hold a master’s degree and have held at least one, if not two, “C-suite” equivalent jobs.<sup>37</sup> Imposing a marriage penalty on that individual based on a value judgment that his/her standard of living is too high, in the rare case he/she is married to another O-6, creates a precedent unlike any other in the U.S. professional workforce.

Such a provision sends a message to the military that legislative leaders accept the standard of living of a business executive married to a lawyer, a GS-15 married to a GS-15, and a Congressman married to a Congressman, or any combination thereof; and that they equally accept the standard of living of a service member who marries any of the aforementioned. Yet, ONLY in the case in which a service member is married to another service member does that standard of living become unacceptable.

**FIGURE 1**  
**Possible combinations of married couples civilian, GS, and military**

✓ No marriage penalty                      ✗ Marriage Penalty

	CIVILIAN	GS	MILITARY
CIVILIAN	✓	✓	✓
GS	✓	✓	✓
MILITARY	✓	✓	✗

This concept applies to E-6s just as much as it does to O-6s. In fact, discussing two O-6s married to one another in reference to Section 604 is as statistically irrelevant as mentioning two Congressmen married to one another, a point which will be explained later in detail.

***Dual-military marriages have risen to 11.5%.***

**True and False.** *Stars and Stripes* reports that the number of members in dual-military marriages has increased in recent years and now represents 11.5% of the force.<sup>38</sup> While the percentage is accurate for the Total Force (TF), using TF data in reference to S. 1376 Section 604 is misleading and irrelevant. The TF consists of both the Active Component (AC) and Reserve Component (RC). Due to the “reserve” nature of the RC, these members rarely draw BAH. Furthermore, to be subject to S. 1376 Section 604, both members of a dual-military RC marriage would have to be simultaneously activated, an equally unlikely scenario. Finally, while RC dual-military marriages have increased in the past 13 years, from 1.9 to 2.6% of the RC, a negligible portion of a 0.7% increase over more than a decade can hardly be responsible for increased Federal spending. The appropriate demographic to consider is the AC.

***In recent decades, dual-military marriages have increased in both numbers and as a percentage of the AC force.***

**False.** On an annual basis, the Office of the Deputy Assistant Secretary of Defense (Military Community and Family Policy), under contract with ICF International, produces a comprehensive and near all-inclusive report on military demographics. The most recent data covers the period 1995-2013. Unless otherwise explicitly stated or noted, all discussions contained herein reference this report entitled, “2013 Demographics: Profile of the Military Community.” Figure 2 was derived from that source and applies to the active component force, the only demographic that receives BAH on a routine basis.

**FIGURE 2**  
**Number and Percentage of Active Component Members by Family Status Trends: 1995-2013**

Family Status	1995*		2000*		2005		2010	
	N	%	N	%	N	%	N	%
Single, no children	527,879	35.1%	559,138	40.8%	549,128	40.0%	542,495	38.3%
Single, with children	76,366	5.1%	85,552	6.2%	74,086	5.4%	75,954	5.4%
Married to Civilian, no children	206,100	13.7%	145,979	10.7%	176,065	12.8%	196,244	13.8%
Married to Civilian, with children	600,044	39.9%	500,674	36.5%	479,068	34.9%	508,350	35.9%
Dual-military, no children	55,626	3.7%	44,370	3.2%	55,695	4.0%	53,268	3.7%
Dual-military, with children	39,155	2.6%	34,941	2.5%	39,492	2.9%	41,059	2.9%
Total DoD	1,505,170	100.0%	1,370,654	100.0%	1,373,534	100.0%	1,417,370	100.0%

