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37 USCS @ 201 (1998) printed in FULL format.

UNITED STATES CODE SERVICE
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*** THIS SECTION IS CURRENT THROUGH 105-165, APPROVED 3/20/98 ***
*** WITH A GAP OF 160 AND 164 ***

TITLE 37. PAY AND ALLOWANCES OF THE UNIFORMED SERVICES
CHAPTER 3. BASIC PAY

37 USCS @ 201 (1998)

@ 201. Pay grades; assignment to; general rules

(a) For the purpose of computing their basic pay, commissioned officers of the uniformed services (other than commissioned warrant officers) are assigned by the grade or rank in which serving to the following pay grades:

Pay grade	Army, Air Force and Marine Corps	Navy, Coast Guard, and, National Oceanic and Atmospheric Administration	Public Health Service
O-10 . .	General	Admiral	Assistant Secretary
O-9 . .	Lieutenant general . .	Vice Admiral	Surgeon General
O-8 . .	Major general	Rear admiral	Deputy Surgeon General
			Assistant Surgeon General having rank of major general.
O-7 . .	Brigadier general . .	Rear admiral (lower half)	Assistant Surgeon General having rank of brigadier general.
O-6 . .	Colonel	Captain	Director grade.
O-5 . .	Lieutenant colonel . .	Commander	Senior grade.
O-4 . .	Major	Lieutenant commander	Full grade.
O-3 . .	Captain	Lieutenant	Senior assistant grade.
O-2 . .	1st lieutenant	Lieutenant (junior grade)	Assistant grade.
O-1 . .	2d lieutenant	Ensign	Junior assistant grade.

(b) For the purpose of computing their basic pay, warrant officers of the

armed forces are assigned, by the warrant officer grade in which serving, to the following pay grades:

Pay Grade	Warrant Officer Grade
W-5.....	Chief Warrant Officer, W-5
W-4.....	Chief Warrant Officer, W-4
W-3.....	Chief Warrant Officer, W-3
W-2.....	Chief Warrant Officer, W-2
W-1.....	Warrant Officer, W-1

(c) Unless entitled to the basic pay of a higher pay grade, an aviation cadet of the Navy, Air Force, Marine Corps, or Coast Guard is entitled to monthly basic pay at the lowest rate prescribed for pay grade E-4.

(d) Unless he is entitled to the basic pay of a higher pay grade, an aviation pilot of the Naval Reserve, Marine Corps Reserve, or Coast Guard Reserve is entitled to monthly basic pay at the rate prescribed for pay grade E-5.

(e) Except as provided by subsections (c) and (d), enlisted members of the uniformed services shall, for the purpose of computing their basic pay, be distributed by the Secretary concerned in the various enlisted pay grades set forth in section 203 of this title. However, except as provided by section 307 of this title, an enlisted member may not be placed in pay grade E-8 or E-9 until he has completed at least 8 years or 10 years, respectively, of enlisted service computed under section 205 of this title.

(f) [Redesignated]

HISTORY: (Sept. 7, 1962, P.L. 87-649, @ 1, 76 Stat. 453; Oct. 2, 1963, P.L. 88-132, @ 3(a), 77 Stat. 212; Nov. 2, 1966, P.L. 89-718, @ 49(a)(1), 80 Stat. 1121; June 12, 1970, P.L. 91-278, @ 3(1), 84 Stat. 306; July 30, 1977, P.L. 95-79, Title III, @ 302(a)(1), 91 Stat. 326; Sept. 29, 1979, P.L. 96-76, Title III, @ 313(a), 93 Stat. 586; Dec. 12, 1980, P.L. 96-513, Title V, Part B, @ 516(2), 94 Stat. 2937; Dec. 12, 1980, P.L. 96-513, Title V, Part A, @ 506(3) 94 Stat. 2918; Dec. 1, 1981, P.L. 97-86, Title IV, @ 405(c), 95 Stat. 1106; Sept. 24, 1983, P.L. 98-94, Title IX, Part C, @ 932(d), 97 Stat. 650; Oct. 30, 1984, P.L. 98-557, @ 25(b)(1), 98 Stat. 2872; Nov. 8, 1985, P.L. 99-145, Title V, Part B, @ 514(d)(1), 99 Stat. 629; Nov. 3, 1990, P.L. 101-502, @ 5(k)(2), 104 Stat. 1289; April 6, 1991, P.L. 102-25, Title VII, @ 702(b)(1), (c), 105 Stat. 117; Dec. 5, 1991, P.L. 102-190, Div A, Title VI, @ 605, Title XI, Part A, @ 1111(b), 105 Stat. 1374, 1491.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
201(a)	37:232(b).	Oct. 12, 1949, ch 681, Sec. 201(b), restated May

37 USCS @ 201 (1998)

		20, 1958, Pub. L. 85-422, Sec. 1(2), 72 Stat. 124.
201(b)	37:304 (as applicable to basic pay).	Oct. 12, 19 49, ch 681, Sec. 504 (as applicable to basic pay), 63 Stat. 827.
201(c)	37:308 (as applicable to pay).	Oct. 12, 19 49, ch 681, Sec. 508 (as applicable to pay), 63 Stat. 828; May 19, 1952, ch 310, Sec. 1(e), 66 Stat. 80; March 31, 1955, ch 20, Sec. 2(14), 69 Stat. 22.
201(d)	10:555(a) (as applicable to pay grades).	[None]
201(e)	37:232(e).	Oct. 12, 1949, ch 681, Sec. 201(e); added March 31, 1955, ch 20, Sec. 2(3), 69 Stat. 19.
201(f)	10:6915(f). 14:758a(f).	[None] [None]
201(g)	37:232(c) (less last sentence).	Oct. 12, 1949, ch 681, Sec. 201 (c) (less last sentence), 63 Stat. 807; redesignated as "(c)" by March 31, 1955, ch 20, Sec. 2(2), 69 Stat. 19; May 20, 1958, P.L. 85-422, Sec. 1(3) (first sentence), 72 Stat. 124.

In subsection (a), the words "whether under temporary or permanent appointment" are omitted as surplusage. The words "the following pay grades" are substituted for the words "the various pay grades prescribed for commissioned officers by subsection (a) of this section, as follows". The words "(other than a commissioned warrant officer)" are inserted to conform to the definition of "warrant officer" in 37 USCS @ 101(13).

In subsection (b), the words "with two or less years of service computed under section 205 of this title" are substituted for the word "minimum".

In subsections (c) and (e), the words "with two or less years of service computed under section 205 of this title" are substituted for the words "with under two cumulative years' service" and "with under two cumulative years of service", in former 37 USC @ 308 and 232(e), respectively.

In subsection (e), the words "enlisted or appointed under the Army Aviation Cadet Act, as amended, or under the Naval Aviation Cadet Act of 1942, as amended" are omitted as obsolete and surplusage. Both of the cited Acts were repealed by Act August 10, 1956, ch 1041 @ 53, 70A Stat. 641, and replaced by various sections of 10 USCS. Further reference is surplusage, however, since aviation cadets are not appointed or enlisted under any provision of law other than the sections of 10 USCS embodying the former Army Aviation Cadet Act and the Naval Aviation Cadet Act of 1942. The word "basic" is inserted for clarity, since the word "pay" as defined in 37 USCS @ 101(21) section includes special

and incentive pays. Incentive pay for aviation cadets is provided in 37 USCS @ 301(b).

In subsection (f), the words "While on active duty", in former 10 USC @ 6915(f) and former 14 USC @ 758a(f), are omitted as covered by 37 USCS @ 204, which prescribes the conditions under which members of the uniformed services are entitled to basic pay. The words "Unless he is entitled to the basic pay of a higher pay grade" are substituted for the words "or that of his grade, whichever is greater" in former 10 USC @ 6915(f) and former 14 USC @ 758a(f).

In subsection (g), the words "Except as provided by subsections (e) and (f)" are inserted to reflect those subsections relating to enlisted aviation cadets or aviation pilots.

Amendments:

1963. Act Oct. 2, 1963, in subsec. (b), substituted "O-3 with over four, but not more than six," for "O-2 with two or less". for effective date of this amendment, see Other provisions note to this section.

1966. Act Nov. 2, 1966, in subsec. (a), in the third column of table, substituted "Environmental Science Services Administration" for "Coast and Geodetic Survey".

1970. Act June 21, 1970, in subsec. (e), deleted "or" preceding "Marine Corps" and inserted ", or Coast Guard".

1977. Act June 30, 1977, deleted subsec. (c), which read: "(c) A cadet at the United States Military Academy, the United States Air Force Academy, or the Coast Guard Academy, or a midshipman at the United States Naval Academy, is entitled to monthly pay at the rate of 50 percent of the basic pay of a commissioned officer in pay grade O-1 with two or less years of service computed under section 205 of this title."; and redesignated subsecs. (d), (e), (f), and (g), as subsecs. (c), (d), (e), and (f), respectively.

1979. Act Sept. 29, 1979 (effective 10/1/79, as provided by @ 314 of such Act), in subsec. (a), in the fourth column of the table, upgraded "Surgeon General." from pay grade O-8 to pay grade O-9.

1980. Act Dec. 12, 1980, @ 516(2) (effective 12/12/80, as provided by @ 701(b)(3) of such Act), in subsec. (f), substituted "subsections (d) and (e)" for "subsections (e) and (f)".

Such Act further (effective 9/15/81, as provided by @ 701(a) of such Act which appears as 10 USCS @ 101 note), in subsec. (a), substituted the rank and pay grade table for one which read:

Pay grade	"Army, Air Force and Marine Corps	Navy, Coast Guard, and, Environmental Science Administration	Public Health Service

O-10. .	General	Admiral	
O-9 . .	Lieutenant general. .	Vice Admiral. . . .	Surgeon General
O-8 . .	Major general	Rear admiral (upper half)	Deputy Surgeon General
			Assistant Surgeon Gen- eral having rank of major general.
O-7 . .	Brigadier general . .	Rear admiral	Assistant Surgeon Gen-

37 USCS @ 201 (1998)

	(lower half) and commodore.	eral having rank of brigadier general.
O-6 . . Colonel	Captain	Director grade.
O-5 . . Lieutenant colonel. .	Commander	Senior grade.
O-4 . . Major	Lieutenant commander	Full grade.
O-3 . . Captain	Lieutenant.	Senior assistant grade.
O-2 . . 1st lieutenant. . . .	Lieutenant (junior grade)	Assistant grade.
O-1 . . 2d lieutenant	Ensign	Junior assistant grade."

1981. Act Dec. 1, 1981 (effective 9/15/81, as provided by @ 405(f) of such Act, which appears as 10 USCS @ 101 note), in subsec. (a), in the third column of the table, deleted "admiral" after "Commodore".

1983. Act Sept. 24, 1983 (effective 10/1/83, as provided by @ 932(f) of such Act, which appears as 10 USCS @ 1091 note) deleted subsec. (b), which read: "A contract surgeon who is serving full time with a uniformed service is entitled to the basic pay of a commissioned officer in pay grade O-3 with over four, but not more than six, years of service computed under section 205 of this title."; redesignated subsecs. (c)-(f) as subsecs. (b)-(e) respectively; and, in subsec. (e) as so redesignated, substituted "subsections (c) and (d)" for "subsections (d) and (e)".

1984. Act Oct. 30, 1984, in subsec. (a), in the column "Navy, Coast Guard, and National Oceanic and Atmospheric Administration", substituted:

"Rear admiral

"Commodore"

for:

"Rear admiral (Navy) and

"Rear admiral (upper half)

"(Coast Guard and

"National Oceanic

"Atmospheric Administration)

"Commodore (Navy)

"and Rear admiral (lower

"half) and commodore

"(Coast Guard and National

"Oceanic and Atmospheric

"Administration)"

1985. Act Nov. 8, 1985, in subsec. (a), in the third column of the table, substituted "Rear admiral (lower half)" for "Commodore".

1990. Act Nov. 3, 1990 (effective as provided by @ 5(k)(3) of such Act, which appears as a note to this section), in subsec. (a) in the Table, inserted "Assistant Secretary for Health".

1991. Act April 6, 1991, in subsec. (e), deleted "of this section" following "subsections (c) and (d)".

Act Dec. 5, 1991 substituted subsec. (c) for one which read: " "An aviation cadet of the Navy, Air Force, Marine Corps, or Coast Guard is entitled to monthly basic pay at the rate of 50 percent of the basic pay of a commissioned officer in pay grade O-1 with two or less years of service computed under section 205 of this title.".

Such Act further (effective 2/1/92 as provided by @ 1132 of such Act, which appears as 10 USCS @ 521 note), in subsec. (b), substituted the table for one which read:

"Pay Grade	Warrant Officer Grade
W-4.....	Chief Warrant Officer, W-4
W-3.....	Chief Warrant Officer, W-3
W-2.....	Chief Warrant Officer, W-2
W-1.....	Warrant Officer, W-1".

Transfer of functions:

The Coast Guard was transferred to the Department of Transportation, and all functions, powers, and duties relating to the Coast Guard of the Secretary of the Treasury and of all other officers and offices of the Department of the Treasury were transferred to the Secretary of Transportation by Act Oct. 15, 1966, P.L. 89-670, @ 6(b)(1), 80 Stat. 938, classified to 49 USCS @ 1655(b)(1), except the Coast Guard shall operate as part of the Navy in time of war or when the President directs as provided by @ 6(b)(2).

All functions of the Public Health Service, of the Surgeon General of the Public Health Service, and of all other officers and employees of the Public Health Service, and all functions of all agencies of or in the Public Health Service were transferred to the Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, effective June 25, 1966, 31 Fed. Reg. 8855, 80 Stat. 1610, located at 5 USCS @ 903 note.

Act Oct. 17, 1979, P.L. 96-88, Title V, @ 509, 93 Stat. 695, located at 20 USCS @ 3508, redesignated the Secretary of Health, Education, and Welfare as the Secretary of Health and Human Services and provided that any reference to the Secretary of Health, Education, and Welfare, in any law in force on the effective date of Act Oct. 17, 1979, shall be deemed to refer and apply to the Secretary of Health and Human Services, except to the extent such reference is to a function or office transferred to the Secretary of Education or the Department of Education under Act Oct. 17, 1979.

Other provisions:

Effective date of amendments made by Act Oct. 2, 1963. Act Oct. 2, 1963, P.L. 88-132, @ 14, 77 Stat. 218, provided: "This Act [amending this section, among other things; for full classification, consult USCS Tables volumes] becomes effective on October 1, 1963.".

Change of name. Reorg. Plan No. 4 of 1970, @ 4(d), effective Oct. 3, 1970, 35 Fed. Reg. 15627, 84 Stat. 2090, located at 5 USCS @ 903 note, changed the name of the commissioned officer corps of the Environmental Science Services Administration to the commissioned officer corps of the National Oceanic and Atmospheric Administration.

Application of amendments made by Act Sept. 24, 1983 to certain contracts. For provisions as to the application of the amendments made to this section by Act Sept. 24, 1983 to certain contracts entered into under the authority of this section, see Act Sept. 24, 1983, P.L. 98-94, Title IX, Part C, @ 923(f), 97 Stat. 650, which appears as 10 USCS @ 1091 note.

Effective date of amendments by @ 5(k) of Act Nov. 3, 1990. Act Nov. 3, 1990, P.L. 101-502, @ 5(k)(3), 104 Stat. 1289, provides: "The amendments made by paragraphs (1) and (2) [amending 21 USCS @ 331(e) and [subsec. (a) of this section] shall take effect on the first day of the month immediately following the month in which this Act was enacted.".

NOTES:

CROSS REFERENCES

Warrant officer grades, 10 USCS @ 571.

This section is referred to in 10 USCS @ 571; 18 USCS @ 207.

RESEARCH GUIDE

Am Jur:

54 Am Jur 2d, Military, and Civil Defense @ 164.

53A Am Jur 2d, Military and Civil Defense @ 169.

70A Am Jur 2d, Social Security and Medicare @ 169.

INTERPRETIVE NOTES AND DECISIONS

1. Generally
2. Power of Congress to regulate pay
3. Right to receive pay, generally
4. --Effect of court martial
5. --Effect of detention by civil authorities
6. Additional pay
7. Brevet officers of Marine Corps
8. Collateral source rule
9. Recovery of erroneous payment

1. Generally

Common-law rules governing private contracts have no place in area of military pay, soldier's entitlement to pay being dependent upon statutory right. *Bell v United States* (1961) 366 US 393, 6 L Ed 2d 365, 81 S Ct 1230.

Where statute fixes pay of Army officer, his compensation rests upon act of Congress, not upon contract, and his acceptance of less than statutory compensation does not estop him from claiming full amount. *Emmons v United States* (1927) 63 Ct Cl 121.

Soldier is subject to military discipline for nonperformance of duty, and resort cannot be had to courts to investigate whether, by his services, he has earned what statutes allow him. *White v United States* (1931) 72 Ct Cl 459.

2. Power of Congress to regulate pay

It is not in power of executive department, or any branch of it, to reduce pay of Army officer, since regulation of compensation of officers of Army belongs to legislative department of government. *United States v Williamson*

(1875) 90 US 411, 23 Wall 411, 23 L Ed 89.

Congress may prospectively reduce pay of members of Armed Forces, even if that reduction deprives members of benefits they expected to be able to earn. *United States v Larionoff* (1977) 431 US 864, 53 L Ed 2d 48, 97 S Ct 2150.

Congress has power to regulate pay of naval officers. *Lowry v McCarl* (1935) 65 App DC 19, 79 F2d 144, cert den (1935) 296 US 637, 80 L Ed 453, 56 S Ct 170.

3. Right to receive pay, generally

Retired officers are not entitled to pay as Army officers during period of time when they were absent from country in discharge of continuous official duties inconsistent with subjection to rules and articles of war. *Badeau v United States* (1889) 130 US 439, 32 L Ed 997, 9 S Ct 579.

If officer sues for his salary he must show legal title to office; but if he in good faith performed service for which he was paid, it is money which in equity and good conscience he may retain, though he was not officer de jure. *Bennett v United States* (1884) 19 Ct Cl 379; *Palen v United States* (1884) 19 Ct Cl 389; *McBlair v United States* (1884) 19 Ct Cl 528.

Lieutenant who wrote letter to Secretary of War [Army] which though not intended as such was considered resignation by department, and who, as result of which, was dropped from rolls, but afterwards was restored by President to his station and rank, was entitled to be paid as lieutenant during time he was kept out of service. 3 Op Atty Gen 641.

So long as person is officer of Army, he is entitled to receive pay belonging to office, unless he has forfeited it under some provision of law, whether he has actually performed military service or not. 13 Op Atty Gen 104.

As general rule, contract surgeon is entitled to pay only from time he enters upon duty under his contract. 17 Op Atty Gen 461.

4. --Effect of court martial

Mere fact that officer is under court-martial charges does not deprive him of his pay and allowances; such forfeiture can only be imposed by sentence of court-martial. *Walsh v United States* (1908) 43 Ct Cl 225; *Carrington v United States* (1911) 46 Ct Cl 279.

5. --Effect of detention by civil authorities

Enlisted man in Marine Corps, who upon enlistment was without knowledge that he was suspected of crime, or that warrant for his arrest had been issued, and who after enlistment was surrendered to civil authorities for trial and had charges dismissed, was entitled to pay during period of detention. *White v United States* (1931) 72 Ct Cl 459.

Arrest and confinement by civil authorities does not deprive enlisted marines of their pay and allowances. 2 Op Atty Gen 396.

6. Additional pay

Soldier honorably discharged from Army, who enlists in Marine Corps within one month, is entitled to same additional pay that he would be entitled to if his reenlistment had been in Army. *Walton v United States* (1896) 31 Ct Cl 196.

Where statute provided for increase of pay of 20 per centum in time of war for enlisted men in Army, such pay was construed as part of regular pay of marines, in forming basis for distribution of prize money. *Engagement off Santiago Bay, July 3, 1898* (1901) 36 Ct Cl 200; *Engagement at Manila Bay, May 1, 1898* (1901) 36 Ct Cl 206.

7. Brevet officers of Marine Corps

Brevet officers of Marine Corps are on same footing as other officers with

respect to pay and allowances. United States v Freeman (1845) 44 US 556, 3 How 556, 11 L Ed 724.

Brevet officers of Marine Corps are entitled to pay and allowances of officers of similar grades in infantry of Army. 5 Op Atty Gen 513.

8. Collateral source rule

Compensation paid injured serviceman under provisions of 37 USCS @@ 201 et seq. is subject to collateral source rule in action against tortfeasor arising from automobile accident; serviceman accepts lower rate of compensation in exchange for security, including payment of wages during period of disability, and, as result thereof, serviceman may recover against tortfeasor impaired earning capacity during disability. Hall v Olague (1978, App) 119 Ariz 73, 579 P2d 577.

9. Recovery of erroneous payment

Limitation of actions against United States or its officials to enforce liability of endorser, transferor, or depositor arising out of forged or unauthorized signature does not apply to action by government to recover amount overpaid to person while in military service as result of government's failure to make proper deductions from military pay. Thompson v United States (1962, CA10 Kan) 312 F2d 516, cert den (1963) 373 US 912, 10 L Ed 2d 414, 83 S Ct 1303.

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*** WITH A GAP OF 160 AND 164 ***

TITLE 37. PAY AND ALLOWANCES OF THE UNIFORMED SERVICES

CHAPTER 3. BASIC PAY

37 USCS @ 203 (1998)

@ 203. Rates

(a) The rates of monthly basic pay for members of the uniformed services within each pay grade are those prescribed in accordance with section 1009 of this title or as otherwise prescribed by law.

(b) While serving as a permanent professor at the United States Military Academy or the United States Air Force Academy or as a member of the permanent commissioned teaching staff at the United States Coast Guard Academy, an officer who has over 36 years of service computed under section 205 of this title is, in addition to the pay and allowances to which he is otherwise entitled under this title, entitled to additional pay in the amount of \$ 250 a month. This additional pay may not be used in the computation of retired pay.

(c) A cadet at the United States Military Academy, the United States Air Force Academy, or the Coast Guard Academy, or a midshipman at the United States Naval Academy, is entitled to monthly cadet pay, or midshipman pay, at the rate of \$ 558.04.

(d) The basic pay of a commissioned officer who is in pay grade O-1, O-2, or O-3 and who is credited with a total of over four years' active service as a warrant officer or as a warrant officer and enlisted member shall be computed in the same manner as the basic pay of a commissioned officer in the same pay grade who has been credited with over four years' active service as an enlisted member.

(e) (1) A student at the United States Military Academy Preparatory School, the United States Naval Academy Preparatory School, or the United States Air Force Academy Preparatory School who was selected to attend the preparatory school from civilian life is entitled to monthly student pay at the same rate as provided for cadets and midshipmen under subsection (c).

(2) A student at a preparatory school referred to in paragraph (1) who, at the time of the student's selection to attend the preparatory school, was an enlisted member of the uniformed services on active duty for a period of more than 30 days shall continue to receive monthly basic pay at the rate prescribed for the student's pay grade and years of service as an enlisted member.

(3) The monthly student pay of a student described in paragraph (1) shall be treated for purposes of the accrual charge for the Department of Defense Military Retirement Fund established under section 1461 of title 10 in the same manner as monthly cadet pay or midshipman pay under subsection (c).

HISTORY: (Sept. 7, 1962, P.L. 87-649, @ 1, 76 Stat. 456; Oct. 2, 1963, P.L. 88-132, @ 2, 77 Stat. 210; Aug. 12, 1964, P.L. 88-422, @ 1, 78 Stat. 395; Aug. 21, 1965, P.L. 89-132, @ 1, 79 Stat. 545; July 13, 1966, P.L. 89-501, Title

37 USCS @ 203 (1998)

III, @ 301, 80 Stat. 276; Dec. 16, 1967, P.L. 90-207, @ 1(1), 81 Stat. 649; June 12, 1970, P.L. 91-278, @ 3(2), 84 Stat. 306; Sept. 28, 1971, P.L. 92-129, Title II, @ 201, 85 Stat. 355; Oct. 2, 1972, P.L. 92-455, @ 3, 86 Stat. 761; Sept. 19, 1974, P.L. 93-419, @ 2, 88 Stat. 1152; July 30, 1977, P.L. 95-79, Title III, @ 302(a)(2), 91 Stat. 326; Sept. 8, 1980, P.L. 96-343, @ 6(b), 94 Stat. 1127; Oct. 14, 1981, P.L. 97-60, Title I, Part A, @ 102(a), 95 Stat. 992; Sept. 24, 1983, P.L. 98-94, Title IX, Part A, @ 902(a), 97 Stat. 635; Nov. 8, 1985, P.L. 99-145, Title XIII, @ 1303(b)(1), 99 Stat. 740; Nov. 14, 1986, P.L. 99-661, Div A, Title VI, Part A, @ 601(c), 100 Stat. 3874; Dec. 4, 1987, P.L. 100-180, Div A, Title VI, Part A, @ 601(c) [(d)], 101 Stat. 1092; Dec. 22, 1987, P.L. 100-202, @ 110(b), 101 Stat. 1329-436; Sept. 29, 1988, P.L. 100-456, Div A, Title VI, Part A, @ 601(d), 102 Stat. 1976; Nov. 29, 1989, P.L. 101-189, Div A, Title VI, Part A, @ 601(c), 103 Stat. 1445; Nov. 30, 1993, P.L. 103-160, Div A, Title VI, Subtitle A, @ 603(a), 107 Stat. 1678; Oct. 5, 1994, P.L. 103-337, Div A, Title VI, Subtitle A, @ 601(c), 108 Stat. 2779.)

(As amended Sept. 23, 1996, P.L. 104-201, Div A, Title VI, Subtitle A, @ 602, 110 Stat. 2540.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
203	10:142(d) (as applicable to basic pay).	[None]
	37:232(a).	Oct. 12, 1949, ch 681, Sec. 201(a); May 19, 1952, ch 310, Sec. 1(a); restated March 31, 1955, ch 20, Sec. 2(1); restated May 20, 1958, P.L. 85- 422, Sec. 1(1), 72 Stat. 122.

Former 10 USC @ 142(d) (as applicable to basic pay) is omitted as superseded by footnote 1 of former 37 USCS @ 232(a). The words "pay grades are prescribed" are omitted as covered by 37 USCS @ 201. The words "rates of monthly basic pay . . . are" are substituted for the words "monthly basic pay . . . is established". The words "according to cumulative years of service" are omitted as covered by the words "years of service computed under section 205" appearing in each table.

Amendments:

1963. Act Oct. 2, 1963 (effective 10/1/63, as provided by @ 14 of such Act), substituted new section for one which read:

"The rates of monthly basic pay for members of the uniformed services within each pay grade are set forth in the following tables:

Years of service computed under section 205

2 or less	Over 2	Over 3	Over 4	Over 6
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O-10<1>	..	\$ 1,200.00	\$ 1,250	\$ 1,250	\$ 1,250	\$ 1,250	\$ 1,300	\$ 1,300
O-9		1,063.30	1,100	1,122	1,122	1,122		
O-8		963.30	1,000	1,022	1,022			
O-7	.....	800.28	860	860	860			
O-6	.....	592.80	628	670	670			
O-5	.....	474.24	503	540	540			
O-4	.....	400.14	424	455	455			
O-3<2>	...	326.04	346	372	415			
O-2<2>	...	259.36	291	360	370			
O-1<2>	...	222.30	251	314	314			

Over 12	Over 14	Over 16	Over 18	Over 20
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O-10<1>	..	\$ 1,400	\$ 1,400	\$ 1,500	\$ 1,500	\$ 1,600	\$ 1,600	\$ 1,700	\$ 1,700
O-9		1,200	1,200	1,300	1,300	1,400			
O-8		1,150	1,150	1,200	1,250	1,300			
O-7	.....	950	1,000	1,100	1,175				
O-6	.....	670	690	800	840				
O-5	.....	590	630	680	720				
O-4	.....	550	570	610	630				
O-3<2>	...	510	525	525	525				
O-2<2>	...	380	380	380	380				
O-1<2>	...	314	314	314	314				

<2> Does not apply to commissioned officers who have been credited with over 4 years active service as an enlisted member.

"Commissioned officers credited with over 4 years of active service as an enlisted member

[illegible]

O-3 .. \$ 415 \$ 440 \$ 460 \$ 480 \$ 510 \$ 535 \$ 535 \$ 535 \$ 535 \$ 535 \$ 535 \$ 535

37 USCS @ 203 (1998)

O-2 .. 370 380 395 415
 O-1 .. 314 335 350 365

 "Warrant officers

Years of service computed under section 205

"Pay grade-----

	2 or less	Over 2	Over 3	Over 4	Over 6
--	--------------	-----------	-----------	-----------	-----------

W-4 ...	\$ 332.90	\$ 376	\$ 376	\$ 383	\$ 399
W-3 ...	302.64	343	343	348	353
W-2 ...	264.82	298	298	307	328
W-1 ...	219.42	266	266	285	299

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Years of service computed under section 205

"Pay grade-----

	Over 14	Over 16	Over 18	Over 20	Over 22
--	------------	------------	------------	------------	------------

W-4	\$ 486	\$ 504	\$ 516	\$ 528	\$ 543
W-3	427	441	458	470	
W-2	381	393	406	417	
W-1	354	364	375	390	

 "Enlisted members

Years of service computed under section 205

"Pay grade-----

	2 or less	Over 2	Over 3	Over 4	Over 6
--	--------------	-----------	-----------	-----------	-----------

E-9 ...	.....	.....	.....	.....	.....
E-8 ...	.....	.....	.....	.....	.....
E-7 ...	\$ 206.39	\$ 236	\$ 236	\$ 250	\$ 260 270
E-6 ...	175.81	200	200	225	
E-5 ...	145.24	180	180	205	
E-4 ...	122.30	150	160	170	
E-3 ...	99.37	124	124	141	
E-2 ...	85.80	108	108	108	
E-1 ...	83.20	105	105	105	
E-1 (under 4 months)	78.00				

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Years of service computed under section 205

"Pay grade-----

	Over 14	Over 16	Over 18	Over 20	Over 22
--	------------	------------	------------	------------	------------

E-9	\$ 400	\$ 410	\$ 420	\$ 430	\$ 440
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37 USCS @ 203 (1998)

E-8	340	350	360	370
E-7	310	325	340	350
E-6	275	280	290	290
E-5	240	240	240	240
E-4	190	190	190	190
E-3	141	141	141	141
E-2	108	108	108	108
E-1	105	105	105	105

1964. Act Aug. 12, 1964, substituted new subsec. (a) for one which read:

"(a) The rates of monthly basic pay for members of the uniformed services within each pay grade are set forth in the following tables:

"Commissioned officers

Years of service computed under section 205

"Pay grade-----	2 or less	Over 2	Over 3	Over 4	Over 6
O-10<1> ..\$	1,200.00	\$ 1,315	\$ 1,315	\$ 1,315	\$ 1,315
O-9	1,063.30	1,155	1,180	1,180	1,180
O-8	963.30	1,050	1,075	1,075	
O-7	800.28	905	905	905	
O-6	592.80	690	735	735	
O-5	474.24	590	630	630	
O-4	400.14	515	550	550	
O-3<2> ...	326.04	440	470	520	
O-2<2> ...	259.36	375	450	465	
O-1<2> ...	222.30	300	375	375	

Years of service computed under section 205

"Pay grade-----	Over 12	Over 14	Over 16	Over 18	Over 20
O-10<1> ..\$	1,470	\$ 1,470	\$ 1,575	\$ 1,575	\$ 1,680
O-9	1,260	1,260	1,365	1,365	1,470
O-8	1,210	1,210	1,260	1,315	1,365
O-7	1,000	1,050	1,155	1,235	1,235
O-6	735	760	880	925	
O-5	685	730	785	830	
O-4	660	690	720	740	
O-3<2> ...	625	640	640	640	
O-2<2> ...	475	475	475	475	
O-1<2> ...	375	375	375	375	

"<1> While serving as Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, or Commandant of the Marine Corps, basic pay for this

37 USCS @ 203 (1998)

grade is \$ 1,970 regardless of cumulative years of service computed under section 205 of this title.

"<2> Does not apply to commissioned officers who have been credited with over 4 years' active service as an enlisted member.

"Commissioned officers who have been credited with over 4 years' active service as an enlisted member

Years of service computed under section 205

"Pay grade

Over 4	Over 6	Over 8	Over 10	Over 12
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O-3	\$ 520	\$ 545	\$ 565	\$ 595	\$ 625
O-2	465	475	490	515	
O-1	375	400	415	430	

Years of service computed under section 205

"Pay grade

Over 16	Over 18	Over 20	Over 22	Over 26
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O-3	\$ 650	\$ 650	\$ 650	\$ 650	\$ 650
O-2	550	550	550	550	
O-1	465	465	465	465	

"Warrant officers

Years of service computed under section 205

"Pay grade

2 or less	Over 2	Over 3	Over 4	Over 6
--------------	-----------	-----------	-----------	-----------

W-4	\$ 332.90	\$ 430	\$ 430	\$ 440	\$ 460	\$ 480
W-3	302.64	395	395	400		
W-2	264.82	345	345	355		
W-1	219.42	305	305	330		

Years of service computed under section 205

"Pay grade

Over 14	Over 16	Over 18	Over 20	Over 22
------------	------------	------------	------------	------------

W-4	\$ 560	\$ 580	\$ 595	\$ 615	\$ 635
W-3	490	505	520	540	
W-2	440	455	470	485	
W-1	405	420	435	450	

"Enlisted members

Years of service computed under section 205

37 USCS @ 203 (1998)

"Pay grade-----	2 or less	Over 2	Over 3	Over 4	Over 6
E-9					
E-8					
E-7 ... \$ 206.39	\$ 275	\$ 285	\$ 295	\$ 305	
E-6 ... 175.81	240	250	260	270	
E-5 ... 145.24	210	220	230	245	
E-4 ... 122.30	180	190	205	215	
E-3 ... 99.37	145	155	165		
E-2 ... 85.80	120	120	120		
E-1 ... 83.20	110	110	110		
E-1 (under 4 months) 78.00	.....	.....	.....	.....	.....

Years of service computed under section 205

"Pay grade-----	Over 14	Over 16	Over 18	Over 20	Over 22
E-9	\$ 455	\$ 465	\$ 475	\$ 485	\$ 510
E-8	395	405	415	425	
E-7	350	360	370	375	
E-6	315	325	330	330	
E-5	280	280	280	280	
E-4	215	215	215	215	
E-3	165	165	165	165	
E-2	120	120	120	120	
E-1	110	110	110	110	

For effective date of this amendment, see Other provisions note to this section.

1965. Act Aug. 21, 1965, substituted new subsec. (a) for one which read:

"(a) The rates of monthly basic pay for members of the uniformed services within each pay grade are set forth in the following tables:

"COMMISSIONED OFFICERS

Years of service computed under section 205

"Pay grade-----	2 or less	Over 2	Over 3	Over 4	Over 6
O-10<1> .. \$ 1,302.00	\$ 1,347.90	\$ 1,347.90	\$ 1,347.90	\$ 1,347.90	\$ 1,347.90
O-9 1,153.80	1,183.80	1,209.60	1,209.60	1,209.60	
O-8 1,045.20	1,076.40	1,101.90	1,101.90	1,101.90	
O-7 868.20	927.60	927.60	927.60		
O-6 643.20	707.40	753.30	753.30		
O-5 514.50	604.80	645.90	645.90		
O-4 434.10	528.00	563.70	563.70		
O-3<2> ... 353.70	450.90	481.80	533.10		

37 USCS @ 203 (1998)

O-2<2> ...	281.40	384.30	461.40	476.70
O-1<2> ...	241.20	307.50	384.30	384.30

Years of service computed under section 205

"Pay grade-----

Over	Over
8	10

O-10<1> ..\$	1,399.20	\$ 1,399.20
O-9	1,240.20	1,240.20
O-8	1,183.80	1,183.80
O-7	968.70	1,025.10
O-6	753.30	753.30
O-5	645.90	666.30
O-4	599.70	640.50
O-3<2> ...	579.00	609.90
O-2<2> ...	486.90	486.90
O-1<2> ...	384.30	384.30

Years of service computed under section 205

"Pay grade-----

Over	Over	Over	Over	Over
12	14	16	18	20

O-10<1> ..\$	1,506.90	\$ 1,506.90	\$ 1,614.30	\$ 1,614.30	\$ 1,722.00
O-9	1,291.50	1,291.50	1,399.20	1,399.20	1,506.90
O-8	1,240.20	1,240.20	1,291.50	1,347.90	1,399.20
O-7	1,025.10	1,076.40	1,183.80	1,266.00	1,266.00
O-6	753.30	779.10	902.10	948.00	
O-5	702.00	748.20	804.60	850.80	
O-4	676.50	707.40	738.00	758.40	
O-3<2> ...	640.50	656.10	656.10	656.10	
O-2<2> ...	486.90	486.90	486.90	486.90	
O-1<2> ...	384.30	384.30	384.30	384.30	

Years of service computed under section 205

"Pay grade-----

Over	Over	Over
22	26	30

O-10<1> ..\$	1,722.00	\$ 1,829.70	\$ 1,829.70
O-9	1,506.90	1,614.30	1,614.30
O-8	1,455.60	1,455.60	1,455.60
O-7	1,266.00	1,266.00	1,266.00
O-6	1,025.10	1,112.10	1,112.10
O-5	907.20	907.20	907.20
O-4	758.40	758.40	758.40
O-3<2> ...	656.10	656.10	656.10
O-2<2> ...	486.90	486.90	486.90
O-1<2> ...	384.30	384.30	384.30

"<1> While serving as Chairman of the Joint Chiefs of

37 USCS @ 203 (1998)

Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, or Commandant of the Marine Corps, basic pay for this grade is \$ 2,019.30 regardless of cumulative years of service computed under section 205 of this title.

"<2> Does not apply to commissioned officers who have been credited with over 4 years' active service as an enlisted member.

"COMMISSIONED OFFICERS WHO HAVE BEEN CREDITED WITH OVER
4 YEARS' ACTIVE SERVICE AS AN ENLISTED MEMBER

"Pay grade	Years of service computed under section 205				
	Over	Over	Over	Over	Over
	4	6	8	10	12
O-3	\$ 533.10	\$ 558.60	\$ 579.00	\$ 609.90	\$ 640.50
O-2	476.70	486.90	502.20	528.00	
O-1	384.30	410.10	425.40	440.70	

"Pay grade	Years of service computed under section 205				
	Over	Over	Over	Over	Over
	16	18	20	22	26
O-3	\$ 666.30	\$ 666.30	\$ 666.30	\$ 666.30	\$ 666.30
O-2	563.70	563.70	563.70	563.70	
O-1	476.70	476.70	476.70	476.70	

"WARRANT OFFICERS

"Pay grade	Years of service computed under section 205						
	2 or	Over	Over	Over	Over		
	less	2	3	4	6		
W-4..	\$ 361.20	\$ 440.70	\$ 440.70	\$ 450.90	\$ 471.60	\$ 492.00	\$ 512.40 \$ 548.40
W-3..	328.50	405.00	405.00	410.10	415.20		
W-2..	287.40	353.70	353.70	363.90	384.30		
W-1..	238.20	312.60	312.60	338.40	353.70		

"Pay grade	Years of service computed under section 205				
	Over	Over	Over	Over	Over
	4	6	8	10	12
W-4 ...	\$ 573.90	\$ 594.60	\$ 609.90	\$ 630.30	\$ 651.00
W-3 ...	502.20	517.50	533.10	553.50	
W-2 ...	450.90	466.50	481.80	497.10	
W-1 ...	415.20	430.50	445.80	461.40	

37 USCS @ 203 (1998)

"ENLISTED MEMBERS

Years of service computed under section 205

"Pay grade	2 or less	Over 2	Over 3	Over 4	Over 6
E-9..					
E-8..					
E-7..	\$ 206.39	\$ 282.00	\$ 292.20	\$ 302.40	\$ 312.60 322.80 333.00 343.50
E-6..	175.81	246.00	256.20	266.40	
E-5..	145.24	215.40	225.60	235.80	
E-4..	122.30	184.50	194.70	210.00	
E-3..	99.37	148.50	159.00	169.20	
E-2..	85.80	123.00	123.00	123.00	
E-1..	83.20	112.80	112.80	112.80	
E-1..					
(under 4 months)	78.00				

=====

Years of service computed under section 205

"Pay grade	Over 14	Over 16	Over 18	Over 20	Over 22
E-9 ..	\$ 466.50	\$ 476.70	\$ 486.90	\$ 497.10	\$ 522.90
E-8 ..	405.00	415.20	425.40	435.60	
E-7 ..	358.80	369.00	379.20	384.30	
E-6 ..	322.80	333.00	338.40	338.40	
E-5 ..	287.10	287.10	287.10	287.10	
E-4 ..	220.50	220.50	220.50	220.50	
E-3 ..	169.20	169.20	169.20	169.20	
E-2 ..	123.00	123.00	123.00	123.00	
E-1 ..	112.80	112.80	112.80	112.80	

For effective date of this amendment, see Other provisions note to this section.

