

§ 1169. Regular enlisted members: limitations on discharge

No regular enlisted member of an armed force may be discharged before his term of service expires, except—

- (1) as prescribed by the Secretary concerned;
- (2) by sentence of a general or special court martial; or
- (3) as otherwise provided by law.

(Added Pub. L. 90-235, §3(a)(1)(A), Jan. 2, 1968, 81 Stat. 757.)

§ 1170. Regular enlisted members: minority discharge

Upon application by the parents or guardian of a regular enlisted member of an armed force to the Secretary concerned within 90 days after the member's enlistment, the member shall be discharged for his own convenience, with the pay and form of discharge certificate to which his service entitles him, if—

- (1) there is evidence satisfactory to the Secretary concerned that the member is under eighteen years of age; and
- (2) the member enlisted without the written consent of his parent or guardian.

(Added Pub. L. 90-235, §3(a)(1)(A), Jan. 2, 1968, 81 Stat. 757.)

§ 1171. Regular enlisted members: early discharge

Under regulations prescribed by the Secretary concerned and approved by the President, any regular enlisted member of an armed force may be discharged within one year before the expiration of the term of his enlistment or extended enlistment. A discharge under this section does not affect any right, privilege, or benefit that a member would have had if he completed his enlistment or extended enlistment, except that the member is not entitled to pay and allowances for the period not served.

(Added Pub. L. 90-235, §3(a)(1)(A), Jan. 2, 1968, 81 Stat. 757; amended Pub. L. 112-81, div. A, title V, §525, Dec. 31, 2011, 125 Stat. 1401.)

AMENDMENTS

2011—Pub. L. 112-81 substituted “within one year” for “within three months”.

EX. ORD. NO. 11498. DELEGATION OF AUTHORITY TO SECRETARY OF DEFENSE

Ex. Ord. No. 11498, Dec. 1, 1969, 34 F.R. 19125, provided: By virtue of the authority vested in me by section 301 of title 3 of the United States Code, and as President of the United States, it is ordered that the Secretary of Defense is hereby designated and empowered to approve regulations issued by the Secretaries concerned under section 1171 of title 10, United States Code, effective January 2, 1968, which relate to the early discharge of regular enlisted members of the armed forces.

RICHARD NIXON.

§ 1172. Enlisted members: during war or emergency; discharge

A person enlisted under section 518 of this title may be discharged at any time by the President, or otherwise according to law.

(Added Pub. L. 90-235, §3(a)(1)(A), Jan. 2, 1968, 81 Stat. 757.)

§ 1173. Enlisted members: discharge for hardship

Under regulations prescribed by the Secretary concerned, a regular enlisted member of an armed force who has dependents may be discharged for hardship.

(Added Pub. L. 93-64, title I, §102, July 9, 1973, 87 Stat. 147.)

EFFECTIVE DATE

Section effective July 1, 1973, see section 206 of Pub. L. 93-64, set out as a note under section 401 of Title 37, Pay and Allowances of the Uniformed Services.

§ 1174. Separation pay upon involuntary discharge or release from active duty

(a) REGULAR OFFICERS.—(1) A regular officer who is discharged under chapter 36 of this title (except under section 630(1)(A) or 643 of such chapter) or under section 580 or 6383 of this title and who has completed six or more, but less than twenty, years of active service immediately before that discharge is entitled to separation pay computed under subsection (d)(1).

(2) A regular commissioned officer of the Army, Navy, Air Force, or Marine Corps who is discharged under section 630(1)(A), 643, or 1186 of this title, and a regular warrant officer of the Army, Navy, Air Force, or Marine Corps who is separated under section 1165 or 1166 of this title, who has completed six or more, but less than twenty, years of active service immediately before that discharge or separation is entitled to separation pay computed under subsection (d)(1) or (d)(2), as determined by the Secretary of the military department concerned, unless the Secretary concerned determines that the conditions under which the officer is discharged or separated do not warrant payment of such pay.

(3) Notwithstanding paragraphs (1) and (2), an officer discharged under any provision of chapter 36 of this title for twice failing of selection for promotion to the next higher grade is not entitled to separation pay under this section if either (or both) of those failures of selection for promotion was by the action of a selection board to which the officer submitted a request in writing not to be selected for promotion or who otherwise directly caused his nonselection through written communication to the Board under section 614(b) of this title.

