

by subsections (a), (b), and (c) [amending this section] shall apply to payments under section 1413a of title 10, United States Code, for months beginning on or after January 1, 2004. The amendment made by subsection (d) [amending this section] shall take effect on January 1, 2004.”

EFFECTIVE DATE

Pub. L. 107-314, div. A, title VI, § 636(a)(2), Dec. 2, 2002, 116 Stat. 2576, provided that: “Section 1413a of title 10, United States Code, as added by paragraph (1), shall take effect not later than 180 days after the date of the enactment of this Act [Dec. 2, 2002].”

§ 1414. Members eligible for retired pay who are also eligible for veterans’ disability compensation for disabilities rated 50 percent or higher; concurrent payment of retired pay and veterans’ disability compensation

(a) PAYMENT OF BOTH RETIRED PAY AND COMPENSATION.—

(1) IN GENERAL.—Subject to subsection (b), a member or former member of the uniformed services who is entitled for any month to retired pay and who is also entitled for that month to veterans’ disability compensation for a qualifying service-connected disability (hereinafter in this section referred to as a “qualified retiree”) is entitled to be paid both for that month without regard to sections 5304 and 5305 of title 38. During the period beginning on January 1, 2004, and ending on December 31, 2013, payment of retired pay to such a qualified retiree is subject to subsection (c), except that payment of retired pay is subject to subsection (c) only during the period beginning on January 1, 2004, and ending on December 31, 2004, in the case of the following:

(A) A qualified retiree receiving veterans’ disability compensation for a disability rated as 100 percent.

(B) A qualified retiree receiving veterans’ disability compensation at the rate payable for a 100 percent disability by reason of a determination of individual unemployability.

(2) QUALIFYING SERVICE-CONNECTED DISABILITY.—In this section, the term “qualifying service-connected disability” means a service-connected disability or combination of service-connected disabilities that is rated as not less than 50 percent disabling by the Secretary of Veterans Affairs.

(b) SPECIAL RULES FOR CHAPTER 61 DISABILITY RETIREES.—

(1) CAREER RETIREES.—The retired pay of a member retired under chapter 61 of this title with 20 years or more of service otherwise creditable under section 1405 of this title, or at least 20 years of service computed under section 12732 of this title, at the time of the member’s retirement is subject to reduction under sections 5304 and 5305 of title 38, but only to the extent that the amount of the member’s retired pay under chapter 61 of this title exceeds the amount of retired pay to which the member would have been entitled under any other provision of law based upon the member’s service in the uniformed services if the member had not been retired under chapter 61 of this title.

(2) DISABILITY RETIREES WITH LESS THAN 20 YEARS OF SERVICE.—Subsection (a) does not

apply to a member retired under chapter 61 of this title with less than 20 years of service otherwise creditable under section 1405 of this title, or with less than 20 years of service computed under section 12732 of this title, at the time of the member’s retirement.

(c) PHASE-IN OF FULL CONCURRENT RECEIPT.—During the period beginning on January 1, 2004, and ending on December 31, 2013, retired pay payable to a qualified retiree that pursuant to the second sentence of subsection (a)(1) is subject to this subsection shall be determined as follows:

(1) CALENDAR YEAR 2004.—For a month during 2004, the amount of retired pay payable to a qualified retiree is the amount (if any) of retired pay in excess of the current baseline offset plus the following:

(A) For a month for which the retiree receives veterans’ disability compensation for a disability rated as total, \$750.

(B) For a month for which the retiree receives veterans’ disability compensation for a disability rated as 90 percent, \$500.

(C) For a month for which the retiree receives veterans’ disability compensation for a disability rated as 80 percent, \$350.

(D) For a month for which the retiree receives veterans’ disability compensation for a disability rated as 70 percent, \$250.

(E) For a month for which the retiree receives veterans’ disability compensation for a disability rated as 60 percent, \$125.

(F) For a month for which the retiree receives veterans’ disability compensation for a disability rated as 50 percent, \$100.

