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Editorial Notes

AMENDMENTS

2021—Pub. L. 116-283, div. A, title V, § 508(a)(2), Jan. 1, 2021, 134 Stat. 3584, added items 1370 and 1370a and struck out former item 1370 “Commissioned officers: general rule; exceptions”.

1994—Pub. L. 103-337, div. A, title XVI, § 1671(b)(11), Oct. 5, 1994, 108 Stat. 3013, struck out item 1374 “Reserve commissioned officers: grade on retirement or transfer to Retired Reserve” and substituted “Temporary disability retired lists” for “Retired lists” in item 1376.

1980—Pub. L. 96-513, title V, § 501(20), Dec. 12, 1980, 94 Stat. 2908, added item 1370.

1958—Pub. L. 85-861, § 1(30), Sept. 2, 1958, 72 Stat. 1451, added item 1374.

§ 1370. Regular commissioned officers

(a) RETIREMENT IN HIGHEST GRADE IN WHICH SERVED SATISFACTORILY.—

(1) IN GENERAL.—Unless entitled to a different retired grade under some other provision of law, a commissioned officer (other than a commissioned warrant officer) of the Army, Navy, Air Force, Marine Corps, or Space Force who retires under any provision of law other than chapter 61 or 1223 of this title shall be retired in the highest permanent grade in which such officer is determined to have served on active duty satisfactorily.

(2) DETERMINATION OF SATISFACTORY SERVICE.—The determination of satisfactory service of an officer in a grade under paragraph (1) shall be made as follows:

(A) By the Secretary of the military department concerned, if the officer is serving in a grade at or below the grade of major general or rear admiral.

(B) By the Secretary of Defense, if the officer is serving or has served in a grade above the grade of major general or rear admiral.

(3) EFFECT OF MISCONDUCT IN LOWER GRADE IN DETERMINATION.—If the Secretary of a military department or the Secretary of Defense, as applicable, determines that an officer committed misconduct in a lower grade than the retirement grade otherwise provided for the officer by this section—

(A) such Secretary may deem the officer to have not served satisfactorily in any grade equal to or higher than such lower grade for purposes of determining the retirement grade of the officer under this section; and

(B) the grade next lower to such lower grade shall be the retired grade of the officer under this section.

(4) NATURE OF RETIREMENT OF CERTAIN RESERVE OFFICERS AND OFFICERS IN TEMPORARY GRADES.—A reserve officer, or an officer ap-

pointed to a position under section 601 of this title, who is notified that the officer will be released from active duty without the officer's consent and thereafter requests retirement under section 7311, 8323, or 9311 of this title and is retired pursuant to that request is considered for purposes of this section to have been retired involuntarily.

(5) NATURE OF RETIREMENT OF CERTAIN REMOVED OFFICERS.—An officer retired pursuant to section 1186(b)(1) of this title is considered for purposes of this section to have been retired voluntarily.

(b) RETIREMENT OF OFFICERS RETIRING VOLUNTARILY.—

(1) SERVICE-IN-GRADE REQUIREMENT.—In order to be eligible for voluntary retirement under any provision of this title in a grade above the grade of captain in the Army, Air Force, Marine Corps, or Space Force or lieutenant in the Navy, a commissioned officer of the Army, Navy, Air Force, Marine Corps, or Space Force must have served on active duty in that grade for a period of not less than three years, except that—

(A) subject to subsection (c), the Secretary of Defense may reduce such period to a period of not less than two years for any officer; and

(B) in the case of an officer to be retired in a grade at or below the grade of major general or rear admiral, the Secretary of Defense may authorize the Secretary of the military department concerned to reduce such period to a period of not less than two years.

(2) LIMITATION ON DELEGATION.—The authority of the Secretary of Defense in subparagraph (A) of paragraph (1) may not be delegated. The authority of the Secretary of a military department in subparagraph (B) of paragraph (1), as delegated to such Secretary pursuant to such subparagraph, may not be further delegated.

(3) WAIVER OF REQUIREMENT.—Subject to subsection (c), the President may waive the application of the service-in-grade requirement in paragraph (1) to officers covered by that paragraph in individual cases involving extreme hardship or exceptional or unusual circumstances. The authority of the President under this paragraph may not be delegated.

