

from active duty through the programs provided under section 1174a and 1175 of title 10, United States Code—

“(A) elected not to accept such discharge or separation; and

“(B) submits an application under subsection (b) during the two-year period beginning on the later of the date of the enactment of this Act [Nov. 30, 1993] and the date of such discharge or separation.

“(b) APPLICATION.—A review under this section shall be conducted in any case submitted to the Secretary concerned by application from the officer or former officer under regulations prescribed by the Secretary.

“(c) PURPOSE OF REVIEW.—(1) The review under this section shall be designed to evaluate the effectiveness of the counseling of the officer before the convening of the board to ensure that the officer was properly informed that selection for discharge or other separation from active duty was a potential result of being within the group of officers to be considered by the board and that the officer was not improperly informed that such selection in that officer's personal case was unlikely.

“(2) The Board for the Correction of Military Records of a military department shall render a decision in each case under this section not later than 60 days after receipt by the Secretary concerned of an application under subsection (b).

“(d) REMEDY.—Upon a finding of ineffective counseling under subsection (c), the Secretary shall provide the officer the opportunity to participate, at the officer's option, in any one of the following programs for which the officer meets all eligibility criteria:

“(1) The Special Separation Benefits program under section 1174a of title 10, United States Code.

“(2) The Voluntary Separation Incentive program under section 1175 of such title.

“(3) Retirement under the authority provided by section 4403 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102-484; 106 Stat. 2702; 10 U.S.C. 1293 note).

“(e) EFFECTIVE DATE.—This section shall apply with respect to officers separated after September 30, 1990.”

SEPARATION PAYMENTS; REDUCTIONS AND PROHIBITIONS

Pub. L. 103-335, title VIII, §8106A, Sept. 30, 1994, 108 Stat. 2645, as amended by Pub. L. 104-6, title I, §105(a), Apr. 10, 1995, 109 Stat. 79, which provided that members who separated after Sept. 30, 1994, from active duty or full-time National Guard duty in a military department pursuant to a Special Separation Benefits program under section 1174a of this title or a Voluntary Separation Incentive program under section 1175 of this title would have their separation payments reduced by the amount of certain bonus payments and eliminated if they are rehired within 180 days by the Department of Defense in a civilian position and that civilian Department of Defense employees would not receive voluntary separation payments if rehired by a Federal agency within 180 days of separating from the Department of Defense, was from the Department of Defense Appropriations Act, 1995, and was not repeated in subsequent appropriation acts. Similar provisions were contained in the following prior appropriation act:

Pub. L. 103-139, title VIII, §8127, Nov. 11, 1993, 107 Stat. 1469.

COMMENCEMENT OF PROGRAM

Pub. L. 102-190, div. A, title VI, §661(b), Dec. 5, 1991, 105 Stat. 1395, provided that: “The Secretary of each military department shall commence the program required by section 1174a of title 10, United States Code (as added by subsection (a)), not later than 60 days after the date of the enactment of this Act [Dec. 5, 1991].”

REPORT ON PROGRAMS

Pub. L. 102-190, div. A, title VI, §663, Dec. 5, 1991, 105 Stat. 1399, directed Secretary, not later than 180 days after Dec. 5, 1991, to submit to Congress a report containing the Secretary's assessment of effectiveness of

programs established under sections 1174a and 1175 of this title.

§ 1175. Voluntary separation incentive

(a)(1) Consistent with this section and the availability of appropriations for this purpose, the Secretary of Defense and the Secretary of Homeland Security may provide a financial incentive to members of the armed forces described in subsection (b) for voluntary appointment, enlistment, or transfer to a reserve component, requested and approved under subsection (c).

(2)(A) Except as provided in subparagraph (B), a financial incentive provided a member under this section shall be paid for the period equal to twice the number of years of service of the member, computed as provided in subsection (e)(5).

(B) If, before the expiration of the period otherwise applicable under subparagraph (A) to a member receiving a financial incentive under this section, the member is separated from a reserve component or is transferred to the Retired Reserve, the period for payment of a financial incentive to the member under this section shall terminate on the date of the separation or transfer unless—

(i) the separation or transfer is required by reason of the age or number of years of service of the member;

(ii) the separation or transfer is required by reason of the failure of selection for promotion or the medical disqualification of the member, except in a case in which the Secretary of Defense or the Secretary of Homeland Security determines that the basis for the separation or transfer is a result of a deliberate action taken by the member with the intent to avoid retention in the Ready Reserve or Standby Reserve; or

(iii) in the case of a separation, the member is separated from the reserve component for appointment or enlistment in or transfer to another reserve component of an armed force for service in the Ready Reserve or Standby Reserve of that armed force.