1966. Act July 13, 1966, substituted new subsec. (a) for one which read:

"(a) The rates of monthly basic pay for members of the uniformed services within each pay grade are set forth in the following tables:

"COMMISSIONED OFFICERS

Years of service computed under section 205

"Pay grade	2 or less	Over 2	Over 3	Over 4	Over 6
O-10<1> ..	\$ 1,380.00	\$ 1,428.90	\$ 1,428.90	\$ 1,428.90	\$ 1,428.90
O-9	1,223.10	1,254.90	1,282.20	1,282.20	1,282.20

37 USCS @ 203 (1998)

O-8	1,107.90	1,140.90	1,167.90	1,167.90	1,167.90
O-7	920.40	983.40	983.40	983.40	
O-6	681.90	749.70	798.60	798.60	
O-5	545.40	641.10	684.60	684.60	
O-4	460.20	559.80	597.60	597.60	
O-3<2> ...	427.80	477.90	510.60	565.20	
O-2<2> ...	342.60	407.40	489.00	505.20	
O-1<2> ...	294.60	325.80	407.40	407.40	

Years of service computed under section 205

"Pay grade-----

Over	Over	Over
8	10	12

O-10<1> ..\$	1,483.20	\$ 1,483.20	\$ 1,597.20
O-9	1,314.60	1,314.60	1,368.90
O-8	1,254.90	1,254.90	1,314.60
O-7	1,026.90	1,086.60	1,086.60
O-6	798.60	798.60	798.60
O-5	684.60	706.20	744.00
O-4	635.70	678.90	717.00
O-3<2> ...	613.80	646.50	678.90
O-2<2> ...	516.00	516.00	516.00
O-1<2> ...	407.40	407.40	407.40

Years of service computed under section 205

"Pay grade-----

Over	Over	Over	Over	Over
14	16	18	20	22

O-10<1> ..\$	1,597.20	\$ 1,711.20	\$ 1,711.20	\$ 1,825.20	\$ 1,825.20
O-9	1,368.90	1,483.20	1,483.20	1,597.20	1,597.20
O-8	1,314.60	1,368.90	1,428.90	1,483.20	1,542.90
O-7	1,140.90	1,254.90	1,341.90	1,341.90	1,341.90
O-6	825.90	956.10	1,005.00	1,026.90	
O-5	793.20	852.90	901.80	928.80	
O-4	749.70	782.40	804.00	804.00	
O-3<2> ...	695.40	695.40	695.40	695.40	
O-2<2> ...	516.00	516.00	516.00	516.00	
O-1<2> ...	407.40	407.40	407.40	407.40	

Years of service computed under section 205

"Pay grade-----

Over	Over
26	30

O-10<1> ..\$	1,939.50	\$ 1,939.50
O-9	1,711.20	1,711.20
O-8	1,542.90	1,542.90
O-7	1,341.90	1,341.90
O-6	1,178.70	1,178.70
O-5	961.50	961.50

37 USCS @ 203 (1998)

O-4	804.00	804.00
O-3<2> ...	695.40	695.40
O-2<2> ...	516.00	516.00
O-1<2> ...	407.40	407.40

<1> While serving as Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, or Commandant of the Marine Corps, basic pay for this grade is \$ 2,140.20 regardless of cumulative years of service computed under section 205 of this title.

<2> Does not apply to commissioned officers who have been credited with over 4 years' active service as an enlisted member.

"COMMISSIONED OFFICERS WHO HAVE BEEN CREDITED WITH OVER
4 YEARS' ACTIVE SERVICE AS AN ENLISTED MEMBER

Years of service computed under section 205

"Pay grade

Over	Over	Over	Over	Over
4	6	8	10	12

O-3	\$ 565.20	\$ 592.20	\$ 613.80	\$ 646.50	\$ 678.90
O-2	505.20	516.00	532.20	559.80	
O-1	407.40	434.70	450.90	467.10	

Years of service computed under section 205

"Pay grade

Over	Over	Over	Over	Over
16	18	20	22	26

O-3	\$ 666.30	\$ 666.30	\$ 666.30	\$ 666.30	\$ 666.30
O-3	\$ 706.20	\$ 706.20	\$ 706.20	\$ 706.20	\$ 706.20
O-2	597.60	597.60	597.60	597.60	
O-1	505.20	505.20	505.20	505.20	

"WARRANT OFFICERS

Years of service computed under section 205

"Pay grade

2 or	Over	Over	Over	Over
less	2	3	4	6

W-4..	\$ 435.60	\$ 467.10	\$ 467.10	\$ 477.90	\$ 499.80	\$ 521.40	\$ 543.00	\$ 581.40
W-3..	396.00	429.30	429.30	434.70	440.10			
W-2..	346.50	375.00	375.00	385.80	407.40			
W-1..	288.90	331.50	331.50	358.80	375.00			

Years of service computed under section 205

"Pay grade

37 USCS @ 203 (1998)

	Over 14	Over 16	Over 18	Over 20	Over 22
W-4 ...	\$ 608.40	\$ 630.30	\$ 646.50	\$ 668.10	\$ 690.00
W-3 ...	532.20	548.40	565.20	586.80	
W-2 ...	477.90	494.40	510.60	526.80	
W-1 ...	440.10	456.30	472.50	489.00	

"ENLISTED MEMBERS

Years of service computed under section 205

"Pay grade	2 or less	Over 2	Over 3	Over 4	Over 6			
E-9..	.....	.....	.....	.....				
E-8..	.....	.....	.....	.....				
E-7..	\$ 261.00	\$ 312.90	\$ 324.30	\$ 335.70	\$ 347.10	358.20	369.60	381.30
E-6..	225.00	273.00	284.40	295.80				
E-5..	194.10	239.10	250.50	261.60				
E-4..	163.50	204.90	216.00	233.10				
E-3..	117.90	164.70	176.40	187.80				
E-2..	97.50	136.50	136.50	136.50				
E-1..	93.90	125.10	125.10	125.10				
E-1 (under 4 months)	87.90	.....	.....	.....	.....			

Years of service computed under section 205

"Pay grade	Over 14	Over 16	Over 18	Over 20	Over 22
E-9 ...	\$ 517.80	\$ 529.20	\$ 540.60	\$ 551.70	\$ 580.50
E-8 ...	449.40	460.80	472.20	483.60	
E-7 ...	398.40	409.50	420.90	426.60	
E-6 ...	358.20	369.60	375.60	375.60	
E-5 ...	318.60	318.60	318.60	318.60	
E-4 ...	244.80	244.80	244.80	244.80	
E-3 ...	187.80	187.80	187.80	187.80	
E-2 ...	136.50	136.50	136.50	136.50	
E-1 ...	125.10	125.10	125.10	125.10	

For effective date of this amendment, see Other provisions note to this section.

1967. Act Dec. 16, 1967, substituted new subsec. (a) for one which read:

"(a) The rates of monthly basic pay for members of the uniformed services within each pay grade are set forth in the following tables:

"COMMISSIONED OFFICERS

Years of service computed under section 205

37 USCS @ 203 (1998)

"Pay grade-----	2 or less	Over 2	Over 3	Over 4	Over 6
O-10<1> ..\$	1,424.10	\$ 1,474.50	\$ 1,474.50	\$ 1,474.50	\$ 1,474.50
O-9	1,262.10	1,295.10	1,323.30	1,323.30	1,323.30
O-8	1,143.30	1,177.50	1,205.40	1,205.40	1,205.40
O-7	949.80	1,014.90	1,014.90	1,014.90	
O-6	703.80	773.70	824.10	824.10	
O-5	562.80	661.50	706.50	706.50	
O-4	474.90	577.80	616.80	616.80	
O-3<2> ...	441.60	493.20	526.80	583.20	
O-2<2> ...	353.70	420.30	504.60	521.40	
O-1<2> ...	303.90	336.30	420.30	420.30	

Years of service computed under section 205

"Pay grade-----	Over 8	Over 10	Over 12	Over 14	Over 16
O-10<1> ..\$	1,530.60	\$ 1,530.60	\$ 1,648.20	\$ 1,648.20	\$ 1,766.10
O-9	1,356.60	1,356.60	1,412.70	1,412.70	1,530.60
O-8	1,295.10	1,295.10	1,356.60	1,356.60	1,412.70
O-7	1,059.90	1,121.40	1,121.40	1,177.50	1,295.10
O-6	824.10	824.10	824.10	852.30	
O-5	706.50	728.70	767.70	818.70	
O-4	656.10	700.50	739.80	773.70	
O-3<2> ...	633.30	667.20	700.50	717.60	
O-2<2> ...	532.50	532.50	532.50	532.50	
O-1<2> ...	420.30	420.30	420.30	420.30	

Years of service computed under section 205

"Pay grade-----	Over 18	Over 20	Over 22	Over 26	Over 30
O-10<1> ..\$	1,766.10	\$ 1,883.70	\$ 1,883.70	\$ 2,001.60	\$ 2,001.60
O-9	1,530.60	1,648.20	1,648.20	1,766.10	1,766.10
O-8	1,474.50	1,530.60	1,592.40	1,592.40	1,592.40
O-7	1,384.80	1,384.80	1,384.80	1,384.80	1,384.80
O-6	1,037.10	1,059.90	1,121.40	1,216.50	1,216.50
O-5	930.60	958.50	992.40	992.40	
O-4	829.80	829.80	829.80	829.80	
O-3<2> ...	717.60	717.60	717.60	717.60	
O-2<2> ...	532.50	532.50	532.50	532.50	
O-1<2> ...	420.30	420.30	420.30	420.30	

"<1> While serving as Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, or Commandant of the Marine Corps, basic pay for this grade is \$ 2,208.60 regardless of cumulative years of service computed under section 205 of this title.

37 USCS @ 203 (1998)

"<2> Does not apply to commissioned officers who have been credited with over 4 years' active service as an enlisted member.

"COMMISSIONED OFFICERS WHO HAVE BEEN CREDITED WITH OVER
4 YEARS' ACTIVE SERVICE AS AN ENLISTED MEMBER

Years of service computed under section 205

"Pay grade	Over 4	Over 6	Over 8	Over 10	Over 12
O-3	\$ 583.20	\$ 611.10	\$ 633.30	\$ 667.20	\$ 700.50
O-2	521.40	532.50	549.30	577.80	
O-1	420.30	448.50	465.30	482.10	

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Years of service computed under section 205

"Pay grade	Over 16	Over 18	Over 20	Over 22	Over 26
O-3	\$ 728.70	\$ 728.70	\$ 728.70	\$ 728.70	\$ 728.70
O-2	616.80	616.80	616.80	616.80	
O-1	521.40	521.40	521.40	521.40	

=====

"WARRANT OFFICERS

Years of service computed under section 205

"Pay grade	2 or less	Over 2	Over 3	Over 4	Over 6
W-4..	\$ 449.40	\$ 482.10	\$ 482.10	\$ 493.20	\$ 515.70
W-3..	408.60	443.10	443.10	448.50	454.20
W-2..	357.60	387.00	387.00	398.10	420.30
W-1..	298.20	342.00	342.00	370.20	387.00

=====

Years of service computed under section 205

"Pay grade	Over 14	Over 16	Over 18	Over 20	Over 22
W-4 ...	\$ 627.90	\$ 650.40	\$ 667.20	\$ 689.40	\$ 712.20
W-3 ...	549.30	565.80	583.20	605.70	
W-2 ...	493.20	510.30	526.80	543.60	
W-1 ...	454.20	471.00	487.50	504.60	

=====

"ENLISTED MEMBERS

Years of service computed under section 205

37 USCS @ 203 (1998)

"Pay grade-----								
	2 or	Over	Over	Over	Over			
	less	2	3	4	6			
E-9.. .. .								
E-8.. .. .								
E-7.. \$ 269.40	\$ 322.80	\$ 334.80	\$ 346.50	\$ 358.20	369.60	381.30	393.60	
E-6.. 232.20	281.70	293.40	305.40					
E-5.. 200.40	246.90	258.60	270.00					
E-4.. 168.60	211.50	222.90	240.60					
E-3.. 121.80	170.10	182.10	193.80					
E-2.. 100.50	141.00	141.00	141.00					
E-1.. 96.90	129.00	129.00	129.00					
E-1 (under 4 months) 90.60	.....	.....	.....	.....				

Years of service computed under section 205

"Pay grade-----					
	Over	Over	Over	Over	Over
	14	16	18	20	22
E-9 ... \$ 534.30	\$ 546.00	\$ 558.00	\$ 569.40	\$ 599.10	
E-8 ... 463.80	475.50	487.20	499.20		
E-7 ... 411.00	422.70	434.40	440.40		
E-6 ... 369.60	381.30	387.60	387.60		
E-5 ... 328.80	328.80	328.80	328.80		
E-4 ... 252.60	252.60	252.60	252.60		
E-3 ... 193.80	193.80	193.80	193.80		
E-2 ... 141.00	141.00	141.00	141.00		
E-1 ... 129.00	129.00	129.00	129.00		

For effective date of this section, as amended, see Other provisions note to this section.

1970. Act June 12, 1970, in subsec. (b), inserted "or as a member of the permanent commissioned teaching staff at the United States Coast Guard Academy".

1971. Act Sept. 28, 1971 (effective 10/1/71, as provided by @ 209 of such Act), substituted new subsec. (a) for one which read:

"(a) The rates of monthly basic pay for members of the uniformed services within each pay grade are set forth in the following tables:

"COMMISSIONED OFFICERS

Years of service computed under section 205

"Pay grade-----					
	2 or	Over	Over	Over	Over
	less	2	3	4	6
O-10<1> ..\$ 1,503.90	\$ 1,557.00	\$ 1,557.00	\$ 1,557.00	\$ 1,557.00	\$ 1,557.00
O-9 1,332.90	1,367.70	1,397.40	1,397.40	1,397.40	1,397.40
O-8 1,207.20	1,243.50	1,272.90	1,272.90	1,272.90	1,272.90
O-7 1,002.90	1,071.60	1,071.60	1,071.60	1,071.60	1,119.30
O-6 743.10	816.90	870.30	870.30	870.30	

37 USCS @ 203 (1998)

O-5	594.30	698.40	746.10	746.10
O-4	501.60	610.20	651.30	651.30
O-3<2> ...	466.20	520.80	556.20	615.90
O-2<2> ...	373.50	443.70	532.80	550.50
O-1<2> ...	321.00	355.20	443.70	443.70

=====

Years of service computed under section 205

"Pay grade-----

	Over 8	Over 10	Over 12	Over 14	Over 16
O-10<1> ..\$	1,530.60	\$ 1,530.60	\$ 1,648.20	\$ 1,648.20	\$ 1,766.10
O-10<1> ..\$	1,616.40	\$ 1,616.40	\$ 1,740.60	\$ 1,740.60	\$ 1,865.10
O-9	1,432.50	1,432.50	1,491.90	1,491.90	1,616.40
O-8	1,367.70	1,367.70	1,432.50	1,432.50	1,491.90
O-7	1,119.30	1,184.10	1,184.10	1,243.50	1,367.70
O-6	870.30	870.30	870.30	900.00	
O-5	746.10	769.50	810.60	864.60	
O-4	692.70	739.80	781.20	816.90	
O-3<2> ...	668.70	704.70	739.80	757.80	
O-2<2> ...	562.20	562.20	562.20	562.20	
O-1<2> ...	443.70	443.70	443.70	443.70	

=====

Years of service computed under section 205

"Pay grade-----

	Over 18	Over 20	Over 22	Over 26	Over 30
O-10<1> ..\$	1,766.10	\$ 1,883.70	\$ 1,883.70	\$ 2,001.60	\$ 2,001.60
O-10<1> ..\$	1,865.10	\$ 1,989.30	\$ 1,989.30	\$ 2,113.80	\$ 2,113.80
O-9	1,616.40	1,740.60	1,740.60	1,865.10	1,865.10
O-8	1,557.00	1,616.40	1,681.50	1,681.50	1,681.50
O-7	1,462.20	1,462.20	1,462.20	1,462.20	1,462.20
O-6	1,095.30	1,119.30	1,184.10	1,284.60	1,284.60
O-5	982.80	1,012.20	1,047.90	1,047.90	
O-4	876.30	876.30	876.30	876.30	
O-3<2> ...	757.80	757.80	757.80	757.80	
O-2<2> ...	562.20	562.20	562.20	562.20	
O-1<2> ...	443.70	443.70	443.70	443.70	

=====

"<1> While serving as Chairman of the Joints Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, or Commandant of the Marine Corps, basic pay for this grade is \$ 2,332.20 regardless of cumulative years of service computed under sec. 205 of this title.

"<2> Does not apply to commissioned officers who have been credited with over 4 years' active service as enlisted members.

"COMMISSIONED OFFICERS WHO HAVE BEEN CREDITED WITH OVER
4 YEARS' ACTIVE SERVICE AS AN ENLISTED MEMBER

37 USCS @ 203 (1998)

Years of service computed under section 205

"Pay grade	Over 4	Over 6	Over 8	Over 10	Over 12
O-3	\$ 615.90	\$ 645.30	\$ 668.70	\$ 704.70	\$ 739.80
O-2	550.50	562.20	580.20	610.20	
O-1	443.70	473.70	491.40	509.10	

Years of service computed under section 205

"Pay grade	Over 16	Over 18	Over 20	Over 22	Over 26
O-3	\$ 769.50	\$ 769.50	\$ 769.50	\$ 769.50	\$ 769.50
O-2	651.30	651.30	651.30	651.30	
O-1	550.50	550.50	550.50	550.50	

"WARRANT OFFICERS

Years of service computed under section 205

"Pay grade	2 or less	Over 2	Over 3	Over 4	Over 6
W-4 ...	\$ 474.60	\$ 509.10	\$ 509.10	\$ 520.80	\$ 544.50
W-3 ...	431.40	468.00	468.00	473.70	
W-2 ...	377.70	408.60	408.60	420.30	
W-1 ...	315.00	361.20	361.20	390.90	

Years of service computed under section 205

"Pay grade	Over 12	Over 14	Over 16	Over 18	Over 20
W-4..	\$ 633.60	\$ 663.00	\$ 686.70	\$ 704.70	\$ 728.10
W-3..	562.20	580.20	597.60	615.90	639.60
W-2..	503.10	520.80	538.80	556.20	573.90
W-1..	462.00	479.70	497.40	514.80	532.80

"ENLISTED MEMBERS

Years of service computed under section 205

"Pay grade	2 or less	Over 2	Over 3	Over 4	Over 6
E-9 ...					
E-8 ...					
E-7 ...	\$ 284.40	\$ 340.80	\$ 353.40	\$ 366.00	\$ 378.30

37 USCS @ 203 (1998)

E-6 ...	245.10	297.60	309.90	322.50
E-5 ...	211.50	260.70	273.00	285.00
E-4 ...	177.90	223.20	235.50	254.10
E-3 ...	128.70	179.70	192.30	204.60
E-2 ...	106.20	148.80	148.80	148.80
E-1 ...	102.30	136.20	136.20	136.20

E-1

(under 4

months) 95.70

=====

Years of service computed under section 205

"Pay grade-----

Over	Over	Over	Over	Over
12	14	16	18	20

E-9<1> .	\$ 551.40	\$ 564.30	\$ 576.60	\$ 589.20	\$ 601.20	\$ 632.70	\$ 694.20	\$ 694.20
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E-8 ...	477.30	489.90	502.20	514.50
E-7 ...	415.50	434.10	446.40	458.70
E-6 ...	378.30	390.30	402.60	409.20
E-5 ...	340.80	347.10	347.10	347.10
E-4 ...	266.70	266.70	266.70	266.70
E-3 ...	204.60	204.60	204.60	204.60
E-2 ...	148.80	148.80	148.80	148.80
E-1 ...	136.20	136.20	136.20	136.20

"<1> While serving as Sergeant Major of the Army, Senior Enlisted Advisor of the Navy, Chief Master Sergeant of the Air Force, or Sergeant Major of the Marine Corps,

basic p

\$ 844.20 regardless of cumulative years of service computed under section 205 of this title."

1972. Act Oct. 2, 1972, in subsec. (a), in footnote 1 of the "ENLISTED MEMBERS" pay table, deleted "or" between "Air Force," and "Sergeant Major" and inserted "or Major Chief Petty Officer of the Coast Guard,".

1974. Act Sept. 19, 1974 (effective 9/19/74, as provided by @ 9 of such Act), substituted new subsec. (a) for one which read:

"(a) The rates of monthly basic pay for members of the uniformed services within each pay grade are set forth in the following tables:

"Commissioned Officers

Years of service computed under section 205

"Pay grade-----

2 or	Over	Over	Over	Over
less	2	3	4	6

O-10<1> ..	\$ 2,111.40	\$ 2,185.80	\$ 2,185.80	\$ 2,185.80	\$ 2,185.80
O-9	1,871.40	1,920.60	1,961.70	1,961.70	1,961.70
O-8	1,695.00	1,745.70	1,787.40	1,787.40	1,787.40
O-7	1,408.20	1,504.20	1,504.20	1,504.20	1,571.10
O-6	1,043.70	1,147.20	1,221.90	1,221.90	1,221.90

37 USCS @ 203 (1998)

O-5	834.60	980.70	1,047.90	1,047.90
O-4	704.10	856.50	914.40	914.40
O-3<2> ...	654.30	731.10	781.20	864.90
O-2<2> ...	570.30	622.80	748.20	773.10
O-1<2> ...	495.00	515.40	622.80	622.80

Years of service computed under section 205

"Pay grade-----

Over	Over	Over	Over	Over
8	10	12	14	16

O-10<1> ..\$	2,269.50	\$ 2,269.50	\$ 2,443.50	\$ 2,443.50	\$ 2,618.40
O-9	2,011.20	2,011.20	2,094.60	2,094.60	2,269.50
O-8	1,920.60	1,920.60	2,011.20	2,011.20	2,094.60
O-7	1,571.10	1,662.60	1,662.60	1,745.70	1,920.60
O-6	1,221.90	1,221.90	1,221.90	1,263.30	1,463.10
O-5	1,047.90	1,080.30	1,137.90	1,213.80	1,304.70
O-4	972.30	1,038.30	1,097.10	1,147.20	
O-3<2> ...	938.70	989.10	1,038.30	1,063.80	
O-2<2> ...	789.30	789.30	789.30	789.30	
O-1<2> ...	622.80	622.80	622.80	622.80	

Years of service computed under section 205

"Pay grade-----

Over	Over	Over	Over	Over
18	20	22	26	30

O-10<1> ..\$	2,618.40	\$ 2,793.30	\$ 2,793.30	\$ 2,967.60	\$ 2,967.60
O-9	2,269.50	2,443.50	2,443.50	2,618.40	2,618.40
O-8	2,185.80	2,269.50	2,361.00	2,361.00	2,361.00
O-7	2,052.60	2,052.60	2,052.60	2,052.60	2,052.60
O-6	1,537.80	1,571.10	1,662.60	1,803.30	1,803.30
O-5	1,379.70	1,421.10	1,471.20	1,471.20	1,471.20
O-4	1,230.30	1,230.30	1,230.30	1,230.30	1,230.30
O-3<2> ...	1,063.80	1,063.80	1,063.80	1,063.80	1,063.80
O-2<2> ...	789.30	789.30	789.30	789.30	
O-1<2> ...	622.80	622.80	622.80	622.80	

"<1> While serving as Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, or Commandant of the Marine Corps, basic pay for this grade is \$ 3,000 regardless of cumulative years of service computed under section 205 of this title.

"<2> Does not apply to commissioned officers who have been credited with over 4 years' active service as enlisted members.

"COMMISSIONED OFFICERS WHO HAVE BEEN CREDITED WITH OVER
4 YEARS' ACTIVE SERVICE AS AN ENLISTED MEMBER

Years of service computed under section 205

"Pay grade-----

37 USCS @ 203 (1998)

	Over 4	Over 6	Over 8	Over 10	Over 12
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O-3	\$ 864.90	\$ 906.00	\$ 938.70	\$ 989.10	\$ 1,038.30	\$ 1,080.30
O-2	773.10	789.30	814.20	856.50		
O-1	622.80	665.10	690.00	714.60		

Years of service computed under section 205

"Pay grade

	Over 16	Over 18	Over 20	Over 22	Over 26
--	------------	------------	------------	------------	------------

O-3	\$ 1,080.30	\$ 1,080.30	\$ 1,080.30	\$ 1,080.30	\$ 1,080.30	\$ 1,080.30
O-2	914.40	914.40	914.40	914.40		
O-1	773.10	773.10	773.10	773.10		

"WARRANT OFFICERS

Years of service computed under section 205

"Pay grade

	2 or less	Over 2	Over 3	Over 4	Over 6
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W-4	\$ 666.30	\$ 714.60	\$ 714.60	\$ 731.10	\$ 764.40
W-3	605.70	657.00	657.00	665.10	
W-2	530.40	573.60	573.60	590.40	
W-1	441.90	507.00	507.00	549.00	

Years of service computed under section 205

"Pay grade

	Over 8	Over 10	Over 12	Over 14	Over 16
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W-4	\$ 798.00	\$ 831.00	\$ 889.80	\$ 930.60	\$ 963.90
W-3	722.40	764.40	789.30	814.20	
W-2	657.00	681.90	706.50	731.10	
W-1	598.50	622.80	648.30	673.20	

Years of service computed under section 205

"Pay grade

	Over 18	Over 20	Over 22	Over 26	Over 30
--	------------	------------	------------	------------	------------

W-4	\$ 989.10	\$ 1,022.10	\$ 1,056.00	\$ 1,137.90	\$ 1,137.90
W-3	864.90	897.90	930.60	963.90	
W-2	781.20	806.10	838.80	838.80	
W-1	722.40	748.20	748.20	748.20	

"ENLISTED MEMBERS

37 USCS @ 203 (1998)

Years of service computed under section 205

"Pay grade-----	2 or less	Over 2	Over 3	Over 4	Over 6
E-9<1>					
E-8					
E-7 \$ 443.40	\$ 478.50	\$ 496.20	\$ 513.60	\$ 531.30	
E-6 382.80	417.90	435.00	453.00		
E-5 336.30	366.00	383.70	400.50		
E-4 323.40	341.40	361.20	389.40		
E-3 311.10	328.20	341.10	354.60		
E-2 299.10	299.10	299.10	299.10		
E-1 268.50	268.50	268.50	268.50		

Years of service computed under section 205

"Pay grade-----	Over 8	Over 10	Over 12	Over 14	Over 16
E-9<1>	\$ 756.90	\$ 774.30	\$ 792.00		
E-8 \$ 635.10	652.80	670.20	687.90	705.30	
E-7 548.10	565.50	583.50	609.60		
E-6 487.50	505.20	531.30	548.10		
E-5 444.00	461.70	478.50	487.50		
E-4 405.00	405.00	405.00	405.00		
E-3 354.60	354.60	354.60	354.60		
E-2 299.10	299.10	299.10	299.10		
E-1 268.50	268.50	268.50	268.50		

Years of service computed under section 205

"Pay grade-----	Over 18	Over 20	Over 22	Over 26	Over 30
E-9<1> .. \$ 827.70	\$ 843.90	\$ 888.60	\$ 975.00	\$ 975.00	
E-8 722.10	740.10	783.60	870.90		
E-7 644.10	652.80	696.60	783.60		
E-6 574.50	574.50	574.50	574.50		
E-5 487.50	487.50	487.50	487.50		
E-4 405.00	405.00	405.00	405.00		
E-3 354.60	354.60	354.60	354.60		
E-2 299.10	299.10	299.10	299.10		
E-1 268.50	268.50	268.50	268.50		

"<1> While serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy, Chief Master Sergeant of the Air Force, Sergeant Major of the Marine Corps, or Major Chief Petty Officer of the Coast Guard, basic pay for this grade is \$ 1,185 regardless of cumulative years of service computed under section 205 of this title."

1977. Act July 30, 1977, added subsec. (c).

1980. Act Sept. 8, 1980, added subsec. (d), for application of this amendment, see Other provisions note.

1981. Act Oct. 14, 1981 (effective 10/1/81, as provided by @ 102(b) of such Act), in subsec. (c)(1), substituted "\$ 461.40" for "\$ 313.20".

1983. Act Sept. 24, 1983 (effective 10/1/83, as provided by @ 902(b) of such Act) substituted subsec. (d) for one which read: "The basic pay of commissioned officers who are in pay grades O-1, O-2, and O-3 and who are credited with over four years' active service as warrant officers shall be computed in the same manner as the basic pay of commissioned officers in the same pay grades who have been credited with over four years' active service as enlisted members.".

1985. Act Nov. 8, 1985, in subsec. (a), inserted "or as otherwise prescribed by law".

1986. Act Nov. 14, 1986 (effective 1/1/87, as provided in @ 601(c) of such Act, which appears as a note to this section), in subsec. (c), in para. (1), substituted "\$ 494.40" for "\$ 461.40".

1987. Act Dec. 4, 1987, as amended by Act Dec. 22, 1987, (effective 1/1/88 as provided by @ 601(c) of such Act), in subsec. (c)(1), substituted "\$ 504.30" for "\$ 494.40".

1988. Act Sept. 29, 1988 (effective 1/1/89 as provided by @ 601(d) of such Act, which appears as a note to this section), in subsec. (c)(1), substituted "\$ 525" for "\$ 504.30".

1989. Act Nov. 29, 1989 (effective 1/1/90 as provided by @ 601(c) of such Act), in subsec. (c)(1), substituted "\$ 543.90" for "\$ 525".

1993. Act Nov. 30, 1993 (applicable as provided by @ 603(b) of such Act, which appears as a note to this section) added subsec. (e).

1994. Act Oct. 5, 1994 (effective 1/1/95 as provided by @ 601(c) of such Act), in subsec. (c)(1), substituted "\$ 558.04" for "\$ 543.90".

1996. Act Sept. 23, 1996, in subsec. (c), deleted "(1)" preceding "A cadet", and deleted para. (2), which read: "(2) The rate of monthly cadet pay, or midshipman pay, under this subsection shall be adjusted in the manner and at the time the monthly basic pay of members of the uniformed services is adjusted under section 1009 of this title.".

Redesignation:

Section 601(d) of Act Dec. 4, 1987, P.L. 100-180, which amended this section, was redesignated @ 601(c) of such Act by Act Dec. 22, 1987, P.L. 100-202, @ 110(b), 101 Stat. 1329-436.

Other provisions:

Pay continuation provisions. Act Oct. 2, 1963, P.L. 88-132, @ 13(b), 77 Stat. 218, provided: "The enactment of this Act [amending this section, among other things; for full classification, consult USCS Tables volumes] does not reduce the basic pay or the retired pay or retainer pay to which a member or former member of a uniformed service was entitled on the day before the effective date of this Act [effective Oct. 1, 1963].".

Act Aug. 12, 1964, P.L. 88-422, @@ 2, 3, 78 Stat. 396, provided:

Sec. 2. Notwithstanding any other provision of law, a member of an armed force who was entitled to pay and allowances under any of the following provisions of law on the day before the effective date of this Act [note to this section] shall continue to receive the pay and allowances to which he was entitled on that day:

"(1) The Act of March 23, 1946, chapter 112 (60 Stat. 59).

"(2) The Act of June 26, 1948, chapter 677 (62 Stat. 1052).

"(3) The Act of September 18, 1950, chapter 952 (64 Stat. A224).

"Sec. 3. The enactment of this Act [amending this section and adding notes to this section] does not reduce--

"(1) the rate of dependency and indemnity compensation under section 411 of title 38, United States Code, that any person was receiving on the day before the effective date of this Act [note to this section] or which thereafter becomes payable for that day by reason of a subsequent determination; or

"(2) the basic pay or the retired pay or retainer pay to which a member or former member of a uniformed service was entitled on the day before the effective date of this Act [note to this section]."

Act Aug. 21, 1965, P.L. 89-132, @ 8, 79 Stat. 548, provided:

"The enactment of this Act [amending this section, among other things; for full classification, consult USCS Tables volumes] does not reduce--

"(1) the rate of dependency and indemnity compensation under section 411 of title 38, United States Code, that any person was receiving on the day before the effective date of this Act [effective Sept. 1, 1965] or which thereafter becomes payable for that day by reason of a subsequent determination; or

"(2) the basic pay or the retired pay or retainer pay to which a member or former member of a uniformed service was entitled on the day before the effective date of this Act [effective Sept. 1, 1965]."

Act July 13, 1966, P.L. 89-501, Title III, @ 302, 80 Stat. 278, provided:

"Notwithstanding any other provision of law, a member of an armed force who was entitled to pay and allowances under any of the following provisions of law on the day before the effective date of this title [see note this section] shall continue to receive the pay and allowances to which he was entitled on that day plus an increase of 3.2 per centum in the total of his pay and allowances:

"(1) The Act of March 23, 1946, chapter 112 (60 Stat. 59).

"(2) The Act of June 26, 1948, chapter 677 (62 Stat. 1052).

"(3) The Act of September 18, 1950, chapter 952 (64 Stat. A224).

After the effective date of this title [see note this section], no increase in the basic pay or any of the allowances of members of the uniformed services on active duty shall increase the basic pay or any of the allowances of a member covered by the preceding provisions of this section."

Act Sept. 28, 1971, P.L. 92-129, Title II, @ 210, 85 Stat. 360, provided:

"The enactment of this title [amending this section, among other things; for full classification, consult USCS Tables volumes] shall not reduce the pay to which any member of the uniformed services was entitled on June 30, 1971."

Effective date of Aug. 12, 1964 amendments. Act Aug. 12, 1964, P.L. 88-422, @ 4, 78 Stat. 396, provided: "This Act [amending this section and adding notes to this section] becomes effective on the first day of the first calendar month beginning after the date of enactment of this Act."

Effective date of Aug. 21, 1965 amendments. Act Aug. 21, 1965, P.L. 89-132, @ 10, 79 Stat. 548, provided: "This Act [amending this section, among other things; for full classification, consult USCS Tables volumes] becomes effective on the first day of the first calendar month beginning after the date of enactment of this Act."

Effective dates of amendments made by Title III of Act July 13, 1966. Act July 13, 1966, P.L. 89-501, Title III, @ 304, 80 Stat. 278, provided: "This title [amending this section and adding notes to this section and 10 USCS @ 1401] becomes effective July 1, 1966, or the first day of the month in which increases in the rates of compensation under the General Schedule of pay provided in section 603(b) of the Classification Act of 1949, as amended (5 U.S.C. 1113(b)) [see 5 USCS @ 5332(a)], become effective pursuant to the Federal Employees Salary Act of 1966 [Act July 18, 1966, P.L. 89-504, 80 Stat. 288], whichever is later."

Effective date of Dec. 16, 1967 amendments. Act Dec. 16, 1967, P.L. 90-207,

@ 7, 81 Stat. 654, provided: "This Act [amending this section, among other things; for full classification, consult USCS Table volumes] becomes effective as of October 1, 1967. However, a member, except as provided in section 6 of this Act [10 USCS @ 1401 note], is not entitled to any increases in his pay and allowances under section 1 [37 USCS @@ 203, 311, 403, 407] or section 4 [50 USCS Appx. @ 2203] for any period before the date of enactment of this Act unless he is on active duty on the date of enactment of this Act. In addition, a member of the National Guard or a member of a Reserve Component of a uniformed service who is in a drill pay status on the effective date of this Act is entitled to have any compensation to which he has become entitled under section 206 of title 37, United States Code, after September 30, 1967, computed under the rates of basic pay prescribed by section 1(1) of this Act [subsec. (a) of this section].".

Periodic pay adjustments in monthly basic pay. Act Dec. 16, 1967, P.L.

90-207, @ 8, 81 Stat. 654, formerly classified as a note to this section, was repealed by Act Sept. 19, 1974, P.L. 93-419, @ 8, 88 Stat. 1153. It provided for adjustment of regular compensation whenever the General Schedule of compensation for federal classified employees was adjusted upwards.

Ex. Ors. 11414, 11475, 11525, 11577, 11638, 11692, 11740 superseded. Ex. Or. No. 11414 of June 11, 1968, 33 Fed. Reg. 8645; Ex. Or. No. 11475 of June 16, 1969, 34 Fed. Reg. 9609; Ex. Or. No. 11525 of April 15, 1970, 35 Fed. Reg. 6251; Ex. Or. No. 11577 of Jan. 8, 1971, 36 Fed. Reg. 349; Ex. Or. No. 11638 of Dec. 22, 1971, 36 Fed. Reg. 24913; Ex. Or. No. 11692 of Dec. 15, 1972, 37 Fed. Reg. 27609, as amended by Ex. Or. No. 11778 of April 12, 1974, 39 Fed. Reg. 13521; and Ex. Or. No. 11740 of Oct. 3, 1973, 38 Fed. Reg. 27585, all of which were formerly classified as notes to this section, were all superseded by Ex. Or. No. 11812 of Oct. 7, 1974, 39 Fed. Reg. 36307. All these Executive Orders adjusted the rates of basic pay.

Report on effectiveness of 1971 pay increases in increasing volunteers. Act Sept. 28, 1971, P.L. 92-129, Title II, @ 211, 85 Stat. 360, provided: "Not later than June 30, 1972, the Secretary of Defense shall report to the Chairman of the Armed Services Committees of the Senate and of the House of Representatives on the effectiveness of the provisions of this title in increasing the number of volunteers enlisting for active duty in the Armed Forces of the United States.".

Master chief petty officer of the Coast Guard; pay recovery. Act Oct. 2, 1972, P.L. 92-455, @ 5, 86 Stat. 761, provided: "An enlisted member of the Coast Guard who has served as the master chief petty officer of the Coast Guard before enactment of this Act is entitled to recover the differences between the basic pay (including proficiency pay) received while so serving and the amount he would have received if his basic pay had been the same as the basic pay of the senior enlisted advisers of the other Armed Forces from the time of his original appointment to serve as the master chief petty officer of the Coast Guard.".

Rate of pay increases for cadets, midshipmen, and applicants for membership in Senior Reserve Officers' Training Corps. Act July 30, 1977, P.L. 95-79, Title III, @ 302(b), (c), 91 Stat. 326, provided:

"(b) Any cadet or midshipman who, on the date of enactment of this Act, or on any date thereafter, is--

"(1) admitted to the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, or the Coast Guard Academy, as the case may be, or

"(2) enrolled in the Senior Reserve Officers' Training Corps program and attending a field training encampment or practice cruise for which he is entitled to pay under section 209(c) of title 37, United States Code,

shall, if otherwise entitled, receive the rate of pay prescribed by section 201(c) of title 37, United States Code, as in effect on the day before the date of enactment of this Act, until the rate of pay authorized by section 203(c)

of such title, as added by the amendments made by subsection (a) of this section, is equal to or greater than the rate prescribed by section 201(c) of such title, as in effect on the day before the date of enactment of this Act. Thereafter, the rate of pay of such person shall be as prescribed by section 203(c) of such title, as added by the amendments made by subsection (a) of this section, or section 209(c) of such title, as amended by subsection (a) of this section, as appropriate.

"(c) A person who, on the date of enactment of this Act, is an applicant for membership in the Senior Reserve Officers' Training Corps and who, in order to satisfy the requirement of section 2104(b)(6)(B) of title 10, United States Code, is attending or will attend one of the field training encampments or practice cruises in a field training or practice cruise period which is in progress on the date of enactment of this Act, is entitled to continue to receive pay at the rate prescribed by such section as in effect on the day before the date of enactment of this Act while such person is attending such field training or practice cruise period in progress on the date of enactment of this Act. Thereafter, the entitlement of such person shall be as prescribed in subsection (b) of this section."

Adjustment of pay rates. For adjustment of pay rates under this section, see Ex. Or. No. 12248 of Oct. 16, 1980, 45 Fed. Reg. 69199, located at 37 USCS @ 1009 note and 5 USCS @ 5332 note.

Application of Sept. 8, 1980 amendment. Act Sept. 8, 1980, P.L. 96-343, @ 6(c), 94 Stat. 1127, located at 37 USCS @ 907 note, provided that the amendment made to this section by Act Sept. 8, 1980 is effective with respect to periods for which pay and allowances are payable which begin after Aug. 31, 1980.

Ex. Or. No. 12248 superseded. Ex. Or. No. 12248 of Oct. 16, 1980, 45 Fed. Reg. 69199, formerly set out as a note to this section, is superseded by Ex. Or. No. 12330 of Oct. 15, 1981, @ 5, 46 Fed. Reg. 50921, 51591, which appears as 5 USCS @ 5332 note. It provided for adjustment of certain rates of pay and allowances.

Ex. Or. No. 12330 superseded. Ex. Or. No. 12330 of Oct. 15, 1981, 46 Fed. Reg. 50921, 51591, formerly set out as a note to this section, is superseded by Ex. Or. No. 12387 of Oct. 8, 1982, 47 Fed. Reg. 44981, which appears as 5 USCS @ 5332 note. It provided for adjustment of certain rates of pay and allowances.

Ex. Or. No. 12387 superseded. Ex. Or. No. 12387 of Oct. 8, 1982, 47 Fed. Reg. 44981, formerly set out as a note to this section, was superseded by Ex. Or. No. 12456 of Dec. 30, 1983, 49 Fed. Reg. 347, which appears as 5 USCS @ 5332 note. It provided for adjustment of certain rates of pay and allowances.

Adjustments of pay rates. For adjustment of pay rates under this section, see Ex. Or. No. 12496 of Dec. 28, 1984, 50 Fed. Reg. 211, located at 37 USCS @ 1009 note and 5 USCS @ 5332 note.

Effective date of amendment of @ 203(c)(1) by Act Nov. 14, 1986. Act Nov. 14, 1986, P.L. 99-661, Div A, Title VI, Part A, @ 601(c), 100 Stat. 3874, provides that effective Jan. 1, 1987, the pay received by cadets and midshipmen is increased by three percent from \$ 461.40 to \$ 494.40.

Effective date of Sept. 29, 1988 amendment to subsec. (c)(1). Act Sept. 29, 1988, P.L. 100-456, Div A, Title VI, Part A, @ 601(d), 102 Stat. 1976, provides in part that the amendment made to subsec. (c)(1) of this section by @ 601(d) of this Act is "effective January 1, 1989".

Application of subsec. (e). Act Nov. 30, 1993, P.L. 103-160, Div A, Title VI, Subtitle A, @ 603(b), 107 Stat. 1678, provides: "The amendment made by subsection (a) [adding subsec. (e) of this section] shall apply with respect to students entering the United States Military Academy Preparatory School, the United States Naval Academy Preparatory School, or the United States Air Force Academy Preparatory School on or after the date of the enactment of this

Act.".

Effective date of Oct. 5, 1994 amendment. Act Oct. 5, 1994, P.L. 103-337, Div A, Title VI, Subtitle A, @ 601(c), 108 Stat. 2779, provides that the amendment made by such @ 601(c) to subsec. (c)(1) of this section, is effective on Jan. 1, 1995.

NOTES:

CROSS REFERENCES

This section is referred to in 2 USCS @ 906; 37 USCS @@ 201, 209, 1009.

RESEARCH GUIDE

Am Jur:

54 Am Jur 2d, Military, and Civil Defense @@ 164, 165.

53A Am Jur 2d, Military and Civil Defense @ 170.

37 USCS @ 204 (1998) printed in FULL format.

UNITED STATES CODE SERVICE

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*** THIS SECTION IS CURRENT THROUGH 105-165, APPROVED 3/20/98 ***

*** WITH A GAP OF 160 AND 164 ***

TITLE 37. PAY AND ALLOWANCES OF THE UNIFORMED SERVICES

CHAPTER 3. BASIC PAY

37 USCS @ 204 (1998)

@ 204. Entitlement

(a) The following persons are entitled to the basic pay of the pay grade to which assigned or distributed, in accordance with their years of service computed under section 205 of this title--

(1) a member of a uniformed service who is on active duty; and

(2) a member of a uniformed service, or a member of the National Guard who is not a Reserve of the Army or the Air Force, who is participating in full-time training, training duty with pay, or other fulltime duty, provided by law, including participation in exercises or the performance of duty under section 10302, 10305, 10502, or 12402 of title 10, or section 503, 504, 505, or 506 of title 32.

