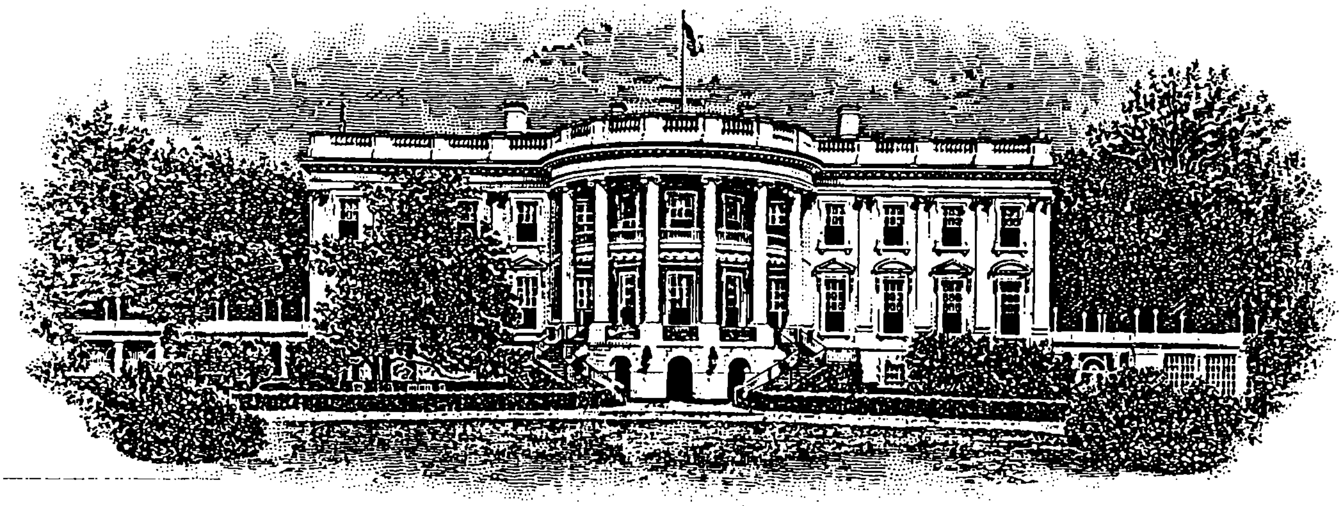
The White House



DOMESTIC POLICY

FACSIMILE TRANSMISSION COVER SHEET

TO: Dan Collins

FAX NUMBER: 6-2239

TELEPHONE NUMBER:

FROM: Molly Boostrom

TELEPHONE NUMBER:

PAGES (INCLUDING COVER):

COMMENTS: Dual Compensation summary attached.
According to DoD, there has been no action (and seemingly no interest from Congress, groups) on this issue under this Administration.
Call if you need anything further.

6-2239

DUAL COMPENSATION LEGISLATIVE SUMMARY

The matter of dual employment and dual compensation of retired military members has a long history of public policy. The Dual Office Act of 1894 first addressed the matter and was designed to prohibit the employment of any person in any Federal office if that person was already an office holder and if either of the positions paid $2,500 a year. A retired officer of the Armed Forces was considered to be an office holder for the purposes of the Act. Over the years, the stipulations changed. The 1894 Act was amended or interpreted to exclude from its provisions all members except Regular Officers retired for length of service. All others, enlisted, Reserve or disabled, were not subject to the limitations. Part of the rationale behind this policy was that a retired Regular Officer, by virtue of the commission and continuous military status, held office as an officer of the United States.

The policy of dual employment and dual compensation continued with the Dual Compensation Act of 1916. This Act prohibited the employment of one person in two civilian positions if the total compensation exceeded $2,000 per year. Many exceptions were made to this Act to meet the particular hiring needs of the Government. The Economy Act of 1932 reduced the retired pay of officers to the extent necessary to maintain a maximum compensation of $10,000 per year. The Act of 1932 applied only to Regular Officers and certain temporary officers who were retired for noncombat disability. In 1956, the Act was amended further to exempt those officers who were retired for disability incurred in combat with any enemy or caused by an instrumentality of war. Retired Reserve Officers were considered to be subject to this Act until the Court of Claims, in a series of decisions beginning in 1954, held that they were exempt by virtue of other legislation.

In 1963, the matter was again addressed by Congress. By that time, these three acts, plus some 200 Comptroller General decisions and numerous special statues, had created administrative difficulties and impeded efficient Government management. In view of that, the Dual Compensation Act of 1964 was passed to unify and simplify the dual compensation provisions. In its original bill form, the provisions would have applied to all retired members, Regular and Reserve, officer and enlisted. As enacted, however, the Congress carried forward the long-held position that the limitation on military retired pay should apply only to retired Regular Officers employed in a Federal position. Reserve Officers and enlisted members were excluded, as were certain Regular Officers retired for disability. The basic premise was reconfirmed that a retired Regular Officer continued to hold status in an office of the United States by fact of commission and military status. As provided, a retired Regular Officer could receive the first $2,000 of retired pay plus one-half of the remainder, if any. The $2,000 amount is adjusted with cost-of-living increases and, as of December 1, 1995, is $9,819.69 for those first becoming members of a Uniformed Service before August 1, 1986; $8,999.27 for those first becoming members on or after that date.

With the Civil Service Reform Act of 1978, the dual compensation matter was again addressed. The basic retired pay limitation of the 1964 Act was not amended; however, the 1978 Act added a provision further limiting retired pay, similar to the 1932 Act. The added provision was expanded to include retired Reserve Officers, as well as all retired enlisted members. The new provision requires a reduction in retired pay if the combination of civil service salary and military retired pay is equal or greater than rates of pay for Executive Level V positions, currently $108,200. As existed under the previous acts, exclusion was extended to certain members already employed in civilian positions on the date of enactment. Today, the dual compensation limitation is codified at section 5531 and 5532 of title 5, United States Code.

OFFIC OF THE CRETARY OF DEFEN E

WASHINGTON, DC 20301-1000

SECRETARY OF DEFENSE TELECOPIER COVER SHEET

Attention: Molly Berstrum

Fax Number: 456-7028

From: Laura Marcus
Special Assistant to SecDef & DepSecDef

Phone Number: 703-614-0363

Fax contains 1 **pages**
(not including cover sheet)

Subject: Dual Compensation

Note: Molly —
I'll look into this more tonight + see what I can drum up for you tomorrow.

Speak to you soon, Laura

—During Bush Admin, law amended to allow for ind'l waivers (rarely used)