Family Status	2011		2012		2013	
	N	%	N	%	N	%
Single, no children	537,144	38.1%	537,252	38.7%	545,677	39.8%
Single, with children	75,214	5.3%	72,471	5.2%	67,912	5.0%
Married to Civilian, no children	198,284	14.0%	192,554	13.9%	188,848	13.8%
Married to Civilian, with children	508,867	36.1%	497,758	35.9%	480,681	35.1%
Dual-military, no children	51,915	3.7%	49,563	3.6%	49,500	3.6%
Dual-military, with children	40,001	2.8%	38,430	2.8%	37,711	2.8%
Total DoD	1,411,425	100.0%	1,388,028	100.0%	1,370,329	100.0%

Contrary to Senate Armed Services Committee (SASC) assumptions, as reported by *Stars and Stripes*, “the percentage of dual-military marriages has remained approximately the same (+0.1%)” during the period 1995-2013: 6.3% (94,781 individual members) in 1995 vs. 6.4% (87,211 individual members) in 2013.<sup>39</sup>

***Since the repeal of “Don’t Ask Don’t Tell” (DADT) dual-military marriages have increased in both numbers and as a percentage of the AC force.***

**False.** Since the repeal of DADT in 2011, the number of dual-military couples has decreased in both numbers and as a percentage of the active duty force over successive years for which we have data: 6.5% in 2011 (91,916), 6.4% in 2012 (87,993), and 6.4% in 2013 (87,211).

***Dual-military marriages cost the federal government more in BAH than other demographics. For example, two married O-6s living in Washington, DC receive an excessive amount of tax-free housing allowance a year.***

**False.** Under existing law, service members who choose to marry another service member, rather than a civilian, suffer a “military marriage penalty” that equates to a “federal cost savings.” Consider the following scenarios, referencing Figure 3:

**FIGURE 3**  
**2015 Federal BAH Spending on Married O-6 Service Members in the NCR<sup>40</sup>**

	NCR	National Median
O-6 w/ dependents	\$ 3,111	\$ 2,605
O-6 w/o dependents	\$ 2,718	\$ 2,244

	Monthly Married	Monthly Married w/ Additional Dependents	Annual Married	Annual Married w/ Additional Dependents
NCR				
2 O-6s married to civilians*	\$ 6,222	\$ 6,222	\$ 74,664	\$ 74,664
2 O-6s married to each other**	\$ 5,436	\$ 5,829	\$ 65,232	\$ 69,948
Federal savings on dual military couple	\$ 786	\$ 393	\$ 9,432	\$ 4,716

	Monthly Married	Monthly Married w/ Additional Dependents	Annual Married	Annual Married w/ Additional Dependents
National Median				
2 O-6s married to civilians*	\$ 5,210	\$ 5,210	\$ 62,520	\$ 62,520
2 O-6s married to each other**	\$ 4,488	\$ 4,849	\$ 53,856	\$ 58,188
Federal savings on dual military couple	\$ 722	\$ 361	\$ 8,664	\$ 4,332

\*Spouse assumed by law to be dependent.

\*\*Spouse not considered dependent.

Suppose the DoD must fill two O-6 billets to meet end strength requirements in the National Capitol Region (NCR). If those O-6s do not have dependents, the Federal government is required to compensate each of them with BAH at the *without* dependent rate. Similarly, if those same O-6s marry one another, the Federal government is still only required to compensate each of them with BAH at the *without* dependent rate. Therefore, their dual-military status has no impact on Federal BAH spending.

However, if those same O-6s marry civilian spouses, which ~80% of AC O-6s do, the Federal government twice incurs an additional BAH cost in that it is then required to compensate each of them with BAH at the *with* dependent rate.

If the dual-military O-6s have children, the Federal savings is slightly lesser due to the fact that the senior member would switch from *without* to *with* dependent BAH. Nevertheless, in every possible combination the dual-military marriage consumes fewer overall dollars of BAH spending, making such marriages the most cost-effective BAH scenario to the Federal Government.