(4) Notwithstanding paragraphs (1) and (2), an officer who is subject to discharge under any provision of chapter 36 of this title or under section 580 or 6383 of this title by reason of having twice failed of selection for promotion to the next higher grade is not entitled to separation pay under this section if that officer, after such second failure of selection for promotion, is selected for, and declines, continuation on active duty for a period that is equal to or more than the amount of service required to qualify the officer for retirement.

(b) REGULAR ENLISTED MEMBERS.—(1) A regular enlisted member of an armed force who is discharged involuntarily or as the result of the denial of the reenlistment of the member and who has completed six or more, but less than 20, years of active service immediately before that discharge is entitled to separation pay computed under subsection (d) unless the Secretary con-

cerned determines that the conditions under which the member is discharged do not warrant payment of such pay.

(2) Separation pay of an enlisted member shall be computed under paragraph (1) of subsection (d), except that such pay shall be computed under paragraph (2) of such subsection in the case of a member who is discharged under criteria prescribed by the Secretary of Defense.

(c) OTHER MEMBERS.—(1) Except as provided in paragraphs (2) and (3), a member of an armed force other than a regular member who is discharged or released from active duty and who has completed six or more, but fewer than 20, years of active service immediately before that discharge or release is entitled to separation pay computed under subsection (d)(1) or (d)(2), as determined by the Secretary concerned, if—

(A) the member's discharge or release from active duty is involuntary; or

(B) the member was not accepted for an additional tour of active duty for which he volunteered.

(2) If the Secretary concerned determines that the conditions under which a member described in paragraph (1) is discharged or separated do not warrant separation pay under this section, that member is not entitled to that pay.

(3) A member described in paragraph (1) who was not on the active-duty list when discharged or separated is not entitled to separation pay under this section unless such member had completed at least six years of continuous active duty immediately before such discharge or release. For purposes of this paragraph, a period of active duty is continuous if it is not interrupted by a break in service of more than 30 days.

(4) In the case of an officer who is subject to discharge or release from active duty under a law or regulation requiring that an officer who has failed of selection for promotion to the next higher grade for the second time be discharged or released from active duty and who, after such second failure of selection for promotion, is selected for, and declines, continuation on active duty—

(A) if the period of time for which the officer was selected for continuation on active duty is less than the amount of service that would be required to qualify the officer for retirement, the officer's discharge or release from active duty shall be considered to be involuntary for purposes of paragraph (1)(A); and

(B) if the period of time for which the officer was selected for continuation on active duty is equal to or more than the amount of service that would be required to qualify the officer for retirement, the officer's discharge or release from active duty shall not be considered to be involuntary for the purposes of paragraph (1)(A).

(d) AMOUNT OF SEPARATION PAY.—The amount of separation pay which may be paid to a member under this section is—

(1) 10 percent of the product of (A) his years of active service, and (B) 12 times the monthly basic pay to which he was entitled at the time of his discharge or release from active duty; or

(2) one-half of the amount computed under clause (1).

(e) REQUIREMENT FOR SERVICE IN READY RESERVE; EXCEPTIONS TO ELIGIBILITY.—(1)(A) As a condition of receiving separation pay under this section, a person otherwise eligible for that pay shall be required to enter into a written agreement with the Secretary concerned to serve in the Ready Reserve of a reserve component for a period of not less than three years following the person's discharge or release from active duty. If the person has a service obligation under section 651 of this title or under any other provision of law that is not completed at the time the person is discharged or released from active duty, the three-year obligation under this subsection shall begin on the day after the date on which the person completes the person's obligation under such section or other provision of law.

(B) Each person who enters into an agreement referred to in subparagraph (A) who is not already a Reserve of an armed force and who is qualified shall, upon such person's discharge or release from active duty, be enlisted or appointed, as appropriate, as a Reserve and be transferred to a reserve component.

(2) A member who is discharged or released from active duty is not eligible for separation pay under this section if the member—

(A) is discharged or released from active duty at his request;

(B) is discharged or released from active duty during an initial term of enlistment or an initial period of obligated service, unless the member is an officer discharged or released under the authority of section 647 of this title;

(C) is released from active duty for training; or

(D) upon discharge or release from active duty, is immediately eligible for retired or retainer pay based on his military service.

