

(ii) if authorized by the Secretary of Defense, by the Secretary of the military department concerned (who may not further delegate such authority);

(B) in the case of an officer whose retired grade is to be changed to the grade of lieutenant general or general in the Army, Air Force, or Marine Corps, vice admiral or admiral in the Navy, or an equivalent grade in the Space Force, by the President, by and with the advice and consent of the Senate.

(7) RECALCULATION OF RETIRED PAY.—If the final retired grade of an officer is changed through the reopening of the officer's retired grade under this subsection, the retired pay of the officer under chapter 71 of this title shall be recalculated. Any modification of the retired pay of the officer as a result of the change shall go into effect on the effective date of the change of the officer's retired grade, and the officer shall not be entitled or subject to any changed amount of retired pay for any period before such effective date. An officer whose retired grade is changed as provided in paragraph (6)(B) shall not be entitled or subject to a change in retired pay for any period before the date on which the Senate provides advice and consent for the retirement of the officer in such grade.

(g) HIGHEST PERMANENT GRADE DEFINED.—In this section, the term “highest permanent grade” means a grade at or below the grade of major general in the Army, Air Force, or Marine Corps, rear admiral in the Navy, or an equivalent grade in the Space Force.

(Added Pub. L. 116-283, div. A, title V, § 508(a)(1), Jan. 1, 2021, 134 Stat. 3574.)

### Editorial Notes

#### PRIOR PROVISIONS

A prior section 1370, Added Pub. L. 96-513, title I, § 112, Dec. 12, 1980, 94 Stat. 2876; amended Pub. L. 101-510, div. A, title V, § 522, Nov. 5, 1990, 104 Stat. 1561; Pub. L. 103-160, div. A, title V, § 561(d), Nov. 30, 1993, 107 Stat. 1667; Pub. L. 103-337, div. A, title XVI, § 1641, 1671(c)(7)(B), Oct. 5, 1994, 108 Stat. 2968, 3014; Pub. L. 104-106, div. A, title V, § 502(a), (b), (f), (g), Feb. 10, 1996, 110 Stat. 292, 293; Pub. L. 104-201, div. A, title V, § 544(a), Sept. 23, 1996, 110 Stat. 2522; Pub. L. 105-261, div. A, title V, §§ 512(a), 513(a), 561(d), (o), Oct. 17, 1998, 112 Stat. 2007, 2025, 2026; Pub. L. 106-65, div. A, title X, § 1066(a)(9), (b)(3), Oct. 5, 1999, 113 Stat. 770, 772; Pub. L. 106-398, § 1 [(div. A), title V, § 571(d)], Oct. 30, 2000, 114 Stat. 1654, 1654A-134; Pub. L. 107-107, div. A, title V, §§ 502, 514, Dec. 28, 2001, 115 Stat. 1080, 1093; Pub. L. 107-314, div. A, title V, § 505, Dec. 2, 2002, 116 Stat. 2533; Pub. L. 108-136, div. A, title V, § 506, Nov. 24, 2003, 117 Stat. 1457; Pub. L. 109-163, div. A, title V, § 501, Jan. 6, 2006, 119 Stat. 3225; Pub. L. 112-239, div. A, title V, §§ 506, 507, Jan. 2, 2013, 126 Stat. 1716; Pub. L. 114-328, div. A, title V, § 508(d), Dec. 23, 2016, 130 Stat. 2109; Pub. L. 115-91, div. A, title V, § 504, Dec. 12, 2017, 131 Stat. 1374; Pub. L. 115-232, div. A, title V, § 509, title VIII, § 809(a), Aug. 13, 2018, 132 Stat. 1749, 1840; (As amended Pub. L. 116-92, div. A, title V, § 509(a), (b), Dec. 20, 2019, 133 Stat. 1346, related to commissioned officers: general rule for retirement with exceptions, prior to repeal by Pub. L. 116-283, div. A, title V, § 508(a)(1), Jan. 1, 2021, 134 Stat. 3574.