(b) The Secretary of Defense and the Secretary of Homeland Security may provide the incentive to a member of the armed forces if the member—

(1) has served on active duty or full-time National Guard duty or any combination of active duty and full-time National Guard duty for more than 6 but less than 20 years;

(2) has served at least 5 years of continuous active duty or full-time National Guard duty or any combination of active duty and full-time National Guard duty immediately preceding the date of separation;

(3) meets such other requirements as the Secretary may prescribe from time to time, which may include requirements relating to—

(A) years of service;

(B) skill or rating;

(C) grade or rank; and

(D) remaining period of obligated service.

(c) A member of the armed forces offered a voluntary separation incentive under this section shall be offered the opportunity to request separation under a program established pursu-

ant to section 1174a of this title. If the Secretary concerned approves a request for separation under either such section, the member shall be separated under the authority of the section selected by such member.

(d)(1) A member of the armed forces described in subsection (b) may request voluntary appointment, enlistment, or transfer to a reserve component accompanied by this incentive, provided the member has completed 6 years of active service.

(2) The Secretary, in his discretion, may approve or disapprove a request according to the needs of the armed forces.

(3) After December 31, 2001, the Secretary may not approve a request.

(e)(1) The annual payment of the incentive shall equal 2.5 percent of the monthly basic pay the member receives on the date appointed, enlisted, or transferred to the reserve component, multiplied by twelve and multiplied again by the member's years of service.

(2) A member entitled to voluntary separation incentive payments who is also entitled to basic pay for active or reserve service, or compensation for inactive duty training, may elect to have a reduction in the voluntary separation incentive payable for the same period in an amount not to exceed the amount of the basic pay or compensation received for that period.

(3)(A) A member who has received the voluntary separation incentive and who later qualifies for retired or retainer pay under this title shall have deducted from each payment of such retired or retainer pay an amount, in such schedule of monthly installments as the Secretary of Defense shall specify, taking into account the financial ability of the member to pay and avoiding the imposition of undue financial hardship on the member and member's dependents, until the total amount deducted is equal to the total amount of voluntary separation incentive so paid. If the member elected to have a reduction in voluntary separation incentive for any period pursuant to paragraph (2), the deduction required under the preceding sentence shall be reduced as the Secretary of Defense shall specify.

(B) If a member is receiving simultaneous voluntary separation incentive payments and retired or retainer pay, the member may elect to terminate the receipt of voluntary separation incentive payments. Any such election is permanent and irrevocable. The rate of monthly recoupment from retired or retainer pay of voluntary separation incentive payments received after such an election shall be reduced by a percentage that is equal to a fraction with a denominator equal to the number of months that the voluntary separation incentive payments were scheduled to be paid and a numerator equal to the number of months that would not be paid as a result of the member's decision to terminate the voluntary separation incentive.

(4) A member who is receiving voluntary separation incentive payments shall not be deprived of this incentive by reason of entitlement to disability compensation under the laws administered by the Department of Veterans Affairs, but there shall be deducted from voluntary separation incentive payments an amount equal to

the amount of any such disability compensation concurrently received. Notwithstanding the preceding sentence, no deduction may be made from voluntary separation incentive payments for any disability compensation received because of an earlier period of active duty if the voluntary separation incentive is received because of discharge or release from a later period of active duty.

(5) The years of service of a member for purposes of this section shall be computed in accordance with section 1405 of this title.

(f) The member's right to incentive payments shall not be transferable, except that the member may designate beneficiaries to receive the payments in the event of the member's death.

(g) Subject to subsection (h), payments under this provision shall be paid from appropriations available to the Department of Defense and the Department of Homeland Security for the Coast Guard.

(h)(1) There is established on the books of the Treasury a fund to be known as the "Voluntary Separation Incentive Fund" (hereinafter in this subsection referred to as the "Fund"). The Fund shall be administered by the Secretary of the Treasury. The Fund shall be used for the accumulation of funds in order to finance on an actuarially sound basis the liabilities of the Department of Defense under this section.

(2) There shall be deposited in the Fund the following, which shall constitute the assets of the Fund:

(A) Amounts paid into the Fund under paragraphs (5), (6), and (7).

(B) Any amount appropriated to the Fund.

(C) Any return on investment of the assets of the Fund.

(3) All voluntary separation incentive payments made by the Secretary of Defense after December 31, 1992, under this section shall be paid out of the Fund. To the extent provided in appropriation Acts, the assets of the Fund shall be available to the Secretary to pay voluntary separation incentives under this section.