It is critically important to note that, while the concepts based on O-6 BAH rates in the National Capital Region are accurate and universally applicable, these numbers should not be used as talking points in favor of, or in opposition to, the proposed legislation because they do not represent the demographic affected by S. 1376 Section 604 on two accounts:

- 1) The NCR is but 1 of 300 Military Housing Areas (MHA) used to calculate BAH rates and it encompasses the nation's most expensive place to live.<sup>41</sup>

- 2) The number of O-6 and above active duty dual-military couples is in the hundreds, while the number of active duty dual-military couples O-3 and below is in the tens of thousands, or more precisely, 93%.<sup>42</sup>

Therefore, using these numbers as talking points in favor of Section 604 is as much a misrepresentation of reality as using numbers for E-1s living in the cheapest MHA as a talking point in opposition to the legislation.

An effective and truthful analysis, one that this study will use from this point forward, considers the demographic most representative of the one targeted by the Bill: E-5 to E-6. In terms of pay grade, service members E-5 to E-6 comprise the largest portion of the affected personnel at 39.2%.<sup>43</sup> The following figure considers possible combinations for E-5s:

**FIGURE 4**  
**Federal BAH Spending on E-5 Married Service Members Based on the Median National Rate<sup>44</sup>**

	NCR	National Median
E-5 w/ dependents	\$ 2,605	\$ 1,550
E-5 w/o dependents	\$ 2,244	\$ 1,354

National Median	Monthly Married	Monthly Married w/ Additional Dependents	Annual Married	Annual Married w/ Additional Dependents
2 E-5s married to civilians*	\$ 3,100	\$ 3,100	\$ 37,200	\$ 37,200
2 E-5s married to each other**	\$ 2,708	\$ 2,904	\$ 32,496	\$ 34,848
Federal savings on dual military couple	\$ 392	\$ 196	\$ 4,704	\$ 2,352

\*Spouse assumed by law to be dependent.

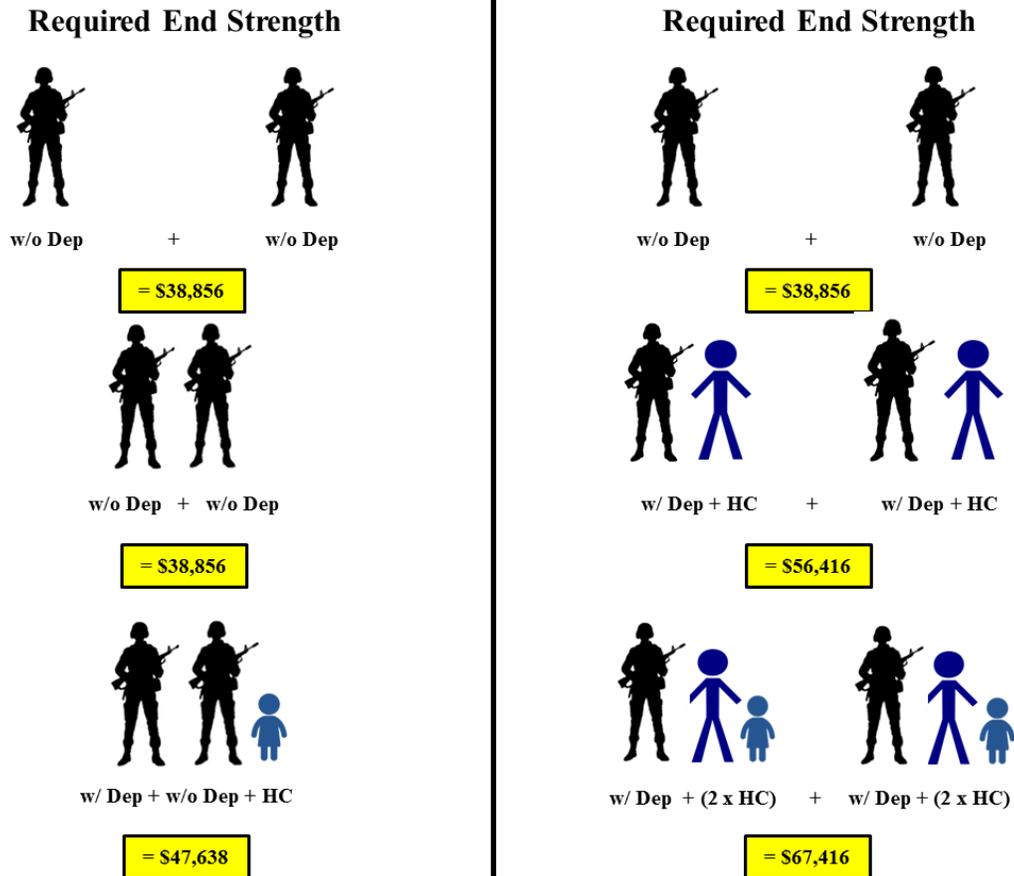
\*\*Spouse not considered dependent.

