

“(iv) from which the Secretary withheld amounts for tax purposes; and

“(B) the individuals to whom such severance payments were made; and

“(2) with respect to each person identified under paragraph (1)(B), provide—

“(A) notice of—

“(i) the amount of severance payments in paragraph (1)(A) which were improperly withheld for tax purposes; and

“(ii) such other information determined to be necessary by the Secretary of the Treasury to carry out the purposes of this section; and

“(B) instructions for filing amended tax returns to recover the amounts improperly withheld for tax purposes.

“(b) EXTENSION OF LIMITATION ON TIME FOR CREDIT OR REFUND.—

“(1) PERIOD FOR FILING CLAIM.—If a claim for credit or refund under section 6511(a) of the Internal Revenue Code of 1986 [26 U.S.C. 6511(a)] relates to a specified overpayment, the 3-year period of limitation prescribed by such subsection shall not expire before the date which is 1 year after the date the information return described in subsection (a)(2) is provided. The allowable amount of credit or refund of a specified overpayment shall be determined without regard to the amount of tax paid within the period provided in section 6511(b)(2) [26 U.S.C. 6511(b)(2)].

“(2) SPECIFIED OVERPAYMENT.—For purposes of paragraph (1), the term ‘specified overpayment’ means an overpayment attributable to a severance payment described in subsection (a)(1).

“SEC. 4. REQUIREMENT THAT SECRETARY OF DEFENSE ENSURE AMOUNTS ARE NOT WITHHELD FOR TAX PURPOSES FROM SEVERANCE PAYMENTS NOT CONSIDERED GROSS INCOME.

“The Secretary of Defense shall take such actions as may be necessary to ensure that amounts are not withheld for tax purposes from severance payments made by the Secretary to individuals when such payments are not considered gross income pursuant to section 104(a)(4) of the Internal Revenue Code of 1986 [26 U.S.C. 104(a)(4)].

“SEC. 5. REPORT TO CONGRESS.

“(a) IN GENERAL.—After completing the identification required by section 3(a) and not later than 1 year after the date of the enactment of this Act [Dec. 16, 2016], the Secretary of Defense shall submit to the appropriate committees of Congress a report on the actions taken by the Secretary to carry out this Act.

“(b) CONTENTS.—The report submitted under subsection (a) shall include the following:

“(1) The number of individuals identified under section 3(a)(1)(B).

“(2) Of all the severance payments described in section 3(a)(1)(A), the aggregate amount that the Secretary withheld for tax purposes from such payments.

“(3) A description of the actions the Secretary plans to take to carry out section 4.

“(c) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ‘appropriate committees of Congress’ means—

“(1) the Committee on Armed Services, the Committee on Veterans’ Affairs, and the Committee on Finance of the Senate; and

“(2) the Committee on Armed Services, the Committee on Veterans’ Affairs, and the Committee on Ways and Means of the House of Representatives.”

§ 1213. Effect of separation on benefits and claims

Unless a person who has received disability severance pay again becomes a member of an armed force, the National Oceanic and Atmospheric Administration, or the Public Health Service, he is not entitled to any payment from

the armed force from which he was separated for, or arising out of, his service before separation, under any law administered by one of those services or for it by another of those services. However, this section does not prohibit the payment of money to a person who has received disability severance pay, if the money was due him on the date of his separation or if a claim by him is allowed under any law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 99; Pub. L. 89-718, §8(a), Nov. 2, 1966, 80 Stat. 1117; Pub. L. 96-513, title V, §511(44), Dec. 12, 1980, 94 Stat. 2924.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1213	37:280.	Oct. 12, 1949, ch. 681, § 410, 63 Stat. 823.

The words “a person who has received disability severance pay” are substituted for the words “Any former member who has been separated for physical disability from any of the uniformed services and paid disability severance pay”. The words “any payment * * * for” are substituted for the words “for any monetary obligation provided under any provision * * * on account of”. The words “this section does not prohibit” are substituted for the words “shall not operate to bar”. The words “the payment of money to * * * if the money was due him” are substituted for the words “from receiving or the service concerned from paying any moneys due and payable”. The words “valid”, “processed”, and “pursuant to any provisions of law” are omitted as surplusage.

AMENDMENTS

1980—Pub. L. 96-513 substituted “National Oceanic and Atmospheric Administration” for “Environmental Science Services Administration”.

1966—Pub. L. 89-718 substituted “Environmental Science Services Administration” for “Coast and Geodetic Survey”.

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.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 89-718, §8(a), Nov. 2, 1966, 80 Stat. 1117, cited as a credit to this section, was repealed by Pub. L. 97-295, §6(b), Oct. 12, 1982, 96 Stat. 1314.

TRANSFER OF FUNCTIONS

For transfer of functions of Public Health Service, see note set out under section 802 of this title.

§ 1214. Right to full and fair hearing

No member of the armed forces may be retired or separated for physical disability without a full and fair hearing if he demands it.

(Aug. 10, 1956, ch. 1041, 70A Stat. 100.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1214	37:283 (less 1st 17 words).	Oct. 12, 1949, ch. 681, § 413 (less 1st 17 words), 63 Stat. 825.