(4) The Department of Defense Board of Actuaries (hereinafter in this subsection referred to as the "Board") shall perform the same functions regarding the Fund, as provided in this subsection, as such Board performs regarding the Department of Defense Military Retirement Fund.

(5) Not later than January 1, 1993, the Board shall determine the amount that is the present value, as of that date, of the future benefits payable under this section in the case of persons who are separated pursuant to this section before that date. The amount so determined is the original unfunded liability of the Fund. The Board shall determine an appropriate amortization period and schedule for liquidation of the original unfunded liability. The Secretary shall make deposits to the Fund in accordance with that amortization schedule.

(6) For persons separated under this section on or after January 1, 1993, the Secretary shall deposit in the Fund during the period beginning on that date and ending on September 30, 1999—

(A) such sums as are necessary to pay the current liabilities under this section during such period; and

(B) the amount equal to the present value, as of September 30, 1999, of the future benefits payable under this section, as determined by the Board.

(7)(A) For each fiscal year after fiscal year 1999, the Board shall—

(i) carry out an actuarial valuation of the Fund and determine any unfunded liability of the Fund which deposits under paragraphs (5) and (6) do not liquidate, taking into consideration any cumulative actuarial gain or loss to the Fund;

(ii) determine the period over which that unfunded liability should be liquidated; and

(iii) determine for the following fiscal year, the total amount, and the monthly amount, of the Department of Defense contributions that must be made to the Fund during that fiscal year in order to fund the unfunded liabilities of the Fund over the applicable amortization periods.

(B) The Board shall carry out its responsibilities for each fiscal year in sufficient time for the amounts referred to in subparagraph (A)(iii) to be included in budget requests for that fiscal year.

(C) The Secretary of Defense shall pay into the Fund at the end of each month as the Department of Defense contribution to the Fund the amount necessary to liquidate unfunded liabilities of the Fund in accordance with the amortization schedules determined by the Board.

(8) Amounts paid into the Fund under this subsection shall be paid from funds available for the pay of members of the armed forces under the jurisdiction of the Secretary of each military department.

(9) The investment provisions of section 1467 of this title shall apply to the Voluntary Separation Incentive Fund.

(i) The Secretary of Defense and the Secretary of Homeland Security may issue such regulations as may be necessary to carry out this section.

(j) A member of the armed forces who is provided a voluntary separation incentive under this section shall be eligible for the same benefits and services as are provided under chapter 58 of this title, sections 452 and 453(c) of title 37, and section 503(c) of the National Defense Authorization Act for Fiscal Year 1991 (104 Stat. 1558; 37 U.S.C. 476¹ note) for members of the armed forces who are involuntarily separated within the meaning of section 1141 of this title.

(Added Pub. L. 102-190, div. A, title VI, § 662(a)(1), Dec. 5, 1991, 105 Stat. 1396; amended Pub. L. 102-484, div. A, title X, § 1052(16), div. D, title XLIV, §§ 4405(b), 4406(a), (b), 4422(b), Oct. 23, 1992, 106 Stat. 2499, 2706, 2707, 2719; Pub. L. 103-160, div. A, title V, §§ 502, 561(h), Nov. 30, 1993, 107 Stat. 1644, 1668; Pub. L. 103-337, div. A, title V, § 542(c), Oct. 5, 1994, 108 Stat. 2769; Pub. L. 105-261, div. A, title V, §§ 561(b), 563(a), (b), Oct. 17, 1998, 112 Stat. 2025, 2028; Pub. L. 106-398, § 1 [[div. A], title V, § 571(b), 572(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A-134, 1654A-135; Pub. L. 107-296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 110-181, div. A, title IX, § 906(c)(1), Jan. 28, 2008,

122 Stat. 277; Pub. L. 111-32, title III, § 318(b), June 24, 2009, 123 Stat. 1874; Pub. L. 112-81, div. A, title VI, § 631(f)(4)(A), Dec. 31, 2011, 125 Stat. 1465; Pub. L. 112-239, div. A, title X, § 1076(a)(9), Jan. 2, 2013, 126 Stat. 1948; Pub. L. 117-263, div. A, title VI, § 626(c)(3), Dec. 23, 2022, 136 Stat. 2628.)

Editorial Notes

REFERENCES IN TEXT

Section 503(c) of the National Defense Authorization Act for Fiscal Year 1991, referred to in subsec. (j), is section 503(c) of Pub. L. 101-510, div. A, title V, Nov. 5, 1990, 104 Stat. 1558, which was formerly set out as a note under section 476 of Title 37, Pay and Allowances of the Uniformed Services, prior to transfer and is now set out as a note under section 453 of Title 37.

