

Pub. L. 103-335, title VIII, §8062, Sept. 30, 1994, 108 Stat. 2633.

Pub. L. 103-139, title VIII, §8073, Nov. 11, 1993, 107 Stat. 1457.

Pub. L. 102-396, title IX, §9106, Oct. 6, 1992, 106 Stat. 1927.

SEPARATION PAYMENTS; REDUCTIONS AND PROHIBITIONS

For provisions reducing, with certain exceptions, amounts received under this section by amounts received as bonus payments under chapter 5 of title 37 in case of members who separate from active duty or full-time National Guard duty in a military department and prohibiting such members from receiving Voluntary Separation Incentive program payments if rehired in DOD civilian position within 180 days of separation, see note set out under section 1174a of this title.

TAX TREATMENT OF INCENTIVE PAYMENT

Section 662(b) of Pub. L. 102-190 provided that: "Notwithstanding the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.] and any other provision of law, any voluntary separation incentive paid to a member of the Armed Forces under section 1175 of title 10, United States Code (as added by subsection (a)), shall be includable in gross income for federal tax purposes only for the taxable year in which such incentive is paid to the participant or beneficiary of the member."

§ 1175a. Voluntary separation pay and benefits

(a) IN GENERAL.—Under regulations approved by the Secretary of Defense, the Secretary concerned may provide voluntary separation pay and benefits in accordance with this section to eligible members of the armed forces who are voluntarily separated from active duty in the armed forces.

(b) ELIGIBLE MEMBERS.—(1) Except as provided in paragraph (2), a member of the armed forces is eligible for voluntary separation pay and benefits under this section if the member—

(A) has served on active duty for more than 6 years but not more than 20 years;

(B) has served at least 5 years of continuous active duty immediately preceding the date of the member's separation from active duty;

(C) has not been approved for payment of a voluntary separation incentive under section 1175 of this title;

(D) meets such other requirements as the Secretary concerned may prescribe, which may include requirements relating to—

(i) years of service, skill, rating, military specialty, or competitive category;

(ii) grade or rank;

(iii) remaining period of obligated service; or

(iv) any combination of these factors; and

(E) requests separation from active duty.

(2) The following members are not eligible for voluntary separation pay and benefits under this section:

(A) Members discharged with disability severance pay under section 1212 of this title.

(B) Members transferred to the temporary disability retired list under section 1202 or 1205 of this title.

(C) Members being evaluated for disability retirement under chapter 61 of this title.

(D) Members who have been previously discharged with voluntary separation pay.

(E) Members who are subject to pending disciplinary action or who are subject to admin-

istrative separation or mandatory discharge under any other provision of law or regulations.

(3) The Secretary concerned shall determine each year the number of members to be separated, and provided separation pay and benefits, under this section during the fiscal year beginning in such year.

(c) SEPARATION.—Each eligible member of the armed forces whose request for separation from active duty under subsection (b)(1)(E) is approved shall be separated from active duty.

(d) ADDITIONAL SERVICE IN READY RESERVE.—Of the number of members of the armed forces to be separated from active duty in a fiscal year, as determined under subsection (b)(3), the Secretary concerned shall determine a number of such members, in such skill and grade combinations as the Secretary concerned shall designate, who shall serve in the Ready Reserve, after separation from active duty, for a period of not less than three years, as a condition of the receipt of voluntary separation pay and benefits under this section.

(e) SEPARATION PAY AND BENEFITS.—(1) A member of the armed forces who is separated from active duty under subsection (c) shall be paid voluntary separation pay in accordance with subsection (g) in an amount determined by the Secretary concerned pursuant to subsection (f).

(2) A member who is not entitled to retired or retainer pay upon separation shall be entitled to the benefits and services provided under—

(A) chapter 58 of this title during the 180-day period beginning on the date the member is separated (notwithstanding any termination date for such benefits and services otherwise applicable under the provisions of such chapter); and

(B) sections 474 and 476 of title 37.