Figure 4 not only provides the most appropriate set of data on which to base broader discussions, when compared to Figure two, it confirms that dual-military couples reduce Federal BAH spending regardless of rank.

BAH, however, represents only the beginning of cost savings generated by dual-military marriages. Adding health care to the equation exponentially increases the dollar return on a dual-military family. Each year the DoD pays health care costs for ~1,370,329 AC members and their ~1,878,092 dependents. In other words, family members will consume more of the \$47.8 billion requested for the FY16 Unified Medical Budget than those actually serving in uniform.<sup>45</sup>

Every time a military member chooses to marry another military member as opposed to marrying a civilian, the DoD has at least two fewer dependents to consider when budgeting for health care and BAH. The following illustrations use annual BAH and health care expenditures on dual-military and military-to-civilian families to demonstrate this concept:

**FIGURE 5**  
**Dependents and costs generated by dual-military and civilian-to-military families**



\*A weighted average probability of family demographics is used to estimate military-to-civilian hiring costs. It considers the hiring likelihood of singles, members married to civilians, and members married to civilians with 1 child (additional dependent). Each additional civilian dependent creates a health care cost (HC) beyond that of the service member.

While the diagram above only considers BAH and health care, the dependent reduction effect of dual-military marriages provides even more cost-savings to the Federal government. There are too many dependent entitlements to quantify in this report, but they include: V.A. Benefits, Spouse Employment Assistance Program, etc.

Having demonstrated the value to the Federal government when a dual-military marriage is created, it is equally important to mention the value that is lost when such a couple is dis-incentivized from continued service, as would be the case if S. 1376 Section 604 becomes law. Uniquely, when one of the members of a dual-military couple resigns, not only does that person require a replacement, but they also become a dependent (assuming their spouse remains in the AC). Therefore, it is more costly to lose a member of a dual-military marriage than one that is married to a civilian.

Ultimately, overall spending on military personnel decreases as the number of dependents decreases. Considering U.S. family demographics (including a couple's likelihood to have children, biological or otherwise), the most cost effective couple for the Department of Defense is one that is same-sex dual-military, followed by heterosexual dual-military, and finally heterosexual military-to-civilian.<sup>46</sup>

## **IF NOT DUAL-MILITARY MARRIAGES AND DADT REPEAL THEN WHY THE INCREASED SPENDING?**

### ***Reduced “on-base” housing supply accompanied by steady demand.***

Despite late 1990s force drawdowns and those in recent years, as well as force build-ups due to the Operations ENDURING and IRAQI FREEDOM, active duty military DoD end strength has remained relatively constant over the past 20 years. (Mean end-strength – ~3.37 million, median end-strength- ~3.3 million, range ~3.2-3.7)<sup>47</sup>

At the same time, the number of on-base housing units steadily decreased due to Base Realignment and Closure Commission rounds. The 1995 round proposed to close 32 major U.S. military bases. Ultimately, 35 bases were either closed or realigned.<sup>48</sup>

The 2005 round proposed to close 22 major U.S. military bases and to realign 33 others. Closures and realignments resulting from 2005 proposals are ongoing.<sup>49</sup>

Decreasing government housing availability due to decreasing numbers of military bases and private-public venture efforts, accompanied by steady end strength, has required more members to seek housing off base. As more members have become eligible for BAH compensation, total spending on BAH has increased in kind.

