

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