(b) For the purposes of subsection (a), under regulations prescribed by the President, the time necessary for a member of a uniformed service who is called or ordered to active duty for a period of more than 30 days to travel from his home to his first duty station and from his last duty station to his home, by the mode of transportation authorized in his call or orders, is considered active duty.

(c) A member of the National Guard who is called into Federal service for a period of 30 days or less is entitled to basic pay from the date when he appears at the place of company rendezvous. However, this subsection does not authorize any expenditure before arriving at the place of rendezvous that is not authorized by law to be paid after arrival at that place.

(d) Full-time training, training duty with pay, or other full-time duty performed by a member of the Army National Guard of the United States or the Air National Guard of the United States in his status as a member of the National Guard, is active duty for the purposes of this section.

(e) A payment accruing under any law to a member of a uniformed service incident to his release from active duty or for his return home incident to that release may be paid to him before his departure from his last duty station, whether or not he actually performs the travel involved. If a member receives a payment under this subsection but dies before that payment would have been made but for this subsection, no part of that payment may be recovered by the United States.

(f) A cadet of the United States Military Academy or the United States Air Force Academy, or a midshipman of the United States Naval Academy, who, upon graduation from one of those academies, is appointed as a second lieutenant of the Army or the Air Force is entitled to the basic pay of pay grade O-1 beginning upon the date of his graduation.

(g) (1) A member of a reserve component of a uniformed service is entitled to the pay and allowances provided by law or regulation for a member of a regular component of a uniformed service of corresponding grade and length of service whenever such member is physically disabled as the result of an injury, illness, or disease incurred or aggravated--

(A) in line of duty while performing active duty;

(B) in line of duty while performing inactive-duty training (other than work or study in connection with a correspondence course of an armed force or attendance in an inactive status at an educational institution under the sponsorship of an armed force or the Public Health Service);

(C) while traveling directly to or from such duty or training; or

(D) in line of duty while remaining overnight immediately before the commencement of inactive-duty training, or while remaining overnight, between successive periods of inactive-duty training, at or in the vicinity of the site of the inactive-duty training, if the site is outside reasonable commuting distance from the member's residence.

(2) In the case of a member who receives earned income from nonmilitary employment or self-employment performed in any month in which the member is otherwise entitled to pay and allowances under paragraph (1), the total pay and allowances shall be reduced by the amount of such income. In calculating earned income for the purpose of the preceding sentence, income from an income protection plan, vacation pay, or sick leave which the member elects to receive shall be considered.

(h) (1) A member of a reserve component of a uniformed service who is physically able to perform his military duties, is entitled, upon request, to a portion of the monthly pay and allowances provided by law or regulation for a member of a regular component of a uniformed service of corresponding grade and length of service for each month for which the member demonstrates a loss of earned income from nonmilitary employment or self-employment as a result of an injury, illness, or disease incurred or aggravated--

(A) in line of duty while performing active duty;

(B) in line of duty while performing inactive-duty training (other than work or study in connection with a correspondence course of an armed force or attendance in an inactive status at an educational institution under the sponsorship of an armed force or the Public Health Service);

(C) while traveling directly to or from such duty or training; or

(D) in line of duty while remaining overnight immediately before the commencement of inactive-duty training, or while remaining overnight, between successive periods of inactive-duty training, at or in the vicinity of the site of the inactive-duty training, if the site is outside reasonable commuting distance from the member's residence.

(2) The monthly entitlement may not exceed the member's demonstrated loss of earned income from nonmilitary or self-employment. In calculating such loss of income, income from an income protection plan, vacation pay, or sick leave which the member elects to receive shall be considered.

(i)

(1) The total amount of pay and allowances paid under subsections (g) and (h) and compensation paid under section 206(a) of this title for any period may not exceed the amount of pay and allowances provided by law or regulation for a member of a regular component of a uniformed service of corresponding grade and length of service for that period.

(2) Pay and allowances may not be paid under subsection (g) or (h) for a

period of more than six months. The Secretary concerned may extend such period in any case if the Secretary determines that it is in the interests of fairness and equity to do so.

(3) A member is not entitled to benefits under subsection (g) or (h) if the injury, illness, disease, or aggravation of an injury, illness, or disease is the result of the gross negligence or misconduct of the member.

(4) Regulations with respect to procedures for paying pay and allowances under subsections (g) and (h) shall be prescribed--

(A) by the Secretary of Defense for the armed forces under the jurisdiction of the Secretary; and

(B) by the Secretary of Transportation for the Coast Guard when the Coast Guard is not operating as a service in the Navy.

(j) A member of the uniformed services who is entitled to medical or dental care under section 1074a of title 10 is entitled to travel and transportation allowances, or a monetary allowance in place thereof, for necessary travel incident to such care, and return to his home upon discharge from treatment.

HISTORY: (Sept. 7, 1962, P.L. 87-649, @ 1, 76 Stat. 457; Dec. 12, 1980, P.L. 96-513, Title V, Part A, @ 506(4), 94 Stat. 2919; Sept. 24, 1983, p. L. 98-94, Title X, Part B, @ 1012(b), 97 Stat. 665; Oct. 1, 1986, P.L. 99-433, Title V, Part D, @ 531(b), 100 Stat. 1063; Nov. 14, 1986, P.L. 99-661, Div A, Title VI, Part A, @ 604(b), 100 Stat. 3876; Sept. 29, 1988, P.L. 100-456, Div A, Title VI, Part D, @ 631(a), (b), 102 Stat. 1984; April 6, 1991, P.L. 102-25, Title VII, @ 702(b)(1), (c), 105 Stat. 117; Oct. 5, 1994, P.L. 103-337, Div A, Title XVI, Subtitle D, @ 1676(b)(1), 108 Stat. 3019; Feb. 10, 1996, P.L. 104-106, Div A, Title VII, Subtitle A, @ 702(c), 110 Stat. 371.)

(As amended Nov. 18, 1997, P.L. 105-85, Div A, Title V, Subtitle B, @ 513(f), 111 Stat. 1732.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
204(a)	37:232(d) (1st sentence, less provisos).	Oct. 12, 1949, ch 681, Sec. 201(d), 63 Stat. 807; redesignated as "(d)" by March 31, 1955, ch 20, Sec. 2(2), 69 Stat. 19; Aug. 10, 1956, ch 1041, Sec. 20(a), 70A Stat. 627; May 20, 1958, P.L. 85-422, Sec. 1(4), 72 Stat. 124.
204(b)	37:232(d) (1st proviso of 1st sentence).	
204(c)	37:232(d) (2d proviso of 1st sentence).	
204(d)	37:232(d) (last proviso of 1st sentence).	
204(e)	37:232(d) (less 1st sentence).	
204(f)	37:308a.	Dec. 20, 1886, ch 2, 24 Stat. 351; June 2, 1950, ch 217, Sec. 2, 64 Stat.

37 USCS @ 204 (1998)

195.
 204(g) 10:3687 (as [None]
 applicable to pay
 and allowances).
 10:8687 (as [None]
 applicable to
 pay and allowances).
 204(h) 32:318 (as [None]
 applicable to
 pay and allowances).
 204(i) 10:6148(a) (as [None]
 applicable to
 pay and allowances).
 10:6148(b) (as [None]
 applicable to
 pay and allowances).

[The citations to former 37 USC @ 232(d) above, are to the language of subsection (d) set forth in the codification note under former 37 USC @ 232, rather than that erroneously set forth in the text of the section.]

In subsection (a), the last 27 words are substituted for the words "or performance of the duties provided for by sections 5, 81, 94, 97 and 99 of the National Defense Act, as amended," to reflect the current citations. So much of the introductory clause as follows the exception is substituted for the 36 words preceding 1st proviso of 1st sentence of former 37 USC @ 232(d). The words "on the active list" are omitted as covered by the words "active duty" as defined in 37 USCS @ 101(18). The words "(provided for or authorized in the National Defense Act, as amended, or in the Naval Reserve Act of 1938, as amended)" are omitted as covered by the words "provided by law".

In subsection (b), the words "For the purposes of subsection (a)" are inserted for clarity. The words "active duty for a period of more than 30 days" are substituted for the words "extended active duty in excess of thirty days". The words "call or" are inserted to conform to the words "called or".

In subsection (c), the words "and allowances" are omitted, since, under 37 USCS @@ 401 et seq., entitlement to allowances depends upon entitlement to basic pay. The last sentence is substituted for the last 38 words of the 2d proviso of the 1st sentence of former 37 USC @ 232(d).

In subsection (d), the words "for the purposes of this section" are substituted for the words "and which entitles them to receive basic pay . . . in the service of the United States". The words "pursuant to this section" are omitted as surplusage.

In subsection (e), the words "or active duty for training" are omitted as covered by the words "active duty" as defined in 37 USCS @ 101(18).

In subsection (f), the words "is appointed" are substituted for the words "has been or may be commissioned". The words "under the laws appointing such graduates to the Army" and the last 16 words of former 37 USC @ 308a are omitted as surplusage. The words "to the date of his acceptance of and qualification under his commission" are omitted, since the member concerned would continue to be entitled to basic pay after that acceptance and qualification. The words "or the United States Naval Academy" are inserted to reflect 10 USCS @ 541, under which graduates of that Academy may be appointed in the Army or the Air Force.

In subsection (i), the inclusion of the Coast Guard Reserve is based on the authority contained in 14 USCS @ 755(c).

Amendments:

1980. Act Dec. 12, 1980 (effective 9/15/81, as provided by @ 701(a) of such Act, which appears as 10 USCS @ 101 note), in subsec. (a), substituted "The" for "Except for members covered by section 202(i) of this title, the".

1983. Act Sept. 24, 1983 added subsec. (j).

1986. Act Oct. 1, 1986, in subsec. (a)(2), substituted "3021" for "3033" and "8021" for "8033".

Act Nov. 14, 1986 (applicable as provided by @ 604(g) of such Act, which appears as 10 USCS @ 1074a note), substituted subsecs. (g) and (h) for ones which read:

"(g) A member of the Army or the Air Force (other than of the Regular Army or the Regular Air Force) is entitled to the pay and allowances provided by law or regulation for a member of the Regular Army or the Regular Air Force, as the case may be, of corresponding grade and length of service, whenever--

"(1) he is called or ordered to active duty (other than for training under section 270(b) of title 10) for a period of more than 30 days, and is disabled in line of duty from disease while so employed; or

"(2) he is called or ordered to active duty, or to perform inactive-duty training, for any period of time, and is disabled in line of duty from injury while so employed.

"(h) A member of the National Guard is entitled to the pay and allowances provided by law or regulation for a member of the Regular Army or the Regular Air Force, as the case may be, of corresponding grade and length of service, whenever he is called or ordered to perform training under section 502, 503, 504, or 505 of title 32--

"(1) for a period of more than 30 days, and is disabled in line of duty from disease while so employed; or

"(2) for any period of time, and is disabled in line of duty from injury while so employed."

Such Act further (applicable as provided by @ 604(g) of such Act, which appears as 10 USCS @ 1074a note), repealed subsec. (i) which read: "(i) A member of the Naval Reserve, Fleet Reserve, Marine Corps Reserve, Fleet Marine Corps Reserve, or Coast Guard Reserve is entitled to the pay and allowances provided by law or regulation for a member of the Regular Navy, Regular Marine Corps, or Regular Coast Guard, as the case may be, of corresponding grade and length of service, under the same conditions as those described in clauses (1) and (2) of subsection (g) of this section.", and redesignated subsec. (j) as subsec. (i).

1988. Act Sept. 29, 1988 (applicable as provided by @ 631(d) of such Act, which appears as a note to this section) substituted subsecs. (g) and (h) for ones which read:

"(g) A member of a reserve component of a uniformed service is entitled to the pay and allowances provided by law or regulation for a member of a regular component of a uniformed service of corresponding grade and length of service whenever such member--

"(1) is called or ordered to active duty for a period of more than 30 days; and

"(2) is physically disabled in line of duty from injury, illness, or disease.

"(h)

(1) A member of a reserve component of a uniformed service is entitled, upon request, to a portion of the monthly pay and allowances provided by law or regulation for a member of a regular component of a uniformed service of corresponding grade and length of service for each month for which the member demonstrates a loss of income from non-military compensation as a result of an

injury, illness, or disease incurred or aggravated--

"(A) in line of duty while performing active duty for a period of 30 days or less;

"(B) in line of duty while performing inactive-duty training (other than work or study in connection with a correspondence course of an armed force or attendance in an inactive status at an educational institution under the sponsorship of an armed force or the Public Health Service); or

"(C) while traveling directly to or from that duty or training.

"(2)

(A) Subject to subparagraphs (B) and (C), pay and allowances paid under paragraph (1) shall be in an amount which offsets the loss of income from non-military compensation.

"(B) Pay and allowances may not be paid under paragraph (1) to a member who is enrolled in any other income protection insurance plan to the extent that such payment would result in total benefits to the member of more than the demonstrated loss of income from non-military compensation.

"(C) The total amount of pay and allowances paid under paragraph (1) and compensation paid under section 206(a) of this title for any period may not exceed the amount of pay and allowances provided by law or regulation for a member of a regular component of a uniformed service of corresponding grade and length of service for that period.

"(3) Pay and allowances may be paid under paragraph (1)--

"(A) for a period of not more than six months; or

"(B) for a longer period, if the Secretary concerned determines that it is in the interests of fairness and equity to do so.

"(4) A member is not entitled to benefits under this subsection if the injury, illness, disease, or aggravation of an injury, illness, or disease described in paragraph (1)(C) is the result of the gross misconduct of the member.

"(5) Regulations with respect to procedures for paying pay and allowances under paragraph (1) shall be prescribed--

"(A) by the Secretary of Defense for the armed forces under the jurisdiction of the Secretary; and

"(B) by the Secretary of Transportation for the Coast Guard when the Coast Guard is not operating as a service in the Navy."

Such Act further redesignated former subsec. (i) as subsec. (j); and added new subsec. (i).

1991. Act April 6, 1991, in subsec. (b), deleted "of this section" following "subsection (a)".

1994. Act Oct. 5, 1994 (effective 12/1/94 as provided by @ 1691 of such Act, which appears as 10 USCS @ 10001 note), in subsec. (a)(2), substituted "section 10302, 10305, 10502, or 12402" for "section 3021, 3496, 3541, 8021, 8496, or 8541".

1996. Act Feb. 10, 1996, in subsec. (g)(1), in subpara. (B), deleted "or" after the concluding semicolon, in subpara. (C), substituted "; or" for a concluding period, and added subpara. (D); and, in subsec. (h)(1), in subpara. (B), deleted "or" after the concluding semicolon, in subpara. (C), substituted "; or" for a concluding period, and added subpara. (D).

1997. Act Nov. 18, 1997, in subsecs. (g)(1)(D) and (h)(1)(D), inserted "while remaining overnight immediately before the commencement of inactive-duty training, or".

Other provisions:

Application of Sept. 24, 1983 amendments. For provisions as to the application of amendments made by Act Sept. 24, 1983, which added subsec. (j)

37 USCS @ 204 (1998)

of this section, see @ 1012(c) of Act Sept. 24, 1983, P.L. 98-94, Title X, Part B, 97 Stat. 665, which appears as 10 USCS @ 1074a note.

Application of Sept. 29, 1988 amendments. Act Sept. 29, 1988, P.L. 100-456, Div A, Title VI, Part D, @ 631(d), 102 Stat. 1985, provides: "The amendments made by this section [amending this section and 37 USCS @ 206] shall apply with respect to persons who, after the date of enactment of this Act, incur or aggravate an injury, illness, or disease, or who die as the result of incurring or aggravating an injury, illness, or disease."

NOTES:

CROSS REFERENCES

No increase in allowances while dependent entitled to basic pay, 37 USCS @ 421.

This section is referred to in 5 USCS @@ 4102, 8334, 8422; 22 USCS @ 4045; 50 USCS @ 2082.

RESEARCH GUIDE

Forms:

3 Fed Procedural Forms L Ed, Armed Forces, Civil Disturbances, and National Defense @@ 5:321, 341, 347.

5 Federal Procedural Forms L Ed, Civil Disturbances and National Defense, @@ 5:122, 5:128.

Annotations:

Computation of backpay and allowances to which member of armed forces is entitled upon showing that he was wrongfully separated from service. 7 ALR Fed 473.

Law Review Articles:

Michalski. The Air Force Disability System--An Overview. 23 AF L Rev 218, 1982-1983.

INTERPRETIVE NOTES AND DECISIONS

1. Generally
2. Right to receive pay
3. Entitlement during period of confinement or parole
4. Promotion
5. Reduction of pay due to income from other source
6. Travel status
7. Recovery by government of money erroneously paid
8. Judicial review and jurisdiction
9. Miscellaneous

1. Generally

Noncommissioned officer who admitted having homosexual affair is entitled to reasoned explanation from Air Force as to why he was not retained under "unusual circumstances" exception to general policy of discharging homosexuals, even though officer failed to set forth statutory right for backpay to justify judicial review of monetary claim, because 37 USCS @ 204 provides substantive source of entitlement for recovery of backpay by officer allegedly discharged wrongfully. *Secora v Fox* (1989, SD Ohio) 747 F Supp 406.

2. Right to receive pay

Officer of Army suspended from duty is not entitled to emoluments or

allowances. *Swaim v United States* (1897) 165 US 553, 41 L Ed 823, 17 S Ct 448.

Armed Forces member's entitlement to pay ordinarily ceases at time he is separated from service. *United States v Brown* (1907) 206 US 240, 51 L Ed 1046, 27 S Ct 620.

Commissioned warrant officer of Navy is not entitled to longevity pay unless he sustains burden of proving creditable record during time for which it is claimed. *Reid v United States* (1934) 80 Ct Cl 342.

Physically unqualified reserve officer mistakenly taken from his home and put in military hospital was entitled to be paid as de facto active duty officer. *Heins v United States* (1957) 137 Ct Cl 658, 149 F Supp 331.

As general rule, contract surgeon is entitled to pay only from time he enters upon duty under his contract. 17 Op Atty Gen 461.

Even if reservist were successful in having transfer to inactive, nonpay status set aside as unauthorized, there would be no statutory basis for awarding him backpay for work not actually performed. *Huber v United States* (1993) 29 Fed Cl 260, 1993 US Claims LEXIS 146.

If serviceman's involuntary discharge was improper, his statutory right to pay under 37 USCS @ 204(a)(1) was not extinguished. *Cameron v United States* (1995) 34 Fed Cl 422.

37 USCS @ 204(a) does not provide right to payment to reservist who is not on continuous active duty, who is not ordered to perform work, and who does not actually perform work. *Palmer v United States* (1997) 38 Fed Cl 316.

3. Entitlement during period of confinement or parole

Confined servicemember was not entitled to pay for period between date his term of service expired and his dishonorable discharge date since, although adultery charged was dismissed, rape conviction had not been, hence, sentence was not completely overturned or set aside. *Reed v United States* (1991) 23 Cl Ct 517.

Service member confined pursuant to court-martial conviction was not entitled to pay from expiration of his term of service until completion of military appellate process; when plaintiff's enlistment term expired, he was in process of serving sentence and not confined merely in preparation for court-martial, and none of his convictions was overturned on appeal. *Knight v United States* (1992) 26 Cl Ct 328.

Serviceman, who was detained in Army after his enlistment expired, is entitled to pay and allowances under 37 USCS @ 204(a)(1) albeit he was confined and subsequently paroled, during time from expiration of his term of enlistment to his formal release under court-martial sentence later set aside and never set for rehearing although serviceman had not be acquitted. *Cowden v United States* (1979) 220 Ct Cl 490, 600 F2d 1354.

Soldier whose conviction was ultimately overturned is entitled to military pay during period that he was on adjudged parole status, even though period of enlistment expired during parole, since soldier is subject to military control during such period by virtue of terms and conditions of parole; civilian earnings in such cases are not to be offset against military pay unless civilian employment was with federal government. (1979) 59 Op Comp Gen p 12.

Enlisted member of U. S. Army, confined after expiration of his term of enlistment, was due pay and allowances for period of confinement, where conviction was set aside due to prejudicial error at trial level and no rehearing was ordered. *Cowden v United States*, Ct Cl No. 242-78, June 13, 1979.

4. Promotion

Statute could not be construed as money-mandating with respect to claims for retroactive promotions and accompanying monetary relief. *Upshaw v United*

States (1989) 17 Cl Ct 732.

Court will not award retroactive promotion and adjustment in pay since to do so would infringe upon discretionary process of selection for promotion; fact that BCMR can order such relief and that court may review BCMR's actions does not mean that court can order such relief. *Miller v United States* (1993) 29 Fed Cl 107, 1993 US Claims LEXIS 117.

5. Reduction of pay due to income from other source

"Employment" contemplated by 37 USCS @ 204(g)(2) is active employment that, to extent it can be engaged in, is inconsistent with receipt of disability payments; thus, any income received in form of civil service annuity should not be considered as earned income for purposes of statute, since civil service annuitant is no longer actively employed in that sense. Chief Master Sergeant Trente R. Adair, USAF Reserve (1991) 70 Comp Gen 350.

6. Travel status

National Guard member is in travel status for purpose of medical and disability entitlements for injury incurred while traveling to and from active duty training when he leaves his living quarters with intention of going directly to place where ordered to perform such duty; such travel status continues upon completion of his tour of duty when he returns directly from his place of duty to his home until he has entered his living quarters. (1979) 58 Op Comp Gen 232.

7. Recovery by government of money erroneously paid

Payments made in good faith to marine officers by treasury officials, upon erroneous construction of statutes, cannot be recovered back. *United States v Freeman* (1845) 44 US 556, 3 How 556, 11 L Ed 724.

Where officer of Army was paid, as such, for some time during intervals of his employment in a diplomatic or consular capacity, being officer de facto, if not de jure, moneys so paid to him cannot be recovered back by United States. *Badeau v United States* (1889) 130 US 439, 32 L Ed 997, 9 S Ct 579.

Where officer sues government to recover additional amount claimed by him for pay, government may have deducted from sum due him for such pay, any sum which has been mistakenly and improperly paid to him. *United States v Stahl* (1894) 151 US 366, 38 L Ed 194, 14 S Ct 347, reh den (1894) 152 US 384, 38 L Ed 488, 14 S Ct 635.

Payments made to late commander in Navy after he is lawfully out of service cannot be recovered back by government, but are ratified when Congress subsequently passes act for his relief, providing for his reappointment to his original rank, but providing that he shall receive no pay except from date of his reappointment. *Quackenbush v United States* (1900) 177 US 20, 44 L Ed 654, 20 S Ct 530.

Officer, holding rank of major, though not legally appointed to that rank, and performing duties of major, cannot be required to refund salary he received as major. *United States v Royer* (1925) 268 US 394, 69 L Ed 1011, 45 S Ct 519.

Where officer has been overpaid, government can recover money. *Heidt v United States* (1932, CA5 Tex) 56 F2d 559, cert den (1932) 287 US 601, 77 L Ed 523, 53 S Ct 8.

Where money is paid as salary to one who claimed to be an officer, but rendered no service, and held no official relation with government, money so paid may be recovered. *Miller v United States* (1884) 19 Ct Cl 338.

Government is entitled to recover overpayment of salary, amount of which is prescribed by Congress. *United States v Yates* (1932, DC Va) 58 F2d 368.

Amount drawn for pay as chaplain in Army when contrary to law, even though

with consent of executive department, may be charged against, and withheld from pay of chaplain thereafter accruing. 17 Op Atty Gen 152.

8. Judicial review and jurisdiction

Fact that lieutenant colonel chose retirement date earlier than one designated by Army in notice of selection for early retirement did not render his retirement "voluntary" so as to divest Court of Federal Claims of jurisdiction over his claim under money-mandating basic pay statute (37 USCS @ 204); he was selected for early retirement under 10 USCS @ 638a, which provides that retirement of officer pursuant to it shall be considered involuntary for purposes of any other provision of law. *Adkins v United States* (1995, CA FC) 68 F3d 1317, reh den (1996, CA FC) 1996 US App LEXIS 3919.

Claims Court has jurisdiction to review military reservist's claim that Army acted arbitrarily and capriciously in not reinstating reservist to active duty after removing reservist from Temporary Disability Retired List (reservist was placed on list due to psychological problems) and that Army Board of Corrections for Military Records decision to uphold Army's decision was arbitrary or capricious, since reservist may have right to reinstatement to active duty under those circumstances and active duty status mandates pay pursuant to 37 USCS @ 204. *Pope v United States* (1988) 15 Cl Ct 218.

37 USCS @ 204, which authorizes pay for career military officers, may be relied upon to invoke jurisdiction of Court of Federal Claims. *Doe v United States* (1996) 35 Fed Cl 85.

Since decision of Air Force to separate active duty member with disability discharge cannot be construed as voluntary retirement, Court of Federal Claims has jurisdiction over member's court action, because member's right to pay under 37 USCS @ 204(a)(1) was not extinguished if his discharge was involuntary and improper. *West v United States* (1996) 35 Fed Cl 226.

Involuntarily discharged military personnel may rely on pay statutes, such as 37 USCS @ 204, to invoke 28 USCS @ 1491 jurisdiction of Court of Federal Claims. *Strickland v United States* (1996) 36 Fed Cl 651.

9. Miscellaneous

Where officer was retired from active duty and his retirement pay was based on percentage of his disability as determined by Army physical disability appeal board as of date of his retirement, later determination by Veterans Administration that he was one hundred per cent disabled had no effect upon his retirement pay. *Mackey v United States* (1956) 135 Ct Cl 411, 142 F Supp 922.

Excess Leave Program promulgated by Secretary of Army, whereby selected commissioned officers of Regular Army and ROTC graduates are permitted to enter excess leave for up to 3.5 years to obtain legal education and admission to bar while retaining active duty status but without pay and allowances, does not violate entitlement to basic pay provisions of 37 USCS @ 204, as program was founded on exceptions to @ 204n: (1) @ 502(b), that there is no entitlement to pay or allowances for authorized absences longer than serviceman's accrued leave and (2) provisions in annual appropriations acts for Department of Defense prohibiting use of appropriated funds for full-time legal training for Defense Department personnel. *Bickford v United States* (1981) 228 Ct Cl 321, 656 F2d 636.

Decision by United States Court of Military Appeals finding individual's enlistment in service void for purpose of court-martial jurisdiction does not ipso facto void enlistment for purposes of determining individual's entitlement to pay and allowances; for purposes of pay and allowances under 37 USCS, when Government becomes cognizant of fraudulent enlistment and appropriate administrative body decides to waive fraud, waiver acts as ratification of

individual's enlistment which relates back to original date of entry conferring upon individual, for pay purposes, de jure member status for duration of enlistment; similarly where voidable character of fraud places option to waive fraud upon individual whose enlistment has been found to be fraudulent, enlistee can waive defect in enlistment so as to confer upon himself de jure member status for purposes of pay and allowances, such status relating back to date of original enlistment. (1977) 57 Op Comp Gen 132.

Court lacked jurisdiction of active duty Air Force officer's claim for back pay and constructive service credit for time spent in graduate studies since 10 USCS @ 533 providing for such credit applies only to officers commissioned in regular armed forces and not reserves and was not money-mandating, 10 USCS @ 8353 providing similarly for reserved officers is discretionary hence is not money-mandating, and 37 USCS @ 204, entitling members to their basic pay, was not applicable since plaintiff did not allege that he received no pay, but that he was not paid at rate to which he was allegedly entitled. *Alonge v United States* (1994) 30 Fed Cl 519, 1994 US Claims LEXIS 46, affd without op (1995, CA FC) 45 F3d 444, reported in full (1995, CA FC) 1995 US App LEXIS 228.

Since Department of Defense does not have jurisdiction to court martial reservist who is not on active duty, to proceed with court martial, reservist must be placed on active duty; thus, pursuant to 37 USCS @ 204(a), at least in absence of contrary regulations, such placement brings with it entitlement to pay. *Graham v United States* (1996) 36 Fed Cl 430.

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UNITED STATES CODE SERVICE

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*** THIS SECTION IS CURRENT THROUGH 105-165, APPROVED 3/20/98 ***

*** WITH A GAP OF 160 AND 164 ***

TITLE 37. PAY AND ALLOWANCES OF THE UNIFORMED SERVICES

CHAPTER 3. BASIC PAY

37 USCS @ 205 (1998)

@ 205. Computation; service creditable

(a) Subject to subsections (b) and (c), for the purpose of computing the basic pay of a member of a uniformed service, his years of service are computed by adding--

(1) all periods of active service as an officer, Army field clerk, flight officer, aviation midshipman, or enlisted member of a uniformed service;

(2) all periods during which he was enlisted or held an appointment as an officer, Army field clerk, or flight officer of--

(A) a regular component of a uniformed service;

(B) the Regular Army Reserve;

(C) the Organized Militia before July 1, 1916;

(D) the National Guard;

(E) the National Guard Reserve;

(F) a reserve component of a uniformed service;

(G) the Naval Militia;

(H) the National Naval Volunteers;

(I) the Naval Reserve Force;

(J) the Army without specification of component;

(K) the Air Force without specification of component;

(L) the Marine Corps Reserve Force;

(M) the Phillippine Scouts; or

(N) the Philippine Constabulary;

(3) for a commissioned officer in service on June 30, 1922, all service that was then counted in computing longevity pay and all service as a contract surgeon serving full time;

(4) all periods during which he held an appointment as a nurse, reserve nurse, or commissioned officer in the Army Nurse Corps as it existed at any time before April 16, 1947, the Navy Nurse Corps as it existed at any time before April 16, 1947, or the Public Health Service, or a reserve component of any of them;

(5) all periods during which he was a deck officer or junior engineer in the National Oceanic and Atmospheric Administration;

(6) all periods that, under law in effect on January 10, 1962, were authorized to be credited in computing basic pay; and

(7) all periods while--

(A) on a temporary disability retired list, honorary retired list, or a retired list of a uniformed service;

(B) entitled to retired pay, retirement pay, or retainer pay, from a uniformed service or the Department of Veterans Affairs, as a member of the Fleet Reserve or the Fleet Marine Corps Reserve; or

(C) a member of the Honorary Reserve of the Officers' Reserve Corps or the Organized Reserve Corps.

Except for any period of active service described in clause (1) and except as provided by subsections (b), (c), and (d) of section 1402 and subsections (b), (c), and (d) of section 1402a of title 10, a period of service described in clauses (2) through (7) of this subsection that is performed while on a retired list, in a retired status, or in the Fleet Reserve or Fleet Marine Corps Reserve, may not be included to increase retired pay, retirement pay, or retainer pay. For the purpose of clause (5), periods during which a member was a deck officer or junior engineer in the Environmental Science Services Administration includes periods during which a member was a deck officer or junior engineer in the Coast and Geodetic Survey.

(b) A period of time may not be counted more than once under subsection (a).

(c) The periods of service authorized to be counted under subsection (a) shall, under regulations prescribed by the Secretary concerned, include service performed by a member of a uniformed service before he became 18 years of age.

(d) Notwithstanding subsection (a), a commissioned officer may not count in computing basic pay a period of service after October 13, 1964, that the officer performed concurrently as a member of the Senior Reserve Officers' Training Corps, except for service that the officer performed on or after August 1, 1979, other than for training as an enlisted member of the Selected Reserve may be so counted.

(e)

(1) Notwithstanding subsection (a), a period of service described in paragraph (2) of a member who enlists in a reserve component may not be counted under this section.

(2) Paragraph (1) applies to the following service:

(A) Service performed while a member of a reserve component under an enlistment under section 12103(b) or 12103(d) of title 10 before the member begins service on active duty under such section (including a period of active duty for training) unless the member performs inactive-duty training before beginning service on active duty or active duty for training;

(B) Service performed while a member of a reserve component under an enlistment under section 513 of title 10 (other than a period of active duty to which the member is ordered under chapter 1209 of title 10 [10 USCS @@ 12301 et seq.] or another provision of law).

HISTORY: (Sept. 7, 1962, P.L. 87-649, @ 1, 76 Stat. 458; Oct. 13, 1964, P.L. 88-647, Title II, @ 202(1), 78 Stat. 1070; Nov. 2, 1966, P.L. 89-718, @ 49(a)(1), (b), 80 Stat. 1121; Oct. 22, 1968, P.L. 90-623, @ 3(3), 82 Stat. 1314; Dec. 26, 1974, P.L. 93-545, @ 2, 88 Stat. 1741; Sept. 8, 1980, P.L. 96-342, Title VIII, @ 813(b)(3)(D), 94 Stat. 1104; Dec. 12, 1980, P.L. 96-513, Title V, Part B, @ 516(3), 94 Stat. 2937; Dec. 12, 1980, P.L. 96-513, Title IV, Part A, @ 402, 94 Stat. 2904; Oct. 19, 1984, P.L. 98-525, Title VI, Part A, @ 607(a), 98 Stat. 2538; Nov. 29, 1989, P.L. 101-189, Div A, Title V, Part A, @ 501(c), 103 Stat. 1435; April 6, 1991, P.L. 102-25, Title VII, @ 702(b)(1), (2), 105 Stat. 117; Oct. 23, 1992, P.L. 102-484, Div A, Title V, Subtitle B, @ 517(b), 106 Stat. 2407; May 31, 1993, P.L. 103-35, Title II, @ 204(a)(1), 107 Stat. 102; Oct. 5, 1994, P.L. 103-337, Div A, Title XVI, Subtitle D, @ 1676(b)(2), 108 Stat. 3019.)

(As amended Sept. 23, 1996, P.L. 104-201, Div A, Title V, Subtitle A, @ 507(b), 110 Stat. 2512; Nov. 18, 1997, P.L. 105-85, Div A, Title X, Subtitle

G, @ 1073(b), 111 Stat. 1904.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
205(a)	37:233(a) (less words after 2d semicolon of clause (7)).	Oct. 12, 1949, ch 681, Sec. 202 (less proviso of (d)), 63 Stat. 807; April 30, 1956, ch 223, Sec. 2, 70 Stat. 121.
	37:233(b).	
205(b)	37:233(a) (7) (words between 2d and 3d semicolons).	
	37:233(d) (less proviso).	
205(c)	37:233(a) (7) (words after 3d semicolon).	
205(d)	37:233(c).	

In subsection (a), the introductory clause is substituted for former 37 USC @ 233(a) (introductory clause). In clauses (1) and (2), the word "officer" is substituted for the words "commissioned officer, commissioned warrant officer, warrant officer" to conform to the definition of "officer" in 37 USCS @ 101(11). In clause (1), the words "Regular or Reserve component" are omitted, since, under the definition of "reserve component" in section 102(k) of the source statute, those words are defined to include members without component status. Together, these categories compose the entire structure of any uniformed service. In clause (2)(F), the words "a reserve component of a uniformed service" are substituted for the words "the National Guard of the United States, or in the Organized Reserve Corps, or in the Officers' Reserve Corps, or in the Enlisted Reserve Corps, or in the Medical Reserve Corps, or in the Medical Reserve Corps of the Navy, or in the Dental Reserve Corps of the Navy . . . or in the Naval Reserve . . . or in the Air National Guard of the United States, or in the Air Force Reserve, or in the officers' section of the Air Force Reserve, or in the enlisted section of the Air Force Reserve, or in the Air Corps Reserve . . . or in the Marine Corps Reserve, or in the Coast Guard Reserve, or in the Reserve Corps of the Public Health Service," since all of the named organizations were or are reserve components. In clause (4), the words "as it existed at any time before April 16, 1947" are inserted for clarity, since the reference is intended to apply to the corps established by law before April 16, 1947. Service in the Army Nurse Corps or Navy Nurse Corps now existing would be included under clause (1) or (2), since there is now no legal distinction between the service of nurses and that of other members of the Army and Navy. In clause (6), the date "January 1, 1961," is substituted for the words "the effective date of this section," to reflect laws enacted after that effective

date which authorized certain service to be credited for pay purposes. See, for example, Public Law 86-142. Clause (9) is substituted for former 37 USC @ 233(b) (less proviso). The last sentence is substituted for former 37 USC @ 233(b) (proviso).

In subsection (b), the first 33 words of former 37 USC @ 233(d) are omitted as covered by the words "are computed by adding" in subsection (a). The words "for any reason," in former 37 USC @ 233(d), are omitted as surplusage.

In subsection (c)(3), the words "chapter 67 of title 10" are substituted for the words "title III of the Army and Air Force Vitalization and Retirement Equalization Act of 1948," since that title was repealed by Act of August 10, 1956, ch 1041 @ 53, 70 A Stat. 641. Similar provisions are now contained in 10 USCS @@ 1331 et seq.

Amendments:

1964. Act Oct. 13, 1964, added subsec. (e).

1966. Act Nov. 2, 1966, in subsec. (a)(5), substituted "Environmental Science Services Administration" for "Coast and Geodetic Survey"; in subsec (a), concluding matter, inserted "For the purpose of clause (5) of this subsection, periods during which a member was a deck officer or junior engineer in the Environmental Science Services Administration includes periods during which a member was a deck officer or junior engineer in the Coast and Geodetic Survey.".

1968. Act Oct. 22, 1968, in subsec. (e), substituted "October 13, 1964," for "the enactment of this subsection".

1974. Act Dec. 26, 1974, in subsec. (a)(1), inserted "aviation midshipman,".

1980. Act Sept. 8, 1980, in subsec. (a), concluding matter, inserted "and section 1402a(a)-(d)".

Act Dec. 12, 1980, @ 516(3) (effective 12/12/80, as provided by @ 701(b)(3) of such Act), in subsec. (a), in para. (5), substituted "National Oceanic and Atmospheric Administration" for "Environmental Science Services Administration", and in the concluding matter, substituted "National Oceanic and Atmospheric Administration" for "Environmental Science Services Administration" and inserted "Environmental Science Services Administration or the".

Act Dec. 12, 1980 (effective 9/15/81, as provided by @ 701(a) of such Act, which appears as 10 USCS @ 101 note), in subsec. (a), substituted "subsections (b) and (c)" for "subsections (b)-(d)", in clause (6), inserted "and" at the end, deleted clauses (7) and (8) which read:

"(7) for an officer of the Medical Corps or Dental Corps of the Army or Navy, an officer of the Air Force designated as a medical or dental officer, or an officer of the Public Health Service commissioned as a medical or dental officer--four years;

"(8) for a medical officer named in clause (7) who has completed one year of medical internship or the equivalent thereof--one year in addition to the four years prescribed by clause (7); and",

redesignated clause (9) as new clause (7), as in such clause substituted "subsections (b), (c), and (d) of section 1402 and subsections (b), (c), and (d) of section 1402a" for "section 1402(b)-(d) and section 1402a(a)-(d)" and substituted "clauses (2) through (7)" for "clauses (2)-(9)"; in subsec. (b), deleted "In addition, the amount of service authorized to be credited under clause (7) or (8) of subsection (a) of this section to an officer shall be reduced by the amount of any service otherwise creditable under that subsection that covers any part of his professional education or internship." following "of this section."; deleted subsec. (c) which read:

"(c) Notwithstanding any other law, service credited under clause (7) or (8) of subsection (a) of this section may not--

"(1) be included in establishing eligibility for voluntary or

involuntary retirement or separation from a uniformed service;

"(2) increase the retired or retirement pay of a person who became entitled to that pay before May 1, 1956; or

"(3) increase the retired pay of a person who is entitled to that pay under chapter 67 of title 10, after April 30, 1956, and who does not perform active duty after May 1, 1956.";

and redesignated subsecs. (d) and (e) as subsecs. (c) and (d), respectively.

1984. Act Oct. 19, 1984 added subsec. (e).

1989. Act Nov. 29, 1989 substituted subsec. (e) for one which read:

"Notwithstanding subsection (a) of this section, a period served by a member of a uniformed service in a reserve component under an enlistment under section 511 of title 10 before the member--

"(1) begins service on active duty under subsection (b) of that section, or

"(2) begins an initial period of active duty for training under subsection (d) of that section, may not be counted under this section."

1991. Act April 6, 1991, in subsecs. (a) introductory matter, and, (b), and (c), deleted "of this section" following, respectively, "subsections (b) and (c)", "subsection (a)", and "subsection (a)"; and, in subsec. (a), in the concluding matter, deleted "of this subsection" following "clause (1)" and "clause (5)".

1992. Act Oct. 23, 1992, substituted subsec. (d) for one which read: "(d) Notwithstanding subsection (a), a commissioned officer may not count in computing his basic pay any period of service after the October 13, 1964, that he performed concurrently as a member of a uniformed service and as a member of the Senior Reserve Officers' Training Corps."

1993. Act May 31, 1993, in subsec. (a)(7)(B), substituted "the Department of Veterans Affairs," for "the Veterans' Administration,".

1994. Act Oct. 5, 1994 (effective 12/1/94 as provided by @ 1691 of such Act, which appears as 10 USCS @ 10001 note), in subsec. (e)(2), in subpara. (A), substituted "section 12102(b) or 12103(d)" for "section 511(b) or 511(d)", and, in subpara. (B), substituted "chapter 1209" for "chapter 39".

1996. Act Sept. 23, 1996, in subsec. (d), substituted "for service that the officer performed on or after August 1, 1979." for "that service after July 31, 1990, that the officer performed while serving on active duty".

1997. Act Nov. 18, 1997 (applicable as provided by @ 1073(i) of such Act, which appears as 10 USCS @ 101 note), in subsec. (d), substituted a comma for a period following "August 1, 1979".

Other provisions:

Legislative construction. Act Oct. 22, 1968, P.L. 90-623, @ 6(a), 82 Stat. 1315, located at 5 USCS @ 5334 note, provided that the amendment made to this section by Act Oct. 22, 1968 restates, without substantive change, the laws replaced by the amendment on Oct. 22, 1968 and that laws effective after June 30, 1968 that are inconsistent with this Act supersede it to the extent of the inconsistency.