### Statutory Notes and Related Subsidiaries

#### OTHER REFERENCES

Pub. L. 116-283, div. A, title V, § 508(c), Jan. 1, 2021, 134 Stat. 3585, provided that: “In the determination of the retired grade of a commissioned officer of the Armed Forces entitled to retired pay under chapter 1223 of title 10, United States Code, who retires after the date of the enactment of this Act [Jan. 1, 2021], any reference in a provision of law or regulation to section 1370 of title 10, United States Code, in such determination with respect to such officer shall be deemed to be a reference to section 1370a of title 10, United States Code (as amended by subsection (a)).”

#### TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provisions relating to the time-in-grade requirement for voluntary retirement of officers not subsequently promoted, see section 629 of Pub. L. 96-513, set out as a note under section 611 of this title.

#### § 1370a. Officers entitled to retired pay for non-regular service

(a) RETIREMENT IN HIGHEST GRADE HELD SATISFACTORILY.—Unless entitled to a different grade, or to credit for satisfactory service in a different grade under some other provision of law, a person who is entitled to retired pay under chapter 1223 of this title shall, upon application under section 12731 of this title, be credited with satisfactory service in the highest permanent grade in which that person served satisfactorily at any time in the armed forces, as determined by the Secretary of the military department concerned in accordance with this section.

(b) SERVICE-IN-GRADE REQUIREMENT FOR OFFICERS IN GRADES BELOW O-5.—In order to be credited with satisfactory service in an officer grade (other than a warrant officer grade) below the grade of lieutenant colonel or commander (in the case of the Navy), a person covered by subsection (a) must have served satisfactorily in that grade (as determined by the Secretary of the military department concerned) as a reserve commissioned officer in an active status, or in a retired status on active duty, for not less than six months.

(c) SERVICE-IN-GRADE REQUIREMENT FOR OFFICERS IN GRADES ABOVE O-4.—

(1) IN GENERAL.—In order to be credited with satisfactory service in an officer grade above major or lieutenant commander (in the case of the Navy), a person covered by subsection (a) must have served satisfactorily in that grade (as determined by the Secretary of the military department concerned) as a reserve commissioned officer in an active status, or in a retired status on active duty, for not less than three years.

(2) SATISFACTION OF REQUIREMENT BY CERTAIN OFFICERS NOT COMPLETING THREE YEARS.—A person covered by paragraph (1) who has completed at least six months of satisfactory service in grade may be credited with satisfactory service in the grade in which serving at the time of transfer or discharge, notwithstanding failure of the person to complete three years of service in that grade, if the person is transferred from an active status or discharged as a reserve commissioned officer—

(A) solely due to the requirements of a nondiscretionary provision of law requiring

that transfer or discharge due to the person's age or years of service; or

(B) because the person no longer meets the qualifications for membership in the Ready Reserve solely because of a physical disability, as determined in accordance with chapter 61 of this title, and at the time of such transfer or discharge the person (pursuant to section 12731b of this title or otherwise) meets the service requirements established by section 12731(a) of this title for eligibility for retired pay under chapter 1223 of this title, unless the disability is described in section 12731b of this title.

(3) REDUCTION IN SERVICE-IN-GRADE REQUIREMENTS.—

(A) OFFICERS IN GRADES BELOW GENERAL AND FLAG OFFICER GRADES.—In the case of a person to be retired in a grade below brigadier general or rear admiral (lower half) in the Navy, the Secretary of Defense may authorize the Secretary of a military department to reduce, subject to subparagraph (B), the three-year period of service-in-grade required by paragraph (1) to a period not less than two years. The authority of the Secretary of a military department under this subparagraph may not be delegated.

(B) LIMITATION.—The number of reserve commissioned officers of an armed force in the same grade for whom a reduction is made under subparagraph (A) during any fiscal year in the period of service-in-grade otherwise required by paragraph (1) may not exceed the number equal to 2 percent of the strength authorized for that fiscal year for reserve commissioned officers of that armed force in an active status in that grade.

(C) OFFICERS IN GENERAL AND FLAG OFFICERS GRADES.—The Secretary of Defense may reduce the three-year period of service-in-grade required by paragraph (1) to a period not less than two years for any person, including a person who, upon transfer to the Retired Reserve or discharge, is to be credited with satisfactory service in a general or flag officer grade under that paragraph. The authority of the Secretary of Defense under this subparagraph may not be delegated.

