

concerned, there shall be maintained retired lists containing the names of the Reserves of the armed forces under his jurisdiction who are in the Retired Reserve.” See section 12774 of this title.

1958—Subsec. (b). Pub. L. 85-861 struck out provisions requiring publication of the temporary disability retired list annually in the official register or other official publication of the armed force concerned.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103-337, set out as an Effective Date note under section 10001 of this title.

**CHAPTER 71—COMPUTATION OF RETIRED PAY**

- Sec.
- 1401. Computation of retired pay.
- 1401a. Adjustment of retired pay and retainer pay to reflect changes in Consumer Price Index.
- 1402. Recomputation of retired or retainer pay to reflect later active duty of members who first became members before September 8, 1980.
- 1402a. Recomputation of retired or retainer pay to reflect later active duty of members who first became members after September 7, 1980.
- 1403. Disability retired pay: treatment under Internal Revenue Code of 1986.
- 1404. Applicability of section 8301 of title 5.
- 1405. Years of service.
- 1406. Retired pay base for members who first became members before September 8, 1980: final basic pay.
- 1407. Retired pay base for members who first became members after September 7, 1980: high-36 month average.
- 1407a. Retired pay base: officers retired in general or flag officer grades.
- 1408. Payment of retired or retainer pay in compliance with court orders.
- 1409. Retired pay multiplier.
- 1410. Restoral of full retirement amount at age 62 for certain members entering on or after August 1, 1986.
- 1411. Rules of construction.
- 1412. Administrative provisions.
- [1413. Repealed.]
- 1413a. Combat-related special compensation.
- 1414. Members eligible for retired pay who are also eligible for veterans' disability compensation for disabilities rated 50 percent or higher: concurrent payment of retired pay and veterans' disability compensation.

AMENDMENTS

2011—Pub. L. 111-383, div. A, title VI, §632(b)(2), Jan. 7, 2011, 124 Stat. 4240, added item 1412 and struck out former item 1412 “Rounding to next lower dollar”.

2006—Pub. L. 109-364, div. A, title VI, §641(b), Oct. 17, 2006, 120 Stat. 2259, added item 1407a.

2003—Pub. L. 108-136, div. A, title VI, §641(d), (e)(2), Nov. 24, 2003, 117 Stat. 1516, 1517, struck out item 1413 “Special compensation for certain severely disabled

uniformed services retirees”, and substituted “Combat-related special compensation” for “Special compensation for certain combat-related disabled uniformed services retirees” in item 1413a and “Members eligible for retired pay who are also eligible for veterans' disability compensation for disabilities rated 50 percent or higher: concurrent payment of retired pay and veterans' disability compensation” for “Members eligible for retired pay who have service-connected disabilities: payment of retired pay and veterans' disability compensation; contingent authority” in item 1414.

2002—Pub. L. 107-314, div. A, title VI, §636(a)(3), Dec. 2, 2002, 116 Stat. 2576, added item 1413a.

2001—Pub. L. 107-107, div. A, title VI, §641(c), Dec. 28, 2001, 115 Stat. 1150, added item 1414.

1999—Pub. L. 106-65, div. A, title VI, §§643(b)(3)(B), 658(a)(2), Oct. 5, 1999, 113 Stat. 664, 669, inserted “certain” before “members” in item 1410 and added item 1413.

1987—Pub. L. 100-26, §7(h)(2)(B), Apr. 21, 1987, 101 Stat. 282, substituted colon for semicolon and “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954” in item 1403.

1986—Pub. L. 99-348, title III, §304(b)(2), July 1, 1986, 100 Stat. 703, inserted “of members who first became members before September 8, 1980” in item 1402, substituted “Retired pay base for members who first became members before September 8, 1980: final basic pay” for “Limitations on revocation of retired pay” in item 1406 and “Retired pay base for members who first became members after September 7, 1980: high-36 month average” for “Retired pay base” in item 1407, and added items 1409 to 1412.

1982—Pub. L. 97-252, title X, §1002(b), Sept. 8, 1982, 96 Stat. 735, added item 1408.

1980—Pub. L. 96-513, title V, §511(51)(C), (52)(C), Dec. 12, 1980, 94 Stat. 2924, 2925, substituted “of members who first became members after September 7, 1980” for “in case of members who first became members after the enactment of the Department of Defense Authorization Act, 1981” in item 1402a, and substituted “Internal Revenue Code of 1954” for “title 26” in item 1403.

Pub. L. 96-342, title VIII, §813(a)(2), (b)(3)(B), 94 Stat. 1101, 1104, added items 1402a and 1407.

1966—Pub. L. 89-718, §3, Nov. 2, 1966, 80 Stat. 1115, substituted “8301” for “47a” in item 1404.

Pub. L. 89-652, §2(2), Oct. 14, 1966, 80 Stat. 902, added item 1406.

1963—Pub. L. 88-132, §5(g)(2), Oct. 2, 1963, 77 Stat. 214, added item 1401a.

1958—Pub. L. 85-422, §11(a)(1)(B), May 20, 1958, 72 Stat. 131, added item 1405.

**§ 1401. Computation of retired pay**

(a) DISABILITY, NON-REGULAR SERVICE, WARRANT OFFICER, AND DOPMA RETIREMENT.—The monthly retired pay of a person entitled thereto under this subtitle is computed according to the following table. For each case covered by a section of this title named in the column headed “For sections”, retired pay is computed by taking, in order, the steps prescribed opposite it in columns 1, 2, 3, and 4,<sup>1</sup> as modified by the applicable footnotes.

Formula No.	For sections	Column 1 Take	Column 2 Multiply by	Column 3 Add
1	1201 1204	Retired pay base as computed under section 1406(b) or 1407.	As member elects— (1) 2½% of years of service credited to him under section 1208; <sup>1</sup> or (2) the percentage of disability, not to exceed 75%, on date when retired.	

<sup>1</sup> So in original. Column 4 has been struck out.

Formula No.	For sections	Column 1 Take	Column 2 Multiply by	Column 3 Add
2	1202 1205	Retired pay base as computed under section 1406(b) or 1407.	As member elects— (1) 2½% of years of service credited to him under section 1208; <sup>1</sup> or (2) the percentage of disability, not to exceed 75%, on date when his name was placed on temporary disability retired list.	Amount necessary to increase product of columns 1 and 2 to 50% of retired pay base upon which computation is based.
4	580 1263 1293 1305	Retired pay base as computed under section 1406(b) or 1407.	The retired pay multiplier prescribed in section 1409(a) for the years of service credited to him under section 1405.	
5	633 634 635 636 1251 1252 1253	Retired pay base as computed under section 1406(b) or 1407.	The retired pay multiplier prescribed in section 1409(a) for the years of service credited to him under section 1405.	

<sup>1</sup> Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month.

(b) USE OF MOST FAVORABLE FORMULA.—If a person would otherwise be entitled to retired pay computed under more than one formula of the table in subsection (a) or of any other provision of law, the person is entitled to be paid under the applicable formula that is most favorable to him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 106; Pub. L. 85-422, §§ 6(7), 11(a)(2), May 20, 1958, 72 Stat. 129, 131; Pub. L. 88-132, § 5(h)(1), Oct. 2, 1963, 77 Stat. 214; Pub. L. 89-132, § 6, Aug. 21, 1965, 79 Stat. 547; Pub. L. 90-207, § 3(1), Dec. 16, 1967, 81 Stat. 653; Pub. L. 92-455, § 1, Oct. 2, 1972, 86 Stat. 761; Pub. L. 96-342, title VIII, § 813(b)(1), Sept. 8, 1980, 94 Stat. 1102; Pub. L. 96-513, title I, § 113(a), title V, § 511(49), Dec. 12, 1980, 94 Stat. 2876, 2924; Pub. L. 98-94, title IX, §§ 922(a)(1), 923(a)(1), (2)(A), Sept. 24, 1983, 97 Stat. 641, 642; Pub. L. 98-557, § 35(b), Oct. 30, 1984, 98 Stat. 2877; Pub. L. 99-348, title II, § 201(a), July 1, 1986, 100 Stat. 691; Pub. L. 102-484, div. A, title X, § 1052(18), Oct. 23, 1992, 106 Stat. 2500; Pub. L. 103-337, div. A, title XVI, § 1662(j)(2), Oct. 5, 1994, 108 Stat. 3004; Pub. L. 109-163, div. A, title V, § 509(d)(1)(A), Jan. 6, 2006, 119 Stat. 3231; Pub. L. 109-364, div. A, title V, § 502(d)(1), Oct. 17, 2006, 120 Stat. 2177; Pub. L. 111-383, div. A, title VI, § 631(a), Jan. 7, 2011, 124 Stat. 4239.)

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1401, footnote 3.	37:272(d) (1st proviso); 10:600(d) (less 1st and 2d sentences). 34:430(d) (less 1st and 2d sentences).	

In the introductory paragraph, the applicability of the rule stated in the third sentence to situations not expressly covered by the laws named in the source statutes above is a practical construction that the rule must be reciprocally applied in all cases.

In formula No. 1, the words “whichever is earlier”, in 37:272(d) (clause (2)), are omitted, since they are contrary to the rule stated in 37:272(e) (1st proviso of last sentence).

In formula No. 3, the computation is based on monthly pay instead of annual pay to conform to the other formulas of the revised section. The words “basic pay” are substituted for the words “base and longevity pay” to conform to the terminology of the Career Compensation Act of 1949 (37 U.S.C. 231 et seq.). The words “which he would receive if serving, at the time granted such pay, on active duty” are omitted as surplusage and to conform to the other formulas of the revised section, since the effect of these words is covered by footnote 1. The words “at any time” are substituted for the words “during his entire period of service”.

Footnotes 1 and 2 reflect the long-standing construction of those provisions dealing with computation of retired pay which do not specifically provide that the member is entitled to compute his retired pay on the basis of the monthly basic pay to which he would be entitled if he were on active duty in his retired grade. The pertinent basic computation provisions for such retirement either provide for computation of retired pay on the same basis as the provisions dealing with higher retired grade, or the basic retirement provisions were enacted after the provisions authorizing higher retired grade. The words “at rates applicable on date of retirement \* \* \* and adjust to reflect later changes in permanent rates”, in footnote 1; and all of footnote 2; are based on the source statutes incorporated in the formulas to which footnotes 1 and 2 apply, as interpreted in an opinion of the Judge Advocate General of the Army (1953/4120, 14 May 1953).

In footnote 3, the words “and disregard a part of a year that is less than six months” are made applicable to formulas Nos. 1 and 2. The legislative history of the Career Compensation Act of 1949 (Hearings before the Committee on Armed Services of the Senate on H.R. 5007, 81st Congress, First Session, page 313, July 6, 1949) indicates that the provisions, upon which formulas Nos. 1 and 2 are based, should be construed to require that a fraction of less than one-half of a year be disregarded. It also indicates that other retirement laws that are also silent on this point should be similarly construed.

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1401 Introductory clause.	10:600(f) (1st sentence, less applicability to retired grade). 34:430(f) (1st sentence, less applicability to retired grade).	June 29, 1948, ch. 708, § 303 (1st 91 words and 1st proviso), 62 Stat. 1088.
1401(1) .....	37:272(d) (less 1st 55 words; less 104th through 128th words, as applicable to retired grade; and less 1st, 2d, 4th, 5th, and last provisos).	Oct. 12, 1949, ch. 681, §§ 402(d) (less 30th through 55th words; less 104th through 128th words, as applicable to retired grade; and less 2d, 5th, and last provisos), 402(e) (1st proviso of last sentence), 63 Stat. 818, 819.
1401(2) .....	37:272(e) (1st proviso of last sentence).	
1401(3) .....	37:272(d) (1st 29, and 51st through 55th words, and 4th proviso). 10:1036b (1st 91 words and 1st proviso). 34:440j (1st 91 words and 1st proviso).	May 29, 1954, ch. 249, § 14(d) (less 1st sentence), (f) (1st sentence, less applicability to retired grade; and last sentence), 68 Stat. 163, 164.
1401(4) .....	10:600(d) (2d sentence). 10:600(f) (last sentence). 34:430(d) (2d sentence). 34:430(f) (last sentence).	
1401, footnote 1.	[No source].	
1401, footnote 2.	[No source].	

## AMENDMENTS

2011—Subsec. (a). Pub. L. 111-383 in column 2 of table inserted “, not to exceed 75%,” after “percentage of disability” in two places and struck out column 4 of table which directed subtraction of excess over 75 percent of retired pay base upon which computation is based in formulas 1 and 2.

2006—Subsec. (a). Pub. L. 109-364 in table inserted “1253” after “1252” in column under heading “For sections”.

Pub. L. 109-163 in table inserted “1252” after “1251” in column under heading “For sections”.

1994—Subsec. (a). Pub. L. 103-337 in table struck out formula number 3 which provided formula for computing retired pay under former section 1331 of this title.

1992—Subsec. (a). Pub. L. 102-484 substituted “580” for “564” in column in table under heading “For sections”.

1986—Subsec. (a). Pub. L. 99-348, §201(a)(1), (2), designated existing provision as subsec. (a), added heading, and struck out third, fourth, and fifth sentences which read as follows: “The amount computed, if not a multiple of \$1, shall be rounded to the next lower multiple of \$1. However, if a person would otherwise be entitled to retired pay computed under more than one pay formula of this table or of any other provision of law, he is entitled to be paid under the applicable formula that is most favorable to him. Section references below are to sections of this title.”

Pub. L. 99-348, §201(a)(3), amended column 1 of table generally by substituting provisions that retired pay be computed by taking the retired pay base as computed under section 1406(b) or 1407 of this title for provisions that retired pay be computed for a person who first became a member of a uniformed service, as defined in section 1407(a)(2) of this title, after Sept. 7, 1980, by taking the monthly retired pay base as computed under section 1407(b) of this title, and for all others, by taking the monthly basic pay to which the member was entitled under various circumstances.

Pub. L. 99-348, §201(a)(4), substituted in column 2 of table a multiplier of the retired pay multiplier prescribed in section 1409(a) for the years of service credited to him under section 1405 for a multiplier of 2½% of years of service credited under section 1405 for formulas 4 and 5 and struck out “Excess over 75% of pay upon which computation is based.” in column 4 of table for formulas 4 and 5.

Pub. L. 99-348, §201(a)(5), in columns 3 and 4 substituted “retired pay base” for “pay” wherever appearing.

Pub. L. 99-348, §201(a)(6), redesignated footnote 3 as 1, and struck out former footnote 1 which provided computation at rates applicable on date of retirement or date when the member’s name was placed on temporary disability retired list, as the case may be, footnote 2 which provided computation at rates applicable on the date when retired pay is granted, footnote 4 which provided computation at the highest rates of basic pay applicable to an officer who served as Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, while so serving in that office and computation at the highest rate of basic pay applicable to an enlisted person who has served as sergeant major of the Army, master chief petty officer of the Navy, chief master sergeant of the Air Force, sergeant major of the Marine Corps, or master chief petty officer of the Coast Guard, while he served if that rate is higher than the rate authorized by the table, and footnote 5 which provided for purposes of this section that an officer’s retired grade be determined as if sections 3962(b) and 8962(b) did not apply.

Pub. L. 99-348, §201(a)(7), in column 2 of table substituted footnote 1 designation for footnote 3 designation wherever appearing.

Subsec. (b). Pub. L. 99-348, §201(a)(8), added subsec. (b).

1984—Pub. L. 98-557 inserted reference to Commandant of the Coast Guard in footnote 4 of table.

1983—Pub. L. 98-94, §922(a)(1), inserted “The amount computed, if not a multiple of \$1, shall be rounded to the next lower multiple of \$1.”

Pub. L. 98-94, §923(a)(1), (2)(A), in footnote 3 of table, substituted “Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month” for “Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months”.

1980—Pub. L. 96-513, §113(a), inserted formula 5 in table of formulae set out in the section and added footnote 5.

Pub. L. 96-513, §511(49), in formula 4 table of sections struck out reference to section 1255, in heading for Column 1 substituted reference to Sept. 7, 1980, for reference to date of enactment of Department of Defense Authorization Act, 1981, and in footnote 4 substituted reference to master chief petty officer of the Navy, for reference to senior enlisted advisor of the Navy.

Pub. L. 96-342 in heading for column 1 of table inserted provisions respecting applicability to persons becoming members after the date of the enactment of the Department of Defense Authorization Act, 1981.

1972—Pub. L. 92-455 substituted in second sentence of footnote 4 of table “chief master sergeant of the Air Force, sergeant major of the Marine Corps, or master chief petty officer of the Coast Guard,” for “chief master sergeant of the Air Force, or sergeant major of the Marine Corps,”.

1967—Pub. L. 90-207 inserted sentence to footnote 4 of table requiring the computation of retired pay for an enlisted person who has served as senior noncommissioned officer of his service at the highest rate of basic pay applicable to him while he so served, if that rate is higher than the rate authorized by the table.

1965—Pub. L. 89-132 struck out “increased, for members credited with two or less years of service for basic pay purposes, by 6%” from column 1 of formula 1 and column 1 of formula 2.

1963—Pub. L. 88-132 struck out from footnote 1 of table “, and adjust to reflect later changes in applicable permanent rates” after “as the case may be.”

1958—Pub. L. 85-422, §6(7)(A), inserted provisions in Column 1 of formulas 1 and 2 permitting the taking of the monthly basic pay to which a member was entitled on the day before retirement or placement on temporary disability retired list, increased, for members credited with two or less years of service for basic pay purposes, by 6 percent.

Pub. L. 85-422, §11(a)(2), substituted “under section 1405 of this title” for “in computing basic pay” in column 2 of formula 4.

Pub. L. 85-422, §6(7)(B), added footnote 4.

## EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 111-383, div. A, title VI, §631(d), Jan. 7, 2011, 124 Stat. 4240, provided that: “The tables in sections 1401(a), 1402(d), and 1402a(d) of title 10, United States Code, as in effect on the day before the date of the enactment of this Act [Jan. 7, 2011], shall continue to apply to the computation or recomputation of retired or retainer pay for persons who first became entitled to retired or retainer pay under subtitle A of such title on or before the date of the enactment of this Act. The amendments made by this section [amending this section and sections 1402 and 1402a of this title] shall apply only with respect to persons who first become entitled to retired or retainer pay under such subtitle after that date.”

## EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103-337, set out as an Effective Date note under section 10001 of this title.

## EFFECTIVE DATE OF 1984 AMENDMENT

Section 35(c) of Pub. L. 98-557 provided that: “The amendments made by this section [amending this sec-

tion and provisions set out as a note under section 1009 of Title 37, Pay and Allowances of the Uniformed Services] shall become effective on October 1, 1984”.

#### EFFECTIVE DATE OF 1983 AMENDMENT

Section 922(e) of Pub. L. 98-94 provided that: “The amendments made by this section [enacting section 6333 of this title and amending this section, sections 1401a, 1402, 1402a, 1437, 1451, 3991, 3992, 6151, 6383, 8991, and 8992 of this title, section 423 of Title 14, Coast Guard, section 8530 of Title 33, Navigation and Navigable Waters, section 212 of Title 42, The Public Health and Welfare] shall take effect on October 1, 1983.”

Amendment by section 923 of Pub. L. 98-94 applicable with respect to the computation of retired or retainer pay of any individual who becomes entitled to that pay after Sept. 30, 1983, see section 923(g) of Pub. L. 98-94, set out as a note under section 1174 of this title.

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 113(a) of Pub. L. 96-513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96-513 effective on Dec. 12, 1980, and amendment by section 511(49) of Pub. L. 96-513 effective Dec. 12, 1980, see section 701 of Pub. L. 96-513, set out as a note under section 101 of this title.

#### EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90-207 effective Oct. 1, 1967, see section 7 of Pub. L. 90-207, set out as a note under section 203 of Title 37, Pay and Allowances of the Uniformed Services.

#### EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89-132 effective Sept. 1, 1965, see section 10 of Pub. L. 89-132, set out as a note under section 203 of Title 37, Pay and Allowances of the Uniformed Services.

#### EFFECTIVE DATE OF 1963 AMENDMENT

Amendment by Pub. L. 88-132 effective Oct. 1, 1963, see section 14 of Pub. L. 88-132, set out as a note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

#### EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-422 effective June 1, 1958, see section 9 of Pub. L. 85-422.

#### SHORT TITLE OF 1986 AMENDMENT

Section 1(a) of Pub. L. 99-348 provided that: “This Act [enacting sections 134a, 1406, 1407, and 1409 to 1412 of this title, redesignating former section 1406 of this title as section 1338 [now 12738] of this title, amending this section, sections 101, 135, 136a, 716, 1040, 1338 [now 12738], 1401a, 1402, 1402a, 1405, 1447, 1451, 1452, 2830, 3925, 3991, 3992, 5083, 5201, 6151, 6322, 6323, 6325, 6326, 6330, 6333, 6383, 8925, 8991, and 8992 of this title, sections 5313 and 5314 of Title 5, Government Organization and Employees, sections 46, 47, 51, 288, 291 to 293, 327, 334, 353 to 355, 357, 362, and 421 to 424 of Title 14, Coast Guard, section 8530 of Title 33, Navigation and Navigable Waters, and sections 211 and 212 of Title 42, The Public Health and Welfare, repealing former section 1407 and section 6328 of this title, enacting provisions set out as notes under this section and sections 135 and 12731 of this title, and repealing provisions set out as notes under this section and section 6330 of this title] may be cited as the ‘Military Retirement Reform Act of 1986’.”

#### SHORT TITLE OF 1982 AMENDMENT

Pub. L. 97-252, title X, §1001, Sept. 8, 1982, 96 Stat. 730, provided that: “This title [enacting section 1408 of this title, amending sections 1072, 1076, 1086, 1447, 1448, and 1450 of this title, and enacting provisions set out as notes under sections 1408 and 2208 of this title] may be

cited as the ‘Uniformed Services Former Spouses’ Protection Act’.”

#### TREATMENT AS ACTIVE SERVICE FOR RETIRED PAY PURPOSES OF SERVICE AS MEMBER OF ALASKA TERRITORIAL GUARD DURING WORLD WAR II

Pub. L. 111-84, div. A, title VI, §645, Oct. 28, 2009, 123 Stat. 2368, provided that:

“(a) IN GENERAL.—Service as a member of the Alaska Territorial Guard during World War II of any individual who was honorably discharged therefrom under section 8147 of the Department of Defense Appropriations Act, 2001 [Public Law 106-259; 114 Stat. 705] [amending section 106 of Title 38, Veterans’ Benefits, and enacting provisions set out as a note under section 106 of Title 38] shall be treated as active service for purposes of the computation under chapter 61, 71, 371, 571, 871, or 1223 of title 10, United States Code, as applicable, of the retired pay to which such individual may be entitled under title 10, United States Code.

“(b) APPLICABILITY.—Subsection (a) shall apply with respect to amounts of retired pay payable under title 10, United States Code, for months beginning on or after the date of the enactment of this Act [Oct. 28, 2009]. No retired pay shall be paid to any individual by reason of subsection (a) for any period before that date.

“(c) WORLD WAR II DEFINED.—In this section, the term ‘World War II’ has the meaning given that term in section 101(8) of title 38, United States Code.”

Similar provisions were contained in the following appropriation act:

Pub. L. 111-118, div. A, title VIII, §8055, Dec. 19, 2009, 123 Stat. 3441.

#### RECOMPUTATION OF RETIRED PAY FOR CERTAIN RECENTLY RETIRED OFFICERS

Pub. L. 106-65, div. A, title VI, §601(e), Oct. 5, 1999, 113 Stat. 648, provided that: “In the case of a commissioned officer of the uniformed services who retired during the period beginning on April 30, 1999, through December 31, 1999, and who, at the time of retirement, was in pay grade O-7, O-8, O-9, or O-10, the retired pay of that officer shall be recomputed, effective as of January 1, 2000, using the rate of basic pay that would have been applicable to the computation of that officer’s retired pay if the provisions of paragraph (2) of section 203(a) of title 37, United States Code, as added by subsection (d), had taken effect on April 30, 1999.”

#### SIX-MONTH ROUNDING RULE

Section 305(b) of Pub. L. 99-348 provided that:

“(1) GENERAL RULE.—Retired pay or retainer pay may not be paid to a covered member of the Armed Forces (as defined in paragraph (3)) for any month in an amount that is greater than the amount otherwise determined to be payable after such reductions as may be necessary to reflect adjusting the computation of retired pay or retainer pay that includes credit for a part of a year of service to permit credit for a part of a year of service only for such month or months actually served.

“(2) EXCEPTIONS.—The limitation in paragraph (1) does not apply to a member who before January 1, 1982—

“(A) applied for retirement or transfer to the Fleet Reserve or Fleet Marine Corps Reserve;

“(B) was being processed for retirement under the provisions of chapter 61 of title 10, United States Code, or who was on the temporary disability retired list and thereafter retired under the provisions of section 1210(c) or 1210(d) of such title; or

“(C) was retired or in an inactive status and would have been eligible for retired pay under the provisions of chapter 67 [now 1223] of such title, but for the fact that the person was under 60 years of age.

“(3) DEFINITION OF COVERED MEMBER.—For the purposes of this subsection, the term ‘covered member of the Armed Forces’ means a member of the Armed Forces who became entitled to retired or retainer pay

during the period beginning on January 1, 1982, and ending on September 30, 1983.

“(4) REPEAL OF SOURCE LAW.—Section 8054 of the Department of Defense Appropriations Act, 1985 (as contained in section 101(h) of Public Law 98-473) [formerly set out as a note below], is repealed.

“(5) CROSS REFERENCE.—For the effective date of October 1, 1983, for provisions making permanent programmatic changes in law to accomplish the policy provided in such section 8054 (and prior provisions of law), see section 923(h) of the Department of Defense Authorization Act, 1984 (Public Law 98-94) [probably means section 923(g) of Pub. L. 98-94, set out as an Effective Date of 1983 Amendment note under section 1174 of this title].”

#### LIMITATION ON PAYMENT OF RETIRED OR RETAINER PAY TO REFLECT FRACTIONAL YEAR ADJUSTMENTS

Pub. L. 98-473, title I, §101(h) [title VIII, §8054], Oct. 12, 1984, 98 Stat. 1904, 1933, prohibited, with certain exceptions, payment of retired pay or retainer pay of a member of the Armed Forces for any month who, on or after January 1, 1982, became entitled to retired or retainer pay, in an amount greater than the amount otherwise determined payable after reductions necessary to reflect adjusting the computation of retired pay or retainer pay that includes credit for part of a year of service to permit credit for a part of a year of service only for such month or months actually served, prior to repeal by Pub. L. 99-348, title III, §305(b)(4), July 1, 1986, 100 Stat. 705.

#### INCREASE IN PAY AND ALLOWANCES OF CERTAIN PERSONS WHO SERVED AS GENERALS OF THE ARMY, FLEET ADMIRALS OF THE NAVY, GENERAL OF THE MARINE CORPS, OR ADMIRAL IN THE COAST GUARD

Section 5 of Pub. L. 90-207 provided that: “Notwithstanding any other provision of law, a member of an armed force who is entitled to pay and allowances under any of the following provisions of law on September 30, 1967, shall continue to receive the pay and allowances to which he was entitled on that day plus an increase of 4.5 per centum in the total of his pay and allowances:

“(1) The Act of March 23, 1946, chapter 112 (60 Stat. 59).

“(2) The Act of June 26, 1948, chapter 677 (62 Stat. 1052).

“(3) The Act of September 18, 1950, chapter 952 (64 Stat. A224).”

#### INCREASE IN RETIRED OR RETAINER PAY OF MEMBERS ENTITLED THERETO ON OR AFTER OCTOBER 1, 1967

Section 6 of Pub. L. 90-207 provided that: “Notwithstanding any other provision of law, a member or former member of a uniformed service who initially becomes entitled to retired pay or retainer pay on or after October 1, 1967, shall be entitled to have that pay computed using the rates of basic pay prescribed by the first section of this Act [amending section 203(a) of Title 37].”

#### INCREASES IN RETIRED OR RETAINER PAY

Pub. L. 89-501, title III, §303, July 13, 1966, 80 Stat. 278, provided that: “Notwithstanding any other provision of law, a member or former member of a uniformed service who initially becomes entitled to retired pay or retainer pay on the effective date of this title shall be entitled to have that pay computed using the rates of basic pay prescribed by the first section of this title [amending section 203(a) of Title 37].”

Effective date of section 303 of Pub. L. 89-501 as the first day of the first pay period which begins on or after July 1, 1966, see section 304 of Pub. L. 89-501, set out as Effective Date of 1966 Amendments note under section 203 of Title 37, Pay and Allowances of the Uniformed Services.

