

TITLE 10 - ARMED FORCES**Subtitle A - General Military Law****PART II - PERSONNEL****CHAPTER 73 - ANNUITIES BASED ON RETIRED OR RETAINER PAY****SUBCHAPTER I - RETIRED SERVICEMANS FAMILY PROTECTION PLAN****§ 1431. Election of annuity: members of armed forces**

- (a) This section applies to all members of the armed forces except—
- (1) members whose names are on a retired list other than a list maintained under section 12774 (a) of this title;
 - (2) cadets at the United States Military Academy, the United States Air Force Academy, or the Coast Guard Academy; and
 - (3) midshipmen.
- (b) To provide an annuity under section 1434 of this title, a person covered by subsection (a) may elect to receive a reduced amount of the retired pay or retainer pay to which he may become entitled as a result of service in his armed force. Except as otherwise provided in this section, unless it is made before he completes nineteen years of service for which he is entitled to credit in the computation of his basic pay, the election must be made at least two years before the first day for which retired pay or retainer pay is granted. However, if, because of military operations, a member is assigned to an isolated station or is missing, interned in a neutral country, captured by a hostile force, or beleaguered or besieged, and for that reason is unable to make an election before completing nineteen years of that service, he may make the election, to become effective immediately, within one year after he ceases to be assigned to that station or returns to the jurisdiction of his armed force, as the case may be. A member to whom retired pay or retainer pay is granted retroactively, and who is otherwise eligible to make an election, may make the election within ninety days after receiving notice that such pay has been granted to him. An election made after August 13, 1968, is not effective if—
- (1) the elector dies during the first thirty-day period he is entitled to retired pay as a result of a physical condition which led to his being granted retired pay under chapter 61 of title 10 with a disability of 100 per centum under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination of the per centum of his disability;
 - (2) the disability was not the result of injury or disease received in line of duty as a direct result of armed conflict; and
 - (3) his surviving spouse or children are entitled to dependency and indemnity compensation under chapter 13 of title 38 based upon his death.
- (c) An election may be changed or revoked by the elector before the first day for which retired or retainer pay is granted. Unless it is made on the basis of restored mental competency under section 1433 of this title, or unless it is made before the elector completes nineteen years of service for which he is entitled to credit in the computation of his basic pay (in which case only the latest change or revocation shall be effective), the change or revocation is not effective if it is made less than two years before the first day for which retired or retainer pay is granted. The elector may, however, before the first day for which retired or retainer pay is granted, change or revoke his election (provided the change does not increase the amount of the annuity elected) to reflect a change in the marital or dependency status of the member or his family that is caused by death, divorce, annulment, remarriage, or acquisition of a child, if such change or revocation of election is made within two years of such change in marital or dependency status.
- (d) If an election made under this section is found to be void for any reason except fraud or willful intent of the member making the election, he may make a corrected election at any time within 90 days after he is notified in writing that the election is void. A corrected election made under this subsection is effective as of the date of the voided election it replaces.

(Aug. 10, 1956, ch. 1041, 70A Stat. 108; Pub. L. 85–861, § 33(a)(11), Sept. 2, 1958, 72 Stat. 1565; Pub. L. 87–381, § 2, Oct. 4, 1961, 75 Stat. 810; Pub. L. 90–485, § 1(1), (2), Aug. 13, 1968, 82 Stat. 751; Pub. L. 96–513, title V, § 511(55), Dec. 12, 1980, 94 Stat. 2925; Pub. L. 99–145, title XIII, § 1301(a)(2), Nov. 8, 1985, 99 Stat. 735; Pub. L. 101–189, div. A, title XVI, § 1621(a)(1), Nov. 29, 1989, 103 Stat. 1602; Pub. L. 104–106, div. A, title XV, § 1501(c)(17), Feb. 10, 1996, 110 Stat. 499.)

Historical and Revision Notes

1956 Act

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1431(a)		
1431(b)	37:371 (less (e) and (f)).	
37:372(a) (2d sentence).		
37:372(a) (less 2d, 5th, 6th, and last sentences).		
37:372(b) (less last sentence).	Aug. 8, 1953, ch. 393, §§ 2 (less (e) and (f)), 3(a) (less 5th sentence), (b), 67 Stat. 501, 502; Apr. 29, 1954, ch. 176, 68 Stat. 64.	
1431(c)	37:372(a) (6th and last sentences).	
1431(d)	37:372(b) (last sentence).	

