

§ 374. Critical skill training bonus

(a) The Secretary may provide a bonus, not to exceed \$20,000, to an enlisted member who completes training in a skill designated as critical, if at least four years of obligated active service remain on the member's enlistment at the time the training is completed. A bonus under this section may be paid in a single lump sum or in periodic installments.

(b) If an enlisted member voluntarily or because of misconduct does not complete the member's term of obligated active service, the Secretary may require the member to repay the United States, on a pro rata basis, all sums paid under this section. The Secretary may charge interest on the amount repaid at a rate, to be determined quarterly, equal to 150 percent of the average of the yields on the 91-day Treasury bills auctioned during the calendar quarter preceding the date on which the amount to be repaid is determined.

(Added Pub. L. 108-293, title II, §204(a), Aug. 9, 2004, 118 Stat. 1032.)

GENERAL PROVISIONS**§ 421. Retirement**

(a) Every commissioned officer, warrant officer, or enlisted member who is retired under any provisions of this title shall be retired with the permanent grade or rate held at the time of retirement, unless entitled to retire with a higher grade or rate under any provision of this title or any other law.

(b) Where an officer is entitled, under any provision of law, to retire with one grade higher than the grade in which serving at the time of retirement, the next higher grade in the case of captain shall be rear admiral (lower half), and the next higher grade in the case of commissioned warrant officer shall be lieutenant (junior grade).

(Aug. 4, 1949, ch. 393, 63 Stat. 524; Pub. L. 97-417, §2(10), Jan. 4, 1983, 96 Stat. 2086; Pub. L. 98-557, §15(a)(3)(A), Oct. 30, 1984, 98 Stat. 2865; Pub. L. 99-145, title V, §514(c)(1), Nov. 8, 1985, 99 Stat. 629; Pub. L. 99-348, title II, §205(b)(10), July 1, 1986, 100 Stat. 700.)

HISTORICAL AND REVISION NOTES

Subsection (a) is new in this form, but the provision contained therein is expressed or implied in numerous statutes relating to the retirement of military personnel.

A provision defining the next higher grade to that of commissioned warrant officer as lieutenant (junior grade), for purposes of retirement, was added.

The other provisions of said section are obsolete and are no longer needed.

Subsection (a) is new, but the provision contained in it is expressed or implied in numerous statutes relating to retirement of military personnel. It is believed desirable to include such a provision to prevent any misconstruction of retirement statutes, even though no change in existing law is intended on the point covered, either by other sections dealing with retirement or by this section.

Subsection (b) is a codification of the only provision of title 14, U.S.C., 1946 ed., §174, that it is desired to retain, and in addition designated the next higher grade for commissioned warrant officers as lieutenant (junior grade) because the pay of the commissioned warrant of-

icers is the same as for the grade of lieutenant (junior grade) and advancing such officers to the grade of ensign would in some aspects not appear to be a promotion. 81st Congress, House Report No. 557.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-348 substituted "rate" for "rating" in two places.

1985—Subsec. (b). Pub. L. 99-145 substituted "rear admiral (lower half)" for "commodore".

1984—Subsec. (a). Pub. L. 98-557 substituted reference to enlisted member for reference to enlisted man.

1983—Subsec. (b). Pub. L. 97-417 substituted "commodore" for "rear admiral".

§ 422. Status of recalled personnel

All retired personnel when recalled to active duty shall serve in the grade or rate in which they were serving at the time of retirement.

(Aug. 4, 1949, ch. 393, 63 Stat. 524; Pub. L. 99-348, title II, §205(b)(10), July 1, 1986, 100 Stat. 700.)

HISTORICAL AND REVISION NOTES

This provision is desirable because many enlisted men and low-ranking officers may now retire with higher grade which they previously held on a temporary basis. If recalled in the higher grades, they might not be capable of holding same at the time of recall. 81st Congress, House Report No. 557.

AMENDMENTS

1986—Pub. L. 99-348 substituted "rate" for "rating".

