

“(ii) any special or incentive pay or bonus shall be payable to the member in accordance with the terms of the agreement concerned for the term specified in clause (i).

“(B) LIMITATIONS.—

“(i) LIMITATION AT TIME OF RETURN TO ACTIVE DUTY.—Subparagraph (A) shall not apply to any special or incentive pay or bonus otherwise covered by that subparagraph with respect to a member if, at the time of the return of the member to active duty as described in that subparagraph—

“(I) such pay or bonus is no longer authorized by law; or

“(II) the member does not satisfy eligibility criteria for such pay or bonus as in effect at the time of the return of the member to active duty.

“(ii) CESSATION DURING LATER SERVICE.—Subparagraph (A) shall cease to apply to any special or incentive pay or bonus otherwise covered by that subparagraph with respect to a member if, during the term of the revived agreement of the member under subparagraph (A)(i), such pay or bonus ceases being authorized by law.

“(C) REPAYMENT.—A member who is ineligible for payment of a special or incentive pay or bonus otherwise covered by this paragraph by reason of subparagraph (B)(i)(II) shall be subject to the requirements for repayment of such pay or bonus in accordance with the terms of the applicable agreement of the member under chapter 5 of title 37, United States Code.

“(D) CONSTRUCTION OF REQUIRED SERVICE.—Any service required of a member under an agreement covered by this paragraph after the member returns to active duty as described in subparagraph (A) shall be in addition to any service required of the member under an agreement under subsection (e).

“(4) CERTAIN TRAVEL AND TRANSPORTATION ALLOWANCES.—

“(A) IN GENERAL.—Subject to subparagraph (B), a member who participates in a pilot program is entitled, while participating in the pilot program, to the travel and transportation allowances authorized by section 474 of title 37, United States Code, for—

“(i) travel performed from the member’s residence, at the time of release from active duty to participate in the pilot program, to the location in the United States designated by the member as his residence during the period of participation in the pilot program; and

“(ii) travel performed to the member’s residence upon return to active duty at the end of the member’s participation in the pilot program.

“(B) LIMITATION.—An allowance is payable under this paragraph only with respect to travel of a member to and from a single residence.

“(i) PROMOTION.—

“(1) OFFICERS.—

“(A) LIMITATION ON PROMOTION.—An officer participating in a pilot program under this section shall not, while participating in the pilot program, be eligible for consideration for promotion under chapter 36 or 1405 of title 10, United States Code.

“(B) PROMOTION AND RANK UPON RETURN TO ACTIVE DUTY.—Upon the return of an officer to active duty after completion by the officer of participation in a pilot program—

“(i) the Secretary of the military department concerned shall adjust the officer’s date of rank in such manner as the Secretary of Defense shall prescribe in regulations for purposes of this section; and

“(ii) the officer shall be eligible for consideration for promotion when officers of the same competitive category, grade, and seniority are eligible for consideration for promotion.

“(2) ENLISTED MEMBERS.—An enlisted member participating in a pilot program shall not be eligible for consideration for promotion during the period that—

“(A) begins on the date of the member’s inactivation from active duty under the pilot program; and

“(B) ends at such time after the return of the member to active duty under the pilot program that the member is treatable as eligible for promotion by reason of time in grade and such other requirements as the Secretary of the military department concerned shall prescribe in regulations for purposes of the pilot program.

“(j) MEDICAL AND DENTAL CARE.—A member participating in a pilot program under this section shall, while participating in the pilot program, be treated as a member of the Armed Forces on active duty for a period of more than 30 days for purposes of the entitlement of the member and the member’s dependents to medical and dental care under the provisions of chapter 55 of title 10, United States Code.

“(k) REPORTS.—

“(1) INTERIM REPORTS.—Not later than June 1 of 2011, 2013, 2015, and 2017, the Secretary of each military department shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the implementation and current status of the pilot programs conducted by such Secretary under this section.