(f) COMPUTATION OF VOLUNTARY SEPARATION PAY.—The Secretary concerned shall specify the amount of voluntary separation pay that an individual or defined group of members of the armed forces may be paid under subsection (e)(1). No member may receive as voluntary separation pay an amount greater than four times the full amount of separation pay for a member of the same pay grade and years of service who is involuntarily separated under section 1174 of this title.

(g) PAYMENT OF VOLUNTARY SEPARATION PAY.—

(1) Voluntary separation pay under this section may be paid in a single lump sum.

(2) In the case of a member of the armed forces who, at the time of separation under subsection (c), has completed at least 15 years, but less than 20 years, of active service, voluntary separation pay may be paid, at the election of the Secretary concerned, in—

(A) a single lump sum;

(B) installments over a period not to exceed 10 years; or

(C) a combination of lump sum and such installments.

(h) COORDINATION WITH RETIRED OR RETAINER PAY AND DISABILITY COMPENSATION.—(1) A member who is paid voluntary separation pay under this section and who later qualifies for retired

or retainer pay under this title or title 14 shall have deducted from each payment of such retired or retainer pay an amount, in such schedule of monthly installments as the Secretary concerned shall specify, until the total amount deducted from such retired or retainer pay is equal to the total amount of voluntary separation pay so paid.

(2)(A) Except as provided in subparagraphs (B) and (C), a member who is paid voluntary separation pay under this section shall not be deprived, by reason of the member's receipt of such pay, of any disability compensation to which the member is entitled under the laws administered by the Secretary of Veterans Affairs, but there shall be deducted from such disability compensation an amount, in such schedule of monthly installments as the Secretary concerned shall specify, until the total amount deducted from such disability compensation is equal to the total amount of voluntary separation pay so paid, less the amount of Federal income tax withheld from such pay (such withholding being at the flat withholding rate for Federal income tax withholding, as in effect pursuant to regulations prescribed under chapter 24 of the Internal Revenue Code of 1986).

(B) No deduction shall be made from the disability compensation paid to an eligible disabled uniformed services retiree under section 1413, or to an eligible combat-related disabled uniformed services retiree under section 1413a of this title, who is paid voluntary separation pay under this section.

(C) No deduction may be made from the disability compensation paid to a member for the amount of voluntary separation pay received by the member because of an earlier discharge or release from a period of active duty if the disability which is the basis for that disability compensation was incurred or aggravated during a later period of active duty.

(3) The requirement under this subsection to repay voluntary separation pay following retirement from the armed forces does not apply to a member who was eligible to retire at the time the member applied and was accepted for voluntary separation pay and benefits under this section.

(4) The Secretary concerned may waive the requirement to repay voluntary separation pay under paragraphs (1) and (2) if the Secretary determines that recovery would be against equity and good conscience or would be contrary to the best interests of the United States.

(i) RETIREMENT DEFINED.—In this section, the term "retirement" includes a transfer to the Fleet Reserve or Fleet Marine Corps Reserve.

(j) REPAYMENT FOR MEMBERS WHO RETURN TO ACTIVE DUTY.—(1) Except as provided in paragraphs (2) and (3), a member of the armed forces who, after having received all or part of voluntary separation pay under this section, returns to active duty shall have deducted from each payment of basic pay, in such schedule of monthly installments as the Secretary concerned shall specify, until the total amount deducted from such basic pay equals the total amount of voluntary separation pay received.

(2) Members who are involuntarily recalled to active duty or full-time National Guard duty in

accordance with section 12301(a), 12301(b), 12301(g), 12302, 12303, or 12304 of this title or section 502(f)(1) of title 32 shall not be subject to this subsection.

(3) Members who are recalled or perform active duty or full-time National Guard duty in accordance with section 101(d)(1), 101(d)(2), 101(d)(5), 12301(d) (insofar as the period served is less than 180 consecutive days with the consent of the member), 12319, or 12503 of this title, or section 114, 115, or 502(f)(2) of title 32 (insofar as the period served is less than 180 consecutive days with consent of the member), shall not be subject to this subsection.