(f) COUNTING FRACTIONAL YEARS OF SERVICE.—In determining a member's years of active service for the purpose of computing separation pay under this section, each full month of service that is in addition to the number of full years of service creditable to the member is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded.

(g) COORDINATION WITH OTHER SEPARATION OR SEVERANCE PAY BENEFITS.—A period for which a member has previously received separation pay under this section or severance pay or readjustment pay under any other provision of law based on service in the armed forces may not be included in determining the years of service that may be counted in computing the separation pay of the member under this section.

(h) COORDINATION WITH RETIRED OR RETAINER PAY AND DISABILITY COMPENSATION.—(1) A member who has received separation pay under this section, or separation pay, severance pay, or readjustment pay under any other provision of law, based on service in the armed forces, 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 of Defense shall specify, taking into account the financial ability of the member to pay and avoiding the imposition of undue financial hardship on the mem-

ber and member's dependents, until the total amount deducted is equal to the total amount of separation pay, severance pay, and readjustment pay so paid.

(2) A member who has received separation pay under this section, or severance pay or readjustment pay under any other provision of law, based on service in the armed forces shall not be deprived, by reason of his receipt of such separation pay, severance pay, or readjustment pay, of any disability compensation to which he is entitled under the laws administered by the Department of Veterans Affairs, but there shall be deducted from that disability compensation an amount equal to the total amount of separation pay, severance pay, and readjustment pay received, 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). Notwithstanding the preceding sentence, no deduction may be made from disability compensation for the amount of any separation pay, severance pay, or readjustment pay received 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.

(i) SPECIAL RULE FOR MEMBERS RECEIVING SOLE SURVIVORSHIP DISCHARGE.—(1) A member of the armed forces who receives a sole survivorship discharge shall be entitled to separation pay under this section even though the member has completed less than six years of active service immediately before that discharge. Subsection (e) shall not apply to a member who receives a sole survivorship discharge.

(2) The amount of the separation pay to be paid to a member pursuant to this subsection shall be based on the years of active service actually completed by the member before the member's sole survivorship discharge.

(3) In this subsection, the term "sole survivorship discharge" means the separation of a member from the armed forces, at the request of the member, pursuant to the Department of Defense policy permitting the early separation of a member who is the only surviving child in a family in which—

(A) the father or mother or one or more siblings—

- (i) served in the armed forces; and
- (ii) was killed, died as a result of wounds, accident, or disease, is in a captured or missing in action status, or is permanently 100 percent disabled or hospitalized on a continuing basis (and is not employed gainfully because of the disability or hospitalization); and

(B) the death, status, or disability did not result from the intentional misconduct or willful neglect of the parent or sibling and was not incurred during a period of unauthorized absence.

(j) REGULATIONS; CREDITING OF OTHER COMMISSIONED SERVICE.—(1) The Secretary of Defense shall prescribe regulations, which shall be uniform for the Army, Navy, Air Force, and Marine Corps, for the administration of this section.

(2) Active commissioned service in the National Oceanic and Atmospheric Administration or the Public Health Service shall be credited as active service in the armed forces for the purposes of this section.

(Added Pub. L. 96-513, title I, §109(c), Dec. 12, 1980, 94 Stat. 2870; amended Pub. L. 97-22, §10(b)(10)(A), July 10, 1981, 95 Stat. 137; Pub. L. 98-94, title IX, §§911(a), (b), 923(b), title X, §1007(c)(2), Sept. 24, 1983, 97 Stat. 639, 640, 643, 662; Pub. L. 98-498, title III, §320(a)(2), Oct. 19, 1984, 98 Stat. 2308; Pub. L. 101-189, div. A, title XVI, §1621(a)(1), Nov. 29, 1989, 103 Stat. 1602; Pub. L. 101-510, div. A, title V, §501(a)-(d), (g), (h), Nov. 5, 1990, 104 Stat. 1549-1551; Pub. L. 102-190, div. A, title XI, §1131(6), Dec. 5, 1991, 105 Stat. 1506; Pub. L. 103-160, div. A, title V, §501(a), Nov. 30, 1993, 107 Stat. 1644; Pub. L. 103-337, div. A, title V, §560(c), Oct. 5, 1994, 108 Stat. 2778; Pub. L. 104-201, div. A, title VI, §653(a), Sept. 23, 1996, 110 Stat. 2583; Pub. L. 105-85, div. A, title X, §1073(a)(22), Nov. 18, 1997, 111 Stat. 1901; Pub. L. 105-261, div. A, title V, §502(a), Oct. 17, 1998, 112 Stat. 2003; Pub. L. 106-398, §1 [[div. A], title V, §508(a), (b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-107; Pub. L. 108-375, div. A, title V, §501(c)(2), Oct. 28, 2004, 118 Stat. 1874; Pub. L. 110-317, §3, Aug. 29, 2008, 122 Stat. 3527; Pub. L. 111-32, title III, §318(a), June 24, 2009, 123 Stat. 1873; Pub. L. 111-383, div. A, title X, §1075(b)(17), Jan. 7, 2011, 124 Stat. 4370.)