### ***An upwardly biased algorithm.***

The algorithm used to calculate BAH allows increases in-kind with increases in aggregate rents, however, due to rate protection, a one-way valve that “locks-in” a floor during a member's lease term, BAH does not decrease at the same rate as aggregate rents.

### ***Congressional efforts to trend military compensation rates towards those of the private sector in a nascent all-volunteer force that increasingly required higher education and technical skills.***

For two decades, Congress passed legislation to close the gap between military and private sector compensation using each element of RMC (basic pay, BAS, and BAH). BAH increased at accelerated rates between 2001 and 2005, due to Secretary Cohen's goal to cover 100% of housing costs.<sup>50</sup> The “allowance” attributes of BAH were particularly attractive to Congress when determining which part of RMC to increase due to their tax-free nature. Increases in BAH had a multiplier effect over increases in basic pay. This allowed Congress to keep the total compensation number low while increasing

effective compensation substantially, thereby reducing annual budgets and retirement obligations. Importantly, all compensation increases were applied universally, benefiting every service member regardless of their dependent or marital status. By 2011, the Quadrennial Military Compensation Review assessed military compensation to be closely aligned with that of the private sector.<sup>51</sup>

## **NEGATIVE IMPACTS OF S. 1376 SECTION 604**

### ***Regressive***

The Commandant of the Marine Corps does not live with the Chief of Naval Operations, nor does the Chief Master Sergeant of the Air Force live with the Sergeant Major of the Army. An extreme example, no doubt, but demonstrative of the fact that, due to compensation and lifestyle choices associated with service members O-4 and above and E-7 and above, this demographic is not likely to cohabitate, married or not.

It is probable, however, that officers and enlisted, pay grades O-1 to O-3 and E-1 to E-6 have cohabitated, are cohabitating, or will cohabitate.<sup>52</sup> Therefore, while all service members enjoyed BAH increases outlined in the section above, only the junior most members will suffer the overwhelming majority of the 25% and 100% BAH cuts under S. 1376 Section 604.

The regressive impact is compounded by the fact that BAH is a greater portion of overall compensation for junior service members than it is for senior members. For example, BAH is 31% of Regular military Compensation for an E-5 and just 10.3% for an O-10.

### ***Discriminatory***

Not only does Section 604 discriminate against the military's junior-most members as described above, it inequitably targets dual-military members as a whole (who only represent 6.4% of the active duty force), and has a particularly disparate effect on women. If 604 were to take effect, two cohabitating E-5s would each see a 25% cut in BAH. However, if those two E-5s married one another, the junior of the two would lose 100% of BAH. Because women only comprise ~14.9% of the force, but still account for ~50% of service members in dual-military marriages, they are 650% more likely than men to be affected by Section 604.<sup>53</sup>

Also consider that, in American heterosexual marriages, a male is more likely to be older than his female spouse. Since military rank structure is largely defined by tenure, and since the overwhelming majority of senior officers and enlisted are male, it is highly likely that the woman is the junior member of a dual-military couple.<sup>54</sup> Therefore, women are not only more likely than men to be indirectly effected, but they are more likely to be directly affected. In either case, the discriminatory nature of the proposal creates an incentive for women to resign from service.

Section 604 further discriminates by targeting but protecting an arbitrary benefit provided to a “policy-preferred” demographic. Since the current system is based on the previously described 1949 paradigm, in which a civilian spouse is assumed to be dependent on the service member, it favors the 1949 family model over other married models and over singles. For example, a single E-5 who performs the same duties as an E-5 who is married to a teacher or a lawyer gets paid less simply for being single. This attribute is preserved by Section 604.

