

*ences a hardship as determined by the Secretary concerned.*

*(iii) Persons experiencing break in service.—A person returning to reserve component service after a break in reserve component service in which falls the election period specified in clause (i) shall make the election described in subparagraph (A) on the date of the reentry into service of the person.*

*(C) No retroactive contributions pursuant to election.—Thrift Savings Plan contributions may not be made for a person making an election pursuant to subparagraph (A) for any pay period beginning before the date of the person's election under that subparagraph by reason of the person's election.*

*(3) Regulations.—The Secretary concerned shall prescribe regulations to implement this subsection.*

*See 2015 Amendment note below.*

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in formula 3 of the table in section 1401(a) of this title, prior to amendment by Pub. L. 103-337, § 1662(j)(2).

#### AMENDMENTS

- 2015—Subsec. (f). Pub. L. 114-92 added subsec. (f).  
 2009—Subsec. (e). Pub. L. 111-84 added subsec. (e).  
 2006—Subsec. (c). Pub. L. 109-364 designated existing provisions as par. (1), substituted “Except as provided in paragraph (2), the” for “The”, and added par. (2).  
 2002—Subsec. (b). Pub. L. 107-314, § 632(a)(2), added subsec. (b). Former subsec. (b) redesignated (c).  
 Subsec. (c). Pub. L. 107-314, § 632(a)(1), (b), redesignated subsec. (b) as (c) and substituted “total amount of the monthly retired pay computed under subsections (a) and (b)” for “amount computed under subsection (a)”. Former subsec. (c) redesignated (d).  
 Subsec. (d). Pub. L. 107-314, § 632(a)(1), redesignated subsec. (c) as (d).

#### EFFECTIVE DATE OF 2015 AMENDMENT; IMPLEMENTATION

Amendment by Pub. L. 114-92 effective Jan. 1, 2018, with certain implementation requirements, see section 635 of Pub. L. 114-92, set out as a note under section 8432 of Title 5, Government Organization and Employees.

#### EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-314, div. A, title VI, § 632(c), Dec. 2, 2002, 116 Stat. 2572, provided that: “The amendments made by subsections (a) and (b) [amending this section] shall take effect on October 1, 2002, and shall apply with respect to retired pay for months beginning on or after that date.”

#### EFFECTIVE DATE

Section effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103-337, set out as a note under section 10001 of this title.

### § 12740. Eligibility: denial upon certain punitive discharges or dismissals

A person who—

(1) is convicted of an offense under the Uniform Code of Military Justice (chapter 47 of this title) and whose sentence includes death; or

(2) is separated pursuant to sentence of a court-martial with a dishonorable discharge, a bad conduct discharge, or (in the case of an officer) a dismissal,

is not eligible for retired pay under this chapter.

(Added Pub. L. 104-106, div. A, title VI, § 632(a)(1), Feb. 10, 1996, 110 Stat. 365.)

#### EFFECTIVE DATE

Pub. L. 104-106, div. A, title VI, § 632(b), Feb. 10, 1996, 110 Stat. 365, provided that: “Section 12740 of title 10, United States Code, as added by subsection (a), shall apply with respect to court-martial sentences adjudged after the date of the enactment of this Act [Feb. 10, 1996].”

### § 12741. Retirement for service in an active status performed in the Selected Reserve of the Ready Reserve after eligibility for regular retirement

(a) AUTHORITY TO ELECT TO RECEIVE RESERVE RETIRED PAY.—(1) Notwithstanding the requirement in paragraph (4) of section 12731(a) of this title that a person may not receive retired pay under this chapter when the person is entitled, under any other provision of law, to retired pay or retainer pay, a person may elect to receive retired pay under this chapter, instead of receiving retired or retainer pay under chapter 65, 367, 571, or 867 of this title, if the person—

(A) satisfies the requirements specified in paragraphs (1) and (2) of such section for entitlement to retired pay under this chapter;

(B) served in an active status in the Selected Reserve of the Ready Reserve after becoming eligible for retirement under chapter 65, 367, 571, or 867 of this title (without regard to whether the person actually retired or received retired or retainer pay under one of those chapters); and

(C) completed not less than two years of satisfactory service (as determined by the Secretary concerned) in such active status (excluding any period of active service).

(2) The Secretary concerned may reduce the minimum two-year service requirement specified in paragraph (1)(C) in the case of a person who—

(A) completed at least one year of service in a position of adjutant general required under section 314 of title 32 or in a position of assistant adjutant general subordinate to such a position of adjutant general; and

(B) failed to complete the minimum years of service solely because the appointment of the person to such position was terminated or vacated as described in section 324(b) of title 32.

(b) ACTIONS TO EFFECTUATE ELECTION.—As of the effective date of an election made by a person under subsection (a), the Secretary concerned shall—

(1) terminate the eligibility of the person to retire under chapter 65, 367, 571, or 867 of this title, if the person is not already retired under one of those chapters, and terminate entitlement of the person to retired or retainer pay under one of those chapters, if the person was already receiving retired or retainer pay under one of those chapters; and

(2) in the case of a reserve commissioned officer, transfer the officer to the Retired Reserve.

(c) TIME AND FORM OF ELECTION.—An election under subsection (a) shall be made within such time and in such form as the Secretary concerned requires.

