

(2) a voluntary extension of an enlistment for two or more years.

(f) Refunds with respect to incompleting terms of reenlistment.

Under such regulations as may be approved by the Secretary of Defense, or by the Secretary of the Treasury with respect to Coast Guard personnel, a member of a uniformed service who voluntarily, or because of his own misconduct, does not complete the term of enlistment for which he was paid a bonus under this section shall refund that percentage of the bonus that the unexpired part of his enlistment is of the total enlistment period for which the bonus was paid.

(g) Regulations.

The Secretary concerned may prescribe regulations for the administration of this section in his department. (Oct. 12, 1949, ch. 681, title II, § 208, as added July 16, 1954, ch. 535, § 2, 68 Stat. 488.)

SUBCHAPTER II. ALLOWANCES

§ 251a. Equivalency of commuted rations for enlisted personnel on leave or authorized to mess separately.

Hereafter, commuted rations for enlisted personnel of the uniformed services (as defined in this chapter) on leave, or otherwise authorized to mess separately, shall be equivalent to the cost of the ration as determined by the Secretary of Defense. (Aug. 1, 1953, ch. 305, title VI, § 617, 67 Stat. 352.)

CODIFICATION

Section enacted as a part of the "Defense Department Appropriation Act, 1954", and not as a part of the "Career Compensation Act of 1949", which comprises this chapter.

§ 253a. Restriction on foreign duty allowances to persons serving in Territories or possessions of which they are residents.

No part of the funds appropriated in any Act shall be available for the payment to any person in the military service who is resident of a United States Territory or possession, of any foreign duty allowances above the authorized allowances for comparable rating in the continental United States unless such person is serving in an area outside the Territory or possession of which he is a resident. (Aug. 1, 1953, ch. 305, title VI, § 640, 67 Stat. 356.)

CODIFICATION

Section enacted as a part of the "Defense Department Appropriation Act, 1954", and not as a part of the "Career Compensation Act of 1949", which comprises this chapter.

CROSS REFERENCES

Restriction on foreign duty pay to persons serving in Territories or possessions of which they are residents, see section 237a of this title.

SUBCHAPTER III. RETIREMENT, RETIREMENT PAY, SEPARATION AND SEVERANCE PAY FOR PHYSICAL DISABILITY

WARRANT OFFICERS, RETIREMENT OR SEPARATION; RETIRED OR SEVERANCE PAY

Retirement or separation from service, of warrant officers, and retired or severance pay, see sections 6001 et seq., of Title 10, Army and Air Force, and 430 et seq., of Title 34, Navy.

SUBCHAPTER IV. MISCELLANEOUS PROVISIONS

§ 311. Retired and retainer pay of members on retired lists or receiving retainer pay; methods of computation; definition of "active service."

NAVY, MARINE CORPS, AND COAST GUARD ENLISTED AND WARRANT OFFICER PERSONNEL ADVANCED TO COMMISSIONED RANK; RETIRED PAY

Retired pay of enlisted men and warrant officers temporarily appointed or advanced to commissioned rank, and restored to former status, see sections 3501 and 993a—993e of Title 34, Navy.

WARRANT OFFICERS, RETIREMENT OR SEPARATION; RETIRED OR SEVERANCE PAY

Retirement or separation from service, of warrant officers, and retired or severance pay, see sections 6001 et seq., of Title 10, Army and Air Force, and 430 et seq., of Title 34, Navy.

§ 313. Retired pay grade of certain warrant officers and enlisted persons.

NAVY, MARINE CORPS, AND COAST GUARD ENLISTED AND WARRANT OFFICER PERSONNEL ADVANCED TO COMMISSIONED RANK; RETIRED PAY

Retired pay of enlisted men and warrant officers temporarily appointed or advanced to commissioned rank, and restored to former status, see sections 3501 and 993a—993e of Title 34, Navy.

§ 323. Restriction on retirement payments to officers selling to Government agencies.

No payment shall be made from appropriations in any Act to any officer on the retired lists of the Regular Army, Regular Navy, Regular Marine Corps, Regular Air Force, Regular Coast Guard, Coast and Geodetic Survey, and Public Health Service for a period of two years after retirement who for himself or for others is engaged in the selling of or contracting for the sale of or negotiating for the sale of to any agency of the Department of Defense, the Coast Guard, the Coast and Geodetic Survey, and the Public Health Service any supplies or war materials. (Nov. 1, 1951, ch. 664, ch. XIII, § 1309, 65 Stat. 757.)

