

computed, 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.

ACCURAL 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

Revised section	Source (U.S. Code)	Source (Statutes at Large)
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

Revised section	Source (U.S. Code)	Source (Statutes at Large)
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 deferrals 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  $\frac{1}{12}$  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

Revised section	Source (U.S. Code)	Source (Statutes at Large)
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 credit for inactive service in the computation of retirement pay. The Comptroller General in 1965 (B-156576) held in effect that computation of such retirement pay was governed by the wording of new title 10 that based the computation on years of active service only even though this had the result of making a substantive change. The Armed Services Committee of the House of Representatives concurs that an error was made in the codification of title 10 and has indicated that corrective legislative action is properly a responsibility of the House Judiciary Committee. See, also, the amendments to 10:3992 and 8992 made by sections 1(40) and 1(52), respectively.

#### AMENDMENTS

2001—Subsec. (c)(1). Pub. L. 107-107 substituted “October 5, 1994,” for “the date of the enactment of the National Defense Authorization Act for Fiscal Year 1995.”

1996—Subsec. (c). Pub. L. 104-106, as amended by Pub. L. 104-201, substituted “Made Up or Excluded” for “Made Up” in heading, designated existing provisions as par. (1), substituted “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 the date of the enactment of the National Defense Authorization Act for Fiscal Year 1995,” for “section 972 of this title”, and added par. (2).

1994—Subsec. (a)(3). Pub. L. 103-337, §1662(j)(3), substituted “12733” for “1333” and “12731” for “1331”.

Subsec. (c). Pub. L. 103-337, §635(d), added subsec. (c).

1986—Pub. L. 99-348 designated existing provision as subsec. (a), inserted heading, and in provision preceding par. (1) substituted “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” for “section 1401 (formulas 4 and 5), 3991 (formula A), 3992 (formula B), 6151(b), 6323(e), 6325(a)(2) and (b)(2), 6383(c)(2), 8991 (formula A), or 8992 (formula B) of this title, the years of service of a member of the armed forces”, and added subsec. (b).

1982—Pub. L. 97-295, §1(17), substituted “3991 (formula A), 3992 (formula B)” for “3991 (formula B)”, struck out “or” first time appearing, and substituted “8991 (formula A), or 8992 (formula B)” for “8991 (formula B)”.

1980—Pub. L. 96-513 struck out provisions that permitted the crediting of certain periods of constructive service in computing the retired pay of medical and dental officers and provided that members would compute their years of service for retirement pay by adding (1) years of active service, (2) years of service not otherwise counted with which the member was entitled to be credited on May 31, 1958, and (3) years of service not otherwise counted with which he would be credited under section 1333 if he were entitled to retired pay under section 1331.

1967—Pub. L. 90-130 struck out references to section 6399(c)(2) of this title.

1962—Pub. L. 87-651 struck out references to sections 6391(h) and 6394(g)(2) of this title and inserted a reference to section 6394(h) of this title.

Pub. L. 87-649 substituted “section 205(a)(7) and (8) of title 37” for “section 233(a)(7) of title 37” in cl. (2).

1958—Pub. L. 85-861 inserted references to sections 6323(e) and 6391(h) of this title.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-106 effective Feb. 10, 1996, and applicable to any period of time covered by section 972 of this title that occurs after that date, see section 561(e) of Pub. L. 104-106, set out as a note under section 972 of this title.

#### EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103-337, div. A, title VI, §635(e), Oct. 5, 1994, 108 Stat. 2789, provided that: “This section [amending