(2) CALENDAR YEAR 2005.—For a month during 2005, the amount of retired pay payable to a qualified retiree is the sum of—

(A) the amount specified in paragraph (1) for that qualified retiree; and

(B) 10 percent of the difference between (i) the current baseline offset, and (ii) the amount specified in paragraph (1) for that member’s disability.

(3) CALENDAR YEAR 2006.—For a month during 2006, the amount of retired pay payable to a qualified retiree is the sum of—

(A) the amount determined under paragraph (2) for that qualified retiree; and

(B) 20 percent of the difference between (i) the current baseline offset, and (ii) the amount determined under paragraph (2) for that qualified retiree.

(4) CALENDAR YEAR 2007.—For a month during 2007, the amount of retired pay payable to a qualified retiree is the sum of—

(A) the amount determined under paragraph (3) for that qualified retiree; and

(B) 30 percent of the difference between (i) the current baseline offset, and (ii) the amount determined under paragraph (3) for that qualified retiree.

(5) CALENDAR YEAR 2008.—For a month during 2008, the amount of retired pay payable to a qualified retiree is the sum of—

(A) the amount determined under paragraph (4) for that qualified retiree; and

(B) 40 percent of the difference between (i) the current baseline offset, and (ii) the

amount determined under paragraph (4) for that qualified retiree.

(6) CALENDAR YEAR 2009.—For a month during 2009, the amount of retired pay payable to a qualified retiree is the sum of—

(A) the amount determined under paragraph (5) for that qualified retiree; and

(B) 50 percent of the difference between (i) the current baseline offset, and (ii) the amount determined under paragraph (5) for that qualified retiree.

(7) CALENDAR YEAR 2010.—For a month during 2010, the amount of retired pay payable to a qualified retiree is the sum of—

(A) the amount determined under paragraph (6) for that qualified retiree; and

(B) 60 percent of the difference between (i) the current baseline offset, and (ii) the amount determined under paragraph (6) for that qualified retiree.

(8) CALENDAR YEAR 2011.—For a month during 2011, the amount of retired pay payable to a qualified retiree is the sum of—

(A) the amount determined under paragraph (7) for that qualified retiree; and

(B) 70 percent of the difference between (i) the current baseline offset, and (ii) the amount determined under paragraph (7) for that qualified retiree.

(9) CALENDAR YEAR 2012.—For a month during 2012, the amount of retired pay payable to a qualified retiree is the sum of—

(A) the amount determined under paragraph (8) for that qualified retiree; and

(B) 80 percent of the difference between (i) the current baseline offset, and (ii) the amount determined under paragraph (8) for that qualified retiree.

(10) CALENDAR YEAR 2013.—For a month during 2013, the amount of retired pay payable to a qualified retiree is the sum of—

(A) the amount determined under paragraph (9) for that qualified retiree; and

(B) 90 percent of the difference between (i) the current baseline offset, and (ii) the amount determined under paragraph (9) for that qualified retiree.

(11) GENERAL LIMITATION.—Retired pay determined under this subsection for a qualified retiree, if greater than the amount of retired pay otherwise applicable to that qualified retiree, shall be reduced to the amount of retired pay otherwise applicable to that qualified retiree.

(d) COORDINATION WITH COMBAT-RELATED SPECIAL COMPENSATION PROGRAM.—

(1) IN GENERAL.—A person who is a qualified retiree under this section and is also an eligible combat-related disabled uniformed services retiree under section 1413a of this title may receive special compensation in accordance with that section or retired pay in accordance with this section, but not both.

(2) ANNUAL OPEN SEASON.—The Secretary concerned shall provide for an annual period (referred to as an “open season”) during which a person described in paragraph (1) shall have the right to make an election to change from

receipt of special compensation in accordance with section 1413a of this title to receipt of retired pay in accordance with this section, or the reverse, as the case may be. Any such election shall be made under regulations prescribed by the Secretary concerned. Such regulations shall provide for the form and manner for making such an election and shall provide for the date as of when such an election shall become effective. In the case of the Secretary of a military department, such regulations shall be subject to approval by the Secretary of Defense.

(e) DEFINITIONS.—In this section:

(1) RETIRED PAY.—The term “retired pay” includes retainer pay, emergency officers’ retirement pay, and naval pension.