Application of Oct. 19, 1984 amendment. Act Oct. 19, 1984, P.L. 98-525, Title VI, Part A, @ 607(b), 98 Stat. 2538, provides: "The amendment made by subsection (a) [adding subsec. (e)] shall apply to persons who enlist under section 511 of title 10, United States Code, on or after the first day of the third calendar month which begins after the date of the enactment of this Act."

Sept. 23, 1996 amendment; benefits not to accrue for prior periods. Pursuant to @ 507(c) of Act Sept. 23, 1996, P.L. 104-201, which appears as 10 USCS @ 2106 note, no increase in pay or retired or retainer pay shall accrue for periods before Sept. 23, 1996 by reason of the amendment made by such @ 507(c) to

subsec. (d) of this section.

NOTES:

CROSS REFERENCES

Years of service, computation, 10 USCS @ 1405.

This section is referred to in 10 USCS @ 2126; 37 USCS @@ 201, 203, 301a, 301c, 308, 406; 42 USCS @ 212.

INTERPRETIVE NOTES AND DECISIONS

1. Generally
2. Inactive service or retirement
3. Service at military academy or as cadet
4. Service as clerk
5. Other types of service
6. Miscellaneous

1. Generally

Word "service" in statutes concerning longevity pay means actual service performed under color of office without regard to defects in title to office; reward which statutes intend is for long-continued actual service, and it matters not whether officer serves as such de jure or de facto. *Bennett v United States* (1884) 19 Ct Cl 379; *Palen v United States* (1884) 19 Ct Cl 389.

Officer in actual service under color of office, and treated as such by executive, is entitled to have time of actual service credited to him in computation of his longevity pay. *Gould v United States* (1884) 19 Ct Cl 593.

State statute, providing that each officer of national guard is entitled to pay at same rates in time of danger as officers of corresponding grade in United States Army is entitled, applies to longevity pay as well as regular pay. *State v Dudley* (1910) 173 Ind 633, 91 NE 228.

2. Inactive service or retirement

Army officers retired from active service with reduced pay were still in service and were entitled to increased pay allowed by law for every five years' service while in that condition as well as when in active service. *United States v Tyler* (1882) 105 US 244, 15 Otto 244, 26 L Ed 985 (criticized in *Franklin v Commissioner* (1995) TC Memo 1995-304, RIA TC Memo P 95304, 70 CCH TCM 30, 95 TNT 136-12).

Time spent by Marine officer on retired list cannot be counted in determining amount of his base pay as officer on retired list. *Leonard v United States* (1929) 279 US 40, 73 L Ed 604, 49 S Ct 232.

Where commissioned officer who had received no wounds in battle was retired to inactive list September 21, 1908, because of disability incurred in line of duty, and was put on active list August 18, 1914, where he continued until September 17, 1917, when he was again put on inactive list, time of inactive duty was not to be considered in computing longevity pay. *Heidt v United States* (1932, CA5 Tex) 56 F2d 559, cert den (1932) 287 US 601, 77 L Ed 523, 53 S Ct 8.

Officer in Marine Corps who was retired, but afterward rendered additional active service is not entitled to have periods during which he was on retired list added to his active service for purpose of computing his pay. *Leonard v United States* (1928) 64 Ct Cl 384, affd (1929) 279 US 40, 73 L Ed 604, 49 S Ct 232.

Coast Guard officer placed on retired list, and thereafter in active-duty status, during which he was granted leave of absence for sickness, but continued to sign papers as member of general Coast Guard court, was in active-duty

status as affecting gratuity pay to his widow. *Maxwell v United States* (1930) 68 Ct Cl 727.

Officer recalled to active duty after retirement is not entitled to include period of retirement in computing longevity pay. *Chandler v United States* (1930) 70 Ct Cl 690.

Retired commissioned officer recalled to service was entitled to add to his active commissioned service before retirement period of active duty performed since retirement in computation of his pay period. *Marvin v United States* (1933) 78 Ct Cl 567.

Officer of armed forces, who served on active duty November 1, 1918, to April 1, 1926, when he was retired for physical disability in grade of first lieutenant and who was advanced December 26, 1944, to grade of major on retired list for additional physical disability incurred while serving temporarily in that grade on active duty during the period January 12, 1942, to March 24, 1945, is entitled to have counted his inactive service on retired list from April 1, 1926, to January 12, 1942, in computing his retired pay on reversion to inactive status March 24, 1945. *Carroll v United States* (1948) 117 Ct Cl 53, 81 F Supp 268.

Computation of active duty pay included credit for years of retired service, but when basic active duty pay was under consideration as element in retired pay, credit for retired or inactive service was eliminated. *Jones v United States* (1961) 152 Ct Cl 793, 289 F2d 825.

Commissioned warrant officer in Navy was officer and, consequently, was entitled to have his retired pay computed on basis of 75 percent of his active duty pay at time of retirement. *Zur-Linden v United States* (1962) 158 Ct Cl 383, 305 F2d 856.

3. Service at military academy or as cadet

Officer is entitled to credit for time spent as cadet at West Point in computing longevity pay. *United States v Morton* (1884) 112 US 1, 28 L Ed 613, 5 S Ct 1; *United States v Watson* (1889) 130 US 80, 32 L Ed 852, 9 S Ct 430.

Line officer who was retired was entitled to have his service at Naval Academy included in his years of service. *Roggenkamp v United States* (1932) 76 Ct Cl 329.

In computing longevity pay of officers in Army under statute which provided that "actual time of service" should be allowed, time of service spent as cadet at military academy was not allowed. 17 Op Atty Gen 93.

Where, by agreement, officer accepted increase in longevity pay for time spent as cadet, he was not entitled to have case reopened, because of court decision placing more liberal construction on statute. 19 Op Atty Gen 439.

4. Service as clerk

Clerk and messenger in quartermaster's or subsistence department is civilian and is not in "service in the army" as regards longevity pay. *Schreiner v United States* (1908) 43 Ct Cl 480.

Warrant officer of Coast Guard is entitled to have included for longevity pay purposes his previous service as clerk to commandant at naval station. *Cartwright v United States* (1932) 74 Ct Cl 186.

In computing longevity pay of officers of Army, time of service spent as captain's clerk in Navy is allowed. 17 Op Atty Gen 93.

5. Other types of service

Lieutenant in Navy is not entitled to have his longevity pay based upon any additional allowance he received as aid to rear admiral, in addition to regular pay fixed by law for lieutenant. *United States v Miller* (1908) 208 US 32, 52

L Ed 376, 28 S Ct 199.

In computing length of service for longevity pay purposes, warrant officer in Coast Guard is entitled to include prior service both in life-saving service before merger of that service and revenue cutter service into Coast Guard and in Coast Guard prior to his appointment as warrant officer in that service. Pitt v United States (1933) 77 Ct Cl 275.

Participants in Public Health Service's Senior Commissioned Officer Student Training and Extern Program under 42 USCS @ 218a and National Health Service Corps' scholarship program under predecessor to @ 2541, who are commissioned as medical and dental officers of Public Health Service after September 15, 1981 are not entitled to constructive service credit under repealed provisions of 37 USCS @ 205(a)(7), (8) formerly covering medical and dental officers and medical interns, including participants in such programs, since savings clause of Act repealing such provisions effective September 15, 1981 (Defense Officer Personnel Management Act, PL 96-513, 94 Stat 2952, @ 625(b), 10 USCS @ 611 note) does not include participants in either program. (1982) 61 Op Comp Gen p 461.

In computing longevity pay of officers of Army, time of service spent in medical corps of Navy is allowed. 17 Op Atty Gen 93.

6. Miscellaneous

Where retired army officer elected to use his percentage of disability as basis for his retirement pay rather than years of his service, he was entitled to apply his disability percentage against basic pay computed by counting time of active service as well as time while on retired list. Bailey v United States (1956) 134 Ct Cl 471, 146 F Supp 843.

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*** THIS SECTION IS CURRENT THROUGH 105-165, APPROVED 3/20/98 ***

*** WITH A GAP OF 160 AND 164 ***

TITLE 37. PAY AND ALLOWANCES OF THE UNIFORMED SERVICES

CHAPTER 19. ADMINISTRATION

37 USCS @ 1001 (1998)

@ 1001. Regulations relating to pay and allowances

(a) A Secretary of a military department may not prescribe a regulation under this title or any other law, relating to the pay and allowances of members of an armed force under that department, unless it has been approved under procedures prescribed by the Secretary of Defense.

(b) Regulations of the Secretary concerned relating to pay and allowances matters, similar to those covered by subsection (a), for members of the Coast Guard, the National Oceanic and Atmospheric Administration, and the Public Health Service, shall, as far as practicable, conform to regulations approved under that subsection.

(c) The Secretary of Defense, the Secretary of Transportation, the Secretary of Commerce, or the Secretary of Health and Human Services, may obtain from the Comptroller General an advisory opinion with respect to a proposed regulation especially affecting a department under that Secretary's jurisdiction.

HISTORY: (Sept. 7, 1962, P.L. 87-649, @ 1, 76 Stat. 489; Nov. 2, 1966, P.L. 89-718, @@ 49(a)(1), 69, 80 Stat. 1121, 1123; Oct. 22, 1968, P.L. 90-623, @ 3(1), 82 Stat. 1314; Dec. 12, 1980, P.L. 96-513, Title V, Part B, @ 516(22), 94 Stat. 2939; April 6, 1991, P.L. 102-25, Title VII, @ 702(b)(1), (c), 105 Stat. 117.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1001(a)	37:324 (1st sentence).	Oct. 12, 1949, ch 681, Sec. 534; added Sept. 2,
1001(b)	37:324 (2d sentence).	1957, P.L. 85-272, Sec. 4, 71 Stat. 597.
1001(c)	37:324 (less 1st and 2d sentences).	

In subsection (a), the words "within the Department of Defense" are omitted as surplusage. The words "members of the armed forces" are substituted for the

words "military personnel".

In subsection (b), the words "conform to" are substituted for the words "agree with".

In subsection (c), the words "or departments" are omitted, since, under 1 USCS @ 1, words importing the singular include and apply to several persons, parties, or things.

Amendments:

1966. Act Nov. 2, 1966, in subsec. (b), inserted "and allowances" and substituted "Environmental Science Services Administration" for "Coast and Geodetic Survey".

1968. Act Oct. 22, 1968, in subsec. (c), substituted "Transportation" for "the Treasury".

1980. Act Dec. 12, 1980 (effective 12/12/80, as provided by @ 701(b)(3) of such Act), in subsec. (b), substituted "National Oceanic and Atmospheric Administration" for "Environmental Science Services Administration"; and in subsec. (c), substituted "Secretary of Health and Human Services" for "Secretary of Health, Education, and Welfare".

1991. Act April 6, 1991, in subsec. (b), deleted "of this section" following "subsection (a)".

Other provisions:

Legislative construction. Act Oct. 22, 1968, P.L. 90-623, @ 6(a), 82 Stat. 1315, located at 5 USCS @ 5334 note, provided that the amendment made to this section by Act Oct. 22, 1968 restates, without substantive change, the laws replaced by the amendment on Oct. 22, 1968 and that laws effective after June 30, 1968 that are inconsistent with this Act supersede it to the extent of the inconsistency.

NOTES:

CODE OF FEDERAL REGULATIONS

Department of the Navy--Payments of amounts due mentally incompetent members of the naval service, 32 CFR Part 726.

RESEARCH GUIDE

Am Jur:

54 Am Jur 2d, Military, and Civil Defense @ 164.

53A Am Jur 2d, Military and Civil Defense @ 169.

INTERPRETIVE NOTES AND DECISIONS

In order for regulations to be valid, they must be consistent with statute under which they are promulgated; power of administrative officer or board to administer federal statute and to prescribe rules and regulations to that end is only power to adopt regulations to carry into effect will of Congress as expressed by statute, and regulation which does not do this, but operates to create rule out of harmony with statute, is mere nullity. *United States v Larionoff* (1977) 431 US 864, 53 L Ed 2d 48, 97 S Ct 2150.

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*** THIS SECTION IS CURRENT THROUGH 105-165, APPROVED 3/20/98 ***

*** WITH A GAP OF 160 AND 164 ***

TITLE 37. PAY AND ALLOWANCES OF THE UNIFORMED SERVICES

CHAPTER 19. ADMINISTRATION

37 USCS @ 1004 (1998)

@ 1004. Computation of pay and allowances for month or part of month

A member of a uniformed service who is entitled to pay and allowances under this title for a continuous period of less than one month is entitled to his pay and allowances for each day of that period at the rate of 1/30 of the monthly amount of his pay and allowances. The thirty-first day of a calendar month may not be excluded from a computation under this section.

HISTORY: (Sept. 7, 1962, P.L. 87-649, @ 1, 76 Stat. 490.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1004	37:310.	Oct. 12, 1949, ch 681, Sec. 510, 63 Stat. 828.

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*** THIS SECTION IS CURRENT THROUGH 105-165, APPROVED 3/20/98 ***

*** WITH A GAP OF 160 AND 164 ***

TITLE 37. PAY AND ALLOWANCES OF THE UNIFORMED SERVICES
CHAPTER 19. ADMINISTRATION

37 USCS @ 1009 (1998)

@ 1009. Adjustments of monthly basic pay

(a) Adjustment required. Whenever the General Schedule of compensation for Federal classified employees, as contained in section 5332 of title 5, is adjusted upward as provided in section 5303 of such title, the President shall immediately make an upward adjustment in the monthly basic pay authorized members of the uniformed services by section 203(a) of this title.

(b) Effectiveness of adjustment. An adjustment under this section shall--

(1) have the force and effect of law; and

(2) carry the same effective date as that applying to the compensation adjustments provided General Schedule employees.

(c) Equal percentage increase for all members. Subject to subsection (d), an adjustment under this section shall provide all eligible members with an increase in the monthly basic pay which is of the same percentage as the overall average percentage increase in the General Schedule rates of both basic pay and locality pay for civilian employees.

(d) Allocation of increase among pay grades and years-of-service.

(1) Subject to paragraph (2), whenever the President determines such action to be in the best interest of the Government, he may allocate the overall percentage increase in the monthly basic pay under subsection (a) among such pay grade and years-of-service categories as he considers appropriate.

(2) In making any allocation of an overall percentage increase in basic pay under paragraph (1)--

(A) the amount of the increase in basic pay for any given pay grade and years-of-service category after any allocation made under this subsection may not be less than 75 percent of the amount of the increase in the monthly basic pay that would otherwise have been effective with respect to such pay grade and years-of-service category under subsection (c); and

(B) the percentage increase in the monthly basic pay in the case of any member of the uniformed services with four years or less service may not exceed the overall percentage increase in the General Schedule rates of basic pay for civilian employees.

(e) Notice of allocations. Whenever the President plans to exercise the authority of the President under subsection (d) with respect to any anticipated increase in the monthly basic pay of members of the uniformed services, the President shall advise Congress, at the earliest practicable time prior to the effective date of such increase, regarding the proposed allocation of such increase.

(f) Protection of member's total compensation while performing certain duty.

(1) The total daily equivalent amount of the elements of compensation described in paragraph (3), together with other pay and allowances under this title, to be paid to a member of the uniformed services who is temporarily assigned to duty away from the member's permanent duty station or to duty under field conditions at the member's permanent duty station shall not be less, for any day during the assignment period, than the total amount, for the day immediately preceding the date of the assignment, of the elements of compensation and other pay and allowances of the member.

(2) Paragraph (1) shall not apply with respect to an element of compensation or other pay or allowance of a member during an assignment described in such paragraph to the extent that the element of compensation or other pay or allowance is reduced or terminated due to circumstances unrelated to the assignment.

(3) The elements of compensation referred to in this subsection mean--

(A) the monthly basic pay authorized members of the uniformed services by section 203(a) of this title;

(B) the basic allowance for subsistence authorized members of the uniformed services by section 402 of this title; and

(C) the basic allowance for housing authorized members of the uniformed services by section 403 of this title.

(g) Quadrennial assessment of allocations. The allocations of increases made under this section shall be assessed in conjunction with the quadrennial review of military compensation required by section 1008(b) of this title.

HISTORY: (Added Sept. 19, 1974, P.L. 93-419, @ 4, 88 Stat. 1152; July 14, 1976, P.L. 94-361, Title III, @ 303, 90 Stat. 925; Sept. 8, 1980, P.L. 96-342, Title VIII, @ 803, 94 Stat. 1091; Dec. 12, 1980, P.L. 96-513, Title V, Part B, @ 516(24), 94 Stat. 2939; April 6, 1991, P.L. 102-25, Title VII, @ 702(b)(1), (2), (c), 105 Stat. 117; Feb. 10, 1996, P.L. 104-106, Div A, Title VI, Subtitle E, @ 642(c), 110 Stat. 368.)

(As amended Nov. 18, 1997, P.L. 105-85, Div A, Title VI, Subtitle A, @@ 604(a)(1), 605, 111 Stat. 1783, 1784.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Effective date of section:

This section took effect upon enactment pursuant to @ 9 of Act Sept. 19, 1974, P.L. 93-419, which appears as a note to this section.

Amendments:

1976. Act July 14, 1976, in subsec. (b)(3), inserted "subject to subsection (c),"; and added subsecs. (c)-(f).

1980. Act Sept. 8, 1980, in subsec. (b)(3), substituted "subsections (c) and (d) of this section," for "subsection (c)"; redesignated subsec. (c) as subsec. (c)(1); in subsec. (c)(1), as redesignated, inserted "of this section" wherever appearing, and substituted "per cent" for "per centum"; redesignated subsec. (d) as subsec. (c)(2); in subsec. (c)(2), as redesignated, substituted "under paragraph (1) of this subsection" for "under subsection (c)" wherever appearing, inserted "of this section" wherever appearing, and inserted "of this title" wherever appearing; added new subsec. (d); in subsec. (e), inserted "or (d) of this section" and deleted "among the different elements of compensation" following "allocation of such increase"; in subsec. (f), deleted "among the three elements of compensation" following "under this section" and inserted

"of this title".

Act Dec. 12, 1980 (effective 12/12/80, as provided by @ 701(b)(3) of such Act), in subsec. (a), introductory matter, deleted ", United States Code," following "5332 of title 5"; and in subsec. (b)(2), substituted "section 402 or 403 of this title" for "section 8 of the Act of December 16, 1967 (Public Law 90-207; 81 Stat. 654), section 402 or 403 of this title,".

1991. Act April 6, 1991, in subsecs. (b)(3), (c)(1) (two places), (2) (two places),, (d)(2)(A) (two places), and (e), deleted "of this section" following, respectively, "and (d)", "(b)(3)" twice, "subsection (c)" and "(b)(3)", and "(c) or (d)"; and, in subsecs. (c)(2) and (d)(1) and (2) introduction, deleted "of this subsection" following, respectively, "paragraph (1)", "paragraph (2)", and "paragraph (1)".

1996. Act Feb. 10, 1996, in subsec. (f), substituted "of this title." for "of this title, and a full report shall be made to the Congress summarizing the objectives and results of those allocations.".

1997. Act Nov. 18, 1997 (effective 1/1/98 as provided by @ 604(b) of such Act, which appears as a note to this section), substituted this section for one which read:

"@ 1009. Adjustments of compensation

"(a) Whenever the General Schedule of compensation for Federal classified employees as contained in section 5332 of title 5 is adjusted upward, the President shall immediately make an upward adjustment in the--

"(1) monthly basic pay authorized members of the uniformed services by section 203(a) of this title;

"(2) basic allowance for subsistence authorized enlisted members and officers by section 402 of this title; and

"(3) basic allowance for quarters authorized members of the uniformed services by section 403(a) of this title.

"(b) An adjustment under this section shall have the force and effect of law and shall--

"(1) carry the same effective date as that applying to the compensation adjustments provided General Schedule employees;

"(2) be based on the rates of the various elements of compensation as defined in, or made under, section 402 or 403 of this title, or this section; and

"(3) subject to subsections (c) and (d), provide all eligible members with an increase in each element of compensation, set forth in subsection (a) of this section, which is of the same percentage as the overall average percentage increase in the General Schedule rates of basic pay for civilian employees.

"(c)

(1) Whenever the President determines such action to be in the best interest of the Government, he is authorized to allocate the overall average percentage of any increase described in subsection (b)(3) among the elements of compensation specified in subsection (a) of this section on a percentage basis other than an equal percentage basis; however, the amount allocated to the element of monthly basic pay may not be less than 75 percent of the amount that would have been allocated to the element of basic pay under subsection (b)(3).

"(2) Under regulations prescribed by the President, whenever the President exercises his authority under paragraph (1) of this subsection to allocate the elements of compensation specified in subsection (a) on a percentage basis other than an equal percentage basis, he may pay to each member without dependents who, under section 403(b) or (c) of this title, is not entitled to receive a basic allowance for quarters, an amount equal to the difference between (1) the amount of such increase under paragraph (1) in the amount of the basic allowance for quarters which, but for section 403(b) or (c) of this title, such member

would be entitled to receive, and (2) the amount by which such basic allowance for quarters would have been increased under subsection (b)(3) if the President had not exercised such authority.

"(d)

(1) Subject to paragraph (2), whenever the President determines such action to be in the best interest of the Government, he may allocate the overall percentage increase in the element of basic pay that would otherwise be effective after any allocation made under subsection (c) of this section among such pay grade and years-of-service categories as he considers appropriate.

"(2) In making any allocation of an overall percentage increase in basic pay under paragraph (1)--

"(A) the amount of the increase in basic pay for any given pay grade and years-of-service category after any allocation made under this subsection or under subsection (c) (or under both such subsections) may not be less than 75 percent of the amount of the increase in the element of basic pay that would otherwise have been effective with respect to such pay grade and years-of-service category under subsection (b)(3); and

"(B) the overall percentage increase in the elements of compensation specified in subsection (a) of this section in the case of any member of the uniformed services with four years or less service may not exceed the overall percentage increase in the General Schedule rates of basic pay for civilian employees.

"(e) Whenever the President plans to exercise his authority under subsection (c) or (d) with respect to any anticipated increase in the compensation of members of the uniformed services, he shall advise the Congress, at the earliest practicable time prior to the effective date of such increase, regarding the proposed allocation of such increase.

"(f) The allocations of increases made under this section shall be assessed in conjunction with the quadrennial review of military compensation required by section 1008(b) of this title."

Such Act further redesignated subsec. (f) as subsec. (g), and added a new subsec. (f).

Other provisions:

Rates of monthly basic pay. Act Sept. 19, 1974, P.L. 93-419, @ 5, 88 Stat. 1153, provided: "Until the effective date of the first upward adjustment in the rates of monthly basic pay for members of the uniformed services made by the President under section 1009 of title 37, United States Code, as added by section 4 of this Act, after the effective date of this Act [effective Sept. 19, 1974], the rates of monthly basic pay for members of the uniformed services authorized by section 203(a) of that title are those prescribed by Executive Order 11740 of October 3, 1973, which became effective on October 1, 1973."

Rates of basic allowance for subsistence. Act Sept. 19, 1974, P.L. 93-419, @ 6, 88 Stat. 1153, provided: "Until the effective date of the first upward adjustment in the rates of basic allowance for subsistence for enlisted members and officers made by the President under section 1009 of title 37, United States Code, as added by section 4 of this Act [this section], after the effective date of this Act [effective Sept. 19, 1974], the rates prescribed under section 402 of title 37, United States Code, as it existed on the date before the effective date of this Act [effective Sept. 19, 1974] shall continue in effect."

Rates of basic allowance for quarters. Act Sept. 19, 1974, P.L. 93-419, @ 7, 88 Stat. 1153, provided: "Until the effective date of the first adjustment in the rates of basic allowance for quarters for members of the uniformed services made by the President under Section 1009 of title 37, United States Code, as added by section 4 of this Act [this section], after the effective date of

this Act [effective Sept. 19, 1974], the rates of basic allowance for quarters prescribed in section 403(a) of title 37, United States Code, as it existed on the day before the effective date of this Act [effective Sept. 19, 1974], shall continue in effect."

Effective date of Act Sept. 19, 1974. Act Sept. 19, 1974, P.L. 93-419, @ 9, 88 Stat. 1153, provided that "This Act [enacting 37 USCS @@ 101, 203, 402, 403, 1009 and note; repealing 37 USCS @ 203 note] is effective upon enactment."

Restrictions on upward adjustments in compensation. Act Oct. 7, 1975, P.L. 94-106, Title VIII, @ 819, 89 Stat. 544, provided: "(a) Notwithstanding any other provision of law, the aggregate amount of any upward adjustments in certain elements of compensation of members of the uniformed services required by section 1009 of title 37, United States Code [this section], may not exceed 5 per centum during the period from January 1, 1975, through June 30, 1976, except that no such restriction shall apply unless a 5 per centum restriction on the aggregate amount of upward adjustments of the General Schedule of compensation for Federal classified employees as contained in section 5332 of title 5, United States Code, is also required during that period.

"(b) No reduction in compensation is required under subsection (a) of any upward adjustment that may have been put into effect under section 1009 of title 37, United States Code [this section], between January 1, 1975, and the date of enactment of this section.

"(c) Any upward adjustment in compensation which has been limited by subsection (a) of this section to an amount or amounts less than otherwise would have been in effect shall not be increased subsequent to June 30, 1976--

"(1) in order to compensate a member for the difference between the amounts he has received under the provisions of subsection (a) and the amounts he would have otherwise received; or

"(2) except in accordance with the normal procedures and timing which would have been in effect for any such pay increase subsequent to June 30, 1976, without regard to any limitation under subsection (a) of this section."

Ex. Or. No. 11812 superseded. Ex. Or. No. 11812 of Oct. 7, 1974, 39 Fed. Reg. 36307, formerly classified as a note to this section, was superseded by Ex. Or. No. 11883 of Oct. 6, 1975, 40 Fed. Reg. 47091 [formerly appearing as 5 USCS @ 5332 note]. Ex. Or. No. 11812 provided for the adjustment of pay rates effective Oct. 1, 1974.

Ex. Or. No. 11883 superseded. Ex. Or. No. 11883 of Oct. 6, 1975, 40 Fed. 47091, formerly classified as a note to this section, was superseded by Ex. Or. No. 11941 of Oct. 1, 1976, 41 Fed. Reg. 43889, formerly classified as a note to 5 USCS @ 5332. It provided for adjustment of pay rates effective Oct. 1, 1975.

Ex. Or. No. 11941 superseded. Ex. Or. No. 11941, of Oct. 1, 1976, 41 Fed. Reg. 43899; Ex. Or. No. 11943 of Oct. 25, 1976, 41 Fed. Reg. 47213, was superseded by Ex. Or. No. 12010, of Sept. 28, 1977, 42 Fed. Reg. 52365, formerly classified as a note to 5 USCS @ 5332. It provided for adjustment of pay rates effective Oct. 1, 1976.

Ex. Or. No. 11998 revoked. Ex. Or. No. 11998 of June 27, 1977, 42 Fed. Reg. 33021, formerly classified as a note to this section, was revoked by Ex. Or. No. 12110 of Dec. 28, 1978, 44 Fed. Reg. 1069, effective Dec. 31, 1978. Ex. Or. No. 11998 related to the President's Commission on Military Compensation.

Ex. Or. No. 12010 superseded. Ex. Or. No. 12010 of Sept. 28, 1977, 42 Fed. Reg. 52365, was superseded by Ex. Or. No. 12087 of Oct. 7, 1978, 43 Fed. Reg. 46823. Ex. Or. No. 12010 provided for adjustment of pay rates effective Oct. 1, 1977.

Ex. Or. No. 12087 superseded. Ex. Or. No. 12087 of Oct. 7, 1978, 43 Fed. Reg. 46823, formerly classified in part as a note to this section, was superseded by Ex. Or. No. 12165 of Oct. 9, 1979, 44 Fed. Reg. 58671. Ex. Or. No. 12087

provided for adjustment of certain rates of pay and allowances.

Ex. Or. No. 12165 superseded. Ex. Or. No. 12165 of Oct. 9, 1979, 44 Fed. Reg. 58671; Ex. Or. No. 12200 of March 12, 1980, 45 Fed. Reg. 16443, formerly classified in part as a note to this section, was superseded by Ex. Or. No. 12248 of Oct. 16, 1980, 45 Fed. Reg. 69199. Ex. Or. No. 12165 provided for adjustment of certain rates of pay and allowances.

Pay increase of 11.7 percent for members of the uniformed services. Act Sept. 8, 1980, P.L. 96-342, Title VIII, @ 801, 94 Stat. 1090, provided:

"(a) Any adjustment required under the provisions of section 1009 of title 37, United States Code, relating to adjustments in the compensation of members of the uniformed services, which would otherwise first become effective beginning with any pay period in fiscal year 1981 shall not become effective.

"(b)

(1) Subject to the provisions of paragraph (2), each element of compensation specified in section 1009(a) of title 37, United States Code, shall be increased for members of the uniformed services by 11.7 percent effective with the first pay period beginning after September 30, 1980.

"(2) The President may allocate the percentage increase specified under paragraph (1) in the same manner and to the same extent the President is authorized under subsections (c) and (d) of section 1009 of title 37, United States Code, as amended by section 803 of this Act, to allocate any percentage increase described in subsection (b)(3) of section 1009 of such title [subsec. (b)(3) of this section], except that--

"(A) the provisions of subsection (d)(2)(B) of such section shall not apply to this subsection or any action of the President under this subsection; and

"(B) the overall average percentage increase in the elements of compensation specified in subsection (a) of such section in the case of any member of the uniformed services with four years or less service may not exceed 11.7 percent."

Adjustment of pay rates. Ex. Or. No. 12248 of Oct. 16, 1980, 45 Fed. Reg. 69199, located at 5 USCS @ 5332 note, provided for an adjustment of pay rates under this section as follows:

Schedule 5 --PAY AND ALLOWANCES OF THE UNIFORMED SERVICES

Part I --Monthly Basic Pay

(Years of service computed under 37 U.S.C. 205)

Commissioned officers

Pay Grade	2 or less	Over 2	Over 3	Over 4	
0-10<1>	\$ 3942.90	\$ 4081.50	\$ 4081.50	\$ 4081.50	\$ 4081.50 \$ 4238.10* \$ 4562.70
0-9	3494.40	3586.20	3662.40	3662.40	
0-8	3165.00	3259.80	3337.20	3337.20	
0-7	2629.80	2808.90	2808.90	2808.90	
0-6	1949.40	2142.00	2281.80	2281.80	
0-5	1559.10	1830.90	1957.20	1957.20	
0-4	1314.30	1599.90	1707.00	1707.00	
0-3<2>	1221.30	1365.30	1459.50	1614.90	
0-2<2>	1064.70	1163.10	1397.10	1444.20	
0-1<2>	924.30	962.10	1163.10	1163.10	

Pay
Grade Over
12

37 USCS @ 1009 (1998)

 0-10<1> \$ 4562.70*
 0-9 3911.70
 0-8 3755.70
 0-7 3105.00
 0-6 2281.80
 0-5 2124.90
 0-4 2048.40
 0-3<2> 1939.20
 0-2<2> 1474.20
 0-1<2> 1163.10

Pay Grade	Over 14	Over 16	Over 18	Over 20	
0-10<1>	\$ 4562.70*	\$ 4889.10*	\$ 4889.10*	\$ 5216.10*	\$ 5216.10*
0-9	3911.70	4238.10*	4562.70*	4889.10*	
0-8	3755.70	3911.70	4081.50	4238.10*	
0-7	3259.80	3586.20	3832.50	3832.50	
0-6	2359.20	2732.70	2872.50	2934.60	
0-5	2267.10	2436.90	2577.00	2654.70	
0-4	2142.00	2235.60	2297.70	2297.70	
0-3<2>	1986.90	1986.90	1986.90	1986.90	
0-2<2>	1474.20	1474.20	1474.20	1474.20	
0-1<2>	1163.10	1163.10	1163.10	1163.10	

Pay Grade	Over 30
0-10<1>	\$ 5541.60*
0-9	4889.10*
0-8	4407.90*
0-7	3832.50
0-6	3367.50
0-5	2747.40
0-4	2297.70
0-3<2>	1986.90
0-2<2>	1474.20
0-1<2>	1163.10

1. While serving as Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, or Commandant of the Marine Corps, basic pay for this grade is \$ 6114.30* regardless of cumulative years of service computed under section 205 of Title 37 of the United States Code.
2. Does not apply to commissioned officers who have been credited with over 4 years' active service as enlisted members or warrant officers.

*Basic pay is limited by Section 5308 of Title 5 of the United States Code to the rate for Level V of the Executive Schedule which is, as of the effective date of this schedule, \$ 4875.00 per month. See also Note 1.

37 USCS @ 1009 (1998)

Note 1. Notwithstanding the above rates the maximum rate payable, as of the effective date of this schedule, is \$ 4,176.00 per month.
 (The effect of Section 101(c) of Public Law 96-369 (the continuing resolution approved October 1, 1980) is to limit the use of the funds so appropriated so that they are not available to pay basic pay in this schedule in excess of the rate payable for level V of the Executive Schedule on September 30, 1980.)

Part II--Basic Allowance for Subsistence Rates

Officers: \$ 82.58 per month
 Enlisted Members:
 When on leave or authorized to mess separately: \$ 3.94 per day
 When rations in-kind are not available: \$ 4.45 per day
 When assigned to duty under emergency conditions where no messing facilities of the United States are available: \$ 5.89 per day

Part III--Monthly Basic Allowance for Quarters Rates

Pay grade	Without Dependents		With Dependents
	Full Rate	Partial Rate n1	

Commissioned officers			
O-10	\$ 427.80	\$ 50.70	\$ 535.20
O-9	427.80	50.70	535.20
O-8	427.80	50.70	535.20
O-7	427.80	50.70	535.20
O-6	364.00	39.60	468.60
O-5	354.00	33.00	426.30
O-4	315.30	26.70	380.40
O-3	277.20	22.20	342.00
O-2	240.60	17.70	304.50
O-1	187.80	13.20	244.50
Warrant Officers			
W-4	\$ 303.60	\$ 25.20	\$ 366.60
W-3	270.90	20.70	333.90
W-2	235.50	15.90	299.70
W-1	212.70	13.80	275.40
Enlisted Members			
E-9	\$ 229.20	\$ 18.60	\$ 322.50
E-8	211.20	15.30	297.90
E-7	179.70	12.00	277.20
E-6	163.20	9.90	255.00
E-5	156.90	8.70	234.30
E-4	138.30	8.10	206.10
E-3	123.60	7.80	179.70
E-2	109.20	7.20	179.70
E-1	103.20	6.90	179.70

1. Payment of the full rate of basic allowance for quarters at these rates to members of the uniformed services without dependents is authorized by 37 U.S.C. 403 and Part IV of Executive Order 11157, as amended.

2. Payment of the partial rate of basic allowance for quarters at these rates to members of the uniformed services without dependents who, under 37 U.S.C. 403(b) or 403(c), are not entitled to the full rate of basic allowance for quarters, is authorized by 37 U.S.C. 1009(d) and Part IV of Executive Order 11157, as amended.

Part IV--Monthly Rate of Cadet or Midshipman Pay

The rate of monthly cadet or midshipman pay authorized by section 203(c) of Title 37 of the United State Code is adjusted from \$ 375.60 to \$ 419.40.

Commissioned officers who have been credited with over 4 years' active service as enlisted members or warrant officers

(Years of service computed under 37 U.S.C. 205)				
Pay Grade	Over 4	Over 6	Over 8	Over 10
0-3	\$ 1614.90	\$ 1692.00	\$ 1753.20	\$ 1847.40
0-2	1444.20	1474.20	1521.00	1599.90
0-1	1163.10	1242.30	1288.20	1334.70
Pay Grade	Over 16	Over 18	Over 20	Over 22
0-3	\$ 2016.90	\$ 2016.90	\$ 2016.90	\$ 2016.90
0-2	1707.00	1707.00	1707.00	1707.00
0-1	1444.20	1444.20	1444.20	1444.20

Warrant Officers

(Years of service computed under 37 U.S.C. 205)				
Pay Grade	2 or less	Over 2	Over 3	Over 4
W-4	\$ 1244.10	\$ 1334.70	\$ 1344.70	\$ 1365.30
W-3	1131.00	1226.70	1226.70	1242.30
W-2	990.60	1071.30	1071.30	1102.50
W-1	825.30	946.20	946.20	1025.10
Pay Grade	Over 10	Over 12		
W-4	\$ 1552.80	\$ 1661.40		
W-3	1427.40	1474.20		
W-2	1319.70	1319.70		
W-1	1163.10	1211.10		
Pay Grade	Over 14	Over 16	Over 18	Over 20
W-4	\$ 1738.20	\$ 1799.70	\$ 1847.40	\$ 1907.70
W-3	1521.00	1566.60	1614.90	1677.30

37 USCS @ 1009 (1998)

W-2	1365.30	1413.00	1459.50	1505.70
W-1	1257.00	1303.20	1348.80	1397.10

Pay	Over
Grade	30

W-4	\$ 2124.90
W-3	1799.70
W-2	1566.60
W-1	1397.10

Enlisted Members

(Years of service computed under 37 U.S.C. 205)

Pay	2 or	Over	Over	Over
Grade	less	2	3	4

E-9<1>	\$ 0	\$ 0	\$ 0	\$ 0
E-8	0	0	0	0
E-7	828.00	893.70	927.00	959.10
E-6	715.20	779.70	812.40	846.60
E-5	627.90	683.40	716.40	747.60
E-4	603.60	637.50	674.70	727.20
E-3	580.50	612.30	636.90	662.10
E-2	558.60	558.60	558.60	558.60
E-1	501.30	501.30	501.30	501.30

Pay	Over	Over
Grade	10	12

E-9<1>	\$ 1413.60	1445.70
E-8	1219.20	1251.60
E-7	1056.30	1089.00
E-6	943.50	992.10
E-5	862.20	893.70
E-4	756.00	756.00
E-3	662.10	612.30
E-2	558.60	558.60
E-1	501.30	501.30

Pay	2 or	Over	Over	Over
Grade	less	2	3	4

E-9<1>	\$ 1478.40	\$ 1512.60	\$ 1546.20	\$ 1576.20
E-8	1284.30	1317.90	1348.50	1381.50
E-7	1138.20	1170.60	1203.60	1219.20
E-6	1023.30	1056.30	1072.20	1072.20
E-5	910.20	910.20	910.20	910.20
E-4	756.00	756.00	756.00	756.00
E-3	662.10	662.10	662.10	662.10
E-2	558.60	558.60	558.60	558.60
E-1	501.30	501.30	501.30	501.30

Pay	Over
Grade	30

37 USCS @ 1009 (1998)

E-9<1>	\$ 1820.40
E-8	1626.00
E-7	1462.80
E-6	1072.20
E-5	910.20
E-4	756.00
E-3	662.10
E-2	558.60
E-1	501.30

1. While serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, or Sergeant Major of the Marine Corps, basic pay for this grade is \$ 2212.80 regardless of cumulative years of service computed under section 205 of Title 37 of the United States Code.

Increase in basic pay and allowances. Act Oct. 14, 1981, P.L. 97-60, Title I, Part A, @ 101, 95 Stat. 989, as amended Oct. 30, 1984, P.L. 98-557, @ 35(a), 98 Stat. 2877 (effective 10/1/84, as provided by @ 35(c) of such Act, which appears as 10 USCS @ 1401 note); Dec. 4, 1987, P.L. 100-180, Div A, Title XIII, Part B, @ 1314(d)(3), 101 Stat. 1176 (effective 10/1/86, as provided by @ 1314(e)(2) of such Act, which appears as 37 USCS @ 413 note), provides:

"(a) The adjustment required by section 1009 of title 37, United States Code, in certain elements of the compensation of members of the uniformed services to become effective on October 1, 1981, shall not be made, and no adjustment of the compensation of any member of a uniformed service shall be made pursuant to such section for the period beginning on October 1, 1981, and ending on the date of the enactment of this Act. Effective as of October 1, 1981, the rates for each element of compensation specified in section 1009(a) of such title are as provided in subsection (b).