CODIFICATION

Section was enacted as a part of the "Supplemental Appropriation Act, 1952", and not as a part of the "Career Compensation Act of 1949" which comprises this chapter.

Chapter 6.—UNIFORMED SERVICES RETIREMENT CONTINGENCY OPTIONS [NEW]

Sec.

371. Definitions.

372. Election by members of survivor's annuity.

(a) Active members; retirement for physical disability; prisoner of war; revocation.

(b) Retired members awarded retired pay; irrevocable.

(c) Mental incompetents; termination of election deductions.

372a. Revocation of elections under section 372 (b); time limit; refunds [New].

372b. Same; definitions [New].

372c. Same; use of appropriations for refunds [New].

373. Types of annuities.

(a) Options.

(b) More than one annuity.

(c) Computation; time.

(d) Members on temporary disability retired list; refund.

374. Deposit requirement during nonpay period.

375. Determination and certification of eligibility.

376. Recovery of erroneous payments; absence of neglect or fraud.

Sec.

377. Administration; reports to Congress; Board of Actuaries; meetings; composition; independent actuary; compensation; actuarial tables.

378. Assignment of annuity; protection against legal process.

379. Date of accrual and payment of annuities.

380. Annuities as additional to other pensions or payments.

381. Funds available.

§ 371. Definitions.

As used in this chapter—

(a) The term "uniformed services" means the Army of the United States, Navy, United States Air Force, Marine Corps, Coast Guard, Coast and Geodetic Survey, and Public Health Service, including all components and members thereof.

(b) The term "member" means a commissioned officer, commissioned warrant officer, warrant officer, nurse, flight officer, or a person in an enlisted grade (including an aviation cadet), of any of the uniformed services and a person entitled to retainer pay in the Fleet Reserve or Fleet Marine Corps Reserve with credit for sixteen or more years of naval service.

(c) The term "active member" means a member on the active list of a regular or reserve component of a uniformed service or member of a reserve component of a uniformed service, who has completed twenty satisfactory years in his uniformed service, as defined in section 1036a of Title 10 and section 440i of Title 34.

(d) The term "retired member" means a member or former member of a uniformed service, who is or has been awarded retired, retirement, or retainer pay or equivalent pay as a result of service in one of the uniformed services.

(e) The term "widow" includes a widower and refers only to the spouse at the date of retirement of an active member or to the spouse at the effective date of this chapter in the case of a retired member at the effective date of this chapter.

(f) The term "child" means a legitimate child, a stepchild in fact dependent upon the member for support, or a legally adopted child, who is under eighteen years of age and unmarried, or a child over eighteen years of age and unmarried who is incapable of self-support because of being mentally defective or physically incapacitated if that condition existed prior to reaching age eighteen and refers only to an active member's child who was born and is living at the date of retirement of the active member or to a retired member's child who was born and is living at the effective date of this chapter in the case of a retired member at the effective date of this chapter.

(g) The term "retired pay" includes retirement pay, equivalent pay, and retainer pay.

(h) The term "department concerned" means (A) the Department of the Army with respect to the Army, (B) the Department of the Navy with respect to the Navy and Marine Corps, (C) the Department of the Air Force with respect to the Air Force, (D) the Treasury Department with respect to the Coast Guard, (E) the Department of Commerce with respect to the Coast and Geodetic Survey, and (F)

the Department of Health, Education, and Welfare with respect to the Public Health Service. (Aug. 8, 1953, ch. 393, § 2, 67 Stat. 501.)

EFFECTIVE DATE

Section 13 of act Aug. 8, 1953, provided that this chapter should become effective on the first day of the third month after Aug. 8, 1953.

SHORT TITLE

Congress in enacting this chapter provided by section 1 of act Aug. 8, 1953, that it should be popularly known as the "Uniformed Services Contingency Option Act of 1953".

§ 372. Election by members of survivor's annuity—(a) Active members; retirement for physical disability; prisoner of war; revocation.