“(2) FINAL REPORT.—Not later than March 1, 2019, the Secretary of Defense shall submit to the congressional defense committees a report on the pilot programs conducted under this section.

“(3) ELEMENTS OF REPORT.—Each interim report and the final report under this subsection shall include the following:

“(A) A description of each pilot program conducted under this section, including a description of the number of applicants for such pilot program and the criteria used to select individuals for participation in such pilot program.

“(B) An assessment by the Secretary concerned of the pilot programs, including an evaluation of whether—

“(i) the authorities of the pilot programs provided an effective means to enhance the retention of members of the Armed Forces possessing critical skills, talents, and leadership abilities;

“(ii) the career progression in the Armed Forces of individuals who participate in the pilot program has been or will be adversely affected; and

“(iii) the usefulness of the pilot program in responding to the personal and professional needs of individual members of the Armed Forces.

“(C) Such recommendations for legislative or administrative action as the Secretary concerned considers appropriate for the modification or continuation of the pilot programs.

“(l) DURATION OF PROGRAM AUTHORITY.—No member of the Armed Forces may be released from active duty under a pilot program conducted under this section after December 31, 2015.’

[Amendment by section 631(f)(4)(B) of Pub. L. 112-81 to section 533 of Pub. L. 110-417, set out above, was executed to reflect the probable intent of Congress, notwithstanding an error in the directory language.]

§ 701. Entitlement and accumulation

(a) A member of an armed force is entitled to leave at the rate of 2½ calendar days for each month of active service, excluding periods of—

- (1) absence from duty without leave;
- (2) absence over leave;
- (3) confinement as the result of a sentence of a court-martial; and
- (4) leave required to be taken under section 876a of this title.

Full-time training, or other full-time duty for a period of more than 29 days, performed under section 316, 502, 503, 504, or 505 of title 32 by a

member of the Army National Guard of the United States or the Air National Guard of the United States in his status as a member of the National Guard, and for which he is entitled to pay, is active service for the purposes of this section.

(b) Except as provided in subsections (d), (f), and (g), a member may not accumulate more than 60 days' leave. However, leave taken during a fiscal year may be charged to leave accumulated during that fiscal year without regard to this limitation.

(c) A member who retired after August 9, 1946, who is continued on, or is recalled to active duty, may have his leave which accumulated during his service before retirement carried over to his period of service after retirement.

(d) Notwithstanding subsection (b), during the period beginning on October 1, 2008, through September 30, 2013, a member may accumulate up to 75 days of leave.

(e) Leave taken before discharge is considered to be active service.

(f)(1)(A) The Secretary concerned, under uniform regulations to be prescribed by the Secretary of Defense, may authorize a member described in subparagraph (B) who, except for this paragraph, would lose at the end of the fiscal year any accumulated leave in excess of the number of days of leave authorized to be accumulated under subsection (b) or (d), to retain an accumulated total of 120 days leave.

(B) This subsection applies to a member who—

(i) serves on active duty for a continuous period of at least 120 days in an area in which the member is entitled to special pay under section 310(a) of title 37;

(ii) is assigned to a deployable ship or mobile unit or to other duty designated for the purpose of this section; or

(iii) on or after August 29, 2005, performs duty designated by the Secretary of Defense as qualifying duty for purposes of this subsection.

(C) Except as provided in paragraph (2), leave in excess of the days of leave authorized to be accumulated under subsection (b) or (d) that are accumulated under this paragraph is lost unless it is used by the member before the end of the third fiscal year (or fourth fiscal year, if accumulated while subsection (d) is in effect) after the fiscal year in which the continuous period of service referred to in subparagraph (B) terminated.

(2) Under the uniform regulations referred to in paragraph (1), a member of an armed force who serves on active duty in a duty assignment in support of a contingency operation during a fiscal year and who, except for this paragraph, would lose at the end of that fiscal year any accumulated leave in excess of the number of days of leave authorized to be accumulated under subsection (b) or (d), shall be permitted to retain such leave until the end of the second fiscal year after the fiscal year in which such service on active duty is terminated.

