

div. A, title XVI, § 1662(j)(1), Oct. 5, 1994, 108 Stat. 2998, 3003.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1336	10:1036d (less 1st sentence). 34:440l (less 1st sentence).	June 29, 1948, ch. 708, § 305 (less 1st sentence), 62 Stat. 1089.

AMENDMENTS

1994—Pub. L. 103-337 renumbered section 1336 of this title as this section and restated catchline and text without change.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103-337, set out as an Effective Date note under section 10001 of this title.

§ 12737. **Limitation on active duty**

A member of the armed forces may not be ordered to active duty solely for the purpose of qualifying the member for retired pay under this chapter.

(Aug. 10, 1956, ch. 1041, 70A Stat. 104, § 1337; renumbered § 12737 and amended Pub. L. 103-337, div. A, title XVI, § 1662(j)(1), Oct. 5, 1994, 108 Stat. 2998, 3003.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1337	10:1036h. 34:440p.	June 29, 1948, ch. 708, § 309, 62 Stat. 1090.

10:1036h (1st sentence) and 34:440p (1st sentence) are omitted as surplusage. The words “member of the armed forces” are substituted for the word “person”, since only a member may be “ordered to active duty”.

AMENDMENTS

1994—Pub. L. 103-337 renumbered section 1337 of this title as this section and amended text generally, substituting “the member” for “him”.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103-337, set out as an Effective Date note under section 10001 of this title.

§ 12738. **Limitations on revocation of retired pay**

(a) After a person is granted retired pay under this chapter, or is notified in accordance with section 12731(d) of this title that the person has completed the years of service required for eligibility for retired pay under this chapter, the person’s eligibility for retired pay may not be denied or revoked on the basis of any error, miscalculation, misinformation, or administrative determination of years of service performed as required by section 12731(a)(2) of this title, unless it resulted directly from the fraud or misrepresentation of the person.

(b) The number of years of creditable service upon which retired pay is computed may be adjusted to correct any error, miscalculation, misinformation, or administrative determination and when such a correction is made the person is entitled to retired pay in accordance with the

number of years of creditable service, as corrected, from the date the person is granted retired pay.

(Added Pub. L. 89-652, § 2(1), Oct. 14, 1966, 80 Stat. 902, § 1406; renumbered § 1338 and amended Pub. L. 99-348, title I, § 104(a), July 1, 1986, 100 Stat. 686; renumbered § 12738 and amended Pub. L. 103-337, div. A, title XVI, § 1662(j)(1), Oct. 5, 1994, 108 Stat. 2998, 3003.)

AMENDMENTS

1994—Pub. L. 103-337 renumbered section 1338 of this title as this section and amended text generally, making changes in style and references to other sections.

1986—Pub. L. 99-348 renumbered section 1406 of this title as this section, designated first sentence as subsec. (a) and substituted “this chapter” for “chapter 67 of this title” in two places, and designated second sentence as subsec. (b).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103-337, set out as an Effective Date note under section 10001 of this title.

ENTITLEMENT TO RETIREMENT PAY AFTER OCTOBER 14, 1966; CONCLUSIVENESS

Pub. L. 89-652, § 3, Oct. 14, 1966, 80 Stat. 902, provided that: “Notwithstanding section 1406 [now 12738] of title 10, United States Code, as added by this Act—

“(1) the granting of retired pay to a person under chapter 67 [now 1223] of that title is conclusive as to that person’s entitlement to such pay only if the payment of that retired pay is begun after the effective date of this Act [Oct. 14, 1966]; and

“(2) a notification that a person has completed the years of service required for eligibility for retired pay under chapter 67 [now 1223] of that title is conclusive as to the person’s subsequent entitlement to such pay only if the notification is made after the effective date of this Act.”

§ 12739. **Computation of retired pay**

(a) The monthly retired pay of a person entitled to that pay under this chapter is the product of—

(1) the retired pay base for that person as computed under section 1406(b)(2) or 1407 of this title; and

(2) 2½ percent of the years of service credited to that person under section 12733 of this title.

(b) If a person entitled to retired pay under this chapter has been credited by the Secretary concerned with extraordinary heroism in the line of duty and if the highest grade held satisfactorily by that person at any time in the armed forces is an enlisted grade, the person’s retired pay shall be increased by 10 percent of the amount determined under subsection (a). The Secretary’s determination as to extraordinary heroism is conclusive for all purposes.