§ 423. Computation of retired pay

(a)(1) The retired pay of a member who first became a member of a uniformed service (as defined in section 101 of title 10) before September 8, 1980, is determined by multiplying—

(A) the sum of—

(i) the basic pay of the member's retired grade or rate, and

(ii) all permanent additions thereto including longevity credit to which the member was entitled at the time of retirement; by

(B) the retired pay multiplier determined under section 1409 of title 10 for the number of years of service that may be credited to the member under section 1405 of such title.

(2) In the case of an officer who served as Commandant of the Coast Guard, retired pay under paragraph (1) shall be computed at the highest rate of basic pay applicable to the officer while so serving.

(3) In the case of an enlisted member who served as the master chief petty officer of the Coast Guard, retired pay under paragraph (1) shall be computed at the highest rate of basic pay to which the member was entitled while so serving, if that basic pay is greater than the basic pay of the grade or rate to which the member is otherwise entitled at the time of retirement.

(4) In the case of an officer whose retired pay is computed on the pay of a grade for which basic pay is not based upon years of service, retired pay under paragraph (1) shall be computed on the basis of the number of years of service for which the officer would be entitled to credit in the computation of pay on the active list had the officer been serving in the grade of captain at the time of retirement.

(b) The retired pay of a member who first became a member of a uniformed service (as defined in section 101 of title 10) on or after September 8, 1980, is determined by multiplying—

- (1) the retired pay base determined under section 1407 of title 10; by
- (2) the retired pay multiplier determined under section 1409 of title 10 for the number of years of service that may be credited to the member under section 1405 of such title.

(c)(1) In computing for the purpose of subsection (a) or (b) the number of years of service that may be credited to a member under section 1405 of title 10—

- (A) each full month of service that is in addition to the number of full years of service creditable to the member shall be counted as $\frac{1}{12}$ of a year; and
- (B) any remaining fractional part of a month shall be disregarded.

(2) Retired pay computed under this section, if not a multiple of \$1, shall be rounded to the next lower multiple of \$1.

(Aug. 4, 1949, ch. 393, 63 Stat. 525; Aug. 3, 1950, ch. 536, §23, 64 Stat. 407; Pub. L. 85-422, §11(b), May 20, 1958, 72 Stat. 132; Pub. L. 88-132, §5(i), Oct. 2, 1963, 77 Stat. 214; Pub. L. 92-455, §2, Oct. 2, 1972, 86 Stat. 761; Pub. L. 96-342, title VIII, §813(f)(2), Sept. 8, 1980, 94 Stat. 1109; Pub. L. 97-295, §2(12), Oct. 12, 1982, 96 Stat. 1302; Pub. L. 98-94, title IX, §922(b), 923(d), Sept. 24, 1983, 97 Stat. 642, 643; Pub. L. 98-557, §15(a)(3)(A), Oct. 30, 1984, 98 Stat. 2865; Pub. L. 99-348, title II, §205(a), July 1, 1986, 100 Stat. 699.)

HISTORICAL AND REVISION NOTES

Based on title 14, U.S.C., 1946 ed., §§162a, 167, 175c, 185d (Apr. 12, 1902, ch. 501, §9, 32 Stat. 101; Jan. 12, 1938, ch. 3, §3, 52 Stat. 5; May 24, 1939, ch. 146, §5, 53 Stat. 756; Feb. 21, 1946, ch. 34, §10, 60 Stat. 29).

Section was enlarged to include computation of retired pay in all situations. It is in accord with the provisions of Navy statutes. 81st Congress, House Report No. 557.

AMENDMENTS

1986—Pub. L. 99-348 amended section generally. Prior to amendment, section provided that retired pay of a grade or rating would be computed at the rate of 2½ percent of the sum of the basic pay of that grade or rating and all permanent additions thereto including longevity credit, multiplied by the number of years of service credited, with certain exceptions, and that retired pay of an officer or member of the Coast Guard who first became a member of a uniformed service, as defined in section 1407(a)(2) of title 10, after Sept. 7, 1980, would be computed at the rate of 2½ percent of the monthly retired pay base computed under section 1407(f) of title 10, multiplied by the number of years of service credited, but that retired pay was not to be more than 75 percent of such monthly retired pay base.