(D) NOTICE TO CONGRESS ON REDUCTION IN SERVICE-IN-GRADE REQUIREMENTS FOR GENERAL AND FLAG OFFICER GRADES.—In the case of a person to be credited under this section with satisfactory service in a grade that is a general or flag officer grade who is eligible to be credited with such service in that grade only by reason of an exercise of authority in subparagraph (C) to reduce the three-year service-in-grade requirement otherwise applicable under paragraph (1), the Secretary of Defense shall, not later than 60 days prior to the date on which the person will be credited with such satisfactory service in that grade, notify the Committees on Armed Services of the Senate and the House of Representatives of the exercise of authority in subparagraph (C) with respect to that person.

(4) OFFICERS SERVING IN GRADES ABOVE O-6 INVOLUNTARILY TRANSFERRED FROM ACTIVE STA-

TUS.—A person covered by paragraph (1) who has completed at least six months of satisfactory service in a grade above colonel or (in the case of the Navy) captain and, while serving in an active status in such grade, is involuntarily transferred (other than for cause) from active status may be credited with satisfactory service in the grade in which serving at the time of such transfer, notwithstanding failure of the person to complete three years of service in that grade.

(5) ADJUTANTS AND ASSISTANT ADJUTANTS GENERAL.—If a person covered by paragraph (1) has completed at least six months of satisfactory service in grade, the person was serving in that grade while serving in a position of adjutant general required under section 314 of title 32 or while serving in a position of assistant adjutant general subordinate to such a position of adjutant general, and the person has failed to complete three years of service in that grade solely because the person's appointment to such position has been terminated or vacated as described in section 324(b) of such title, the person may be credited with satisfactory service in that grade, notwithstanding the failure of the person to complete three years of service in that grade.

(6) OFFICERS RECOMMENDED FOR PROMOTION SERVING IN CERTAIN GRADE BEFORE PROMOTION.—To the extent authorized by the Secretary of the military department concerned, a person who, after having been recommended for promotion in a report of a promotion board but before being promoted to the recommended grade, served in a position for which that grade is the minimum authorized grade may be credited for purposes of paragraph (1) as having served in that grade for the period for which the person served in that position while in the next lower grade. The period credited may not include any period before the date on which the Senate provides advice and consent for the appointment of that person in the recommended grade.

(7) OFFICERS QUALIFIED FOR FEDERAL RECOGNITION SERVING IN CERTAIN GRADE BEFORE APPOINTMENT.—To the extent authorized by the Secretary of the military department concerned, a person who, after having been found qualified for Federal recognition in a higher grade by a board under section 307 of title 32, serves in a position for which that grade is the minimum authorized grade and is appointed as a reserve officer in that grade may be credited for the purposes of paragraph (1) as having served in that grade. The period of the service for which credit is afforded under the preceding sentence may be only the period for which the person served in the position after the Senate provides advice and consent for the appointment.

(8) RETIREMENT IN NEXT LOWEST GRADE FOR OFFICERS NOT MEETING SERVICE-IN-GRADE REQUIREMENTS.—A person whose length of service in the highest grade held does not meet the service-in-grade requirements specified in this subsection shall be credited with satisfactory service in the next lower grade in which that person served satisfactorily (as determined by the Secretary of the military department concerned) for not less than six months.

(d) OFFICERS IN O-9 AND O-10 GRADES.—

(1) IN GENERAL.—A person covered by this section in the Army, Navy, Air Force, or Marine Corps who is serving or has served in a position of importance and responsibility designated by the President to carry the grade of lieutenant general or general in the Army, Air Force, or Marine Corps, or vice admiral or admiral in the Navy under section 601 of this title may be retired in such grade under subsection (a) only after the Secretary of Defense certifies in writing to the President and the Committees on Armed Services of the Senate and the House of Representatives that the officer served satisfactorily in such grade.

(2) PROHIBITION ON DELEGATION.—The authority of the Secretary of Defense to make a certification with respect to an officer under paragraph (1) may not be delegated.

(3) REQUIREMENTS IN CONNECTION WITH CERTIFICATION.—A certification with respect to an officer under paragraph (1) shall—

(A) be submitted by the Secretary of Defense such that it is received by the President and the Committees on Armed Services of the Senate and the House of Representatives not later than 60 days prior to the date on which the officer will be retired in the grade concerned;

(B) include an up-to-date copy of the military biography of the officer; and

(C) include the statement of the Secretary as to whether or not potentially adverse, adverse, or reportable information regarding the officer was considered by the Secretary in making the certification.