In subsection (a), the language of the revised subsection is substituted for 37:371(b) and (c), to make clear that the section was intended to include enlisted members and members of the Army, or the Air Force, without component. The words “the United States Air Force Academy” are inserted to reflect its establishment by the Air Force Academy Act (68 Stat. 47). The words “retirement pay” are omitted as covered by the words “retired pay”. The words “equivalent pay” are omitted as surplusage. 37:371(c) (less 1st 21 words) is omitted as executed, since the persons described must have completed 18 years of the required service on the effective date of the source statute and exercised the option by 180 days after that date. 37:371(a) is omitted, since the revised chapter applies only to the armed forces. 37:371(d) is omitted, since the words “person entitled to retired or retainer pay”, or their equivalent, are used throughout the revised chapter. 37:371(g) is omitted, since the words “retired or retainer pay” are used throughout the revised chapter. 37:371(h) is omitted as unnecessary in view of the definitions contained in section 101 (5), (7), and (8). 37:372(a) (2d sentence) is omitted as surplusage.

In subsection (b), 37:372(a) (last 28 words of 1st sentence) is omitted as covered by section 1434 of this title. The words “or naval” are omitted as covered by the word “military”. The last sentence is substituted for 37:372(a) (4th sentence, less 61st through 81st words). 37:372(a) (3d sentence, and 61st through 85th words of 4th sentence) and 37:372(b) (less last sentence) are omitted as executed.

In subsection (c), the words “is retired or becomes entitled to retired or retainer pay” are substituted for the words “his retirement” and “he retires” since, under sections 1331–1333 of this title, a person may be granted retired pay without having been retired. The last eight words are substituted for 37:372(a) (7th through 17th words of last sentence). 37:372(a) (last sentence, less 1st 17 words) is omitted as surplusage.

1958 Act

The change makes clear that section 1431 applies to a person who, because of military operations, is missing under any circumstances.

Amendments

1996—Subsec. (a)(1). Pub. L. 104–106 substituted “section 12774 (a)” for “section 1376 (a)”.

1989—Subsec. (b)(1). Pub. L. 101–189 substituted “Department of Veterans Affairs” for “Veterans’ Administration”.

NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscp.html>).

1985—Subsec. (b)(3). Pub. L. 99–145 substituted “surviving spouse” for “widow”.

1980—Subsec. (b). Pub. L. 96–513 substituted “August 13, 1968,” for “the date of enactment of this amendment”.

1968—Subsec. (b). Pub. L. 90–485, § 1(1), increased from eighteen to nineteen the number of years of service the annuitant must complete, decreased from three to two years before eligibility the time required to make an election, and inserted provisions that an election made after Aug. 13, 1968 will not be effective if the conditions of cls. (1) to (3) are satisfied.

Subsec. (c). Pub. L. 90–485, § 1(2), decreased from three to two years before the first day for which retired or retainer pay is granted the time required to change or revoke an election when the ground of restored mental competency is not present, inserted provision that any change or revocation in an election after the completion of 19 years of service is effective if made before the first day for which retired or retainer pay is granted, and provided for a change or revocation in an election before the first day for which retired or retainer pay is granted when there is a change in marital or dependency status, if such change or revocation of election is made within two years of such change in marital or dependency status.

1961—Subsec. (a). Pub. L. 87–381 substituted “other than a list maintained under section 1376 (a) of this title” for “or who are in the Retired Reserve”, redesignated pars. (4) and (5) as (2) and (3), and struck out former pars. (2) and (3) which related to reserves on an inactive status list, and members assigned to the inactive National Guard, respectively.

Subsec. (b). Pub. L. 87–381 required that unless the election is made before 18 years of service, it must be made at least three years before the first day for which retired or retainer pay is granted, inserted assignment to an isolated station among the reasons permitting a delayed election, changed the period within which to make such delayed election from within six months after return to the jurisdiction of his armed force, to within one year after he ceases to be assigned to the isolated station or his return to the jurisdiction of his armed force, and if the member is retroactively granted retired or retainer pay, and is eligible for an election, he may elect within 90 days after notice of such grant.

Subsec. (c). Pub. L. 87–381 substituted “the first day for which retired or retainer pay is granted” for “his retirement or before he becomes entitled to retired or retainer pay”, the requirement that the change or revocation is not effective if made less than 3 years before the first day for which retired or retainer pay is granted, for a required period of five years after change or revocation before retirement or becoming entitled to retired or retainer pay, and deleted “If he revokes the election, he may not change or withdraw the revocation.”

Subsec. (d). Pub. L. 87–381 substituted permission to make a corrected election within 90 days after notice that the election is void for any reason, except fraud or willful intent of the member making election, with such election effective as of the date of the election it replaces, for provisions which denied the ability to revoke any election by a person retired or granted retired or retainer pay before Nov. 1, 1953, and who elected within 180 days after that date to receive reduced pay to provide for an annuity.

1958—Subsec. (b). Pub. L. 85–861 struck out “in action” after “he is missing”.