(g) A member who is in a missing status, as defined in section 551(2) of title 37, accumulates leave without regard to the limitations in subsections (b), (d), and (f). Notwithstanding the

death of a member while in a missing status, he continues to earn leave through the date—

(1) the Secretary concerned receives evidence that the member is dead; or

(2) that his death is prescribed or determined under section 555 of title 37.

Leave accumulated while in missing status shall be accounted for separately. It may not be taken, but shall be paid for under section 501(h) of title 37. However, a member whose death is prescribed or determined under section 555 or 556 of title 37 may, in addition to leave accrued before entering a missing status, accrue not more than 150 days' leave during the period he is in a missing status, unless his actual death occurs on a date when, had he lived, he would have accrued leave in excess of 150 days, in which event settlement will be made for the number of days accrued to the actual date of death. Leave so accrued in a missing status shall be accounted for separately and paid for under the provisions of section 501 of title 37.

(h) A member who has taken leave in excess of that authorized by this section and who is being discharged or released from active duty for the purpose of accepting an appointment or a warrant in an armed force, or of entering into an enlistment or an extension of an enlistment in an armed force, may elect to have excess leave of up to 30 days or the maximum number of days of leave that could be earned in the new term of service, whichever is less, carried over to that new term of service to count against leave that will accrue on the new term of service. A member shall be required, at the time of his discharge or release from active duty, to pay for excess leave not carried over under this subsection.

(i)(1) Under regulations prescribed by the Secretary of Defense, a member of the armed forces adopting a child in a qualifying child adoption is allowed up to 21 days of leave in a calendar year to be used in connection with the adoption.

(2) For the purpose of this subsection, an adoption of a child by a member is a qualifying child adoption if the member is eligible for reimbursement of qualified adoption expenses for such adoption under section 1052 of this title.

(3) In the event that two members of the armed forces who are married to each other adopt a child in a qualifying child adoption, only one such member shall be allowed leave under this subsection.

(4) Leave under paragraph (1) is in addition to other leave provided under other provisions of this section.

(j)(1) Under regulations prescribed by the Secretary concerned, a married member of the armed forces on active duty whose wife gives birth to a child shall receive 10 days of leave to be used in connection with the birth of the child.

(2) Leave under paragraph (1) is in addition to other leave authorized under this section.

(k) A member of a reserve component who accumulates leave during a period of active service may carry over any leave so accumulated to the member's next period of active service, subject to the accumulation limits in subsections (b), (d), and (f), without regard to separation or release from active service if the separation or

release is under honorable conditions. The taking of leave carried over under this subsection shall be subject to the provisions of this section.

(Added Pub. L. 87-649, §3(1), Sept. 7, 1962, 76 Stat. 492; amended Pub. L. 89-151, §3, Aug. 28, 1965, 79 Stat. 586; Pub. L. 90-245, §1, Jan. 2, 1968, 81 Stat. 782; Pub. L. 92-596, §1, Oct. 27, 1972, 86 Stat. 1317; Pub. L. 96-579, §10, Dec. 23, 1980, 94 Stat. 3368; Pub. L. 97-81, §2(a), Nov. 20, 1981, 95 Stat. 1085; Pub. L. 98-94, title X, §1031(a), Sept. 24, 1983, 97 Stat. 671; Pub. L. 98-525, title XIV, §1405(18), Oct. 19, 1984, 98 Stat. 2622; Pub. L. 99-661, div. A, title V, §506(a), Nov. 14, 1986, 100 Stat. 3864; Pub. L. 102-190, div. A, title VI, §638, Dec. 5, 1991, 105 Stat. 1384; Pub. L. 108-136, div. A, title V, §542(a), Nov. 24, 2003, 117 Stat. 1478; Pub. L. 109-163, div. A, title V, §593(a), title VI, §682, Jan. 6, 2006, 119 Stat. 3280, 3321; Pub. L. 110-181, div. A, title V, §551(a)-(c), Jan. 28, 2008, 122 Stat. 117; Pub. L. 110-417, [div. A], title V, §532(a), Oct. 14, 2008, 122 Stat. 4449; Pub. L. 111-84, div. A, title V, §504, Oct. 28, 2009, 123 Stat. 2277; Pub. L. 111-383, div. A, title V, §516(a), Jan. 7, 2011, 124 Stat. 4213.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
701(a)	37:31a(a) (1st, 2d, and last sentences).	Aug. 9, 1946, ch. 931, §3(a) (less 4th, 5th, 6th, and 7th sentences).
701(b)	37:31a(b) (less proviso).	(b) (less proviso), 60 Stat. 963;
701(c)	37:31a(a) (8th sentence).	Sept. 23, 1950, ch. 998,
701(d)	37:31a(a) (3d sentence).	§1, 64 Stat. 978; Aug. 10, 1956, ch. 1041, §23, 70A, Stat. 630.
701(e)	37:31a(a) (9th sentence).	