Additionally, 25% of civilian spouses are employed AND do not have children.<sup>55</sup> In these cases, the service member still receives a dependent benefit despite having no true financial dependent. Dependency considerations also neglect scenarios in which a civilian spouse earns higher compensation than the service member. Here too, the service member receives a dependent benefit despite having no true financial dependent. If Section 604 becomes law, an O-5 in the NCR who marries a hedge fund manager will receive an annual pay raise of \$5,472 while an O-5 who marries an O-6 will be penalized with a \$31,464 annual pay cut.<sup>56</sup>

### ***Costly***

Any proposed cost-savings or compensation initiatives must consider incentives in their calculus. Under the provision that reduces cohabitation BAH by 25%, members are less likely to cohabit with other members and more likely to get civilian roommates or live alone. Therefore, what sounds like a cost-savings measure, may not produce the desired effect.

In the case of the dual-military couple, in order to achieve any cost savings by eliminating BAH from the junior member’s compensation, that member has to commit to work equally for unequal pay (e.g. a 31% reduction in compensation for an E-5). If that member resigns, S. 1376 Section 604 can no longer exploit her for cost savings. A measure that attempts to decrease spending by retaining a specific demographic, then applies, as its primary cost-savings mechanism, an incentive for that same demographic to resign, is sure to fail.

For example, Congress could propose a law that eliminated basic pay from the compensation package of Naval Aviators or Army Rangers. If all Naval Aviators and Army Rangers continued to serve despite a draconian pay cut, spending would certainly decrease. However, it is reasonable to assume that the Joint Force would lose a large number of Naval Aviators and Army Rangers as a result of the new policy and be left with a hollow force and a recruiting problem.

However, Naval Aviators and Army Rangers are not the most cost-effective demographic. That attribute belongs to dual-military marriages. Therefore, Section 604, targets the most cost-effective group and provides it with the following choice: accept unequal pay for equal work, get a divorce, or resign. If 45,000 signatures on a White House petition are any indication of which choice dual-military couples will make, the likelihood of resignation being a popular choice is high.<sup>57</sup>

And when a dual-military spouse resigns, the number of dependents on the Department of Defense, and the accompanying costs, increases at a much higher rate than any other demographic. The effect is so drastic that if the percentage of dual-military couples drops from 6.4% the AC force to 4.6%, Section 604 becomes cost neutral. At 4.5%, Section 604 begins to cost the Department of Defense \$2.6 million for every .1% drop. Since attrition is dynamic and includes both those who resign and others who are disincentivized to join, this measure creates an unpredictable and precarious position for the Department.

Importantly, to preserve the integrity of this study, all data used considers extremes that make Section 604 most effective. According to CBO reports, however, first-year “cost-savings” only amount to \$3.4 million vice the \$8.8 million used in the calculations above. When considering CBO data, dual-military marriages as a percentage of the total force would only have to fall .064% to ~5.7% to negate any potential cost-savings.<sup>58</sup> Attrition, static or dynamic, is NOT considered in the CBO report. The report rather assumes that 100% affected service members will martyr themselves to Section 604.

Finally, Section 604 does not consider divorce. Divorce rates in the military are high and even higher for those in dual-military marriages.<sup>59</sup> If the marriage penalty in Section 604 becomes law, then a junior service member choosing to separate from her/his spouse would be beholden to the senior member for housing. Under state law in both Virginia and California, states with a large number of active component military members, there is a minimum waiting period of 6 months for a divorce to become finalized.<sup>60</sup> In some cases, divorce proceedings can take years. This added challenge is sure to lower the mission readiness of the junior service member, especially when the separation is caused by situations such as domestic violence or adultery.

