

§ 12734. Time not creditable toward years of service

(a) Service in an inactive status may not be counted in any computation of years of service under this chapter.

(b) Time spent after retirement (without pay) for failure to conform to standards and qualifications prescribed under section 12641 of this title may not be credited in a computation of years of service under this chapter.

(Aug. 10, 1956, ch. 1041, 70A Stat. 104, §1334; Pub. L. 87-651, title I, §108, Sept. 7, 1962, 76 Stat. 509; renumbered §12734 and amended Pub. L. 103-337, div. A, title XVI, §1662(j)(1), Oct. 5, 1994, 108 Stat. 2998, 3003.)

HISTORICAL AND REVISION NOTES
1956 ACT

| Revised section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|--|--|
| 1334(a) | 10:1036c (last sentence, as applicable to inactive status). 10:1036g (last 41 words of 2d sentence). 34:440k (last sentence, as applicable to inactive status). 34:440o (last 41 words of 2d sentence). 50:931(b) (less 1st 16 words). | June 29, 1948, ch. 708, §§304 (last sentence), 308 (last 41 words of 2d sentence), 62 Stat. 1088, 1090. July 9, 1952, ch. 608, §211(b) (less 1st 16 words), 66 Stat. 485. |
| 1334(b) | 10:1036c (last sentence, less applicability to inactive status). 34:440k (last sentence, less applicability to inactive status). | |

Subsection (a) is substituted for 10:1036c (1st 17 words of last sentence, as applicable to inactive status), 10:1036g (last 41 words of 2d sentence), 34:440k (last 17 words of last sentence, as applicable to inactive status), and 34:440o (last 41 words of 2d sentence). 10:1036c (proviso of last sentence, as applicable to inactive status) and 34:440k (proviso of last sentence, as applicable to inactive status) are omitted as executed. 10:1036c (last sentence, less 1st 17 words and less proviso, as applicable to inactive status) and 34:440k (last sentence, less 1st 17 words and less proviso, as applicable to inactive status) are omitted as surplusage.

In subsection (b), 10:1036c (proviso of last sentence, less applicability to inactive status) and 34:440k (proviso of last sentence, less applicability to inactive status) are omitted as executed. 10:1036c (last sentence, less 1st 17 words and less proviso, less applicability to inactive status) and 34:440k (last sentence, less 1st 17 words and less proviso, less applicability to inactive status) are omitted as surplusage.

1962 ACT

The change conforms section 1334(b) of title 10 to the source law, the last sentence of section 304 of the Army and Air Force Vitalization and Retirement Equalization Act of 1948 (62 Stat. 1089). Section 305 makes the change retroactive to August 10, 1956, the date of repeal of the source law by the original military codification act of that date.

AMENDMENTS

1994—Pub. L. 103-337 renumbered section 1334 of this title as this section and amended text generally, changing one section reference.

1962—Subsec. (b). Pub. L. 87-651 substituted “retirement (without pay) for failure to conform to standards and qualifications prescribed under section 1001 of this title may not be credited in a computation” for “retirement or transfer to the Retired Reserve may not be credited in any computation.”

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.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 305 of Pub. L. 87-651 provided that: “Section 108 of this Act [amending this section] is effective as of August 10, 1956, for all purposes. Section 304 of this Act is effective as of February 6, 1959.”

§ 12735. Inactive status list

(a) A member who would be eligible for retired pay under this chapter but for the fact that that member is under 60 years of age may be transferred, at his request and by direction of the Secretary concerned, to such inactive status list as may be established for members of his armed force, other than members of a regular component.

(b) While on an inactive status list under subsection (a), a member is not required to participate in any training or other program prescribed for his component.

(c) The Secretary may at any time recall to active status a member who is on an inactive status list under subsection (a).

(Aug. 10, 1956, ch. 1041, 70A Stat. 104, §1335; renumbered §12735 and amended Pub. L. 103-337, div. A, title XVI, §1662(j)(1), Oct. 5, 1994, 108 Stat. 2998, 3003.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|---|--|
| 1335(a) | 10:1036g (1st sentence). 34:440o (1st sentence). | June 29, 1948, ch. 708, §308 (less last 41 words of 2d sentence), 62 Stat. 1090. |
| 1335(b) | 10:1036g (2d sentence, less last 41 words). 34:440o (2d sentence, less last 41 words). | |
| 1335(c) | 10:1036g (less 1st and 2d sentences). 34:440o (less 1st and 2d sentences). | |

In subsection (a), the words “would be eligible but for the fact that he is under 60 years of age” are substituted for the words “has not attained the age of sixty years but is eligible in all other respects”. The words “for members of his armed force, other than members of a regular component” are substituted for the words “for the reserve components of the Army of the United States or Air Force of the United States”, since the source statute applied to all members except members of the regular components. The words “as has been, or” and “by law or regulation” are omitted as surplusage.

In subsection (b), the words “after the effective date of such transfer” are omitted as surplusage.

In subsection (c), 10:1036g (last 32 words of last sentence) and 34:440o (last 32 words of last sentence) are omitted as surplusage.

AMENDMENTS

1994—Pub. L. 103-337 renumbered section 1335 of this title as this section and amended text generally, making changes in style.

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.

§ 12736. Service credited for retired pay benefits not excluded for other benefits

No period of service included wholly or partly in determining a person's right to, or the amount of, retired pay under this chapter may be excluded in determining his eligibility for any annuity, pension, or old-age benefit, under any other law, on account of civilian employment by the United States or otherwise, or in determining the amount payable under that law, if that service is otherwise properly credited under it.

(Aug. 10, 1956, ch. 1041, 70A Stat. 104, §1336; renumbered §12736 and amended Pub. L. 103-337, div. A, title XVI, §1662(j)(1), Oct. 5, 1994, 108 Stat. 2998, 3003.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|---|--|
| 1336 | 10:1036d (less 1st sentence). 34:440f (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

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