Effective Date of 1996 Amendment

Section 1501(c) of Pub. L. 104–106 provided that the amendment made by that section is effective as of Dec. 1, 1994, and as if included as an amendment made by the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as originally enacted.

Effective Date of 1980 Amendment

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

Effective Date of 1968 Amendment

Section 6 of Pub. L. 90–485 provided in part that: “Clause (1) and clause (6) of section 1 [amending this section and section 1436 of this title], and sections 2, 3, and 4 of this Act [amending section 1331 [now 12731] of this title and enacting material set out as notes under this section] are effective on the date of enactment [Aug. 13, 1968]. Remaining provisions of this Act [amending this section and sections 1434, 1435, 1437, and 1446 of this title, and enacting provisions set out as a note under this section] are effective on the first day of the third calendar month following the date of enactment.”

Effective Date of 1958 Amendment

Amendment by Pub. L. 85–861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85–861, set out as a note under section 101 of this title.

Short Title of 1978 Amendment

Section 1 of Pub. L. 95–397, Sept. 30, 1978, 92 Stat. 843, provided: “That this Act [amending sections 1076, 1331 [now 12731], 1434, and 1447 to 1452 of this title and enacting provisions set out as notes under sections 1076, 1434, 1447, and 1448 of this title] may be cited as the ‘Uniformed Services Survivors’ Benefits Amendments of 1978’.”

Transfer of Functions

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468 (b), 551 (d), 552 (d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Provisions Effective for Certain Members on August 13, 1968

Section 3 of Pub. L. 90–485 provided that: “For members to whom section 1431 of title 10, United States Code [this section], applies on the date of enactment of this Act [Aug. 13, 1968], the provisions of section 1434(c) of that title, as amended by this Act [section 1(3) of Pub. L. 90–485] are effective immediately and automatically”.

Election of Annuity Made Prior to August 13, 1968

Section 4 of Pub. L. 90–485 provided that: “A retired member who elected an annuity under chapter 73 of title 10, United States Code [this chapter], before the date of enactment of this Act [Aug. 13, 1968], but did not make the election that was then provided by section 1434(c) of that title, may, before the first day of the thirteenth calendar month beginning after the date of enactment of this Act, make that election. That election becomes effective on the first day of the month following the month in which the election is made. Under regulations prescribed under section 1444 (a) of this title, on or before the effective date the retired member must pay the total additional amount that would otherwise have been deducted from his retired or retainer pay to reflect such an election, had it been effective when he retired, plus the interest which would have accrued on that additional amount up to the effective date, except that if an undue hardship or financial burden would otherwise result payment may be made in from two to twelve monthly installments when the monthly amounts involved are \$25, or less, or in from two to thirty-six monthly installments when the monthly amounts involved exceed \$25. No amounts by which a member’s retired or retainer pay was reduced may be refunded to, or credited on behalf of, the retired member by virtue of an application made by him under this section. A retired member described in the first sentence of this section, who does not make the election provided under this section, will not be allowed under section 1436 (b) of title 10, to reduce an annuity or withdraw from participation in an annuity program under that title.”

Elections Subject to Cost Tables Applicable on Date of Retirement; Annuities Payable to Beneficiaries Eligible Under Law in Effect the Day Prior to August 13, 1968

Section 5 of Pub. L. 90–485 provided, effective on the first day of the third calendar month following Aug. 13, 1968, that: “Notwithstanding any other provision of this Act [see Effective Date of 1968 Amendment note set out above], elections in effect on the date of enactment [Aug. 13, 1968] will remain under the cost tables applicable on the date of retirement, and the annuities provided thereunder shall be payable to those eligible beneficiaries prescribed under the law in effect on the day prior to the date of enactment of this Act.”

Applicability of Provisions in Effect on the Day Prior to August 13, 1968

Section 6 of Pub. L. 90–485 provided in part that: “Notwithstanding any other provision of this Act [see Effective Date of 1968 Amendment note set out above], any member to whom section 1431 of title 10, United States Code [this section], applies on the date of enactment of this Act [Aug. 13, 1968] may, before the first day of the thirteenth calendar month beginning after the date of enactment of this Act, submit a written application to the Secretary concerned requesting that an election or a change or revocation of election made by such member prior to the date of enactment of this Act shall continue to be governed by the provisions of section 1431 (b) or (c) of title 10, United States Code [subsec. (b) or (c) of this section] as in effect on the day before the date of enactment of this Act.”

Interim Authority for Selection of Commanders and Captains for Continuation on Active Duty

Section 3(q) of Pub. L. 88–130 rendered election, change, or revocation of election under this section effective if made prior to the convening date of the board which considers Coast Guard commanders and captains for continuation.

NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscprint.html>).