"(b)

(1) The rates of monthly basic pay for members of the uniformed services entitled to basic pay under section 204 of title 37, United States Code, based on years of service computed under section 205 of such title, are as follows:

COMMISSIONED OFFICERS<1>

Years of service computed under section 205 of title 37
United States Code

Pay grade	2 or less	Over 2	Over 3	Over 4	Over 6
O-10<2>	..\$ 4,506.60	\$ 4,665.30	\$ 4,665.30	\$ 4,665.30	\$ 4,665.30
O-9	 3,994.20	4,098.90	4,186.20	4,186.20	4,186.20
O-8	 3,617.70	3,726.00	3,814.50	3,814.50	3,814.50
O-7	 3,006.00	3,210.60	3,210.60	3,210.60	3,354.30
O-6	 2,228.10	2,448.30	2,608.20	2,608.20	2,608.20
O-5	 1,782.00	2,092.80	2,237.10	2,237.10	2,237.10
O-4	 1,502.10	1,828.80	1,951.20	1,951.20	1,986.90
O-3<3>	... 1,395.90	1,560.60	1,668.30	1,845.90	1,934.10
O-2<3>	... 1,217.10	1,329.30	1,596.90	1,650.60	1,685.10
O-1<3>	... 1,056.60	1,099.80	1,329.30	1,329.30	1,329.30

37 USCS @ 1009 (1998)

 Years of service computed under section 205 of title 37
 United State Code

Pay grade-----

	Over 8	Over 10	Over 12	Over 14	Over 16
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O-10<2> ..	\$ 4,844.10	\$ 4,844.10	\$ 5,215.20	\$ 5,215.20	\$ 5,588.10
O-9	4,292.70	4,292.70	4,471.20	4,471.20	4,844.10
O-8	4,098.90	4,098.90	4,292.70	4,292.70	4,471.20
O-7	3,354.30	3,549.00	3,549.00	3,726.00	4,098.90

Years of service computed under section 205 of title 37
 United States Code

Pay grade-----

	Over 8	Over 10	Over 12	Over 14	Over 16
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O-6	2,608.20	2,608.20	2,608.20	2,696.70	3,123.60
O-5	2,237.10	2,305.20	2,428.80	2,591.40	2,785.50
O-4	2,075.10	2,216.40	2,341.20	2,448.30	2,555.40
O-3<3> ...	2,004.00	2,111.70	2,216.40	2,271.00	2,271.00
O-2<3> ...	1,685.10	1,685.10	1,685.10	1,685.10	1,685.10
O-1<3> ...	1,329.30	1,329.30	1,329.30	1,329.30	1,329.30

Years of service computed under section 205 of title 37
 United States Code

Pay grade-----

	Over 18	Over 20	Over 22	Over 26
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O-10<2>	\$ 5,588.10	\$ 5,961.90	\$ 5,961.90	\$ 6,333.90
O-9	4,844.10	5,215.20	5,215.20	5,588.10
O-8	4,665.30	4,844.10	5,038.20	5,038.20
O-7	4,380.60	4,380.60	4,380.60	4,380.60
O-6	3,283.20	3,354.30	3,549.00	3,849.00
O-5	2,945.40	3,034.20	3,140.40	3,140.40
O-4	2,626.20	2,626.20	2,626.20	2,626.20
O-3<3>	2,271.00	2,271.00	2,271.00	2,271.00
O-2<3>	1,685.10	1,685.10	1,685.10	1,685.10
O-1<3>	1,329.30	1,329.30	1,329.30	1,329.30

Commissioned Officers Who Have Been Credited With Over 4 Years Active
 Service as Enlisted Members or Warrant Officers

Years of service computed under section 205 of title 37
 United States Code

Pay grade-----

	Over 4	Over 6	Over 8	Over 10	Over 12
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O-3	\$ 1,845.90	\$ 1,934.10	\$ 2,004.00	\$ 2,111.70	\$ 2,216.40	\$ 2,305.20
O-2	1,650.60	1,685.10	1,738.50	1,828.80	1,899.00	
O-1	1,329.30	1,419.90	1,472.40	1,525.50	1,578.60	

37 USCS @ 1009 (1998)

 Years of service computed under section 205 of title 37
 United States Code

Pay grade-----	Over 16	Over 18	Over 20	Over 22	Over 26
O-3	\$ 2,305.20	\$ 2,305.20	\$ 2,305.20	\$ 2,305.20	\$ 2,305.20
O-2	1,951.20	1,951.20	1,951.20	1,951.20	1,951.20
O-1	1,650.60	1,650.60	1,650.60	1,650.60	1,650.60

 WARRANT OFFICERS

Years of service computed under section 205 of title 37
 United States Code

Pay grade-----	2 or less	Over 2	Over 3	Over 4	Over 6
W-4	\$ 1,422.00	\$ 1,525.50	\$ 1,525.50	\$ 1,560.60	\$ 1,631.40
W-3	1,292.70	1,402.20	1,402.20	1,419.90	1,436.70
W-2	1,132.20	1,224.60	1,224.60	1,260.30	1,329.30
W-1	943.20	1,081.50	1,081.50	1,171.80	

 Years of service computed under section 205 of title 37
 United States Code

Pay grade-----	Over 8	Over 10	Over 12	Over 14	Over 16
W-4	\$ 1,703.40	\$ 1,774.80	\$ 1,899.00	\$ 1,986.90	\$ 2,057.10
W-3	1,541.70	1,631.40	1,685.10	1,738.50	1,790.70
W-2	1,402.20	1,455.00	1,508.40	1,560.60	1,615.20
W-1	1,277.40	1,329.30	1,384.20	1,436.70	1,489.50

 Years of service computed under section 205 of title 37
 United States Code

Pay grade-----	Over 18	Over 20	Over 22	Over 26
W-4	\$ 2,111.70	\$ 2,180.40	\$ 2,253.60	\$ 2,428.80
W-3	1,845.90	1,917.30	1,986.90	2,057.10
W-2	1,668.30	1,721.10	1,790.70	1,790.70
W-1	1,541.70	1,596.90	1,596.90	1,596.90

 ENLISTED MEMBERS

Years of service computed under section 205 of title 37
 United States Code

Pay grade-----	2 or less	Over 2	Over 3	Over 4	Over 6
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37 USCS @ 1009 (1998)

E-9 n1.....				
E-8.....				
E-7	\$ 968.70	\$ 1,045.50	\$ 1,084.50	\$ 1,122.00
E-6	833.10	908.40	946.50	986.40
E-5	731.40	796.20	834.60	870.90
E-4	682.20	720.30	762.30	821.70
E-3	642.60	677.70	705.00	732.90
E-2	618.30	618.30	618.30	618.30
E-1	551.40	551.40	551.40	551.40

Years of service computed under section 205 of title 37

(FS28)United States Code

Pay grade-----

	Over 8	Over 10	Over 12	Over 14	Over 16
E-9 n1.....	\$ 1,653.90	\$ 1,691.40	\$ 1,729.80	\$ 1,769.70	
E-8	\$ 1,387.50	1,426.60	1,464.30	1,502.70	1,542.00
E-7	1,197.30	1,236.00	1,274.10	1,331.70	1,369.50
E-6	1,060.50	1,099.20	1,155.90	1,192.20	1,230.60
E-5	965.70	1,004.40	1,041.30	1,060.50	
E-4	854.40	854.40	854.40	854.40	
E-3	732.90	732.90	732.90	732.90	
E-2	618.30	618.30	618.30	618.30	
E-1	551.40	551.40	551.40	551.40	

Years of service computed under section 205 of title 37

United States Code

Pay grade-----

	Over 18	Over 20	Over 22	Over 26
E-9 n1.....	\$ 1,809.00	\$ 1,844.10	\$ 1,941.30	\$ 2,130.00
E-8	1,577.70	1,616.40	1,711.50	1,902.30
E-7	1,408.20	1,426.50	1,522.20	1,711.50
E-6	1,249.20	1,249.20	1,249.20	1,249.20
E-5	1,060.50	1,060.50	1,060.50	1,060.50
E-4	854.40	854.40	854.40	854.40
E-3	732.90	732.90	732.90	732.90
E-2	618.30	618.30	618.30	618.30
E-1	551.40	551.40	551.40	551.40

Without Dependents

Pay grade

Full Rate

Partial Rate n1

With
Dependents

Commissioned officers:

O-10	\$ 489.00	\$ 50.70	\$ 611.70
O-9	489.00	50.70	611.70
O-8	489.00	50.70	611.70
O-7	489.00	50.70	611.70
O-6	438.90	39.60	535.50

37 USCS @ 1009 (1998)

O-5	404.70	33.00	487.20
O-4	360.30	26.70	434.70
O-3	316.80	22.20	390.90
O-2	275.10	17.70	348.00
O-1	214.80	13.20	279.60

Warrant officers:

W-4	347.10	25.20	419.10
W-3	309.60	20.70	381.60
W-2	269.10	15.90	342.60
W-1	243.00	13.80	314.70

Enlisted members:

E-9	261.90	18.60	368.70
E-8	241.50	15.30	340.50
E-7	205.50	12.00	316.80
E-6	186.60	9.90	291.60
E-5	179.40	8.70	267.90
E-4	158.10	8.10	235.50
E-3	141.30	7.80	205.50
E-2	124.80	7.20	205.50
E-1	117.90	6.90	205.50

Ex. Or. No. 12248 superseded. Ex. Or. No. 12248 of Oct. 16, 1980, 45 Fed. Reg. 69199, formerly set out as a note to this section, is superseded by Ex. Or. No. 12330 of Oct. 15, 1981, @ 5, 46 Fed. Reg. 50921, 51591, which appears as 5 USCS @ 5332 note. It provided for adjustment of certain rates of pay and allowances.

Ex. Or. No. 12330 superseded. Ex. Or. No. 12330 of Oct. 15, 1981, 46 Fed. Reg. 50921, 51591, formerly set out as a note to this section, is superseded by Ex. Or. No. 12387 of Oct. 8, 1982, 47 Fed. Reg. 44981, which appears as 5 USCS @ 5332 note. It provided for adjustment of certain rates of pay and allowances.

Ex. Or. 12387 superseded. Ex. Or. No. 12387 of Oct. 8, 1982, 47 Fed. Reg. 44981, formerly set out as a note to this section, was superseded by Ex. Or. No. 12456 of Dec. 30, 1983, 49 Fed. Reg. 347, which appears as 5 USCS @ 5332 note. It provided for the adjustment of certain rates of pay and allowances.

Pay increase of 4 percent for members of the uniformed services. Act Sept. 24, 1983, P.L. 98-94, Title IX, Part A, @ 901, 97 Stat. 634, provides:

"(a) The adjustment required by section 1009 of title 37, United States Code [this section], in certain elements of the compensation of members of the uniformed services to become effective on October 1, 1983, shall not be made.

"(b)

(1) Subject to the provisions of paragraphs (2) and (3), each element of compensation specified in section 1009(a) of title 37, United States Code, shall be increased for members of the uniformed services by 4 percent effective on April 1, 1984.

"(2) The increase provided for in paragraph (1) shall not apply to enlisted members in pay grade E-1 with less than 4 months active duty.

"(3) The President may allocate the percentage increase specified under paragraphs (1) and (2) in the same manner and to the same extent the President is authorized under subsections (c) and (d) of section 1009 of title 37, United States Code, to allocate any percentage increase described in subsection (b)(3) of section 1009 of such title.

"(c) Notwithstanding the effective date of April 1, 1984, prescribed in

subsection (b) for the increase in compensation of members of the uniformed services, if an adjustment is made after the date of the enactment of this Act in the General Schedule of compensation for Federal classified employees and such adjustment is to become effective before April 1, 1984, the increase in the compensation of members of the uniformed services provided for in subsection (b) shall become effective on the first day of the first pay period for members of the uniformed services which begins on or after the effective date of the adjustment made in the compensation of Federal classified employees."

Military pay raise for fiscal year 1985. Act Oct. 19, 1984, P.L. 98-525, Title VI, Part A, @ 601, 98 Stat. 2533, provides:

"(a) Any adjustment required by section 1009 of title 37, United States Code, in elements of the compensation of members of the uniformed services to become effective during fiscal year 1985 shall not be made.

"(b)

(1) Except as provided in paragraph (2), the rates of basic pay and basic allowances for subsistence for members of the uniformed services are increased by 4 percent effective on January 1, 1985.

"(2) The increase in rates of basic pay and basic allowances for subsistence provided for in paragraph (1) shall not apply to enlisted members in pay grade E-1 with less than 4 months active duty."

Ex. Or No. 12456 superseded. Ex. Or. No. 12456 of Dec. 30, 1983, 49 Fed. Reg. 347; Ex. Or. No. 12477 of May 23, 1984, 49 Fed. Reg. 22041 (effective on the first day of the first applicable pay period beginning on or after January 1, 1984, as provided by @ 2 of such Ex. Or.), formerly set out as a note to this section, was superseded by Ex. Or. No. 12496 of Dec. 30, 1984, 50 Fed. Reg. 211, which appears as 5 USCS @ 5332 note. It provided for the adjustment of certain rates of pay and allowances.

Adjustment of pay rates. Ex. Or. No. 12496 of Dec. 30, 1984, 50 Fed. Reg. 211; Ex. Or. No. 12540 of Dec. 30, 1985, 51 Fed. Reg. 577, which appears as 5 USCS @ 5332 note, provides for an adjustment of pay rates under this section, effective for monthly basic pay and allowances for subsistence and quarters for members of the uniformed services, and all other adjustments of salary or pay, effective on the first day of the first applicable pay period beginning on or after Jan. 1, 1985, as provided by @ 5 of such Order, which appears as 5 USCS @ 5332 note. See the Schedule following:

Schedule 8 --PAY AND ALLOWANCES OF THE UNIFORMED SERVICES

Part I --Monthly Basic Pay

(Years of service computed under 37 U.S.C. 205)

----- Commissioned officers -----						
Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	

0-10<1>	\$. 5221.50	\$ 5405.40	\$ 5405.40	\$ 5405.40	\$ 5405.40	\$ 5612.70 \$ 5612.70
0-9	4627.80	4749.00	4850.10	4850.10	4850.10	
0-8	4191.60	4317.00	4419.60	4419.60	4419.60	
0-7	3483.00	3719.70	3719.70	3719.70	3886.20	
0-6	2581.50	2836.20	3021.90	3021.90	3021.90	
0-5	2064.60	2424.60	2592.00	2592.00	2592.00	
0-4	1740.30	2119.20	2260.50	2260.50	2302.50	
0-3<2> ..	1617.30	1808.10	1932.90	2138.70	2241.00	
0-2<2> ..	1410.30	1540.20	1850.10	1912.50	1952.70	

37 USCS @ 1009 (1998)

0-1<2> .. 1224.30 1274.70 1540.20 1540.20 1540.20

 Pay Over Over Over Over
 Grade 12 14 16 18

0-10<1> . \$ 6042.30* \$ 6042.30* \$ 6474.60* \$ 6474.60* \$ 6907.80* \$ 6907.80*

0-9 5180.40 5180.40 5612.70 5612.70 6042.30*
 0-8 4973.40 4973.40 5180.40 5405.40 5612.70
 0-7 4111.80 4317.00 4749.00 5075.40 5075.40
 0-6 3021.90 3124.50 3618.60 3803.70 3886.20
 0-5 2814.00 3002.70 3227.10 3412.50 3515.70
 0-4 2712.60 2836.20 2960.70 3042.60 3042.60
 0-3<2> .. 2568.00 2631.30 2631.30 2631.30 2631.30
 0-2<2> .. 1952.70 1952.70 1952.70 1952.70 1952.70
 0-1<2> .. 1540.20 1540.20 1540.20 1540.20 1540.20

Pay Over
 Grade 26

0-10<1> . \$ 7338.30*
 0-9 6474.60*
 0-8 5837.70*
 0-7 5075.40
 0-6 4459.50
 0-5 3638.40
 0-4 3042.60
 0-3<2> .. 2631.30
 0-2<2> .. 1952.70
 0-1<2> .. 1540.20

Commissioned Officers credited with over 4 years' active
 duty as an enlisted member and/or warrant officer

 Pay Over Over Over Over
 Grade 4 6 8 10

0-3 \$ 2138.70 \$ 2241.00 \$ 2321.70 \$ 2447.10 \$ 2568.00
 0-2 1912.50 1952.70 2014.50 2119.20
 0-1 1540.20 1645.20 1705.80 1767.60

 Pay Over Over Over Over
 Grade 16 18 20 22

0-3 \$ 2670.60 \$ 2670.60 \$ 2670.60 \$ 2670.60 \$ 2670.60
 0-2 2260.50 2260.50 2260.50 2260.50
 0-1 1912.50 1912.50 1912.50 1912.50

 Warrant Officers

Pay 2 or Over Over Over
 Grade less 2 3 4

W-4 \$ 1647.60 \$ 1767.60 \$ 1767.60 \$ 1808.10 \$ 1890.30 \$ 1973.70 \$ 2056.50
 W-3 1497.30 1624.50 1624.50 1645.20 1664.70

37 USCS @ 1009 (1998)

W-2	....	1311.60	1419.00	1419.00	1460.40	1540.20
W-1	....	1092.90	1253.10	1253.10	1357.50	1419.00

Over	Over	Over	Over	Over
12	14	16	18	20

W-4	....	\$ 2200.20	\$ 2302.50	\$ 2383.20	\$ 2447.10	\$ 2526.00	\$ 2610.60	\$ 2814.00
W-3	....	1952.70	2014.50	2074.50	2138.70	2221.80		
W-2	....	1747.80	1808.10	1871.40	1932.90	1994.10		
W-1	....	1604.10	1664.70	1726.20	1786.20	1850.10		

Enlisted Members

Pay	2 or	Over	Over	Over
Grade	less	2	3	4

E-9<1>	..	----	----	----	----	----
E-8	....	----	----	----	----	----
E-7	....	\$ 1122.30	\$ 1211.40	\$ 1256.40	\$ 1300.20	1344.90 \$ 1387.50 \$ 1431.90
E-6	....	965.40	1052.40	1096.20	1143.00	
E-5	....	847.20	922.50	966.90	1009.20	
E-4	....	790.50	834.60	883.50	952.20	
E-3	....	744.60	785.10	816.90	849.30	
E-2	....	716.40	716.40	716.40	716.40	
E-1<2>	..	639.00	639.00	639.00	639.00	
E-1<3>	..	590.70	590.70	590.70	590.70	

Pay	2 or	Over	Over	Over
Grade	less	2	3	4

W-4	....	\$ 1647.60	\$ 1767.60	\$ 1767.60	\$ 1808.10	\$ 1890.30	\$ 1973.70	\$ 2056.50
E-9<1>	..	\$ 1959.90	\$ 2004.30	\$ 2050.20	\$ 2095.80	\$ 2136.60	\$ 2249.10	\$ 2467.80
E-8	....	1696.50	1740.90	1786.50	1827.90	1872.90		
E-7	....	1476.30	1543.20	1587.00	1631.40	1652.70		
E-6	....	1339.20	1381.20	1425.60	1447.50	1447.50		
E-5	....	1206.30	1228.50	1228.50	1228.50	1228.50		
E-4	....	989.70	989.70	989.70	989.70			
E-3	....	849.30	849.30	849.30	849.30			
E-2	....	716.40	716.40	716.40	716.40			
E-1<2>	..	639.00	639.00	639.00	639.00			
E-1<3>	..	590.70	590.70	590.70	590.70			

Part II--Basic Allowance for Subsistence Rates

Officers (per month):	\$ 109.37
Enlisted Members (per day):	

E-1 (less than	All Other
4 months' active duty)	Enlisted

When on leave or authorized to mess separately:	\$ 4.82	\$ 5.21
When rations-in-kind are not available:	\$ 5.45	\$ 5.89
When assigned to duty under		

37 USCS @ 1009 (1998)

emergency conditions where no
messing facilities of the United
States are available:

\$ 7.21

\$ 7.80

Part III--Monthly Basic Allowance For Quarters Rates

Pay Grade	Without dependents		With dependents
	Full rate n1	Partial rate n2	

Commissioned officers:			
O-10	\$ 553.50	\$ 50.70	\$ 680.70
O-9	553.50	50.70	680.70
O-8	553.50	50.70	680.70
O-7	553.50	50.70	680.70
O-6	507.90	39.60	617.40
O-5	479.40	33.00	568.80
O-4	439.50	26.70	519.90
O-3	355.80	22.20	433.50
O-2	286.50	17.70	371.70
O-1	245.70	13.20	333.30
Warrant officers:			
W-4	\$ 402.90	\$ 25.20	\$ 467.40
W-3	340.20	20.70	418.20
W-2	306.00	15.90	390.90
W-1	258.90	13.80	340.80
Enlisted members:			
E-9	\$ 324.90	\$ 18.60	\$ 442.80
E-8	300.90	15.30	412.50
E-7	256.80	12.00	383.70
E-6	228.00	9.90	348.00
E-5	210.90	8.70	309.30
E-4	183.00	8.10	267.30
E-3	177.60	7.80	245.70
E-2	150.90	7.20	245.70
E-1	137.40	6.90	245.70

Military pay raise for fiscal year 1986. Act Nov. 8, 1985, P.L. 99-145, Title VI, Part A, @ 601, 99 Stat. 635, provides:

"(a) Waiver of section 1009 Adjustment. Any adjustment required by section 1009 of title 37, United States Code, in elements of the compensation of members of the uniformed services to become effective during fiscal year 1986 shall not be made.

"(b) Three percent pay raise. The rates of basic pay, basic allowance for subsistence, and basic allowance for quarters of members of the uniformed services are increased by 3 percent effective on October 1, 1985."

Military pay raise for fiscal year 1987. Act Nov. 14, 1986, P.L. 99-661, Div A, Title VI, Part A, @ 601(a), (b), 100 Stat. 3873, provides:

"(a) Waiver of Section 1009 Adjustment.-- Any adjustment required by section 1009 of title 37, United States Code, in elements of compensation of members of the uniformed services to become effective during fiscal year 1987 shall not be made.

"(b) Three Percent Increase in Basic Pay, Basic Allowance for Quarters, and Basic Allowance for Subsistence. The rates of basic pay, basic allowance for subsistence, and basic allowance for quarters of members of the uniformed services are increased by 3 percent effective on January 1, 1987."

Contingent reduction in pay increase. Act Nov. 14, 1986, P.L. 99-661, Div A, Title XIII, Part A, @ 1310(b), 100 Stat. 3983, provides: "Subject to the condition specified in subsection (a) [unclassified], the percentage of the increase in basic pay, basic allowance for quarters, and basic allowance for subsistence for members of the uniformed services, and the increase in pay for cadets and midshipmen, specified in sections 601(b) [note to this section] and 601(c) [amending 37 USCS @ 203(c)(1) and adding note to that section], respectively, of this Act is hereby reduced from 3 percent to 2 percent."

[For a provision that pay and allowances are to be paid on the first day of the month following the month for which the pay and allowances accrue (the condition provided for in @ 1310(a) of Act Nov. 14, 1986, P.L. 99-661, 100 Stat. 3983, as referred to above in @ 1310(b) of such Act) see 37 USCS @ 1013, added by Acts Oct. 18, 1986, P.L. 99-500, and Oct. 30, 1986, P.L. 99-591, @ 101(c), 100 Stat. 3341-118 (Act Oct. 30, 1986, P.L. 99-591, is a corrected version of Act Oct. 18, 1986, P.L. 99-500.).]

Military pay raise for fiscal year 1987. Acts Oct. 18, 1986, P.L. 99-500, and Oct. 30, 1986, P.L. 99-591, Title I, @ 144(b), 100 Stat. 3341-353 (Act Oct. 30, 1986, P.L. 99-591, is a corrected version of Act Oct. 18, 1986, P.L. 99-500.), provides:

"(1) Any adjustment required by section 1009 of title 37, United States Code, in elements of the compensation of members of the uniformed services to become effective during fiscal year 1987 shall not be made.

"(2) The rates of basic pay, basic allowance for subsistence, and basic allowance for quarters of members of the uniformed services are increased by 3 percent effective on January 1, 1987."

Military pay raise for fiscal year 1988. Act Dec. 4, 1987, P.L. 100-180, Div A, Title VI, Part A, @ 601(a), (b), 101 Stat. 1092, as amended, Dec. 22, 1987, P.L. 100-202, @ 110(b), 101 Stat. 1329-436, provide:

"(a) Waiver of section 1009 adjustment. Any adjustment required by section 1009 of title 37, United States Code, in elements of compensation of members of the uniformed services to become effective during fiscal year 1988 shall not be made.

"(b) Two percent increase in basic pay, BAQ, and BAS. The rates of basic pay, basic allowance for quarters, and basic allowance for subsistence of members of the uniformed services are increased by 2 percent effective on January 1, 1988."

Military pay raise for fiscal year 1989. Act Sept. 29, 1988, P.L. 100-456, Div A, Title VI, Part A, @ 601(a), (b), 102 Stat. 1976, provides:

"(a) Waiver of section 1009 adjustment. Any adjustment required by section 1009 of title 37, United States Code, in elements of compensation of members of the uniformed services to become effective during fiscal year 1989 shall not be made.

"(b) Increase in basic pay and BAS. The rates of basic pay and basic allowance for subsistence of members of the uniformed services are increased by 4.1 percent effective on January 1, 1989."

Military pay raise for fiscal year 1990. Act Nov. 29, 1989, P.L. 101-189, Div A, Title VI, Part A, @ 601(a), (b), 103 Stat. 1444, provides:

"(a) Waiver of section 1009 adjustment. Any adjustment required by section 1009 of title 37, United States Code, in elements of compensation of members of the uniformed services to become effective during fiscal year 1990 shall not be made.

37 USCS @ 1009 (1998)

"(b) Increase in basic pay, BAS, and BAQ. The rates of basic pay, basic allowance for subsistence, and basic allowance for quarters of members of the uniformed services are increased by 3.6 percent effective on January 1, 1990.".

Military pay raise for fiscal year 1991. Act Nov. 5, 1990, P.L. 101-510, Div A, Title VI, Part A, @ 601, 104 Stat. 1575, provides:

"(a) Waiver of section 1009 adjustment. Any adjustment required by section 1009 of title 37, United States Code, in elements of compensation of members of the uniformed services to become effective during fiscal year 1991 shall not be made.

"(b) Increase in basic pay, BAS, and BAQ. Effective on January 1, 1991, the rates of basic pay, basic allowance for subsistence, and basic allowance for quarters of members of the uniformed services are increased by 4.1 percent.".

Military pay raise for fiscal year 1992. Act Dec. 5, 1991, P.L. 102-190, Div A, Title VI, Part A, @ 601, 105 Stat. 1372, provides:

"(a) Waiver of section 1009 adjustment. Any adjustment required by section 1009 of title 37, United States Code, in elements of compensation of members of the uniformed services to become effective during fiscal year 1992 shall not be made.

"(b) Increase in basic pay, BAS, and BAQ. Effective on January 1, 1992, the rates of basic pay, basic allowance for subsistence, and basic allowance for quarters of members of the uniformed services are increased by 4.2 percent.".

Rates of pay and allowances to chief warrant officers. Act Dec. 5, 1991, P.L. 102-190, Div A, Title XI, Part A, @ 1111(c), 105 Stat. 1491 (effective 2/1/92 as provided by @ 1132 of such Act, which appears as 10 USCS @ 521 note), provides: "A warrant officer who holds the grade of Chief Warrant Officer, W-5, is entitled to pay and allowances at the monthly rates as follows:

BASIC PAY

	Years of service computed under section 205		

	22 or less	Over 22	Over 26
W-5	3455.90	3587.10	3846.30

BASIC ALLOWANCE FOR QUARTERS

Pay grade	Without dependents		With depend-
	-----		ents
	Full rate	Partial rate	
W-5	573.00	25.20	626.40

Military pay raise for fiscal year 1993. Act Oct. 23, 1992, P.L. 102-484, Div A, Title VI, Subtitle A, @ 601, 106 Stat. 2420, provides:

"(a) Waiver of section 1009 adjustment. Any adjustment required by section

1009 of title 37, United States Code, in elements of compensation of members of the uniformed services to become effective during fiscal year 1993 shall not be made.

"(b) Increase in basic pay, BAS, and BAQ. Effective on January 1, 1993, the rates of basic pay, basic allowance for subsistence, and basic allowance for quarters of members of the uniformed services are increased by 3.7 percent."

Rate of basic pay applicable to certain members with over 24 years of service. Act Oct. 23, 1992, P.L. 102-484, Div D, Title XLIV, Subtitle A, @ 4402, 106 Stat. 2701; Nov. 30, 1993, P.L. 103-160, Div A, Title VI, Subtitle A, @ 602(a), 107 Stat. 1678, provides:

"(a) Rate of basic pay. Subject to subsection (b), the rate of monthly basic pay for a member of the uniformed services who is entitled to such pay under section 204 of title 37, United States Code, is in pay grade E-7, E-8, E-9, W-4, W-5, or O-6, and has over 24, but under 26, years of service (as computed under section 205 of such title) shall be as set forth in the following table:

~~Rate of Monthly Basic Pay~~

Pay Grade	24-26 Years of Service
E-7.....	\$ 2,359.30
E-8.....	\$ 2,639.70
E-9.....	\$ \$ 2,977.70
W-4.....	\$ 3,430.90
W-5.....	\$ 3,827.30
O-6.....	\$ 5,417.70

"(b) Application of pay rate. The rates of monthly basic pay established under subsection (a) shall be effective for months beginning after December 31, 1992.

"(c) Adjustments of compensation. The rates of monthly basic pay established under subsection (a) shall be adjusted in accordance with section 1009 of title 37, United States Code, or other applicable provision of law, except that the increase in the rates of basic pay made by section 601(b) [note to this section] shall not apply to the rates established under subsection (a)."

Military pay raise for fiscal year 1994. Act Nov. 30, 1993, P.L. 103-160, Div A, Title VI, Subtitle A, @ 601, 107 Stat. 1677, provides:

"(a) Waiver of section 1009 adjustment. Any adjustment required by section 1009 of title 37, United States Code, in elements of compensation of members of the uniformed services to become effective during fiscal year 1994 shall not be made.

"(b) Increase in basic pay, BAS, and BAQ. Effective on January 1, 1994, the rates of basic pay, basic allowance for subsistence, and basic allowance for quarters of members of the uniformed services are increased by 2.2 percent."

Military pay raise for fiscal year 1995. Act Oct. 5, 1994, P.L. 103-337, Div A, Title VI, Subtitle A, @ 601(a), (b), 108 Stat. 2779, provides:

"(a) Waiver of section 1009 adjustment. Any adjustment required by section 1009 of title 37, United States Code, in elements of compensation of members of the uniformed services to become effective during fiscal year 1995 shall not be made.

"(b) Increase in basic pay, BAS, and BAQ. Effective on January 1, 1995, the rates of basic pay, basic allowance for subsistence, and basic allowance for quarters of members of the uniformed services are increased by 2.6 percent."

Military pay raise for fiscal year 1996. Act Feb. 10, 1996, P.L. 104-106,

Div A, Title VI, Subtitle A, @ 601, 110 Stat. 356, provides:

"(a) Rescission of prior section 1009 adjustment. The adjustment made as of January 1, 1996, pursuant to section 4 of Executive Order No. 12984 (issued December 28, 1995) [5 USCS @ 5332 note], in elements of compensation of members of the uniformed services pursuant to section 1009 of title 37, United States Code, is hereby rescinded.

"(b) Increase in basic pay and BAS. The rates of basic pay and basic allowance for subsistence of members of the uniformed services, as in effect on December 31, 1995, are hereby increased by 2.4 percent.

"(c) Increase in BAQ. The rates of basic allowance for quarters of members of the uniformed services, as in effect on December 31, 1995, are hereby increased by 5.2 percent.

"(d) Effective date. This section shall take effect as of January 1, 1996."

Military pay raise for fiscal year 1997. Act Sept. 23, 1996, P.L. 104-201, Div A, Title VI, Subtitle A, @ 601, 110 Stat. 2539, provides:

"(a) Waiver of section 1009 adjustment. Any adjustment required by section 1009 of title 37, United States Code, in elements of compensation of members of the uniformed services to become effective during fiscal year 1997 shall not be made.

"(b) Increase in basic pay and BAS. Effective on January 1, 1997, the rates of basic pay and basic allowance for subsistence of members of the uniformed services are increased by 3.0 percent.

"(c) Increase in BAQ. Effective on January 1, 1997, the rates of basic allowance for quarters of members of the uniformed services are increased by 4.6 percent."

Military pay raise for fiscal year 1998. Act Nov. 18, 1997, P.L. 105-85, Div A, Title VI, Subtitle A, @ 601, 111 Stat. 1771, provides:

"(a) Waiver of section 1009 adjustment. The adjustment, to become effective during fiscal year 1998, required by section 1009 of title 37, United States Code (as amended by section 604), in the rate of monthly basic pay authorized members of the uniformed services by section 203(a) of such title shall not be made.

"(b) Increase in basic pay. Effective on January 1, 1998, the rates of basic pay of members of the uniformed services are increased by 2.8 percent."

Effective date of amendments made by @ 604 of Act Nov. 18, 1997. Act Nov. 18, 1997, P.L. 105-85, Div A, Title VI, Subtitle A, @ 604(b), 111 Stat. 1784, provides: "The amendments made by subsection (a) [amending this section and the chapter analysis preceding 37 USCS @ 1001] shall take effect on January 1, 1998."

NOTES:

CROSS REFERENCES

This section is referred to in 2 USCS @ 906; 26 USCS @ 3121; 37 USCS @@ 203, 402, 403.

RESEARCH GUIDE

Am Jur:

53A Am Jur 2d, Military and Civil Defense @ 169.

Forms:

3 Fed Procedural Forms L Ed, Armed Forces, Civil Disturbances, and National Defense @ 5:321.

INTERPRETIVE NOTES AND DECISIONS

1. Generally
2. Purpose
3. Partial basic allowance for quarters

1. Generally

Commissioned officer failed to make persuasive showing that when Congress provided in @ 1009 schedule that commissioned officers receive credit for over 4 years of prior active service as enlisted members it meant to grant credit for those having exactly 4 years of service. *Conlon v United States* (1985) 8 Cl Ct 30.

2. Purpose

Legislative purpose in enacting 37 USCS @ 1009(d) was to pay partial basic allowance for quarters (BAQ) to members without dependents who are not entitled to regular BAQ because they are assigned to single-type government quarters, or who are on sea or field duty, since value of quarters furnished in such cases is less than BAQ forfeited; this applies to members whose only dependent is spouse entitled to basic pay and therefore not claimable as dependent for increased BAQ; however, @ 1009(d) does not apply to members, single or married to other members, who occupy higher value family quarters. (1977) 56 Op Comp Gen 894.

3. Partial basic allowance for quarters

Officer on sea duty being reimbursed under 10 USCS @ 7572(b) for expense incurred for quarters because his shipboard quarters are uninhabitable is entitled to partial basic allowance for quarters under 37 USCS @ 1009(d). (1977) 56 Op Comp Gen 894.

Navy member assigned government single-type quarters who is ineligible for regular basic allowance for quarters under 37 USCS @ 403(b), is entitled to "partial" basic allowance for quarters under 37 USCS @ 1009(d). (1978) 58 Op Comp Gen 136.

Basic allowance for quarters at partial rate is not payable to single member when he is assigned to quarters which substantially exceed minimum criteria for single-type housing but are not considered adequate by service concerned for classification as family-type quarters because they include only one bedroom. (1982) 62 Op Comp Gen p 37.

2ND SECTION of Level 1 printed in FULL format.

UNITED STATES CODE SERVICE

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*** THIS SECTION IS CURRENT THROUGH 105-165, APPROVED 3/20/98 ***

*** WITH A GAP OF 160 AND 164 ***

TITLE 10. ARMED FORCES
SUBTITLE A. GENERAL MILITARY LAW
PART II. PERSONNEL
CHAPTER 31. ENLISTMENTS

10 USCS @ 505 (1998)

@ 505. Regular components: qualifications, term, grade

(a) The Secretary concerned may accept original enlistments in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard, as the case may be, of qualified, effective, and able-bodied persons who are not less than seventeen years of age, nor more than thirty-five years of age. However, no person under eighteen years of age may be originally enlisted without the written consent of his parent or guardian, if he has a parent or guardian entitled to his custody and control.

(b) A person is enlisted in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard in the grade or rating prescribed by the Secretary concerned.

(c) The Secretary concerned may accept original enlistments of persons for the duration of their minority or for a period of at least two but not more than six years, in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard, as the case may be.

(d) (1) The Secretary concerned may accept a reenlistment in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard, as the case may be, for a period determined under this subsection.

(2) In the case of a member who has less than 10 years of service in the armed forces as of the day before the first day of the period for which reenlisted, the period for which the member reenlists shall be at least two years but not more than six years.

(3) In the case of a member who has at least 10 years of service in the armed forces as of the day before the first day of the period for which reenlisted, the Secretary concerned may accept a reenlistment for either--

(A) a specified period of at least two years but not more than six years;
or

(B) an unspecified period.

(4) No enlisted member is entitled to be reenlisted for a period that would expire before the end of the member's current enlistment.

HISTORY: (Added Jan. 2, 1968, P.L. 90-235, @ 2(a)(1)(B), 81 Stat. 754; May 24, 1974, P.L. 93-290, @@ 1, 2, 88 Stat. 173; Oct. 20, 1978, P.L. 95-485, Title VIII, @ 820(a), 92 Stat. 1627; Sept. 24, 1983, P.L. 98-94, Title X, Part C, @ 1023, 97 Stat. 671.)

(As amended Sept. 23, 1996, P.L. 104-201, Div A, Title V, Subtitle B, @ 511, 110 Stat. 2514.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

1974. Act May 24, 1974, substituted subsec. (a) for one which read: "(a) The Secretary concerned may accept original enlistments in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard, as the case may be, of qualified, effective, and able-bodied persons who are not less than seventeen years of age in the case of male persons and not less than eighteen years of age in the case of female persons, nor more than thirty-five years of age. However, no male person under eighteen years of age, or female person under twenty-one years of age, may be originally enlisted without the written consent of his parent or guardian, if he has a parent or guardian entitled to his custody and control."; and substituted subsec. (c) for one which read:

"(c) The Secretary concerned may accept original enlistments in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard, as the case may be--

"(1) of male persons for the duration of their minority or for a period of two, three, four, five, or six years; and

"(2) of female persons for a period of two, three, four, five, or six years."

1978. Act Oct. 20, 1978, deleted subsec. (d), which read: "In the Regular Army, female persons may be enlisted only in the Women's Army Corps."; and redesignated subsec. (e) as subsec. (d).

1983. Act Sept. 24, 1983, in subssecs. (c) and (d), substituted "at least two but not more than six years" for "two, three, four, five, or six years".

1996. Act Sept. 23, 1996 substituted subsec. (d) for one which read: "(d) The Secretary concerned may accept reenlistments in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard, as the case may be, for periods of at least two but not more than six years. No enlisted member is entitled to be reenlisted for a period that would expire before the end of his current enlistment.".

NOTES:

CODE OF FEDERAL REGULATIONS

Acquisition and use of criminal history record information by the military services, 32 CFR Part 96.

CROSS REFERENCES

Military Selective Service Act, 50 USCS Appx. @@ 451 et seq.

This section is referred to in 10 USCS @@ 519, 802.

RESEARCH GUIDE

Federal Procedure L Ed:

Armed Forces, Civil Disturbances, and National Defense, Fed Proc, L Ed @ 5:79.

Am Jur:

53 Am Jur 2d, Military, and Civil Defense @@ 138, 141, 147.

Annotations:

Enlistment or re-enlistment in branches of United States Armed Forces as protected by Federal Constitution or by federal statutes. 64 ALR Fed 489.

Law Review Articles:

Armed Forces Enlistment; The Use and Abuse of Contract. 39 U Chi L Rev 783.

INTERPRETIVE NOTES AND DECISIONS

1. Generally
2. Qualifications
3. Review

1. Generally

Enlistment provisions of 10 USCS @ 505 require written instrument for enlistment since otherwise there would be no way government could determine which branch of service was involved or terms and conditions of enlistment. *Jackson v United States* (1977) 213 Ct Cl 354, 551 F2d 282, vacated without op 434 US 947, 54 L Ed 2d 307, 98 S Ct 471, on remand 216 Ct Cl 25, 573 F2d 1189.

In era of volunteer military establishment, modern contract principles apply to military enlistment contracts. *Novak v Rumsfeld* (1976, ND Cal) 423 F Supp 971.

2. Qualifications

Applicant for enlistment in Army has no right to enlist despite claim that regulation of Secretary of Army barring enlistment of unwed parents of minor, dependent children infringes upon applicant's right to marry, or not to marry, and right to bear children. *West v Brown* (1977, CA5 Fla) 558 F2d 757, cert den 435 US 926, 55 L Ed 2d 520, 98 S Ct 1493 and (disagreed with *Dillard v Brown* (CA3 NJ) 652 F2d 316 (disagreed with *Lindenau v Alexander* (CA10 NM) 663 F2d 68) and (disagreed with *Nieszner v Mark* (CA8 Minn) 684 F2d 562, 29 CCH EPD P 32923, cert den 460 US 1022, 75 L Ed 2d 494, 103 S Ct 1273, 32 CCH EPD P 33714)).

Applicants may properly be denied enlistment in Armed Forces by regulations barring enlistment of single parents with minor dependent children since single parents of minors do not constitute suspect class, and government needs only rational reason for implementation of such regulation. *Lindenau v Alexander* (1981, CA10 NM) 663 F2d 68.

Discharge for fraudulent enlistment of soldier who at time of enlistment denied being homosexual is not denial of substantive due process despite claim of infringement of fundamental right of privacy, since special circumstances surrounding service in Armed Forces control. *Rich v Secretary of Army* (1981, DC Colo) 516 F Supp 621, affd (CA10 Colo) 735 F2d 1220.

Claim of erroneous enlistment under 10 USCS @ 505, warranted dismissal notwithstanding that serviceman enlisted at age 17 years, 19 days with a low intelligence level, since serviceman enlisted with requisite written parental consent needed for those under 18 and had waived requirement that those with low test scores be 17 years, 8 months at time of enlistment when he enlisted for 3 years and under "Buddy" program, further serviceman's voluntary continuation of duty after attaining 17 years, 8 months waived enlistment defect; voluntary continuation on active duty such as beyond regulatory age requirement waives any such defect, whether that regulation constituted a waivable or nonwaivable enlistment defect. *Blassingame v Secretary of Navy* (1985, ED NY) 626 F Supp 632, revd on other grounds (CA2 NY) 811 F2d 65, 7 FR Serv 3d 191.

Under 10 USCS @ 505(a), individual under age of 17 is statutorily incompetent to acquire military status; but, Government may show constructive enlistment where such individual enlists but continues to serve after reaching age 17 despite fact that parental consent is never obtained. *United States v Harrison* (1977, NCMR) 3 MJ 1020, affd (CMA) 5 MJ 476.

3. Review

Court will review military decisions where court strikes balance in favor of review based upon: (1) strength of plaintiff's claim; (2) potential harm to plaintiff if review is denied; (3) type and degree of anticipated interference with military functions; and (4) extent to which military expertise or discretion is involved. *Mindes v Seaman* (1971, CA5 Fla) 453 F2d 197, later app (CA5 Fla) 501 F2d 175 and (disagreed with *Dillard v Brown* (CA3 NJ) 652 F2d 316 (disagreed with *Lindenau v Alexander* (CA10 NM) 663 F2d 68) and (disagreed with *Nieszner v Mark* (CA8 Minn) 684 F2d 562, 29 CCH EPD P 32923, cert den 460 US 1022, 75 L Ed 2d 494, 103 S Ct 1273, 32 CCH EPD P 33714)).

Applicant's challenge of regulation forbidding enlistment of single parents with minor, dependent children as unconstitutionally discriminatory is justiciable. *Dillard v Brown* (1981, CA3 NJ) 652 F2d 316 (disagreed with *Lindenau v Alexander* (CA10 NM) 663 F2d 68) and (disagreed with *Nieszner v Mark* (CA8 Minn) 684 F2d 562, 29 CCH EPD P 32923, cert den 460 US 1022, 75 L Ed 2d 494, 103 S Ct 1273, 32 CCH EPD P 33714).

Civilian courts are not barred from reviewing parties' compliance with terms of military enlistment contract. *Myers v Parkinson* (1975, ED Wis) 398 F Supp 727.

Concept of comity between civilian and military courts mandates that Federal District Court refrain from exercising equitable jurisdiction until military court system has opportunity to hear and adjudicate issues, where accused claims void enlistment on basis of recruiter's misconduct and resultant lack of court-martial jurisdiction over him. *Hodges v Brown* (1980, ED Pa) 500 F Supp 25, affd without op (CA3 Pa) 649 F2d 859, cert den 454 US 820, 70 L Ed 2d 91, 102 S Ct 101.