(d) **EFFECTIVE DATE OF ELECTION.**—An election made by a person under subsection (a) shall be effective—

(1) except as provided in paragraph (2)(B), as of the date on which the person attains the eligibility age applicable to the person under section 12731(f) of this title, if the Secretary concerned receives the election in accordance with this section within 180 days after that date; or

(2) on the first day of the first month that begins after the date on which the Secretary concerned receives the election in accordance with this section, if—

(A) the date of the receipt of the election is more than 180 days after the date on which the person attains the eligibility age applicable to the person under such section; or

(B) the person retires from service in an active status within that 180-day period.

(Added Pub. L. 106-398, §1 [[div. A], title VI, §653(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A-164; amended Pub. L. 107-107, div. A, title X, §1048(a)(31), Dec. 28, 2001, 115 Stat. 1225; Pub. L. 109-364, div. A, title X, §1071(a)(41), Oct. 17, 2006, 120 Stat. 2400; Pub. L. 111-84, div. A, title VI, §643(a)-(c), (e)(1), Oct. 28, 2009, 123 Stat. 2366, 2367.)

#### AMENDMENTS

2009—Pub. L. 111-84, §643(e)(1), substituted “Retirement for service in an active status performed in the Selected Reserve of the Ready Reserve after eligibility for regular retirement” for “Retirement from active reserve service performed after regular retirement” in section catchline.

Subsec. (a). Pub. L. 111-84, §643(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows:

“(a) **ELECTION OF RESERVE RETIRED PAY.**—A person who, after becoming entitled to retired or retainer pay under chapter 65, 367, 571, or 867 of this title, serves in an active status in a reserve component is entitled to retired pay under this chapter if—

“(1) the person would, but for paragraphs (3) and (4) of section 12731(a) of this title, otherwise be entitled to retired pay under this chapter;

“(2) the person elects under this section to receive retired pay under this chapter; and

“(3) the person’s service in an active status after having become entitled to retired or retainer pay under that chapter is determined by the Secretary concerned to have been satisfactory.”

Subsec. (b)(1). Pub. L. 111-84, §643(b), added par. (1) and struck out former par. (1) which read as follows: “terminate the person’s entitlement to retired or retainer pay under the applicable chapter of this title referred to in subsection (a); and”.

Subsec. (d)(1). Pub. L. 111-84, §643(c)(1), substituted “attains the eligibility age applicable to the person under section 12731(f) of this title” for “attains 60 years of age”.

Subsec. (d)(2)(A). Pub. L. 111-84, §643(c)(2), substituted “attains the eligibility age applicable to the person under such section” for “attains 60 years of age”.

2006—Subsecs. (c), (d). Pub. L. 109-364 substituted “subsection (a)” for “subsection (b)”.

2001—Subsec. (a)(2). Pub. L. 107-107 substituted “receive” for “received”.

#### EFFECTIVE DATE

Pub. L. 106-398, §1 [[div. A], title VI, §653(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-165, provided that: “Section 12741 of title 10, United States Code, as added by sub-

section (a), shall take effect 180 days after the date of the enactment of this Act [Oct. 30, 2000] and shall apply with respect to retired pay payable for months beginning on or after that effective date.”

#### CHAPTER 1225—RETIRED GRADE

Sec.

12771. Reserve officers: grade on transfer to Retired Reserve.

12772. Reserve commissioned officers who have served as Attending Physician to the Congress: grade on transfer to Retired Reserve.

12773. Limitation on accrual of increased pay or benefits.

12774. Retired lists.

#### § 12771. Reserve officers: grade on transfer to Retired Reserve

(a) **GRADE ON TRANSFER.**—Unless entitled to a higher grade under another provision of law, a reserve commissioned officer, other than a commissioned warrant officer, who is transferred to the Retired Reserve is entitled to be placed on the retired list established by section 12774(a) of this title in the highest grade in which he served satisfactorily, as determined by the Secretary concerned and in accordance with section 1370(d), in the armed force in which he is serving on the date of transfer.

(b) **EFFECT OF SUBSEQUENT RECALL TO ACTIVE STATUS.**—(1) If a member of the Retired Reserve who is a commissioned officer is recalled to an active status in the Selected Reserve of the Ready Reserve under section 10145(d) of this title and completes not less than two years of service in such active status, the member is entitled to an adjustment in the retired grade of the member in the manner provided in section 1370(d) of this title.

(2) The Secretary concerned may reduce the two-year service requirement specified in paragraph (1) in the case of a member who—

(A) is recalled to serve in a position of adjutant general required under section 314 of title 32 or in a position of assistant adjutant general subordinate to such a position of adjutant general;

(B) completes at least one year of service in such position; and

(C) fails to complete the minimum two years of service solely because the appointment of the member to such position is terminated or vacated as described in section 324(b) of title 32.

(Added Pub. L. 103-337, div. A, title XVI, §1662(k)(1), Oct. 5, 1994, 108 Stat. 3005; amended Pub. L. 111-84, div. A, title VI, §642(b), Oct. 28, 2009, 123 Stat. 2365.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 1374(b), (f) of this title, prior to repeal by Pub. L. 103-337, §1662(k)(2).

#### AMENDMENTS

2009—Pub. L. 111-84 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

#### EFFECTIVE DATE

Section effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103-337, set out as a note under section 10001 of this title.