(4) CONSTRUCTION WITH OTHER NOTICE.—In the case of an officer under paragraph (1) who is eligible to be credited with service in a grade only by reason of the exercise of the authority in subsection (c)(3)(C) to reduce the three-year service-in-grade requirement under subsection (c)(1), the requirement for notification under subsection (c)(3)(D) is satisfied if the notification is included in the certification submitted by the Secretary of Defense under paragraph (1).

(e) CONDITIONAL RETIREMENT GRADE AND RETIREMENT FOR OFFICERS UNDER INVESTIGATION FOR MISCONDUCT OR PENDING ADVERSE PERSONNEL ACTION.—The retirement grade, and retirement, of a person covered by this section who is under investigation for alleged misconduct or pending the disposition of an adverse personnel action at the time of retirement is as provided for by section 1370(d) of this title. In the application of such section 1370(d) for purposes of this subsection, any reference<sup>1</sup> “active duty” shall be deemed not to apply, and any reference to a provision of section 1370 of this title shall be deemed to be a reference to the analogous provision of this section.

(f) FINAL RETIREMENT GRADE FOLLOWING RESOLUTION OF PENDING INVESTIGATION OR ADVERSE ACTION.—The final retirement grade under this section of a person described in subsection (e) following resolution of the investigation or personnel action concerned is the final retirement

grade provided for by section 1370(e) of this title. In the application of such section 1370(e) for purposes of this subsection, any reference to a provision of section 1370 of this title shall be deemed to be a reference to the analogous provision of this section. In the application of paragraph (3) of such section 1370e(e)<sup>2</sup> for purposes of this subsection, the reference to “chapter 71” of this title<sup>3</sup> shall be deemed to be a reference to “chapter 1223 of this title”.

(g) FINALITY OF RETIRED GRADE DETERMINATIONS.—

(1) IN GENERAL.—Except for a conditional determination authorized by subsection (e), a determination of the retired grade of a person pursuant to this section is administratively final on the day the person is retired, and may not be reopened.

(2) REOPENING.—A determination of the retired grade of a person may be reopened in accordance with applicable provisions of section 1370(f) of this title. In the application of such section 1370(f) for purposes of this subsection, any reference to a provision of section 1370 of this title shall be deemed to be a reference to the analogous provision of this section. In the application of paragraph (7) of such section 1370(f) for purposes of this paragraph, the reference to “chapter 71 of this title” shall be deemed to be a reference to “chapter 1223 of this title”.

(h) HIGHEST PERMANENT GRADE DEFINED.—In this section, the term “highest permanent grade” means a grade at or below the grade of major general in the Army, Air Force, or Marine Corps or rear admiral in the Navy.

(Added Pub. L. 116-283, div. A, title V, § 508(a)(1), Jan. 1, 2021, 134 Stat. 3580.)

**§ 1371. Warrant officers: general rule**

Unless entitled to a higher retired grade under some other provision of law, a warrant officer shall be retired in the highest regular or reserve warrant officer grade in which the warrant officer served satisfactorily, as determined by the Secretary concerned.

(Aug. 10, 1956, ch. 1041, 70A Stat. 104; Pub. L. 114-92, div. A, title V, § 505, Nov. 25, 2015, 129 Stat. 808.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1371 .....	10:600(d) (1st sentence). 10:600(f) (1st sentence, as applicable to retired grade). 34:430(d) (1st sentence). 34:430(f) (1st sentence, as applicable to retired grade).	May 29, 1954, ch. 249, § 14(d) (1st sentence), (f) (1st sentence, as applicable to retired grade), 68 Stat. 163, 164.

The first 13 words are substituted for 10:600(f) (1st sentence, as applicable to retired grade) and 34:430 (1st sentence, as applicable to retired grade). The words “for a period of more than 30 days” are substituted for the words “under \* \* \* orders specifying that the period of such duty shall be for a period in excess of thirty days or for an indefinite period”, to conform to the

<sup>2</sup>So in original. Probably should be “1370(e)”.

<sup>3</sup>So in original. The closing quotation marks following “71” probably should follow “title”.

<sup>1</sup>So in original. Probably should be followed by “to”.