An active member may elect, prior to the completion of eighteen years of service which is creditable in the computation of active-duty pay in the uniformed service of which he is a member, to receive a reduced amount of any retired pay which may be awarded him as the result of service in his uniformed service in order to provide one or more of the annuities specified in section 373 of this title, payable after his death in a retired status to his widow, child, or children, if such widow, child, or children are living at the date of his retirement. Where the active member is awarded retired pay by his uniformed service for physical disability prior to the completion of the eighteen years of service, the election may be made at the time of retirement. An active member who has heretofore completed the eighteen years of service may make this election within one year after the effective date of this chapter. An active member who, as a result of or in connection with military or naval operations, is in a status of missing, missing in action, interned in a neutral country, captured by a hostile force, or beleaguered or besieged, and because of that status is unable to make the election prior to the completion of the eighteen years of service, or an active member who is in that status on the effective date of this chapter and has theretofore completed the eighteen years of service, may make the election within six months of his return to the jurisdiction of his uniformed service. A person who is a former member on the effective date of this chapter and who is thereafter awarded retired pay by a uniformed service may make the election at the time he is awarded that pay. The terms of the election may be modified or revoked by a member at any time prior to his retirement but any modification or revocation so made shall not be effective if he retires within five years after the date it is made. Any member who revokes an election shall not thereafter be permitted to withdraw or modify his revocation and after it becomes effective, he shall not be permitted to be covered in any way by this chapter.

(b) Retired members awarded retired pay irrevocable.

A retired member who has heretofore been awarded retired pay by a uniformed service may, within one hundred and eighty days after the effective date of this chapter, elect to receive a reduced amount of that retired pay in order to provide one or more of the annuities specified in section 373 of

this title, payable after his death to his widow, child, or children. An election so made shall thereafter be irrevocable.

(c) Mental incompetents; termination of election; deductions.

Whenever an active member, former member, or retired member is determined to be mentally incompetent by medical officers of the service concerned or of the Veterans' Administration, or is adjudged mentally incompetent by a court of competent jurisdiction, and because of such mental incompetency is incapable of making any election provided in this section within the time limitations specified therein, the head of the department concerned may make the appropriate election provided for in this section on behalf of such member if so requested by the spouse or if there be no spouse by the child or children of such member. If such member is subsequently determined to be mentally competent by medical officers of the Veterans' Administration, or where appropriate is subsequently adjudged mentally competent by a court of competent jurisdiction, he may, within one hundred and eighty days of such determination or judgment, modify, or terminate the election made on his behalf. Deductions theretofore made shall not be refunded. (Aug. 8, 1953, ch. 393, § 3, 67 Stat. 502, amended Apr. 29, 1954, ch. 176, 68 Stat. 64.)

AMENDMENTS

1954—Subsec. (a) amended by act Apr. 29, 1954, to extend the period of election, specified in third sentence, from one hundred and eighty days to one year.

§ 372a. Revocation of elections under section 372 (b); time limit; refunds.

Retired members of the uniformed services who have elected under section 372 (b) of this title to receive a reduced amount of retired pay in order to provide an annuity under this chapter may, within sixty days after August 28, 1954, revoke such elections. A retired member may revoke an election under this section only if he can establish to the satisfaction of the Secretary concerned that he made such election because he was misinformed as to his rights under this chapter or because he made a substantial mathematical error in computing the cost of the benefits which he would derive under this chapter and that such misinformation or error has resulted in undue hardship. The Secretary concerned may revoke an election made by him on behalf of a mentally incompetent member when it is established to his satisfaction that such election has resulted in undue hardship. A retired member whose election is revoked under this section shall have refunded to him a sum which represents the difference between the amount by which his retired pay has been reduced in accordance with his election and the cost of an amount of term insurance which is equal to the protection provided his dependents during the period his election was in effect. A retired member whose election is revoked under this section shall not thereafter be permitted to be covered in any way under this chapter. (Aug. 28, 1954, ch. 1047, § 1, 68 Stat. 915.)

CODIFICATION

Section was not enacted as a part of the Uniformed Services Contingency Option Act of 1953, which comprises this chapter.

§ 372b. Same; definitions.

Terms used in sections 372a—372c of this title shall have the meaning assigned to them by this chapter. (Aug. 28, 1954, ch. 1047, § 2, 68 Stat. 916.)

CODIFICATION

Section was not enacted as a part of the Uniformed Services Contingency Option Act of 1953, which comprises this chapter.

§ 372c. Same; use of appropriations for refunds.

Payments of the refunds authorized by sections 372a—372c of this title may be made from appropriate current appropriations. (Aug. 28, 1954, ch. 1047, § 3, 68 Stat. 916.)

CODIFICATION

Section was not enacted as a part of the Uniformed Services Contingency Option Act of 1953, which comprises this chapter.

§ 373. Types of annuities—(a) Options.

Under the conditions set forth in section 372 of this title, an active or retired member may elect one or more of the following annuities, payable under this chapter, in such amount, expressed as a percentage of the reduced amount of his retired pay, as he may specify at the time of election, in amounts equal to one-half, one-quarter or one-eighth of the reduced amount of his retired pay.