REFERENCES IN TEXT

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

AMENDMENTS

2011—Subsec. (i). Pub. L. 111-383 substituted "armed forces" for "Armed Forces" wherever appearing.

2009—Subsec. (h)(1). Pub. L. 111-32 amended par. (1) generally. Prior to amendment, par. (1) read as follows: "A member who has received separation pay under this section, or separation pay, severance pay, or readjustment pay under any other provision of law, based on service in the armed forces, 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 so much of such pay as is based on the service for which he received separation pay under this section or separation pay, severance pay, or readjustment pay under any other provision of law until the total amount deducted is equal to the total amount of separation pay, severance pay, and readjustment pay received."

2008—Subsecs. (i), (j). Pub. L. 110-317 added subsec. (i) and redesignated former subsec. (i) as (j).

2004—Subsec. (e)(2)(B). Pub. L. 108-375 inserted " , unless the member is an officer discharged or released under the authority of section 647 of this title" after "obligated service".

2000—Subsec. (a)(4). Pub. L. 106-398, §1 [[div. A], title V, §508(a)], added par. (4).

Subsec. (c)(4). Pub. L. 106-398, §1 [[div. A], title V, §508(b)], added par. (4).

1998—Subsec. (a)(3). Pub. L. 105-261 added par. (3).

1997—Subsec. (a)(1). Pub. L. 105-85 struck out " , 1177," before "or 6383 of this title".

1996—Subsec. (h)(2). Pub. L. 104-201 inserted " , 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)" before period at end of first sentence.

1994—Subsec. (a)(1). Pub. L. 103-337 inserted “, 1177,” after “section 580”.

1993—Subsec. (a)(1). Pub. L. 103-160 substituted “six” for “five”.

1991—Subsec. (a)(1). Pub. L. 102-190 substituted “section 580” for “section 564”.

1990—Subsec. (a). Pub. L. 101-510, §501(a)(1), inserted heading.

Subsec. (a)(1). Pub. L. 101-510, §501(g)(1), substituted “or under section 564 or 6383 of this title” for “, under section 564 or 6383 of this title, or under section 603 or 604 of the Defense Officer Personnel Management Act” and struck out “or release” after “that discharge”.

Subsec. (a)(2). Pub. L. 101-510, §501(b)(1), substituted “six or more” for “five or more”.

Pub. L. 101-510, §501(a)(2), redesignated subsec. (b) as subsec. (a)(2).

Subsec. (b). Pub. L. 101-510, §501(a)(3), added subsec. (b). Former subsec. (b) redesignated (a)(2).

Subsec. (c). Pub. L. 101-510, §501(h)(1), inserted heading.

Subsec. (c)(1). Pub. L. 101-510, §501(g)(2), struck out “after September 14, 1981,” after “member who” in introductory provisions.

Pub. L. 101-510, §501(b)(1), substituted “six or more” for “five or more” in introductory provisions.

Subsec. (c)(3). Pub. L. 101-510, §501(b)(2), substituted “at least six years” for “at least five years”.

Subsec. (d). Pub. L. 101-510, §501(h)(2), inserted heading.

Subsec. (d)(1). Pub. L. 101-510, §501(c)(1)(A), struck out “or \$30,000, whichever is less” after “active duty”.

Subsec. (d)(2). Pub. L. 101-510, §501(c)(1)(B), struck out “, but in no event more than \$15,000” after “under clause (1)”.

Subsec. (e). Pub. L. 101-510, §501(d), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: “A member who—

“(1) is discharged or released from active duty at his request;

“(2) is released from active duty for training; or

“(3) upon discharge or release from active duty, is immediately eligible for retired or retainer pay based on his military service;

is not eligible for separation pay under this section.”