Section 5(a) of Pub. L. 89-132 provided that: “The retired pay or retainer pay of a member or former mem-

ber of a uniformed service who is entitled to that pay computed under rates of basic pay in effect before the effective date of this Act [Sept. 1, 1965] shall be increased, effective that date, by the per centum (adjusted to the nearest one-tenth of 1 per centum) that the Consumer Price Index (all items—United States city average), published by the Bureau of Labor Statistics, for the calendar month immediately preceding the effective date of this Act has increased over the average monthly index for calendar year 1962.”

#### CONTINUATION OF PAY AND ALLOWANCES OF CERTAIN PERSONS WHO SERVED AS GENERALS OF THE ARMY, FLEET ADMIRALS OF THE NAVY, GENERAL OF THE MARINE CORPS, OR ADMIRAL IN THE COAST GUARD

Section 7 of Pub. L. 89-132 provided that: “Notwithstanding any other provision of law, a member of an armed force who was entitled to pay and allowances under any of the following provisions of law on the day before the effective date of this Act [Sept. 1, 1965] shall continue to receive the pay and allowances to which he was entitled on that day:

“(1) The Act of March 23, 1946, chapter 112 (60 Stat. 59).

“(2) The Act of June 26, 1948, chapter 677 (62 Stat. 1052).

“(3) The Act of September 18, 1950, chapter 952 (64 Stat. A224).”

#### INCREASE IN RETIRED PAY TO PERSONS RETIRED BEFORE JUNE 1, 1958

Section 4 of Pub. L. 85-422, as amended by Pub. L. 85-855, §1(a), Aug. 28, 1958, 72 Stat. 1104, provided that:

“(a) Except for members covered by section 7 of this Act, members and former members of the uniformed services who are entitled to retired pay, retirement pay, retainer pay, or equivalent pay, on the day before the effective date of this Act [June 1, 1958], shall be entitled to an increase of 6 per centum of that pay to which they were entitled on that date.

“(b) Notwithstanding any other provision of law, a member of a uniformed service retired under any provision of law, or transferred to the Fleet Reserve or Fleet Marine Corps Reserve, on the effective date of this Act [June 1, 1958] shall have his retired pay or retainer pay computed on the basis of the rates of basic pay set forth in the Career Compensation Act of 1949, as amended by this Act, or on the rates of basic pay set forth in the Career Compensation Act of 1949 on the day before the effective date of this Act, plus 6 per centum of that pay, whichever is greater.

“(c) Section 5 of the Career Incentive Act of 1955 (69 Stat. 22) does not apply to any person who is retired, or to whom retired pay, retirement pay, retainer pay, or equivalent pay (including temporary disability retired pay) is granted, on or after the effective date of this Act [June 1, 1958].”

Section 1(b) of Pub. L. 85-855 provided that the amendment of section 4(a) of Pub. L. 85-422, which eliminated the words “and persons with two or less years of service for basic pay purposes who were retired for physical disability or placed on the temporary disability retired list” preceding “members and former members” should be effective June 1, 1958.

#### PUBLIC HEALTH SERVICE

Authority vested by this chapter in “military departments”, “the Secretary concerned”, or “the Secretary of Defense” to be exercised, with respect to commissioned officers of Public Health Service, by Secretary of Health and Human Services or his designee, see section 213a of Title 42, The Public Health and Welfare.

#### NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Authority vested by this chapter in “military departments”, “the Secretary concerned”, or “the Secretary of Defense” to be exercised, with respect to commissioned officer corps of National Oceanic and Atmospheric Administration, by Secretary of Commerce or

Secretary's designee, see section 3071 of Title 33, Navigation and Navigable Waters.

**§ 1401a. Adjustment of retired pay and retainer pay to reflect changes in Consumer Price Index**

(a) PROHIBITION ON RECOMPUTATION TO REFLECT INCREASES IN BASIC PAY.—Unless otherwise specifically provided by law, the retired pay of a member or former member of an armed force may not be recomputed to reflect any increase in the rates of basic pay for members of the armed forces.

(b) COST-OF-LIVING ADJUSTMENTS BASED ON CPI INCREASES.—

(1) INCREASE REQUIRED.—Effective on December 1 of each year, the Secretary of Defense shall increase the retired pay of members and former members entitled to that pay in accordance with paragraphs (2) and (3).

(2) PERCENTAGE INCREASE.—Except as otherwise provided in this subsection, the Secretary shall increase the retired pay of each member and former member by the percent (adjusted to the nearest one-tenth of 1 percent) by which—

(A) the price index for the base quarter of that year, exceeds

(B) the base index.

(3) REDUCED PERCENTAGE FOR CERTAIN POST-AUGUST 1, 1986 MEMBERS.—If the percent determined under paragraph (2) is greater than 1 percent, the Secretary shall increase the retired pay of each member and former member who first became a member on or after August 1, 1986, and has elected to receive a bonus under section 322 (as in effect before the enactment of the National Defense Authorization Act for Fiscal Year 2008) or section 354 of title 37, by the difference between—

(A) the percent determined under paragraph (2); and

(B) 1 percent.

(4) SPECIAL RULE FOR PARAGRAPH (3).—If in any case in which an increase in retired pay that would otherwise be made under paragraph (3) is not made by reason of law (other than any provision of this section), then (unless otherwise provided by law) when the next increase in retired pay is made under this subsection, the increase under paragraph (3) shall be carried out so as to achieve the same net increase in retired pay under that paragraph that would have been the case if that law had not been enacted.

(5) REGULATIONS.—Any increase in retired pay under this subsection shall be made in accordance with regulations prescribed by the Secretary of Defense.

(c) FIRST COLA ADJUSTMENT FOR MEMBERS WITH RETIRED PAY COMPUTED USING FINAL BASIC PAY.—

(1) FIRST ADJUSTMENT WITH INTERVENING INCREASE IN BASIC PAY.—Notwithstanding subsection (b) but subject to subsection (f)(2), if a person described in paragraph (3) becomes entitled to retired pay based on rates of monthly basic pay that became effective after the last day of the calendar quarter of the base index, the retired pay of the member or former mem-

ber shall be increased on the effective date of the next adjustment of retired pay under subsection (b) only by the percent (adjusted to the nearest one-tenth of 1 percent) by which—

(A) the price index for the base quarter of that year, exceeds

(B) the price index for the calendar quarter immediately before the calendar quarter in which the rates of monthly basic pay on which the retired pay is based became effective.

(2) FIRST ADJUSTMENT WITH NO INTERVENING INCREASE IN BASIC PAY.—If a person described in paragraph (3) becomes entitled to retired pay on or after the effective date of an adjustment in retired pay under subsection (b) but before the effective date of the next increase in the rates of monthly basic pay, the retired pay of the member or former member shall be increased (subject to subsection (f)(2) as applied to other members whose retired pay is computed on the current rates of basic pay in the most recent adjustment under this section), effective on the date the member becomes entitled to that pay, by the percent (adjusted to the nearest one-tenth of 1 percent) by which—

(A) the base index, exceeds

(B) the price index for the calendar quarter immediately before the calendar quarter in which the rates of monthly basic pay on which the retired pay is based became effective.

(3) MEMBERS COVERED.—Paragraphs (1) and (2) apply to a member or former member of an armed force who first became a member of a uniformed service before August 1, 1986, and whose retired pay base is determined under section 1406 of this title.

(d) FIRST COLA ADJUSTMENT FOR MEMBERS WITH RETIRED PAY COMPUTED USING HIGH-THREE.—Notwithstanding subsection (b) but subject to subsection (f)(2), the retired pay of a member or former member of an armed force who first became a member of a uniformed service before August 1, 1986, or on or after August 1, 1986, if the member or former member did not elect to receive a bonus under section 322 (as in effect before the enactment of the National Defense Authorization Act for Fiscal Year 2008) or section 354 of title 37 and whose retired pay base is determined under section 1407 of this title shall be increased on the effective date of the first adjustment of retired pay under subsection (b) after the member or former member becomes entitled to retired pay by the percent (adjusted to the nearest one-tenth of 1 percent) equal to the difference between the percent by which—

(1) the price index for the base quarter of that year, exceeds

(2) the price index for the calendar quarter immediately before the calendar quarter during which the member became entitled to retired pay.

(e) PRO RATING OF INITIAL ADJUSTMENT.—Notwithstanding subsection (b) but subject to subsection (f)(2), the retired pay of a member or former member of an armed force who first became a member of a uniformed service on or

after August 1, 1986, and elected to receive a bonus under section 322 (as in effect before the enactment of the National Defense Authorization Act for Fiscal Year 2008) or section 354 of title 37 shall be increased on the effective date of the first adjustment of retired pay under subsection (b) after the member or former member becomes entitled to retired pay by the percent (adjusted to the nearest one-tenth of 1 percent) equal to the difference between—

(1) the percent by which—

(A) the price index for the base quarter of that year, exceeds

(B) the price index for the calendar quarter immediately before the calendar quarter during which the member became entitled to retired pay; and

(2) one-fourth of 1 percent for each calendar quarter from the quarter described in paragraph (1)(B) to the quarter described in paragraph (1)(A).

If in any case the percent described in paragraph (2) exceeds the percent determined under paragraph (1), such an increase shall not be made.

(f) PREVENTION OF PAY INVERSIONS.—

(1) PREVENTION OF RETIRED PAY INVERSIONS.—Notwithstanding any other provision of law, the monthly retired pay of a member or a former member of an armed force who initially became entitled to that pay on or after January 1, 1971, may not be less than the monthly retired pay to which he would be entitled if he had become entitled to retired pay at an earlier date based on the grade in which the member is retired, adjusted to reflect any applicable increases in such pay under this section. In computing the amount of retired pay to which such a member or former member would have been entitled on that earlier date, the computation shall be based on his grade, length of service, and the rate of basic pay applicable to him at that time, except that such computation may not be based on a rate of basic pay for a grade higher than the grade in which the member is retired. This subsection does not authorize any increase in the monthly retired pay to which a member was entitled for any period before October 7, 1975.

(2) PREVENTION OF COLA INVERSIONS.—The percentage of the first adjustment under this section in the retired pay of any person, as determined under subsection (c)(1), (c)(2), (d), or (e), may not exceed the percentage increase in retired pay determined under subsection (b)(2) that is effective on the same date as the effective date of such first adjustment.

(g) DEFINITIONS.—In this section:

(1) The term “price index” means the Consumer Price Index (all items, United States city average) published by the Bureau of Labor Statistics.

(2) The term “base quarter” means the calendar quarter ending on September 30 of each year.

(3) The term “base index” means the price index for the base quarter for the most recent adjustment under subsection (b).

(4) The term “retired pay” includes retainer pay.

(h) PRICE INDEX FOR A QUARTER.—For purposes of this section, the price index for a calendar quarter is the arithmetical mean of the price index for the three months comprising that quarter.

(Added Pub. L. 88-132, §5(g)(1), Oct. 2, 1963, 77 Stat. 213; amended Pub. L. 89-132, §5(b), Aug. 21, 1965, 79 Stat. 547; Pub. L. 90-207, §2(a)(1), Dec. 16, 1967, 81 Stat. 652; Pub. L. 91-179, §1, Dec. 30, 1969, 83 Stat. 837; Pub. L. 94-106, title VIII, §806, Oct. 7, 1975, 89 Stat. 538; Pub. L. 94-361, title VIII, §801(a), July 14, 1976, 90 Stat. 929; Pub. L. 94-440, title XIII, §1306(d)(1), Oct. 1, 1976, 90 Stat. 1462; Pub. L. 96-342, title VIII, §812(b)(1), Sept. 8, 1980, 94 Stat. 1098; Pub. L. 98-94, title IX, §§921(a)(1), (b), 922(a)(2), Sept. 24, 1983, 97 Stat. 640, 641; Pub. L. 98-525, title XIV, §1405(26), Oct. 19, 1984, 98 Stat. 2623; Pub. L. 99-348, title I, §102, July 1, 1986, 100 Stat. 683; Pub. L. 100-180, div. A, title XII, §1231(21), Dec. 4, 1987, 101 Stat. 1161; Pub. L. 100-224, §1, Dec. 30, 1987, 101 Stat. 1536; Pub. L. 100-456, div. A, title VI, §622(a), Sept. 29, 1988, 102 Stat. 1983; Pub. L. 101-189, div. A, title VI, §651(b)(1), Nov. 29, 1989, 103 Stat. 1460; Pub. L. 103-66, title II, §2001, Aug. 10, 1993, 107 Stat. 335; Pub. L. 103-160, div. A, title XI, §1182(e), Nov. 30, 1993, 107 Stat. 1773; Pub. L. 103-335, title VIII, §8114A(b)(1), Sept. 30, 1994, 108 Stat. 2648; Pub. L. 103-337, div. A, title VI, §633(a), Oct. 5, 1994, 108 Stat. 2787; Pub. L. 104-106, div. A, title VI, §631(a), (c), Feb. 10, 1996, 110 Stat. 364, 365; Pub. L. 104-201, div. A, title VI, §§631(a), 632(a), Sept. 23, 1996, 110 Stat. 2549; Pub. L. 106-65, div. A, title VI, §§641(b), 643(b)(1), title X, §1066(a)(10), Oct. 5, 1999, 113 Stat. 662, 663, 771; Pub. L. 107-314, div. A, title VI, §633, Dec. 2, 2002, 116 Stat. 2572; Pub. L. 110-181, div. A, title VI, §661(b)(3), Jan. 28, 2008, 122 Stat. 178.)

#### REFERENCES IN TEXT

Section 322 of title 37 (as in effect before the enactment of the National Defense Authorization Act for Fiscal Year 2008), referred to in subsecs. (b)(3), (d), and (e), means section 322 of title 37 as in effect before enactment of Pub. L. 110-181. Section 322 of title 37 was renumbered as section 354 of title 37 and amended by Pub. L. 110-181, div. A, title VI, §661(b)(1), (2), Jan. 28, 2008, 122 Stat. 178.

#### AMENDMENTS

2008—Subsecs. (b)(3), (d), (e). Pub. L. 110-181, in introductory provisions, substituted “section 322 (as in effect before the enactment of the National Defense Authorization Act for Fiscal Year 2008) or section 354” for “section 322”.

2002—Subsec. (c)(1). Pub. L. 107-314, §633(a)(1), inserted “but subject to subsection (f)(2)” after “Notwithstanding subsection (b)” in introductory provisions.

Subsec. (c)(2). Pub. L. 107-314, §633(a)(2), inserted “(subject to subsection (f)(2) as applied to other members whose retired pay is computed on the current rates of basic pay in the most recent adjustment under this section)” after “shall be increased” in introductory provisions.

Subsec. (d). Pub. L. 107-314, §633(a)(1), (b)(1), in introductory provisions, inserted “but subject to subsection (f)(2)” after “Notwithstanding subsection (b)” and “or on or after August 1, 1986, if the member or former member did not elect to receive a bonus under section 322 of title 37” after “August 1, 1986.”

Subsec. (e). Pub. L. 107-314, §633(a)(1), (b)(2), in introductory provisions, inserted “but subject to subsection (f)(2)” after “Notwithstanding subsection (b)” and “and

elect to receive a bonus under section 322 of title 37” after “August 1, 1986.”

Subsec. (f). Pub. L. 107-314, § 633(a)(3), designated existing provisions as par. (1), inserted par. heading, realigned margins, and added par. (2).

1999—Subsec. (b)(1). Pub. L. 106-65, § 643(b)(1)(A), substituted “INCREASE REQUIRED” for “IN GENERAL” in heading.

Subsec. (b)(2). Pub. L. 106-65, § 1066(a)(10), struck out subpar. (A) designation and heading “GENERAL RULE”, redesignated cls. (i) and (ii) as subpars. (A) and (B), respectively, and realigned their margins, and struck out former subpars. (B) and (C) which read as follows:

“(B) SPECIAL RULE FOR FISCAL YEAR 1996.—In the case of the increase in retired pay that, pursuant to paragraph (1), becomes effective on December 1, 1995, the initial month for which such increase is payable as part of such retired pay shall (notwithstanding such December 1 effective date) be March 1996.

“(C) INAPPLICABILITY TO DISABILITY RETIREES.—Subparagraph (B) does not apply with respect to the retired pay of a member retired under chapter 61 of this title.”

Pub. L. 106-65, § 643(b)(1)(B), substituted “PERCENTAGE INCREASE” for “PRE-AUGUST 1, 1986 MEMBERS” in heading.

Pub. L. 106-65, § 641(b)(1), substituted “Except as otherwise provided in this subsection, the Secretary shall increase the retired pay of each member and former member” for “The Secretary shall increase the retired pay of each member and former member who first became a member of a uniformed service before August 1, 1986.”

Subsec. (b)(3). Pub. L. 106-65, § 643(b)(1)(C), substituted “REDUCED PERCENTAGE FOR CERTAIN POST-AUGUST 1, 1986 MEMBERS” for “POST-AUGUST 1, 1986 MEMBERS” in heading.

Pub. L. 106-65, § 641(b)(2), inserted “and has elected to receive a bonus under section 322 of title 37,” after “August 1, 1986.”

1996—Subsec. (b)(2)(B). Pub. L. 104-201, § 631(a), substituted “SPECIAL RULE FOR FISCAL YEAR 1996” for “SPECIAL RULES FOR FISCAL YEARS 1996 AND 1998” as subpar. heading, struck out cl. (i) designation and heading “FISCAL YEAR 1996” before “In the case of”, and struck out cl. (ii) which read as follows: “FISCAL YEAR 1998.—In the case of the increase in retired pay that, pursuant to paragraph (1), becomes effective on December 1, 1997, the initial month for which such increase is payable as part of such retired pay shall (notwithstanding such December 1 effective date) be September 1998.”

Pub. L. 104-106, § 631(c), repealed Pub. L. 103-335, § 8114A(b)(1). See 1994 Amendment note below.

Pub. L. 104-106, § 631(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “SPECIAL RULES FOR FISCAL YEARS 1994 THROUGH 1998.—

“(i) FISCAL YEAR 1994.—In the case of an increase in retired pay that, pursuant to paragraph (1), becomes effective on December 1, 1993, the initial month for which such increase is payable as part of such retired pay shall (notwithstanding such December 1 effective date) be March 1994.

“(ii) FISCAL YEARS 1995 THROUGH 1998.—In the case of an increase in retired pay that, pursuant to paragraph (1), becomes effective on December 1 of 1994, 1995, 1996, or 1997, the initial month for which such increase is payable as part of such retired pay shall (notwithstanding such December 1 effective date) be September of the following year.”

Subsec. (c). Pub. L. 104-201, § 632(a), added subsec. (c) and struck out former subsec. (c) which read as follows: “RULE FOR FIRST ADJUSTMENT AFTER RETIREMENT WITH INTERVENING INCREASE IN BASIC PAY.—Notwithstanding subsection (b), if a member or former member of an armed force who first became a member of a uniformed service before August 1, 1986, becomes entitled to retired pay based on rates of monthly basic pay that became effective after the last day of the calendar quarter of the base index, the retired pay of the member or former member shall be increased on the effective date of the next adjustment of retired pay under subsection (b) only by the percent (adjusted to the nearest one-tenth of 1 percent) by which—

“(1) the price index for the base quarter of that year, exceeds

“(2) the price index for the calendar quarter immediately before the calendar quarter in which the rates of monthly basic pay on which the retired pay is based became effective.”

Subsec. (d). Pub. L. 104-201, § 632(a), added subsec. (d) and struck out former subsec. (d) which read as follows: “RULE FOR FIRST ADJUSTMENT AFTER RETIREMENT WITH NO INTERVENING INCREASE IN BASIC PAY.—If a member or former member of an armed force who first became a member of a uniformed service before August 1, 1986, becomes entitled to retired pay on or after the effective date of an adjustment in retired pay under subsection (b) but before the effective date of the next increase in the rates of monthly basic pay, the retired pay of the member or former member shall be increased, effective on the date the member becomes entitled to that pay, by the percent (adjusted to the nearest one-tenth of 1 percent) by which—

“(1) the base index, exceeds

“(2) the price index for the calendar quarter immediately before the calendar quarter in which the rates of monthly basic pay on which the retired pay is based became effective.”

1994—Subsec. (b)(2)(B). Pub. L. 103-335, § 8114A(b)(1), which directed substituting, in heading, “through 1996” for “through 1998” and substituting, in cl. (ii), “and 1996” for “through 1998”, “of 1994 or 1995” for “of 1994, 1995, 1996, or 1997”, and “March” for “September”, was repealed by Pub. L. 104-106, § 631(c).

Subsec. (f). Pub. L. 103-337 inserted “based on the grade in which the member is retired” after “at an earlier date” in first sentence and “, except that such computation may not be based on a rate of basic pay for a grade higher than the grade in which the member is retired” before period at end of second sentence and struck out after second sentence “However, in the case of a member who, after initially becoming eligible for retired pay, is reduced in grade pursuant to a sentence of a court-martial, such computation may not be based on a grade higher than the grade in which the member is retired.”

1993—Subsec. (b)(2). Pub. L. 103-160, § 1182(e)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “Except as provided in paragraph (6), the Secretary shall increase the retired pay of each member and former member who first became a member of a uniformed service before August 1, 1986, by the percent (adjusted to the nearest one-tenth of 1 percent) by which—

“(A) the price index for the base quarter of that year, exceeds

“(B) the base index.”

Pub. L. 103-66, § 2001(1), substituted “Except as provided in paragraph (6), the Secretary” for “The Secretary”.

Subsec. (b)(6). Pub. L. 103-160, § 1182(e)(2), struck out par. (6) which read as follows: “SPECIAL RULES FOR PARAGRAPH (2) FOR FISCAL YEARS 1994 THROUGH 1998.—

“(A) FISCAL YEAR 1994.—In the case of an increase in the retired pay of a member or former member referred to in paragraph (2) that, pursuant to paragraph (1), becomes effective on December 1, 1993, the initial month for which such increase is payable as part of such retired pay shall (notwithstanding such December 1 effective date) be March 1994.

“(B) FISCAL YEARS 1995 THROUGH 1998.—In the case of an increase in retired pay of a member or former member referred to in paragraph (2) that, pursuant to paragraph (1), becomes effective on December 1 of 1994, 1995, 1996, or 1997, the initial month for which such increase is payable as part of such retired pay shall (notwithstanding such December 1 effective date) be September of the following year.

“(C) INAPPLICABILITY TO DISABILITY RETIREES.—Subparagraphs (A) and (B) do not apply with respect to the retired pay of a member retired under chapter 61 of this title.”

Pub. L. 103-66, § 2001(2), added par. (6).

1989—Subsec. (b)(3). Pub. L. 101-189, § 651(b)(1)(A), inserted “and former member” after first reference to “member”.

Subsec. (e). Pub. L. 101-189, § 651(b)(1)(B), inserted “or former member” after first and third reference to “member”.

Subsec. (f). Pub. L. 101-189, § 651(b)(1)(C), inserted “or former member” after “member” in second sentence.

1988—Subsec. (f). Pub. L. 100-456 inserted after second sentence “However, in the case of a member who, after initially becoming eligible for retired pay, is reduced in grade pursuant to a sentence of a court-martial, such computation may not be based on a grade higher than the grade in which the member is retired.”

1987—Subsec. (a). Pub. L. 100-180 struck out “pay” after “the retired pay”.

Subsec. (b)(4), (5). Pub. L. 100-224, § 1(a), added par. (4) and redesignated former par. (4) as (5).

Subsec. (e). Pub. L. 100-224, § 1(b), substituted “by the percent (adjusted to the nearest one-tenth of 1 percent) equal to the difference between—

“(1) the percent by which—

“(A) the price index for the base quarter of that year, exceeds

“(B) the price index for the calendar quarter immediately before the calendar quarter during which the member became entitled to retired pay; and

“(2) one-fourth of 1 percent for each calendar quarter from the quarter described in paragraph (1)(B) to the quarter described in paragraph (1)(A).

If in any case the percent described in paragraph (2) exceeds the percent determined under paragraph (1), such an increase shall not be made.” for “only by the percent (adjusted to the nearest one-tenth of 1 percent) by which—

“(1) the price index for the base quarter of that year, exceeds

“(2) the price index for the calendar quarter immediately before the calendar quarter in which the member became entitled to retired pay.”

1986—Subsec. (a). Pub. L. 99-348, § 102(b)(1), (c)(1), inserted heading, struck out “or retainer” after “retired pay”, and struck out sentence defining “Index” in this section as meaning the Consumer Price Index (all items, United States city average) published by the Bureau of Labor Statistics.

Subsecs. (b) to (d). Pub. L. 99-348, § 102(a), added subsecs. (b) to (d) and struck out former subsecs. (b) to (d) which read as follows:

“(b) Each time that an increase is made under section 8340(b) of title 5 in annuities paid under subchapter III of chapter 83 of such title, the Secretary of Defense shall at the same time increase the retired and retainer pay of members and former members of the armed forces by the same percent as the percentage by which annuities are increased under such section.

“(c) Notwithstanding subsection (b), if a member or former member of an armed force becomes entitled to retired pay or retainer pay based on rates of monthly basic pay prescribed by section 203 of title 37 that became effective after the last day of the month of the base index, his retired pay or retainer pay shall be increased on the effective date of the next adjustment of retired pay and retainer pay under subsection (b) only by the percent (adjusted to the nearest one-tenth of 1 percent) that the new base index exceeds the index for the calendar month immediately before that in which the rates of monthly basic pay on which his retired pay or retainer pay is based became effective.

“(d) If a member or former member of an armed force becomes entitled to retired pay or retainer pay on or after the effective date of an adjustment of retired pay and retainer pay under subsection (b) but before the effective date of the next increase in the rates of monthly basic pay prescribed by section 203 of title 37, his retired pay or retainer pay shall be increased, effective on the date he becomes entitled to that pay, by the percent (adjusted to the nearest one-tenth of 1 percent) that the base index exceeds the index for the calendar month immediately before that in which the rates of

monthly basic pay on which his retired pay or retainer pay is based became effective.”

Subsec. (e). Pub. L. 99-348, § 102(a), added subsec. (e).

Subsec. (f). Pub. L. 99-348, § 102(c)(2), inserted heading and struck out “or retainer” after “retired” wherever appearing.

Subsecs. (g), (h). Pub. L. 99-348, § 102(b)(2), added subsecs. (g) and (h) and struck out former subsec. (g) which provided that the retired or retainer pay of a member or former member of an armed force as adjusted under this section, if not a multiple of \$1, would be rounded to the next lower multiple of \$1.

1984—Subsec. (f). Pub. L. 98-525 substituted “before October 7, 1975” for “prior to the effective date of this subsection”.

1983—Subsec. (e). Pub. L. 98-94, § 921(a)(1), struck out subsec. (e) which provided that: “Notwithstanding subsections (c) and (d), the adjusted retired pay or retainer pay of a member or former member of an armed force retired on or after October 1, 1967, may not be less than it would have been had he become entitled to retired pay or retainer pay based on the same pay grade, years of service for pay, years of service for retired or retainer pay purposes, and percent of disability, if any, on the day before the effective date of the rates of monthly basic pay on which his retired pay or retainer pay is based.”

Subsec. (f). Pub. L. 98-94, § 921(b), struck out “, subject to subsection (e) of this section,” after “the computation shall”.

Subsec. (g). Pub. L. 98-94, § 922(a)(2), added subsec. (g).

1980—Subsec. (b). Pub. L. 96-342 substituted provisions directing the Secretary of Defense to increase the retired and retainer pay of members and former members of the armed forces each time that an increase is made under section 8340(b) of title 5 in annuities paid under subchapter III of chapter 83 of title 5, with such increase to be by the same percent as the percentage by which the annuities are increased for provisions under which the Secretary of Defense had been authorized and directed to increase the retired pay and retainer pay of members and former members of the armed forces on March 1 and September 1 depending upon determinations which the Secretary was directed to make on January 1 and July 1 of each year with regards to the percentage change in the index published for June or December of the previous year.

1976—Subsec. (b). Pub. L. 94-440 substituted provisions that Secretary of Defense shall determine the percent change in the index on Jan. 1 and July 1 of each year and effective Mar. 1 and Sept. 1, retired and retainer pay shall be increased by the computed percent change adjusted to the nearest  $\frac{1}{10}$  of 1 percent, for provisions that the Secretary of Defense shall determine on a monthly basis the percent by which the index has increased over that used as a basis for the most recent adjustment of retired and retainer pay and if Secretary determines for 3 consecutive months that the amount of increase is at least 3 percent over the base index, retired and retainer pay shall be increased by adding 1 percent and the highest percent increase in the index during those months adjusted to the nearest  $\frac{1}{10}$  of 1 percent.