(1) An annuity payable to or on behalf of his widow, the annuity to terminate upon her death or remarriage, whichever first occurs.

(2) An annuity payable to or on behalf of his surviving child or children, the annuity to terminate when there ceases to be at least one such surviving child, unmarried and under eighteen years of age, except that if there is a child, unmarried and over eighteen years of age incapable of self-support because of being mentally defective or physically incapacitated and that condition existed prior to his reaching eighteen years of age, the annuity to terminate upon his marriage, death, or recovery from the disability, whichever first occurs. Each payment under such annuity shall be paid in equal shares to or on behalf of the surviving children remaining eligible at the time the payment is due.

(3) An annuity payable to or on behalf of his widow and surviving children, the annuity to terminate upon: the death or remarriage of the widow; or, if later, the first day of the month in which there are no surviving children of the member who are under eighteen years of age and unmarried, except that if there is a child, unmarried and over eighteen years of age incapable of self-support because of being mentally defective or physically incapacitated and that condition existed prior to his reaching eighteen years of age, the annuity to terminate upon his marriage, death, or recovery from the disability, whichever first occurs. Such annuity shall be paid to the widow until death or remarriage, and thereafter each payment under such annuity shall be paid in equal shares to or on behalf of the

surviving children remaining eligible at the time the payment is due.

(4) An annuity payable under the same terms and conditions as specified in paragraph (1), (2), or (3) of this subsection, with the additional provision that no further deductions shall be made from the retired pay of the member commencing with the first day of the month following that in which there was no beneficiary who would have been eligible to receive, upon the death of the member, an annuity payable under the election made by him.

(h) More than one annuity.

Where an active or retired member desires to provide more than one annuity, he may elect paragraphs (1) and (2) of subsection (a) of this section, with or without the provisions of (4) thereof, but in no case may the combined amounts of the annuities exceed 50 per centum of the amount of his reduced retired pay.

(c) Computation; time.

The reduction to be made in the retired pay of an active or retired member who has made an election under section 372 of this title shall be computed by the uniformed service concerned in each individual case, as of the date of retirement in the case of an active member and as of the date of election in the case of a retired member, by an actuarial equivalent method using as a basis appropriate actuarial tables selected by the Board of Actuaries designated in section 8 and an interest rate of 3 per centum per annum or such other interest rate as the Secretary of the Treasury, after considering the average yield during the preceding six months on outstanding marketable long-term obligations of the United States, may specify by August 1 of any year as applicable for the succeeding calendar year. In the case of an active or retired member the computation shall be made at the time of retirement, or election, as appropriate, and the actuarial equivalent method and actuarial tables shall be those in effect at that time.

(d) Members on temporary disability retired list: refund.

Any active member or former member on the temporary disability retired list who has elected, pursuant to section 372 of this title, to receive reduced retired pay in order to provide one or more of the annuities specified in this section, and who is subsequently removed from the list due to any reason other than permanent retirement shall have refunded to him a sum which represents the difference between the amount by which his retired pay has been reduced in accordance with his election under section 372 of this title and the cost of an amount of term insurance which is equal to the protection provided his dependents during the period he was on the temporary disability retired list. (Aug. 8, 1953, ch. 393, § 4, 67 Stat. 502.)

§ 374. Deposit requirement during nonpay period.

A retired member of a uniformed service who has made the election specified in section 372 of this title shall, during any period in which he is

not receiving retired pay, deposit with the United States Treasury the amount which would have been withheld from his retired pay had he been receiving that pay. (Aug. 8, 1953, ch. 393, § 5, 67 Stat. 504.)

§ 375. Determination and certification of eligibility.

Determination and certification of eligibility for, and payment of, annuities payable under this chapter and any other payments or refunds authorized shall be made by the department concerned, except that payments for departments other than the military departments shall be made through the disbursing facilities of the Treasury Department. (Aug. 8, 1953, ch. 393, § 6, 67 Stat. 504.)

§ 376. Recovery of erroneous payments; absence of neglect or fraud.

(a) The head of the department concerned is empowered to use any means provided by law to recover amounts of annuities erroneously paid to any individual under this chapter. The head of the department concerned may authorize such recovery by adjustments in subsequent payments to which the individual is entitled.

(b) There need be no recovery as provided in subsection (a) of this section when, in the judgment of the head of the department concerned, and the Comptroller General of the United States, the individual to whom the erroneous payment has been made is without fault and recovery would be contrary to the purpose of this chapter or would be against equity and good conscience. (Aug. 8, 1953, ch. 393, § 7, 67 Stat. 504.)