1984—Subsec. (a). Pub. L. 98-557 substituted reference to enlisted member concerned for reference to enlisted man concerned.

1983—Subsec. (a). Pub. L. 98-94, §923(d), substituted “In computing the number of years of service by which the rate of 2½ percent is multiplied, each full month of service that is in addition to the number of full years of service creditable to a member is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded” for “A fractional year of six months or more shall be considered a full year in computing the number of years of service by which the rate of 2½ percent is multiplied”.

Pub. L. 98-94, §922(b), inserted “Retired pay, if not a multiple of \$1, shall be rounded to the next lower multiple of \$1.”

1982—Subsec. (b). Pub. L. 97-295 substituted “after September 7, 1980” for “on or after the date of the enactment of the Department of Defense Authorization Act, 1981”.

1980—Pub. L. 96-342 designated existing provisions as subsec. (a), substituted “Except as provided in subsection (b), the” for “The”, and added subsec. (b).

1972—Pub. L. 92-455 provided for computation of retired pay of an enlisted member serving as the master chief petty officer of the Coast Guard at the highest basic pay applicable to him while he so served, if that basic pay is greater than the basic pay of the grade or rating to which he was otherwise entitled at the time of retirement.

1963—Pub. L. 88-132 substituted “basic” for “active-duty” wherever appearing.

1958—Pub. L. 85-422 substituted “that may be credited to him under section 1405 of title 10” for “for which he was entitled to credit in the computation of his pay when last on active duty”.

1950—Act Aug. 3, 1950, struck out reference to computation of pay of retired personnel retired by reason of physical disability.

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 Title 10, Armed Forces.

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 Title 10.

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.

§ 424. Limitations on retirement and retired pay

(a) The provisions of any section of this title shall not be construed so as to prevent any member from being placed on the retired list with the highest grade or rate and the highest retired pay to which the member may be entitled under the provisions of any other section of this title or under any other law.

(b) In no case may the retired pay of a member exceed 75 percent of (1) the sum of the active-duty pay and all permanent additions thereto (including longevity credit to which the member is entitled) of the grade or rate on which the member's pay is computed, or (2) the retired pay base determined under section 1407 of title 10, as appropriate.

(Aug. 4, 1949, ch. 393, 63 Stat. 525; Pub. L. 98-557, §15(a)(3)(A), Oct. 30, 1984, 98 Stat. 2865; Pub. L. 99-348, title II, §205(b)(11), July 1, 1986, 100 Stat. 700.)

HISTORICAL AND REVISION NOTES

The two provisions of this section are considered desirable as safeguards to eliminate any possible misconstruction of situations relating to retirement and retired pay in respect to the two points covered. 81st Congress, House Report No. 557.

AMENDMENTS

1986—Pub. L. 99-348 amended section generally. Prior to amendment, section read as follows: “The provisions

of any section of this title shall not be construed so as to prevent any officer or enlisted member from being placed on the retired list with the highest grade or rating and the highest retired pay to which such officer or enlisted member may be entitled under the provisions of any other section of this title or under the provisions of any other law. In no case shall the retired pay of an officer or enlisted member exceed 75 percent of the sum of the active-duty pay and all permanent additions thereto, including longevity credit to which the officer or enlisted member concerned is entitled, of the grade or rating on which his pay is computed."

1984—Pub. L. 98-557 substituted reference to enlisted member for reference to enlisted man in four places.

§ 424a. Suspension of payment of retired pay of members who are absent from the United States to avoid prosecution

Under procedures prescribed by the Secretary, the Secretary may suspend the payment of the retired pay of a member or former member during periods in which the member willfully remains outside the United States to avoid criminal prosecution or civil liability. The procedures shall address the types of criminal offenses and civil proceedings for which the procedures may be used, including the offenses specified in section 8312 of title 5, and the manner by which a member, upon the return of the member to the United States, may obtain retired pay withheld during the member's absence.

(Added Pub. L. 107-295, title IV, §444(a), Nov. 25, 2002, 116 Stat. 2132.)

§ 425. Board for Correction of Military Records deadline

(a) DEADLINE FOR COMPLETION OF ACTION.—The Secretary shall complete processing of an application for correction of military records under section 1552 of title 10 by not later than 10 months after the date the Secretary receives the completed application.