(c)(1) Except as provided in paragraph (2), the total amount of the monthly retired pay computed under subsections (a) and (b) may not exceed 75 percent of the retired pay base upon which the computation is based.

(2) In the case of a person who retires after December 31, 2006, with more than 30 years of service credited to that person under section 12733 of this title, the total amount of the monthly retired pay computed under subsections (a) and (b) may not exceed the sum of—

(A) 75 percent of the retired pay base upon which the computation is based; and

(B) the product of—

(i) the retired pay base upon which the computation is based; and

(ii) 2½ percent of the years of service credited to that person under section 12733 of this title, for service under conditions authorized for purposes of this paragraph during a period designated by the Secretary of Defense for purposes of this paragraph.

(d) Amounts computed under this section, if not a multiple of \$1, shall be rounded down to the next lower multiple of \$1.

(e)(1) If a member of the Retired Reserve 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 the recomputation under this section of the retired pay of the member.

(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.

(f) MODERNIZED RETIREMENT SYSTEM.—

(1) REDUCED MULTIPLIER FOR FULL TSP MEMBERS.—Notwithstanding subsection (a) or (c), in the case of a person who first performs reserve component service on or after January 1, 2018, after not having performed regular or reserve component service on or before that date, or a person who makes the election described in paragraph (2) (referred to as a “full TSP member”)—

(A) subsection (a)(2) shall be applied by substituting “2 percent” for “2½ percent”;

(B) subparagraph (A) of subsection (c)(2) shall be applied by substituting “60 percent” for “75 percent”; and

(C) subparagraph (B)(ii) of such subsection shall be applied by substituting “2 percent” for “2½ percent”.

(2) ELECTION TO PARTICIPATE IN MODERNIZED RETIREMENT SYSTEM.—

(A) IN GENERAL.—Pursuant to subparagraph (B), a person performing reserve component service on December 31, 2017, who has performed fewer than 12 years of service as of December 31, 2017 (as computed in accordance with section 12733 of this title), may elect, in exchange for the reduced multipliers described in paragraph (1) for purposes of calculating the retired pay of the person, to receive Thrift Savings Plan contributions pursuant to section 8440e(e) of title 5.

(B) ELECTION PERIOD.—

(i) IN GENERAL.—Except as provided in clauses (ii) and (iii), a person described in

subparagraph (A) may make the election described in that subparagraph during the period that begins on January 1, 2018, and ends on December 31, 2018.

(ii) HARDSHIP EXTENSION.—The Secretary concerned may extend the election period described in clause (i) for a person who experiences 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) within 30 days after 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.

(Added Pub. L. 103-337, div. A, title XVI, §1662(j)(1), Oct. 5, 1994, 108 Stat. 3004; amended Pub. L. 107-314, div. A, title VI, §632(a), (b), Dec. 2, 2002, 116 Stat. 2572; Pub. L. 109-364, div. A, title VI, §642(b), Oct. 17, 2006, 120 Stat. 2259; Pub. L. 111-84, div. A, title VI, §642(a), Oct. 28, 2009, 123 Stat. 2365; Pub. L. 114-92, div. A, title VI, §631(b), Nov. 25, 2015, 129 Stat. 843; Pub. L. 115-91, div. A, title VI, §623(a), Dec. 12, 2017, 131 Stat. 1428.)

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

2017—Subsec. (f)(2)(B)(iii). Pub. L. 115-91 substituted “within 30 days after the date of the reentry” for “on the date of the reentry”.

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 2017 AMENDMENT

Pub. L. 115-91, div. A, title VI, §623(b), Dec. 12, 2017, 131 Stat. 1429, provided that: “The amendment made by subsection (a) [amending this section] shall take effect on January 1, 2018, immediately after the coming into effect of the amendment made by section 631(b) of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92; 129 Stat. 843) [amending this section], to which the amendment made by subsection (a) relates.”

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, 741, 841, or 941 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, 741, 841, or 941 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 speci-

fied 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, 741, 841, or 941 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; Pub. L. 115-232, div. A, title VIII, §809(a), Aug. 13, 2018, 132 Stat. 1840.)

AMENDMENTS

2018—Subsec. (a)(1). Pub. L. 115-232 substituted “chapter 65, 741, 841, or 941” for “chapter 65, 367, 571, or 867” in introductory provisions and in subpar. (B).

Subsec. (b)(1). Pub. L. 115-232 substituted “chapter 65, 741, 841, or 941” for “chapter 65, 367, 571, or 867”.

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