(4) LIMITATION ON REDUCTION OR WAIVER OF REQUIREMENT FOR OFFICERS UNDER INVESTIGATION OR PENDING MISCONDUCT.—In the case of an officer to be retired in a grade above the grade of colonel in the Army, Air Force, Marine Corps, or Space Force or captain in the Navy, the service-in-grade requirement in paragraph (1) may not be reduced pursuant to that paragraph, or waived pursuant to paragraph (3), while the officer is under investigation for alleged misconduct or while there is pending the disposition of an adverse personnel action against the officer.

(5) GRADE AND FISCAL YEAR LIMITATIONS ON REDUCTION OR WAIVER OF REQUIREMENTS.—The aggregate number of members of an armed force in a grade for whom reductions are made under paragraph (1), and waivers are made

under paragraph (3), in a fiscal year may not exceed—

(A) in the case of officers to be retired in a grade at or below the grade of major in the Army, Air Force, Marine Corps, or Space Force or lieutenant commander in the Navy, the number equal to two percent of the authorized active-duty strength for that fiscal year for officers of that armed force in that grade;

(B) in the case of officers to be retired in the grade of lieutenant colonel or colonel in the Army, Air Force, Marine Corps, or Space Force or commander or captain in the Navy, the number equal to four percent of the authorized active-duty strength for that fiscal year for officers of that armed force in the applicable grade; or

(C) in the case of officers to be retired in the grade of brigadier general or major general in the Army, Air Force, Marine Corps, or Space Force or rear admiral (lower half) or rear admiral in the Navy, the number equal to 10 percent of the authorized active-duty strength for that fiscal year for officers of that armed force in the applicable grade.

(6) NOTICE TO CONGRESS ON REDUCTION OR WAIVER OF REQUIREMENTS FOR GENERAL, FLAG, AND EQUIVALENT OFFICER GRADES.—In the case of an officer to be retired in a grade that is a general or flag officer grade who is eligible to retire in that grade only by reason of an exercise of the authority in paragraph (1) to reduce the service-in-grade requirement in that paragraph, or the authority in paragraph (3) to waive that requirement, the Secretary of Defense or the President, as applicable, shall, not later than 60 days prior to the date on which the officer will be retired in that grade, notify the Committees on Armed Services of the Senate and the House of Representatives of the exercise of the applicable authority with respect to that officer.

(7) RETIREMENT IN NEXT LOWEST GRADE FOR OFFICERS NOT MEETING REQUIREMENT.—An officer described in paragraph (1) whose length of service in the highest grade held by the officer while on active duty does not meet the period of the service-in-grade requirement applicable to the officer under this subsection shall, subject to subsection (c), be retired in the next lower grade in which the officer served on active duty satisfactorily, as determined by the Secretary of the military department concerned or the Secretary of Defense, as applicable.

(c) OFFICERS IN O-9 AND O-10 GRADES.—

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

cer served on active duty satisfactorily in such grade.

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

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

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

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

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

(4) CONSTRUCTION WITH OTHER NOTICE.—In the case of an officer under paragraph (1) to whom a reduction in the service-in-grade requirement under subsection (b)(1) or waiver under subsection (b)(3) applies, the requirement for notification under subsection (b)(6) is satisfied if the notification is included in the certification submitted by the Secretary of Defense under paragraph (1).

(d) CONDITIONAL RETIREMENT GRADE AND RETIREMENT FOR OFFICERS PENDING INVESTIGATION OR ADVERSE ACTION.—

(1) IN GENERAL.—When an officer serving in a grade at or below the grade of major general in the Army, Air Force, Marine Corps, or Space Force or rear admiral in the Navy is under investigation for alleged misconduct or pending the disposition of an adverse personnel action at the time of retirement, the Secretary of the military department concerned may—

(A) conditionally determine the highest permanent grade of satisfactory service on active duty of the officer pending completion of the investigation or resolution of the personnel action, as applicable; and

(B) retire the officer in that conditional grade, subject to subsection (e).

(2) OFFICERS IN O-9 AND O-10 GRADES.—When an officer described by subsection (c)(1) is under investigation for alleged misconduct or pending the disposition of an adverse personnel action at the time of retirement, the Secretary of Defense may—

(A) conditionally determine the highest permanent grade of satisfactory service on active duty of the officer, pending completion of the investigation or personnel action, as applicable; and

(B) retire the officer in that conditional grade, subject to subsection (e).

