



Department of Defense INSTRUCTION

NUMBER 1338.1

April 18, 1974

ASD(M&RA)

SUBJECT: Assignment of Public Quarters or Payment of Basic Allowance for Quarters to Members of the Uniformed Services

- References:
- (a) Sections 401 and 403 of title 37, United States Code
 - (b) DoD Instruction 1338.1, subject as above, January 30, 1964 (hereby canceled)
 - (c) DoD Military Pay and Allowances Entitlements Manual
 - (d) ASD(M&RA) Memorandum, "Military Family Housing or Allowance for Quarters -- Female Members," June 15, 1973 (hereby canceled)
 - (e) ASD(M&RA) Memorandum, "Military Family Housing Eligibility -- Husband and Wife Members," September 13, 1973 (hereby canceled)

1. REISSUANCE AND PURPOSE

This Instruction reissues reference (b) and contains changes that restate policy in regard to assignment of public quarters for members of the Uniformed Services or entitlement to the basic allowance for quarters. These changes are in consonance, where applicable, with the Supreme Court decision, *Frontiero v. Richardson*, May 14, 1973, which held as unconstitutional those provisions of sections 401 and 403 of reference (a), which provided for different treatment of the female member in the application of dependency criteria for purposes of entitlement to the basic allowance for quarters. References (b), (d) and (e) are hereby superseded and canceled.

2. APPLICABILITY AND SCOPE

- 2.1. The provisions of this Instruction apply to the Military Departments.

2.2. Its provisions do not cover restrictions on authorization and payment of the basic allowance for quarters, or rates that will continue to be determined in accordance with the provisions of the DoD Military Pay and Allowances Entitlements Manual (reference (c)).

3. POLICY

3.1. It is the policy of the Department of Defense to encourage maintenance of the family unit. When both husband and wife are members of the Uniformed Services, and stationed at the same or adjacent military installations, both members are authorized the basic allowance for quarters prescribed for a member without dependents when public quarters for dependents are not assigned, notwithstanding the availability of adequate single quarters for either or both.

3.2. When only one person in the family unit is a member of the Uniformed Services, the following provisions are applicable:

3.2.1. The civilian husband of a female member is considered a presumptive dependent when so claimed, without proof that he is in fact dependent upon her for over one-half of his support.

3.2.2. The female member married to a civilian spouse is considered a member with dependents for the purpose of assignment to public quarters or entitlement to the basic allowance for quarters.

3.2.3. The unmarried, legitimate, minor child of a female member is also a presumptive dependent when so claimed, without proof of in fact dependency.

3.2.4. An unmarried, illegitimate, minor child, whose parentage has been admitted in writing by a male or female member, or whose alleged member-father has been judicially decreed to be the father of the child or judicially ordered to contribute to the child's support, may be considered a dependent on submission of adequate proof of in fact dependency and provision of support, under conditions set forth in the DoD Military Pay and Allowances Entitlements Manual (reference (c)).

3.2.5. Entitlement of male members to the basic allowance for quarters when married to civilians is also set forth in reference (c).

3.3. When both husband and wife are members of the Uniformed Services with no other dependents and are stationed or home-ported at the same or adjacent military installations, the following provisions apply:

3.3.1. Both Officer or Both Enlisted. Eligibility for assignment to public quarters for dependents rests with whichever member both spouses jointly decide. When public quarters are not assigned, both members are entitled to the basic allowance for quarters, prescribed for a member without dependents, notwithstanding the availability of adequate single quarters for assignment to either or both. However, when either husband or wife is on sea duty, or occupies single Government quarters for any reason and has only the other spouse for consideration as a dependent, he or she will not be entitled to the basic allowance for quarters during the period of such occupancy or while on sea duty. When adequate public quarters for dependents are assigned, neither member is entitled to the basic allowance for quarters.

3.3.2. Male Enlisted - Female Officer, or Vice Versa. Assignment to public quarters under these circumstances has traditionally not been considered in the best interest of the Service. In view of differences in availability of and requirements for public quarters at various installations, this tradition of assignment policy need not necessarily be used as a singular determinate in the assignment of public quarters.

3.4. When both parties concerned are members of the Uniformed Services and either or both have dependents other than spouse, the assignment to public quarters for dependents rests with either or both and either or both may be entitled to the basic allowance for quarters prescribed for members with dependents when not assigned to public quarters, under conditions set forth in the DoD Military Pay and Allowances Entitlements Manual (reference (c)).

3.4.1. Both members may not claim the same dependent for entitlement to the basic allowance for quarters prescribed for members with dependents.

3.4.2. When more than one child is born of the same marriage, only one member may claim those children for purposes of entitlement to the basic allowance for quarters prescribed for a member with dependents.

3.4.3. Members may jointly decide which spouse will claim the child or children, born of the same marriage, for purposes of entitlement to the basic allowance for quarters prescribed for a member with dependents. If such determination is not jointly made by the members, entitlement to such allowance on account of the child or children will rest with the senior member.

3.4.4. When public quarters are jointly occupied by the members, either or both of whom have dependents other than spouse, neither member will be entitled to a basic allowance for quarters prescribed for such dependents even though such dependents do not reside in the quarters.

3.5. When both parties concerned are members of the Uniformed Services with no other dependents and when such parties are precluded by distance from living together, both parties will normally be treated as members without dependents for purposes of assignment to public quarters or determining entitlement to the basic allowance for quarters. However, when husband-wife members, who are both entitled to the basic allowance for quarters at the same or adjacent military installations, are geographically separated by competent orders and one member remains assigned to the old duty station, that member will normally be authorized continuance of the basic allowance for quarters prescribed for a member without dependents, notwithstanding the availability of adequate single quarters for assignment to him or her.

4. EFFECTIVE DATE AND IMPLEMENTATION

This Instruction is effective immediately. Two copies of implementing documents shall be forwarded to the Assistant Secretary of Defense (Manpower and Reserve Affairs) within 45 days.



William K. Brehm
Assistant Secretary of Defense
(Manpower and Reserve Affairs)