Pub. L. 94-361 struck out “the per centum obtained by adding 1 per centum and” before “the highest per centum of increase in the index”.

1975—Subsec. (f). Pub. L. 94-106 added subsec. (f).

1969—Subsec. (b). Pub. L. 91-179 provided for a 1 percent addition in computing increases in retired and retainer pay of present and former members of the armed forces, whenever the Secretary made such adjustments to effect increases in the consumer index over the base index.

1967—Subsec. (a). Pub. L. 90-207 substituted “may not be recomputed” for “shall not be recomputed”, struck out “if that increase becomes effective after the effective date of this section” after “armed forces” and inserted sentence defining “Index”.

Subsec. (b). Pub. L. 90-207 revised subsec. (b) generally and, among other changes, substituted provisions

requiring the Secretary of Defense to determine monthly the percent by which the index has increased over that used as the basis for the most recent adjustment of retired and retainer pay under this subsection for provisions which required the Secretary of Defense to determine the per centum that the index for each calendar month after the calendar month immediately preceding the effective date of Pub. L. 89-132 has increased over the base index (that for the calendar month immediately preceding the effective date of Pub. L. 89-132 or, if later, that used as the basis for the most recent adjustment of retired and retainer pay under this subsection).

Subsecs. (c) to (e). Pub. L. 90-207 added subsecs. (c) to (e).

1965—Subsec. (b). Pub. L. 89-132 substituted provisions requiring the Secretary of Defense to determine the per centum for each calendar month that the Consumer Price Index has increased over the base Consumer Price Index, and if the index has shown an increase of at least 3 per centum over the base index for three consecutive calendar months to increase the retired or retainer pay by the highest per centum of increase in the index, for provisions which required a determination of the increase over the preceding calendar year and permitted an increase in the retired or retainer pay if the index advanced 3 per centum or more for a full calendar year.

#### EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-65, div. A, title VI, §644, Oct. 5, 1999, 113 Stat. 664, provided that: “The amendments made by sections 641, 642, and 643 [enacting section 322 of Title 37, Pay and Allowances of the Uniformed Services, and amending this section and sections 1409, 1410, 1451, and 1452 of this title] shall take effect on October 1, 1999.”

#### EFFECTIVE DATE OF 1996 AMENDMENT

Section 632(b) of Pub. L. 104-201 provided that: “The amendment made by subsection (a) [amending this section] shall apply only to adjustments of retired and retainer pay effective after the date of the enactment of this Act [Sept. 23, 1996].”

#### EFFECTIVE DATE OF 1994 AMENDMENT

Section 633(b) of Pub. L. 103-337 provided that: “The amendments made by subsection (a) [amending this section] shall apply with respect to the computation of the retired pay of a member of the Armed Forces who retires on or after the date of the enactment of this Act [Oct. 5, 1994].”

#### EFFECTIVE DATE OF 1988 AMENDMENT

Section 622(b) of Pub. L. 100-456 provided that: “The amendment made by subsection (a) [amending this section] shall take effect on the first day of the first month that begins after the date of the enactment of this Act [Sept. 29, 1988] and shall apply to the computation of the retired or retainer pay of members who initially become entitled to such pay on or after such effective date.”

#### EFFECTIVE DATE OF 1983 AMENDMENT

Section 921(a)(2) of Pub. L. 98-94 provided that: “(A) Notwithstanding the repeal of such subsection [subsec. (e) of this section], the provisions of such subsection shall apply in the case of any member or former member of the Armed Forces eligible to retire on the date of the enactment of this Act [Sept. 24, 1983] for a period of three years after such date in the same manner such provisions would have applied had they not been repealed.

“(B) The amount of retired or retainer pay of any member or former member of the Armed Forces who was eligible to retire on the date of the enactment of this Act [Sept. 24, 1983] and who becomes entitled to such pay at any time after the end of the three-year period beginning on the date of the enactment of this Act may not be less than it would have been had he become

entitled to retired or retainer pay on the day before the end of such three-year period.”

Amendment by section 922 of Pub. L. 98-94 effective Oct. 1, 1983, see section 922(e) of Pub. L. 98-94, set out as a note under section 1401 of this title.

#### EFFECTIVE DATE OF 1980 AMENDMENT

Section 812(b)(1) of Pub. L. 96-342, set out below, provided that the amendment made by that section is effective Aug. 31, 1981, but subject to certain conditions.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Section 1306(d)(2) of Pub. L. 94-440 provided that: “The amendment made by subsection (1) [amending this section] shall apply to any increase in retired pay or retainer pay after the date of enactment of this Act [Oct. 1, 1976], except that with respect to the first date after the date of enactment of this Act on which the Secretary of Defense is to determine a percent change, such percent change shall be determined by computing the change in the index published for the month immediately preceding such first date over the index for the last month preceding the date of enactment of this Act used as the basis for the most recent adjustment of retired pay and retainer pay under section 1401a(b) of title 10, United States Code [subsec. (b) of this section], as in effect immediately prior to the date of enactment of this Act [Oct. 1, 1976].”

#### EFFECTIVE DATE OF 1969 AMENDMENT

Section 2 of Pub. L. 91-179 provided that: “The provisions of this Act [amending this section] become effective on October 31, 1969.”

#### EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90-207 effective Oct. 1, 1967, see section 7 of Pub. L. 90-207, set out as a note under section 203 of Title 37, Pay and Allowances of the Uniformed Services.

#### EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89-132 effective Sept. 1, 1965, see section 10 of Pub. L. 89-132, set out as a note under section 203 of Title 37, Pay and Allowances of the Uniformed Services.

#### EFFECTIVE DATE

Section effective Oct. 1, 1963, see section 14 of Pub. L. 88-132, set out as an Effective Date of 1963 Amendment note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

#### CONTINGENT ALTERNATIVE DATE FOR FISCAL YEAR 1998

Section 631(b) of Pub. L. 104-106 provided that if a civil service retiree COLA that becomes effective during fiscal year 1998 becomes effective on a date other than the date on which a military retiree COLA during that fiscal year is specified to become effective under subsec. (b)(2)(B) of this section, then the increase in military retired and retainer pay would become payable as part of such retired and retainer pay effective on the same date on which such civil service retiree COLA was to become effective, prior to repeal by Pub. L. 104-201, div. A, title VI, §631(b), Sept. 23, 1996, 110 Stat. 2549.

#### ELIMINATION OF DISPARITY BETWEEN EFFECTIVE DATES FOR MILITARY AND CIVILIAN RETIREE COST-OF-LIVING ADJUSTMENTS FOR FISCAL YEAR 1995

Section 631 of Pub. L. 103-337 provided that:

“(a) IN GENERAL.—The fiscal year 1995 increase in military retired pay shall (notwithstanding subparagraph (B) of section 1401a(b)(2) of title 10, United States Code) first be payable as part of such retired pay for the month of March 1995.

“(b) DEFINITIONS.—For the purposes of subsection (a):

“(1) The term ‘fiscal year 1995 increase in military retired pay’ means the increase in retired pay that,

pursuant to paragraph (1) of section 1401a(b) of title 10, United States Code, becomes effective on December 1, 1994.

“(2) The term ‘retired pay’ includes retainer pay.

“(c) LIMITATION.—Subsection (a) shall be effective only if there is appropriated to the Department of Defense Military Retirement Fund (in an Act making appropriations for the Department of Defense for fiscal year 1995 that is enacted before March 1, 1995) such amount as is necessary to offset increased outlays to be made from that fund during fiscal year 1995 by reason of the provisions of subsection (a).

“(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for fiscal year 1995 to the Department of Defense Military Retirement Fund the sum of \$376,000,000 to offset increased outlays to be made from that fund during fiscal year 1995 by reason of the provisions of subsection (a).”

SENSE OF CONGRESS ON EQUAL TREATMENT OF EFFECTIVE DATES FOR FUTURE COST-OF-LIVING ADJUSTMENTS FOR MILITARY AND CIVILIAN RETIREES

Section 632 of Pub. L. 103-337 provided that:

“(a) FINDINGS.—Congress makes the following findings:

“(1) Congress, in the Omnibus Budget Reconciliation Act of 1993 [Pub. L. 103-66, see Tables for classification], changed the effective dates for future cost-of-living adjustments for military retired pay and for Federal civilian retirement annuities, which (before that Act) were provided by law to be made effective on December 1 each year.

“(2) The timing, and the percentage of increase, of military and Federal civilian retirees’ cost-of-living adjustments have been linked for decades.

“(3) The effect of the enactment of the Omnibus Budget Reconciliation Act of 1993 was to abandon the longstanding congressional practice of treating military and Federal civilian retirees identically in matters related to cost-of-living adjustments.

“(b) SENSE OF CONGRESS.—In light of the findings in subsection (a), it is the sense of Congress that—

“(1) as a matter of simple equity and fairness, it is imperative that cost-of-living adjustments in retirement benefits for military and Federal civilian retirees be returned to an identical schedule as soon as possible, but not later than January 1, 1999;

“(2) if after October 1, 1998, there is, by law, a difference between the date on which a cost-of-living adjustment for Federal civilian retirees takes effect and the date on which a cost-of-living adjustment for military retirees takes effect, then the difference in those effective dates should be eliminated by requiring that cost-of-living adjustments for both classes of retirees become effective on the earlier of the two dates; and

“(3) if after October 1, 1998, there is, by law, a difference between the first month for which a cost-of-living adjustment for civilian retirees is payable and the first month for which a cost-of-living adjustment for military retirees is payable, then the difference in the months for which those adjustments are first payable should be eliminated by requiring that the cost-of-living adjustments for both classes of retirees first become payable for the earlier of the two months.”

WAIVER OF ADMINISTRATIVE TIME-IN-GRADE REQUIREMENTS TO PREVENT PAY INVERSIONS IN RETIRED PAY OF CERTAIN MILITARY RETIREES

Section 634 of Pub. L. 103-337 provided that:

“(a) AUTHORITY.—The Secretary concerned may, for purposes of the computation under section 1401a(f) of title 10, United States Code, of the retired pay of military retirees described in subsection (b), waive any administrative time-in-grade regulation (as described in subsection (d)) that would otherwise apply to such computation. Any such waiver may be made retroactive, in the case of any such retiree, to the date on which that retiree initially became entitled to retired pay.

“(b) COVERED RETIREES.—This section applies to any military retiree—

“(1) who initially became entitled to retired pay on or after January 1, 1971, and before the date of the enactment of this Act [Oct. 5, 1994];

“(2) whose retired pay, by reason of the provisions of section 1401a(f) of title 10, United States Code (the so-called ‘Tower amendment’), was initially computed as an amount greater than would have been the case but for that section; and

“(3) who, as of the earlier computation date applicable to that retiree—

“(A) in the case of an individual retired in an enlisted grade, had served in the grade in which the retiree retired for a period that was less than the period prescribed by the applicable administrative time-in-grade requirement described in subsection (d); and

“(B) in the case of an individual retired in an officer grade—

“(i) was subject to an administrative time-in-grade requirement described in subsection (d) that established a time-in-grade requirement that was longer than the statutory time-in-grade requirement applicable to that member; and

“(ii) had served in the grade in which the retiree retired for a period that was less than the period prescribed by such administrative time-in-grade requirement but not less than the statutory time-in-grade requirement applicable to that member.

“(c) EARLIER COMPUTATION DATE.—For purposes of subsection (b)(3), the earlier computation date applicable to a military retiree is the date that (under such section 1401a(f) as in effect on the date of the member’s retirement) was the ‘earlier date’ that was used as the basis for the computation of the retiree’s retired pay.

“(d) REGULATIONS SUBJECT TO WAIVER.—A regulation that may be waived under subsection (a) is any regulation (not required by law) that establishes a minimum period of time that a member of the Armed Forces must have served in a grade on active duty in order to be eligible to retire in that grade.

“(e) SCOPE OF WAIVER AUTHORITY.—The Secretary concerned may exercise the authority provided in subsection (a) in the case of an individual military retiree or for any group of military retirees.

“(f) MILITARY RETIREE DEFINED.—For purposes of this section, the term ‘military retiree’ means a member or former member of the Armed Forces who is entitled to retired pay.

“(g) SECRETARY CONCERNED.—For purposes of this section, the term ‘Secretary concerned’ has the meaning given such term in section 101 of title 10, United States Code.”

FISCAL YEAR 1995 COST-OF-LIVING ADJUSTMENTS FOR MILITARY RETIREES

Pub. L. 103-335, title VIII, §8114A, Sept. 30, 1994, 108 Stat. 2648, as amended by Pub. L. 104-106, div. A, title VI, §631(c), Feb. 10, 1996, 110 Stat. 365, provided that:

“(a) FISCAL YEAR 1995 COST-OF-LIVING ADJUSTMENT FOR MILITARY RETIREES.—(1) The fiscal year 1995 increase in military retired pay shall (notwithstanding subparagraph (B) of section 1401a(b)(2) of title 10, United States Code) first be payable as part of such retired pay for the month of March 1995.

“(2) For the purposes of subsection (a):

“(A) The term ‘fiscal year 1995 increase in military retired pay’ means the increase in retired pay that, pursuant to paragraph (1) of section 1401a(b) of title 10, United States Code, becomes effective on December 1, 1994.

“(B) The term ‘retired pay’ includes retainer pay.

“(b) [Repealed. Pub. L. 104-106, div. A, title VI, §631(c), Feb. 10, 1996, 110 Stat. 365.]”

CONTINGENT ONCE-A-YEAR ADJUSTMENT OF RETIRED AND RETAINER PAY

Pub. L. 96-342, title VIII, §812, Sept. 8, 1980, 94 Stat. 1098, as amended by Pub. L. 97-35, title II, §211(b), Aug. 13, 1981, 95 Stat. 383, provided that:

“(a)(1) The increase in the retired and retainer pay of members and former members of the uniformed services which but for this section would be made effective September 1, 1980, under the provisions of paragraph (2)(B) of section 1401a(b) of title 10, United States Code, shall not be made.

“(2)(A) In making the determination required by the provisions of paragraph (1)(A) of section 1401a(b) of title 10, United States Code, to be made on January 1, 1981, or within a reasonable time thereafter, the Secretary of Defense shall determine the percent change in the index (as such term is defined in section 1401a(a) of title 10, United States Code) published for December 1980 over the index published for December 1979 (rather than over the index published for June 1980).

“(B) The increase in the retired and retainer pay of members and former members of the uniformed services to be made effective March 1, 1981, under the provisions of paragraph (2)(A) of such section shall, in lieu of the increase prescribed by such paragraph, be the percent change computed under subparagraph (A), adjusted to the nearest  $\frac{1}{10}$  of one percent.

“(3) The President shall by Executive order provide for only one cost-of-living adjustment in the annuities paid under the Central Intelligence Agency [Retirement] Act of 1964 for Certain Employees (50 U.S.C. 403 note) during the period beginning on September 1, 1980, and ending on August 31, 1981. Such adjustment shall be effective March 1, 1981, and shall be made in the same manner and percentage as the adjustment provided for in paragraphs (1) and (2) for the retired and retainer pay of members and former members of the uniformed services.

“(4) Paragraphs (1), (2), and (3) shall not take effect unless similar legislation is enacted which provides for only one cost-of-living increase in annuities paid under subchapter III of chapter 83 of title 5, United States Code, during the period beginning on September 1, 1980, and ending on August 31, 1981.

“(b)(1) Effective August 31, 1981, but subject to paragraph (2), section 1401a(b), of title 10, United States Code, relating to adjustment of retired pay and retainer pay to reflect changes in the Consumer Price Index, is amended to read as follows:

“(b) Each time that an increase is made under section 8340(b) of title 5 in annuities paid under subchapter III of chapter 83 of such title, the Secretary of Defense shall at the same time increase the retired and retainer pay of members and former members of the armed forces by the same percent as the percentage by which annuities are increased under such section.”

“(2) The amendment made by paragraph (1) shall not take effect unless legislation is enacted which provides for the adjustment of annuities paid under subchapter III of chapter 83 of title 5, United States Code, on a once-a-year basis. In the event such legislation is enacted, such amendment shall become effective with respect to adjustments in the retired pay and retainer pay of members and former members of the uniformed services at the same time that the legislation providing for such a once-a-year adjustment of annuities paid under subchapter III of chapter 83 of title 5, United States Code, becomes effective.

“(3) If legislation described in paragraph (2) is enacted to provide for the adjustment of annuities paid under subchapter III of chapter 83 of title 5, United States Code, on a once-a-year basis, the President shall exercise the authority vested in him under section 292 of the Central Intelligence Agency [Retirement] Act of 1964 for Certain Employees (50 U.S.C. 403 note) to provide for cost-of-living adjustments in the annuities paid under such Act on an identical basis.

“(4) If at the time the first adjustment in retired and retainer pay is made under section 1401a(b) of title 10, United States Code, as amended by paragraph (1) of this subsection, the period upon which the most recent adjustment in such retired and retainer pay was computed is not identical to the period upon which the most recent adjustment in annuities under subchapter

III of chapter 83 of title 5, United States Code, was computed, then the percentage increase to be made under such section 1401a(b) at the time of the first such adjustment shall be computed in the same manner as the percentage increase made at the same time in annuities under subchapter III of chapter 83 of title 5, United States Code, is computed, but shall be based on the period beginning on the last day of the period upon which the most recent adjustment in such retired and retainer pay was computed and ending on the last day of the period upon which the adjustment being made at the same time in annuities under such subchapter III is computed. The President shall by Executive order provide for a similar computation of the adjustment in annuities paid under the Central Intelligence Agency [Retirement] Act of 1964 for Certain Employees (50 U.S.C. 403 note) which is made at the same time as the increase in retired and retainer pay to which the preceeding [preceding] sentence is applicable.

“(c) For the purposes of this section, the term ‘uniformed services’ means—

“(1) the Armed Forces; and

“(2) the commissioned corps of the National Oceanic and Atmospheric Administration and of the Public Health Service.”

COMPUTATION OF RETIRED PAY OF SERGEANT MAJORS OF MARINE CORPS WHO COMPLETED SERVICE PRIOR TO DECEMBER 16, 1967

Pub. L. 95-581, Nov. 2, 1978, 92 Stat. 2478, provided: “That (a) the retired pay of any individual who served as sergeant major of the Marine Corps and who completed such service before December 16, 1967, shall be computed based upon a rate of basic pay of the sum of (1) the highest rate of basic pay to which such individual was entitled while so serving, and (2) \$150.

“(b) For the purpose of computing any adjustment under section 1401a of title 10, United States Code, in the retired pay of any individual whose retired pay is affected by subsection (a), the rate of basic pay provided under such subsection for the purpose of computing the retired pay of such individual shall be considered to have been the rate of basic pay applicable to such individual at the time of his retirement, and any adjustment under such section 1401a in the retired pay of such individual before September 30, 1978, shall be re-adjusted to reflect such rate of basic pay.

“SEC. 2. (a) Any change in the retired pay of any individual by reason of the enactment of this Act shall be effective for months beginning after September 30, 1978.

“(b) The enactment of this Act shall not reduce the retired pay of any individual.”

[The Central Intelligence Agency Retirement Act of 1964 for Certain Employees, referred to in Pub. L. 96-342, set out above, is Pub. L. 88-643, Oct. 13, 1964, 78 Stat. 1043, which was revised generally by Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3196, is known as the Central Intelligence Agency Retirement Act and is classified generally to chapter 38 (§2001 et seq.) of Title 50, War and National Defense.]

COST-OF-LIVING ADJUSTMENT OF RETIRED PAY OR RETAINER PAY OF MEMBERS AND FORMER MEMBERS OF ARMED FORCES AND COMMISSIONED OFFICERS OF NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION AND PUBLIC HEALTH SERVICE; EFFECTIVE DATE OF 1976 AMENDMENT

Section 801(c) of Pub. L. 94-361 provided that:

“(1) The amendments made by subsections (a) [to subsection (b) of this section] and (b) [to provisions formerly set out as a note under section 403 of title 50] shall not become effective unless legislation is enacted repealing the so-called 1 per centum add-on provision applicable to the cost-of-living adjustment of annuities paid under chapter 83 of title 5, United States Code. In the event such legislation is enacted, such amendments shall become effective with respect to the cost-of-living adjustment of the retired pay and retainer pay of members and former members of the Armed Forces and the cost-

of-living adjustment of annuities paid under the Central Intelligence Agency [Retirement] Act of 1964 for Certain Employees at the same time the repeal of such 1 per centum add-on provision becomes effective with respect to such cost-of-living adjustment of annuities paid under such chapter 83.

“(2) If any change other than the repeal of the so-called 1 per centum add-on provision referred to in paragraph (1) is made in the method of computing the cost-of-living adjustment of annuities paid under chapter 83 of title 5, United States Code, the President shall make the same change in the cost-of-living adjustment of retired pay and retainer pay of members and former members of the Armed Forces and the cost-of-living adjustment of annuities paid under the Central Intelligence Agency [Retirement] Act of 1964 for Certain Employees. Any change made under this paragraph shall have the same effective date as the effective date applicable to such change made in annuities under chapter 83 of title 5, United States Code.

“(3) The provisions of paragraphs (1) and (2) relating to any change in the method of computing the cost-of-living adjustment of the retired pay or retainer pay of members and former members of the Armed Forces shall be applicable to the computation of cost-of-living adjustments of the retired pay of commissioned officers of the National Oceanic and Atmospheric Administration and the retired pay of commissioned officers of the Public Health Service.”

[The Central Intelligence Agency Retirement Act of 1964 for Certain Employees, referred to in Pub. L. 94-361, set out above, is Pub. L. 88-643, Oct. 13, 1964, 78 Stat. 1043, which was revised generally by Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3196, is known as the Central Intelligence Agency Retirement Act and is classified generally to chapter 38 (§2001 et seq.) of Title 50, War and National Defense.]

**INCREASE IN CERTAIN ARMED FORCE MEMBERS' PAY AND ALLOWANCES NOT OTHERWISE TIED TO CONSUMER PRICE INDEX**

Pub. L. 93-210, §2, Dec. 28, 1973, 87 Stat. 908, provided that:

“(a) Notwithstanding any other provision of law, effective on the date of enactment of this Act [Dec. 28, 1973], the pay and allowances of members of the Armed Forces to whom this Act applies shall be increased to amounts equal to the amounts such pay and allowances would have been increased if the pay and allowances of such members had been increased, under section 1401a(b) of title 10, United States Code, by the same percentage rates, consecutively compounded, that the retired pay or retainer pay of members and former members of the Armed Forces entitled to retired pay or retainer pay since October 1, 1967, has been increased, and such member shall, on and after the date of enactment of this Act [Dec. 28, 1973], have his pay and allowances increased effective the same day and by the same percentage rate that the retired pay or retainer pay of members and former members of the Armed Forces is increased under such section 1401a(b).

“(b) This section applies to members of the Armed Forces entitled to pay and allowances under either of the following provisions of law:

“(1) The Act of June 26, 1948, chapter 677 (62 Stat. 1052) [which authorized the appointment of one officer in the Regular Army in the permanent grade of general, one officer in the Regular Air Force in the permanent grade of general, and one officer in the Regular Navy in the permanent grade of admiral].

“(2) The Act of September 18, 1950, chapter 952 (64 Stat. A224) [which authorized the appointment of Omar N. Bradley to the permanent grade of General of the Army].

“(c) No amounts shall be paid, as the result of the enactment of this section, for any period prior to the date of enactment of this section [Dec. 28, 1973].”

**RETROACTIVE ADJUSTMENT OF RETIRED OR RETAINER PAY OF PERSONS ENTITLED THERETO AFTER NOVEMBER 30, 1966, BUT PRIOR TO EFFECTIVE DATE OF NEXT INCREASE AFTER JULY 1, 1966**

Section 2(b) of Pub. L. 90-207 provided that: “Notwithstanding section 1401a(d) of title 10, United States Code, a person who is a member or former member of an armed force on the date of enactment of this Act [Dec. 16, 1967] and who initially became, or hereafter initially becomes, entitled to retired pay or retainer pay after November 30, 1966, but before the effective date of the next increase after July 1, 1966, in the rates of monthly basic pay prescribed by section 203 of title 37, United States Code, is entitled to have his retired pay or retainer pay increased by 3.7 percent, effective as of the date of his entitlement to that pay.”

**§ 1402. Recomputation of retired or retainer pay to reflect later active duty of members who first became members before September 8, 1980**

(a) A member of an armed force who first became a member of a uniformed service before September 8, 1980, and who has become entitled to retired pay or retainer pay, and who thereafter serves on active duty (other than for training), is entitled to recompute his retired pay or retainer pay upon his release from that duty according to the following table.

Column 1 Take	Column 2 Multiply by
Monthly basic pay <sup>1</sup> of the grade in which he would be eligible— (1) to retire if he were retiring upon that release from active duty; or (2) to transfer to the Fleet Reserve or Fleet Marine Corps Reserve if he were transferring to either upon that release from active duty.	2½ percent of the sum of— (1) the years of service that may be credited to him in computing retired pay or retainer pay; and (2) his years of active service after becoming entitled to retired pay or retainer pay. <sup>2</sup>

<sup>1</sup> For a member who has been entitled, for continuous period of at least two years, to basic pay under the rates of basic pay in effect upon that release from active duty, compute under those rates. For a member who has been entitled to basic pay for a continuous period of at least two years upon that release from active duty, but who is not covered by the preceding sentence, compute under the rates of basic pay replaced by those in effect upon that release from active duty. For any other member, compute under the rates of basic pay under which the member's retired pay or retainer pay was computed when he entered on that active duty.

<sup>2</sup> Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month.

However, an officer who was ordered to active duty (other than for training) in the grade that he holds on the retired list under former section 6150 of this title, or under any other law that authorized advancement on the retired list based upon a special commendation for the performance of duty in actual combat, may have his retired pay recomputed under this subsection on the basis of the rate of basic pay applicable to that grade upon his release from that active duty only if he has been entitled, for a continuous period of at least three years, to basic pay at that rate. If, upon his release from that active duty, he has been entitled to the basic pay of that grade for a continuous period of at least three years, but he does not qualify under the preceding sentence, he may have his retired pay

recomputed under this subsection on the basis of the rate of basic pay prescribed for that grade by the rates of basic pay replaced by those in effect upon his release from that duty.

(b) A member of an armed force who first became a member of a uniformed service before September 8, 1980, and who has been retired other than for physical disability, and who while on active duty incurs a physical disability of at least 30 percent for which he would otherwise be eligible for retired pay under chapter 61 of this title, is entitled, upon his release from active duty, to retired pay under subsection (d).

(c) A member of an armed force who first became a member of a uniformed service before September 8, 1980, and who—

(1) was retired for physical disability under section 1201 or 1204 of this title or any other law or whose name is on the temporary disability retired list;

(2) incurs, while on active duty after retirement or after his name was placed on that list, a physical disability that is in addition to or that aggravates the physical disability for which he was retired or for which his name was placed on the temporary disability retired list; and

(3) is qualified under section 1201, 1202, 1204, or 1205 of this title;

is entitled, upon his release from active duty, to retired pay under subsection (d).

(d) A member of an armed force covered by subsection (b) or (c) may elect to receive either (1) the retired pay to which he became entitled when he retired, increased by any applicable adjustments in that pay under section 1401a of this title after he initially became entitled to that pay, or (2) retired pay computed according to the following table.

Column 1 Take	Column 2 Multiply by	Column 3 Add
Highest monthly basic pay that member received while on active duty after retirement or after date when his name was placed on temporary disability retired list, as the case may be.	As member elects— (1) 2½% of years of service credited under section 1208 of this title; <sup>1</sup> or (2) the highest percentage of disability, not to exceed 75%, attained while on active duty after retirement or after the date when his name was placed on temporary disability retired list, as the case may be. <sup>1</sup>	Add amount necessary to increase product of columns 1 and 2 to 50% of pay upon which computation is based, if member is on temporary disability retired list.

<sup>1</sup> Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month.

If, while on active duty after retirement or after his name was placed on the temporary disability retired list, a member covered by this subsection was promoted to a higher grade in which he served satisfactorily, as determined by the Secretary concerned, he is entitled to retired pay based on the monthly basic pay to which he would be entitled if he were on active duty in that higher grade.