(3) REDUCTION OR WAIVER OF SERVICE-IN-GRADE REQUIREMENT PROHIBITED FOR GENERAL, FLAG, AND EQUIVALENT OFFICER GRADES.—In conditionally determining the retirement grade of an officer under paragraph (1)(A) or

(2)(A) of this subsection to be a grade above the grade of colonel in the Army, Air Force, Marine Corps, or Space Force or captain in the Navy, the service-in-grade requirement in subsection (b)(1) may not be reduced pursuant to subsection (b)(1) or waived pursuant to subsection (b)(3).

(4) PROHIBITION ON DELEGATION.—The authority of the Secretary of a military department under paragraph (1) may not be delegated. The authority of the Secretary of Defense under paragraph (2) may not be delegated.

(e) FINAL RETIREMENT GRADE FOLLOWING RESOLUTION OF PENDING INVESTIGATION OR ADVERSE ACTION.—

(1) NO CHANGE FROM CONDITIONAL RETIREMENT GRADE.—If the resolution of an investigation or personnel action with respect to an officer who has been retired in a conditional retirement grade pursuant to subsection (d) results in a determination that the conditional retirement grade in which the officer was retired will not be changed, the conditional retirement grade of the officer shall, subject to paragraph (3), be the final retired grade of the officer.

(2) CHANGE FROM CONDITIONAL RETIREMENT GRADE.—If the resolution of an investigation or personnel action with respect to an officer who has been retired in a conditional retirement grade pursuant to subsection (d) results in a determination that the conditional retirement grade in which the officer was retired should be changed, the changed retirement grade shall be the final retired grade of the officer under this section, except that if the final retirement grade provided for an officer pursuant to this paragraph is the grade of lieutenant general or general in the Army, Air Force, Marine Corps, or Space Force or vice admiral or admiral in the Navy, the requirements in subsection (c) shall apply in connection with the retirement of the officer in such final retirement grade.

(3) RECALCULATION OF RETIRED PAY.—

(A) IN GENERAL.—If the final retired grade of an officer is as a result of a change under paragraph (2), the retired pay of the officer under chapter 71 of this title shall be recalculated accordingly, with any modification of the retired pay of the officer to go into effect as of the date of the retirement of the officer.

(B) PAYMENT OF HIGHER AMOUNT FOR PERIOD OF CONDITIONAL RETIREMENT GRADE.—If the recalculation of the retired pay of an officer results in an increase in retired pay, the officer shall be paid the amount by which such increased retired pay exceeded the amount of retired pay paid the officer for retirement in the officer's conditional grade during the period beginning on the date of the retirement of the officer in such conditional grade and ending on the effective date of the change of the officer's retired grade. For an officer whose retired grade is determined pursuant to subsection (c), the effective date of the change of the officer's retired grade for purposes of this subparagraph shall be the date that is 60 days after the date on which the Secretary of Defense submits to

the Committees on Armed Services of the Senate and the House of Representatives the certification required by subsection (c) in connection with the retired grade of the officer.

(C) RECOUPMENT OF OVERAGE DURING PERIOD OF CONDITIONAL RETIREMENT GRADE.—If the recalculation of the retired pay of an officer results in a decrease in retired pay, there shall be recouped from the officer the amount by which the amount of retired pay paid the officer for retirement in the officer's conditional grade exceeded such decreased retired pay during the period beginning on the date of the retirement of the officer in such conditional grade and ending on the effective date of the change of the officer's retired grade.

(f) FINALITY OF RETIRED GRADE DETERMINATIONS.—

(1) IN GENERAL.—Except for a conditional determination authorized by subsection (d), a determination of the retired grade of an officer pursuant to this section is administratively final on the day the officer is retired, and may not be reopened, except as provided in paragraph (2).

(2) REOPENING.—A final determination of the retired grade of an officer may be reopened as follows:

(A) If the retirement or retired grade of the officer was procured by fraud.

(B) If substantial evidence comes to light after the retirement that could have led to determination of a different retired grade under this section if known by competent authority at the time of retirement.

(C) If a mistake of law or calculation was made in the determination of the retired grade.

(D) If the applicable Secretary determines, pursuant to regulations prescribed by the Secretary of Defense, that good cause exists to reopen the determination of retired grade.