Subsec. (f). Pub. L. 101-510, §501(h)(3), inserted heading.

Subsec. (g). Pub. L. 101-510, §501(h)(4), inserted heading.

Pub. L. 101-510, §501(c)(2), struck out “(1)” after “(g)” and struck out par. (2) which read as follows: “The total amount that a member may receive in separation pay under this section and severance pay and readjustment pay under any other provision of law, other than section 1212 of this title, based on service in the armed forces may not exceed \$30,000.”

Subsec. (h). Pub. L. 101-510, §501(h)(5), inserted heading.

Subsec. (i). Pub. L. 101-510, §501(h)(6), inserted heading.

1989—Subsec. (h)(2). Pub. L. 101-189 substituted “Department of Veterans Affairs” for “Veterans’ Administration”.

1984—Subsec. (h)(1). Pub. L. 98-498 substituted “separation pay, severance pay,” for “severance pay” before “or readjustment pay” in two places.

1983—Subsec. (c). Pub. L. 98-94, §911(a), amended subsec. (c) generally, designating existing provisions as par. (1) and existing pars. (1) and (2) as subpars. (A) and (B), respectively, and in provisions preceding subpar. (A) substituted “Except as provided in paragraphs (2) and (3), a member” for “A member” and “fewer than 20, years of active service immediately before that discharge or release is entitled to separation pay” for “less than twenty, years of active service immediately before that discharge or release is entitled, unless the Secretary concerned determines that the conditions under which the member is discharged or separated do not warrant such pay, to separation pay”, and added pars. (2) and (3).

Subsec. (f). Pub. L. 98-94, §923(b), amended subsec. (f) generally, substituting “each full month of service that is in addition to the number of full years of service creditable to the member is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded” for “a part of a year that is six months or more is counted as a whole year and a part of a year that is less than six months is disregarded”.

Subsec. (g)(2). Pub. L. 98-94, §911(b), inserted “, other than section 1212 of this title,” after “any other provision of law”.

Subsec. (i). Pub. L. 98-94, §1007(c)(2), designated existing provisions as par. (1) and added par. (2).

1981—Subsec. (c). Pub. L. 97-22 substituted “after September 14, 1981,” for “on or after the effective date of the Defense Officer Personnel Management Act”.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111-32, title III, §318(c), June 24, 2009, 123 Stat. 1874, provided that: “The amendments made by this section [amending this section and section 1175 of this title] shall apply to any repayments of separation pay, severance pay, readjustment pay, special separation benefit, or voluntary separation incentive, that occur on or after the date of enactment [June 24, 2009], including any ongoing repayment actions that were initiated prior to this amendment.”

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-317 applicable with respect to any sole survivorship discharge granted after Sept. 11, 2001, see section 10 of Pub. L. 110-317, set out as a note under section 2108 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-375 effective on the first day of the first month beginning more than 180 days after Oct. 28, 2004, see section 501(g) of Pub. L. 108-375, set out as a note under section 531 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-398, §1 [[div. A], title V, §508(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A-107, provided that: “Paragraph (4) of section 1174(a) of title 10, United States Code, as added by subsection (a), and paragraph (4) of section 1174(c) of such title, as added by subsection (b), shall apply with respect to any offer of selective continuation on active duty that is declined on or after the date of the enactment of this Act [Oct. 30, 2000].”

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-261 applicable with respect to selection boards convened under section 611(a) of this title on or after Oct. 17, 1998, see section 502(c) of Pub. L. 105-261, set out as a note under section 617 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 105-178, title VIII, §8208, June 9, 1998, 112 Stat. 495, provided that: “The amendment made by section 653 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104-201; 110 Stat. 2583) to subsection (h)(2) of section 1174 of title 10, United States Code, shall apply to any payment of separation pay under the special separation benefits program under section 1174a of that title that was made during the period beginning on December 5, 1991, and ending on September 30, 1996.”

Pub. L. 104-201, div. A, title VI, §653(b), Sept. 23, 1996, 110 Stat. 2583, provided that: “The amendments made by this section [amending this section] shall take effect on October 1, 1996, and shall apply to payments of separation pay, severance pay, or readjustment pay that are made after September 30, 1996.”