(2) VETERANS’ DISABILITY COMPENSATION.—The term “veterans’ disability compensation” has the meaning given the term “compensation” in section 101(13) of title 38.

(3) DISABILITY RATED AS TOTAL.—The term “disability rated as total” means—

(A) a disability, or combination of disabilities, that is rated as total under the standard schedule of rating disabilities in use by the Department of Veterans Affairs; or

(B) a disability, or combination of disabilities, for which the scheduled rating is less than total but for which a rating of total is assigned by reason of inability of the disabled person concerned to secure or follow a substantially gainful occupation as a result of disabilities for which veterans’ disability compensation may be paid.

(4) CURRENT BASELINE OFFSET.—

(A) IN GENERAL.—The term “current baseline offset” for any qualified retiree means the amount for any month that is the lesser of—

(i) the amount of the applicable monthly retired pay of the qualified retiree for that month; and

(ii) the amount of monthly veterans’ disability compensation to which the qualified retiree is entitled for that month.

(B) APPLICABLE RETIRED PAY.—In subparagraph (A), the term “applicable retired pay” for a qualified retiree means the amount of monthly retired pay to which the qualified retiree is entitled, determined without regard to this section or sections 5304 and 5305 of title 38, except that in the case of such a retiree who was retired under chapter 61 of this title, such amount is the amount of retired pay to which the member would have been entitled under any other provision of law based upon the member’s service in the uniformed services if the member had not been retired under chapter 61 of this title.

(Added Pub. L. 107-107, div. A, title VI, §641(a), Dec. 28, 2001, 115 Stat. 1149; amended Pub. L. 108-136, div. A, title VI, §641(a), Nov. 24, 2003, 117 Stat. 1511; Pub. L. 108-375, div. A, title VI, §642, Oct. 28, 2004, 118 Stat. 1957; Pub. L. 109-163, div. A, title VI, §663, Jan. 6, 2006, 119 Stat. 3316; Pub. L. 110-181, div. A, title VI, §642(a), Jan. 28, 2008, 122 Stat. 157; Pub. L. 113-76, div. C, title X, §10001(b)(2), Jan. 17, 2014, 128 Stat. 151; Pub. L.

114-92, div. A, title VI, § 631(d)(2), Nov. 25, 2015, 129 Stat. 845.)

AMENDMENTS

2015—Subsec. (b)(1). Pub. L. 114-92, § 631(d)(2), which was approved Nov. 25, 2015, provided that the amendment made by Pub. L. 113-76, § 10001(b)(2), which was effective Dec. 1, 2015, would not take effect. See 2014 Amendment note below.

2014—Subsec. (b)(1). Pub. L. 113-76, § 10001(b)(2), which directed insertion of “(but without the application of section 1401a(b)(4) of this title)” after “under any other provision of law”, did not take effect pursuant to Pub. L. 114-92, § 631(d)(2). See 2015 Amendment note above.

2008—Subsec. (a)(1). Pub. L. 110-181 substituted “except that payment of retired pay is subject to subsection (c) only during the period beginning on January 1, 2004, and ending on December 31, 2004, in the case of the following:” for “except that in the case of a qualified retiree receiving veterans’ disability compensation for a disability rated as 100 percent, payment of retired pay to such veteran is subject to subsection (c) only during the period beginning on January 1, 2004, and ending on December 31, 2004, and in the case of a qualified retiree receiving veterans’ disability compensation at the rate payable for a 100 percent disability by reason of a determination of individual unemployability, payment of retired pay to such veteran is subject to subsection (c) only during the period beginning on January 1, 2004, and ending on September 30, 2009.” and added subpars. (A) and (B).

2006—Subsec. (a)(1). Pub. L. 109-163 inserted “, and in the case of a qualified retiree receiving veterans’ disability compensation at the rate payable for a 100 percent disability by reason of a determination of individual unemployability, payment of retired pay to such veteran is subject to subsection (c) only during the period beginning on January 1, 2004, and ending on September 30, 2009” before period at end.

