

“(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).”

RETIRED 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.

#### ACCRAUAL 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  $\frac{1}{2}$  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-