In subsection (a), the 2d sentence of section 31a(a) of existing title 37 is omitted as inconsistent with subsection (b).

In subsection (b), the words “(other than a member on terminal leave on September 1, 1946)” and “at any time after August 31, 1946” are omitted as executed. The words “or regulation” are omitted, since a regulation cannot override a statute. The words “or have to his credit” are omitted as surplusage.

In subsections (b) and (c), the word “accrued” is omitted as covered by the word “accumulated”.

In subsection (e), the words “before or after August 9, 1946” and section 31a(a) (words after semicolon in 9th sentence) of existing title 37 are omitted as executed.

AMENDMENTS

2011—Subsec. (k). Pub. L. 111-383 added subsec. (k).
 2009—Subsec. (d). Pub. L. 111-84 substituted “September 30, 2013” for “December 31, 2010”.

2008—Subsec. (b). Pub. L. 110-181, §551(a)(1), substituted “subsections (d), (f), and (g)” for “subsection (f) and subsection (g)”.

Subsec. (d). Pub. L. 110-181, §551(a)(2), added subsec. (d).

Subsec. (f)(1)(A). Pub. L. 110-181, §551(b)(1), substituted “at the end of the fiscal year any accumulated leave in excess of the number of days of leave authorized to be accumulated under subsection (b) or (d)” for “any accumulated leave in excess of 60 days at the end of the fiscal year”.

Subsec. (f)(1)(C). Pub. L. 110-181, §551(b)(2), substituted “the days of leave authorized to be accumulated under subsection (b) or (d) that are” for “60 days” and inserted “(or fourth fiscal year, if accumulated while subsection (d) is in effect)” after “third fiscal year”.

Subsec. (f)(2). Pub. L. 110-181, §551(b)(3), substituted “except for this paragraph, would lose at the end of that fiscal year any accumulated leave in excess of the number of days of leave authorized to be accumulated under subsection (b) or (d), shall be permitted to retain

such leave until the end of the second fiscal year after the fiscal year in which such service on active duty is terminated” for “except for this paragraph—

“(A) would lose any accumulated leave in excess of 60 days at the end of that fiscal year, shall be permitted to retain such leave (not to exceed 90 days) until the end of the succeeding fiscal year; or

“(B) would lose any accumulated leave in excess of 60 days at the end of the succeeding fiscal year (other than by reason of subparagraph (A)), shall be permitted to retain such leave (not to exceed 90 days) until the end of the next succeeding fiscal year.”

Subsec. (g). Pub. L. 110-181, §551(c), substituted “limitations in subsections (b), (d), and (f)” for “60-day limitation in subsection (b) and the 90-day limitation in subsection (f)” in introductory provisions.

Subsec. (j). Pub. L. 110-417 added subsec. (j).