2004—Subsec. (a)(1). Pub. L. 108-375, § 642(a), inserted before period at end “, except that in the case of a qualified retiree receiving veterans’ disability compensation for a disability rated as 100 percent, payment of retired pay to such veteran is subject to subsection (c) only during the period beginning on January 1, 2004, and ending on December 31, 2004”.

Subsec. (c). Pub. L. 108-375, § 642(b), inserted “that pursuant to the second sentence of subsection (a)(1) is subject to this subsection” after “a qualified retiree” in introductory provisions.

2003—Pub. L. 108-136 amended section generally. Prior to amendment, section related to members eligible for retired pay who had service-connected disabilities: payment of retired pay and veterans’ disability compensation; and contingent effectiveness based on enactment of offsetting legislation.

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-76 effective Dec. 1, 2015, immediately after the coming into effect of section 403 of Pub. L. 113-67 and the amendments made by that section, see section 10001(c) of Pub. L. 113-76, set out as a note under section 1401a of this title. Amendment did not take effect pursuant to section 631(d)(2) of Pub. L. 114-92, set out as a Repeal of Reduced Cost-of-living Adjustments for Members Under the Age of 62 note under section 1401a of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-181, div. A, title VI, § 642(b), Jan. 28, 2008, 122 Stat. 157, provided that:

“(1) IN GENERAL.—Subject to paragraph (2), the amendment made by subsection (a) [amending this section] shall take effect as of December 31, 2004.

“(2) TIMING OF PAYMENT OF RETROACTIVE BENEFITS.—Any amount payable for a period before October 1, 2008, by reason of the amendment made by subsection (a) shall not be paid until after that date.”

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108-136, div. A, title VI, § 641(e), Nov. 24, 2003, 117 Stat. 1516, provided that: “The amendments made by subsections (a) and (b) [amending this section and repealing section 1413 of this title] shall take effect on January 1, 2004, and shall apply to payments for months beginning on or after that date.”

PROHIBITION OF RETROACTIVE BENEFITS

Pub. L. 107-107, div. A, title VI, § 641(d), Dec. 28, 2001, 115 Stat. 1150, provided that: “If the provisions of subsection (a) of section 1414 of title 10, United States Code, becomes [sic] effective in accordance with subsection (f) of that section, no benefit may be paid to any person by reason of those provisions for any period before the effective date specified in subsection (e) of that section.”

§ 1415. Lump sum payment of certain retired pay

(a) DEFINITIONS.—In this section:

(1) COVERED RETIRED PAY.—The term “covered retired pay” means retired pay under—

(A) this title;

(B) title 14;

(C) the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 (33 U.S.C. 3001 et seq.); or

(D) the Public Health Service Act (42 U.S.C. 201 et seq.).

(2) ELIGIBLE PERSON.—The term “eligible person” means a person who—

(A)(i) first becomes a member of a uniformed service on or after January 1, 2018; or

(ii) makes the election described in section 1409(b)(4)(B) or 12739(f)(2) of this title; and

(B) does not retire or separate under chapter 61 of this title.

(3) RETIREMENT AGE.—The term “retirement age” has the meaning given the term in section 216(l) of the Social Security Act (42 U.S.C. 416(l)).

(b) ELECTION OF LUMP SUM PAYMENT OF CERTAIN RETIRED PAY.—

(1) IN GENERAL.—An eligible person entitled to covered retired pay (including an eligible person who is entitled to such pay by reason of an election described in subsection (a)(2)(A)(ii)) may elect to receive—

(A) a lump sum payment of the discounted present value at the time of the election of an amount of the covered retired pay that the eligible person is otherwise entitled to receive for the period beginning on the date of retirement and ending on the date the eligible person attains the eligible person’s retirement age equal to—

(i) 50 percent of the amount of such covered retired pay during such period; or

(ii) 25 percent of the amount of such covered retired pay during such period; and

(B) a monthly amount during the period described in subparagraph (A) equal to—

(i) in the case of an eligible person electing to receive an amount described in subparagraph (A)(i), 50 percent of the amount of monthly covered retired pay the eligible person is otherwise entitled to receive during such period; and

(ii) in the case of an eligible person electing to receive an amount described in