(e) Notwithstanding subsection (a), a member covered by that subsection may elect, upon his release from active duty, to have his retired pay or retainer pay—

(1) computed according to the formula set forth in subsection (a) but using the rate of basic pay under which his retired pay or retainer pay was computed when he entered on active duty; and

(2) increased by any applicable adjustments in that pay under section 1401a of this title after he initially became entitled to that pay.

(f)(1) In the case of a member who is entitled to recompute retired pay under this section upon release from active duty served after retiring under section 3914 or 8914 of this title, the member's retired pay as recomputed under another provision of this section shall be increased by 10 percent of the amount so recomputed if the member has been credited by the Secretary concerned with extraordinary heroism in the line of duty during any period of active duty service in the armed forces.

(2) The amount of the retired pay as recomputed under another provision of this section and as increased under paragraph (1) may not exceed the amount equal to 75 percent of the monthly rate of basic pay upon which the recomputation of such retired pay is based.

(3) The determination of the Secretary concerned as to extraordinary heroism is conclusive for all purposes.

(Aug. 10, 1956, ch. 1041, 70A Stat. 107; Pub. L. 86-559, §1(5), June 30, 1960, 74 Stat. 265; Pub. L. 88-132, §5(l)(1), Oct. 2, 1963, 77 Stat. 214; Pub. L. 90-207, §2(a)(2), Dec. 16, 1967, 81 Stat. 653; Pub. L. 96-342, title VIII, §813(b)(2), Sept. 8, 1980, 94 Stat. 1102; Pub. L. 96-513, title V, §511(50), Dec. 12, 1980, 94 Stat. 2924; Pub. L. 98-94, title IX, §§922(a)(3), (4), 923(a)(1), (2)(B), (C), Sept. 24, 1983, 97 Stat. 641, 642; Pub. L. 99-348, title II, §201(b)(3), title III, §304(a)(3), (b)(3), July 1, 1986, 100 Stat. 694, 703; Pub. L. 102-484, div. A, title VI, §642(a), Oct. 23, 1992, 106 Stat. 2424; Pub. L. 110-181, div. A, title VI, §646(b), Jan. 28, 2008, 122 Stat. 160; Pub. L. 111-383, div. A, title VI, §631(b), Jan. 7, 2011, 124 Stat. 4239.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1402(a) .....	37:316.	Oct. 12, 1949, ch. 681,
1402(b), (c).	37:272(d) (1st 128 words of last proviso, less applicability to retired grade).	§§402(d) (last proviso, less applicability to retired grade), 516, 63 Stat. 819, 832.
1402(d) .....	37:272(d) (last proviso, less 1st 128 words, and less applicability to retired grade).	

In subsection (a), columns 1 and 2 of the table are based on 37:316 (1st proviso). Column 4 is based on 37:316 (last proviso). Footnote 1 is based on 37:316 (2d proviso). 37:316 (3d proviso) is omitted as operationally obsolete.

In subsections (a) and (d), the words “and disregard a part of a year that is less than six months” are added to footnote 1 to conform to footnote 3 of section 1401 of this title.

In subsection (b), the words “for which he would otherwise be eligible for retired pay under chapter 61 of

this title” are substituted for the words “in accordance with the standard schedule of rating disabilities in current use by the Veterans’ Administration” and “if qualified”.

In subsection (c), the requirement that the physical disability incurred be 30 percent or more is omitted as surplusage, since it is also required that the member be qualified for physical disability retirement under section 1201 or 1204 of this title.

In subsection (d), the rules stated in 37:316 (2d and last provisos) are repeated in column 4 of the table and the footnote to the table, since they apply to all cases of increased pay for active duty performed after retirement.

#### CODIFICATION

Another section 304(b)(3) of Pub. L. 99-348 amended the table of sections at the beginning of chapter 571 of this title.

#### AMENDMENTS

2011—Subsec. (d). Pub. L. 111-383, in column 2 of table, inserted “, not to exceed 75%,” after “percentage of disability” and struck out column 4 of table which related to subtraction of excess over 75 percent of pay upon which computation is based.

2008—Subsec. (a). Pub. L. 110-181 struck out column 3 of the table, which related to subtraction of excess over 75 percent of pay upon which computation is based.

1992—Subsec. (f). Pub. L. 102-484 added subsec. (f).

1986—Pub. L. 99-348, § 304(b)(3), inserted “of members who first became members before September 8, 1980” in section catchline.

Subsec. (a). Pub. L. 99-348, §§ 201(b)(3), 304(a)(3), struck out “(as defined in section 1407(a)(2) of this title)” after “uniformed service” and struck out provision that if the amount recomputed is not a multiple of \$1, it be rounded to the next lower multiple of \$1. See section 1412 of this title.

Subsecs. (b), (c). Pub. L. 99-348, § 304(a)(3), struck out “(as defined in section 1407(a)(2) of this title)” after “uniformed service”.

Subsec. (d). Pub. L. 99-348, § 201(b)(3), struck out provision that if the amount recomputed is not a multiple of \$1, it be rounded to the next lower multiple of \$1. See section 1412 of this title.

1983—Subsec. (a). Pub. L. 98-94, § 922(a)(3), substituted “according to the following table. The amount recomputed, if not a multiple of \$1, shall be rounded to the next lower multiple of \$1.” for “as follows:”.

Pub. L. 98-94, § 923(a)(1), (2)(B), in footnote 2 of table, substituted “Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month” for “Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months”.

Subsec. (d). Pub. L. 98-94, § 922(a)(4), substituted “according to the following table. The amount computed, if not a multiple of \$1, shall be rounded to the next lower multiple of \$1.” for “as follows:”.

Pub. L. 98-94, § 923(a)(1), (2)(C), in footnote 1 of table, substituted “Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month” for “Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months”.

1980—Subsecs. (a) to (c). Pub. L. 96-513 substituted “a uniformed service (as defined in section 1407(a)(2) of this title) before September 8, 1980” for “the armed forces before the date of the enactment of the Department of Defense Appropriation Act, 1981” wherever appearing.

Pub. L. 96-342 inserted “who first became a member of the armed forces before the date of the enactment of

the Department of Defense Authorization Act, 1981, and” after “of an armed force” wherever appearing.

1967—Subsec. (d). Pub. L. 90-207, § 2(a)(2)(A), inserted “increased by any applicable adjustments in that pay under section 1401a of this title after he initially became entitled to that pay” after “retired.”.

Subsec. (e). Pub. L. 90-207, § 2(a)(2)(B), added subsec. (e).

1963—Subsec. (a). Pub. L. 88-132 substituted in introductory clause “who has become entitled to retired pay or retainer pay” for “who has been retired or has become entitled to retainer pay” and “to recompute his retired pay or retainer pay upon his release from that duty” for “, upon release from that duty, to recompute his retired or retainer pay” and inserted in such clause “(other than for training)” after “active duty”; substituted in column 1 of table “Monthly basic pay” for “Monthly basic pay or base and longevity pay, as the case may be,” designated existing provisions as (1) and added (2); substituted in (1) of column 2 of the table “retired pay or retainer pay” for “retired or retainer pay” and in (2) of such column 2 “after becoming entitled to retired pay or retainer pay” for “after retirement or becoming entitled to retainer pay”, struck out column 3 relating to addition and redesignated column 4 as 3; added footnote 1 to the table and redesignated former footnote 1 as 2; and inserted provisions for recomputation of retired pay upon release from active duty of officers ordered to active duty in a higher grade based upon special commendation for performance of duty in actual combat.

1960—Subsec. (a). Pub. L. 86-559 prohibited recomputation of retired pay under subsec. (a) on the basis of any period of active duty that was of less than six consecutive months’ duration or on the basis of any active duty for training for a reserve officer who is or has been retired under section 3911, 6323, or 8911 of this title or under section 232 of title 14.

#### EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 111-383 applicable to persons who first become entitled to retired or retainer pay under subtitle A of this title after Jan. 7, 2011, and table in subsec. (d) of this section, in effect on the day before Jan. 7, 2011, applicable to the computation or recomputation of retired or retainer pay for persons who first became entitled to retired or retainer pay under subtitle A on or before Jan. 7, 2011, see section 631(d) of Pub. L. 111-383, set out as a note under section 1401 of this title.

#### EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-181, div. A, title VI, § 646(c), Jan. 28, 2008, 122 Stat. 160, provided that: “The amendments made by subsections (a) and (b) [amending this section and section 6333 of this title] shall take effect as of January 1, 2007, and shall apply with respect to retired pay and retainer pay payable on or after that date.”

#### EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 922 of Pub. L. 98-94 effective Oct. 1, 1983, see section 922(e) of Pub. L. 98-94, set out as a note under section 1401 of this title.

Amendment by section 923 of Pub. L. 98-94 applicable with respect to (1) the computation of retired or retainer pay of any individual who becomes entitled to that pay after Sept. 30, 1983, and (2) the recomputation of retired pay under this section, of any individual who after Sept. 30, 1983, becomes entitled to recompute retired pay under this section, see section 923(g) of Pub. L. 98-94, set out as a note under section 1174 of this title.

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96-513, set out as a note under section 101 of this title.

#### EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90-207 effective Oct. 1, 1967, see section 7 of Pub. L. 90-207, set out as a note under

section 203 of Title 37, Pay and Allowances of the Uniformed Services.

#### EFFECTIVE DATE OF 1963 AMENDMENT

Amendment by Pub. L. 88-132 effective Oct. 1, 1963, see section 14 of Pub. L. 88-132, set out as a note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

#### ACCRAUAL OF BENEFITS; PROSPECTIVE APPLICABILITY

Section 642(c) of Pub. L. 102-484 provided that: "No benefits shall accrue for months beginning before the date of the enactment of this Act [Oct. 23, 1992] by reason of the amendments made by this section [amending this section and section 1402a of this title]."

#### RECOMPUTATION OF RETIRED PAY OF CERTAIN RECALLED RETIREES

Pub. L. 98-525, title VI, §655, Oct. 19, 1984, 98 Stat. 2552, provided that:

"(a) Notwithstanding the second sentence of footnote 1 of the table contained in section 1402(a) of title 10, United States Code (relating to recomputation of retired pay to reflect later active duty), in the case of a member of the Armed Forces who—

"(1) was voluntarily called or ordered to active duty during the period beginning on October 1, 1963, and ending on September 30, 1971;

"(2) was at the time of such call or order entitled to retired pay or retainer pay;

"(3) served on such active duty under such call or order for a continuous period of at least two years; and

"(4) was released from such active duty before October 1, 1973,

the retired or retainer pay of such member shall be recomputed, as provided in subsection (b), under the rates of basic pay in effect at the time of that release from active duty.

"(b) The retired or retainer pay of a member of the Armed Forces described in subsection (a) shall be the amount determined under section 1402(a) of title 10, United States Code (as modified with respect to such member by subsection (a)), and increased by the amount by which the member's retired or retainer pay would have been increased during the period beginning on the date of the member's release from active duty referred to in subsection (a)(4) and ending on the day before the day on which this section becomes effective had subsection (a) applied in the case of the member at the time of that release from active duty.

"(c) This section shall apply only with respect to retired pay and retainer pay payable for months beginning after September 30, 1984, or on or after the date of the enactment of this Act [Oct. 19, 1984], whichever is later."

#### RETIRED PAY AND RETAINER PAY; PROHIBITION AGAINST RECOMPUTATION UNDER 1963 PAY RATES; EXCEPTIONS; INCREMENTS BASED ON THE GREATER OF A 5 PERCENT INCREASE OR RECOMPUTATION UNDER 1958 PAY RATES FOR MEMBERS RETIRED PRIOR TO OCTOBER 1949 FOR REASONS OTHER THAN PHYSICAL DISABILITY, MEMBERS RECEIVING RETIRED PAY UNDER CAREER COMPENSATION ACT OF 1949 AND FORMER CHIEFS OF STAFF; ADDITIONAL 5 PERCENT INCREASE FOR OTHER RETIRED MEMBERS; EXCLUSION FROM INCREASE OF OFFICERS RETIRED UNDER CERTAIN PROVISIONS

Section 5(a)-(f) of Pub. L. 88-132 provided that:

"(a) Except as provided in section 1402 of title 10, United States Code, the changes made by this Act [see Short Title note under section 201 of Title 37] in the rates of basic pay of members of the uniformed services do not increase the retired pay or retainer pay to which a member or former member of the uniformed services was entitled on the day before the effective date of this Act [Oct. 1, 1963]. However, except for a member covered by section 6331 of title 10, United States Code who

became entitled to retainer pay before April 1, 1963, and subject to subsection (j) of this section [set out as a note below], a member or former member of a uniformed service who became entitled to retired pay or retainer pay after March 31, 1963, but before the effective date of this Act [Oct. 1, 1963], is entitled—

"(1) to have the retired pay or retainer pay to which he was entitled on the day before the effective date of this Act [Oct. 1, 1963] recomputed under the rates of basic pay prescribed by section 2 of this Act [amending section 203 of Title 37]; or

"(2) to continue to have that pay computed under the rates of basic pay that were in effect under section 203 of title 37, United States Code, on the day before the effective date of this Act [Oct. 1, 1963], plus the percentage increase provided by subsection (e) of this section;

whichever pay is the greater. For the purposes of the preceding sentence, a member or former member who became entitled to retired pay on April 1, 1963, by virtue of section 1 of the Act of April 23, 1930, ch. 209, as amended (5 U.S.C. 47a) [section 8301 of Title 5], shall be considered as having become entitled to that pay before April 1, 1963.

"(b) A member or former member of a uniformed service who was retired other than for physical disability and who, in accordance with section 511 of the Career Compensation Act of 1949 (63 Stat. 829) [act Oct. 12, 1949, former 10 U.S.C. 580 note], is entitled to retired pay or retainer pay computed by 'method' (a) of that section using rates of basic pay that were in effect before October 1, 1949, is entitled—

"(1) to have pay recomputed by 'method' (b) of that section using the rates of basic pay that were in effect under that Act on the day before the effective date of this Act [Oct. 1, 1963]; or

"(2) to an increase of 5 percent in the retired pay or retainer pay to which he was entitled on the day before the effective date of this Act [Oct. 1, 1963]; whichever pay is the greater.

"(c) A member or former member of a uniformed service who is entitled to retired pay or retainer pay computed under the rates of basic pay that were in effect under the Career Compensation Act of 1949 before June 1, 1958, including a member or former member who is entitled to retired pay under section 7 (b) or (c) of the Act of May 20, 1958, Public Law 85-422 (72 Stat. 130), is entitled—

"(1) to have that pay recomputed under the rates of basic pay that were in effect under that Act on the day before the effective date of this Act [Oct. 1, 1963]; or

"(2) to an increase of 5 percent in the retired pay or retainer pay to which he was entitled on the day before the effective date of this Act [Oct. 1, 1963]; whichever pay is the greater.

"(d) A member or former member of a uniformed service who was entitled to retired pay on the day before the effective date of this Act [Oct. 1, 1963] and who served as Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, or Commandant of the Marine Corps is entitled—

"(1) to have his retired pay recomputed under the formula for computing retired pay applicable to him—

"(A) when he retired; or

"(B) if he served on active duty after he retired and his retired pay was recomputed by reason of that service, when his retired pay was so recomputed;

using as his rate of basic pay the rate of basic pay prescribed for officers serving on active duty in those positions on June 1, 1958, by footnote 1 to table for commissioned officers in section 201(a) of the Career Compensation Act of 1949, as amended (72 Stat. 122) [see section 203 of Title 37]; or

"(2) to an increase of 5 percent in the retired pay to which he was entitled on the day before the effective date of this Act [Oct. 1, 1963];

whichever pay is the greater.

“(e) A member or former member of a uniformed service who was entitled to retired pay or retainer pay on the day before the effective date of this Act [Oct. 1, 1963], other than a member or former member who is covered by subsection (b), (c), or (d) of this section, is entitled to an increase of 5 percent in the retired or retainer pay to which he was entitled on the day before the effective date of this Act [Oct. 1, 1963].

“(f) Notwithstanding any other provision of law, a member of an armed force who was entitled to pay and allowances under any of the following provisions of law on the day before the effective date of this Act [Oct. 1, 1963] shall continue to receive the pay and allowances to which he was entitled on that day:

- “(1) The Act of March 23, 1946, chapter 112 (60 Stat. 59).
- “(2) The Act of June 26, 1948, chapter 677 (62 Stat. 1052).
- “(3) The Act of September 18, 1950, chapter 952 (64 Stat. A224).”

RETIREE PAY AND RETAINER PAY; RETROACTIVE EFFECT

Section 5(j) of Pub. L. 88-132 provided that: “A member or former member of a uniformed service is not entitled to an increase in his retired pay or retainer pay because of the enactment of this Act [see Short Title note set out under section 201 of Title 37] for any period before the effective date of this Act [Oct. 1, 1963].”

SAVINGS PROVISION

Section 5(l)(2) of Pub. L. 88-132 provided that: “Notwithstanding paragraph (1) of this subsection [amending this section], and unless otherwise entitled to higher retired pay or retainer pay, a member of a uniformed service who is on active duty (other than for training) on the effective date of this Act [Oct. 1, 1963], who was entitled to retired pay or retainer pay before he entered on that duty, and who is released from that duty on or after the effective date of this Act after having served on that duty for a continuous period of at least one year shall, upon that release from active duty, be entitled to recompute his retired pay or retainer pay under the table in section 1402 of title 10, United States Code [this section], subject to section 6483(c) of title 10, as that table and that section were in effect on the day before the effective date of this Act, using rates of basic pay prescribed by this Act [section 203 of Title 37].”

**§ 1402a. Recomputation of retired or retainer pay to reflect later active duty of members who first became members after September 7, 1980**

(a) IN GENERAL.—A member of an armed force—

- (1) who first became a member of a uniformed service after September 7, 1980;
- (2) who has become entitled to retired pay or retainer pay; and
- (3) who thereafter serves on active duty (other than for training),

is entitled to recompute his retired pay or retainer pay upon release from that duty according to the following table.

Column 1 Take	Column 2 Multiply by	Column 3 Add
The retired pay base computed under section 1407(b) of this title.	As member elects— (1) 2½ percent of years of service credited under section 1208 of this title; <sup>1</sup> or (2) the highest percentage of disability, not to exceed 75 percent, attained while on active duty after retirement or after the date when his name was placed on temporary disability retired list, as the case may be.	Amount necessary to increase product of columns 1 and 2 to 50 percent of pay upon which computation is based, if member is on temporary disability retired list.

<sup>1</sup> Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month.

Column 1 Take	Column 2 Multiply by
Retired pay base or retainer pay base under section 1407 which he would be entitled to use if— (1) he were retiring upon release from that active duty; or (2) he were transferring to the Fleet Reserve or Fleet Marine Corps Reserve upon that release from active duty.	The retired pay multiplier or retainer pay multiplier prescribed in section 1409 for the sum of— (1) the years of service that may be credited to him in computing retired pay or retainer pay; and (2) his years of active service after becoming entitled to retired pay or retainer pay.

(b) NEW DISABILITY INCURRED DURING LATER ACTIVE DUTY.—A member of an armed force who first became a member of a uniformed service after September 7, 1980, who has been retired other than for physical disability and who while on active duty incurs a physical disability of at least 30 percent for which he would otherwise be eligible for retired pay under chapter 61 of this title, is entitled, upon his release from active duty, to retired pay under subsection (d).

(c) ADDITIONAL OR AGGRAVATED DISABILITY INCURRED DURING LATER ACTIVE DUTY.—A member of an armed force who first became a member of a uniformed service after September 7, 1980, and who—

- (1) was retired for physical disability under section 1201 or 1204 of this title or any other law or whose name is on the temporary disability retired list;
- (2) incurs, while on active duty after retirement or after his name was placed on the temporary disability retired list, a physical disability that is in addition to or that aggravates the physical disability for which he was retired or for which his name was placed on that list; and
- (3) is qualified under section 1201, 1202, 1204, or 1205 of this title;

is entitled, upon his release from active duty, to retired pay under subsection (d).

(d) COMPUTATION FOR LATER DISABILITY.—A member of an armed force covered by subsection (b) or (c) may elect to receive either (1) the retired pay to which he became entitled when he retired, increased by any applicable adjustments in that pay under section 1401a of this title after he initially became entitled to that pay, or (2) retired pay computed according to the following table.

(e) ALTERNATIVE RECOMPUTATION TO SUBSECTION (a) FORMULA.—Notwithstanding subsection (a), a member covered by that subsection may elect, upon his release from that active duty, to have his retired pay or retainer pay—

(1) computed according to the formula set forth in subsection (a) but using the monthly retired pay base under which his retired pay or retainer pay was computed when he entered on that active duty; and

(2) increased by any applicable adjustments in that pay under section 1401a of this title after he initially became entitled to that pay.

(f) ADDITIONAL 10 PERCENT FOR CERTAIN ENLISTED MEMBERS CREDITED WITH EXTRAORDINARY HEROISM.—(1) In the case of a member who is entitled to recompute retired pay under this section upon release from active duty served after retiring under section 3914 or 8914 of this title, the member's retired pay as recomputed under another provision of this section shall be increased by 10 percent of the amount so recomputed if the member has been credited by the Secretary concerned with extraordinary heroism in the line of duty during any period of active duty service in the armed forces.

(2) The amount of the retired pay as recomputed under another provision of this section and as increased under paragraph (1) may not exceed the amount equal to 75 percent of the retired pay base upon which the recomputation of such retired pay is based.

(3) The determination of the Secretary concerned as to extraordinary heroism is conclusive for all purposes.

(Added Pub. L. 96-342, title VIII, §813(b)(3)(A), Sept. 8, 1980, 94 Stat. 1102; amended Pub. L. 96-513, title V, §511(51)(A), (B), Dec. 12, 1980, 94 Stat. 2924; Pub. L. 98-94, title IX, §§922(a)(5), (6), 923(a)(1), (2)(D), (E), Sept. 24, 1983, 97 Stat. 641, 642; Pub. L. 99-348, title II, §201(b)(1), (2), July 1, 1986, 100 Stat. 693; Pub. L. 102-484, div. A, title VI, §642(b), Oct. 23, 1992, 106 Stat. 2425; Pub. L. 111-383, div. A, title VI, §631(c), Jan. 7, 2011, 124 Stat. 4239.)

#### AMENDMENTS

2011—Subsec. (d). Pub. L. 111-383, in column 2 of table, inserted “, not to exceed 75%,” after “percentage of disability” and struck out column 4 of table which related to subtraction of excess over 75 percent of retired or retainer pay base upon which computation is based.

1992—Subsec. (f). Pub. L. 102-484 added subsec. (f).

1986—Subsec. (a). Pub. L. 99-348, §201(b)(1), amended subsec. (a) generally. Prior to the amendment, subsec. (a) read as follows: “A member of an armed force who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) after September 7, 1980, who has become entitled to retired pay or retainer pay, and who thereafter serves on active duty (other than for training), is entitled to recompute his retired pay or retainer pay upon his release from that duty according to the following table. The amount recomputed, if not a multiple of \$1, shall be rounded to the next lower multiple of \$1.”

Subsec. (b). Pub. L. 99-348, §201(b)(2)(A), inserted heading.

Subsec. (c). Pub. L. 99-348, §201(b)(2)(B), inserted heading.

Subsec. (d). Pub. L. 99-348, §201(b)(2)(C), inserted heading, struck out provision that if the amount recomputed is not a multiple of \$1, it be rounded to the

next lower multiple of \$1, and in column 1 of table struck out “monthly” before “retired pay” and in column 4 of table struck out “monthly” before “retired or”.

Subsec. (e). Pub. L. 99-348, §201(b)(2)(D), inserted heading.

1983—Subsec. (a). Pub. L. 98-94, §922(a)(5), substituted “according to the following table. The amount recomputed, if not a multiple of \$1, shall be rounded to the next lower multiple of \$1.” for “as follows:”.

Pub. L. 98-94, §923(a)(1), (2)(D), in footnote 1 of table, substituted “Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month” for “Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months”.

Subsec. (d). Pub. L. 98-94, §922(a)(6), substituted “according to the following table. The amount computed, if not a multiple of \$1, shall be rounded to the next lower multiple of \$1.” for “as follows:”.

Pub. L. 98-94, §923(a)(1), (2)(E), in footnote 1 of table, substituted “Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month” for “Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months”.

1980—Pub. L. 96-513, §511(51)(B), substituted “of members who first became members after September 7, 1980” for “in case of members who first became members after the enactment of the Department of Defense Authorization Act, 1981” in section catchline.

Subsecs. (a) to (c). Pub. L. 96-513, §511(51)(A), substituted “after September 7, 1980” for “on or after the date of the enactment of the Department of Defense Authorization Act, 1981” wherever appearing.

#### EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 111-383 applicable to persons who first become entitled to retired or retainer pay under subtitle A of this title after Jan. 7, 2011, and table in subsec. (d) of this section, in effect on the day before Jan. 7, 2011, applicable to the computation or recomputation of retired or retainer pay for persons who first became entitled to retired or retainer pay under subtitle A on or before Jan. 7, 2011, see section 631(d) of Pub. L. 111-383, set out as a note under section 1401 of this title.

#### EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 922 of Pub. L. 98-94 effective Oct. 1, 1983, see section 922(e) of Pub. L. 98-94, set out as a note under section 1401 of this title.

Amendment by section 923 of Pub. L. 98-94 applicable with respect to (1) the computation of retired or retainer pay of any individual who becomes entitled to that pay after Sept. 30, 1983, and (2) the recomputation of retired pay under this section, of any individual who after Sept. 30, 1983, becomes entitled to recompute retired pay under this section, see section 923(g) of Pub. L. 98-94, set out as a note under section 1174 of this title.

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96-513, set out as a note under section 101 of this title.

#### ACCRUAL OF BENEFITS; PROSPECTIVE APPLICABILITY

No benefits to accrue for months beginning before Oct. 23, 1992, by reason of the amendment by Pub. L. 102-484, see section 642(c) of Pub. L. 102-484, set out as a note under section 1402 of this title.

**§ 1403. Disability retired pay: treatment under Internal Revenue Code of 1986**

That part of the retired pay of a member of an armed force, computed under formula No. 1 or 2 of section 1401, or under section 1402(d) or 1402a(d) of this title on the basis of years of service, which exceeds the retired pay that he would receive if it were computed on the basis of percentage of disability is not considered as a pension, annuity, or similar allowance for personal injury, or sickness, resulting from active service in the armed forces, under section 104(a) of the Internal Revenue Code of 1986.

(Aug. 10, 1956, ch. 1041, 70A Stat. 108; Pub. L. 96-342, title VIII, §813(b)(3)(C), Sept. 8, 1980, 94 Stat. 1104; Pub. L. 96-513, title V, §511(52)(A), (B), Dec. 12, 1980, 94 Stat. 2925; Pub. L. 100-26, §7(h)(1), (2)(A), Apr. 21, 1987, 101 Stat. 282.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1403 .....	37:272(h).	Oct. 12, 1949, ch. 681, §402(h), 63 Stat. 820.

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in text, is set out in Title 26, Internal Revenue Code.

AMENDMENTS

1987—Pub. L. 100-26 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954” in section catchline and text.

1980—Pub. L. 96-513 substituted “the Internal Revenue Code of 1954” for “title 26” in section catchline and text.

Pub. L. 96-342 inserted reference to section 1402a(d) of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96-513, set out as a note under section 101 of this title.

**§ 1404. Applicability of section 8301 of title 5**

The retirement provisions of this title are subject to section 8301 of title 5.

(Aug. 10, 1956, ch. 1041, 70A Stat. 108; Pub. L. 89-718, §3, Nov. 2, 1966, 80 Stat. 1115.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1404 .....	[No source].	[No source].

The effect of the act of April 23, 1930 (5 U.S.C. 47a), in temporarily deferring retirement dates otherwise specifically fixed by law is reflected in the sections of the proposed text that name those dates. This section is inserted to make clear that under that act such deferments have no effect on the applicability of the specific rates that are to be used in computing retired pay.

AMENDMENTS

1966—Pub. L. 89-718 substituted “8301” for “47a” in section catchline and text.

**§ 1405. Years of service**

(a) IN GENERAL.—For the purposes of the computation of the years of service of a member of the armed forces under a provision of this title

providing for such computation to be made under this section, the years of service of the member are computed by adding—

(1) his years of active service;

(2) the years of service, not included in clause (1), with which he was entitled to be credited on May 31, 1958, in computing his basic pay; and

(3) the years of service, not included in clause (1) or (2), with which he would be entitled to be credited under section 12733 of this title if he were entitled to retired pay under section 12731 of this title.