(4) The Secretary of Defense may waive, in whole or in part, repayment required under paragraph (1) if the Secretary determines that recovery would be against equity and good conscience or would be contrary to the best interests of the United States. The authority in this paragraph may be delegated only to the Undersecretary of Defense for Personnel and Readiness and the Principal Deputy Undersecretary of Defense for Personnel and Readiness.

(k) TERMINATION OF AUTHORITY.—(1) The authority to separate a member of the armed forces from active duty under subsection (c) shall terminate on December 31, 2018.

(2) A member who separates by the date specified in paragraph (1) may continue to be provided voluntary separation pay and benefits under this section until the member has received the entire amount of pay and benefits to which the member is entitled under this section.

(Added Pub. L. 109-163, div. A, title VI, § 643(a)(1), Jan. 6, 2006, 119 Stat. 3306; amended Pub. L. 109-364, div. A, title VI, § 623(a)(1), (2), Oct. 17, 2006, 120 Stat. 2256; Pub. L. 111-84, div. A, title X, § 1073(a)(14), Oct. 28, 2009, 123 Stat. 2473; Pub. L. 111-383, div. A, title X, § 1075(b)(18), Jan. 7, 2011, 124 Stat. 4370; Pub. L. 112-81, div. A, title V, § 526, title VI, § 631(f)(4)(A), Dec. 31, 2011, 125 Stat. 1401, 1465.)

REFERENCES IN TEXT

Chapter 24 of the Internal Revenue Code of 1986, referred to in subsec. (h)(2)(A), is classified generally to chapter 24 (§3401 et seq.) of Title 26, Internal Revenue Code.

CODIFICATION

Section 631(f)(4)(A) of Pub. L. 112-81, which directed that this title be amended by conforming any references to sections of title 37, United States Code, which were transferred and redesignated by "subsection (c)" of section 631, was executed by conforming the references to those sections as transferred and redesignated by subsection (d) of section 631, to reflect the probable intent of Congress.

AMENDMENTS

2011—Subsec. (e)(2)(B). Pub. L. 112-81, § 631(f)(4)(A), substituted "474" for "404" and "476" for "406". See Codification note above.

Subsec. (j)(3). Pub. L. 111-383 substituted "this title" for "title 10".

Subsec. (k)(1). Pub. L. 112-81, § 526, substituted "December 31, 2018" for "December 31, 2012".

2009—Subsec. (h)(1). Pub. L. 111-84 substituted "qualifies" for "qualities".

2006—Subsec. (f). Pub. L. 109-364, § 623(a)(1), substituted "four" for "two".

Subsec. (k)(1). Pub. L. 109-364, § 623(a)(2), substituted "2012" for "2008".

LIMITATION ON APPLICABILITY

Pub. L. 109-163, div. A, title VI, §643(b), Jan. 6, 2006, 119 Stat. 3310, which provided that, during the period beginning on Jan. 6, 2006, and ending on Dec. 31, 2008, members eligible for separation and for voluntary separation pay and benefits under this section would be limited to officers who had met the eligibility requirements of this section, but had not completed more than 12 years of active service as of the date of separation, was repealed by Pub. L. 109-364, div. A, title VI, §623(a)(3), Oct. 17, 2006, 120 Stat. 2256.

§ 1176. Enlisted members: retention after completion of 18 or more, but less than 20, years of service

(a) **REGULAR MEMBERS.**—A regular enlisted member who is selected to be involuntarily separated, or whose term of enlistment expires and who is denied reenlistment, and who on the date on which the member is to be discharged is within two years of qualifying for retirement under section 3914 or 8914 of this title, or of qualifying for transfer to the Fleet Reserve or Fleet Marine Corps Reserve under section 6330 of this title, shall be retained on active duty until the member is qualified for retirement or transfer to the Fleet Reserve or Fleet Marine Corps Reserve, as the case may be, unless the member is sooner retired or discharged under any other provision of law.