(3) APPLICABLE SECRETARY.—For purposes of this subsection, the applicable Secretary for purposes of a determination or action specified in this subsection is—

(A) the Secretary of the military department concerned, in the case of an officer retired in a grade at or below the grade of major general in the Army, Air Force, Marine Corps, or Space Force or rear admiral in the Navy; or

(B) the Secretary of Defense, in the case of an officer retired in a grade of lieutenant general or general in the Army, Air Force, Marine Corps, or Space Force or vice admiral or admiral in the Navy.

(4) NOTICE AND LIMITATION.—If a final determination of the retired grade of an officer is reopened in accordance with paragraph (2), the applicable Secretary—

(A) shall notify the officer of the reopening; and

(B) may not make an adverse determination on the retired grade of the officer until the officer has had a reasonable opportunity to respond regarding the basis for the reopening of the officer's retired grade.

(5) **ADDITIONAL NOTICE ON REOPENING FOR OFFICERS RETIRED IN O-9 AND O-10 GRADES.**—If the determination of the retired grade of an officer whose retired grade was provided for pursuant to subsection (c) is reopened, the Secretary of Defense shall also notify the President and the Committees on Armed Services of the Senate and the House of Representatives.

(6) **MANNER OF MAKING OF CHANGE.**—If the retired grade of an officer is proposed to be changed through the reopening of the final determination of an officer's retired grade under this subsection, the change in grade shall be made—

(A) in the case of an officer whose retired grade is to be changed to a grade at or below the grade of major general in the Army, Air Force, Marine Corps, or Space Force or rear admiral in the Navy in accordance with subsections (a) and (b)—

(i) by the Secretary of Defense (who may delegate such authority only as authorized by clause (ii)); or

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

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

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

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

(Added Pub. L. 116-283, div. A, title V, § 508(a)(1), Jan. 1, 2021, 134 Stat. 3574; amended Pub. L. 118-31, div. A, title XVII, § 1741(a)(5), Dec. 22, 2023, 137 Stat. 679; Pub. L. 118-159, div. A, title V, § 521(f)(1), title XVII, § 1701(a)(20), Dec. 23, 2024, 138 Stat. 1881, 2204.)

Editorial Notes

PRIOR PROVISIONS

A prior section 1370, Added Pub. L. 96-513, title I, § 112, Dec. 12, 1980, 94 Stat. 2876; amended Pub. L. 101-510, div.

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

AMENDMENTS

2024—Subsec. (b)(1). Pub. L. 118-159, § 1701(a)(20)(A), substituted “or Space Force” for “or, Space Force” in introductory provisions.

Subsec. (f)(6)(A). Pub. L. 118-159, § 1701(a)(20)(B)(i), inserted a comma after “Air Force” in introductory provisions.

Subsec. (f)(6)(B). Pub. L. 118-159, § 1701(a)(20)(B)(ii), inserted a comma after “Navy”.

Subsec. (g). Pub. L. 118-159, § 521(f)(1), substituted “Marine Corps, or Space Force, or rear admiral in the Navy” for “or Marine Corps, rear admiral in the Navy, or an equivalent grade in the Space Force”.

2023—Subsec. (a)(2). Pub. L. 118-31, § 1741(a)(5)(A), substituted “major general or rear admiral.” for “major general, rear admiral in the Navy, or the equivalent grade in the Space Force.” in subpars. (A) and (B).

Subsec. (b)(1). Pub. L. 118-31, § 1741(a)(5)(B)(i)(I), substituted “Marine Corps, or Space Force or lieutenant in the Navy,” for “or Marine Corps, lieutenant in the Navy, or the equivalent grade in the Space Force.” in introductory provisions.

Subsec. (b)(1)(B). Pub. L. 118-31, § 1741(a)(5)(B)(i)(II), substituted “major general or rear admiral” for “major general in the Army, Air Force, or Marine Corps, rear admiral in the Navy, or an equivalent grade in the Space Force”.

Subsec. (b)(4). Pub. L. 118-31, § 1741(a)(5)(B)(ii), substituted “Marine Corps, or Space Force or captain in the Navy,” for “or Marine Corps, captain in the Navy, or the equivalent grade in the Space Force.”.

Subsec. (b)(5)(A). Pub. L. 118-31, § 1741(a)(5)(B)(iii)(I), substituted “Marine Corps, or Space Force or lieutenant commander in the Navy,” for “or Marine Corps, lieutenant commander in the Navy, or the equivalent grade in the Space Force.”.