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*** THIS SECTION IS CURRENT THROUGH 105-165, APPROVED 3/20/98 ***

*** WITH A GAP OF 160 AND 164 ***

TITLE 10. ARMED FORCES
SUBTITLE A. GENERAL MILITARY LAW
PART II. PERSONNEL
CHAPTER 31. ENLISTMENTS

10 USCS @ 517 (1998)

@ 517. Authorized daily average: members in pay grades E-8 and E-9

(a) Except as provided in section 307 of title 37 [37 USCS @ 307], the authorized daily average number of enlisted members on active duty (other than for training) in an armed force in pay grades E-8 and E-9 in a calendar year may not be more than 2 percent (or, in the case of the Army, 2.5 percent) and 1 percent, respectively, of the number of enlisted members of that armed force who are on active duty (other than for training) on January 1 of that year. In computing the limitations prescribed in the preceding sentence, there shall be excluded enlisted members of an armed force on active duty (other than for training) in connection with organizing, administering, recruiting, instructing, or training the reserve component of an armed force.

(b) Whenever the number of members serving in pay grade E-9 is less than the number authorized for that grade under subsection (a), the difference between the two numbers may be applied to increase the number authorized under such subsection for pay grade E-8.

(c) [Redesignated]

HISTORY: (Added Sept. 7, 1962, P.L. 87-649, @ 2(1), 76 Stat. 492; Dec. 23, 1980, P.L. 96-584, @ 4, 94 Stat. 3377; Dec. 1, 1981, P.L. 97-86, Title V, @ 503(a)(1), (2), 95 Stat. 1107, 1108; Sept. 8, 1982, P.L. 97-252, Title V, @ 503(a), 96 Stat. 727; Sept. 24, 1983, P.L. 98-94, Title V, @ 503(a), 97 Stat. 631; Oct. 19, 1984, P.L. 98-525, Title IV, Part B, @@ 413(a), 414(a)(2), 98 Stat. 2517, 2518.)

(As amended Nov. 8, 1985, P.L. 99-145, Title IV, Part A, @ 413(a), 99 Stat. 619; Dec. 4, 1987, P.L. 100-180, Div A, Title IV, Part B, @ 413(a)(1), (2), 101 Stat. 1083; Nov. 29, 1989, P.L. 101-189, Div A, Title IV, Part B, @ 413(a)(1), (2) 103 Stat. 1433; Dec. 5, 1991, P.L. 102-190, Div A, Title IV, Part B, @ 413(a), 105 Stat. 1352; Nov. 30, 1993, P.L. 103-160, Div A, Title IV, Subtitle B, @ 413(a), 107 Stat. 1642; Oct. 5, 1994, P.L. 103-337, Div A, Title V, Subtitle E, @ 552(a), Title XVI, Subtitle C, @ 1662(a)(4), 108 Stat. 2772, 2988.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

Revised Section Source (U.S. Code) Source (Statutes at Large)

517 37:232(c) (last sentence). Oct. 12, 1949, ch. 681, Sec. 201(c) (last sentence); added May 20, 1958, Pub. L. 85-422, Sec. 1(3) (last sentence), 72 Stat. 124.

Effective date of section:

Act Sept. 7, 1962, P.L. 87-649, @ 15, 76 Stat. 502, which appears as 37 USCS prec @ 101 note, provided that this section shall take effect on November 1, 1962.

Amendments:

1980. Act Dec. 23, 1980, designated the existing provisions as subsec. (a), and inserted "In computing the limitations prescribed in the preceding sentence, there shall be excluded enlisted members of an armed force on active duty (other than for training) in connection with organizing, administering, recruiting, instructing, or training the reserve component of an armed force."; and added subsec. (b).

1981. Act Dec. 1, 1981, in subsec. (b), substituted the table for one which read:

"Grade	Army	Navy	Air Force
"E-9	209	140	71
"E-8	823	302	302."

Such Act further added subsec. (c).

1982. Act Sept. 8, 1982, in subsec. (b), substituted the table for one which read:

"Grade	Army	Navy	Air Force	Marine Corps
"E-9.....	265	156	132	6
"E-8	908	319	307	12"

1983. Act Sept. 24, 1983 (effective 10/1/83, as provided by @ 503(c) of such Act, which appears as a note to this section), in subsec. (b), substituted the table for one which read:

"Grade	Army	Navy	Air Force	Marine Corps
"E-9.....	265	156	132	6
"E-8	1244	329	441	56"

1984. Act Oct. 19, 1984, @ 413(a) (effective 10/1/84, as provided by @ 413(c) of such Act, which appears as a note to this section), in subsec. (b), substituted the table for one which read:

Grade	Army	Navy	Air Force	Marine Corps
-------	------	------	-----------	--------------

10 USCS @ 517 (1998)

"E-9.....	314	156	143	6
"E-8	1,494	381	617	56".

Section 414(a)(2) of such Act, in subsec. (b), in the introductory matter, inserted "(other than for training) or on full-time National Guard duty under the authority of section 502(f) of title 32 (other than for training)", substituted "or the National Guard" for "of the armed forces", and substituted "for that grade and armed force" for "prescribed for the grade and the armed force".

1985. Act Nov. 8, 1985 (effective 10/1/85, as provided by @ 413(c) of such Act, which appears as a note to this section), in subsec. (b), substituted the table for one which read:

Grade	Army	Navy	Air Force	Marine Corps
"E-9.....	517	156	87	9
"E-8	2,295	381	455	74".

1987. Act Dec. 4, 1987, in subsec. (b), substituted the table for one which read:

Grade	Army	Navy	Air Force	Marine Corps
"E-9	517	165	80	9
"E-8	2,295	381	358	74".

Such Act further (effective 10/1/88, as provided by @ 413(a)(2) of such Act), in subsec. (b), substituted the table for one which read:

"Grade	Army	Navy	Air Force	Marine Corps
"E-9	517	175	125	13
"E-8	2,295	390	425	74".

1989. Act Nov. 29, 1989, in subsec. (b), substituted the table for one which read:

"Grade	Army	Navy	Air Force	Marine Corps
"E-9	529	180	150	13
"E-8	2,350	400	425	74".

10 USCS @ 517 (1998)

Such Act further (effective 10/1/90), in subsec. (b), substituted the table for one which read:

Grade	Army	Navy	Air Force	Marine Corps
E-9	542	200	224	13
E-8	2,504	425	637	74".

1991. Act Dec. 5, 1991, in subsec. (b), substituted the table for one which read:

"Grade	Army	Navy	Air Force	Marine Corps
E-9	557	202	231	13
E-8	2,585	429	670	74".

1993. Act Nov. 30, 1993, in subsec. (b), substituted the table for one which read:

"Grade	Army	Navy	Air Force	Marine Corps
E-9	569	202	279	14
E-8	2,585	429	800	74".

1994. Act Oct. 5, 1994, in subsec. (a), inserted "(or, in the case of the Army, 2.5 percent)".

Such Act further (effective Dec. 1, 1994, as provided by @ 1691 of such Act, which appears as 10 USCS @ 10001 note) deleted subsec. (b), which read: "(b) The number of enlisted members in pay grades E-8 and E-9 who may be on active duty (other than for training) or on full-time National Guard duty under the authority of section 502(f) of title 32 (other than for training) as of the end of any fiscal year in connection with organizing, administering, recruiting, instructing, or training the reserve components or the National Guard may not exceed the number for that grade and armed force in the following table:

Grade	Army	Navy	Air Force	Marine Corps
E-9	569	202	328	14
E-8	2,585	429	840	74".

Such Act further (effective as above), redesignated subsec. (c) as subsec. (b), and, in such subsection as redesignated, deleted "or whenever the number of members serving in pay grade E-9 for duty described in subsection (b) is less than the number authorized for that grade under subsection (b)," following "subsection (a),".

Other provisions:

Effective date of Sept. 24, 1983 amendments. Act Sept. 24, 1983, P.L. 98-94, Title V, @ 503(c), 97 Stat. 631, provided: "The amendments made by subsections (a) and (b) [amending this section and 10 USCS @ 524] shall take effect on October 1, 1983.".

Effective date of Oct. 19, 1984 amendments. Act Oct. 19, 1984, P.L. 98-525, Title IV, Part B, @ 413(c), 98 Stat. 2518, provides: "The amendments made by subsections (a) [amending this section] and (b) [amending 10 USCS @ 524] shall take effect on October 1, 1984.".

Effective date of Nov. 8, 1985 amendments. Act Nov. 8, 1985, P.L. 99-145, Title IV, Part B, @ 413(c), 99 Stat. 620, provides:

"The amendments made by subsections (a) and (b) [amending this section and 10 USCS @ 524] shall take effect on October 1, 1985.".

Oct. 5, 1994 amendment of subsec. (a); special rule for 1995. Act Oct. 5, 1994, P.L. 103-337, Div A, Title V, Subtitle E, @ 552(b), 108 Stat. 2772, provides: "The percentage applicable to enlisted members of the Army in pay grade E-8 under section 517(a) of title 10, United States Code, during 1995 shall be 2.3 percent (rather than the percentage provided by the amendment made by subsection (a) [amending subsec. (a) of this section]).".

Oct. 5, 1994 amendment of subsec. (a); inapplicability for 1994. Act Oct. 5, 1994, P.L. 103-337, Div A, Title V, Subtitle E, @ 552(c), 108 Stat. 2772, provides: "The amendment made by subsection (a) [amending subsec. (a) of this section] shall not apply with respect to the number of enlisted members of the Army on active duty in pay grade E-8 during 1994.".

NOTES:

RESEARCH GUIDE

Am Jur:

53 Am Jur 2d, Military, and Civil Defense @ 138.

INTERPRETIVE NOTES AND DECISIONS

Pursuant to 10 USCS @@ 517 and 1169, Secretary of Navy has authority to discharge enlisted members prior to expiration of their term of service. *Brigante v United States* (1996) 35 Fed Cl 526.

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*** THIS SECTION IS CURRENT THROUGH 105-165, APPROVED 3/20/98 ***

*** WITH A GAP OF 160 AND 164 ***

TITLE 10. ARMED FORCES

SUBTITLE A. GENERAL MILITARY LAW

PART II. PERSONNEL

CHAPTER 71. COMPUTATION OF RETIRED PAY

10 USCS @ 1401 (1998)

@ 1401. Computation of retired pay

(a) Disability, non-regular service, Warrant Officer, and DOPMA retirement. The monthly retired pay of a person entitled thereto under this subtitle [10 USCS @@ 101 et seq.] is computed according to the following table. For each case covered by a section of this title named in the column headed "For sections", retired pay is computed by taking, in order, the steps prescribed opposite it in columns 1, 2, 3, and 4, as modified by the applicable footnotes.

.....				
For				
For-	sec-	Column 1	Column 2	Column 3
mula	tions	Take	Multiply by	Add
.....				
1	1201	Retired pay base	As member elects--	
	1204	as computed under	(1) 2 1/2% of	
		section 1406(b)	years of service	
		or 1407.	credited to him	
			under section	
			1208;<1> or	
			(2) the percent-	
			age of disabil-	
			ity on date when	
			retired.	
.....				
2	1202	Retired pay base	As member elects--	Amount necessary
	1205	as computed under	(1) 2 1/2% of	to increase pro-
		section 1406(b)	years of service	duct of columns
		or 1407.	credited to him	1 and 2 to 50%
			under section	of retired pay
			1208;<1> or	base upon which
			(2) the percentage	computation is
			of disability on	based.
.....				
3	[Deleted]			
.....				
4	580	Retired pay base	The retired pay mul-	

10 USCS @ 1401 (1998)

1263 as computed under tiplier prescribed
 1293 section 1406(b) in section 1409(a)
 1305 or 1407. for the years of
 service credited to
 him under section
 1405.

5 633 Retired pay base The retired pay mul-
 634 as computed under tiplier prescribed
 635 section 1406(b) in section 1409(a)
 636 or 1407. for the years of
 1251 service credited to
 him under section
 1405.

For
 For- sec- Column 4
 mula tions Subtract

1 1201 Excess over 75%
 1204 of retired pay
 base upon
 which compu-
 tation is based.

2 1202 Excess over 75%
 1205 of retired pay
 base upon
 which compu-
 tation is based.

4 564
 1263
 1293
 1305

5 633
 634
 635
 636
 1251

<1> Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month.

(b) Use of most favorable formula. If a person would otherwise be entitled to retired pay computed under more than one formula of the table in subsection (a) or of any other provision of law, the person is entitled to be paid under the applicable formula that is most favorable to him.

HISTORY: (Aug. 10, 1956, ch 1041, @ 1, 70A Stat. 106; May 20, 1958, P.L. 85-422, @@ 6(7), 11(a)(2), 72 Stat. 129, 131; Oct. 2, 1963, P.L. 88-132, @ 5(h)(1), 77 Stat. 214; Aug. 21, 1965, P.L. 89-132, @ 6, 79 Stat. 547; Dec. 16, 1967, P.L. 90-207, @ 3(1), 81 Stat. 653; Oct. 2, 1972, P.L. 92-455, @ 1, 86 Stat. 761; Sept. 8, 1980, P.L. 96-342, Title VIII, @ 313(b)(1), 94 Stat. 1102; Dec. 12, 1980, P.L. 96-513, Title I, @ 113(a), Title V, Part B, @ 511(49), 94 Stat. 2876, 2924; Sept. 24, 1983, P.L. 98-94, Title IX, Part B, @@ 922(a)(1), 923(a)(1) in part, (2)(A), 97 Stat. 641, 642; Oct. 30, 1984, P.L. 98-557, @ 35(b), 98 Stat. 2877.)

(As amended July 1, 1986, P.L. 99-348, Title II, @ 201(a), 100 Stat. 691; Oct. 23, 1992, P.L. 102-484, Div A, Title X, Subtitle F, @ 1052(18), 106 Stat. 2500; Oct. 5, 1994, P.L. 103-337, Div A, Title XVI, Subtitle C, @ 1662(j)(2), 108 Stat. 3004.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1401	10:6001(f) (1st sentence, less applicability to retired grade).	June 29, 1948, ch. 708, Sec. 303 (1st 91 words and 1st proviso), 62 Stat. 1088.
Introduc- tory clause.	34:430(f) (1st sentence, less applicability to retired grade).	Oct. 12, 1949, ch. 681, Secs. 402(d) (less 30th through 55th words; less 104th through 128th words, as applicable to retired grade; and less 2d, 5th, and last provisos), 402(e) (1st proviso of last sentence), 63 Stat. 818, 819.
1401(1)	37:272(d) (less 1st 55 words; less 104th through 128th words, as applicable to retired grade; and less 1st, 2d, 4th, 5th and last provisos).	May 29, 1954, ch. 249, Sec. 14(d) (less 1st sentence), (f) (1st sentence, less applicability to retired grade; and last sentence), 68 Stat. 163, 164.
1401(2)	37:272(e) (1st proviso of last sentence).	
1401(3)	10:1036b (1st 91 words and 1st proviso).	
1401(4)	34:440j (1st 91 words and 1st proviso).	
	10:6001(d) (2d sentence).	
	10:6001(f) (last sen-	

tence).
 34:430(d) (2d sentence).
 34:430(f) (last sentence).

1401, [No source].

footnote

1.

1401, [No source].

footnote

2.

1401, 37:272(d) (1st proviso);

footnote 10:6001(d) (less 1st and

3. 2d sentences).

34:430(d) (less 1st and

2d sentences).

.....

In the introductory paragraph, the applicability of the rule stated in the third sentence to situations not expressly covered by the laws named in the source statutes above is a practical construction that the rule must be reciprocally applied in all cases.

In formula No. 1, the words "whichever is earlier", in 37:272(d) (clause (2)), are omitted, since they are contrary to the rule stated in 37:272(e) (1st proviso of last sentence).

In formula No. 3, the computation is based on monthly pay instead of annual pay to conform to the other formulas of the revised section. The words "basic pay" are substituted for the words "base and longevity pay" to conform to the terminology of the Career Compensation Act of 1949 (37 U.S.C. 231 et seq.). The words "which he would receive if serving, at the time granted such pay, on active duty" are omitted as surplusage and to conform to the other formulas of the revised section, since the effect of these words is covered by footnote 1. The words "at any time" are substituted for the words "during his entire period of service".

Footnotes 1 and 2 reflect the long-standing construction of those provisions dealing with computation of retired pay which do not specifically provide that the member is entitled to compute his retired pay on the basis of the monthly basic pay to which he would be entitled if he were on active duty in his retired grade. The pertinent basic computation provisions for such retirement either provide for computation of retired pay on the same basis as the provisions dealing with higher retired grade, or the basic retirement provisions were enacted after the provisions authorizing higher retired grade. The words "at rates applicable on date of retirement . . . and adjust to reflect later changes in permanent rates", in footnote 1; and all of footnote 2; are based on the source statutes incorporated in the formulas to which footnotes 1 and 2 apply, as interpreted in an opinion of the Judge Advocate General of the Army (1953/4120, 14 May 1953).

In footnote 3, the words "and disregard a part of a year that is less than six months" are made applicable to formulas Nos. 1 and 2. The legislative history of the Career Compensation Act of 1949 (Hearings before the Committee on Armed Services of the Senate on H.R. 5007, 81st Congress, First Session, page 313, July 6, 1949) indicates that the provisions, upon which formulas Nos. 1 and 2 are based, should be construed to require that a fraction of less than one-half of a year be disregarded. It also indicates that other retirement laws that are also silent on this point should be similarly construed.

Amendments:

1958. Act May 20, 1958 (effective 6/1/58, as provided by @ 9 of that Act), in column 1 of formulas 1 and 2, inserted "or to which he was entitled on day before retirement or placement on temporary disability retired list, whichever is higher, increased, for members credited with two or less years of service for basic pay purposes, by 6%."; in column 2 of formula 4, substituted "under section 1405 of this title" for "in computing basic pay"; and added footnote 4.

1963. Act Oct. 2, 1963 (effective 10/1/63, as provided by @ 14 of such Act, which appears as 37 USCS @ 201 note), in footnote 1, deleted ", and adjust to reflect later changes in applicable permanent rates" after "as the case may be".

1965. Act Aug. 21, 1965 (effective 9/1/65, as provided by @ 10 of that Act, which appears as 37 USCS @ 203 note), in column 1 of formulas 1 and 2, deleted ", increased, for members credited with two or less years of service for basic pay purposes, by 6%" after "whichever is higher".

1967. Act Dec. 16, 1967 (effective 10/1/67, as provided by @ 7 of that Act, which appears as 37 USCS @ 203 note), in footnote 4, inserted the sentence beginning "For an enlisted person . . .".

1972. Act Oct. 2, 1972, in footnote 4, deleted "or" preceding ", Sergeant Major" and inserted "or master chief petty officer of the Coast Guard,".

1980. Act Sept. 8, 1980, in the table heading, in column 1, substituted "For a person who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) on or after the date of the enactment of the Department of Defense Authorization Act, 1981, take the monthly retired pay base as computed under section 1407(b). For all others, take" for "Take".

Act Dec. 12, 1980 (effective upon enactment on 12/12/80, as provided by @ 701(b)(3) of such Act, which appears as 10 USCS @ 101 note), in the heading in column 1 of the table, substituted ") after September 7, 1980" for "of this title) on or after the date of the enactment of the Department of Defense Authorization Act, 1981"; under the column headed "For sections", deleted "1255" after "564" for formula 4; in the second para. of footnote 4, substituted "master chief petty officer of the Navy" for "senior enlisted advisor of the Navy".

Such Act further (effective 9/15/81, as provided by @ 701(a) of such Act, which appears as 10 USCS @ 101 note), added formula 5 and footnote 5.

1983. Act Sept. 24, 1983, @ 922(a)(1) (effective 10/1/83, as provided by @ 922(e) of such Act, which appears as a note to this section), in the introductory matter, inserted "The amount computed, if not a multiple of \$ 1, shall be rounded to the next lower multiple of \$ 1.".

Section 923(a)(1) of such Act substituted footnote 3 for one which read: "Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months.".

1984. Act Oct. 30, 1984 (effective 10/1/84, as provided by @ 35(c) of such Act, which appears as a note to this section), in footnote 4, deleted "or" preceding "Commandant of the Marine Corps", and inserted "or Commandant of the Coast Guard,".

1986. Act July 1, 1986 designated the existing provisions as subsec. (a), and in subsec. (a), as so designated, in the matter preceding the table, inserted the subsec. catchline, deleted "The amount computed, if not a multiple of \$ 1, shall be rounded to the next lower multiple of \$ 1. However, if a person would otherwise be entitled to retired pay computed under more than one pay formula of this table or of any other provision of law, he is entitled to be paid under the applicable formula that is most favorable to him. Section references below are to sections of this title." following "the applicable footnotes.", and in the table, substituted column 1 for one which read:

.....

"Column 1

.....

For a person who first became a member of a uniformed service (as defined in section 1407(a)(2) [10 USCS Sec. 1407(a)(2)]) after September 7, 1980, take the monthly retired pay base as computed under section 1407(b) [10 USCS Sec. 1407(b)]. For all others, take

.....

Monthly basic pay<1> of grade to which member is entitled under section 1372 or to which he was entitled on day before retirement or placement on temporary disability retired list, whichever is higher.<4>

.....

Monthly basic pay<1> of grade to which member is entitled under section 1372 or to which he was entitled on day before retirement or placement on temporary disability retired list, whichever is higher.<4>

.....

Monthly basic pay<2> of highest grade held satisfactorily by person at any time in the armed forces.

.....

Monthly basic pay to which member would have been entitled if he had served on active duty in his retired grade on day before retirement, or if the pay of that grade is less than the pay of any warrant grade satisfactorily held by him on active duty, the monthly basic pay of that warrant officer grade.

.....

Monthly basic pay<1> of member's retired grade.<5> ". Such Act further, in subsec. (a) as so designated, in the table, in the matter relating to formulas 4 and 5, substituted columns 2-4 for ones which read:.

.....

"2 1/2% of years of service that may be credited to him under section 1405 of this title.<3>	Excess over 75% of pay upon which computation is based.
--	---

.....

2 1/2% of the years of service credited under	Excess over 75% of pay upon which computation is based."
---	--

section
1405.<3>

Such Act further, in subsec. (a), as so designated, in the table, in the matter relating to formulas 1-3, in columns 3 and 4, substituted "retired pay base" for "pay" wherever appearing, and deleted footnotes 1, 2, 4, and 5 which read:.

"<1> Compute at rates applicable on date of retirement or date when member's name was placed on temporary disability retired list, as the case may be.

<2> Compute at rates applicable on date when retired pay is granted.

<4> For an officer who served as Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, compute at the highest rates of basic pay applicable to him while he served in that office.

For an enlisted person who has served as sergeant major of the Army, master chief petty officer of the Navy, chief master sergeant of the Air Force, sergeant major of the Marine Corps, or master chief petty officer of the Coast Guard, compute at the highest rate of basic pay applicable to him while he so served, if that rate is higher than the rate authorized by the table.

<5> For the purposes of this section, determine an officer's retired grade as if sections 3962(b) and 8962(b) [10 USCS @@ 3962(b), 8962(b)] did not apply."

Such Act further, in subsec. (a) as so designated, in the table, redesignated former footnote 3 as footnote 1, and, in column 2, substituted references to footnote 1 for footnote 3 wherever appearing; and added subsec. (b).

1992. Act Oct. 23, 1992, in subsec. (a), in the table under the heading "For sections", substituted "580" for "564".

1994. Act Oct. 5, 1994 (effective 12/1/94 as provided by @ 1691 of such Act, which appears as 10 USCS @ 10001 note), in the table in subsec. (a), deleted formula number 3, which read:

.....			
For-	sec-	Column 1	Column 2
mula	tions	Take	Multiply by
.....			
.....			

3	1331	Retired pay base as computed under section 1406(b) or 1407.	2 1/2% of years of service credited to him under section 1333.
.....			
3	1331	Excess over 75% of retired pay base upon which compu- tation is based.	

Short titles:

Act Sept. 8, 1982, P.L. 97-252, Title X, @ 1001, 96 Stat. 730, effective on the first day of the first month which begins more than 120 days after enactment (enacted Sept. 8, 1982), as provided by P 1006(a) of such Act, which appears as 10 USCS @ 1408 note, provides: "This title [for full classification, consult USCS Tables volumes] may be cited as the 'Uniformed Services Former Spouses' Protection Act'.".

Act July 1, 1986, P.L. 99-348, @ 1(a), 100 Stat. 682, provides: "This Act may be cited as the 'Military Retirement Reform Act of 1986'." For full classification of such Act, consult USCS Tables volumes.

Other provisions:

Public Health Service. The authority vested by this chapter in the "military departments", "the Secretary concerned" or "the Secretary of Defense" is to be exercised, with respect to commissioned officers of the Public Health Service, by the Secretary of Health, Education, and Welfare or his designee, as provided by Act July 1, 1944, ch 373, Title II, @ 221, as added Aug. 10, 1956, ch 1041, @ 4, 70A Stat. 619, which appears as 42 USCS @ 213a.

The Secretary of Health, Education, and Welfare was redesignated as the Secretary of Health and Human Services by Act Oct. 17, 1979, P.L. 96-88, Title V, @ 509, 93 Stat. 695, which appears as 20 USCS @ 3508, which also provided that any reference to the Secretary of Health, Education, and Welfare in any law in force on the effective date of such Act on Oct. 17, 1979, shall be deemed to refer and apply to the Secretary of Health and Human Services, except to the extent such reference is a function or office transferred to the Secretary of Education or the Department of Education under Act Oct. 17, 1979.

National Oceanic and Atmospheric Administration. The authority vested by this chapter in the "military departments", "the Secretary concerned", or "the Secretary of Defense" is to be exercised, with respect to the Coast and Geodetic Survey, by the Secretary of Commerce or his designee, as provided by Act Aug. 10, 1956, ch 1041, @ 3, 70A Stat. 619, which appears as 33 USCS @ 857a.

The commissioned officers of the Coast and Geodetic Survey were transferred to the Environmental Science Services Administration by Reorg. Plan No. 2 of 1965, @ 6, 30 Fed. Reg. 8819, 79 Stat. 1318, effective July 13, 1965, which appears as 5 USCS @ 903 note, and the Commissioned Officer Corps of the Environmental Science Services Administration became the Commissioned Officers Corps of the National Oceanic and Atmospheric Administration by Reorg. Plan No. 4 of 1970, @ 4(d), 35 Fed. Reg. 15627, 84 Stat. 2090, effective Oct. 3, 1970, which appears as 5 USCS @ 903 note.

Increase in Retired Pay to Persons Retired Before June 1, 1958. Act May 20, 1958, P.L. 85-422, @ 4, 72 Stat. 128; Aug. 28, 1958, P.L. 85-855, @ 1(a), 72 Stat. 1104, provided:

"(a) Except for members covered by section 7 of this Act [former 37 USC @ 232 nt], members and former members of the uniformed services who are entitled to retired pay, retirement pay, retainer pay, or equivalent pay, on the day before the effective date of this Act [effective June 1, 1958], shall be entitled to an increase of 6 per centum of that pay to which they were entitled on that date.

"(b) Notwithstanding any other provision of law, a member of a uniformed service retired under any provision of law, or transferred to the Fleet Reserve or Fleet Marine Corps Reserve, on the effective date of this Act [effective June 1, 1958] shall have his retired pay or retainer pay computed on the basis of the rates of basic pay set forth in the Career Compensation Act of 1949, as amended by this Act, or on the rates of basic pay set forth in the Career Compensation Act of 1949 on the day before the effective date of this Act [effective June 1, 1958], plus 6 per centum of that pay, whichever is greater.

"(c) Section 5 of the Career Incentive Act of 1955 (69 Stat. 22) [former 37 U.S.C. @ 321a] does not apply to any person who is retired, or to whom retired pay, retirement pay, retainer pay, or equivalent pay (including temporary disability retired pay) is granted, on or after the effective date of this Act [effective June 1, 1958].".

Act Aug. 28, 1958, P.L. 85-855, @ 1(b), 72 Stat. 1104, provided that the amendment of @ 4(a) of Act Aug. 20, 1958, which eliminated the words "and persons with two or less years of service for basic pay purposes who were retired for physical disability or placed on the temporary disability retired list" preceding "members and former members" [note to this section] should be effective June 1, 1958.

Increase in retired or retainer pay. Act Aug. 21, 1965, P.L. 89-132, @ 5(a), 79 Stat. 547, provided: "The retired pay or retainer pay of a member or former member of a uniformed service who is entitled to that pay computed under rates of basic pay in effect before the effective date of this Act [effective Sept. 1, 1965] shall be increased, effective that date, by the per centum (adjusted to the nearest one-tenth of 1 per centum) that the Consumer Price Index (all items--United States city average), published by the Bureau of Labor Statistics, for the calendar month immediately preceding the effective date of this Act [effective Sept. 1, 1965] has increased over the average monthly index for calendar year 1962.".

Continuation of pay and allowances of certain persons who served as Generals of the Army, Fleet Admirals of the Navy, General of the Marine Corps, or Admiral in the Coast Guard. Act Aug. 21, 1965, P.L. 89-132, & 7, 79 Stat. 547, provided:

"Notwithstanding any other provision of law, a member of an armed force who was entitled to pay and allowances under any of the following provisions of law on the day before the effective date of this Act [effective Sept. 1, 1965] shall continue to receive the pay and allowances to which he was entitled on that day:

"(1) The Act of March 23, 1946, chapter 112 (60 Stat. 59) [50 USCS Appx. @@ 1711 et seq., 1721 et seq. notes].

"(2) The Act of June 26, 1948, chapter 677 (62 Stat. 1052) [former 5 U.S.C. @ 626c note].

"(3) The Act of September 18, 1950, chapter 952 (64 Stat. A224) [unclassified].".

Increase in retired or retainer pay. Act July 13, 1966, P.L. 89-501, Title III, @ 303, 80 Stat. 278, provided: "Notwithstanding any other provision of law, a member or former member of a uniformed service who initially becomes entitled to retired pay or retainer pay on the effective date of this title shall be entitled to have that pay computed using the rates of basic pay prescribed by the first section of this title [amending 37 USCS @ 203].".

For the effective date of the Act July 13, 1966, @ 303 note to this section, see Act July 13, 1966, P.L. 89-501 Title III, @ 304, 80 Stat. 278, which appears as 37 USCS @ 203 note.

Increase in pay and allowances of certain persons who served as Generals of the Army, Fleet Admirals of the Navy, General of the Marine Corps, or Admiral in the Coast Guard. Act Dec. 16, 1967, P.L. 90-207, @ 5, 81 Stat. 654, provided:

"Notwithstanding any other provision of law, a member of an armed force who is entitled to pay and allowances under any of the following provisions of law on September 30, 1967, shall continue to receive the pay and allowances to which he was entitled on that day plus an increase of 4.5 per centum in the total of his pay and allowances:

"(1) The Act of March 23, 1946, chapter 112 (60 Stat. 59) [50 USCS Appx. @@ 1711 et seq., 1721 et seq. notes].

"(2) The Act of June 26, 1948, chapter 677 (62 Stat. 1052) [former 5

U.S.C. @ 626c note].

"(3) The Act of September 18, 1950, chapter 952 (64 Stat. A224) [unclassified].".

Increase in retired or retainer pay of members entitled thereto on or after October 1, 1967. Act Dec. 16, 1967, P.L. 90-207, @ 6, 81 Stat. 654, provided: "Notwithstanding any other provision of law, a member or former member of a uniformed service who initially becomes entitled to retired pay or retainer pay on or after October 1, 1967, shall be entitled to have that pay computed using the rates of basic pay prescribed by the first section of this Act [adding 37 USCS @ 311; amending 37 USCS @@ 203, 403, 407].".

Effective date of 1980 amendment. Act Dec. 12, 1980, P.L. 96-513, Title VII, @ 701(a), 94 Stat. 2955, provided that this section "shall take effect on September 15, 1981", except as provided in @ 701(b)(1) of such Act Dec. 12, 1980, which appears as 10 USCS @ 101 note.

Effective date of amendments made by @ 922 of Act Sept. 24, 1983. Act Sept. 24, 1983, P.L. 98-94, Title IX, Part B, @ 922(e), 97 Stat. 641, provided: "The amendments made by this section [amending the introductory matters of this section, among other things; for full classification, consult USCS Tables volumes] shall take effect on October 1, 1983.".

Application of amendments made by @ 923 of Act Sept. 24, 1983. For application of amendments made to footnote 3 of this section by @ 923 of such Act, see Act Sept. 24, 1983, P.L. 98-94, Title IX, Part B, @ 923(g), 97 Stat. 644, which appears as 10 USCS @ 1174 note.

Effective date of amendments made by Act Oct. 30, 1984. Act Oct. 30, 1984, P.L. 98-557, @ 35(c), 98 Stat. 2877, provided: "The amendments made by this section [amending footnote 4 of this section and 37 USCS @ 1009 note] shall become effective on October 1, 1984.".

Repeal of provisions as to limitation on retired or retainer pay. Act Oct. 12, 1984, P.L. 98-473, Title I, @ 101(h) in part, 98 Stat. 1933, which formerly appeared as a note to this section, was repealed by Act July 1, 1986, P.L. 99-348, Title III, @ 305(b)(4), 100 Stat. 705. It provided for limitation on retired or retainer pay. See @ 305(b) of such Act, which appears as a note to this section.

Six-month rounding rule. Act July 1, 1986, P.L. 99-348, Title III, @ 305(b), 100 Stat. 704, provides:

"(1) General rule. Retired pay or retainer pay may not be paid to a covered member of the Armed Forces (as defined in paragraph (3)) for any month in an amount that is greater than the amount otherwise determined to be payable after such reductions as may be necessary to reflect adjusting the computation of retired pay or retainer pay that includes credit for a part of a year of service to permit credit for a part of a year of service only for such month or months actually served.

"(2) Exceptions. The limitation in paragraph (1) does not apply to a member who before January 1, 1982--

"(A) applied for retirement or transfer to the Fleet Reserve or Fleet Marine Corps Reserve;

"(B) was being processed for retirement under the provisions of chapter 61 of title 10, United States Code [10 USCS @@ 1201 et seq.], or who was on the temporary disability retired list and thereafter retired under the provisions of section 1210(c) or 1210(d) of such title [10 USCS @ 1210(c), (d)]; or

"(C) was retired or in an inactive status and would have been eligible for retired pay under the provisions of chapter 67 of such title [10 USCS @@ 1331 et seq.] but for the fact that the person was under 60 years of age.

"(3) Definition of covered member. For the purposes of this subsection, the term 'covered member of the Armed Forces' means a member of the Armed Forces

who became entitled to retired or retainer pay during the period beginning on January 1, 1982, and ending on September 30, 1983.

"(4) Repeal of source law. Section 8054 of the Department of Defense Appropriations Act, 1985 (as contained in section 101(h) of Public Law 98-473) [note to this section], is repealed.

"(5) Cross reference. For the effective date of October 1, 1983, for provisions making permanent programmatic changes in law to accomplish the policy provided in such section 8054 [note to this section] (and prior provisions of law), see section 923(h) of the Department of Defense Authorization Act, 1984 (Public Law 98-94).".

NOTES:

CROSS REFERENCES

Reduction in retired pay, 5 USCS @ 5532.

Retirement of warrant officers upon second failure of promotion, 10 USCS @ 564.

Retirement or separation for physical disability, 10 USCS @@ 1201 et seq.

Temporary disability, computation of retired pay, 10 USCS @@ 1202, 1205.

Injury causing disability, computation of retired pay, 10 USCS @ 1204.

Permanence of temporary disability, 10 USCS @ 1210.

Retired pay for nonregular service, 10 USCS @@ 1331 et seq.

Computation of years of service for purposes of formula 4, 10 USCS @ 1405.

10 USCS @ 1401 not to affect any right, privilege, or benefit of warrant officers of former Life Saving Service, Lighthouse Service, etc., 14 USCS @ 438.

This section is referred to in 5 USCS @ 5532; 10 USCS @@ 564, 1201, 1202, 1204, 1205, 1210, 1331, 1403, 1405, 3991, 8991; 14 USCS @ 438; 33 USCS @ 857a; 42 USCS @ 213a.

RESEARCH GUIDE

Am Jur:

9B Am Jur 2d, Bankruptcy @ 3126.

54 Am Jur 2d, Military, and Civil Defense @ 170.

Law Review Articles:

Cardos, Perry and Sinnott, The Uniformed Services Former Spouses Protection Act. 33 Federal Bar News and Journal 33, January, 1986.

Grendell, Dividing Military Retired Pay in Divorce Proceedings. 29 Prac Law 19, October, 1983.

Manashil, The Uniformed Services Former Spouses' Protection Act of 1982: Problems Resulting From its Application. 20 U S F L Rev 83, Fall, 1985.

INTERPRETIVE NOTES AND DECISIONS

1. Generally
2. Relationship with other laws
3. --State community property laws
4. Application to state National Guard
5. Longevity computation
6. Increments to pay scale
7. Promotions and demotions
8. Death of retiree
9. Retirement after recall to active duty
10. Estoppel
11. Res judicata

1. Generally

Retired pay of member of military services is not in nature of gratuity or pension, but is "pay." *Berkey v United States* (1966) 176 Ct Cl 1, 361 F2d 983.

Retired officers of regular components of Armed Forces, entitled to receive pay, are officers of United States, and pay is not pension or annuity, but is emolument of and dependent upon office so held; upon ceasing to hold office, right to pay, being emolument thereof and dependent thereon, likewise ceases. *Hooper v Hartman* (1958, DC Cal) 163 F Supp 437, affd (CA9 Cal) 274 F2d 429.

For purpose of computing retired pay under Formula 2 of 10 USCS @ 1401, fact that member was not in basic pay status at time of disability determination or placement on that list is not computation requisite, since Formula 2 merely calls for use of pay rate for "grade" to which member was entitled on that date. (1977) 56 Op Comp Gen 807.

2. Relationship with other laws

The statutory disability compensation plan provided by 43 USCS @ 213 and 10 USCS @@ 1202, 1401, for commissioned officers of the Public Health Service is an exclusive remedy which precludes an action for medical malpractice under the Federal Tort Claims Act, 28 USCS @@ 2671-2680. *Alexander v United States* (1974, CA8 Mo) 500 F2d 1, cert den 419 US 1107, 42 L Ed 2d 803, 95 S Ct 779.

While 10 USCS @ 1401 technically does not apply to payment of state retirement benefits, this area is particularly appropriate for a construction harmonizing the statutes involved, so that the intent of a state legislature is best effectuated by construing a state statute involving retirement benefits to avoid incongruence with @ 1401. *Moore v Department of Military Affairs* (1976) 398 Mich 324, 247 NW2d 801, later app 88 Mich App 657, 278 NW2d 711.

3. --State community property laws

Disability pension of military retiree is separate property to the extent of the excess over the amount of the pension retiree would have received if not disabled; remainder of pension is to be divided as community property. *Re Marriage of Stenquist* (1978) 21 Cal 3d 779, 148 Cal Rptr 9, 582 P2d 96 (disapproved *McCarty v McCarty*, 453 US 210, 69 L Ed 2d 589, 101 S Ct 2728, 2 EBC 1502 (superseded by statute as stated in *Chase v Chase* (Alaska) 662 P2d 944) and (superseded by statute as stated in *Savings & Profit Sharing Fund of Sears Employees v Gago* (CA7 Wis) 717 F2d 1038) and (superseded by statute as stated in *Re Marriage of Landry*, 103 Wash 2d 807, 699 P2d 214)) as stated in *In re Marriage of Costo* (3d Dist) 156 Cal App 3d 781, 203 Cal Rptr 85) and (superseded by statute as stated in *In re Marriage of Saslow*, 40 Cal 3d 848, 221 Cal Rptr 546, 710 P2d 346).

Military retirement pay computed under 10 USCS @ 1401 is community property, as are periodic cost of living increases to such pay, so that award of portion of retirement pay to serviceman's ex-wife carries with it right to proportionate amount of future cost of living increases. *Sprott v Sprott* (1978, Tex Civ App Beaumont) 576 SW2d 653, writ dismissed.

4. Application to state National Guard

10 USCS @ 1401, formula 3 deals only with retirement pay granted to military personnel who have retired under 10 USCS @ 1331 and has no application to members of state national guard. *Moore v Department of Military Affairs* (1975) 60 Mich App 338, 230 NW2d 422, revd on other grounds 398 Mich 324, 247 NW2d 801, later app 88 Mich App 657, 278 NW2d 711.

5. Longevity computation

It is not function of federal Court of Appeals to reassess performance

record of naval officer, in review of proceedings for his separation from service, where selection board convened under predecessor to 10 USCS @ 1401 deemed such service unsatisfactory with regard to issue of whether officer had twenty years of service. *Payson v Franke* (1960) 108 App DC 368, 282 F2d 851, cert den 365 US 815, 5 L Ed 2d 694, 81 S Ct 696.

Officer who is retired on date he completed exactly 30 years of service is not entitled to retirement pay based on monthly pay of officer with over 30 years of service as he had not, at time of retirement, entered on his 31st year of service. *Lambert v United States* (1952) 121 Ct Cl 333, 101 F Supp 767.

Member of armed services who, as result of physical examination in connection with transfer, was placed on temporary disability retired list (while on that list qualified for 50 percent multiplier in computing retainer pay, based on active service plus constructive service rounded up to 20 years of service), and was later placed on permanent disability retired list (while on that list was only qualified for 47.5 percent multiplier in computing retired pay, based solely on active service reflecting 19 years of service), is not entitled to relief under 10 USCS @ 1401a(f), since member became entitled to retirement pay in 1967 and statute only applies after 1971, and he was not threatened by retired pay inversion. *YN1 Leonard E. Hill, USN (Retired)* (1992) 71 Comp Gen 439.

6. Increments to pay scale

Officers who were retired prior to effective date of 1958 amendment, i.e. June 1, 1958, were not entitled to have retired pay recomputed on basis of higher active duty pay rates provided in amendment, but only to their pre-effective date retirement pay plus 6 percent cost of living increase. *Akerson v United States* (1966) 175 Ct Cl 551, cert den 385 US 946, 17 L Ed 2d 226, 87 S Ct 320; *Andrews v United States* (1966) 175 Ct Cl 561.