(b) FRACTIONAL YEARS OF SERVICE.—In determining a member’s years of service under subsection (a)—

(1) each full month of service that is in addition to the number of full years of service creditable to the member shall be credited as 1/2 of a year; and

(2) any remaining fractional part of a month shall be disregarded.

(c) EXCLUSION OF TIME REQUIRED TO BE MADE UP OR EXCLUDED.—(1) Time required to be made up by an enlisted member of the Army or Air Force under section 972(a) of this title, or required to be made up by an enlisted member of the Navy, Marine Corps, or Coast Guard under that section with respect to a period of time after October 5, 1994, may not be counted in determining years of service under subsection (a).

(2) Section 972(b) of this title excludes from computation of an officer’s years of service for purposes of this section any time identified with respect to that officer under that section.

(Added Pub. L. 85-422, §11(a)(1)(A), May 20, 1958, 72 Stat. 130; amended Pub. L. 85-861, §1(31A), Sept. 2, 1958, 72 Stat. 1451; Pub. L. 87-649, §6(f)(4), Sept. 7, 1962, 76 Stat. 494; Pub. L. 87-651, title I, §109, Sept. 7, 1962, 76 Stat. 509; Pub. L. 90-130, §1(7), Nov. 8, 1967, 81 Stat. 374; Pub. L. 96-513, title I, §113(b), Dec. 12, 1980, 94 Stat. 2877; Pub. L. 97-295, §1(17), Oct. 12, 1982, 96 Stat. 1290; Pub. L. 99-348, title I, §106, July 1, 1986, 100 Stat. 691; Pub. L. 103-337, div. A, title VI, §635(d), title XVI, §1662(j)(3), Oct. 5, 1994, 108 Stat. 2789, 3004; Pub. L. 104-106, div. A, title V, §561(d)(1), Feb. 10, 1996, 110 Stat. 322; Pub. L. 104-201, div. A, title X, §1074(b)(1), Sept. 23, 1996, 110 Stat. 2660; Pub. L. 107-107, div. A, title X, §1048(c)(7), Dec. 28, 2001, 115 Stat. 1226.)

HISTORICAL AND REVISION NOTES

1958 ACT

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1405 .....	[No source].	[No source].

The amendment reflects section 11 of the Act of May 20, 1958, Pub. L. 85-422 (72 Stat. 130).

1962 ACT

The change corrects a typographical error.

1982 ACT

This amends 10:1405 to correct an inadvertent error in the codification of title 10 in 1956 relating to retirement pay of warrant officers advanced on the retired list. Under provisions of law first enacted in 1948 through the codification of title 10 in 1956 and until 1965, warrant officers advanced on the retired list received cred-

it for inactive service in the computation of retirement pay. The Comptroller General in 1965 (B-156576) held in effect that computation of such retirement pay was governed by the wording of new title 10 that based the computation on years of active service only even though this had the result of making a substantive change. The Armed Services Committee of the House of Representatives concurs that an error was made in the codification of title 10 and has indicated that corrective legislative action is properly a responsibility of the House Judiciary Committee. See, also, the amendments to 10:3992 and 8992 made by sections 1(40) and 1(52), respectively.

#### AMENDMENTS

2001—Subsec. (c)(1). Pub. L. 107-107 substituted “October 5, 1994,” for “the date of the enactment of the National Defense Authorization Act for Fiscal Year 1995.”

1996—Subsec. (c). Pub. L. 104-106, as amended by Pub. L. 104-201, substituted “Made Up or Excluded” for “Made Up” in heading, designated existing provisions as par. (1), substituted “section 972(a) of this title, or required to be made up by an enlisted member of the Navy, Marine Corps, or Coast Guard under that section with respect to a period of time after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1995,” for “section 972 of this title”, and added par. (2).

1994—Subsec. (a)(3). Pub. L. 103-337, §1662(j)(3), substituted “12733” for “1333” and “12731” for “1331”.

Subsec. (c). Pub. L. 103-337, §635(d), added subsec. (c).

1986—Pub. L. 99-348 designated existing provision as subsec. (a), inserted heading, and in provision preceding par. (1) substituted “the computation of the years of service of a member of the armed forces under a provision of this title providing for such computation to be made under this section, the years of service of the member” for “section 1401 (formulas 4 and 5), 3991 (formula A), 3992 (formula B), 6151(b), 6323(e), 6325(a)(2) and (b)(2), 6383(c)(2), 8991 (formula A), or 8992 (formula B) of this title, the years of service of a member of the armed forces”, and added subsec. (b).

1982—Pub. L. 97-295, §1(17), substituted “3991 (formula A), 3992 (formula B)” for “3991 (formula B)”, struck out “or” first time appearing, and substituted “8991 (formula A), or 8992 (formula B)” for “8991 (formula B)”.

1980—Pub. L. 96-513 struck out provisions that permitted the crediting of certain periods of constructive service in computing the retired pay of medical and dental officers and provided that members would compute their years of service for retirement pay by adding (1) years of active service, (2) years of service not otherwise counted with which the member was entitled to be credited on May 31, 1958, and (3) years of service not otherwise counted with which he would be credited under section 1333 if he were entitled to retired pay under section 1331.

1967—Pub. L. 90-130 struck out references to section 6399(c)(2) of this title.

1962—Pub. L. 87-651 struck out references to sections 6391(h) and 6394(g)(2) of this title and inserted a reference to section 6394(h) of this title.

Pub. L. 87-649 substituted “section 205(a)(7) and (8) of title 37” for “section 233(a)(7) of title 37” in cl. (2).

1958—Pub. L. 85-861 inserted references to sections 6323(e) and 6391(h) of this title.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-106 effective Feb. 10, 1996, and applicable to any period of time covered by section 972 of this title that occurs after that date, see section 561(e) of Pub. L. 104-106, set out as a note under section 972 of this title.

#### EFFECTIVE DATE OF 1994 AMENDMENT

Section 635(e) of Pub. L. 103-337 provided that: “This section [amending this section and sections 3925, 3991, 3992, 6333, 8925, 8991, and 8992 of this title] shall apply to—

“(1) the computation of the retired pay of any enlisted member who retires on or after the date of the enactment of this Act [Oct. 5, 1994];

“(2) the computation of the retainer pay of any enlisted member who is transferred to the Fleet Reserve or the Fleet Marine Corps Reserve on or after the date of the enactment of this Act; and

“(3) the recomputation of the retired pay of any enlisted member who is advanced on the retired list on or after the date of the enactment of this Act.”

Amendment by section 1662(j)(3) of Pub. L. 103-337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103-337, set out as an Effective Date note under section 10001 of this title.

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96-513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96-513, set out as a note under section 101 of this title.

#### EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-649 effective Nov. 1, 1962, see section 15 of Pub. L. 87-649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

#### EFFECTIVE DATE

Section effective June 1, 1958, see section 9 of Pub. L. 85-422.

#### TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

#### TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provisions to prevent extinction or premature termination of rights, duties, penalties, or proceedings that existed or were begun prior to the effective date of Pub. L. 96-513 and otherwise to allow for an orderly transition to the system of officer personnel management put in place under Pub. L. 96-513, see section 601 et seq. of Pub. L. 96-513, set out as a note under section 611 of this title.

#### § 1406. Retired pay base for members who first became members before September 8, 1980: final basic pay

(a) USE OF RETIRED PAY BASE IN COMPUTING RETIRED PAY.—

(1) GENERAL RULE.—The retired pay or retainer pay of any person entitled to that pay who first became a member of a uniformed service before September 8, 1980, is computed using the retired pay base or retainer pay base determined under this section.

(2) EXCEPTION FOR RECOMPUTATION.—Recomputation of retired or retainer pay to reflect later active duty is provided for under section 1402 of this title without reference to a retired pay base or retainer pay base.

(b) RETIREMENT UNDER SUBTITLE A OR E.—

(1) DISABILITY, WARRANT OFFICER, AND DOPMA RETIREMENT.—In the case of a person whose retired pay is computed under this subtitle, the retired pay base is determined in accordance with the following table.

For a member entitled to retired pay under section:	The retired pay base is:
1201 1202 1204 1205	Monthly basic pay <sup>1</sup> of grade to which member is entitled under section 1372 or to which he was entitled on day before retirement or placement on temporary disability retired list, whichever is higher.
580 1263 1293 1305	Monthly basic pay to which member would have been entitled if he had served on active duty in his retired grade on day before retirement, or if the pay of that grade is less than the pay of any warrant grade satisfactorily held by him on active duty, the monthly basic pay of that warrant officer grade.
633 634 635 636 1251 1252 1253	Monthly basic pay <sup>2</sup> of member's retired grade. <sup>3</sup>

<sup>1</sup> Compute at rates applicable on date of retirement or date when member's name was placed on temporary disability retired list, as the case may be.

<sup>2</sup> Compute at rates applicable on date of retirement.

<sup>3</sup> For the purposes of this subsection, determine member's retired grade as if sections 3962 and 8962 did not apply.

(2) NON-REGULAR SERVICE RETIREMENT.—In the case of a person who is entitled to retired pay under section 12731 of this title, the retired pay base is the monthly basic pay, determined at the rates applicable on the date when retired pay is granted (or, in the case of a person entitled to retired pay by reason of an election under section 12741(a) of this title, at rates applicable on the date the person completes the service required under such section 12741(a)), of the highest grade held satisfactorily by the person at any time in the armed forces. For purposes of the preceding sentence, the highest grade in which a person served satisfactorily as an officer shall be determined in accordance with section 1370(d) of this title.

(c) VOLUNTARY RETIREMENT FOR MEMBERS OF THE ARMY.—

(1) IN GENERAL.—In the case of a member whose retired pay is computed under section 3991 of this title or who is entitled to retired pay computed under section 3992 of this title, the retired pay base is determined in accordance with the following table.

For a member entitled to retired pay under section:	The retired pay base is:
3911 3918 3920 3924	Monthly basic pay of member's retired grade. <sup>1</sup>
3914 3917	Monthly basic pay to which member was entitled on day before he retired.
3992	Monthly basic pay of grade to which member is advanced on retired list.

<sup>1</sup> For the purposes of this subsection, determine member's retired grade as if section 3962 did not apply.

(2) RATE OF BASIC PAY TO BE USED.—The rate of basic pay to be used under paragraph (1) is the rate applicable on the date of the member's retirement.

(d) RETIREMENT FOR MEMBERS OF THE NAVY AND MARINE CORPS.—In the case of a member whose retired pay is computed under section 6333 of this title, who is advanced on the retired list under section 6151 or 6334 of this title, or who is entitled to retainer pay under section 6330 of this title, the retired pay base or retainer pay base is determined in accordance with the following table.

For a member entitled to retired or retainer pay under section:	The retired pay base or retainer pay base is:
6323 6325(a) 6383	Basic pay of the grade in which the member retired. <sup>1</sup>
6325(b)	Basic pay of the grade the officer would hold if he had not received an appointment described in section 6325(b).
6326	Basic pay of the pay grade in which the member was serving on the day before retirement.
6330	Basic pay that the member received at the time of transfer to the Fleet Reserve or Fleet Marine Corps Reserve.
6151	Basic pay of the grade to which the member is advanced under section 6151.
6334	Basic pay of the grade to which the member is advanced under section 6334.

<sup>1</sup> If the rate specified is less than the pay of any warrant officer grade satisfactorily held by the member on active duty, use the monthly basic pay of that warrant officer grade.

(e) VOLUNTARY RETIREMENT FOR MEMBERS OF THE AIR FORCE.—

(1) IN GENERAL.—In the case of a member whose retired pay is computed under section 8991 of this title or who is entitled to retired pay computed under section 8992 of this title, the retired pay base is determined in accordance with the following table.

For a member entitled to retired pay under section:	The retired pay base is:
8911 8918 8920 8924	Monthly basic pay of member's retired grade. <sup>1</sup>
8914 8917	Monthly basic pay to which member was entitled on day before he retired.
8992	Monthly basic pay of grade to which member is advanced on retired list.

<sup>1</sup> For the purposes of this subsection, determine member's retired grade as if section 8962 did not apply.

(2) RATE OF BASIC PAY TO BE USED.—The rate of basic pay to be used under paragraph (1) is the rate applicable on the date of the member's retirement.

(f) COAST GUARD.—In the case of a member who is retired under any section of title 14, the

member's retired pay is computed under section 423(a) of title 14 in the manner provided in that section.

(g) COMMISSIONED CORPS OF NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION.—In the case of an officer whose retired pay is computed under section 245 of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 (33 U.S.C. 3045), the retired pay base is the basic pay of the rank with which the officer retired.

(h) COMMISSIONED CORPS OF PUBLIC HEALTH SERVICE.—In the case of an officer who is retired under section 210(g) or 211(a) of the Public Health Service Act (42 U.S.C. 211(g), 212(a)), the retired pay base is determined as follows:

(1) MANDATORY RETIREMENT.—If the officer is retired under section 210(g) of such Act, the retired pay base is the basic pay of the permanent grade held by the officer at the time of retirement.

(2) VOLUNTARY RETIREMENT.—If the officer is retired under section 211(a) of such Act, the retired pay base is the basic pay of the highest grade held by the officer and in which, in the case of a temporary promotion to such grade, the officer has performed active duty for not less than six months.

(i) SPECIAL RULE FOR FORMER CHAIRMEN AND VICE CHAIRMEN OF THE JCS, CHIEFS OF SERVICE, COMMANDERS OF COMBATANT COMMANDS, AND SENIOR ENLISTED MEMBERS.—

(1) IN GENERAL.—For the purposes of subsections (b) through (e), in determining the rate of basic pay to apply in the determination of the retired pay base of a member who has served as Chairman or Vice Chairman of the Joint Chiefs of Staff, as a Chief of Service, as a commander of a unified or specified combatant command (as defined in section 161(c) of this title), or as the senior enlisted member of an armed force, the highest rate of basic pay applicable to the member while serving in that position shall be used, if that rate is higher than the rate otherwise authorized by this section.

(2) EXCEPTION FOR MEMBERS REDUCED IN GRADE OR WHO DO NOT SERVE SATISFACTORILY.—Paragraph (1) does not apply in the case of a member who, while or after serving in a position specified in that paragraph and by reason of conduct occurring after October 16, 1998—

(A) in the case of an enlisted member, is reduced in grade as the result of a court-martial sentence, nonjudicial punishment, or other administrative process; or

(B) in the case an officer, is not certified by the Secretary of Defense under section 1370(c) of this title as having served on active duty satisfactorily in the grade of general or admiral, as the case may be, while serving in that position.

(3) DEFINITIONS.—In this subsection:

(A) The term “Chief of Service” means any of the following:

- (i) Chief of Staff of the Army.
- (ii) Chief of Naval Operations.
- (iii) Chief of Staff of the Air Force.
- (iv) Commandant of the Marine Corps.
- (v) Commandant of the Coast Guard.

(B) The term “senior enlisted member” means any of the following:

- (i) Sergeant Major of the Army.
- (ii) Master Chief Petty Officer of the Navy.
- (iii) Chief Master Sergeant of the Air Force.
- (iv) Sergeant Major of the Marine Corps.
- (v) Master Chief Petty Officer of the Coast Guard.
- (vi) Senior Enlisted Advisor to the Chairman of the Joint Chiefs of Staff.

(Added Pub. L. 99-348, title I, §104(b), July 1, 1986, 100 Stat. 686; amended Pub. L. 100-180, div. A, title V, §512(d)(2), title XIII, §1314(b)(6), Dec. 4, 1987, 101 Stat. 1090, 1175; Pub. L. 100-456, div. A, title XII, §1233(c), Sept. 29, 1988, 102 Stat. 2057; Pub. L. 102-190, div. A, title XI, §1131(7), Dec. 5, 1991, 105 Stat. 1506; Pub. L. 103-337, div. A, title XVI, §1662(j)(4), Oct. 5, 1994, 108 Stat. 3004; Pub. L. 105-85, div. A, title X, §1073(a)(23), Nov. 18, 1997, 111 Stat. 1901; Pub. L. 105-261, div. A, title VI, §646, Oct. 17, 1998, 112 Stat. 2050; Pub. L. 106-65, div. A, title X, §1066(a)(11), Oct. 5, 1999, 113 Stat. 771; Pub. L. 107-372, title II, §272(a), Dec. 19, 2002, 116 Stat. 3094; Pub. L. 108-136, div. A, title VI, §643(a), (b), Nov. 24, 2003, 117 Stat. 1517; Pub. L. 108-375, div. A, title X, §1084(d)(9), Oct. 28, 2004, 118 Stat. 2061; Pub. L. 109-163, div. A, title V, §509(d)(1)(B), title VI, §685(d), Jan. 6, 2006, 119 Stat. 3231, 3325; Pub. L. 109-364, div. A, title V, §502(d)(2), title X, §1071(a)(7), Oct. 17, 2006, 120 Stat. 2178, 2398; Pub. L. 111-84, div. A, title VI, §643(d)(1), Oct. 28, 2009, 123 Stat. 2367.)

#### PRIOR PROVISIONS

A prior section 1406 was renumbered section 12738 of this title.

#### AMENDMENTS

2009—Subsec. (b)(2). Pub. L. 111-84 inserted “(or, in the case of a person entitled to retired pay by reason of an election under section 12741(a) of this title, at rates applicable on the date the person completes the service required under such section 12741(a))” after “when retired pay is granted”.

2006—Subsec. (b)(1). Pub. L. 109-364, §502(d)(2), in table inserted “1253” at end of column under heading “For a member entitled to retired pay under section:”.

Pub. L. 109-163, §509(d)(1)(B), in table inserted “1252” at end of column under heading “For a member entitled to retired pay under section:”.

Subsec. (i)(3)(B)(vi). Pub. L. 109-364, §1071(a)(7), substituted “to” for “for”.

Pub. L. 109-163, §685(d), added cl. (vi).

2004—Subsec. (g). Pub. L. 108-375 substituted “section 245” for “section 305” and “Officer Corps Act of 2002 (33 U.S.C. 3045)” for “Officers Act of 2002”.

2003—Subsec. (i). Pub. L. 108-136 inserted “Commanders of Combatant Commands,” after “Chiefs of Service,” in heading and “as a commander of a unified or specified combatant command (as defined in section 161(c) of this title),” after “Chief of Service,” in par. (1).

2002—Subsec. (g). Pub. L. 107-372 substituted “section 305 of the National Oceanic and Atmospheric Administration Commissioned Officers Act of 2002” for “section 16 of the Coast and Geodetic Survey Commissioned Officers’ Act of 1948 (33 U.S.C. 853o)”.

1999—Subsec. (i)(2). Pub. L. 106-65 substituted “after October 16, 1998” for “on or after the date of the enactment of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999” in introductory provisions.

1998—Subsec. (i)(2), (3). Pub. L. 105-261 added par. (2) and redesignated former par. (2) as (3).

1997—Subsec. (b)(1). Pub. L. 105–85 substituted “3962 and 8962” for “3962(b) and 8962(b)” in footnote 3 in table.

Subsec. (c)(1). Pub. L. 105–85, §1073(a)(23)(A), substituted “3962” for “3962(b)” in footnote 1 in table.

Subsec. (e)(1). Pub. L. 105–85, §1073(a)(23)(B), substituted “8962” for “8962(b)” in footnote 1 in table.

1994—Subsec. (b). Pub. L. 103–337 substituted “Subtitle A or E” for “Subtitle A” in subsec. heading, designated existing provisions as par. (1), inserted par. (1) heading, in table struck out item for section 1331 which related to monthly basic pay of highest grade held satisfactorily by person at any time in armed forces, renumbered footnotes 3 and 4 as 2 and 3, respectively, and struck out former footnote 2 which provided for computations at rates applicable on date when retired pay is granted, and added par. (2).

1991—Subsec. (b). Pub. L. 102–190 substituted “580” for “564” in table.

1988—Subsec. (b). Pub. L. 100–456 substituted “satisfactorily by person” for “satisfactory by person” in item relating to section 1331 in table.

1987—Subsec. (d). Pub. L. 100–180, §512(d)(2), inserted “or 6334” after “6151” in text, and inserted item relating to section 6334 at end of table.

Subsec. (i). Pub. L. 100–180, §1314(b)(6), inserted “and Vice Chairmen” after “Chairmen” in heading and inserted “or Vice Chairman” after “Chairman” in par. (1).

#### EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–136, div. A, title VI, §643(c), Nov. 24, 2003, 117 Stat. 1517, provided that: “The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Nov. 24, 2003] and shall apply with respect to officers who first become entitled to retired pay under title 10, United States Code, on or after such date.”

#### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–190 effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as a note under section 521 of this title.

#### TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

#### GRADE ON TRANSFER TO RETIRED RESERVE

Section 1688 of title XVI of Pub. L. 103–337 provided that: “In determining the highest grade held satisfactorily by a person at any time in the Armed Forces for the purposes of paragraph (2) of section 1406(b) of title 10, United States Code, as added by this title, the requirement for satisfactory service on the reserve active-status list contained in section 1370(d) of title 10, United States Code, as added by this title, shall apply only to reserve commissioned officers who are promoted to a higher grade as a result of selection for promotion under chapter 36 of that title or under chapter 1405 of that title, as added by this title, or having been found qualified for Federal recognition in a higher grade under chapter 3 of title 32, United States Code, after the effective date of this title [see Effective Date note set out under section 10001 of this title].”

### § 1407. Retired pay base for members who first became members after September 7, 1980: high-36 month average

(a) USE OF RETIRED PAY BASE IN COMPUTING RETIRED PAY.—The retired pay or retainer pay of any person entitled to that pay who first became a member of a uniformed service after September 7, 1980, is computed using the retired pay base or retainer pay base determined under this section.

(b) HIGH-THREE AVERAGE.—Except as provided in subsection (f), the retired pay base or retainer pay base of a person under this section is the person’s high-three average determined under subsection (c) or (d).

(c) COMPUTATION OF HIGH-THREE AVERAGE FOR MEMBERS ENTITLED TO RETIRED OR RETAINER PAY FOR REGULAR SERVICE.—

(1) GENERAL RULE.—The high-three average of a member entitled to retired or retainer pay under any provision of law other than section 1204 or 1205 or section 12731 of this title is the amount equal to—

(A) the total amount of monthly basic pay to which the member was entitled for the 36 months (whether or not consecutive) out of all the months of active service of the member for which the monthly basic pay to which the member was entitled was the highest, divided by

(B) 36.

(2) SPECIAL RULE FOR SHORT-TERM DISABILITY RETIREES.—In the case of a member who is entitled to retired pay under section 1201 or 1202 of this title and who has completed less than 36 months of active service, the member’s high-three average (notwithstanding paragraph (1)) is the amount equal to—

(A) the total amount of basic pay to which the member was entitled during the period of the member’s active service, divided by

(B) the number of months (including any fraction thereof) of the member’s active service.

(3) SPECIAL RULE FOR RESERVE COMPONENT MEMBERS.—In the case of a member of a reserve component who is entitled to retired pay under section 1201 or 1202 of this title, the member’s high-three average (notwithstanding paragraphs (1) and (2)) is computed in the same manner as prescribed in paragraphs (2) and (3) of subsection (d) for a member entitled to retired pay under section 1204 or 1205 of this title.

(d) COMPUTATION OF HIGH-THREE AVERAGE FOR MEMBERS AND FORMER MEMBERS ENTITLED TO RETIRED PAY FOR NONREGULAR SERVICE.—

(1) RETIRED PAY UNDER CHAPTER 1223.—The high-three average of a member or former member entitled to retired pay under section 12731 of this title is the amount equal to—

(A) the total amount of monthly basic pay to which the member or former member was entitled during the member or former member’s high-36 months (or to which the member or former member would have been entitled if the member or former member had served on active duty during the entire period of the member or former member’s high-36 months), divided by

## (B) 36.

(2) **NONREGULAR SERVICE DISABILITY RETIRED PAY.**—The high-three average of a member entitled to retired pay under section 1204 or 1205 of this title is the amount equal to—

(A) the total amount of monthly basic pay to which the member was entitled during the member's high-36 months (or to which the member would have been entitled if the member had served on active duty during the entire period of the member's high-36 months), divided by

## (B) 36.

(3) **SPECIAL RULE FOR SHORT-TERM DISABILITY RETIREES.**—In the case of a member who is entitled to retired pay under section 1204 or 1205 of this title and who was a member for less than 36 months before being retired under that section, the member's high-three average (notwithstanding paragraph (2)) is the amount equal to—

(A) the total amount of basic pay to which the member was entitled during the entire period the member was a member of a uniformed service before being so retired (or to which the member would have been entitled if the member had served on active duty during the entire period the member was a member of a uniformed service before being so retired), divided by

(B) the number of months (including any fraction thereof) which the member was a member before being so retired.

(4) **HIGH-36 MONTHS.**—The high-36 months of a member or former member whose retired pay is covered by paragraph (1) or (2) are the 36 months (whether or not consecutive) out of all the months before the member or former member became entitled to retired pay or, in the case of a member or former member entitled to retired pay by reason of an election under section 12741(a) of this title, before the member or former member completes the service required under such section 12741(a), for which the monthly basic pay to which the member or former member was entitled (or would have been entitled if serving on active duty during those months) was the highest. In the case of a former member, only months during which the former member was a member of a uniformed service may be used for purposes of the preceding sentence.

(e) **LIMITATION FOR ENLISTED MEMBERS RETIRING WITH LESS THAN 30 YEARS' SERVICE.**—In the case of a member who is retired under section 3914 or 8914 of this title or who is transferred to the Fleet Reserve or Fleet Marine Corps Reserve under section 6330 of this title, the member's high-36 average shall be computed using only rates of basic pay applicable to months of active duty of the member as an enlisted member.

(f) **EXCEPTION FOR ENLISTED MEMBERS REDUCED IN GRADE AND OFFICERS WHO DO NOT SERVE SATISFACTORILY IN HIGHEST GRADE HELD.**—

(1) **COMPUTATION BASED ON PRE-HIGH-THREE RULES.**—In the case of a member or former member described in paragraph (2), the retired pay base or retainer pay base is determined under section 1406 of this title in the same

manner as if the member or former member first became a member of a uniformed service before September 8, 1980.

(2) **AFFECTED MEMBERS.**—A member or former member referred to in paragraph (1) is a member or former member who by reason of conduct occurring after October 30, 2000—

(A) in the case of a member retired in an enlisted grade or transferred to the Fleet Reserve or Fleet Marine Corps Reserve, was at any time reduced in grade as the result of a court-martial sentence, nonjudicial punishment, or an administrative action, unless the member was subsequently promoted to a higher enlisted grade or appointed to a commissioned or warrant grade; and

(B) in the case of an officer, is retired in a grade lower than the highest grade in which served by reason of denial of a determination or certification under section 1370 of this title that the officer served on active duty satisfactorily in that grade.

(3) **SPECIAL RULE FOR ENLISTED MEMBERS.**—In the case of a member who retires within three years after having been reduced in grade as described in paragraph (2)(A), who retires in an enlisted grade that is lower than the grade from which reduced, and who would be subject to paragraph (1) but for a subsequent promotion to a higher enlisted grade or a subsequent appointment to a warrant or commissioned grade, the rates of basic pay used in the computation of the member's high-36 average for the period of the member's service in a grade higher than the grade in which retired shall be the rates of pay that would apply if the member had been serving for that period in the grade in which retired.

(Added Pub. L. 99-348, title I, §104(b), July 1, 1986, 100 Stat. 689; amended Pub. L. 101-189, div. A, title VI, §651(a), (b)(2), Nov. 29, 1989, 103 Stat. 1459, 1460; Pub. L. 103-337, div. A, title XVI, §1662(j)(5), Oct. 5, 1994, 108 Stat. 3004; Pub. L. 104-106, div. A, title XV, §1501(c)(15), Feb. 10, 1996, 110 Stat. 499; Pub. L. 106-398, §1 [[div. A], title VI, §651], Oct. 30, 2000, 114 Stat. 1654, 1654A-163; Pub. L. 107-107, div. A, title X, §1048(c)(8), Dec. 28, 2001, 115 Stat. 1226; Pub. L. 108-375, div. A, title VI, §641(a), Oct. 28, 2004, 118 Stat. 1957; Pub. L. 111-84, div. A, title VI, §643(d)(2), Oct. 28, 2009, 123 Stat. 2367.)

## PRIOR PROVISIONS

A prior section 1407, added Pub. L. 96-342, title VIII, §813(a)(1), Sept. 8, 1980, 94 Stat. 1100; amended Pub. L. 96-513, title I, §113(c), title V, §§501(21), 511(53), Dec. 12, 1980, 94 Stat. 2877, 2908, 2925, related to determination of retired base pay, prior to repeal by Pub. L. 99-348, §104(b).