2006—Subsec. (f)(1)(B). Pub. L. 109-163, §682, amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “This subsection applies to a member who serves on active duty for a continuous period of at least 120 days—

“(i) in an area in which the member is entitled to special pay under section 310(a) of title 37; or

“(ii) while assigned to a deployable ship or mobile unit or to other duty comparable to that specified in clause (i) that is designated for the purpose of this subsection.”

Subsec. (i). Pub. L. 109-163, §593(a), added subsec. (i).
 2003—Subsec. (f)(1). Pub. L. 108-136 amended par. (1) generally. Prior to amendment, par. (1) read as follows:

“Under uniform regulations to be prescribed by the Secretary concerned, and approved by the Secretary of Defense, a member who serves on active duty for a continuous period of at least 120 days in an area in which he is entitled to special pay under section 310(a) of title 37 or a member assigned to a deployable ship, mobile unit, or to other duty designated for the purpose of this section, may accumulate 90 days’ leave. Except as provided in paragraph (2), leave in excess of 60 days accumulated under this subsection is lost unless it is used by the member before the end of the third fiscal year after the fiscal year in which the service terminated.”

1991—Subsec. (f). Pub. L. 102-190 designated existing provisions as par. (1), substituted “Except as provided in paragraph (2), leave” for “Leave” in last sentence, and added par. (2).

1986—Subsec. (h). Pub. L. 99-661 added subsec. (h).

1984—Subsec. (g). Pub. L. 98-525 substituted “60-day” for “sixty-day”, “90-day” for “ninety-day”, and “150” for “one hundred and fifty” in two places.

1983—Subsec. (f). Pub. L. 98-94 substituted “the end of the third fiscal year” for “the end of the fiscal year”.

1981—Subsec. (a)(2). Pub. L. 97-81, §2(a)(1), struck out “and” at end of par. (2).

Subsec. (a)(3). Pub. L. 97-81, §2(a)(2), substituted “; and” for a period at end of par. (3).

Subsec. (a)(4). Pub. L. 97-81, §2(a)(3), added par. (4).

1980—Subsec. (f). Pub. L. 96-579 authorized accumulation of leave for service as a member assigned to a deployable ship, mobile unit, or to other duty designated for the purpose of this section.

1972—Subsec. (b). Pub. L. 92-596, §1(1), inserted reference to subsec. (g).

Subsec. (g). Pub. L. 92-596, §1(2), added subsec. (g).

1968—Subsec. (b). Pub. L. 90-245, §1(1), inserted reference to subsec. (f).

Subsec. (f). Pub. L. 90-245, §1(2), added subsec. (f).

1965—Subsec. (d). Pub. L. 89-151 repealed subsec. (d) which provided that accumulated leave did not survive the death of a member during active service.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-417, [div. A], title V, §532(b), Oct. 14, 2008, 122 Stat. 4449, provided that: “The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Oct. 14, 2008] and applies only with respect to children born on or after that date.”

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-163, div. A, title V, §593(b), Jan. 6, 2006, 119 Stat. 3281, provided that: “Subsection (i) of section 701

of title 10, United States Code (as added by subsection (a)), shall take effect on January 1, 2006, and shall apply only with respect to adoptions completed on or after that date.”

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108-136, div. A, title V, §542(b), Nov. 24, 2003, 117 Stat. 1478, provided that: “The amendment made by subsection (a) [amending this section] shall take effect on October 1, 2003, or the date of the enactment of this Act [Nov. 24, 2003], whichever is later.”

EFFECTIVE DATE OF 1983 AMENDMENT

Section 1031(b)(1), (2) of Pub. L. 98-94 provided that: “(1) The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Sept. 24, 1983] and shall apply to leave accumulated under section 701(f) of such title [this title] after September 30, 1980.

“(2) A member of the Armed Forces who was authorized under section 701(f) of such title to accumulate 90 days’ leave during fiscal year 1980, 1981, or 1982 and lost any leave at the end of fiscal year 1981, 1982, or 1983, respectively, because of the provisions of the last sentence of such section, as in effect on the day before the date of the enactment of this Act, shall be credited with the amount of the leave lost and may retain leave in excess of 60 days until (A) September 30, 1984, or (B) the end of the third fiscal year after the year in which such leave was accumulated, whichever is later, but in no case may such a member accumulate leave in excess of 90 days.”