7. Promotions and demotions

Officer who was promoted to next higher rank on retired list is entitled to receive only pay and allowances which officer of next higher rank who had been retired under general law was entitled, and officer is not entitled to recover rental or subsistence allowances while in inactive status on retired list. *Byrd v United States* (1945) 103 Ct Cl 285.

In absence of irregularities in connection with procedures leading to demotion of officer from temporary rank of brigadier general just prior to his retirement, officer would not be able to recover additional active duty pay and allowances from date of demotion or be entitled to retired pay of brigadier general. *Brownfield v United States* (1960) 148 Ct Cl 411.

Advance in rank after retirement pursuant to Army's terminal leave promotion policy promulgated subsequent to officer's relief from active duty will have no effect on officer's retired pay. *Carter v United States* (1961) 152 Ct Cl 334.

8. Death of retiree

Claim by retired Navy member's wife for member's retired pay accruing during 7-year period from date of his disappearance to date he was declared dead by state court may not be allowed since retired pay is payable only during member's life; there was no showing whether he was alive after his disappearance or evidence of when he actually died, and state court determination appears to be presumptive only and does not establish that member lived for 7 years; claimant is left to pursue claim in federal courts. (1978) 58 Op Comp Gen 131.

9. Retirement after recall to active duty

Officer who served prior to November 12, 1918 and later advanced on retired

list to next higher rank in 1942, recalled to active duty in 1943 and returned to retired list in 1944, is entitled to have his retired pay computed on basis of 75 percent of active duty pay of such higher rank with all officer's service, active and inactive included. *Kutz v United States* (1964) 168 Ct Cl 68.

10. Estoppel

Fact that officer elects to receive his retirement pay under percentage of disability method in amount less than that required by Career Compensation Act @ 402(d), predecessor to 10 USCS @ 1401, and acquiesced for time in lower payments, does not estop him from later claiming pay computed in strict compliance with Act. *Seliga v United States* (1957) 137 Ct Cl 710, 149 F Supp 211.

11. Res judicata

Former judgment is bar to recovery as plaintiff could have asserted additional claim in earlier suit, where plaintiff has recovered judgment for retired pay for certain period and later seeks in another suit to recover additional retired pay under another statute for same period covered by prior suit. *Amsden v United States* (1960) 150 Ct Cl 479.

10 USCS @ 1401A (1998) printed in FULL format.

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*** THIS SECTION IS CURRENT THROUGH 105-165, APPROVED 3/20/98 ***
*** WITH A GAP OF 160 AND 164 ***

TITLE 10. ARMED FORCES
SUBTITLE A. GENERAL MILITARY LAW
PART II. PERSONNEL
CHAPTER 71. COMPUTATION OF RETIRED PAY

10 USCS @ 1401a (1998)

@ 1401a. Adjustment of retired pay and retainer pay to reflect changes in
Consumer Price Index

(a) Prohibition on recomputation to reflect increases in basic pay. Unless otherwise specifically provided by law, the retired pay of a member or former member of an armed force may not be recomputed to reflect any increase in the rates of basic pay for members of the armed forces.

(b) Cost-of-living adjustments based on CPI increases.

(1) In general. Effective on December 1 of each year, the Secretary of Defense shall increase the retired pay of members and former members entitled to that pay in accordance with paragraphs (2) and (3).

(2) Pre-August 1, 1986 members.

(A) General rule. The Secretary shall increase the retired pay of each member and former member who first became a member of a uniformed service before August 1, 1986, by the percent (adjusted to the nearest one-tenth of 1 percent) by which--

- (i) the price index for the base quarter of that year, exceeds
- (ii) the base index.

(B) Special rule for fiscal year 1996. In the case of the increase in retired pay that, pursuant to paragraph (1), becomes effective on December 1, 1995, the initial month for which such increase is payable as part of such retired pay shall (notwithstanding such December 1 effective date) be March 1996.

(C) Inapplicability to disability retirees. Subparagraph (B) does not apply with respect to the retired pay of a member retired under chapter 61 of this title [10 USCS @@ 1201 et seq.].

(3) Post-August 1, 1986 members. If the percent determined under paragraph (2) is greater than 1 percent, the Secretary shall increase the retired pay of each member and former member who first became a member on or after August 1, 1986, by the difference between--

- (A) the percent determined under paragraph (2); and
- (B) 1 percent.

(4) Special rule for paragraph (3). If in any case in which an increase in retired pay that would otherwise be made under paragraph (3) is not made by reason of law (other than any provision of this section), then (unless otherwise provided by law) when the next increase in retired pay is made under this subsection, the increase under paragraph (3) shall be carried out so as to achieve the same net increase in retired pay under that paragraph that would have been the case if that law had not been enacted.

(5) Regulations. Any increase in retired pay under this subsection shall be.

made in accordance with regulations prescribed by the Secretary of Defense.

(6) [Deleted]

(c) First COLA adjustment for members with retired pay computed using final basic pay.

(1) First adjustment with intervening increase in basic pay. Notwithstanding subsection (b), if a person described in paragraph (3) becomes entitled to retired pay based on rates of monthly basic pay that became effective after the last day of the calendar quarter of the base index, the retired pay of the member or former member shall be increased on the effective date of the next adjustment of retired pay under subsection (b) only by the percent (adjusted to the nearest one-tenth of 1 percent) by which--

(A) the price index for the base quarter of that year, exceeds

(B) the price index for the calendar quarter immediately before the calendar quarter in which the rates of monthly basic pay on which the retired pay is based became effective.

(2) First adjustment with no intervening increase in basic pay. If a person described in paragraph (3) becomes entitled to retired pay on or after the effective date of an adjustment in retired pay under subsection (b) but before the effective date of the next increase in the rates of monthly basic pay, the retired pay of the member or former member shall be increased, effective on the date the member becomes entitled to that pay, by the percent (adjusted to the nearest one-tenth of 1 percent) by which--

(A) the base index, exceeds

(B) the price index for the calendar quarter immediately before the calendar quarter in which the rates of monthly basic pay on which the retired pay is based became effective.

(3) Members covered. Paragraphs (1) and (2) apply to a member or former member of an armed force who first became a member of a uniformed service before August 1, 1986, and whose retired pay base is determined under section 1406 of this title.

(d) First COLA adjustment for members with retired pay computed using high-three. Notwithstanding subsection (b), the retired pay of a member or former member of an armed force who first became a member of a uniformed service before August 1, 1986, and whose retired pay base is determined under section 1407 of this title shall be increased on the effective date of the first adjustment of retired pay under subsection (b) after the member or former member becomes entitled to retired pay by the percent (adjusted to the nearest one-tenth of 1 percent) equal to the difference between the percent by which--

(1) the price index for the base quarter of that year, exceeds

(2) the price index for the calendar quarter immediately before the calendar quarter during which the member became entitled to retired pay.

(e) Pro rating of initial adjustment. Notwithstanding subsection (b), the retired pay of a member or former member of an armed force who first became a member of a uniformed service on or after August 1, 1986, shall be increased on the effective date of the first adjustment of retired pay under subsection (b) after the member or former member becomes entitled to retired pay by the percent (adjusted to the nearest one-tenth of 1 percent) equal to the difference between--

(1) the percent by which--

(A) the price index for the base quarter of that year, exceeds

(B) the price index for the calendar quarter immediately before the calendar quarter during which the member became entitled to retired pay; and

(2) one-fourth of 1 percent for each calendar quarter from the quarter described in paragraph (1)(B) to the quarter described in paragraph (1)(A).

If in any case the percent described in paragraph (2) exceeds the percent determined under paragraph (1), such an increase shall not be made.

(f) Prevention of pay inversions. Notwithstanding any other provision of law, the monthly retired pay of a member or a former member of an armed force who initially became entitled to that pay on or after January 1, 1971, may not be less than the monthly retired pay to which he would be entitled if he had become entitled to retired pay at an earlier date based on the grade in which the member is retired, adjusted to reflect any applicable increases in such pay under this section. In computing the amount of retired pay to which such a member or former member would have been entitled on that earlier date, the computation shall be based on his grade, length of service, and the rate of basic pay applicable to him at that time, except that such computation may not be based on a rate of basic pay for a grade higher than the grade in which the member is retired. This subsection does not authorize any increase in the monthly retired pay to which a member was entitled for any period before October 7, 1975.

(g) Definitions. In this section:

(1) The term "price index" means the Consumer Price Index (all items, United States city average) published by the Bureau of Labor Statistics.

(2) The term "base quarter" means the calendar quarter ending on September 30 of each year.

(3) The term "base index" means the price index for the base quarter for the most recent adjustment under subsection (b).

(4) The term "retired pay" includes retainer pay.

(h) Price index for a quarter. For purposes of this section, the price index for a calendar quarter is the arithmetical mean of the price index for the three months comprising that quarter.

HISTORY: (Added Oct. 2, 1963, P.L. 88-132, @ 5(g)(1), 77 Stat. 213; Aug. 21, 1965, P.L. 89-132, @ 5(b), 79 Stat. 547; Dec. 16, 1967, P.L. 90-207, @ 2(a)(1), 81 Stat. 652; Dec. 30, 1969, P.L. 91-179, @ 1, 83 Stat. 837; Oct. 7, 1975, P.L. 94-106, Title VIII, @ 806, 89 Stat. 538; July 14, 1976, P.L. 94-361, Title VIII, @ 801(a), 90 Stat. 929; Oct. 1, 1976, P.L. 94-440, Title XIII, @ 1306(d)(1), 90 Stat. 1462; Sept. 8, 1980, P.L. 96-342, Title VIII, @ 812(b)(1), 94 Stat. 1098; Sept. 24, 1983, P.L. 98-94, Title IX, Part B, @@ 921(a)(1), (b), 922(a)(2), 97 Stat. 640, 641; Oct. 19, 1984, P.L. 98-525, Title XIV, @ 1405(26), 98 Stat. 2623.)

(As amended July 1, 1986, P.L. 99-348, Title I, @ 102, 100 Stat. 683; Dec. 4, 1987, P.L. 100-180, Div A, Title XII, Part D, @ 1231(21), 101 Stat. 1161; Dec. 30, 1987, P.L. 100-224, @ 1, 101 Stat. 1536; Sept. 29, 1988, P.L. 100-456, Div A, Title VI, Part C, @ 622(a), 102 Stat. 1983; Nov. 29, 1989, P.L. 101-189, Div A, Title VI, Part F, @ 651(b)(1), 103 Stat. 1460; Aug. 10, 1993, P.L. 103-66, Title II, @ 2001, 107 Stat. 335; Nov. 30, 1993, P.L. 103-160, Div A, Title XI, Subtitle H, @ 1182(e), 107 Stat. 1773; Sept. 30, 1994, P.L. 103-335, Title VIII, @ 8114A(b)(1), 108 Stat. 2648; Oct. 5, 1994, P.L. 103-337, Div A, Title VI, Subtitle D, @ 633(a), 108 Stat. 2787; Feb. 10, 1996, P.L. 104-106, Div A, Title VI, Subtitle D, @ 631(a), (c), 110 Stat. 364, 365; Sept. 23, 1996, P.L. 104-201, Div A, Title VI, Subtitle D, @@ 631(a), 632(a), 110 Stat. 2549.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Effective date of section:

Act Oct. 2, 1963, P.L. 88-132, @ 14, 77 Stat. 218, which appears as 37 USCS @ 201 note, provided that this section is effective Oct. 1, 1963.

Amendments:

1965. Act Aug. 21, 1965 (effective 9/1/65, as provided by @ 10 of such Act, which appears as 37 USCS @ 203 note), substituted subsec. (b) for one which read: "In January of each calendar year after 1963, the Secretary of Defense shall determine the percent that the annual average of the Consumer Price Index (all items--United States city average) published by the Bureau of Labor Statistics for the preceding calendar year has increased over that for 1962 or, if later, for the calendar year preceding that in which the most recent adjustment in retired pay and retainer pay has been made under this subsection. If the Secretary determines the percent of that increase to be 3 or more, the retired pay or retainer pay of a member or former member of an armed force who became entitled to that pay before January 2 of the year in which the Secretary makes that determination shall, as of April 1 of that year, be increased by that percent, adjusted to the nearest one-tenth of 1 percent.".

1967. Act Dec. 16, 1967 (effective 10/1/67, as provided by @ 7 of such Act, which appears as 37 USCS @ 203 note), substituted this section for one which read:

"(a) Unless otherwise specifically provided by law, the retired pay or retainer pay of a member or former member of an armed force shall not be recomputed to reflect any increase in the rates of basic pay for members of the armed forces if that increase becomes effective after the effective date of this section.

"(b) The Secretary of Defense shall determine the per centum that the Consumer Price Index for each calendar month after the calendar month immediately preceding the effective date of this Act has increased over the base Consumer Price Index (that for the calendar month immediately preceding the effective date of this Act or, if later, that used as the basis for the most recent adjustment of retired pay and retainer pay under this subsection). If the Secretary determines that, for three consecutive calendar months, the index has shown an increase of at least 3 per centum over the base index, the retired pay and retainer pay of members or former members of the Armed Forces who became entitled to that pay before the first day of the third calendar month beginning after the expiration of those three months shall be increased, effective that day, by the highest per centum of increase in the index during those three months, adjusted to the nearest one-tenth of 1 per centum.".

1969. Act Dec. 30, 1969 (effective 10/31/69, as provided by @ 2 of such Act, which appears as a note to this section), in subsec. (b), substituted the sentence beginning "If the Secretary determines . . ." for one which read: "If the Secretary determines that, for three consecutive months, the amount of the increase is at least 3 percent over the base index, the retired pay and retainer pay of members and former members of the armed forces who became entitled to that pay before the first day of the third calendar month beginning after the end of those three months shall, except as provided in subsection (c), be increased, effective on that day, by the highest percent of increase in the index during those months, adjusted to the nearest one-tenth of 1 percent.".

1975. Act Oct. 7, 1975 added subsec. (f).

1976. Act July 14, 1976, in subsec. (b), deleted "the per centum obtained by adding 1 per centum and" preceding "the highest per centum".

Act Oct. 1, 1976, substituted subsec. (b) for one which read: "The

Secretary of Defense shall determine monthly the percent by which the index has increased over that used as the basis (base index) for the most recent adjustment of retired pay and retainer pay under this subsection. If the Secretary determines that, for three consecutive months, the amount of the increase is at least 3 per centum over the base index, the retired pay and retainer pay of members and former members of the armed forces who become entitled to that pay before the first day of the third calendar month beginning after the end of those three months shall, except as provided in subsection (c), be increased, effective on that day, by the highest per centum of increase in the index during those months, adjusted to the nearest one-tenth of 1 per centum."

1980. Act Sept. 8, 1980 (effective 8/31/81, but subject to certain conditions, as provided by @ 812 of such Act, which appears as a note to this section) substituted subsec. (b) for one which read:

"(b)

(1) The Secretary of Defense shall--

"(A) on January 1 of each year, or within a reasonable time thereafter, determine the percent change in the index published for December of the preceding year over the index published for June of the preceding year; and

"(B) on July 1 of each year, or within a reasonable time thereafter, determine the percent change in the index published for June of such year over the index published for December of the previous year.

"(2) If in any year the percent change determined under either paragraph (1)(A) or (1)(B) indicates a rise in the index, then--

"(A) effective March 1 of such year, in the case of an increase under paragraph (1)(A), the retired pay and retainer pay of members and former members of the armed forces who become entitled to that pay before such March 1 shall be increased by the percent change computed under such paragraph, adjusted to the nearest 1/10 of 1 percent; and

"(B) effective September 1 of such year, in the case of an increase under paragraph (1)(B), the retired pay and retainer pay of members and former members of the armed forces who become entitled to that pay before such September 1 shall be increased by the percent change computed under such paragraph, adjusted to the nearest 1/10 of 1 percent."

1983. Act Sept. 24, 1983 deleted subsec. (e), which read: "(e) Notwithstanding subsections (c) and (d), the adjusted retired pay or retainer pay of a member or former member of an armed force retired on or after October 1, 1967, may not be less than it would have been had he become entitled to retired pay or retainer pay based on the same pay grade, years of service for pay, years of service for retired or retainer pay purposes, and percent of disability, if any, on the day before the effective date of the rates of monthly basic pay on which his retired pay or retainer pay is based."; and, in subsec. (f), deleted ", subject to subsection (e) of this section," preceding "be based on his grade".

Such Act further (effective 10/1/83, as provided by @ 922(e) of such Act, which appears as 10 USCS @ 1401 note) added subsec. (g).

1984. Act Oct. 19, 1984, in subsec. (f), substituted "before October 7, 1975" for "prior to the effective date of this subsection".

1986. Act July 1, 1986, in subsec. (a), inserted the subsec. catchline, deleted "or retainer" following "retired pay", and deleted "In this section, 'Index' means the Consumer Price Index (all items, United States city average) published by the Bureau of Labor Statistics." following "the armed forces."; substituted subsecs. (b)-(d) for ones which read:

"(b) Each time that an increase is made under section 8340(b) of title 5 in annuities paid under subchapter III of chapter 83 of such title, the Secretary

of Defense shall at the same time increase the retired and retainer pay of members and former members of the armed forces by the same percent as the percentage by which annuities are increased under such section.

"(c) Notwithstanding subsection (b), if a member or former member of an armed force becomes entitled to retired pay or retainer pay based on rates of monthly basic pay prescribed by section 203 of title 37 that became effective after the last day of the month of the base index, his retired pay or retainer pay shall be increased on the effective date of the next adjustment of retired pay and retainer pay under subsection (b) only by the percent (adjusted to the nearest one-tenth of 1 percent) that the new base index exceeds the index for the calendar month immediately before that in which the rates of monthly basic pay on which his retired pay or retainer pay is based became effective.

"(d) If a member or former member of an armed force becomes entitled to retired pay or retainer pay on or after the effective date of an adjustment of retired pay and retainer pay under subsection (b) but before the effective date of the next increase in the rates of monthly basic pay prescribed by section 203 of title 37, his retired pay or retainer pay shall be increased, effective on the date he becomes entitled to that pay, by the percent (adjusted to the nearest one-tenth of 1 percent) that the base index exceeds the index for the calendar month immediately before that in which the rates of monthly basic pay on which his retired pay or retainer pay is based became effective."

Such Act further added subsec. (e); in subsec. (f), inserted the subsec. catchline, and deleted "or retainer" following "retired" wherever appearing; substituted subsec. (g) for one which read: "Retired or retainer pay of a member or former member of an armed force as adjusted under this section, if not a multiple of \$ 1, shall be rounded to the next lower multiple of \$ 1."; and added subsec. (h).

1987. Act Dec. 4, 1987, in subsec. (a), deleted "pay" after "retired pay".

Act Dec. 30, 1987, in subsec. (b), redesignated para. (4) as para. (5), and added a new para. (4); and in subsec. (e), in the introductory matter, substituted "by the percent (adjusted to the nearest one-tenth of 1 percent) equal to the difference between--" for "only by the percent (adjusted to the nearest one-tenth of 1 percent) by which--", added the concluding matter and substituted paras. (1) and (2) for ones which read:

"(1) the price index for the base quarter of that year, exceeds

"(2) the price index for the calendar quarter immediately before the calendar quarter in which the member became entitled to retired pay."

1988. Act Sept. 29, 1988 (effective 10/1/88 and applicable as provided by @ 622(b) of such Act, which appears as a note to this section), in subsec. (f), inserted the sentence beginning "However, in the case of a member . . .".

1989. Act Nov. 29, 1989, in subsec. (b)(3), in the introductory matter, inserted "and former member"; in subsec. (e), inserted "or former member" in two places; and, in subsec. (f), inserted "or former member".

1993. Act Aug. 10, 1993, in subsec. (b), in para. (2), substituted "Except as provided in paragraph (6), the Secretary" for "The Secretary", and added para. (6).

Act Nov. 30, 1993, in subsec. (b), substituted para. (2) for one which read:

"(2) Pre-August 1, 1986 members. Except as provided in paragraph (6), the Secretary shall increase the retired pay of each member and former member who first became a member of a uniformed service before August 1, 1986, by the percent (adjusted to the nearest one-tenth of 1 percent) by which--

"(A) the price index for the base quarter of that year, exceeds

"(B) the base index.",

and deleted para. (6), which read:

"(6) Special rules for paragraph (2) for fiscal years 1994 through 1998.

(A) Fiscal year 1994. In the case of an increase in the retired pay of a member or former member referred to in paragraph (2) that, pursuant to paragraph (1), becomes effective on December 1, 1993, the initial month for which such increase is payable as part of such retired pay shall (notwithstanding such December 1 effective date) be March 1994.

"(B) Fiscal years 1995 through 1998. In the case of an increase in retired pay of a member or former member referred to in paragraph (2) that, pursuant to paragraph (1), becomes effective on December 1 of 1994, 1995, 1996, or 1997, the initial month for which such increase is payable as part of such retired pay shall (notwithstanding such December 1 effective date) be September of the following year.

"(C) Inapplicability to disability retirees. Subparagraphs (A) and (B) do not apply with respect to the retired pay of a member retired under chapter 61 of this title."

1994. Act Oct. 5, 1994 (applicable as provided by @ 633(b) of such Act, which appears as a note to this section), in subsec. (f), inserted "based on the grade in which the member is retired" and ", except that such computation may not be based on a rate of basic pay for a grade higher than the grade in which the member is retired" and deleted "However, in the case of a member who, after initially becoming eligible for retired pay, is reduced in grade pursuant to a sentence of a court-martial, such computation may not be based on a grade higher than the grade in which the member is retired." following "is retired."

1996. Act Feb. 10, 1996 substituted subsec. (b)(2)(B) for one which read:

"(B) Special rules for fiscal years 1994 through 1998.

(i) Fiscal year 1994. In the case of an increase in retired pay that, pursuant to paragraph (1), becomes effective on December 1, 1993, the initial month for which such increase is payable as part of such retired pay shall (notwithstanding such December 1 effective date) be March 1994.

"(ii) Fiscal years 1995 through 1998. In the case of an increase in retired pay that, pursuant to paragraph (1), becomes effective on December 1 of 1994, 1995, 1996, or 1997, the initial month for which such increase is payable as part of such retired pay shall (notwithstanding such December 1 effective date) be September of the following year."

Such Act further repealed @ 8114A(b)(1) of Act Sept. 30, 1994 (effective upon enactment of qualifying offsetting legislation during the first session of the 104th Congress, as provided by @ 8114A(b)(2) of such Act, which formerly appeared as a note to this section), which provided that subsec. (b)(2)(B) would be amended, in the heading, by substituting "through 1996" for "through 1998" and, in clause (ii), by substituting "and 1996" for "through 1998", substituting "of 1994 or 1995" for "of 1994, 1995, 1996, or 1997", and substituting "March" for "September".

Act Sept. 23, 1996, in subsec. (b)(2)(B), substituted "Special rule for fiscal year 1996. In the case of" for "Special rules for fiscal years 1996 and 1998. (i) Fiscal year 1996. In the case of", and deleted cl. (ii), which read: "(ii) Fiscal year 1998. In the case of the increase in retired pay that, pursuant to paragraph (1), becomes effective on December 1, 1997, the initial month for which such increase is payable as part of such retired pay shall (notwithstanding such December 1 effective date) be September 1998."

Such Act further (applicable as provided by @ 632(b) of such Act, which appears as a note to this section) substituted subsecs. (c) and (d) for ones which read:

"(c) Rule for first adjustment after retirement with intervening increase in basic pay. Notwithstanding subsection (b), if a member or former member of an armed force who first became a member of a uniformed service before August 1, 1986, becomes entitled to retired pay based on rates of monthly basic pay that

became effective after the last day of the calendar quarter of the base index, the retired pay of the member or former member shall be increased on the effective date of the next adjustment of retired pay under subsection (b) only by the percent (adjusted to the nearest one-tenth of 1 percent) by which--

"(1) the price index for the base quarter of that year, exceeds

"(2) the price index for the calendar quarter immediately before the calendar quarter in which the rates of monthly basic pay on which the retired pay is based became effective.

"(d) Rule for first adjustment after retirement with no intervening increase in basic pay. If a member or former member of an armed force who first became a member of a uniformed service before August 1, 1986, becomes entitled to retired pay on or after the effective date of an adjustment in retired pay under subsection (b) but before the effective date of the next increase in the rates of monthly basic pay, the retired pay of the member or former member shall be increased, effective on the date the member becomes entitled to that pay, by the percent (adjusted to the nearest one-tenth of 1 percent) by which--

"(1) the base index, exceeds

"(2) the price index for the calendar quarter immediately before the calendar quarter in which the rates of monthly basic pay on which the retired pay is based became effective.".

Other provisions:

Retroactive adjustment of retired or retainer pay of persons entitled thereto after November 30, 1966, but prior to effective date of next increase after July 1, 1966. Act Dec. 16, 1967, P.L. 90-207, @ 2(b), 81 Stat. 653, provided:

"Notwithstanding section 1401a(d) of title 10, United States Code, a person who is a member or former member of an armed force on the date of enactment of this Act and who initially became, or hereafter initially becomes, entitled to retired pay or retainer pay after November 30, 1966, but before the effective date of the next increase after July 1, 1966, in the rates of monthly basic pay prescribed by section 203 of title 37, United States Code, is entitled to have his retired pay or retainer pay increased by 3.7 percent, effective as of the date of his entitlement to that pay.".

Effective date of 1969 amendment. Act Dec. 30, 1969, P.L. 91-179, @ 2, 83 Stat. 837, provided: "The provisions of this Act [amending subsec. (b) of this section] become effective on October 31, 1969.".

Increase in certain armed force members' pay and allowances not otherwise tied to Consumer Price Index. Act Dec. 28, 1973, P.L. 93-210, @ 2, 87 Stat. 908, provided:

"(a) Notwithstanding any other provision of law, effective on the date of enactment of this Act, the pay and allowances of members of the Armed Forces to whom this Act [this note and 50 USCS @ 403 note] applies shall be increased to amounts equal to the amounts such pay and allowances would have been increased if the pay and allowances of such members had been increased, under section 1401a(b) of title 10, United States Code, by the same percentage rates, consecutively compounded, that the retired pay or retainer pay of members and former members of the Armed Forces entitled to retired pay or retainer pay since October 1, 1967, has been increased, and such member shall, on and after the date of enactment of this Act, have his pay and allowances increased effective the same day and by the same percentage rate that the retired pay or retainer pay of members and former members of the Armed Forces is increased under such section 1401a(b).

"(b) This section applies to members of the Armed Forces entitled to pay and allowances under either of the following provisions of law:

"(1) The Act of June 26, 1948, chapter 677 (62 Stat. 1052) [former 5

U.S.C. @ 626c note, which authorized the appointment of one officer in the Regular Army in the permanent grade of general, one officer in the Regular Air Force in the permanent grade of general, and one officer in the Regular Navy in the permanent grade of admiral].

"(2) The Act of September 18, 1950, chapter 952 (64 Stat. A224) [unclassified, which authorized the appointment of Omar N. Bradley to the permanent grade of General of the Army].

"(c) No amounts shall be paid, as the result of the enactment of this section, for any period prior to the date of enactment of this section."

Cost-of-living adjustment of retired pay or retainer pay of members and former members of armed forces and commissioned officers of National Oceanic and Atmospheric Administration and Public Health Service; effective date of 1976 Amendment. Act July 14, 1976, P.L. 94-361, Title VIII, @ 801(c), 90 Stat. 929, provided:

"(1) The amendments made by subsections (a) and (b) [amending subsec. (b) of this section and 50 USCS @ 403 note] shall not become effective unless legislation is enacted repealing the so-called 1 per centum add-on provision applicable to the cost-of-living adjustment of annuities paid under chapter 83 of title 5, United States Code [5 USCS @@ 8301 et seq.]. In the event such legislation is enacted, such amendments shall become effective with respect to the cost-of-living adjustment of the retired pay and retainer pay of members and former members of the Armed Forces and the cost-of-living adjustment of annuities paid under the Central Intelligence Agency Act of 1964 for Certain Employees [50 USCS @ 403 note] at the same time the repeal of such 1 per centum add-on provision becomes effective with respect to such cost-of-living adjustment of annuities paid under such chapter 83 [5 USCS @@ 8301 et seq.].

"(2) If any change other than the repeal of the so-called 1 per centum add-on provision referred to in paragraph (1) is made in the method of computing the cost-of-living adjustment of annuities paid under chapter 83 of title 5, United States Code [5 USCS @@ 8301 et seq.] the President shall make the same change in the cost-of-living adjustment of retired pay and retainer pay of members and former members of the Armed Forces and the cost-of-living adjustment of annuities paid under the Central Intelligence Agency Act of 1964 for Certain Employees [50 USCS @ 403 note]. Any change made under this paragraph shall have the same effective date as the effective date applicable to such change made in annuities under chapter 83 of title 5, United States Code [5 USCS @@ 8301 et seq.].

"(3) The provisions of paragraphs (1) and (2) relating to any change in the method of computing the cost-of-living adjustment of the retired pay or retainer pay of members and former members of the Armed Forces shall be applicable to the computation of cost-of-living adjustments of the retired pay of commissioned officers of the National Oceanic and Atmospheric Administration and the retired pay of commissioned officers of the Public Health Service."

Application of Oct. 1, 1976 amendment. Act Oct. 1, 1976, P.L. 94-440, Title XIII, @ 1306(d)(2), 90 Stat. 1463, provide: "The amendment made by subsection (1) [amending subsec. (b) of this section] shall apply to any increase in retired pay or retainer pay after the date of enactment of this Act, except that with respect to the first date after the date of enactment of this Act on which the Secretary of Defense is to determine a percent change, such percent change shall be determined by computing the change in the index published for the month immediately preceding such first date over the index for the last month preceding the date of enactment of this Act used as the basis for the most recent adjustment of retired pay and retainer pay under section 1401a(b) of title 10, United States Code [former subsec. (b) of this section] as in effect immediately prior to the date of enactment of this Act."

Computation of retired pay of sergeant majors of Marine Corps who completed service prior to December 16, 1967. Act Nov. 2, 1978, P.L. 95-581, 92 Stat. 2478, provided: "That (a) the retired pay of any individual who served as sergeant major of the Marine Corps and who completed such service before December 16, 1967, shall be computed based upon a rate of basic pay of the sum of (1) the highest rate of basic pay to which such individual was entitled while so serving, and (2) \$ 150.

"(b) For the purpose of computing any adjustment under section 1401a of title 10, United States Code, in the retired pay of any individual whose retired pay is affected by subsection (a), the rate of basic pay provided under such subsection for the purpose of computing the retired pay of such individual shall be considered to have been the rate of basic pay applicable to such individual at the time of his retirement, and any adjustment under such section 1401a in the retired pay of such individual before September 30, 1978, shall be readjusted to reflect such rate of basic pay.

"Sec. 2. (a) Any change in the retired pay of any individual by reason of the enactment of this Act [this note] shall be effective for months beginning after September 30, 1978.

"(b) The enactment of this Act [this note] shall not reduce the retired pay of any individual."

Contingent once-a-year adjustment of retired and retainer pay. Act Sept. 8, 1980, P.L. 96-342, Title VIII, @ 812, 94 Stat. 1098; Aug. 13, 1981, P.L. 97-35, Title II, Subtitle B, @ 211(b), 95 Stat. 383, provided:

"(a)

(1) The increase in the retired and retainer pay of members and former members of the uniformed services which but for this section would be made effective September 1, 1980, under the provisions of paragraph (2)(B) of section 1401a(b) of title 10, United States Code [subsec. (b)(2)(B) of this section], shall not be made.

"(2)

(A) In making the determination required by the provisions of paragraph (1)(A) of section 1401a(b) of title 10, United States Code, to be made on January 1, 1981, or within a reasonable time thereafter, the Secretary of Defense shall determine the percent change in the index (as such term is defined in section 1401a(a) of title 10, United States Code) published for December 1980 over the index published for December 1979 (rather than over the index published for June 1980).

"(B) The increase in the retired and retainer pay of members and former members of the uniformed services to be made effective March 1, 1981, under the provisions of paragraph (2)(A) of such section shall, in lieu of the increase prescribed by such paragraph, be the percent change computed under subparagraph (A), adjusted to the nearest 1/10 of one percent.

"(3) The President shall by Executive order provide for only one cost-of-living adjustment in the annuities paid under the Central Intelligence Agency Act of 1964 for Certain Employees (50 U.S.C. 403 note) during the period beginning on September 1, 1980, and ending on August 31, 1981. Such adjustment shall be effective March 1, 1981, and shall be made in the same manner and percentage as the adjustment provided for in paragraphs (1) and (2) for the retired and retainer pay of members and former members of the uniformed services.

"(4) Paragraphs (1), (2), and (3) shall not take effect unless similar legislation is enacted which provides for only one cost-of-living increase in annuities paid under subchapter III of chapter 83 of title 5, United States Code [5 USCS @@ 8331 et seq.], during the period beginning on September 1, 1980, and ending on August 31, 1981.

"(b)

(1) Effective August 31, 1981, but subject to paragraph (2), section 1401a(b) of title 10, United States Code, relating to adjustment of retired pay and retainer pay to reflect changes in the Consumer Price Index, is amended to read as follows:

" '(b) Each time that an increase is made under section 8340(b) of title 5 in annuities paid under subchapter III of chapter 83 of such title [5 USCS @@ 8331 et seq.], the Secretary of Defense shall at the same time increase the retired and retainer pay of members and former members of the armed forces by the same percent as the percentage by which annuities are increased under such section.'.

"(2) The amendment made by paragraph (1) shall not take effect unless legislation is enacted which provides for the adjustment of annuities paid under subchapter III of chapter 83 of title 5, United States Code [5 USCS @@ 8331 et seq.], on a once-a-year basis. In the event such legislation is enacted, such amendment shall become effective with respect to adjustments in the retired pay and retainer pay of members and former members of the uniformed services at the same time that the legislation providing for such a once-a-year adjustment of annuities paid under subchapter III of chapter 83 of title 5, United States Code [5 USCS @@ 8331 et seq.], becomes effective.

"(3) If legislation described in paragraph (2) is enacted to provide for the adjustment of annuities paid under subchapter III of chapter 83 of title 5, United States Code [5 USCS @@ 8331 et seq.], on a once-a-year basis, the President shall exercise the authority vested in him under section 292 of the Central Intelligence Agency Act of 1964 for Certain Employees (50 U.S.C. 403 note) to provide for cost-of-living adjustments in the annuities paid under such Act [50 USCS @ 403 note] on an identical basis.

"(4) If at the time the first adjustment in retired and retainer pay is made under section 1401a(b) of title 10, United States Code, as amended by paragraph (1) of this subsection, the period upon which the most recent adjustment in such retired and retainer pay was computed is not identical to the period upon which the most recent adjustment in annuities under subchapter III of chapter 83 of title 5, United States Code [5 USCS @@ 8331 et seq.], was computed, then the percentage increase to be made under such section 1401a(b) at the time of the first such adjustment shall be computed in the same manner as the percentage increase made at the same time in annuities under subchapter III of chapter 83 of title 5, United States Code [5 USCS @@ 8331 et seq.], is computed, but shall be based on the period beginning on the last day of the period upon which the most recent adjustment in such retired and retainer pay was computed and ending on the last day of the period upon which the adjustment being made at the same time in annuities under such subchapter III [5 USCS @@ 8331 et seq.] is computed. The President shall by Executive order provide for a similar computation of the adjustment in annuities paid under the Central Intelligence Agency Act of 1964 for Certain Employees (50 U.S.C. 403 note) which is made at the same time as the increase in retired and retainer pay to which the preceeding sentence is applicable.

"(c) For the purposes of this section, the term 'uniformed services' means--

"(1) the Armed Forces; and

"(2) the commissioned corps of the National Oceanic and Atmospheric Administration and of the Public Health Service.".

Application of former subsec. (e) to certain persons. Act Sept. 24, 1983, P.L. 98-94, Title IX, Part B, @@ 921(a)(2), 97 Stat. 640, provided:

"(A) Notwithstanding the repeal of such subsection [former subsec. (e) of this section; for text of such subsec., see the 1983 Amendment note], the provisions of such subsection shall apply in the case of any member or former member of the Armed Forces eligible to retire on the date of the enactment of

this Act for a period of three years after such date in the same manner such provisions would have applied had they not been repealed.

"(B) The amount of retired or retainer pay of any member or former member of the Armed Forces who was eligible to retire on the date of the enactment of this Act and who becomes entitled to such pay at any time after the end of the three-year period beginning on the date of the enactment of this Act may not be less than it would have been had he become entitled to retired or retainer pay on the day before the end of such three-year period."

Effective date and application of Sept. 29, 1988 amendment of subsec. (f). Act Sept. 29, 1988, P.L. 100-456, Div A, Title VI, Part C, @ 622(b), 102 Stat. 1983, provides: "The amendment made by subsection (a) [amending subsec. (f) of this section] shall take effect on the first day of the first month that begins after the date of the enactment of this Act and shall apply to the computation of the retired or retainer pay of members who initially become entitled to such pay on or after such effective date."

Fiscal year 1995 cost-of-living adjustments for military retirees. Act Sept. 30, 1994, P.L. 103-335, Title VIII, @ 8114A(a), 108 Stat. 2648, provides:

"(a) Fiscal year 1995 cost-of-living adjustment for military retirees.

(1) The fiscal year 1995 increase in military retired pay shall (notwithstanding subparagraph (B) of section 1401a(b)(2) of title 10, United States Code) first be payable as part of such retired pay for the month of March 1995.

"(2) For the purposes of subsection (a):

"(A) The term 'fiscal year 1995 increase in military retired pay' means the increase in retired pay that, pursuant to paragraph (1) of section 1401a(b) of title 10, United States Code, becomes effective on December 1, 1994.

"(B) The term 'retired pay' includes retainer pay."

Repeal of Sept. 30, 1994 provision relating to future cost-of living adjustments for military retirees. Act Sept. 30, 1994, P.L. 103-335, Title VIII, @ 8114A(b), 108 Stat. 2648, which formerly appeared as a note to this section, was repealed by Act Feb. 10, 1996, P.L. 104-106, Div A, Title VI, Subtitle D, @ 631(c), 110 Stat. 365. Such note provided for amendments to subsec. (b)(2)(B) of this section which would take effect only if qualifying offsetting legislation was enacted during the first session of the 104th Congress.

Elimination of disparity between effective dates for military and civilian retiree cost-of-living adjustments for fiscal year 1995. Act Oct. 5, 1994, P.L. 103-337, Div A, Title VI, Subtitle D, @ 631, 108 Stat. 2785, provides:

"(a) In general. The fiscal year 1995 increase in military retired pay shall (notwithstanding subparagraph (B) of section 1401a(b)(2) of title 10, United States Code) first be payable as part of such retired pay for the month of March 1995.

"(b) Definitions. For the purposes of subsection (a):

"(1) The term 'fiscal year 1995 increase in military retired pay' means the increase in retired pay that, pursuant to paragraph (1) of section 1401a(b) of title 10, United States Code, becomes effective on December 1, 1994.

"(2) The term 'retired pay' includes retainer pay.

"(c) Limitation. Subsection (a) shall be effective only if there is appropriated to the Department of Defense Military Retirement Fund (in an Act making appropriations for the Department of Defense for fiscal year 1995 that is enacted before March 1, 1995) such amount as is necessary to offset increased outlays to be made from that fund during fiscal year 1995 by reason of the provisions of subsection (a).

"(d) Authorization of appropriations. There is authorized to be appropriated for fiscal year 1995 to the Department of Defense Military Retirement Fund the sum of \$ 376,000,000 to offset increased outlays to be made from that fund

during fiscal year 1995 by reason of the provisions of subsection (a).".

Sense of Congress on equal treatment of effective dates for future cost-of-living adjustments for military and civilian retirees. Act Oct. 5, 1994, P.L. 103-337, Div A, Title VI, Subtitle D, @ 632, 108 Stat. 2786, provides:

"(a) Findings. Congress makes the following findings:

"(1) Congress, in the Omnibus Budget Reconciliation Act of 1993 [Act Aug. 10, 1993, P.L. 103-66, 107 Stat. 312; for full classification, consult USCS Tables volumes], changed the effective dates for future cost-of-living adjustments for military retired pay and for Federal civilian retirement annuities, which (before that Act) were provided by law to be made effective on December 1 each year.

"(2) The timing, and the percentage of increase, of military and Federal civilian retirees' cost-of-living adjustments have been linked for decades.

"(3) The effect of the enactment of the Omnibus Budget Reconciliation Act of 1993 [Act Aug. 10, 1993, P.L. 103-66, 107 Stat. 312; for full classification, consult USCS Tables volumes] was to abandon the longstanding congressional practice of treating military and Federal civilian retirees identically in matters related to cost-of-living adjustments.

"(b) Sense of Congress. In light of the findings in subsection (a), it is the sense of Congress that--

"(1) as a matter of simple equity and fairness, it is imperative that cost-of-living adjustments in retirement benefits for military and Federal civilian retirees be returned to an identical schedule as soon as possible, but not later than January 1, 1999;

"(2) if after October 1, 1998, there is, by law, a difference between the date on which a cost-of-living adjustment for Federal civilian retirees takes effect and the date on which a cost-of-living adjustment for military retirees takes effect, then the difference in those effective dates should be eliminated by requiring that cost-of-living adjustments for both classes of retirees become effective on the earlier of the two dates; and

"(3) if after October 1, 1998, there is, by law, a difference between the first month for which a cost-of-living adjustment for civilian retirees is payable and the first month for which a cost-of-living adjustment for military retirees is payable, then the difference in the months for which those adjustments are first payable should be eliminated by requiring that the cost-of-living adjustments for both classes of retirees first become payable for the earlier of the two months.".

Application of Oct. 5, 1994 amendments. Act Oct. 5, 1994, P.L. 103-337, Div A, Title VI, Subtitle D @ 633(b), 108 Stat. 2787, provides: "The amendments made by subsection (a) [amending subsec. (f) of this section] shall apply with respect to the computation of the retired pay of a member of the Armed Forces who retires on or after the date of the enactment of this Act."

Waiver of administrative time-in-grade requirements to prevent pay inversions in retired pay of certain military retirees. Act Oct. 5, 1994, P.L. 103-337, Div A, Title VI, Subtitle D @ 634, 108 Stat. 2787, provides:

"(a) Authority. The Secretary concerned may, for purposes of the computation under section 1401a(f) of title 10, United States Code, of the retired pay of military retirees described in subsection (b), waive any administrative time-in-grade regulation (as described in subsection (d)) that would otherwise apply to such computation. Any such waiver may be made retroactive, in the case of any such retiree, to the date on which that retiree initially became entitled to retired pay.