## AMENDMENTS

2009—Subsec. (d)(4). Pub. L. 111-84 inserted “or, in the case of a member or former member entitled to retired pay by reason of an election under section 12741(a) of this title, before the member or former member completes the service required under such section 12741(a),” after “became entitled to retired pay”.

2004—Subsec. (c)(3). Pub. L. 108-375 added par. (3).

2001—Subsec. (f)(2). Pub. L. 107-107 substituted “October 30, 2000—” for “the date of the enactment of this subsection—” in introductory provisions.

2000—Subsec. (b). Pub. L. 106-398, §1 [[div. A], title VI, §651(1)], substituted “Except as provided in subsection (f), the retired pay base” for “The retired pay base”.

Subsec. (f). Pub. L. 106-398, §1 [[div. A], title VI, §651(2)], added subsec. (f).

1996—Subsec. (c)(1). Pub. L. 104-106, §1501(c)(15)(A), substituted “section 12731” for “section 1331”.

Subsec. (d)(1). Pub. L. 104-106 substituted in heading “CHAPTER 1223” for “CHAPTER 67” and in text “section 12731” for “section 1331”.

1994—Subsec. (c)(2)(B). Pub. L. 103-337, §1662(j)(5)(A), which directed substitution of “chapter 1223” for “chapter 67”, could not be executed because the words “chapter 67” did not appear subsequent to amendment by Pub. L. 101-189, §651(a)(2), (4). See 1989 Amendment note below.

Subsec. (f)(2). Pub. L. 103-337, §1662(j)(5)(B), which directed amendment of subsec. (f)(2) by substituting “Chapter 1223” for “Chapter 67” in heading and “section 12731” for “section 1331” in text, could not be executed because of previous repeal of subsec. (f) by Pub. L. 101-189, §651(a)(2). See 1989 Amendment note below.

1989—Subsec. (b). Pub. L. 101-189, §651(a)(1), (b)(2), substituted “person” for “member”, “person’s” for “member’s”, and “subsection (c) or (d)” for “subsection (c)”.

Subsec. (c). Pub. L. 101-189, §651(a)(2), (4), added subsec. (c) and struck out former subsec. (c) which related to computation of high-three average.

Subsec. (d). Pub. L. 101-189, §651(a)(4), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 101-189, §651(a)(2), (3), redesignated subsec. (d) as (e) and struck out former subsec. (e) which related to special rules for short-term disability retirees.

Subsecs. (f), (g). Pub. L. 101-189, §651(a)(2), struck out subsec. (f) which related to special rule for members retiring with non-regular service, and subsec. (g) which defined the term “years of creditable service”.

#### EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-375, div. A, title VI, §641(b), Oct. 28, 2004, 118 Stat. 1957, provided that: “Paragraph (3) of section 1407(c) of title 10, United States Code, as added by subsection (a), shall take effect—

“(1) for purposes of determining an annuity under subchapter II or III of chapter 73 of that title, with respect to deaths on active duty on or after September 10, 2001; and

“(2) for purposes of determining the amount of retired pay of a member of a reserve component entitled to retired pay under section 1201 or 1202 of such title, with respect to such entitlement that becomes effective on or after the date of the enactment of this Act [Oct. 28, 2004].”

#### EFFECTIVE DATE OF 1996 AMENDMENT

Section 1501(c) of Pub. L. 104-106 provided that the amendment made by that section is effective as of Dec. 1, 1994, and as if included as an amendment made by the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103-337, as originally enacted.

#### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103-337, set out as an Effective Date note under section 10001 of this title.

### § 1407a. Retired pay base: officers retired in general or flag officer grades

(a) RATES OF BASIC PAY TO BE USED IN DETERMINATION.—In a case in which the determination under section 1406 or 1407 of this title of the retired pay base applicable to the computation of the retired pay of a covered general or flag officer involves a rate of basic pay payable to that officer for any period that was subject to a reduction under section 203(a)(2) of title 37 for such period, such retired-pay-base determina-

tion shall be made using the rate of basic pay for such period provided by law, rather than such rate as so reduced.

(b) COVERED GENERAL AND FLAG OFFICERS.—In this section, the term “covered general or flag officer” means a member or former member who after September 30, 2006, is retired in a general officer grade or flag officer grade.

(Added Pub. L. 109-364, div. A, title VI, §641(a), Oct. 17, 2006, 120 Stat. 2258.)

### § 1408. Payment of retired or retainer pay in compliance with court orders

(a) DEFINITIONS.—In this section:

(1) The term “court” means—

(A) any court of competent jurisdiction of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands;

(B) any court of the United States (as defined in section 451 of title 28) having competent jurisdiction;

(C) any court of competent jurisdiction of a foreign country with which the United States has an agreement requiring the United States to honor any court order of such country; and

(D) any administrative or judicial tribunal of a State competent to enter orders for support or maintenance (including a State agency administering a program under a State plan approved under part D of title IV of the Social Security Act), and, for purposes of this subparagraph, the term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(2) The term “court order” means a final decree of divorce, dissolution, annulment, or legal separation issued by a court, or a court ordered, ratified, or approved property settlement incident to such a decree (including a final decree modifying the terms of a previously issued decree of divorce, dissolution, annulment, or legal separation, or a court ordered, ratified, or approved property settlement incident to such previously issued decree), or a support order, as defined in section 453(p) of the Social Security Act (42 U.S.C. 653(p)), which—

(A) is issued in accordance with the laws of the jurisdiction of that court;

(B) provides for—

(i) payment of child support (as defined in section 459(i)(2) of the Social Security Act (42 U.S.C. 659(i)(2)));

(ii) payment of alimony (as defined in section 459(i)(3) of the Social Security Act (42 U.S.C. 659(i)(3))); or

(iii) division of property (including a division of community property); and

(C) in the case of a division of property, specifically provides for the payment of an amount, expressed in dollars or as a percentage of disposable retired pay, from the disposable retired pay of a member to the spouse or former spouse of that member.

(3) The term “final decree” means a decree from which no appeal may be taken or from which no appeal has been taken within the time allowed for taking such appeals under the laws applicable to such appeals, or a decree from which timely appeal has been taken and such appeal has been finally decided under the laws applicable to such appeals.

(4) The term “disposable retired pay” means the total monthly retired pay to which a member is entitled less amounts which—

(A) are owed by that member to the United States for previous overpayments of retired pay and for recoupments required by law resulting from entitlement to retired pay;

(B) are deducted from the retired pay of such member as a result of forfeitures of retired pay ordered by a court-martial or as a result of a waiver of retired pay required by law in order to receive compensation under title 5 or title 38;

(C) in the case of a member entitled to retired pay under chapter 61 of this title, are equal to the amount of retired pay of the member under that chapter computed using the percentage of the member’s disability on the date when the member was retired (or the date on which the member’s name was placed on the temporary disability retired list); or

(D) are deducted because of an election under chapter 73 of this title to provide an annuity to a spouse or former spouse to whom payment of a portion of such member’s retired pay is being made pursuant to a court order under this section.

(5) The term “member” includes a former member entitled to retired pay under section 12731 of this title.

(6) The term “spouse or former spouse” means the husband or wife, or former husband or wife, respectively, of a member who, on or before the date of a court order, was married to that member.

(7) The term “retired pay” includes retainer pay.

(b) EFFECTIVE SERVICE OF PROCESS.—For the purposes of this section—

(1) service of a court order is effective if—

(A) an appropriate agent of the Secretary concerned designated for receipt of service of court orders under regulations prescribed pursuant to subsection (i) or, if no agent has been so designated, the Secretary concerned, is personally served or is served by facsimile or electronic transmission or by mail;

(B) the court order is regular on its face;

(C) the court order or other documents served with the court order identify the member concerned and include, if possible, the social security number of such member; and

(D) the court order or other documents served with the court order certify that the rights of the member under the Servicemembers Civil Relief Act (50 U.S.C. App. 501 et seq.) were observed; and

(2) a court order is regular on its face if the order—

(A) is issued by a court of competent jurisdiction;

(B) is legal in form; and

(C) includes nothing on its face that provides reasonable notice that it is issued without authority of law.

(c) AUTHORITY FOR COURT TO TREAT RETIRED PAY AS PROPERTY OF THE MEMBER AND SPOUSE.—

(1) Subject to the limitations of this section, a court may treat disposable retired pay payable to a member for pay periods beginning after June 25, 1981, either as property solely of the member or as property of the member and his spouse in accordance with the law of the jurisdiction of such court. A court may not treat retired pay as property in any proceeding to divide or partition any amount of retired pay of a member as the property of the member and the member’s spouse or former spouse if a final decree of divorce, dissolution, annulment, or legal separation (including a court ordered, ratified, or approved property settlement incident to such decree) affecting the member and the member’s spouse or former spouse (A) was issued before June 25, 1981, and (B) did not treat (or reserve jurisdiction to treat) any amount of retired pay of the member as property of the member and the member’s spouse or former spouse.

(2) Notwithstanding any other provision of law, this section does not create any right, title, or interest which can be sold, assigned, transferred, or otherwise disposed of (including by inheritance) by a spouse or former spouse. Payments by the Secretary concerned under subsection (d) to a spouse or former spouse with respect to a division of retired pay as the property of a member and the member’s spouse under this subsection may not be treated as amounts received as retired pay for service in the uniformed services.

(3) This section does not authorize any court to order a member to apply for retirement or retire at a particular time in order to effectuate any payment under this section.

(4) A court may not treat the disposable retired pay of a member in the manner described in paragraph (1) unless the court has jurisdiction over the member by reason of (A) his residence, other than because of military assignment, in the territorial jurisdiction of the court, (B) his domicile in the territorial jurisdiction of the court, or (C) his consent to the jurisdiction of the court.

(d) PAYMENTS BY SECRETARY CONCERNED TO (OR FOR BENEFIT OF) SPOUSE OR FORMER SPOUSE.—(1) After effective service on the Secretary concerned of a court order providing for the payment of child support or alimony or, with respect to a division of property, specifically providing for the payment of an amount of the disposable retired pay from a member to the spouse or a former spouse of the member, the Secretary shall make payments (subject to the limitations of this section) from the disposable retired pay of the member to the spouse or former spouse (or for the benefit of such spouse or former spouse to a State disbursement unit established pursuant to section 454B of the Social Security Act or other public payee designated by a State, in accordance with part D of title IV of the Social Security Act, as directed by court order, or as otherwise directed in accordance with such part D) in an amount sufficient to satisfy the

amount of child support and alimony set forth in the court order and, with respect to a division of property, in the amount of disposable retired pay specifically provided for in the court order. In the case of a spouse or former spouse who, pursuant to section 408(a)(3) of the Social Security Act (42 U.S.C. 608(a)(4)),<sup>1</sup> assigns to a State the rights of the spouse or former spouse to receive support, the Secretary concerned may make the child support payments referred to in the preceding sentence to that State in amounts consistent with that assignment of rights. In the case of a member entitled to receive retired pay on the date of the effective service of the court order, such payments shall begin not later than 90 days after the date of effective service. In the case of a member not entitled to receive retired pay on the date of the effective service of the court order, such payments shall begin not later than 90 days after the date on which the member first becomes entitled to receive retired pay.

(2) If the spouse or former spouse to whom payments are to be made under this section was not married to the member for a period of 10 years or more during which the member performed at least 10 years of service creditable in determining the member's eligibility for retired pay, payments may not be made under this section to the extent that they include an amount resulting from the treatment by the court under subsection (c) of disposable retired pay of the member as property of the member or property of the member and his spouse.

(3) Payments under this section shall not be made more frequently than once each month, and the Secretary concerned shall not be required to vary normal pay and disbursement cycles for retired pay in order to comply with a court order.

(4) Payments from the disposable retired pay of a member pursuant to this section shall terminate in accordance with the terms of the applicable court order, but not later than the date of the death of the member or the date of the death of the spouse or former spouse to whom payments are being made, whichever occurs first.

(5) If a court order described in paragraph (1) provides for a division of property (including a division of community property) in addition to an amount of child support or alimony or the payment of an amount of disposable retired pay as the result of the court's treatment of such pay under subsection (c) as property of the member and his spouse, the Secretary concerned shall pay (subject to the limitations of this section) from the disposable retired pay of the member to the spouse or former spouse of the member, any part of the amount payable to the spouse or former spouse under the division of property upon effective service of a final court order of garnishment of such amount from such retired pay.

(6) In the case of a court order for which effective service is made on the Secretary concerned on or after August 22, 1996, and which provides for payments from the disposable retired pay of a member to satisfy the amount of child support set forth in the order, the authority provided in

paragraph (1) to make payments from the disposable retired pay of a member to satisfy the amount of child support set forth in a court order shall apply to payment of any amount of child support arrearages set forth in that order as well as to amounts of child support that currently become due.

(7)(A) The Secretary concerned may not accept service of a court order that is an out-of-State modification, or comply with the provisions of such a court order, unless the court issuing that order has jurisdiction in the manner specified in subsection (c)(4) over both the member and the spouse or former spouse involved.

(B) A court order shall be considered to be an out-of-State modification for purposes of this paragraph if the order—

(i) modifies a previous court order under this section upon which payments under this subsection are based; and

(ii) is issued by a court of a State other than the State of the court that issued the previous court order.

(e) LIMITATIONS.—(1) The total amount of the disposable retired pay of a member payable under all court orders pursuant to subsection (c) may not exceed 50 percent of such disposable retired pay.

(2) In the event of effective service of more than one court order which provide for payment to a spouse and one or more former spouses or to more than one former spouse, the disposable retired pay of the member shall be used to satisfy (subject to the limitations of paragraph (1)) such court orders on a first-come, first-served basis. Such court orders shall be satisfied (subject to the limitations of paragraph (1)) out of that amount of disposable retired pay which remains after the satisfaction of all court orders which have been previously served.

(3)(A) In the event of effective service of conflicting court orders under this section which assert to direct that different amounts be paid during a month to the same spouse or former spouse of the same member, the Secretary concerned shall—

(i) pay to that spouse from the member's disposable retired pay the least amount directed to be paid during that month by any such conflicting court order, but not more than the amount of disposable retired pay which remains available for payment of such court orders based on when such court orders were effectively served and the limitations of paragraph (1) and subparagraph (B) of paragraph (4);

(ii) retain an amount of disposable retired pay that is equal to the lesser of—

(I) the difference between the largest amount required by any conflicting court order to be paid to the spouse or former spouse and the amount payable to the spouse or former spouse under clause (i); and

(II) the amount of disposable retired pay which remains available for payment of any conflicting court order based on when such court order was effectively served and the limitations of paragraph (1) and subparagraph (B) of paragraph (4); and

(iii) pay to that member the amount which is equal to the amount of that member's dis-

<sup>1</sup> See References in Text note below.

posable retired pay (less any amount paid during such month pursuant to legal process served under section 459 of the Social Security Act (42 U.S.C. 659) and any amount paid during such month pursuant to court orders effectively served under this section, other than such conflicting court orders) minus—

- (I) the amount of disposable retired pay paid under clause (i); and
- (II) the amount of disposable retired pay retained under clause (ii).

(B) The Secretary concerned shall hold the amount retained under clause (ii) of subparagraph (A) until such time as that Secretary is provided with a court order which has been certified by the member and the spouse or former spouse to be valid and applicable to the retained amount. Upon being provided with such an order, the Secretary shall pay the retained amount in accordance with the order.

(4)(A) In the event of effective service of a court order under this section and the service of legal process pursuant to section 459 of the Social Security Act (42 U.S.C. 659), both of which provide for payments during a month from the same member, satisfaction of such court orders and legal process from the retired pay of the member shall be on a first-come, first-served basis. Such court orders and legal process shall be satisfied out of moneys which are subject to such orders and legal process and which remain available in accordance with the limitations of paragraph (1) and subparagraph (B) of this paragraph during such month after the satisfaction of all court orders or legal process which have been previously served.

(B) Notwithstanding any other provision of law, the total amount of the disposable retired pay of a member payable by the Secretary concerned under all court orders pursuant to this section and all legal processes pursuant to section 459 of the Social Security Act (42 U.S.C. 659) with respect to a member may not exceed 65 percent of the amount of the retired pay payable to such member that is considered under section 462 of the Social Security Act (42 U.S.C. 662) to be remuneration for employment that is payable by the United States.

(5) A court order which itself or because of previously served court orders provides for the payment of an amount which exceeds the amount of disposable retired pay available for payment because of the limit set forth in paragraph (1), or which, because of previously served court orders or legal process previously served under section 459 of the Social Security Act (42 U.S.C. 659), provides for payment of an amount that exceeds the maximum amount permitted under paragraph (1) or subparagraph (B) of paragraph (4), shall not be considered to be irregular on its face solely for that reason. However, such order shall be considered to be fully satisfied for purposes of this section by the payment to the spouse or former spouse of the maximum amount of disposable retired pay permitted under paragraph (1) and subparagraph (B) of paragraph (4).

(6) Nothing in this section shall be construed to relieve a member of liability for the payment of alimony, child support, or other payments required by a court order on the grounds that pay-

ments made out of disposable retired pay under this section have been made in the maximum amount permitted under paragraph (1) or subparagraph (B) of paragraph (4). Any such unsatisfied obligation of a member may be enforced by any means available under law other than the means provided under this section in any case in which the maximum amount permitted under paragraph (1) has been paid and under section 459 of the Social Security Act (42 U.S.C. 659) in any case in which the maximum amount permitted under subparagraph (B) of paragraph (4) has been paid.

(f) IMMUNITY OF OFFICERS AND EMPLOYEES OF UNITED STATES.—(1) The United States and any officer or employee of the United States shall not be liable with respect to any payment made from retired pay to any member, spouse, or former spouse pursuant to a court order that is regular on its face if such payment is made in accordance with this section and the regulations prescribed pursuant to subsection (i).

(2) An officer or employee of the United States who, under regulations prescribed pursuant to subsection (i), has the duty to respond to interrogatories shall not be subject under any law to any disciplinary action or civil or criminal liability or penalty for, or because of, any disclosure of information made by him in carrying out any of his duties which directly or indirectly pertain to answering such interrogatories.

(g) NOTICE TO MEMBER OF SERVICE OF COURT ORDER ON SECRETARY CONCERNED.—A person receiving effective service of a court order under this section shall, as soon as possible, but not later than 30 days after the date on which effective service is made, send a written notice of such court order (together with a copy of such order) to the member affected by the court order at his last known address.

(h) BENEFITS FOR DEPENDENTS WHO ARE VICTIMS OF ABUSE BY MEMBERS LOSING RIGHT TO RETIRED PAY.—(1)(A) If, in the case of a member or former member of the armed forces referred to in paragraph (2)(A), a court order provides (in the manner applicable to a division of property) for the payment of an amount from the disposable retired pay of that member or former member (as certified under paragraph (4)) to an eligible spouse or former spouse of that member or former member, the Secretary concerned, beginning upon effective service of such court order, shall pay that amount in accordance with this subsection to such spouse or former spouse.

(B) If, in the case of a member or former member of the armed forces referred to in paragraph (2)(A), a court order provides for the payment as child support of an amount from the disposable retired pay of that member or former member (as certified under paragraph (4)) to an eligible dependent child of the member or former member, the Secretary concerned, beginning upon effective service of such court order, shall pay that amount in accordance with this subsection to such dependent child.

(2) A spouse or former spouse, or a dependent child, of a member or former member of the armed forces is eligible to receive payment under this subsection if—

- (A) the member or former member, while a member of the armed forces and after becom-

ing eligible to be retired from the armed forces on the basis of years of service, has eligibility to receive retired pay terminated as a result of misconduct while a member involving abuse of a spouse or dependent child (as defined in regulations prescribed by the Secretary of Defense or, for the Coast Guard when it is not operating as a service in the Navy, by the Secretary of Homeland Security);

(B) in the case of eligibility of a spouse or former spouse under paragraph (1)(A), the spouse or former spouse—

(i) was the victim of the abuse and was married to the member or former member at the time of that abuse; or

(ii) is a natural or adopted parent of a dependent child of the member or former member who was the victim of the abuse; and

(C) in the case of eligibility of a dependent child under paragraph (1)(B), the other parent of the child died as a result of the misconduct that resulted in the termination of retired pay.

(3) The amount certified by the Secretary concerned under paragraph (4) with respect to a member or former member of the armed forces referred to in paragraph (2)(A) shall be deemed to be the disposable retired pay of that member or former member for the purposes of this subsection.

(4) Upon the request of a court or an eligible spouse or former spouse, or an eligible dependent child, of a member or former member of the armed forces referred to in paragraph (2)(A) in connection with a civil action for the issuance of a court order in the case of that member or former member, the Secretary concerned shall determine and certify the amount of the monthly retired pay that the member or former member would have been entitled to receive as of the date of the certification—

(A) if the member or former member's eligibility for retired pay had not been terminated as described in paragraph (2)(A); and

(B) if, in the case of a member or former member not in receipt of retired pay immediately before that termination of eligibility for retired pay, the member or former member had retired on the effective date of that termination of eligibility.

(5) A court order under this subsection may provide that whenever retired pay is increased under section 1401a of this title (or any other provision of law), the amount payable under the court order to the spouse or former spouse, or the dependent child, of a member or former member described in paragraph (2)(A) shall be increased at the same time by the percent by which the retired pay of the member or former member would have been increased if the member or former member were receiving retired pay.

(6) Notwithstanding any other provision of law, a member or former member of the armed forces referred to in paragraph (2)(A) shall have no ownership interest in, or claim against, any amount payable under this section to a spouse or former spouse, or to a dependent child, of the member or former member.

(7)(A) If a former spouse receiving payments under this subsection with respect to a member

or former member referred to in paragraph (2)(A) marries again after such payments begin, the eligibility of the former spouse to receive further payments under this subsection shall terminate on the date of such marriage.

(B) A person's eligibility to receive payments under this subsection that is terminated under subparagraph (A) by reason of remarriage shall be resumed in the event of the termination of that marriage by the death of that person's spouse or by annulment or divorce. The resumption of payments shall begin as of the first day of the month in which that marriage is so terminated. The monthly amount of the payments shall be the amount that would have been paid if the continuity of the payments had not been interrupted by the marriage.

(8) Payments in accordance with this subsection shall be made out of funds in the Department of Defense Military Retirement Fund established by section 1461 of this title or, in the case of the Coast Guard, out of funds appropriated to the Department of Homeland Security for payment of retired pay for the Coast Guard.

(9)(A) A spouse or former spouse of a member or former member of the armed forces referred to in paragraph (2)(A), while receiving payments in accordance with this subsection, shall be entitled to receive medical and dental care, to use commissary and exchange stores, and to receive any other benefit that a spouse or a former spouse of a retired member of the armed forces is entitled to receive on the basis of being a spouse or former spouse, as the case may be, of a retired member of the armed forces in the same manner as if the member or former member referred to in paragraph (2)(A) was entitled to retired pay.

(B) A dependent child of a member or former member referred to in paragraph (2)(A) who was a member of the household of the member or former member at the time of the misconduct described in paragraph (2)(A) shall be entitled to receive medical and dental care, to use commissary and exchange stores, and to have other benefits provided to dependents of retired members of the armed forces in the same manner as if the member or former member referred to in paragraph (2)(A) was entitled to retired pay.

(C) If a spouse or former spouse or a dependent child eligible or entitled to receive a particular benefit under this paragraph is eligible or entitled to receive that benefit under another provision of law, the eligibility or entitlement of that spouse or former spouse or dependent child to such benefit shall be determined under such other provision of law instead of this paragraph.

(10)(A) For purposes of this subsection, in the case of a member of the armed forces who has been sentenced by a court-martial to receive a punishment that will terminate the eligibility of that member to receive retired pay if executed, the eligibility of that member to receive retired pay may, as determined by the Secretary concerned, be considered terminated effective upon the approval of that sentence by the person acting under section 860(c) of this title (article 60(c) of the Uniform Code of Military Justice).

(B) If each form of the punishment that would result in the termination of eligibility to re-

ceive retired pay is later remitted, set aside, or mitigated to a punishment that does not result in the termination of that eligibility, a payment of benefits to the eligible recipient under this subsection that is based on the punishment so vacated, set aside, or mitigated shall cease. The cessation of payments shall be effective as of the first day of the first month following the month in which the Secretary concerned notifies the recipient of such benefits in writing that payment of the benefits will cease. The recipient may not be required to repay the benefits received before that effective date (except to the extent necessary to recoup any amount that was erroneous when paid).

(1) In this subsection, the term “dependent child”, with respect to a member or former member of the armed forces referred to in paragraph (2)(A), means an unmarried legitimate child, including an adopted child or a stepchild of the member or former member, who—

(A) is under 18 years of age;

(B) is incapable of self-support because of a mental or physical incapacity that existed before becoming 18 years of age and is dependent on the member or former member for over one-half of the child’s support; or

(C) if enrolled in a full-time course of study in an institution of higher education recognized by the Secretary of Defense for the purposes of this subparagraph, is under 23 years of age and is dependent on the member or former member for over one-half of the child’s support.

(i) **CERTIFICATION DATE.**—It is not necessary that the date of a certification of the authenticity or completeness of a copy of a court order for child support received by the Secretary concerned for the purposes of this section be recent in relation to the date of receipt by the Secretary.

(j) **REGULATIONS.**—The Secretaries concerned shall prescribe uniform regulations for the administration of this section.

(k) **RELATIONSHIP TO OTHER LAWS.**—In any case involving an order providing for payment of child support (as defined in section 459(i)(2) of the Social Security Act) by a member who has never been married to the other parent of the child, the provisions of this section shall not apply, and the case shall be subject to the provisions of section 459 of such Act.

(Added Pub. L. 97-252, title X, §1002(a), Sept. 8, 1982, 96 Stat. 730; amended Pub. L. 98-525, title VI, §643(a)-(d), Oct. 19, 1984, 98 Stat. 2547; Pub. L. 99-661, div. A, title VI, §644(a), Nov. 14, 1986, 100 Stat. 3887; Pub. L. 100-26, §§3(3), 7(h)(1), Apr. 21, 1987, 101 Stat. 273, 282; Pub. L. 101-189, div. A, title VI, §653(a)(5), title XVI, §1622(e)(6), Nov. 29, 1989, 103 Stat. 1462, 1605; Pub. L. 101-510, div. A, title V, §§555(a)-(d), (f), (g), Nov. 5, 1990, 104 Stat. 1569, 1570; Pub. L. 102-190, div. A, title X, §1061(a)(7), Dec. 5, 1991, 105 Stat. 1472; Pub. L. 102-484, div. A, title VI, §653(a), Oct. 23, 1992, 106 Stat. 2426; Pub. L. 103-160, div. A, title V, §555(a), (b), title XI, §1182(a)(2), Nov. 30, 1993, 107 Stat. 1666, 1771; Pub. L. 104-106, div. A, title XV, §1501(c)(16), Feb. 10, 1996, 110 Stat. 499; Pub. L. 104-193, title III, §§362(c), 363(c)(1)-(3), Aug. 22, 1996, 110 Stat. 2246, 2249; Pub. L. 104-201, div. A,

title VI, §636, Sept. 23, 1996, 110 Stat. 2579; Pub. L. 105-85, div. A, title X, §1073(a)(24), (25), Nov. 18, 1997, 111 Stat. 1901; Pub. L. 107-107, div. A, title X, §1048(c)(9), Dec. 28, 2001, 115 Stat. 1226; Pub. L. 107-296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 108-189, §2(c), Dec. 19, 2003, 117 Stat. 2866; Pub. L. 109-163, div. A, title VI, §665(a), Jan. 6, 2006, 119 Stat. 3317; Pub. L. 111-84, div. A, title X, §1073(a)(15), Oct. 28, 2009, 123 Stat. 2473.)

#### REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a)(1)(D) and (d)(1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Part D of title IV of the Act is classified generally to part D (§651 et seq.) of subchapter IV of chapter 7 of Title 42, The Public Health and Welfare. Section 454B of the Act is classified to section 654b of Title 42. Section 408(a)(3) of the Act is classified to section 608(a)(3) of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Servicemembers Civil Relief Act, referred to in subsec. (b)(1)(D), is act Oct. 17, 1940, ch. 888, 54 Stat. 1178, as amended, which is classified to section 501 et seq. of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see section 501 of Title 50, Appendix and Tables.

#### AMENDMENTS

2009—Subsec. (h)(2)(A). Pub. L. 111-84 struck out “and” at end.

2006—Subsec. (h)(1). Pub. L. 109-163, §665(a)(1), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (h)(2). Pub. L. 109-163, §665(a)(2)(A), inserted “, or a dependent child,” after “former spouse” in introductory provisions.