AMENDMENTS

2022—Subsec. (j). Pub. L. 117-263 substituted “sections 452 and 453(c)” for “sections 474 and 476”.

2013—Subsec. (j). Pub. L. 112-239, § 1076(a)(9), made technical amendment to directory language of Pub. L. 112-81, § 631(f)(4)(A). See 2011 Amendment note below.

2011—Subsec. (j). Pub. L. 112-81, § 631(f)(4)(A), as amended by Pub. L. 112-239, § 1076(a)(9), substituted “474” for “404” and substituted “476” for “406” in two places.

2009—Subsec. (e)(3)(A). Pub. L. 111-32 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “A member who has received the voluntary separation incentive and who qualifies for retired or retainer pay under this title shall have deducted from each payment of such retired or retainer pay so much of such pay as is based on the service for which he received the voluntary separation incentive until the total amount deducted equals the total amount of voluntary separation incentive received. If the member elected to have a reduction in voluntary separation incentive for any period pursuant to paragraph (2), the deduction required under the preceding sentence shall be reduced accordingly.”

2008—Subsec. (h)(4). Pub. L. 110-181 struck out “Retirement” before “Board of Actuaries”.

2002—Subsecs. (a)(1), (2)(B)(ii), (b), (g), (i). Pub. L. 107-296 substituted “of Homeland Security” for “of Transportation”.

2000—Subsec. (d)(3). Pub. L. 106-398, § 1 [[div. A], title V, § 571(b)], substituted “December 31, 2001” for “September 30, 2001”.

Subsec. (e)(3). Pub. L. 106-398, § 1 [[div. A], title V, § 572(a)], designated existing provisions as subpar. (A) and added subpar. (B).

1998—Subsec. (a). Pub. L. 105-261, § 563(a), designated existing provisions as par. (1), struck out “, for the period of time the member serves in a reserve component” after “under subsection (c)”, and added par. (2).

Subsec. (d)(3). Pub. L. 105-261, § 561(b), substituted “September 30, 2001” for “September 30, 1999”.

Subsec. (e)(1). Pub. L. 105-261, § 563(b), struck out at end “The annual payment will be made for a period equal to the number of years that is equal to twice the number of years of service of the member.”

1994—Subsecs. (a), (b). Pub. L. 103-337, § 542(c)(1), inserted “and the Secretary of Transportation” after “Secretary of Defense”.

Subsec. (c). Pub. L. 103-337, § 542(c)(2), struck out “of the military department” after “Secretary”.

Subsec. (g). Pub. L. 103-337, § 542(c)(3), inserted “and the Department of Transportation for the Coast Guard” before period at end.

Subsec. (h)(3). Pub. L. 103-337, § 542(c)(4), inserted “by the Secretary of Defense” after “incentive payments made” and “to the Secretary” after “shall be available”.

Subsec. (i). Pub. L. 103-337, § 542(c)(5), inserted “and the Secretary of Transportation” after “Secretary of Defense”.

¹ See References in Text note below.

1993—Subsec. (d)(1). Pub. L. 103-160, §502, struck out “before December 5, 1991” after “active service”.

Subsecs. (d)(3), (h)(6). Pub. L. 103-160, §561(h)(1), substituted “September 30, 1999” for “September 30, 1995” wherever appearing.

Subsec. (h)(7)(A). Pub. L. 103-160, §561(h)(2), substituted “fiscal year 1999” for “fiscal year 1996”.

1992—Subsec. (a). Pub. L. 102-484, §1052(16)(A), substituted “reserve component” for “Reserve component” after “transfer to a”.

Subsec. (b)(1), (2). Pub. L. 102-484, §4422(b)(1), (2), inserted “or full-time National Guard duty or any combination of active duty and full-time National Guard duty” after “active duty”.

Subsec. (b)(3), (4). Pub. L. 102-484, §4424(b)(3), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: “if a Reserve, is on the active duty list; and”.

Subsec. (d)(1). Pub. L. 102-484, §1052(16)(B), substituted “before December 5, 1991” for “prior to the time this provision is enacted”.

Subsec. (e)(2). Pub. L. 102-484, §4406(a)(1), substituted “may elect to have a reduction in the voluntary separation incentive payable for the same period in an amount not to exceed the amount of the basic pay or compensation received for that period.” for “shall forfeit an amount of voluntary separation incentive payable for the same period that is equal to the total amount of basic pay, or compensation, received.”