"(b) Covered retirees. This section applies to any military retiree--

"(1) who initially became entitled to retired pay on or after January 1, 1971, and before the date of the enactment of this Act;

10 USCS @ 1401A (1998)

"(2) whose retired pay, by reason of the provisions of section 1401a(f) of title 10, United States Code (the so-called 'Tower amendment'), was initially computed as an amount greater than would have been the case but for that section; and

"(3) who, as of the earlier computation date applicable to that retiree--

"(A) in the case of an individual retired in an enlisted grade, had served in the grade in which the retiree retired for a period that was less than the period prescribed by the applicable administrative time-in-grade requirement described in subsection (d); and

"(B) in the case of an individual retired in an officer grade--

"(i) was subject to an administrative time-in-grade requirement described in subsection (d) that established a time-in-grade requirement that was longer than the statutory time-in-grade requirement applicable to that member; and

"(ii) had served in the grade in which the retiree retired for a period that was less than the period prescribed by such administrative time-in-grade requirement but not less than the statutory time-in-grade requirement applicable to that member.

"(c) Earlier computation date. For purposes of subsection (b)(3), the earlier computation date applicable to a military retiree is the date that (under such section 1401a(f) as in effect on the date of the member's retirement) was the 'earlier date' that was used as the basis for the computation of the retiree's retired pay.

"(d) Regulations subject to waiver. A regulation that may be waived under subsection (a) is any regulation (not required by law) that establishes a minimum period of time that a member of the Armed Forces must have served in a grade on active duty in order to be eligible to retire in that grade.

"(e) Scope of waiver authority. The Secretary concerned may exercise the authority provided in subsection (a) in the case of an individual military retiree or for any group of military retirees.

"(f) Military retiree defined. For purposes of this section, the term 'military retiree' means a member or former member of the Armed Forces who is entitled to retired pay.

"(g) Secretary concerned. For purposes of this section, the term 'Secretary concerned' has the meaning given such term in section 101 of title 10, United States Code."

Repeal of contingent alternative date for fiscal year 1998. Act Feb. 10, 1996, P.L. 104-106, Div A, Title VI, Subtitle D, @ 631(b), 110 Stat. 364, which formerly appeared as a note to this section, was repealed by Act Sept. 23, 1996, P.L. 104-201, Div A, Title VI, Subtitle D, @ 631(b), 110 Stat. 2549. Such note provided for a contingent alternative date for fiscal year 1998.

Application of Sept. 23, 1996 amendment of subsecs. (c) and (d). Act Sept. 23, 1996, P.L. 104-201, Div A, Title VI, Subtitle D, @ 632(b), 110 Stat. 2550, provides: "The amendment made by subsection (a) [amending subsecs. (c) and (d) of this section] shall apply only to adjustments of retired and retainer pay effective after the date of the enactment of this Act."

NOTES:

CROSS REFERENCES

Employment of retired officers, reduction in retired pay, 5 USCS @ 5532.

Survivor benefit plan, base amount increases, 10 USCS @ 1447.

Survivor benefit plan, annuity increases, 10 USCS @ 1451.

This section is referred to in 5 USCS @ 5532; 10 USCS @@ 1402, 1402a, 1434, 1451, 1452.

INTERPRETIVE NOTES AND DECISIONS

In determining damages to be awarded young soldier for loss of future earnings from injuries received in automobile accident, trial court was not required to compute future earnings so as to reflect adjustments to retirement pay according to changes in Consumer Price Index as required by 10 USCS @ 1401a. *Eason v Weaver* (1973, CA5 Ga) 484 F2d 459.

By enactment of 10 USCS @ 1401a(f) Congress did not intend to change basis upon which member becomes entitled to retired or retainer pay; it merely provided alternative method of computation of such pay; under 10 USCS @ 1401a(f) retainer pay of former Navy or Marine Corps member who initially became entitled to that pay on or after January 1, 1971, may not be less than retainer pay to which he would be entitled if transferred to Fleet Reserve or Fleet Marine Corps Reserve at earlier date, adjusted to reflect applicable increases in such pay under @ 1401a even though transferred to Fleet Reserve or Fleet Marine Corps Reserve at lower pay grade because of unsatisfactory performance of duty or as result of disciplinary action. (1977) 56 Op Comp Gen 740.

In computing retired pay under 10 USCS @ 1401a(f), date immediately preceding active duty basic pay rate change should generally be used as earliest date of voluntary retirement eligibility since this will normally result in computation most favorable to service member concerned. (1980) 59 Op Comp Gen. p 692.

Cost of living adjustments to military retired pay also apply to military retired pay computed on system provided for by 10 USCS @ 1407; partial costs of living adjustments made in military retired pay when member first becomes entitled to retired pay should be applied to military retired pay based on the averaging of pay received under 10 USCS @ 1407 as long as it is reasonably possible to do so; provisions applicable to computation of retired pay allow use of basic pay rates in effect on day before effective date of rates of basic pay on which member's retired pay would otherwise be based plus appropriate cost of living increases. (1983) 62 Op Comp Gen p 157.

10 USCS @ 1401a(f) applies to army officer who, after completing 30 years of active service, unconditionally resigned from military and whose records were later corrected to show that he retired in 1982; 1972 basic pay rates may not be used in computing retired pay since at that time officer was not member of army and therefore could not have retired then. (1983) 62 Op Comp Gen p 406.

Member of armed services who, as result of physical examination in connection with transfer, was placed on temporary disability retired list (while on that list qualified for 50 percent multiplier in computing retainer pay, based on active service plus constructive service rounded up to 20 years of service), and was later placed on permanent disability retired list (while on that list was only qualified for 47.5 percent multiplier in computing retired pay, based solely on active service reflecting 19 years of service), is not entitled to relief under 10 USCS @ 1401a(f), since member became entitled to retirement pay in 1967 and statute only applies after 1971, and he was not threatened by retired pay inversion. *YN1 Leonard E. Hill, USN (Retired)* (1992) 71 Comp Gen 439.

10 USCS @ 1401a(f), which provides that member who voluntarily retires on basis of his longevity of service generally is entitled to maximum amount of retired pay to which he would have been entitled if he had retired voluntarily at some time before his actual retirement date, only contemplates situations where member has met all requirements necessary to become entitled to retired pay at earlier date but chose not to retire and to remain on active duty. *Captain William G. Peters, U.S. Marine Corps (Retired)* (1991) 70 Comp Gen 398.

26TH SECTION of Level 1 printed in FULL format.

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*** THIS SECTION IS CURRENT THROUGH 105-165, APPROVED 3/20/98 ***

*** WITH A GAP OF 160 AND 164 ***

TITLE 10. ARMED FORCES

SUBTITLE A. GENERAL MILITARY LAW

PART II. PERSONNEL

CHAPTER 71. COMPUTATION OF RETIRED PAY

10 USCS @ 1405 (1998)

@ 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 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 the date of the enactment of the National Defense Authorization Act for Fiscal Year 1995 [enacted Oct. 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.

HISTORY: (Added May 20, 1958, P.L. 85-422, @ 11(a)(1)(A), 72 Stat. 130; Sept. 2, 1958, P.L. 85-861, @ 1(31A), 72 Stat. 1451; Sept. 7, 1962, P.L. 87-649, @ 6(f)(4), 76 Stat. 494; Sept. 7, 1962, P.L. 87-651, Title I, @ 109, 76 Stat. 509; Nov. 8, 1967, P.L. 90-130, @ 1(7), 81 Stat. 374; Dec. 12, 1980, P.L. 96-513, Title I, @ 113(b), 94 Stat. 2877; Oct. 12, 1982, P.L. 97-295, @ 1(17), 96 Stat. 1290.)

(As amended July 1, 1986, P.L. 99-348, Title I, @ 106, 100 Stat. 691; Oct. 5, 1994, P.L. 103-337, Div A, Title VI, Subtitle D, @ 635(d), Title XVI, Subtitle C, @ 1662(j)(3), 108 Stat. 2789, 3004; Feb. 10, 1996, P.L. 104-106, Div A, Title V, Subtitle F, @ 561(d)(1), 110 Stat. 322; Sept. 23, 1996, P.L. 104-201, Div

A, Title X, Subtitle F, @ 1074(b)(1), 110 Stat. 2660.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

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.

Effective date of section:

Act May 20, 1958, P.L. 85-422, @ 9, 72 Stat. 130, provided in part that this section shall become effective on the first day of the month following the month in which it is enacted.

Amendments:

1958. Act Sept. 2, 1958, in the preliminary matter, inserted "6323(e)," and "6391(h),".

1962. Act Sept. 7, 1962, P.L. 87-649 (effective 11/1/62, as provided by @ 15 of such Act, which appears as 37 USCS prec. @ 101 note), in para. (2), substituted "205(a)(7) and (8)" for "233(a)(7)".

Act Sept. 7, 1962, P.L. 87-651, in the preliminary matter, substituted "6394(h)" for "6391(h), 6394(g)(2)".

1967. Act Nov. 8, 1967, in the preliminary matter, deleted "6399(c)(2)," after "6398(b)(2),".

1980. Act Dec. 12, 1980 (effective 9/15/81, as provided by @ 701(a) of such Act, which appears as 10 USCS @ 101 note), substituted this section for one which read: "For the purposes of section 1401 (formula 4), 3888(1), 3927(b)(1), 3991 (formula B), 6151(b), 6323(e), 6325(a)(2) and (b)(2), 6381(a)(2), 6383(c)(2), 6390(b)(2), 6394(h), 6396(c)(2), 6398(b)(2), 6400(b)(2), 8888(1), 8927(b)(1), or 8991 (formula B) of this title, the years of service of a member of the armed forces are computed by adding--

"(1) his years of active service;

"(2) the years of service credited to him under section 205(a)(7) and (8) of title 37;

"(3) the years of service, not included in clause (1) or (2) with which he was entitled to be credited, on the day before the effective date of this section in computing his basic pay; and

"(4) the years of service, not included in clause (1), (2), or (3), with which he would be entitled to be credited under section 1333 of this title, if he were entitled to retired pay under section 1331 of this title.

For the purpose of this section, a part of a year that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded."

1982. Act Oct. 12, 1982, in the introductory matter, substituted "3991 (formula A), 3992 (formula B)" for "3991 (formula B)"; deleted "or" following

"6383(c)(2),"; and substituted "8991 (formula A), or 8992 (formula B)" for "8991 (formula B)".

1986. Act July 1, 1986 designated the existing provisions as subsec (a), and in subsec. (a), as so designated, substituted the subsec. catchline and introductory matter for matter which read: "For the purposes of section 1401 (formulas 4 and 5), 3991 (formula A), 3992 (formula B), 6151(b), 6323(e), 6325(a)(2) and (b)(2), 6383(c)(2), 8991 (formula A), or 8992 (formula B) of this title, the years of service of a member of the armed forces are computed by adding--"; and added subsec. (b).

1994. Act Oct. 5, 1994 (effective 12/1/94, as provided by @ 1691 of such Act, which appears as 10 USCS @ 10001 note), in subsec. (a)(3), substituted "section 12733" for "section 1333" and substituted "section 12731" for "section 1331".

Such Act further (applicable as provided by @ 635(e) of such Act, which appears as a note to this section) added subsec. (c).

1996. Act Feb. 10, 1996 (effective on enactment and applicable to any period of time covered by 10 USCS @ 972 that occurs after that date, as provided by @ 561(e) of such Act, which appears as 10 USCS @ 972 note), as amended by Act Sept. 23, 1996, in subsec. (c), in the heading, substituted "made up or excluded." for "made up.", designated the existing provisions as para. (1), substituted "section 972(a)" for "section 972", and inserted ", 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 the date of the enactment of the National Defense Authorization Act for Fiscal Year 1995," and added para. (2).

Act Sept. 23, 1996 made a correction to the directory language of Act Feb. 10, 1996, which did not affect the text of this section.

Other provisions:

Transition provisions under Defense Officer Personnel Management Act. For provisions to prevent extinction or premature termination of rights, duties, penalties, or proceedings that existed or were begun prior to the effective date of Act Dec. 12, 1980, P.L. 96-513 and otherwise to allow for an orderly transition to the system of officer personnel management put in place such Act, see @@ 601 et seq. of Act Dec. 12, 1980, P.L. 96-513, Title VI, Part A, 94 Stat. 2940, which appear as 10 USCS @ 611 notes.

Effective date of Dec. 12, 1980 amendment. Act Dec. 12, 1980, P.L. 96-513, Title VII, @ 701(a), 94 Stat. 2955, provided that the amendment made to this section "shall take effect on September 15, 1981", except as provided in @ 701(b)(1) of such Act Dec. 12, 1980, which appears as 10 USCS @ 101 note.

Application and construction of Oct. 12, 1982 amendment. For provisions as to the application and construction of the Oct. 12, 1982 amendment of this section (see the Amendments note to this section), see @ 5 of such Act, which appears as 10 USCS @ 101 note.

Application of Oct. 5, 1994 amendments. Act Oct. 5, 1994, P.L. 103-337, Div A, Title VI, Subtitle D, @ 635(e), 108 Stat. 2789, provides: "This section [adding subsec. (c) of this section and amending 10 USCS @@ 3925, 3991, 3992, 6333, 8925, 8991, and 8992] shall apply to--

"(1) the computation of the retired pay of any enlisted member who retires on or after the date of the enactment of this Act;

"(2) the computation of the retainer pay of any enlisted member who is transferred to the Fleet Reserve or the Fleet Marine Corps Reserve on or after the date of the enactment of this Act; and

"(3) the recomputation of the retired pay of any enlisted member who is advanced on the retired list on or after the date of the enactment of this Act.".

NOTES:

CROSS REFERENCES

This section is referred to in 10 USCS @@ 1401, 3991, 6151, 6323, 6325, 6383; 14 USCS @ 423; 33 USCS @ 853o.

RESEARCH GUIDE

Am Jur:

54 Am Jur 2d, Military and Civil Defense @@ 165, 170.

INTERPRETIVE NOTES AND DECISIONS

1. Generally
2. Service at academies
3. Service in reserves
4. Years on inactive retired list
5. Miscellaneous

1. Generally

Retired officer of Navy is not entitled to have active service credited in regulating his pay after his active service has ceased. *United States v Alger* (1894) 151 US 362, 38 L Ed 192, 14 S Ct 346.

Years of service means all active service in military within any component and includes commissioned as well as enlisted service. *Steimer v United States* (1962) 159 Ct Cl 40, 309 F2d 412.

2. Service at academies

Officer may count pre-1913 service as midshipman at United States Naval Academy in computing disability retirement pay, where officer resigned his commission prior to June 30, 1922 and was recalled to active duty thereafter and was then retired for physical disability. *Jalbert v United States* (1959) 147 Ct Cl 439.

3. Service in reserves

Chief Petty Officer, who was transferred to Fleet Naval Reserve in 1932, with over 16 years' active service, and remained in Fleet Reserve until 1940 at which time he was recalled to active duty and served until 1945, at which time he was placed on retired list because of physical disability, is entitled to have years of service include 8 years served in Fleet Reserve. *Seliga v United States* (1957) 137 Ct Cl 710, 149 F Supp 211.

4. Years on inactive retired list

Under predecessor to 10 USCS chapter 71, retired members of service recalled to active duty and later re-retired for physical disability may use longevity element based in part on their years of inactive service on retired list as factor in computing their disability retired pay. *Phelan v United States* (1959) 146 Ct Cl 218.

Years spent on inactive retired list because of disability not service incurred may not be used in computing retired pay even though inactive duty time may be used in calculating active duty pay upon reentry into service. *Aflague v United States* (1962) 156 Ct Cl 151, 298 F2d 446.

5. Miscellaneous

It is not function of federal Court of Appeals to reassess performance record of naval officer, in review of proceedings for his separation from service, where selection board deemed such service unsatisfactory with regard to issue

of whether officer had twenty years of service. Payson v Franke (1960) 108 App DC 368, 282 F2d 851, cert den 365 US 815, 5 L Ed 2d 694, 81 S Ct 696.

Under predecessor to 10 USCS @ 1405, officer's years of active service are added in computing years of service for either voluntary or mandatory longevity retirement purposes; for such retirement credit purposes officer cannot count period of incarceration by civilian authorities for commission of various crimes and period of court-martial proceedings, because during these periods he did not perform active service on active duty. Borys v United States (1973) 201 Ct Cl 597, cert den 414 US 1001, 38 L Ed 2d 237, 94 S Ct 355.

Airman with over 17 years service wrongfully discharged due to improper hearing on alleged homosexuality could recover back pay from time of discharge to end of term of enlistment but not to date he would have completed 20 years nor to retirement pay based on 20 years service where term of enlistment would have ended prior to completion of 20 years service. Bray v United States (1975) 207 Ct Cl 60, 515 F2d 1383, later proceeding 208 Ct Cl 1047.

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*** WITH A GAP OF 160 AND 164 ***

TITLE 10. ARMED FORCES

SUBTITLE A. GENERAL MILITARY LAW

PART II. PERSONNEL

CHAPTER 71. COMPUTATION OF RETIRED PAY

10 USCS @ 1406 (1998)

@ 1406. Retired pay base for members who first became members before September 8, 1980: final basic pay

(a) Use of retired pay base in computing retired pay.

(1) General rule. The retired pay or retainer pay of any person entitled to that pay who first became a member of a uniformed service before September 8, 1980, is computed using the retired pay base or retainer pay base determined under this section.

(2) Exception for recomputation. Recomputation of retired or retainer pay to reflect later active duty is provided for under section 1402 of this title without reference to a retired pay base or retainer pay base.

(b) Retirement under Subtitle A or E [10 USCS @@ 101 et seq. or 10001 et seq.].

(1) Disability, warrant officer, and DOPMA retirement. In the case of a person whose retired pay is computed under this subtitle [10 USCS @@ 101 et seq.], the retired pay base is determined in accordance with the following table.

The table for determining retired base pay can be found in the USCS print publication.

(2) Non-regular service retirement. In the case of a person who is entitled to retired pay under section 12731 of this title, the retired pay base is the monthly basic pay, determined at the rates applicable on the date when retired pay is granted, of the highest grade held satisfactorily by the person at any time in the armed forces. For purposes of the preceding sentence, the highest grade in which a person served satisfactorily as an officer shall be determined in accordance with section 1370(d) of this title.

(c) Voluntary retirement for member of the Army.

(1) In general. In the case of a member whose retired pay is computed under section 3991 of this title or who is entitled to retired pay computed under section 3992 of this title, the retired pay base is determined in accordance with the following table.

For a member entitled to retired pay under: The retired pay base is:
 Under Section:

3911

Monthly basic pay of member's

10 USCS @ 1406 (1998)

retired

3918 grade.1
3920
3924

3914 Monthly basic pay to which member
3917 was entitled on day before he

retired.

3992 Monthly basic pay of grade to which
member is advanced on retired list.

1. For the purposes of this subsection, determine members retired grade as if section 3962 did not apply.

(2) Rate of basic pay to be used. The rate of basic pay to be used under paragraph (1) is the rate applicable on the date of the member's retirement.

(d) Retirement for members of the Navy and Marine Corps. In the case of a member whose retired pay is computed under section 6333 of this title, who is advanced on the retired list under section 6151 or 6334 of this title, or who is entitled to retainer pay under section 6330 of this title, the retired pay base or retainer pay base is determined in accordance with the following table.

For a member entitled to retired or The retired pay base or retainer pay
retainer pay under section: base is:

6323-officers Basic pay of the grade in which the
6325(a)officers member retired.\$ 1
6383 *in command of*

6325(b)officers Basic pay of the grade the officer would
hold if he had not received an appoint-
ment described in section 6235(b).

6326 *entitled 30 yrs* Basic pay of the pay grade in which the
member was serving on the day before
retirement.

6330 *wanted to Fleet reserve* Basic pay that the member received at the
time of transfer to the Fleet Reserve or
Fleet Marine Corps Reserve.

10 USCS @ 1406 (1998)

6151

Basic pay of the grade to which the member

member is advanced under section
6151.

6334 ^{active duty}
~~retired~~ ^{0/11:30 yrs}

Basic pay of the grade to which the
member is advanced under section
6334.

1 If the rate specified is less than the pay of any warrant officer grade satisfactorily held by the member on active duty, use the monthly basic pay of that warrant officer grade.

(e) Voluntary retirement for members of the Air Force.

(1) In general. In the case of a member whose retired pay is computed under section 8991 of this title or who is entitled to retired pay computed under section 8992 of this title, the retired pay base is determined in accordance with the following table.

For a member entitled to retired pay
under Section: The retired pay base is:

retired	8911	Monthly basic pay of member's
	8918	grade.1
	8920	
	8924	

member	8914	Monthly basic pay to which
	8917	was entitled on day before he retired.
which	8992	Monthly basic pay of grade to
		member is advanced on retired list.

\$ 1 For the purposes of this subsection, determine members retired grade as if section 8962 did not apply.

(2) Rate of basic pay to be used. The rate of basic pay to be used under paragraph (1) is the rate applicable on the date of the member's retirement.

(f) Coast Guard. In the case of a member who is retired under any section of title 14, the member's retired pay is computed under section 423(a) of title 14 in the manner provided in that section.

(g) Commissioned corps of National Oceanic and Atmospheric Administration. In the case of an officer whose retired pay is computed under section 16 of the Coast and Geodetic Survey Commissioned Officers' Act of 1948 (33 U.S.C. 853o), the retired pay base is the basic pay of the rank with which the officer

retired.

(h) Commissioned corps of Public Health Service. In the case of an officer who is retired under section 210(g) or 211(a) of the Public Health Service Act (42 U.S.C. 211(g), 212(a)), the retired pay base is determined as follows:

(1) Mandatory retirement. If the officer is retired under section 210(g) of such Act [42 USCS @ 211(g)], the retired pay base is the basic pay of the permanent grade held by the officer at the time of retirement.

(2) Voluntary retirement. If the officer is retired under section 211(a) of such Act [42 USCS @ 212(a)], the retired pay base is the basic pay of the highest grade held by the officer and in which, in the case of a temporary promotion to such grade, the officer has performed active duty for not less than six months.

(i) Special rule for Former Chairmen and Vice Chairmen of the JCS, Chiefs of Service, and senior enlisted members.

(1) In general. For the purposes of subsections (b) through (3), in determining the rate of basic pay to apply in the determination of the retired pay base of a member who has served as Chairman or Vice Chairman of the Joint Chiefs of Staff, as a Chief of Service, or as the senior enlisted member of an armed force, the highest rate of basic pay applicable to the member while serving in that position shall be used, if that rate is higher than the rate otherwise authorized by this section.

(2) Definitions. In this subsection:

(A) The term "Chief of Service" means any of the following:

- (i) Chief of Staff of the Army.
- (ii) Chief of Naval Operations.
- (iii) Chief of Staff of the Air Force.
- (iv) Commandant of the Marine Corps.
- (v) Commandant of the Coast Guard.

(B) The term "senior enlisted member" means any of the following:

- (i) Sergeant Major of the Army.
- (ii) Master Chief Petty Officer of the Navy.
- (iii) Chief Master Sergeant of the Air Force.
- (iv) Sergeant Major of the Marine Corps.
- (v) Master Chief Petty Officer of the Coast Guard.

HISTORY: (Added July 1, 1986, P.L. 99-348, Title I, @ 104(b) in part, 100 Stat. 686; Dec. 4, 1987, P.L. 100-180, Div A, Title V, @ 512(d)(2), Title XIII, Part B, @ 1314(b)(6), 101 Stat. 1090, 1175; Sept. 29, 1988, P.L. 100-456, Div A, Title XII, Part D, @ 1233(c) 102 Stat. 2057; Dec. 5, 1991, P.L. 102-190, Div A, Title XI, Part C, @ 1131(7), 105 Stat. 1506; Oct. 5, 1994, P.L. 103-337, Div A, Title XVI, Subtitle C, @ 1662(j)(4), 108 Stat. 3004; Nov. 18, 1997, P.L. 105-85, Div A, Title X, Subtitle G, @ 1073(a)(23), 111 Stat. 1901.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

A prior @ 1406 was transferred to Chapter 67 of Title 10, USCS, and redesignated 10 USCS @ 1338 by Act July 1, 1986, P.L. 99-348, Title I, @ 104(a) in part, 100 Stat. 686.

Amendments:

1987. Act Dec. 4, 1987, in subsec. (d), in the matter preceding the table, inserted "or 6334" and, in the table, added the item relating to 6334; and in

subsec. (i), in the subsec. heading, inserted "and Vice Chairmen" and, in para. (1), inserted "or Vice Chairman".

1988. Act Sept. 29, 1988, in subsec. (b), in the second column of the table relating to section 1331, substituted "satisfactorily" for "satisfactory".

1991. Act Dec. 5, 1991 (effective 2/1/92 as provided by @ 1132 of such Act, which appears as 10 USCS @ 521 note), in subsec. (b), in the table, substituted "580" for "564".

1994. Act Oct. 5, 1994 (effective 12/1/94 as provided by @ 1691 of such Act, which appears as 10 USCS @ 10001 note), in subsec. (b), substituted the subsection heading and the matter preceding the table in para. (1) for "Retirement under subtitle A. In the case of a person whose retired pay is computed under this subtitle, the retired pay base is determined in accordance with the following table." and, in the table, in the first column, deleted "1331", in the second column deleted "Monthly basic pay<2> of highest grade held satisfactorily by person at any time in the armed forces.", deleted former footnote 2 which read: "Compute at rates applicable on date when retired pay is granted.", and renumbered the remaining footnotes accordingly, and added para. (2).

1997. Act Nov. 18, 1997 (applicable as provided by @ 1073(i) of such Act, which appears as 10 USCS @ 101 note), in subsec. (b)(1), in the table, in footnote number 3, substituted "3962" for "3962(b)" and substituted "8962" for "8962(b)"; in subsec. (c)(1), in the table, in footnote number 1, substituted "3962" for "3962(b)"; and, in subsec. (e)(1), in the table, in footnote number 1, substituted "8962" for "8962(b)".

Other provisions:

Entitlement to retirement pay after October 14, 1966; conclusiveness. Act Oct. 14, 1966, P.L. 89-652, @ 3, 80 Stat. 902, provided:

"Notwithstanding section 1406 of title 10, United States Code, as added by this Act--

"(1) the granting of retired pay to a person under [former] chapter 67 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 [enacted Oct. 14, 1966]; and

"(2) a notification that a person has completed the years of service required for eligibility for retired pay under [former] chapter 67 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 [enacted Oct. 14, 1966]."

Entitlement to retirement pay after October 14, 1966; conclusiveness. Act Oct. 14, 1966, P.L. 89-652, @ 3, 80 Stat. 902, provided:

"Notwithstanding section 1406 of title 10, United States Code [redesignated as 10 USCS @ 1338; see the Explanatory note to this section], as added by this Act--

"(1) the granting of retired pay to a person under [former] chapter 67 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 [enacted Oct. 14, 1966]; and

"(2) a notification that a person has completed the years of service required for eligibility for retired pay under [former] chapter 67 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 [enacted Oct. 14, 1966]."

Grade on transfer to the retired reserve. Act Oct. 5, 1994, P.L. 103-337, Div A, Title XVI, Subtitle E, @ 1688, 108 Stat. 3025, provides: "In determining

the highest grade held satisfactorily by a person at any time in the Armed Forces for the purposes of paragraph (2) of section 1406(b) of title 10, United States Code, as added by this title, the requirement for satisfactory service on the reserve active-status list contained in section 1370(d) of title 10, United States Code, as added by this title, shall apply only to reserve commissioned officers who are promoted to a higher grade as a result of selection for promotion under chapter 36 of that title or under chapter 1405 of that title, as added by this title, or having been found qualified for Federal recognition in a higher grade under chapter 3 of title 32, United States Code [32 USCS @@ 301 et seq.], after the effective date of this title [see @ 1691(b) of Act Oct. 5, 1994, P.L. 103-337, which appears as 10 USCS @ 10001 note]."

INTERPRETIVE NOTES AND DECISIONS

Exceptions to 10 USCS @ 1406 are limited to cases of direct fraud or misrepresentation on part of person to whom notice is sent, and showing that member possibly should have had reasonable doubt as to propriety of notice is insufficient to serve as basis for denial of retirement pay at age 60, if member is otherwise qualified. (1979) 58 Op Comp Gen p. 390.

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*** WITH A GAP OF 160 AND 164 ***

TITLE 10. ARMED FORCES

SUBTITLE A. GENERAL MILITARY LAW

PART II. PERSONNEL

CHAPTER 71. COMPUTATION OF RETIRED PAY

10 USCS @ 1407 (1998)

@ 1407. Retired pay base for members who first became members after September 7, 1980: high-36 month average

(a) Use of retired pay base in computing retired pay. The retired pay or retainer pay of any person entitled to that pay who first became a member of a uniformed service after September 7, 1980, is computed using the retired pay base or retainer pay base determined under this section.

(b) High-three average. The retired pay base or retainer pay base of a person under this section is the person's high-three average determined under subsection (c) or (d).

(c) Computation of high-three average for members entitled to retired or retainer pay for regular service.

(1) General rule. The high-three average of a member entitled to retired or retainer pay under any provision of law other than section 1204 or 1205 or section 12731 of this title is the amount equal to--

(A) the total amount of monthly basic pay to which the member was entitled for the 36 months (whether or not consecutive) out of all the months of active service of the member for which the monthly basic pay to which the member was entitled was the highest, divided by

(B) 36.

(2) Special rule for short-term disability retirees. In the case of a member who is entitled to retired pay under section 1201 or 1202 of this title and who has completed less than 36 months of active service, the member's high-three average (notwithstanding paragraph (1)) is the amount equal to--

(A) the total amount of basic pay to which the member was entitled during the period of the member's active service, divided by

(B) the number of months (including any fraction thereof) of the member's active service.

(d) Computation of high-three average for members and former members entitled to retired pay for nonregular service.

(1) Retired pay under chapter 1223 [10 USCS @@ 12731 et seq.]. The high-three average of a member or former member entitled to retired pay under section 12731 of this title is the amount equal to--

(A) the total amount of monthly basic pay to which the member or former member was entitled during the member or former member's high-36 months (or to which the member or former member would have been entitled if the member or former member had served on active duty during the entire period of the member or former member's high-36 months), divided by

(B) 36.

(2) Nonregular service disability retired pay. The high-three average of a member entitled to retired pay under section 1204 or 1205 of this title is the amount equal to--

(A) the total amount of monthly basic pay to which the member was entitled during the member's high-36 months (or to which the member would have been entitled if the member had served on active duty during the entire period of the member's high-36 months), divided by

(B) 36.

(3) Special rule for short-term disability retirees. In the case of a member who is entitled to retired pay under section 1204 or 1205 of this title and who was a member for less than 36 months before being retired under that section, the member's high-three average (notwithstanding paragraph (2)) is the amount equal to--

(A) the total amount of basic pay to which the member was entitled during the entire period the member was a member of a uniformed service before being so retired (or to which the member would have been entitled if the member had served on active duty during the entire period the member was a member of a uniformed service before being so retired), divided by

(B) the number of months (including any fraction thereof) which the member was a member before being so retired.

(4) High-36 months. The high-36 months of a member or former member whose retired pay is covered by paragraph (1) or (2) are the 36 months (whether or not consecutive) out of all the months before the member or former member became entitled to retired pay for which the monthly basic pay to which the member or former member was entitled (or would have been entitled if serving on active duty during those months) was the highest. In the case of a former member, only months during which the former member was a member of a uniformed service may be used for purposes of the preceding sentence.

(e) Limitation for enlisted members retiring with less than 30 years' service. In the case of a member who is retired under section 3914 or 8914 of this title or who is transferred to the Fleet Reserve or Fleet Marine Corps Reserve under section 6330 of this title, the member's high-36 average shall be computed using only rates of basic pay applicable to months of active duty of the member as an enlisted member.

(f), (g) [Deleted]

HISTORY: (Added Sept. 8, 1980, P.L. 96-342, Title VIII, @ 813(a)(1), 94 Stat. 1100; Dec. 12, 1980, P.L. 96-513, Title I, @ 113(c), Title V, Part A, @ 501(21), Part B, @ 511(53), 94 Stat. 2877, 2908, 2925.)

(Added July 1, 1986, P.L. 99-348, Title I, @ 104(b) in part, 100 Stat. 689; Nov. 29, 1989, P.L. 101-189, Div A, Title VI, Part F, @ 651(a), (b)(2), 103 Stat. 1458, 1459; Oct. 5, 1994, P.L. 103-337, Div A, Title XVI, Subtitle C, @ 1662(j)(5), 108 Stat. 3004; Feb. 10, 1996, P.L. 104-106, Div A, Title XV, @ 1501(c)(15), 110 Stat. 499.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

A prior @ 1407 (Act Sept. 8, 1980, P.L. 96-342, Title VIII, @ 813(a)(1), 94 Stat. 1100; Dec. 12, 1980, P.L. 96-513, Title I, @ 113(c), Title V, Part A, @ 501(21), Part B, @ 511(53), 94 Stat. 2877, 2908, 2925.) was repealed by Act July 1, 1986, P.L. 99-348, Title I, @ 104(b) in part, 100 Stat. 686. It related to

retired pay base.

Amendments:

1980. Act Dec. 12, 1980 (effective upon enactment on 12/12/80, as provided by @ 701(b)(3) of such Act, which appears as 10 USCS @ 101 note), in subsec.

(a)(1), substituted "after September 7, 1980" for "on or after the date of the enactment of the Department of Defense Authorization Act, 1981".

Such Act further (effective 9/15/81, as provided by @ 701(a) of such Act, which appears as 10 USCS @ 101 note), in subsec. (b)(4) inserted "633, 634, 635, 636, 1251,"; in subsec. (d)(1) substituted "or 6383" for "6381, 6383, 6390, 6394, 6396, 6398, or 6400".

1989. Act Nov. 29, 1989, in subsec. (b), substituted "person" for "member" and "person's" for "member's" and inserted "or (d)"; and deleted subsec. (c), which read:

"(c) Computation of high-three average.

(1) Formula. For the purposes of this section, a member's high-three average is the amount equal to--

"(A) the total amount of monthly basic pay to which the member was entitled for the member's high-36 months, divided by

"(B) 36.

"(2) High-36 months defined.

(A) General rule. A member's high-36 months are the 36 months out of all the months of active duty served by the member as a member of a uniformed service for which the monthly basic pay to which the member was entitled was the highest.

"(B) Rule for non-regular service retirees. In the case of a member who is entitled to retired pay under section 1204 or 1205 of this title or under chapter 67 of this title, a member's high-36 months are the 36 months out of all the months the member was a member of a uniformed service before becoming entitled to retired pay for which the monthly basic pay to which the member would have been entitled had he served on active duty during those months was the highest."

Such Act further redesignated subsec. (d) as subsec. (e); added new subsecs. (c) and (d); and deleted former subsecs. (e)-(g), which read:

"(e) Special rules for short-term disability retirees.

(1) Members entitled to retired pay under section 1201 or 1202. In the case of a member who--

"(A) is entitled to retired pay under section 1201 or 1202 of this title; and

"(B) served on active duty for less than 36 months, the months (including any fraction thereof) that the member served on active duty shall be deemed to be the member's high-36 months.

"(2) Members entitled to retired pay under section 1204 or 1205. In the case of a member who--

"(A) is entitled to retired pay under section 1204 or 1205 of this title; and

"(B) was a member of a uniformed service for less than 36 months, the months (including any fraction thereof) that the member was such a member shall be deemed to be the member's high-36 months.

"(f) Special rule for members retiring with non-regular service.

(1) Disability retirement. In the case of a member of a uniformed service who is entitled to retired pay under section 1204 or 1205 of this title (relating to members on active duty for 30 days or less), the high-36 average is determined as if the member served on active duty and was entitled to basic pay for the member's high-36 months.

10 USCS @ 1407 (1998)

"(2) Chapter 67 retirement. In the case of a person who is entitled to retired pay under section 1331 of this title (relating to retired pay for non-regular service), the person's high-36 average is determined as if the person served on active duty and was entitled to basic pay for the person's high-36 months.

"(g) Definition. In this section, the term 'years of creditable service' means the number of years of service creditable to a member in computing the member's retired or retainer pay (including 1/12 of a year for each full month of service that is in addition to the number of full years of service of the member)."

1994. Act Oct. 5, 1994 (effective 12/1/94 as provided by @ 1691 of such Act, which appears as 10 USCS @ 10001 note) purported to amend subsecs. (c)(2)(B) and (f)(2) by striking out "chapter 67" and "section 1331" and by inserting in lieu thereof "chapter 1223" and "section 12731", respectively; however, the amendments could not be executed because the matter to be stricken did not appear in such subsections.

1996. Act Feb. 10, 1996 (effective 12/1/94 and as if included as amendments made by Title XVI of Act Oct. 5, 1994 as originally enacted, as provided by @ 1501(c) of such Act), in subsec. (c)(1), in the introductory matter, substituted "section 12731" for "section 1331"; and, in subsec. (d)(1), in the introductory matter, substituted "chapter 1223" for "chapter 67" and substituted "section 12731" for "section 1331".

Other provisions:

Effective date of Dec. 12, 1980 amendment. Act Dec. 12, 1980, P.L. 96-513, Title VII, @ 701(a), 94 Stat. 2955, provided that the amendment made to this section shall take effect on September 15, 1981, except as provided in @ 701(b)(1) of such Act Dec. 12, 1980, which appears as 10 USCS @ 101 note.

NOTES:

CROSS REFERENCES

This section is referred to in 10 USCS @@ 1401, 1402, 1402a, 3991, 3992, 6151, 6322, 6323, 6325, 6326, 6330, 6383, 8991, 8992; 14 USCS @ 423; 33 USCS @ 8530; 42 USCS @@ 211, 212.

INTERPRETIVE NOTES AND DECISIONS

Erroneous payments of basic pay are not includable in computation of service member's retirement pay base; provision that retired pay base is computed on basic pay "received" is limited to basic pay service member was legally entitled to receive. (1983) 62 Op Comp Gen p 157.

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TITLE 10. ARMED FORCES
SUBTITLE A. GENERAL MILITARY LAW
PART II. PERSONNEL
CHAPTER 71. COMPUTATION OF RETIRED PAY

10 USCS @ 1409 (1998)

@ 1409. Retired pay multiplier

(a) Retired pay multiplier for regular-service non-disability retirement. In computing--

(1) the retired pay of a member of a uniformed service who is entitled to that pay under any provision of law other than--

(A) chapter 61 of this title [10 USCS @@ 1201 et seq.] (relating to retirement or separation for physical disability); or

(B) chapter 1223 of this title [10 USCS @@ 12731 et seq.] (relating to retirement for non-regular service); or

(2) the retainer pay of a member who is transferred to the Fleet Reserve or the Fleet Marine Corps Reserve under section 6330 of this title,

the retired pay multiplier (or retainer pay multiplier) is the percentage determined under subsection (b).

(b) Percentage.

(1) General rule. Subject to paragraphs (2) and (3), the percentage to be used under subsection (a) is the product (stated as a percentage) of--

(A) $2 \frac{1}{2}$, and

(B) the member's years of creditable service (as defined in subsection

(c)).

(2) Reduction applicable to new-retirement members with less than 30 years of service. In the case of a member who first became a member of a uniformed service after July 31, 1986, has less than 30 years of creditable service, and is under the age of 62 at the time of retirement, the percentage determined under paragraph (1) shall be reduced by--

(A) 1 percentage point for each full year that the member's years of creditable service are less than 30; and

(B) $\frac{1}{12}$ of 1 percentage point for each month by which the member's years of creditable service (after counting all full years of such service) are less than a full year.

(3) 75 percent limit. In the case of a member with more than 30 years of creditable service, the percentage to be used under subsection (a) is 75 percent.

(c) Years of creditable service defined. In this section, the term "years of creditable service" means the number of years of service creditable to a member in computing the member's retired or retainer pay (including $\frac{1}{12}$ of a year for each full month of service that is in addition to the number of full years of service of the member).

10 USCS @ 1409 (1998)

HISTORY: (Added July 1, 1986, P.L. 99-348, Title I, @ 101, 100 Stat. 683; Nov. 29, 1989, P.L. 101-189, Div A, Title VI, Part F, @ 651(b)(3), 103 Stat. 1460; Oct. 5, 1994, P.L. 103-337, Div A, Title XVI, Subtitle C, @ 1662(j)(6), 108 Stat. 3005.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

1989. Act Nov. 29, 1989, in subsec. (a)(1), in the introductory matter, substituted "who is entitled to that pay" for "who is retired".

1994. Act Oct. 5, 1994 (effective 12/1/94 as provided by @ 1691 of such Act, which appears as 10 USCS @ 10001 note), in subsec. (a)(1)(B), substituted "chapter 1223" for "chapter 67".

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TITLE 10. ARMED FORCES
SUBTITLE A. GENERAL MILITARY LAW
PART II. PERSONNEL
CHAPTER 71. COMPUTATION OF RETIRED PAY

10 USCS @ 1411 (1998)

@ 1411. Rules of construction

(a) Construction of "first became a member". For purposes of this chapter [10 USCS @@ 1401 et seq.] and other provisions of law providing for computation of retired or retainer pay of members of the uniformed services, a person shall be considered to first become a member of a uniformed service on the date the person is first enlisted, inducted, or appointed in a uniformed service.

(b) References in tables. Section references in tables in this chapter [10 USCS @@ 1401 et seq.] are to sections of this title.

HISTORY: (Added July 1, 1986, P.L. 99-348, Title I, @ 105 in part, 100 Stat. 691.)

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TITLE 10. ARMED FORCES
SUBTITLE A. GENERAL MILITARY LAW
PART II. PERSONNEL
CHAPTER 71. COMPUTATION OF RETIRED PAY

10 USCS @ 1412 (1998)

@ 1412. Rounding to next lower dollar

Amounts computed under this chapter [10 USCS @@ 1401 et seq.], if not a multiple of \$ 1, shall be rounded to the next lower multiple of \$ 1.

HISTORY: (Added July 1, 1986, P.L. 99-348, Title I, @ 105 in part, 100 Stat. 691.)