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-81 to take effect at the end of the 60-day period beginning on Nov. 20, 1981, and to apply to each member whose sentence by court-martial is approved on or after Jan. 20, 1982, under section 864 or 865 of this title by the officer exercising general court-martial jurisdiction under the provisions of such section as it existed on the day before the effective date of the Military Justice Act of 1983 (Pub. L. 98-209), or under section 860 of this title by the officer empowered to act on the sentence on or after that effective date, see section 7(a) and (b)(1) of Pub. L. 97-81, set out as an Effective Date note under section 706 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 3 of Pub. L. 92-596 provided that: “The first and second sections of this Act [amending this section and section 501 of Title 37, Pay and Allowances of the Uniformed Services] become effective as of February 28, 1961.”

EFFECTIVE DATE OF 1968 AMENDMENT

Section 2 of Pub. L. 90-245 provided that: “Section 1 of this Act [amending this section] applies only to active duty performed after January 1, 1968.”

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89-151 effective only in the case of members who die on or after Aug. 28, 1965, see section 4 of Pub. L. 89-151, set out as a note under section 501 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE

Section 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.

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.

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.

ACCUMULATION OF LEAVE AFTER SEPTEMBER 30, 1980, PURSUANT TO SUBSECTION (f)

Pub. L. 97-39, title VII, §702, Aug. 14, 1981, 95 Stat. 943, provided that: “The amendment made by section 10 of the Military Pay and Allowances Benefits Act of 1980 (Public Law 96-579; 94 Stat. 3368) [amending this section] shall apply with respect to the accumulation of leave by members of the Armed Forces who after September 30, 1979, are assigned (1) to a deployable ship or mobile unit, or (2) to other duty designated after the date of the enactment of this Act [Aug. 14, 1981] as duty qualifying for the purpose of section 701(f) of title 10, United States Code, as amended by that amendment.”

For savings provision extending period for which certain accrued leave under subsec. (f) of this section may be retained by members of Armed Forces, see section 1115 of Pub. L. 101-510, set out as a Treatment of Accumulated Leave note under section 501 of Title 37, Pay and Allowances of the Uniformed Services.

§ 702. Cadets and midshipmen

(a) GRADUATION LEAVE.—Graduates of the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, or the Coast Guard Academy who, upon graduation, are appointed in a component of an armed force, may, in the discretion of the Secretary concerned or his designated representative, be granted graduation leave of not more than 60 days. Leave granted under this subsection is in addition to any other leave and may not be deducted from or charged against other leave authorized by this chapter, and must be completed within three months of the date of graduation. Leave under this subsection may not be carried forward as credit beyond the date of reporting to the first permanent duty station or to a port of embarkation for permanent duty outside the United States or in Alaska or Hawaii.

(b) INVOLUNTARY LEAVE WITHOUT PAY FOR SUSPENDED ACADEMY CADETS AND MIDSHIPMEN.—(1) Under regulations prescribed under subsection (d), the Secretary concerned may place an academy cadet or midshipman on involuntary leave for any period during which the Superintendent of the Academy at which the cadet or midshipman is admitted has suspended the cadet or midshipman from duty at the Academy—

- (A) pending separation from the Academy;
- (B) pending return to the Academy to repeat an academic semester or year; or
- (C) for other good cause.

(2) A cadet or midshipman placed on involuntary leave under paragraph (1) is not entitled to any pay under section 203(c) of title 37 for the period of the leave.

(3) Return of an academy cadet or midshipman to a pay status at the Academy concerned from involuntary leave status under paragraph (1) does not restore any entitlement of the cadet or midshipman to pay for the period of the involuntary leave.

(c) INAPPLICABLE LEAVE PROVISIONS.—Sections 701, 703, and 704 of this title and subsection (a)