Subsec. (e)(3). Pub. L. 102-484, §4406(a)(2), inserted at end “If the member elected to have a reduction in voluntary separation incentive for any period pursuant to paragraph (2), the deduction required under the preceding sentence shall be reduced accordingly.”

Subsec. (e)(6). Pub. L. 102-484, §4406(b), struck out par. (6) which read as follows: “Years of service that form the basis of the payment under paragraph (5) may not be counted in computing eligibility for, or the amount of, annuities under title 5 or any other law providing annuities to Federal civilian employees.”

Subsec. (j). Pub. L. 102-484, §4405(b), added subsec. (j).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112-239, div. A, title X, §1076(a), Jan. 2, 2013, 126 Stat. 1947, provided that the amendment made by section 1076(a)(9) is effective Dec. 31, 2011, and as if included in Pub. L. 112-81 as enacted.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111-32 applicable to any repayments of separation pay, severance pay, readjustment pay, special separation benefit, or voluntary separation incentive, that occur on or after June 24, 2009, including any ongoing repayment actions that were initiated prior to such amendment, see section 318(c) of Pub. L. 111-32, set out as a note under section 1174 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107-296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-398, §1 [[div. A], title V, §572(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-136, provided that: “Subparagraph (B) of section 1175(e)(3) of title 10, United States Code, as added by subsection (a), shall apply with respect to decisions by members to terminate voluntary separation incentive payments under section 1175 of title 10, United States Code, to be effective after September 30, 2000.”

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-261, div. A, title V, §563(c), Oct. 17, 1998, 112 Stat. 2028, provided that: “The amendments made

by this section [amending this section] apply with respect to any person provided a voluntary separation incentive under section 1175 of title 10, United States Code (whether before, on, or after the date of the enactment of this Act) [Oct. 17, 1998].”

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-337 applicable only to members of the Coast Guard who are separated after Sept. 30, 1994, see section 542(e) of Pub. L. 103-337, set out as a note under section 1141 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 4405(b) of Pub. L. 102-484 applicable as if included in this section as enacted Dec. 5, 1991, with any benefits or services payable by reason of applicability of that amendment during the period beginning Dec. 5, 1991, and ending Oct. 23, 1992, to be subject to availability of appropriations, see section 4405(c) of Pub. L. 102-484, set out as a note under section 1174a of this title.

Pub. L. 102-484, div. D, title XLIV, §4406(c), Oct. 23, 1992, 106 Stat. 2707, provided that: “The amendments to section 1175 of title 10, United States Code, made by subsections (a) and (b) shall apply as if included in section 1175 of title 10, United States Code, as enacted on December 5, 1991.”

PAYMENT OF INCENTIVES FROM VOLUNTARY SEPARATION INCENTIVE FUND

Pub. L. 104-208, div. A, title I, §101(b) [title VIII, §8044], Sept. 30, 1996, 110 Stat. 3009-71, 3009-98, provided that: “During the current fiscal year and hereafter, voluntary separation incentives payable under 10 U.S.C. 1175 may be paid in such amounts as are necessary from the assets of the Voluntary Separation Incentive Fund established by section 1175(h)(1).”

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 104-61, title VIII, §8054, Dec. 1, 1995, 109 Stat. 662.

Pub. L. 103-335, title VIII, §8062, Sept. 30, 1994, 108 Stat. 2633.

Pub. L. 103-139, title VIII, §8073, Nov. 11, 1993, 107 Stat. 1457.

Pub. L. 102-396, title IX, §9106, Oct. 6, 1992, 106 Stat. 1927.

SEPARATION PAYMENTS; REDUCTIONS AND PROHIBITIONS

For provisions reducing, with certain exceptions, amounts received under this section by amounts received as bonus payments under chapter 5 of title 37 in case of members who separate from active duty or full-time National Guard duty in a military department and prohibiting such members from receiving Voluntary Separation Incentive program payments if rehired in DOD civilian position within 180 days of separation, see note set out under section 1174a of this title.

TAX TREATMENT OF INCENTIVE PAYMENT

Pub. L. 102-190, div. A, title VI, §662(b), Dec. 5, 1991, 105 Stat. 1398, provided that: “Notwithstanding the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.] and any other provision of law, any voluntary separation incentive paid to a member of the Armed Forces under section 1175 of title 10, United States Code (as added by subsection (a)), shall be includable in gross income for federal tax purposes only for the taxable year in which such incentive is paid to the participant or beneficiary of the member.”

§ 1175a. Voluntary separation pay and benefits

(a) IN GENERAL.—Under regulations approved by the Secretary of Defense, the Secretary concerned may provide voluntary separation pay and benefits in accordance with this section to eligible members of the armed forces who are