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103-160, div. A, title V, §501(b), Nov. 30, 1993, 107 Stat. 1644, provided that:

“(1) Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply with respect to any regular officer who is discharged after the date of the enactment of this Act [Nov. 30, 1993].

“(2) The amendment made by subsection (a) shall not apply with respect to an officer who on the date of the enactment of this Act has five or more, but less than six, years of active service in the Armed Forces.”

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.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-510, div. A, title V, §501(e), Nov. 5, 1990, 104 Stat. 1550, provided that:

“(1) Except as provided in paragraph (2), subsection (b) of section 1174 of title 10, United States Code, as added by subsection (a), and the amendments made by subsections (b), (c), and (d) [amending this section] shall apply with respect to a member of the Armed Forces who is discharged, or released from active duty, after the date of the enactment of this Act [Nov. 5, 1990].

“(2) The amendments made by subsection (b) [amending this section] shall not apply in the case of a member (other than a regular enlisted member) of the Armed Forces who (A) is serving on active duty on the date of the enactment of this Act, (B) is discharged, or released from active duty, after that date; and (C) on that date has five or more, but less than six, years of active service in the Armed Forces.”

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 98-94, title IX, §911(c), Sept. 24, 1983, 97 Stat. 640, provided that: “The amendments made by this section [amending this section] shall take effect on October 1, 1983.”

Pub. L. 98-94, title IX, §923(g), Sept. 24, 1983, 97 Stat. 644, provided that: “The amendments made by this section [amending this section and sections 1401, 1402, 1402a, 3991, 3992, 6151, 6328, 6330, 6404, 8991, and 8992 of this title, section 423 of Title 14, Coast Guard, section 8530 of Title 33, Navigation and Navigable Waters, and section 212 of Title 42, The Public Health and Welfare] shall apply with respect to (1) the computation of retired or retainer pay of any individual who becomes entitled to that pay after September 30, 1983, and (2) the recomputation of retired pay under section 1402, 1402a, 3992, or 8992 of title 10, United States Code, of any individual who after September 30, 1983, becomes entitled to recompute retired pay under any such section.”

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97-22, §10(b), July 10, 1981, 95 Stat. 137, provided that the amendment made by that section is effective Sept. 15, 1981.

EFFECTIVE DATE

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

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.

§ 1174a. Special separation benefits programs

(a) REQUIREMENT FOR PROGRAMS.—The Secretary concerned shall carry out a special separation benefits program under this section. An eligible member of the armed forces may request separation under the program. The request shall be subject to the approval of the Secretary.

(b) BENEFITS.—Upon the approval of the request of an eligible member, the member shall—

(1) be released from active duty or full-time National Guard duty or discharged, as the case may be; and

(2) be entitled to—

(A) separation pay equal to 15 percent of the product of (i) the member's years of active service, and (ii) 12 times the monthly basic pay to which the member is entitled at the time of his discharge or release from active duty; and

(B) the same benefits and services as are provided under chapter 58 of this title, sections 474 and 476 of title 37, and section 503(c) of the National Defense Authorization Act for Fiscal Year 1991 (104 Stat. 1558; 37 U.S.C. 476 note) for members of the armed forces who are involuntarily separated within the meaning of section 1141 of this title.

(c) ELIGIBILITY.—Subject to subsections (d) and (e), a member of an armed force is eligible for voluntary separation under a program established for that armed force pursuant to this section if the member—

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

(2) has served on active duty or full-time National Guard duty or any combination of active duty and full-time National Guard duty for more than 6 years;

(3) has served on active duty or full-time National Guard duty or any combination of active duty and full-time National Guard duty for not more than 20 years;

(4) has served at least 5 years of continuous active duty or full-time National Guard duty or any combination of active duty and full-time National Guard duty immediately preceding the date of the member's separation from active duty; and

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

(A) years of service;

(B) skill or rating;

(C) grade or rank; and

(D) remaining period of obligated service.

(d) PROGRAM APPLICABILITY.—The Secretary concerned may provide for the program under this section to apply to any of the following members:

(1) A regular officer or warrant officer of an armed force.

(2) A regular enlisted member of an armed force.

(3) A member of an armed force other than a regular member.

(e) APPLICABILITY SUBJECT TO NEEDS OF THE SERVICE.—(1) Subject to paragraphs (2) and (3),