(b) REMEDIES DEEMED EXHAUSTED.—Ten months after a complete application for correction of military records is received by the Board for Correction of Military Records of the Coast Guard, administrative remedies are deemed to have been exhausted, and—

(1) if the Board has rendered a recommended decision, its recommendation shall be final agency action and not subject to further review or approval within the department in which the Coast Guard is operating; or

(2) if the Board has not rendered a recommended decision, agency action is deemed to have been unreasonably delayed or withheld and the applicant is entitled to—

(A) an order under section 706(1) of title 5, directing final action be taken within 30 days from the date the order is entered; and

(B) from amounts appropriated to the department in which the Coast Guard is operating, the costs of obtaining the order, including a reasonable attorney's fee.

(Added Pub. L. 104-324, title II, §209(a), Oct. 19, 1996, 110 Stat. 3914.)

PRIOR PROVISIONS

A prior section 425, act Aug. 4, 1949, ch. 393, 63 Stat. 525, related to retiring boards, prior to repeal by act Aug. 3, 1950, ch. 536, §36, 64 Stat. 408. See section 1216 of Title 10, Armed Forces.

EFFECTIVE DATE

Pub. L. 104-324, §209(d), Oct. 19, 1996, 110 Stat. 3914, provided that: "This section [enacting this section and provisions set out as a note below] shall be effective on and after June 12, 1990."

SPECIAL RIGHT OF APPLICATIONS AFTER DEADLINE FOR COMPLETION OF BOARD ACTION

Pub. L. 104-324, §209(c), Oct. 19, 1996, 110 Stat. 3914, provided that: "This section [enacting this section and provisions set out as a note above] applies to any applicant who had an application filed with or pending before the Board or the Secretary of the department in which the Coast Guard is operating on or after June 12, 1990, who files with the Board for Correction of Military Records of the Coast Guard an application for relief under the amendment made by subsection (a) [enacting this section]. If a recommended decision was modified or reversed on review with final agency action occurring after expiration of the 10-month deadline under that amendment, an applicant who so requests shall have the order in the final decision vacated and receive the relief granted in the recommended decision if the Coast Guard has the legal authority to grant such relief. The recommended decision shall otherwise have no effect as precedent."

§ 426. Emergency leave retention authority

(a) IN GENERAL.—A duty assignment for an active duty member of the Coast Guard in support of a declaration of a major disaster or emergency by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) or in response to a spill of national significance shall be treated, for the purpose of section 701(f)(2) of title 10, as a duty assignment in support of a contingency operation.

(b) DEFINITIONS.—In this section:

(1) SPILL OF NATIONAL SIGNIFICANCE.—The term "spill of national significance" means a discharge of oil or a hazardous substance that is declared by the Commandant to be a spill of national significance.

(2) DISCHARGE.—The term "discharge" has the meaning given that term in section 1001 of the Oil Pollution Act of 1990 (33 U.S.C. 2701).

(Added Pub. L. 111-281, title II, §207(a), Oct. 15, 2010, 124 Stat. 2912.)

REFERENCES IN TEXT

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (a), is Pub. L. 93-288, May 22, 1974, 88 Stat. 143, which is classified principally to chapter 68 (§5121 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of Title 42 and Tables.

EFFECTIVE DATE

Pub. L. 111-281, title II, §207(c), Oct. 15, 2010, 124 Stat. 2912, provided that: "The amendments made by this section [enacting this section] shall be deemed to have been enacted on April 19, 2010."

SPECIAL PROVISIONS

[§ 431. Repealed. Pub. L. 99-640, § 10(a)(6)(A), Nov. 10, 1986, 100 Stat. 3549]

Section, acts Aug. 4, 1949, ch. 393, 63 Stat. 526; Aug. 3, 1950, ch. 536, §24, 64 Stat. 407, related to personnel of former Life Saving Service.

SAVINGS PROVISION

Section 10(a)(6)(A) of Pub. L. 99-640 provided in part that the repeal of sections 431, 433, 434, and 438 of this