## CONCLUSION

Senate Bill 1376 Section 604 is a case in which the narrative is driving the facts rather than the facts driving the narrative. The provision is based on false assumptions; it is regressive, it is discriminatory, and it exacerbates the problem it intends to curb while introducing new problems. Furthermore, it contradicts Secretary of Defense Carter’s vision of the “Force of the Future” and undermines the continued gender integration efforts of leaders like Navy Secretary, Ray Mabus, who champion equal opportunity for all Americans to serve. An alternative and necessary solution, one that is effective, intelligent, and just, must utilize data-driven economics, target the source of increased spending, provide guaranteed and predictable savings, and institute a universally applicable correction.

About the author:

LCDR Ken Hockycko is an active duty Naval Officer. He holds a B.S. in Economics from the United States Naval Academy and an M.B.A. from Dartmouth College.

Key contributors:

LT Megan Isaac is an active duty Naval Officer. She holds a B.S. in English from the United States Naval Academy.

LT Leah Fontenot is an active duty Naval Officer. She holds a B.A. in Political Science from the University of Illinois.

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<sup>1</sup> S. 1376.

<sup>2</sup> Ibid.

<sup>3</sup> H.R. 1735.

<sup>4</sup> United States Department of Defense Fiscal Year 2016 Budget Request

<sup>5</sup> Statement of Administration Policy, S. 1376, Executive Office of the President (June 2, 2015).

<sup>6</sup> Erik Slavin. "BAH Change for Dual-Military Couples Could Cause Troubles." *Stars and Stripes*, 22 June 2015: Web.

<sup>7</sup> United States Code, Title 37, Chapter 1, Section 101, (21).

<sup>8</sup> United States Code, Title 37, Chapter 1.

<sup>9</sup> United States Code, Title 37, Chapter 1, Section 101, (25).

<sup>10</sup> United States Code, Title 37, Chapter 7, Section 403.

<sup>11</sup> "Basic Allowance for Housing." *Military Compensation Background Papers: Compensation Elements and Related Manpower Cost Items: Their Purposes and Legislative Backgrounds*. Seventh ed. Washington, D.C.: Dept. of Defense, Office of the Secretary of Defense, 2011. 167-204. Print.

<sup>12</sup> Ibid.

<sup>13</sup> "Women's Armed Services Integration Act." *Encyclopedia Britannica Online*. Encyclopedia Britannica, n.d. Web. 06 July 2015.

<sup>14</sup> *We Asked-- You Told Us*. Washington, D.C. : U.S. Dept. of Commerce, Economics and Statistics Administration, Bureau of the Census, 1995. Web. 06 July 2015.

<sup>15</sup> "Women in the U.S. Military: Growing Share, Distinctive Profile." *Pew Research Centers Social Demographic Trends Project RSS*. N.p., 22 Dec. 2011. Web. 06 July 2015.

<sup>16</sup> "Basic Allowance for Housing." *Military Compensation Background Papers: Compensation Elements and Related Manpower Cost Items: Their Purposes and Legislative Backgrounds*. Seventh ed. Washington, D.C.: Dept. of Defense, Office of the Secretary of Defense, 2011. 167-204. Print.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> "Women in the U.S. Military: Growing Share, Distinctive Profile." *Pew Research Centers Social Demographic Trends Project RSS*. N.p., 22 Dec. 2011. Web. 06 July 2015.