§ 377. Administration; reports to Congress; Board of Actuaries; meetings; composition; independent actuary; compensation; actuarial tables.

This chapter shall be administered under regulations prescribed by the President, which regulations shall be uniform insofar as practicable for all of the uniformed services. The President shall report annually to the Congress upon the operation of this chapter. For the purpose of advising in the administration of this chapter, the President shall convene annually, or oftener if he deems necessary, a Board of Actuaries to be composed of the Government Actuary, the Chief Actuary of the Social Security Administration, and an actuary to be selected from the membership of the Society of Actuaries. The compensation of the actuary selected from the membership of the Society of Actuaries shall be fixed by the President. The tables to be used in computing deductions in retired or retirement pay to provide the annuities under this chapter shall be those recommended by the Board of Actuaries. (Aug. 8, 1953, ch. 393, § 8, 67 Stat. 504.)

EX. ORD. NO. 10499. DELEGATION OF FUNCTIONS

EX. Ord. No. 10499, Nov. 4, 1953, 18 F. R. 7003, provided:

SECTION 1. Except as otherwise provided in this order, the Secretary of Defense is hereby authorized and empowered to perform, without the approval, ratification, or other action of the President, the functions vested in the President by section 8 of the Uniformed Services Contingency Option Act of 1953, approved August 8, 1953 (Public Law 239, 83d Congress) [this section], hereinafter referred to as the Act. The Secretary of Defense, after

appropriate consultation with the Secretaries of the Treasury, Commerce, and Health, Education, and Welfare, shall prepare for each fiscal year a consolidated report on operations and financing of the benefits authorized by the Act and shall present such report to the President not later than four months following the close of the fiscal year, for transmittal by the President to the Congress.

SEC. 2. The Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, the Secretary of the Treasury, the Secretary of Commerce, and the Secretary of Health, Education, and Welfare are hereby severally authorized and empowered to perform, without the approval, ratification, or other action of the President, the function vested in the President by section 8 of the Act [this section] of prescribing regulations for the administration of the Act [sections 371—381 of this title]; provided that the regulations prescribed by any such Secretary shall relate only to the Department of which the Secretary is the head.

SEC. 3. The regulations prescribed by the said Secretaries under section 2 of this order shall be subject to the approval of the Secretary of Defense; shall be designed to achieve the uniform, equitable, and economical administration of the Act [sections 371—381 of this title]; shall include uniform tables of actuarial equivalents and provision that term insurance values shall be computed by uniform methods prescribed by the Board of Actuaries provided for in section 8 of the Act [this section]; and, to the extent deemed necessary, shall include (a) procedures for informing personnel of their rights, for submitting elections and claims, and for reconsideration of determinations, and (b) definitions of terms.

SEC. 4. Functions under section 8 of the Act [this section] with respect to the selection of a member of the Board of Actuaries from among the membership of the Society of Actuaries and the fixing of his compensation are reserved to the President.

SEC. 5. The meaning of the terms "functions" and "perform" as used in this order shall be the same as the meaning of those terms as used in chapter 4 of title 3 of the United States Code [sections 301—303 of title 3].

This order shall become effective on November 1, 1953.

§ 378. Assignment of annuity; protection against legal process.

No annuity payable under this chapter shall be assignable, either in law or equity, or be subject to execution, levy or attachment, garnishment, or other legal process. (Aug. 8, 1953, ch. 393, § 9, 67 Stat. 504.)

§ 379. Date of accrual and payment of annuities.

All annuities payable under this chapter shall accrue from the first day of the month in which the retired member dies and shall be due and payable not later than the fifteenth day of each month following that month and in equal monthly installment thereafter, except that no annuity shall accrue or be paid for the month in which entitlement to that annuity terminates. (Aug. 8, 1953, ch. 393, § 10, 67 Stat. 504.)

§ 380. Annuities as additional to other pensions or payments.

Annuities payable under this chapter shall be in addition to any pensions or other payments to which the beneficiaries may now or hereafter be entitled under other provisions of law, and shall not be considered income under any law administered by the Veterans' Administration. (Aug. 8, 1953, ch. 393, § 11, 67 Stat. 504.)

§ 381. Funds available.

The payments authorized to be made under this chapter shall be made out of applicable current appropriations which are made available for that purpose. (Aug. 8, 1953, ch. 393, § 12, 67 Stat. 505.)