Subsec. (h)(2)(B). Pub. L. 109-163, §665(a)(2)(B)(i), inserted “in the case of eligibility of a spouse or former spouse under paragraph (1)(A),” after “(B)”.

Subsec. (h)(2)(C). Pub. L. 109-163, §665(a)(2)(B)(ii), (C), added subpar. (C).

Subsec. (h)(4). Pub. L. 109-163, §665(a)(3), inserted “, or an eligible dependent child,” after “former spouse” in introductory provisions.

Subsec. (h)(5). Pub. L. 109-163, §665(a)(4), inserted “, or the dependent child,” after “former spouse”.

Subsec. (h)(6). Pub. L. 109-163, §665(a)(5), inserted “, or to a dependent child,” after “former spouse”.

2003—Subsec. (b)(1)(D). Pub. L. 108-189 substituted “Servicemembers Civil Relief Act” for “Soldiers’ and Sailors’ Civil Relief Act of 1940”.

2002—Subsec. (h)(2)(A), (8). Pub. L. 107-296 substituted “of Homeland Security” for “of Transportation”.

2001—Subsec. (d)(6). Pub. L. 107-107 substituted “August 22, 1996,” for “the date of the enactment of this paragraph”.

1997—Subsec. (d). Pub. L. 105-85, §1073(a)(24)(A), substituted “to” for “To” in heading.

Subsec. (d)(6). Pub. L. 105-85, §1073(a)(24)(B), redesignated par. (6), relating to court order which is out-of-State modification, as (7).

Subsec. (d)(7). Pub. L. 105-85, §1073(a)(24)(B), redesignated par. (6), relating to court order which is out-of-State modification, as (7).

Subsec. (d)(7)(A). Pub. L. 105-85, §1073(a)(24)(C), substituted “out-of-State” for “out-of State”.

Subsec. (g). Pub. L. 105-85, §1073(a)(25), in heading, substituted “to” for “To” and “on” for “On”.

1996—Subsec. (a)(1)(D). Pub. L. 104-193, §362(c)(1), added subpar. (D).

Subsec. (a)(2). Pub. L. 104-193, §362(c)(2)(A), inserted “or a support order, as defined in section 453(p) of the Social Security Act (42 U.S.C. 653(p)),” before “which—”.

Subsec. (a)(2)(B)(i). Pub. L. 104-193, §362(c)(2)(B), substituted “(as defined in section 459(i)(2) of the Social Security Act (42 U.S.C. 659(i)(2)))” for “(as defined in

section 462(b) of the Social Security Act (42 U.S.C. 662(b))”.

Subsec. (a)(2)(B)(ii). Pub. L. 104-193, §362(c)(2)(C), substituted “(as defined in section 459(i)(3) of the Social Security Act (42 U.S.C. 659(i)(3)))” for “(as defined in section 462(c) of the Social Security Act (42 U.S.C. 662(c)))”.

Subsec. (a)(5). Pub. L. 104-106 substituted “section 12731” for “section 1331”.

Subsec. (b)(1)(A). Pub. L. 104-201, §636(a), substituted “facsimile or electronic transmission or by mail” for “certified or registered mail, return receipt requested”.

Subsec. (d). Pub. L. 104-193, §362(c)(3)(A), inserted “(or for benefit of)” before “Spouse or” in heading.

Subsec. (d)(1). Pub. L. 104-193, §363(c)(2), inserted after first sentence “In the case of a spouse or former spouse who, pursuant to section 408(a)(3) of the Social Security Act (42 U.S.C. 608(a)(4)), assigns to a State the rights of the spouse or former spouse to receive support, the Secretary concerned may make the child support payments referred to in the preceding sentence to that State in amounts consistent with that assignment of rights.”

Pub. L. 104-193, §362(c)(3)(B), in first sentence, inserted “(or for the benefit of such spouse or former spouse to a State disbursement unit established pursuant to section 454B of the Social Security Act or other public payee designated by a State, in accordance with part D of title IV of the Social Security Act, as directed by court order, or as otherwise directed in accordance with such part D)” before “in an amount sufficient”.

Subsec. (d)(6). Pub. L. 104-201, §636(b), added par. (6) relating to court order which is out-of-State modification.

Pub. L. 104-193, §363(c)(3), added par. (6) relating to use of disposable retired pay of member to satisfy amount of child support set forth in court order.

Subsec. (i). Pub. L. 104-193, §363(c)(1), added subsec. (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 104-193, §363(c)(1), redesignated subsec. (j) as (k).

Pub. L. 104-193, §362(c)(4), added subsec. (j).

Subsec. (k). Pub. L. 104-193, §363(c)(1), redesignated subsec. (j) as (k).

1993—Subsecs. (b)(1)(A), (f)(1), (2). Pub. L. 103-160, §1182(a)(2)(A), substituted “subsection (i)” for “subsection (h)”.

Subsec. (h)(2)(A). Pub. L. 103-160, §555(b)(1), inserted “or, for the Coast Guard when it is not operating as a service in the Navy, by the Secretary of Transportation” after “Secretary of Defense”.

Subsec. (h)(4)(B). Pub. L. 103-160, §1182(a)(2)(B), inserted “of” after “of that termination”.

Subsec. (h)(8). Pub. L. 103-160, §555(b)(2), inserted before period at end “or, in the case of the Coast Guard, out of funds appropriated to the Department of Transportation for payment of retired pay for the Coast Guard”.

Subsec. (h)(10), (11). Pub. L. 103-160, §555(a), added par. (10) and redesignated former par. (10) as (11).

1992—Subsecs. (h), (i). Pub. L. 102-484 added subsec. (h) and redesignated former subsec. (h) as (i).

1991—Pub. L. 102-190 inserted “or retainer” after “retired” in section catchline.

1990—Pub. L. 101-510, §555(f)(2), substituted “retired pay” for “retired or retainer pay” in section catchline.

Subsec. (a). Pub. L. 101-510, §555(g)(1), inserted heading.

Subsec. (a)(2)(C). Pub. L. 101-510, §555(f)(2), substituted “retired pay” for “retired or retainer pay” wherever appearing.

Subsec. (a)(4). Pub. L. 101-510, §555(f)(2), substituted “retired pay” for “retired or retainer pay” wherever appearing in introductory provisions and in subpar. (D).

Subsec. (a)(4)(A). Pub. L. 101-510, §555(b)(1), inserted before semicolon at end “for previous overpayments of retired pay and for recoupments required by law resulting from entitlement to retired pay”.

Subsec. (a)(4)(B). Pub. L. 101-510, §555(b)(2), added subpar. (B) and struck out former subpar. (B) which read

as follows: “are required by law to be and are deducted from the retired or retainer pay of such member, including fines and forfeitures ordered by courts-martial, Federal employment taxes, and amounts waived in order to receive compensation under title 5 or title 38;”.

Subsec. (a)(4)(C) to (F). Pub. L. 101-510, §555(b)(3), (4), redesignated subpars. (E) and (F) as (C) and (D), respectively, and struck out former subpars. (C) and (D) which read as follows:

“(C) are properly withheld for Federal, State, or local income tax purposes, if the withholding of such amounts is authorized or required by law and to the extent such amounts withheld are not greater than would be authorized if such member claimed all dependents to which he was entitled;

“(D) are withheld under section 3402(i) of the Internal Revenue Code of 1986 if such member presents evidence of a tax obligation which supports such withholding;”.

Subsec. (a)(7). Pub. L. 101-510, §555(f)(1), added par. (7).

Subsec. (b). Pub. L. 101-510, §555(g)(2), inserted heading.

Subsec. (c). Pub. L. 101-510, §555(g)(3), inserted heading.

Subsec. (c)(1). Pub. L. 101-510, §555(f)(2), substituted “retired pay” for “retired or retainer pay”.

Pub. L. 101-510, §555(a), inserted at end “A court may not treat retired pay as property in any proceeding to divide or partition any amount of retired pay of a member as the property of the member and the member’s spouse or former spouse if a final decree of divorce, dissolution, annulment, or legal separation (including a court ordered, ratified, or approved property settlement incident to such decree) affecting the member and the member’s spouse or former spouse (A) was issued before June 25, 1981, and (B) did not treat (or reserve jurisdiction to treat) any amount of retired pay of the member as property of the member and the member’s spouse or former spouse.”

Subsec. (c)(2). Pub. L. 101-510, §555(c), inserted at end “Payments by the Secretary concerned under subsection (d) to a spouse or former spouse with respect to a division of retired pay as the property of a member and the member’s spouse under this subsection may not be treated as amounts received as retired pay for service in the uniformed services.”

Subsec. (c)(4). Pub. L. 101-510, §555(f)(2), substituted “retired pay” for “retired or retainer pay”.

Subsec. (d). Pub. L. 101-510, §555(g)(4), inserted heading.

Pub. L. 101-510, §555(f)(2), substituted “retired pay” for “retired or retainer pay” wherever appearing.

Subsec. (e). Pub. L. 101-510, §555(g)(5), inserted heading.

Pub. L. 101-510, §555(f)(2), substituted “retired pay” for “retired or retainer pay” wherever appearing.

Subsec. (e)(1). Pub. L. 101-510, §555(d)(1), substituted “payable under all court orders pursuant to subsection (c)” for “payable under subsection (d)”.

Subsec. (e)(4)(B). Pub. L. 101-510, §555(d)(2), substituted “the amount of the retired pay payable to such member that is considered under section 462 of the Social Security Act (42 U.S.C. 662) to be remuneration for employment that is payable by the United States” for “the disposable retired or retainer pay payable to such member”.

Subsec. (f). Pub. L. 101-510, §555(g)(6), inserted heading.

Subsec. (f)(1). Pub. L. 101-510, §555(f)(2), substituted “retired pay” for “retired or retainer pay”.

Subsec. (g). Pub. L. 101-510, §555(g)(7), inserted heading.

Subsec. (h). Pub. L. 101-510, §555(g)(8), inserted heading.

1989—Subsec. (a)(1), (2). Pub. L. 101-189, §1622(e)(6), substituted “The term ‘court’ for ‘‘Court’’ in introductory provisions.

Subsec. (a)(3). Pub. L. 101-189, §1622(e)(6), substituted “The term ‘final’ for ‘‘Final’’”.

Subsec. (a)(4). Pub. L. 101-189, § 1622(e)(6), substituted “The term ‘disposable’ for ‘‘Disposable’’ in introductory provisions.

Subsec. (a)(4)(D). Pub. L. 101-189, § 653(a)(5)(A), struck out “(26 U.S.C. 3402(i))” after “Code of 1986”.

Subsec. (a)(5). Pub. L. 101-189, §§ 653(a)(5)(B), 1622(e)(6), substituted “The term ‘member’ for ‘‘Member’’ and inserted “entitled to retired pay under section 1331 of this title” after “a former member”.

Subsec. (a)(6). Pub. L. 101-189, § 1622(e)(6), substituted “The term ‘spouse’ for ‘‘Spouse’’.

1987—Subsec. (a)(4). Pub. L. 100-26, § 3(3), made technical amendment to directory language of Pub. L. 99-661, § 644(a). See 1986 Amendment note below.

Subsec. (a)(4)(D). Pub. L. 100-26, § 7(h)(1), substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”.

1986—Subsec. (a)(4). Pub. L. 99-661, § 644(a), as amended by Pub. L. 100-26, § 3(3), struck out “(other than the retired pay of a member retired for disability under chapter 61 of this title)” before “less amounts” in introductory text, added subpar. (E), and struck out former subpar. (E) which read as follows: “are deducted as Government life insurance premiums (not including amounts deducted for supplemental coverage); or”.

1984—Subsec. (a)(2)(C). Pub. L. 98-525, § 643(a), inserted “in the case of a division of property.”.

Subsec. (b)(1)(C). Pub. L. 98-525, § 643(b), inserted “, if possible,”.

Subsec. (d)(1). Pub. L. 98-525, § 643(c)(1), substituted “After effective service on the Secretary concerned of a court order providing for the payment of child support or alimony or, with respect to a division of property, specifically providing for the payment of an amount of the disposable retired or retainer pay from a member to the spouse or a former spouse of the member, the Secretary shall make payments (subject to the limitations of this section) from the disposable retired or retainer pay of the member to the spouse or former spouse in an amount sufficient to satisfy the amount of child support and alimony set forth in the court order and, with respect to a division of property, in the amount of disposable retired or retainer pay specifically provided for in the court order” for “After effective service on the Secretary concerned of a court order with respect to the payment of a portion of the retired or retainer pay of a member to the spouse or a former spouse of the member, the Secretary shall, subject to the limitations of this section, make payments to the spouse or former spouse in the amount of the disposable retired or retainer pay of the member specifically provided for in the court order”.

Subsec. (d)(5). Pub. L. 98-525, § 643(c)(2), substituted “child support or alimony or the payment of an amount of disposable retired or retainer pay as the result of the court’s treatment of such pay under subsection (c) as property of the member and his spouse, the Secretary concerned shall pay (subject to the limitations of this section) from the disposable retired or retainer pay of the member to the spouse or former spouse of the member, any part” for “disposable retired or retainer pay, the Secretary concerned shall, subject to the limitations of this section, pay to the spouse or former spouse of the member, from the disposable retired or retainer pay of the member, any part”.

Subsec. (e)(2). Pub. L. 98-525, § 643(d)(1), substituted “, the disposable retired or retainer pay of the member” for “from the disposable retired or retainer pay of a member, such pay” before “shall be used to satisfy”.

Subsec. (e)(3)(A). Pub. L. 98-525, § 643(d)(2)(A), struck out “from the disposable retired or retainer pay” before “of the same member”.

Subsec. (e)(3)(A)(i). Pub. L. 98-525, § 643(d)(2)(B), substituted “from the member’s disposable retired or retainer pay the least amount” for “the least amount of disposable retired or retainer pay” before “directed to be paid”.

Subsec. (e)(2)(A)(ii)(I). Pub. L. 98-525, § 643(d)(2)(C), struck out “of retired or retainer pay” before “required by any conflicting”.

Subsec. (e)(4)(A). Pub. L. 98-525, § 643(d)(3), struck out “the retired or retainer pay of” before “the same member” and substituted “satisfaction of such court orders and legal process from the retired or retainer pay of the members shall be” for “such court orders and legal process shall be satisfied”.

Subsec. (e)(5). Pub. L. 98-525, § 643(d)(4), struck out “of disposable retired or retainer pay” after “payment of an amount” in two places and substituted “disposable retired or retainer pay” for “such pay” before “available for payment”.

#### EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-163, div. A, title VI, § 665(b), Jan. 6, 2006, 119 Stat. 3318, provided that: “A court order authorized by the amendments made by this section [amending this section] may not provide for a payment attributable to any period before the date of the enactment of this Act [Jan. 6, 2006], or the date of the court order, whichever is later.”

#### EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107-296, set out as a note under section 101 of this title.

#### EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by section 362(c) of Pub. L. 104-193 effective six months after Aug. 22, 1996, see section 362(d) of Pub. L. 104-193, set out as a note under section 659 of Title 42, The Public Health and Welfare.

For effective date of amendment by section 363(c)(1)-(3) of Pub. L. 104-193, see section 395(a)-(c) of Pub. L. 104-193, set out as a note under section 654 of Title 42.

Section 1501(c) of Pub. L. 104-106 provided that the amendment made by that section is effective as of Dec. 1, 1994, and as if included as an amendment made by the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103-337, as originally enacted.

#### EFFECTIVE DATE OF 1993 AMENDMENT

Section 555(c) of Pub. L. 103-160 provided that: “The amendments made by this section [amending this section] shall take effect as of October 23, 1992, and shall apply as if the provisions of the paragraph (10) of section 1408(h) of title 10, United States Code, added by such subsection were included in the amendment made by section 653(a)(2) of Public Law 102-484 (106 Stat. 2426) [amending this section].”

#### EFFECTIVE DATE OF 1990 AMENDMENT

Section 555(e) of Pub. L. 101-510, as amended by Pub. L. 102-190, div. A, title X, § 1062(a)(1), Dec. 5, 1991, 105 Stat. 1475, provided that:

“(1) The amendment made by subsection (a) [amending this section] shall apply with respect to judgments issued before, on, or after the date of the enactment of this Act [Nov. 5, 1990]. In the case of a judgment issued before the date of the enactment of this Act, such amendment shall not relieve any obligation, otherwise valid, to make a payment that is due to be made before the end of the two-year period beginning on the date of the enactment of this Act.

“(2) The amendments made by subsections (b), (c), and (d) [amending this section] apply with only respect to divorces, dissolutions of marriage, annulments, and legal separations that become effective after the end of the 90-day period beginning on the date of the enactment of this Act.”

#### EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 3(3) of Pub. L. 100-26 applicable as if included in Pub. L. 99-661 when enacted on Nov. 14, 1986, see section 12(a) of Pub. L. 100-26, set out as a note under section 776 of this title.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Section 644(b) of Pub. L. 99-661 provided that: “The amendments made by subsection (a) [amending this

section] shall apply with respect to court orders issued after the date of the enactment of this Act [Nov. 14, 1986].”

#### EFFECTIVE DATE OF 1984 AMENDMENT

Section 643(e) of Pub. L. 98-525 provided that: “The amendments made by this section [amending this section] shall apply with respect to court orders for which effective service (as described in section 1408(b)(1) of title 10, United States Code, as amended by subsection (b) of this section) is made on or after the date of the enactment of this Act [Oct. 19, 1984].”

#### EFFECTIVE DATE; TRANSITION PROVISIONS

Section 1006 of title X of Pub. L. 97-252, as amended by Pub. L. 98-94, title IX, §941(c)(4), Sept. 24, 1983, 97 Stat. 654; Pub. L. 98-525, title VI, §645(b), Oct. 19, 1984, 98 Stat. 2549, provided that:

“(a) The amendments made by this title [amending this section and sections 1072, 1076, 1086, 1447, 1448, and 1450 of this title and enacting provisions set out as notes under this section and section 1401 of this title] shall take effect on the first day of the first month [February 1983] which begins more than one hundred and twenty days after the date of the enactment of this title [Sept. 8, 1982].

“(b) Subsection (d) of section 1408 of title 10, United States Code, as added by section 1002(a), shall apply only with respect to payments of retired or retainer pay for periods beginning on or after the effective date of this title [Feb. 1, 1983, provided in subsec. (a)], but without regard to the date of any court order. However, in the case of a court order that became final before June 26, 1981, payments under such subsection may only be made in accordance with such order as in effect on such date and without regard to any subsequent modifications.

“(c) The amendments made by section 1003 of this title [amending sections 1447, 1448, and 1450 of this title] shall apply to persons who become eligible to participate in the Survivor Benefit Plan provided for in subchapter II of chapter 73 of title 10, United States Code [section 1447 et seq. of this title], before, on, or after the effective date of such amendments.

“(d) The amendments made by section 1004 of this title [amending sections 1072, 1076, and 1086 of this title] and the provisions of section 1005 of this title [formerly set out as a note under this section] shall apply in the case of any former spouse of a member or former member of the uniformed services whether the final decree of divorce, dissolution, or annulment of the marriage of the former spouse and such member or former member is dated before, on, or after February 1, 1983.

“(e) For the purposes of this section—

“(1) the term ‘court order’ has the same meaning as provided in section 1408(a)(2) of title 10, United States Code (as added by section 1002 of this title);

“(2) the term ‘former spouse’ has the same meaning as provided in section 1408(a)(6) of such title (as added by section 1002 of this title); and

“(3) the term ‘uniformed services’ has the same meaning as provided in section 1072 of title 10, United States Code.”

#### TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

#### REVIEW OF FEDERAL FORMER SPOUSE PROTECTION LAWS

Pub. L. 105-85, div. A, title VI, §643, Nov. 18, 1997, 111 Stat. 1799, directed the Secretary of Defense to carry out a comprehensive review of the protections, benefits, and treatment afforded under Federal law to members and former members of the uniformed services and former spouses of such persons and to employees and former employees of the Government and former

spouses of such persons and to submit to committees of Congress a report on the results of such review not later than Sept. 30, 1999.

#### PAYROLL DEDUCTIONS FOR ENFORCEMENT OF CHILD SUPPORT OBLIGATIONS

Section 363(c)(4) of Pub. L. 104-193 provided that: “The Secretary of Defense shall begin payroll deductions within 30 days after receiving notice of withholding, or for the first pay period that begins after such 30-day period.”

#### ACCRUAL OF PAYMENTS; PROSPECTIVE APPLICABILITY

Section 653(c) of Pub. L. 102-484 provided that: “No payments under subsection (h) of section 1408 of title 10, United States Code (as added by subsection (a)), shall accrue for periods before the date of the enactment of this Act [Oct. 23, 1992].”

#### STUDY CONCERNING BENEFITS FOR DEPENDENTS WHO ARE VICTIMS OF ABUSE

Pub. L. 102-484, div. A, title VI, §653(e), Oct. 23, 1992, 106 Stat. 2429, directed the Secretary of Defense to conduct a study in order to estimate the number of persons who would become eligible to receive payments under subsec. (h) of this section during each of fiscal years 1993 through 2000 and the number of members of the Armed Forces who would be approved in each of fiscal years 1993 through 2000 for separation from the Armed Forces as a result of having abused a spouse or dependent child, and to submit to Congress a report on the results of such study not later than one year after Oct. 23, 1992.

#### COMMISSARY AND EXCHANGE PRIVILEGES

Section 1005 of Pub. L. 97-252, which directed Secretary of Defense to prescribe regulations to provide that an unmarried former spouse described in 10 U.S.C. 1072(2)(F)(i) is entitled to commissary and post exchange privileges to the same extent and on the same basis as the surviving spouse of a retired member of the uniformed services, was repealed and restated in section 1062 of this title by Pub. L. 100-370, §1(c)(1), (5).

### § 1409. Retired pay multiplier

(a) RETIRED PAY MULTIPLIER FOR REGULAR-SERVICE NONDISABILITY RETIREMENT.—In computing—

(1) the retired pay of a member of a uniformed service who is entitled to that pay under any provision of law other than—

(A) chapter 61 of this title (relating to retirement or separation for physical disability); or

(B) chapter 1223 of this title (relating to retirement for non-regular service); or

(2) the retainer pay of a member who is transferred to the Fleet Reserve or the Fleet Marine Corps Reserve under section 6330 of this title,

the retired pay multiplier (or retainer pay multiplier) is the percentage determined under subsection (b).

(b) PERCENTAGE.—

(1) GENERAL RULE.—Subject to paragraphs (2) and (3), the percentage to be used under subsection (a) is the product (stated as a percentage) of—

(A) 2½, and

(B) the member’s years of creditable service (as defined in subsection (c)).

(2) REDUCTION APPLICABLE TO CERTAIN NEW-RETIREMENT MEMBERS WITH LESS THAN 30 YEARS

OF SERVICE.—In the case of a member who first became a member of a uniformed service after July 31, 1986, has elected to receive a bonus under section 322 (as in effect before the enactment of the National Defense Authorization Act for Fiscal Year 2008) or section 354 of title 37, has less than 30 years of creditable service, and is under the age of 62 at the time of retirement, the percentage determined under paragraph (1) shall be reduced by—

(A) 1 percentage point for each full year that the member's years of creditable service are less than 30; and

(B)  $\frac{1}{12}$  of 1 percentage point for each month by which the member's years of creditable service (after counting all full years of such service) are less than a full year.

(3) 30 YEARS OF SERVICE.—

(A) RETIREMENT BEFORE JANUARY 1, 2007.—In the case of a member who retires before January 1, 2007, with more than 30 years of creditable service, the percentage to be used under subsection (a) is 75 percent.

(B) RETIREMENT AFTER DECEMBER 31, 2006.—In the case of a member who retires after December 31, 2006, with more than 30 years of creditable service, the percentage to be used under subsection (a) is the sum of—

(i) 75 percent; and  
(ii) the product (stated as a percentage) of—

(I)  $2\frac{1}{2}$ ; and

(II) the member's years of creditable service (as defined in subsection (c)) in excess of 30 years of creditable service, under conditions authorized for purposes of this subparagraph during a period designated by the Secretary of Defense for purposes of this subparagraph.

(c) YEARS OF CREDITABLE SERVICE DEFINED.—In this section, the term “years of creditable service” means the number of years of service creditable to a member in computing the member's retired or retainer pay (including  $\frac{1}{12}$  of a year for each full month of service that is in addition to the number of full years of service of the member).

(Added Pub. L. 99-348, title I, §101, July 1, 1986, 100 Stat. 683; amended Pub. L. 101-189, div. A, title VI, §651(b)(3), Nov. 29, 1989, 103 Stat. 1460; Pub. L. 103-337, div. A, title XVI, §1662(j)(6), Oct. 5, 1994, 108 Stat. 3005; Pub. L. 106-65, div. A, title VI, §§641(a), 643(b)(2), Oct. 5, 1999, 113 Stat. 662, 664; Pub. L. 109-364, div. A, title VI, §642(a), Oct. 17, 2006, 120 Stat. 2259; Pub. L. 110-181, div. A, title VI, §661(b)(3), Jan. 28, 2008, 122 Stat. 178.)

#### REFERENCES IN TEXT

Section 322 of title 37 (as in effect before the enactment of the National Defense Authorization Act for Fiscal Year 2008), referred to in subsec. (b)(2), means section 322 of title 37 as in effect before enactment of Pub. L. 110-181. Section 322 of title 37 was renumbered as section 354 of title 37 and amended by Pub. L. 110-181, div. A, title VI, §661(b)(1), (2), Jan. 28, 2008, 122 Stat. 178.

#### AMENDMENTS

2008—Subsec. (b)(2). Pub. L. 110-181, in introductory provisions, substituted “section 322 (as in effect before the enactment of the National Defense Authorization Act for Fiscal Year 2008) or section 354” for “section 322”.

2006—Subsec. (b)(3). Pub. L. 109-364 amended heading and text of par. (3) generally. Prior to amendment, text read as follows: “In the case of a member with more than 30 years of creditable service, the percentage to be used under subsection (a) is 75 percent.”

1999—Subsec. (b)(2). Pub. L. 106-65 inserted “certain” after “Reduction applicable to” in heading and “has elected to receive a bonus under section 322 of title 37,” after “July 31, 1986,” in introductory provisions.

1994—Subsec. (a)(1)(B). Pub. L. 103-337 substituted “chapter 1223” for “chapter 67”.

1989—Subsec. (a)(1). Pub. L. 101-189 substituted “who is entitled to that pay” for “who is retired” in introductory provisions.

#### EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-65 effective Oct. 1, 1999, see section 644 of Pub. L. 106-65, set out as a note under section 1401a of this title.

#### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103-337, set out as an Effective Date note under section 10001 of this title.

### § 1410. Restoral of full retirement amount at age 62 for certain members entering on or after August 1, 1986

In the case of a member or former member who first became a member of a uniformed service on or after August 1, 1986, who has elected to receive a bonus under section 322 (as in effect before the enactment of the National Defense Authorization Act for Fiscal Year 2008) or section 354 of title 37, and who becomes entitled to retired pay before the age of 62, the retired pay of such member or former member shall be recomputed, effective on the first day of the first month beginning after the member or former member attains 62 years of age, so as to be the amount equal to the amount of retired pay to which the member or former member would be entitled on that date if—

(1) increases in the retired pay of the member or former member under section 1401a(b) of this title had been computed as provided in paragraph (2) of that section (rather than under paragraph (3) of that section); and

(2) in the case of a member whose retired pay was subject to section 1409(b)(2) of this title, no reduction in the member's retired pay had been made under that section.

(Added Pub. L. 99-348, title I, §103, July 1, 1986, 100 Stat. 685; amended Pub. L. 100-224, §2, Dec. 30, 1987, 101 Stat. 1536; Pub. L. 101-189, div. A, title VI, §651(b)(4), Nov. 29, 1989, 103 Stat. 1460; Pub. L. 106-65, div. A, title VI, §§641(c), 643(b)(3)(A), Oct. 5, 1999, 113 Stat. 662, 664; Pub. L. 110-181, div. A, title VI, §661(b)(3), Jan. 28, 2008, 122 Stat. 178.)

#### REFERENCES IN TEXT

Section 322 of title 37 (as in effect before the enactment of the National Defense Authorization Act for Fiscal Year 2008), referred to in text, means section 322 of title 37 as in effect before enactment of Pub. L. 110-181. Section 322 of title 37 was renumbered as section 354 of title 37 and amended by Pub. L. 110-181, div. A, title VI, §661(b)(1), (2), Jan. 28, 2008, 122 Stat. 178.