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- <sup>22</sup> *A Primer on the Basic Allowance for Housing*. Defense Travel Management Office, Jan. 2015. Web. 07 July 2015.
- <sup>23</sup> S. 1376, Section 604.
- <sup>24</sup> Erik Slavin. "BAH Change for Dual-Military Couples Could Cause Troubles." *Stars and Stripes*, 22 June 2015: Web.
- <sup>25</sup> Ibid.
- <sup>26</sup> "Military Compensation." *Regular (RMC) Calculator*. Web. 08 July 2015.
- <sup>27</sup> "Basic Allowance for Housing." *Military Compensation Background Papers: Compensation Elements and Related Manpower Cost Items: Their Purposes and Legislative Backgrounds*. Seventh ed. Washington, D.C.: Dept. of Defense, Office of the Secretary of Defense, 2011. 167-204. Web.
- <sup>28</sup> Ibid.
- <sup>29</sup> Ibid.
- <sup>30</sup> "Military Pay." Military Pay Chart & US Navy Pay Grades : Navy.com. Navy Recruiting Command, Web. 09 July 2015.  
<http://www.navy.com/joining/benefits/pay.html>.
- <sup>31</sup> Ibid.
- <sup>32</sup> Statement of Administration Policy, S. 1376, Executive Office of the President (June 2, 2015).
- <sup>33</sup> *A Primer on the Basic Allowance for Housing*. Defense Travel Management Office, Jan. 2015. Web. 07 July 2015.
- <sup>34</sup> S.Amdt. 1890 - 114th Congress (2015-2016)
- <sup>35</sup> Report of the Military Compensation and Retirement Modernization Commission, January 2015.
- <sup>36</sup> U.S.C. Title 37, Chapter 7, Section 403, (2)
- <sup>37</sup> FY16 Active Duty Line/Staff Community Briefs, <http://www.npc.navy.mil/bupers-npc/boards/activedutyofficer/Pages/CommunityBriefs.aspx>
- <sup>38</sup> Erik Slavin. "BAH Change for Dual-Military Couples Could Cause Troubles." *Stars and Stripes*, 22 June 2015: Web.
- <sup>39</sup> Ibid.
- <sup>40</sup> *BAH Calculator*. Defense Travel Management Office, 22 Dec. 2014. Web. 08 July 2015.
- <sup>41</sup> "District of Columbia the Nation's Most Expensive Place to Live." *Real Time Economics RSS*. Web. 08 July 2015.
- <sup>42</sup> 2013 Demographics: Profile of the Military Community. Office of the Deputy Assistant Secretary of Defense (Military Community and Family Policy).
- <sup>43</sup> Ibid.
- <sup>44</sup> 2015 National Mean BAH Spreadsheet, Defense Management Travel Office.
- <sup>45</sup> United States Department of Defense Fiscal Year 2016 Budget Request
- <sup>46</sup> Gates, Gary J. "Same-sex and Different-sex Couples in the American Community Survey: 2005-2011." The Williams Institute, Feb. 2013. Web.
- <sup>47</sup> 2013 Demographics: Profile of the Military Community. Office of the Deputy Assistant Secretary of Defense (Military Community and Family Policy).

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<sup>48</sup> Defense Base Realignment and Closure Commission, Report to the President, July 1995.

<sup>49</sup> Base Closure and Realignment Report, Volume 1, Part 2, May 2005.

<sup>50</sup> "Basic Allowance for Housing." *Military Compensation Background Papers: Compensation Elements and Related Manpower Cost Items: Their Purposes and Legislative Backgrounds*. Seventh ed. Washington, D.C.: Dept. of Defense, Office of the Secretary of Defense, 2011. 167-204. Web.

<sup>51</sup> 2016 Department of Defense Budget Request

<sup>52</sup> U S Census Bureau, Household and Families (2010)

<sup>53</sup> 2013 Demographics: Profile of the Military Community. Office of the Deputy Assistant Secretary of Defense (Military Community and Family Policy).

<sup>54</sup> U.S. Census Bureau, American Community Survey, 2009

<sup>55</sup> 2013 Demographics: Profile of the Military Community. Office of the Deputy Assistant Secretary of Defense (Military Community and Family Policy).

<sup>56</sup> *BAH Calculator*. Defense Travel Management Office, 22 Dec. 2014. Web. 08 July 2015.

<sup>57</sup> Congressional Budget Office Cost Estimate for S. 1376

<sup>58</sup> Ibid.

<sup>59</sup> Negrusa, Sebastian, Brighita Negrusa, and James Hosek. "Gone to War: Have Deployments Increased Divorces?" *J Popul Econ* 27.2 (2013): 473-96. Web.

<sup>60</sup> Va. Code § 20-91, 750 Ill. Comp. Stat. 5 § 401