

ENTITLEMENT TO RETIREMENT PAY AFTER OCTOBER 14, 1966; CONCLUSIVENESS

Section 3 of Pub. L. 89-652 provided that: “Notwithstanding section 1406 [now 12738] of title 10, United States Code, as added by this Act—

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

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

§ 12739. Computation of retired pay

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

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

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

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

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

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

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

(B) the product of—

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

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

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

(e)(1) If a member of the Retired Reserve is recalled to an active status in the Selected Reserve of the Ready Reserve under section 10145(d) of this title and completes not less than two years of service in such active status, the member is entitled to the recomputation under this section of the retired pay of the member.

(2) The Secretary concerned may reduce the two-year service requirement specified in paragraph (1) in the case of a member who—

(A) is recalled to serve in a position of adjutant general required under section 314 of title 32 or in a position of assistant adjutant general subordinate to such a position of adjutant general;

(B) completes at least one year of service in such position; and

(C) fails to complete the minimum two years of service solely because the appointment of the member to such position is terminated or vacated as described in section 324(b) of title 32.

(Added Pub. L. 103-337, div. A, title XVI, §1662(j)(1), Oct. 5, 1994, 108 Stat. 3004; amended Pub. L. 107-314, div. A, title VI, §632(a), (b), Dec. 2, 2002, 116 Stat. 2572; Pub. L. 109-364, div. A, title VI, §642(b), Oct. 17, 2006, 120 Stat. 2259; Pub. L. 111-84, div. A, title VI, §642(a), Oct. 28, 2009, 123 Stat. 2365.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in formula 3 of the table in section 1401(a) of this title, prior to amendment by Pub. L. 103-337, §1662(j)(2).

AMENDMENTS

2009—Subsec. (e). Pub. L. 111-84 added subsec. (e).

2006—Subsec. (c). Pub. L. 109-364 designated existing provisions as par. (1), substituted “Except as provided in paragraph (2), the” for “The”, and added par. (2).

2002—Subsec. (b). Pub. L. 107-314, §632(a)(2), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 107-314, §632(a)(1), (b), redesignated subsec. (b) as (c) and substituted “total amount of the monthly retired pay computed under subsections (a) and (b)” for “amount computed under subsection (a)”. Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 107-314, §632(a)(1), redesignated subsec. (c) as (d).

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-314, div. A, title VI, §632(c), Dec. 2, 2002, 116 Stat. 2572, provided that: “The amendments made by subsections (a) and (b) [amending this section] shall take effect on October 1, 2002, and shall apply with respect to retired pay for months beginning on or after that date.”

EFFECTIVE DATE

Section effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103-337, set out as a note under section 10001 of this title.

§ 12740. Eligibility; denial upon certain punitive discharges or dismissals

A person who—

(1) is convicted of an offense under the Uniform Code of Military Justice (chapter 47 of this title) and whose sentence includes death; or

(2) is separated pursuant to sentence of a court-martial with a dishonorable discharge, a bad conduct discharge, or (in the case of an officer) a dismissal,

is not eligible for retired pay under this chapter.

(Added Pub. L. 104-106, div. A, title VI, §632(a)(1), Feb. 10, 1996, 110 Stat. 365.)

EFFECTIVE DATE

Section 632(b) of Pub. L. 104-106 provided that: “Section 12740 of title 10, United States Code, as added by subsection (a), shall apply with respect to court-mar-