#### AMENDMENTS

2008—Pub. L. 110-181, in introductory provisions, substituted “section 322 (as in effect before the enactment

of the National Defense Authorization Act for Fiscal Year 2008) or section 354” for “section 322”.

1999—Pub. L. 106-65 inserted “certain” before “members” in section catchline and “who has elected to receive a bonus under section 322 of title 37,” after “August 1, 1986,” in introductory provisions.

1989—Pub. L. 101-189, § 651(b)(4), in introductory provisions, inserted “or former member” after “In the case of a member”, “the retired pay of such member”, “after the member”, and “to which the member”, and in par. (1), substituted “retired pay of the member or former member” for “member’s retired pay”.

1987—Pub. L. 100-224 struck out heading “(a) General rule”, substituted provisions that the amount equal to the amount of retired pay to which the member would be entitled on that date if (1) increases in the member’s retired pay under section 1401a(b) of this title had been computed as provided in paragraph (2) of that section (rather than under paragraph (3) of that section); and (2) in the case of a member whose retired pay was subject to section 1409(b)(2) of this title, no reduction in the member’s retired pay had been made under that section, for provisions that the amount equal to (1) the amount of the member’s initial unreduced retired pay, increased by (2) the percent (adjusted to the nearest one-tenth of 1 percent) by which (A) the price index for the most recent base quarter ending more than 31 days before the date the member attains 62 years of age, exceeds (B) the price index for the calendar quarter immediately before the date the member first became entitled to retired pay, and struck out subsec. (b) which had directed that, in this section, the term “initial unreduced retired pay” meant the amount of retired pay (A) to which the member was entitled when the member first became entitled to retired pay; or (B) in the case of a member whose retired pay was subject to section 1409(b)(2) of this title, to which the member would have been entitled on the date of the member’s retirement without regard to that section, and that the definitions in subsection (g), and the provisions of subsection (h), of section 1401a of this title applied to this section.

#### EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-65 effective Oct. 1, 1999, see section 644 of Pub. L. 106-65, set out as a note under section 1401a of this title.

### § 1411. Rules of construction

(a) CONSTRUCTION OF “FIRST BECAME A MEMBER”.—For purposes of this chapter and other provisions of law providing for computation of retired or retainer pay of members of the uniformed services, a person shall be considered to first become a member of a uniformed service on the date the person is first enlisted, inducted, or appointed in a uniformed service.

(b) REFERENCES IN TABLES.—Section references in tables in this chapter are to sections of this title.

(Added Pub. L. 99-348, title I, § 105, July 1, 1986, 100 Stat. 691.)

### § 1412. Administrative provisions

(a) ROUNDING.—Amounts computed under this chapter, if not a multiple of \$1, shall be rounded to the next lower multiple of \$1.

(b) PAYMENT DATE.—Amounts of retired pay and retainer pay due a retired member of the uniformed services shall be paid on the first day of each month beginning after the month in which the right to such pay accrues.

(Added Pub. L. 99-348, title I, § 105, July 1, 1986, 100 Stat. 691; amended Pub. L. 111-383, div. A,

title VI, § 632(a), (b)(1), Jan. 7, 2011, 124 Stat. 4240.)

#### AMENDMENTS

2011—Pub. L. 111-383, § 632(b)(1), substituted “Administrative provisions” for “Rounding to next lower dollar” in section catchline.

Pub. L. 111-383, § 632(a), designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

#### EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 111-383, div. A, title VI, § 632(c), Jan. 7, 2011, 124 Stat. 4240, provided that: “Subsection (b) of section 1412 of title 10, United States Code, as added by subsection (a), shall apply beginning with the first month that begins more than 30 days after the date of the enactment of this Act [Jan. 7, 2011].”

### § 1413. Repealed. Pub. L. 108-136, div. A, title VI, § 641(b), Nov. 24, 2003, 117 Stat. 1514

Section, added Pub. L. 106-65, div. A, title VI, § 658(a)(1), Oct. 5, 1999, 113 Stat. 668; amended Pub. L. 106-398, § 1 [[div. A], title VI, § 657(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A-166; Pub. L. 107-107, div. A, title VI, § 641(b), (e)(1), (2), Dec. 28, 2001, 115 Stat. 1150, 1151; Pub. L. 107-314, div. A, title VI, § 636(b), Dec. 2, 2002, 116 Stat. 2576; Pub. L. 108-136, div. A, title VI, § 641(c)(1), Nov. 24, 2003, 117 Stat. 1514, related to special compensation for certain severely disabled uniformed services retirees.

#### EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2004, and applicable to payments for months beginning on or after that date, see section 641(e) of Pub. L. 108-136, set out as an Effective Date of 2003 Amendment note under section 1414 of this title.

### § 1413a. Combat-related special compensation

(a) AUTHORITY.—The Secretary concerned shall pay to each eligible combat-related disabled uniformed services retiree who elects benefits under this section a monthly amount for the combat-related disability of the retiree determined under subsection (b).

(b) AMOUNT.—

(1) DETERMINATION OF MONTHLY AMOUNT.—Subject to paragraphs (2) and (3), the monthly amount to be paid an eligible combat-related disabled uniformed services retiree under subsection (a) for any month is the amount of compensation to which the retiree is entitled under title 38 for that month, determined without regard to any disability of the retiree that is not a combat-related disability.

(2) MAXIMUM AMOUNT.—The amount paid to an eligible combat-related disabled uniformed services retiree for any month under paragraph (1) may not exceed the amount of the reduction in retired pay that is applicable to the retiree for that month under sections 5304 and 5305 of title 38.

(3) SPECIAL RULES FOR CHAPTER 61 DISABILITY RETIREES.—

(A) GENERAL RULE.—In the case of an eligible combat-related disabled uniformed services retiree who is retired under chapter 61 of this title, the amount of the payment under paragraph (1) for any month shall be reduced by the amount (if any) by which the amount of the member’s retired pay under chapter 61 of this title exceeds the amount of retired pay to which the member would have been entitled under any other provision

of law based upon the member's service in the uniformed services if the member had not been retired under chapter 61 of this title.

(B) SPECIAL RULE FOR RETIREES WITH FEWER THAN 20 YEARS OF SERVICE.—In the case of an eligible combat-related disabled uniformed services retiree who is retired under chapter 61 of this title with fewer than 20 years of creditable service, the amount of the payment under paragraph (1) for any month shall be reduced by the amount (if any) by which the amount of the member's retired pay under chapter 61 of this title exceeds the amount equal to 2½ percent of the member's years of creditable service multiplied by the member's retired pay base under section 1406(b)(1) or 1407 of this title, whichever is applicable to the member.

(c) ELIGIBLE RETIREES.—For purposes of this section, an eligible combat-related disabled uniformed services retiree referred to in subsection (a) is a member of the uniformed services who—

- (1) is entitled to retired pay (other than by reason of section 12731b of this title); and
- (2) has a combat-related disability.

(d) PROCEDURES.—The Secretary of Defense shall prescribe procedures and criteria under which a disabled uniformed services retiree may apply to the Secretary of a military department to be considered to be an eligible combat-related disabled uniformed services retiree. Such procedures shall apply uniformly throughout the Department of Defense.

(e) COMBAT-RELATED DISABILITY.—In this section, the term “combat-related disability” means a disability that is compensable under the laws administered by the Secretary of Veterans Affairs and that—

- (1) is attributable to an injury for which the member was awarded the Purple Heart; or
- (2) was incurred (as determined under criteria prescribed by the Secretary of Defense)—
  - (A) as a direct result of armed conflict;
  - (B) while engaged in hazardous service;
  - (C) in the performance of duty under conditions simulating war; or
  - (D) through an instrumentality of war.

(f) COORDINATION WITH CONCURRENT RECEIPT PROVISION.—Subsection (d) of section 1414 of this title provides for coordination between benefits under that section and under this section.

(g) STATUS OF PAYMENTS.—Payments under this section are not retired pay.

(h) SOURCE OF PAYMENTS.—Payments under this section for a member of the Army, Navy, Air Force, or Marine Corps shall be paid from the Department of Defense Military Retirement Fund. Payments under this section for any other member for any fiscal year shall be paid out of funds appropriated for pay and allowances payable by the Secretary concerned for that fiscal year.

(i) OTHER DEFINITIONS.—In this section:

- (1) The term “service-connected” has the meaning given such term in section 101 of title 38.
- (2) The term “retired pay” includes retainer pay, emergency officers' retirement pay, and naval pension.

(Added Pub. L. 107-314, div. A, title VI, § 636(a)(1), Dec. 2, 2002, 116 Stat. 2574; amended Pub. L. 108-136, div. A, title VI, §§ 641(c)(1), 642(a)-(e)(1), Nov. 24, 2003, 117 Stat. 1514, 1516, 1517; Pub. L. 110-181, div. A, title VI, § 641(a), (b), Jan. 28, 2008, 122 Stat. 156.)

#### AMENDMENTS

2008—Subsec. (b)(3). Pub. L. 110-181, § 641(b), designated existing text as subpar. (A), inserted heading, and added subpar. (B).

Subsec. (c). Pub. L. 110-181, § 641(a), substituted “who—” for “entitled to retired pay who—” in introductory provisions, added pars. (1) and (2), and struck out former pars. (1) and (2) which read as follows:

“(1) has completed at least 20 years of service in the uniformed services that are creditable for purposes of computing the amount of retired pay to which the member is entitled or is entitled to retired pay under section 12731 of this title (other than by reason of section 12731b of this title); and

“(2) has a combat-related disability.”

2003—Pub. L. 108-136, § 642(e)(1), substituted “Combat-related special compensation” for “Special compensation for certain combat-related disabled uniformed services retirees” in section catchline.

Subsec. (b)(1). Pub. L. 108-136, § 642(c), substituted “under subsection (a) for any month is the amount of compensation to which the retiree is entitled under title 38 for that month, determined without regard to any disability of the retiree that is not a combat-related disability.” for “for a combat-related disability under subsection (a) is the monthly amount of compensation to which the retiree would be entitled solely for the combat-related disability consistent with chapter 11 of title 38.”

Subsec. (c)(1). Pub. L. 108-136, § 642(b), inserted before semicolon at end “or is entitled to retired pay under section 12731 of this title (other than by reason of section 12731b of this title)”.

Subsec. (c)(2). Pub. L. 108-136, § 642(a)(2), struck out “qualifying” before “combat-related disability”.

Subsec. (e). Pub. L. 108-136, § 642(a)(1), amended heading and text of subsec. (e) generally. Prior to amendment, subsec. (e) defined term “qualifying combat-related disability”.

Subsec. (f). Pub. L. 108-136, § 642(d), amended heading and text of subsec. (f) generally. Prior to amendment, text read as follows:

“(1) SINGLE SOURCE OF COMPENSATION.—An individual who is paid special compensation under this section may not receive special compensation under section 1413 of this title.

“(2) ELECTION OF SOURCE.—An individual who is eligible for special compensation under this section and special compensation under section 1413 of this title shall elect which special compensation to receive.

“(3) REGULATIONS.—The Secretary of Defense shall prescribe in regulations the manner and form of an election under this subsection.”

Subsec. (h). Pub. L. 108-136, § 641(c)(1), inserted first sentence and inserted “for any other member” before “for any fiscal year”.

#### EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-181, div. A, title VI, § 641(c), Jan. 28, 2008, 122 Stat. 156, provided that: “The amendments made by this section [amending this section] shall take effect on January 1, 2008, and shall apply to payments for months beginning on or after that date.”

#### EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108-136, div. A, title VI, § 641(c)(6), Nov. 24, 2003, 117 Stat. 1516, provided that: “The amendments made by this subsection [amending this section and sections 1413, 1463, 1465, and 1466 of this title] shall take effect as of October 1, 2003. The Secretary of Defense shall provide for such administrative adjustments as

necessary to provide for payments made for any period during fiscal year 2004 before the date of the enactment of this Act [Nov. 24, 2003] to be treated as having been made in accordance with such amendments and for the provisions of such amendments to be implemented as if enacted as of September 30, 2003.’’

Pub. L. 108-136, div. A, title VI, § 642(f), Nov. 24, 2003, 117 Stat. 1517, provided that: ‘‘The amendments made by subsections (a), (b), and (c) [amending this section] shall apply to payments under section 1413a of title 10, United States Code, for months beginning on or after January 1, 2004. The amendment made by subsection (d) [amending this section] shall take effect on January 1, 2004.’’

#### EFFECTIVE DATE

Pub. L. 107-314, div. A, title VI, § 636(a)(2), Dec. 2, 2002, 116 Stat. 2576, provided that: ‘‘Section 1413a of title 10, United States Code, as added by paragraph (1), shall take effect not later than 180 days after the date of the enactment of this Act [Dec. 2, 2002].’’

### § 1414. Members eligible for retired pay who are also eligible for veterans’ disability compensation for disabilities rated 50 percent or higher: concurrent payment of retired pay and veterans’ disability compensation

#### (a) PAYMENT OF BOTH RETIRED PAY AND COMPENSATION.—

(1) IN GENERAL.—Subject to subsection (b), a member or former member of the uniformed services who is entitled for any month to retired pay and who is also entitled for that month to veterans’ disability compensation for a qualifying service-connected disability (hereinafter in this section referred to as a ‘‘qualified retiree’’) is entitled to be paid both for that month without regard to sections 5304 and 5305 of title 38. During the period beginning on January 1, 2004, and ending on December 31, 2013, payment of retired pay to such a qualified retiree is subject to subsection (c), except that payment of retired pay is subject to subsection (c) only during the period beginning on January 1, 2004, and ending on December 31, 2004, in the case of the following:

(A) A qualified retiree receiving veterans’ disability compensation for a disability rated as 100 percent.

(B) A qualified retiree receiving veterans’ disability compensation at the rate payable for a 100 percent disability by reason of a determination of individual unemployability.

(2) QUALIFYING SERVICE-CONNECTED DISABILITY.—In this section, the term ‘‘qualifying service-connected disability’’ means a service-connected disability or combination of service-connected disabilities that is rated as not less than 50 percent disabling by the Secretary of Veterans Affairs.

#### (b) SPECIAL RULES FOR CHAPTER 61 DISABILITY RETIREES.—

(1) CAREER RETIREES.—The retired pay of a member retired under chapter 61 of this title with 20 years or more of service otherwise creditable under section 1405 of this title, or at least 20 years of service computed under section 12732 of this title, at the time of the member’s retirement is subject to reduction under sections 5304 and 5305 of title 38, but only to the extent that the amount of the member’s retired pay under chapter 61 of this title ex-

ceeds the amount of retired pay to which the member would have been entitled under any other provision of law based upon the member’s service in the uniformed services if the member had not been retired under chapter 61 of this title.

(2) DISABILITY RETIREES WITH LESS THAN 20 YEARS OF SERVICE.—Subsection (a) does not apply to a member retired under chapter 61 of this title with less than 20 years of service otherwise creditable under section 1405 of this title, or with less than 20 years of service computed under section 12732 of this title, at the time of the member’s retirement.

(c) PHASE-IN OF FULL CONCURRENT RECEIPT.—During the period beginning on January 1, 2004, and ending on December 31, 2013, retired pay payable to a qualified retiree that pursuant to the second sentence of subsection (a)(1) is subject to this subsection shall be determined as follows:

(1) CALENDAR YEAR 2004.—For a month during 2004, the amount of retired pay payable to a qualified retiree is the amount (if any) of retired pay in excess of the current baseline offset plus the following:

(A) For a month for which the retiree receives veterans’ disability compensation for a disability rated as total, \$750.

(B) For a month for which the retiree receives veterans’ disability compensation for a disability rated as 90 percent, \$500.

(C) For a month for which the retiree receives veterans’ disability compensation for a disability rated as 80 percent, \$350.

(D) For a month for which the retiree receives veterans’ disability compensation for a disability rated as 70 percent, \$250.

(E) For a month for which the retiree receives veterans’ disability compensation for a disability rated as 60 percent, \$125.

(F) For a month for which the retiree receives veterans’ disability compensation for a disability rated as 50 percent, \$100.

(2) CALENDAR YEAR 2005.—For a month during 2005, the amount of retired pay payable to a qualified retiree is the sum of—

(A) the amount specified in paragraph (1) for that qualified retiree; and

(B) 10 percent of the difference between (i) the current baseline offset, and (ii) the amount specified in paragraph (1) for that member’s disability.

(3) CALENDAR YEAR 2006.—For a month during 2006, the amount of retired pay payable to a qualified retiree is the sum of—

(A) the amount determined under paragraph (2) for that qualified retiree; and

(B) 20 percent of the difference between (i) the current baseline offset, and (ii) the amount determined under paragraph (2) for that qualified retiree.

(4) CALENDAR YEAR 2007.—For a month during 2007, the amount of retired pay payable to a qualified retiree is the sum of—

(A) the amount determined under paragraph (3) for that qualified retiree; and

(B) 30 percent of the difference between (i) the current baseline offset, and (ii) the

amount determined under paragraph (3) for that qualified retiree.

(5) CALENDAR YEAR 2008.—For a month during 2008, the amount of retired pay payable to a qualified retiree is the sum of—

(A) the amount determined under paragraph (4) for that qualified retiree; and

(B) 40 percent of the difference between (i) the current baseline offset, and (ii) the amount determined under paragraph (4) for that qualified retiree.

(6) CALENDAR YEAR 2009.—For a month during 2009, the amount of retired pay payable to a qualified retiree is the sum of—

(A) the amount determined under paragraph (5) for that qualified retiree; and

(B) 50 percent of the difference between (i) the current baseline offset, and (ii) the amount determined under paragraph (5) for that qualified retiree.

(7) CALENDAR YEAR 2010.—For a month during 2010, the amount of retired pay payable to a qualified retiree is the sum of—

(A) the amount determined under paragraph (6) for that qualified retiree; and

(B) 60 percent of the difference between (i) the current baseline offset, and (ii) the amount determined under paragraph (6) for that qualified retiree.

(8) CALENDAR YEAR 2011.—For a month during 2011, the amount of retired pay payable to a qualified retiree is the sum of—

(A) the amount determined under paragraph (7) for that qualified retiree; and

(B) 70 percent of the difference between (i) the current baseline offset, and (ii) the amount determined under paragraph (7) for that qualified retiree.

(9) CALENDAR YEAR 2012.—For a month during 2012, the amount of retired pay payable to a qualified retiree is the sum of—

(A) the amount determined under paragraph (8) for that qualified retiree; and

(B) 80 percent of the difference between (i) the current baseline offset, and (ii) the amount determined under paragraph (8) for that qualified retiree.

(10) CALENDAR YEAR 2013.—For a month during 2013, the amount of retired pay payable to a qualified retiree is the sum of—

(A) the amount determined under paragraph (9) for that qualified retiree; and

(B) 90 percent of the difference between (i) the current baseline offset, and (ii) the amount determined under paragraph (9) for that qualified retiree.

(11) GENERAL LIMITATION.—Retired pay determined under this subsection for a qualified retiree, if greater than the amount of retired pay otherwise applicable to that qualified retiree, shall be reduced to the amount of retired pay otherwise applicable to that qualified retiree.

(d) COORDINATION WITH COMBAT-RELATED SPECIAL COMPENSATION PROGRAM.—

(1) IN GENERAL.—A person who is a qualified retiree under this section and is also an eligi-

ble combat-related disabled uniformed services retiree under section 1413a of this title may receive special compensation in accordance with that section or retired pay in accordance with this section, but not both.

(2) ANNUAL OPEN SEASON.—The Secretary concerned shall provide for an annual period (referred to as an “open season”) during which a person described in paragraph (1) shall have the right to make an election to change from receipt of special compensation in accordance with section 1413a of this title to receipt of retired pay in accordance with this section, or the reverse, as the case may be. Any such election shall be made under regulations prescribed by the Secretary concerned. Such regulations shall provide for the form and manner for making such an election and shall provide for the date as of when such an election shall become effective. In the case of the Secretary of a military department, such regulations shall be subject to approval by the Secretary of Defense.

(e) DEFINITIONS.—In this section:

(1) RETIRED PAY.—The term “retired pay” includes retainer pay, emergency officers’ retirement pay, and naval pension.

(2) VETERANS’ DISABILITY COMPENSATION.—The term “veterans’ disability compensation” has the meaning given the term “compensation” in section 101(13) of title 38.

(3) DISABILITY RATED AS TOTAL.—The term “disability rated as total” means—

(A) a disability, or combination of disabilities, that is rated as total under the standard schedule of rating disabilities in use by the Department of Veterans Affairs; or

(B) a disability, or combination of disabilities, for which the scheduled rating is less than total but for which a rating of total is assigned by reason of inability of the disabled person concerned to secure or follow a substantially gainful occupation as a result of disabilities for which veterans’ disability compensation may be paid.

(4) CURRENT BASELINE OFFSET.—

(A) IN GENERAL.—The term “current baseline offset” for any qualified retiree means the amount for any month that is the lesser of—

(i) the amount of the applicable monthly retired pay of the qualified retiree for that month; and

(ii) the amount of monthly veterans’ disability compensation to which the qualified retiree is entitled for that month.

(B) APPLICABLE RETIRED PAY.—In subparagraph (A), the term “applicable retired pay” for a qualified retiree means the amount of monthly retired pay to which the qualified retiree is entitled, determined without regard to this section or sections 5304 and 5305 of title 38, except that in the case of such a retiree who was retired under chapter 61 of this title, such amount is the amount of retired pay to which the member would have been entitled under any other provision of law based upon the member’s service in the uniformed services if the member had not been retired under chapter 61 of this title.

(Added Pub. L. 107-107, div. A, title VI, §641(a), Dec. 28, 2001, 115 Stat. 1149; amended Pub. L. 108-136, div. A, title VI, §641(a), Nov. 24, 2003, 117 Stat. 1511; Pub. L. 108-375, div. A, title VI, §642, Oct. 28, 2004, 118 Stat. 1957; Pub. L. 109-163, div. A, title VI, §663, Jan. 6, 2006, 119 Stat. 3316; Pub. L. 110-181, div. A, title VI, §642(a), Jan. 28, 2008, 122 Stat. 157.)

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110-181 substituted “except that payment of retired pay is subject to subsection (c) only during the period beginning on January 1, 2004, and ending on December 31, 2004, in the case of the following:” for “except that in the case of a qualified retiree receiving veterans’ disability compensation for a disability rated as 100 percent, payment of retired pay to such veteran is subject to subsection (c) only during the period beginning on January 1, 2004, and ending on December 31, 2004, and in the case of a qualified retiree receiving veterans’ disability compensation at the rate payable for a 100 percent disability by reason of a determination of individual unemployability, payment of retired pay to such veteran is subject to subsection (c) only during the period beginning on January 1, 2004, and ending on September 30, 2009.” and added subpars. (A) and (B).

2006—Subsec. (a)(1). Pub. L. 109-163 inserted “, and in the case of a qualified retiree receiving veterans’ disability compensation at the rate payable for a 100 percent disability by reason of a determination of individual unemployability, payment of retired pay to such veteran is subject to subsection (c) only during the period beginning on January 1, 2004, and ending on September 30, 2009” before period at end.

2004—Subsec. (a)(1). Pub. L. 108-375, §642(a), inserted before period at end “, except that in the case of a qualified retiree receiving veterans’ disability compensation for a disability rated as 100 percent, payment of retired pay to such veteran is subject to subsection (c) only during the period beginning on January 1, 2004, and ending on December 31, 2004”.

Subsec. (c). Pub. L. 108-375, §642(b), inserted “that pursuant to the second sentence of subsection (a)(1) is subject to this subsection” after “a qualified retiree” in introductory provisions.

2003—Pub. L. 108-136 amended section generally. Prior to amendment, section related to members eligible for retired pay who had service-connected disabilities: payment of retired pay and veterans’ disability compensation; and contingent effectiveness based on enactment of offsetting legislation.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-181, div. A, title VI, §642(b), Jan. 28, 2008, 122 Stat. 157, provided that:

“(1) IN GENERAL.—Subject to paragraph (2), the amendment made by subsection (a) [amending this section] shall take effect as of December 31, 2004.

“(2) TIMING OF PAYMENT OF RETROACTIVE BENEFITS.—Any amount payable for a period before October 1, 2008, by reason of the amendment made by subsection (a) shall not be paid until after that date.”

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108-136, div. A, title VI, §641(e), Nov. 24, 2003, 117 Stat. 1516, provided that: “The amendments made by subsections (a) and (b) [amending this section and repealing section 1413 of this title] shall take effect on January 1, 2004, and shall apply to payments for months beginning on or after that date.”

PROHIBITION OF RETROACTIVE BENEFITS

Pub. L. 107-107, div. A, title VI, §641(d), Dec. 28, 2001, 115 Stat. 1150, provided that: “If the provisions of subsection (a) of section 1414 of title 10, United States Code, becomes [sic] effective in accordance with subsection (f) of that section, no benefit may be paid to

any person by reason of those provisions for any period before the effective date specified in subsection (e) of that section.”

CHAPTER 73—ANNUITIES BASED ON RETIRED OR RETAINER PAY

Subchapter I. Retired Serviceman’s Family Protection Plan ..... 1431
II. Survivor Benefit Plan ..... 1447
[III. Repealed]

AMENDMENTS

2004—Pub. L. 108-375, div. A, title VI, §644(b)(2), Oct. 28, 2004, 118 Stat. 1961, struck out item for subchapter III “Supplemental Survivor Benefit Plan”, effective Apr. 1, 2008.

1990—Pub. L. 101-510, div. A, title VI, §631(1), title XIV, §1484(7)(4)(A), Nov. 5, 1990, 104 Stat. 1580, 1719, amended Pub. L. 101-189, §1404(a)(2), see 1989 Amendment note below.

1989—Pub. L. 101-189, div. A, title XIV, §1404(a)(2), Nov. 29, 1989, 103 Stat. 1586, as amended by Pub. L. 101-510, div. A, title VI, §631(1), title XIV, §1484(7)(4)(A), Nov. 5, 1990, 104 Stat. 1580, 1719, added item for subchapter III, effective Apr. 1, 1992.

1980—Pub. L. 96-513, title V, §511(54)(A), Dec. 12, 1980, 94 Stat. 2925, amended chapter heading to read: “ANNUITIES BASED ON RETIRED OR RETAINER PAY”.

1972—Pub. L. 92-425, §1(1), Sept. 21, 1972, 86 Stat. 706, added subchapter analysis and amended chapter heading by inserting “; SURVIVOR BENEFIT PLAN” after “PAY” which could not be executed as directed in view of amendment by Pub. L. 87-381.

1961—Pub. L. 87-381, §1(1), Oct. 4, 1961, 75 Stat. 810, substituted “RETIRED SERVICEMAN’S FAMILY PROTECTION PLAN” for “ANNUITIES BASED ON RETIRED OR RETAINER PAY” in chapter heading.

SUBCHAPTER I—RETIRED SERVICEMAN’S FAMILY PROTECTION PLAN

Sec. 1431. Election of annuity: members of armed forces.
1432. Election of annuity: former members of armed forces.
1433. Mental incompetency of member.
1434. Kinds of annuities that may be elected.
1435. Eligible beneficiaries.
1436. Computation of reduction in retired pay; withdrawal for severe financial hardship.
1436a. Coverage paid up at 30 years and age 70.
1437. Payment of annuity.
1438. Deposits for amounts not deducted.
1439. Refund of amounts deducted from retired pay.
1440. Annuities not subject to legal process.
1441. Annuities in addition to other payments.
1442. Recovery of annuity erroneously paid.
[1443. Repealed.]
1444. Regulations; determinations.
1444a. Regulations regarding payment of annuity to a representative payee.
1445. Correction of administrative deficiencies.
1446. Restriction on participation.

AMENDMENTS

1999—Pub. L. 106-65, div. A, title VI, §655(b), Oct. 5, 1999, 113 Stat. 667, added item 1436a.

1991—Pub. L. 102-190, div. A, title VI, §654(b)(2), Dec. 5, 1991, 105 Stat. 1390, added item 1444a.

1972—Pub. L. 92-425, §1(2)(B), (C), Sept. 21, 1972, 86 Stat. 706, struck out item 1443 “Board of Actuaries”, and struck out “reports to Congress” from item 1444.

1961—Pub. L. 87-381, §6(2), (3), Oct. 4, 1961, 75 Stat. 812, inserted “; withdrawal for severe financial hardship” in item 1436, and added items 1445 and 1446.

§ 1431. Election of annuity: members of armed forces

(a) This section applies to all members of the armed forces except—