Subsec. (b)(5)(B). Pub. L. 118-31, § 1741(a)(5)(B)(iii)(II), substituted “Marine Corps, or Space Force or commander or captain in the Navy,” for “or Marine Corps, commander or captain in the Navy, or an equivalent grade in the Space Force.”.

Subsec. (b)(5)(C). Pub. L. 118-31, § 1741(a)(5)(B)(iii)(III), substituted “Marine Corps, or Space Force or rear admiral (lower half) or rear admiral in the Navy,” for “or Marine Corps, rear admiral (lower half) or rear admiral in the Navy, or an equivalent grade in the Space Force.”.

Subsec. (b)(6). Pub. L. 118-31, § 1741(a)(5)(B)(iv), struck out “, or an equivalent grade in the Space Force,” after “general or flag officer grade”.

Subsec. (c)(1). Pub. L. 118-31, § 1741(a)(5)(C), which directed amendment of par. (1) “by ‘or Marine Corps’ and all that follows through ‘Space Force’ and inserting

“Marine Corps, or Space Force or vice admiral or admiral in the Navy”, was executed by striking “or Marine Corps, vice admiral or admiral in the Navy, or an equivalent grade in the Space Force” and inserting “Marine Corps, or Space Force or vice admiral or admiral in the Navy” to reflect the probable intent of Congress.

Subsec. (d)(1). Pub. L. 118-31, §1741(a)(5)(D)(i), substituted “Marine Corps, or Space Force or rear admiral in the Navy” for “or Marine Corps, rear admiral in the Navy, or an equivalent grade in the Space Force”.

Subsec. (d)(3). Pub. L. 118-31, §1741(a)(5)(D)(ii), substituted “Marine Corps, or Space Force or captain in the Navy,” for “or Marine Corps, captain in the Navy, or the equivalent grade in the Space Force,”.

Subsec. (e)(2). Pub. L. 118-31, §1741(a)(5)(E), substituted “Marine Corps, or Space Force or vice admiral or admiral in the Navy,” for “or Marine Corps, vice admiral or admiral in the Navy, or an equivalent grade in the Space Force,”.

Subsec. (f)(3)(A). Pub. L. 118-31, §1741(a)(5)(F)(i)(I), which directed amendment of subpar. (A) by striking “or Marine Corps” and all that followed through “Space Force,” and inserting “Marine Corps, or Space Force or rear admiral in the Navy”, was executed by making the substitution for “or Marine Corps, rear admiral in the Navy, or the equivalent grade in the Space Force” to reflect the probable intent of Congress, as there was no comma following “Space Force”.

Subsec. (f)(3)(B). Pub. L. 118-31, §1741(a)(5)(F)(i)(II), which directed amendment of subpar. (B) by striking “or Marine Corps” and all that follows through “Space Force” and inserting “Marine Corps, or Space Force or vice admiral or admiral in the Navy”, was executed by striking “or Marine Corps, vice admiral or admiral in the Navy, or an equivalent grade in the Space Force” and inserting “Marine Corps, or Space Force or vice admiral or admiral in the Navy” to reflect the probable intent of Congress.

Subsec. (f)(6)(A). Pub. L. 118-31, §1741(a)(5)(F)(ii)(I), substituted “Marine Corps, or Space Force or rear admiral in the Navy” for “or Marine Corps, rear admiral in the Navy, or the equivalent grade in the Space Force,” in introductory provisions.

Subsec. (f)(6)(B). Pub. L. 118-31, §1741(a)(5)(F)(ii)(II), substituted “Marine Corps, or Space Force or vice admiral or admiral in the Navy” for “or Marine Corps, vice admiral or admiral in the Navy, or an equivalent grade in the Space Force,”.

Statutory Notes and Related Subsidiaries

OTHER REFERENCES

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

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

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

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

(a) RETIREMENT IN HIGHEST GRADE HELD SATISFACTORILY.—Unless entitled to a different grade, or to credit for satisfactory service in a different grade under some other provision of law, a per-

son who is entitled to retired pay under chapter 1223 of this title shall, upon application under section 12731 of this title, be credited with satisfactory service in the highest permanent grade in which that person served satisfactorily at any time in the armed forces, as determined by the Secretary of the military department concerned in accordance with this section.

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

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

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

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

(A) solely due to the requirements of a nondiscretionary provision of law requiring that transfer or discharge due to the person's age or years of service; or

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

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

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