(b) **RESERVE MEMBERS IN ACTIVE STATUS.**—A reserve enlisted member serving in an active status who is selected to be involuntarily separated (other than for physical disability or for cause), or whose term of enlistment expires and who is denied reenlistment (other than for physical disability or for cause), and who on the date on which the member is to be discharged or transferred from an active status is entitled to be credited with at least 18 but less than 20 years of service computed under section 12732 of this title, may not be discharged, denied reenlistment, or transferred from an active status without the member's consent before the earlier of the following:

(1) If as of the date on which the member is to be discharged or transferred from an active status the member has at least 18, but less than 19, years of service computed under section 12732 of this title—

(A) the date on which the member is entitled to be credited with 20 years of service computed under section 12732 of this title; or

(B) the third anniversary of the date on which the member would otherwise be discharged or transferred from an active status.

(2) If as of the date on which the member is to be discharged or transferred from an active status the member has at least 19, but less than 20, years of service computed under section 12732 of this title—

(A) the date on which the member is entitled to be credited with 20 years of service computed under section 12732 of this title; or

(B) the second anniversary of the date on which the member would otherwise be discharged or transferred from an active status.

(Added Pub. L. 102-484, div. A, title V, §541(a), Oct. 23, 1992, 106 Stat. 2412; amended Pub. L. 103-160, div. A, title V, §562(a), Nov. 30, 1993, 107 Stat. 1669; Pub. L. 104-106, div. A, title XV, §1501(c)(12), Feb. 10, 1996, 110 Stat. 499.)

AMENDMENTS

1996—Subsec. (b). Pub. L. 104-106 substituted “section 12732” for “section 1332” wherever appearing.

1993—Subsec. (b). Pub. L. 103-160 added subsec. (b) and struck out heading and text of former subsec. (b) which provided that a reserve enlisted member serving on active duty who was selected to be involuntarily separated, or whose term of enlistment expired and who was denied reenlistment, and who on the date on which the member was to be discharged or released from active duty was entitled to be credited with at least 18 but less than 20 years of service computed under section 1332 of this title, could not be discharged or released from active duty without the member's consent before the earlier of certain dates.

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 1993 AMENDMENT

Section 562(b) of Pub. L. 103-160 provided that: “Subsection (b) of section 1176 of title 10, United States Code, as added by subsection (a), shall take effect as of October 23, 1992.”

§ 1177. Members diagnosed with or reasonably asserting post-traumatic stress disorder or traumatic brain injury: medical examination required before administrative separation

(a) **MEDICAL EXAMINATION REQUIRED.**—(1) Under regulations prescribed by the Secretary of Defense, the Secretary of a military department shall ensure that a member of the armed forces under the jurisdiction of the Secretary who has been deployed overseas in support of a contingency operation during the previous 24 months, and who is diagnosed by a physician, clinical psychologist, or psychiatrist as experiencing post-traumatic stress disorder or traumatic brain injury or who otherwise reasonably alleges, based on the service of the member while deployed, the influence of such a condition, receives a medical examination to evaluate a diagnosis of post-traumatic stress disorder or traumatic brain injury.

(2) A member covered by paragraph (1) shall not be administratively separated under conditions other than honorable until the results of the medical examination have been reviewed by appropriate authorities responsible for evaluating, reviewing, and approving the separation case, as determined by the Secretary concerned.

(3) In a case involving post-traumatic stress disorder, the medical examination shall be performed by a clinical psychologist or psychiatrist. In cases involving traumatic brain injury, the medical examination may be performed by a physician, clinical psychologist, psychiatrist, or other health care professional, as appropriate.

(b) **PURPOSE OF MEDICAL EXAMINATION.**—The medical examination required by subsection (a) shall assess whether the effects of post-traumatic stress disorder or traumatic brain injury constitute matters in extenuation that relate to the basis for administrative separation under conditions other than honorable or the overall characterization of service of the member as other than honorable.

(c) **INAPPLICABILITY TO PROCEEDINGS UNDER UNIFORM CODE OF MILITARY JUSTICE.**—The medi-