Change or Revocation of an Election Filed Prior to October 4, 1961

Section 7 of Pub. L. 87–381 provided that: “Any person who, before the date of enactment of this Act [Oct. 4, 1961], has filed a change or revocation, subject to section 1431 (c) of title 10, United States Code [subsec. (c) of this section], of an election made under section 1431(b) of that title [subsec. (b) of this section], which change or revocation would be ineffective if the first day for which retired or retainer pay is granted were to be the date of enactment of this Act [Oct. 4, 1961], shall have that change or revocation become effective on that date, or three years after the date upon which it was filed, whichever is later.”

Provisions Applicable to Certain Persons Retiring After October 4, 1961, for Disability

Section 8 of Pub. L. 87–381 provided that: “Any person who—

“(1) made an election before the date of enactment of this Act [Oct. 4, 1961], which would be effective if he retired on the day before such date; and

“(2) hereafter retires for physical disability before completing 18 years of service for which he is entitled to credit in the computation of his basic pay—

shall be considered as having applicable to him all of the provisions of chapter 73 of title 10, United States Code [this chapter], existing on the date preceding the date of enactment of this Act [Oct. 4, 1961], except that any revocation or change of an election is not effective until three years after the date of filing such revocation or change, or the date of enactment of this Act [Oct. 4, 1961], whichever is later.”

Change or Revocation of Election by Certain Colonels and Lieutenant Colonels

Pub. L. 86–616, § 11, July 12, 1960, 74 Stat. 396, provided that: “Notwithstanding section 1431 of title 10, United States Code [this section], a change or revocation of an election made under that section by an officer who is retired under section 10 of this Act [set out as a note under section 3297 of this title] is effective if made at such a time that it would have been effective had he been retired on the earliest date prescribed for an officer of his kind by section 3916, 3921, 8916, or 8921 of title 10, as appropriate.”

Change or Revocation of Election by Certain Officers of Regular Navy and Regular Marine Corps

Pub. L. 86–616, § 13, July 12, 1960, 74 Stat. 396, provided that: “An officer who has been considered but not recommended for continuation on the active list under section 1 of the Act of August 11, 1959. Public Law 86–155 (73 Stat. 333) [set out as a note under section 5701 of this title], and who retired or retires voluntarily before the second day of the month following the month in which this Act is enacted [July 1960], may, within six months following the enactment of this Act [July 12, 1960], affirm a change or revocation of an election made under section 1431 of title 10, United States Code [this section], before his retirement, if the change or revocation would have been effective under section 3 of the Act of August 11, 1959, Public Law 86–155, as amended by this Act [set out as a note under section 5701 of this title], but for his voluntary retirement. If an officer takes no action under this section, his currently valid election under section 1431 of title 10, United States Code [this section], shall remain unchanged. The computation of the revised reduction in retired pay in the case of an officer who affirms a change of election under this section shall be in accordance with section 1436 of title 10, United States Code, and according to the conditions that existed on the day the officer became eligible for retired pay. An affirmation or revocation made under this section is effective on the first day of the month in which made. No refund may be made and no additional payment may be required with respect to any period before that date.”

Election of Annuity by Certain Personnel

Pub. L. 86–197, § 4, Aug. 25, 1959, 73 Stat. 426, provided that: “Any person who, on the effective date of this Act [August 25, 1959], would not have completed 18 years of service for which he is entitled to credit in the computation of his basic pay under the laws in effect prior to the effective date of this Act, and who, as a result of the enactment of this Act [amending sections 1332 [now 12732], 3683, 3926, 6324, 8683 and 8926 of this title, and enacting provisions set out as notes under sections 3441 and 12732 of this title], is credited with more than 17 years of such service, shall be allowed twelve months from the effective date of this Act to make the election provided by section 1431 (b) of title 10, United States Code [subsection (b) of this section], notwithstanding the requirement of the second sentence of that section.”

Change or Revocation of Election by Certain Officers

Effective date of change or revocation of election by certain officers, see section 3 of Pub. L. 86–155, Aug. 11, 1959, 73 Stat. 336, set out as a note under section 5701 of this title.

NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscpri.html>).

Public Health Service

Authority vested by this chapter in “military departments”, “the Secretary concerned”, or “the Secretary of Defense” to be exercised, with respect to commissioned officers of Public Health Service, by Secretary of Health and Human Services or his designee, see section 213a of Title 42, The Public Health and Welfare.

National Oceanic and Atmospheric Administration

Authority vested by this chapter in “military departments”, “the Secretary concerned”, or “the Secretary of Defense” to be exercised, with respect to commissioned officer corps of National Oceanic and Atmospheric Administration, by Secretary of Commerce or Secretary’s designee, see section 3071 of Title 33, Navigation and Navigable Waters.