The words “including regulations” are omitted as covered by section 1216(a) of this title.

§ 1214a. Members determined fit for duty in Physical Evaluation Board: prohibition on involuntary administrative separation or denial of reenlistment due to unsuitability based on medical conditions considered in evaluation

(a) DISPOSITION.—Except as provided in subsection (c), the Secretary of the military department concerned may not authorize the involuntary administrative separation of a member described in subsection (b), or deny reenlistment of the member, based on a determination that the member is unsuitable for deployment or worldwide assignment based on the same medical condition of the member considered by a Physical Evaluation Board during the evaluation of the member.

(b) COVERED MEMBERS.—A member covered by subsection (a) is any member of the armed forces who has been determined by a Physical Evaluation Board pursuant to a physical evaluation by the board to be fit for duty.

(c) REEVALUATION.—(1) The Secretary of the military department concerned may direct the Physical Evaluation Board to reevaluate any member described in subsection (b) if the Secretary has reason to believe that a medical condition of the member considered by the Physical Evaluation Board during the evaluation of the member described in that subsection renders the member unsuitable for continued military service based on the medical condition.

(2) A member determined pursuant to reevaluation under paragraph (1) to be unfit to perform the duties of the member's office, grade, rank, or rating may be retired or separated for physical disability under this chapter.

(3) The Secretary of Defense shall be the final approval authority for any case determined by the Secretary of a military department to warrant administrative separation or denial of reenlistment based on a determination that the member is unsuitable for continued service due to the same medical condition of the member considered by a Physical Evaluation Board that found the member fit for duty.

(Added Pub. L. 111-383, div. A, title V, §534(a)(1), Jan. 7, 2011, 124 Stat. 4216; amended Pub. L. 112-81, div. A, title V, §527(a)-(c)(1), Dec. 31, 2011, 125 Stat. 1401, 1402.)

AMENDMENTS

2011—Pub. L. 112-81, §527(c)(1), substituted “Members determined fit for duty in Physical Evaluation Board: prohibition on involuntary administrative separation or denial of reenlistment due to unsuitability based on medical conditions considered in evaluation” for “Members determined fit for duty in Physical Evaluation Board evaluation: prohibition on involuntary administrative separation due to unsuitability based on medical conditions considered in evaluation” in section catchline.

Subsec. (a). Pub. L. 112-81, §527(a), inserted “, or deny reenlistment of the member,” after “a member described in subsection (b)”.

Subsec. (c)(3). Pub. L. 112-81, §527(b), inserted “or denial of reenlistment” after “to warrant administrative separation”.

EFFECTIVE DATE

Pub. L. 111-383, div. A, title V, §534(b), Jan. 7, 2011, 124 Stat. 4217, provided that: “The amendments made by

subsection (a) [enacting this section] shall take effect on the date of the enactment of this Act [Jan. 7, 2011], and shall apply with respect to members evaluated for fitness for duty by Physical Evaluation Boards on or after that date.”

§ 1215. Members other than Regulars: applicability of laws

The laws and regulations that entitle any retired member of a regular component of the armed forces to pay, rights, benefits, or privileges extend the same pay, rights, benefits, or privileges to any other member of the armed forces who is not a member of a regular component and who is retired, or to whom retired pay is granted, because of physical disability.

(Aug. 10, 1956, ch. 1041, 70A Stat. 100.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1215	37:272(i).	Oct. 12, 1949, ch. 681, § 402(i), 63 Stat. 820.

The words “is retired, or to whom retired pay is granted” are substituted for the words “heretofore or hereafter retired or granted retirement pay”. The words “any other member of the armed forces” are substituted for the words “all members of the reserve components”, since the words “reserve components” are defined by section 102(k) of the Career Compensation Act of 1949, 63 Stat. 805 (37 U.S.C. 231(k)), to include members appointed, enlisted, or inducted without component.

§ 1216. Secretaries: powers, functions, and duties

(a) The Secretary concerned shall prescribe regulations to carry out this chapter within his department.

(b) Except as provided in subsection (d), the Secretary concerned has all powers, functions, and duties incident to the determination under this chapter of—

- (1) the fitness for active duty of any member of an armed force under his jurisdiction;
- (2) the percentage of disability of any such member at the time of his separation from active duty;
- (3) the suitability of any member for reappointment, reenlistment, or reentry upon active duty in an armed force under his jurisdiction; and
- (4) the entitlement to, and payment of, disability severance pay to any member of an armed force under his jurisdiction.

(c) The Secretary concerned or the Secretary of Veterans Affairs, as prescribed by the President, has the powers, functions, and duties under this chapter incident to hospitalization, reexaminations, and the payment of disability retired pay within his department or agency.

(d) The Secretary concerned may not, with respect to any member who is a general officer or flag officer or is a medical officer being processed for retirement under any provisions of this title by reason of age or length of service—

- (1) retire such member under section 1201 of this title;
- (2) place such member on the temporary disability retired list pursuant to section 1202 of this title; or