

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 316a of this title.

**§ 316a. Waiver of certification requirement**

(a) **CERTIFICATION INTERRUPTED BY CONTINGENCY OPERATION.**—(1) A member of the armed forces described in subsection (b) shall be paid special pay under section 316 of this title for the active duty performed by that member during the period described in paragraph (2) if—

(A) the member was assigned to duty in connection with a contingency operation;

(B) the Secretary concerned (under regulations prescribed by the Secretary of Defense) determines that the member was unable to schedule or complete the certification required for eligibility for the special pay under that section because of that duty;

(C) except for not meeting the certification requirement in that section, the member was otherwise eligible for that special pay for that active duty; and

(D) the member completes the certification requirement specified in that section before the end of the period established for the member in subsection (c).

(2) The period for which a member may be paid special pay for active duty pursuant to paragraph (1) is the period beginning on the date on which the member was assigned to the duty referred to in subparagraph (A) of that paragraph and ending on the date of the member's certification referred to in subparagraph (D) of that paragraph.

(b) **ELIGIBLE MEMBER DESCRIBED.**—A member of the armed forces referred to in subsection (a) is a member who meets the requirement referred to in section 316(a)(3) of this title.

(c) **PERIOD FOR CERTIFICATION.**—The period referred to in subparagraph (D) of subsection (a)(1) with respect to a member of the armed forces is the 180-day period beginning on the date on which the member was released from the duty referred to in that subsection. The Secretary concerned may extend that period for a member in accordance with regulations prescribed by the Secretary of Defense.

(Added Pub. L. 102-190, div. A, title VI, § 636(a), Dec. 5, 1991, 105 Stat. 1382.)

## OPERATION DESERT STORM DUTY ASSIGNMENT

Pub. L. 102-25, title III, § 306, Apr. 6, 1991, 105 Stat. 82, provided that:

“(a) **CERTIFICATION INTERRUPTED BY OPERATION DESERT STORM.**—A member of the Armed Forces described in subsection (b) who obtains a certification of foreign language proficiency before the end of the period established for the member in subsection (c) shall be paid foreign language proficiency pay under section 316 of title 37, United States Code, for active duty performed after August 2, 1990, and before the date of that certification if the Secretary of Defense determines that the member was unable to schedule or complete that certification earlier because of a duty assignment in connection with Operation Desert Storm.

“(b) **ELIGIBLE MEMBERS DESCRIBED.**—A member of the Armed Forces referred to in subsection (a) is a member on active duty who, except for subsection (a)(2) of that section, was otherwise eligible for special pay under that section during the duty assignment in connection with Operation Desert Storm.

“(c) **PERIOD FOR CERTIFICATION.**—The period referred to in subsection (a) for completion of certification of foreign language proficiency with respect to a member of the Armed Forces is the 180-day period (extended for such additional time as the Secretary of Defense determines to be appropriate) beginning on the date that the member is released from the duty to which the member was assigned in connection with Operation Desert Storm.”

**§ 317. Special pay: officers in critical acquisition positions extending period of active duty**

(a) **BONUS AUTHORIZED.**—An officer described in subsection (b) who executes a written agreement to remain on active duty in a critical acquisition position for at least one year may, upon the acceptance of the agreement by the Secretary concerned, be paid a retention bonus as provided in this section.

(b) **COVERED OFFICERS.**—An officer referred to in subsection (a) is an officer of the Army, Navy, Air Force, or Marine Corps who—

(1) is a member of an Acquisition Corps selected to serve in, or serving in, a critical acquisition position designated under section 1733 of title 10; and

(2) is eligible to retire, or is assigned to such position for a period that will extend beyond the date on which the officer will be eligible to retire, under any provision of law.

(c) **AMOUNT OF BONUS.**—The amount of a bonus paid under this section for each year a member agrees to remain on active duty may not be more than 15 percent of the annual rate of basic pay paid to the member at the time the member executes a written agreement under this section.

(d) **PAYMENT OF BONUS.**—Upon the acceptance of a written agreement under subsection (a) by the Secretary concerned, the total amount payable pursuant to the agreement becomes fixed and may be paid by the Secretary in either a lump sum or installments.

(e) **ADDITIONAL PAY.**—A bonus paid under this section is in addition to other pay and allowances to which an officer is entitled.

(f) **REPAYMENT OF BONUS.**—(1) If an officer who has entered into a written agreement under subsection (a) and who has received all or part of a bonus under this section fails to complete the total period of active duty specified in the agreement, the Secretary concerned may require the officer to repay the United States, on a pro rata basis and to the extent that the Secretary determines conditions and circumstances warrant, all sums paid under this section.

(2) An obligation to repay the United States imposed under paragraph (1) is for all purposes a debt owed to the United States.

(3) A discharge in bankruptcy under title 11 that is entered less than 5 years after the termination of a written agreement entered into under subsection (a) does not discharge the officer signing the agreement from a debt arising under such agreement or under paragraph (1). This paragraph applies to any case commenced under title 11 after January 1, 1991.

(g) **PERIOD OF COMMITMENT.**—The period of active duty agreed upon by an officer in a written agreement under this section is in addition to

any other service commitment of the officer, except that any period of active duty agreed upon in a written agreement under subsection (a)(2) or (b)(2) of section 1734 of title 10 by the officer may be counted concurrently with the commitment under this section.

(h) REGULATIONS.—The Secretaries concerned shall prescribe regulations to carry out this section. Regulations prescribed by the Secretary of a military department shall be subject to the approval of the Secretary of Defense.

(Added Pub. L. 101-510, div. A, title XII, § 1203(a)(1), Nov. 5, 1990, 104 Stat. 1656.)

#### EFFECTIVE DATE

Section 1203(b) of Pub. L. 101-510 provided that: “Section 317 of title 37, United States Code, as added by subsection (a), shall take effect as of October 1, 1991.”

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 1762.

### § 318. Special pay: special warfare officers extending period of active duty

(a) SPECIAL WARFARE OFFICER DEFINED.—In this section, the term “special warfare officer” means an officer of a uniformed service who—

(1) is qualified for a military occupational specialty or designator identified by the Secretary concerned as a special warfare military occupational specialty or designator; and

(2) is serving in a position for which that specialty or designator is authorized.

(b) RETENTION BONUS AUTHORIZED.—A special warfare officer who meets the eligibility requirements specified in subsection (c) and who executes a written agreement to remain on active duty in special warfare service for at least one year may, upon the acceptance of the agreement by the Secretary concerned, be paid a retention bonus as provided in this section.

(c) ELIGIBILITY REQUIREMENTS.—A special warfare officer may apply to enter into an agreement referred to in subsection (b) if the officer—

(1) is in pay grade O-3, or is in pay grade O-4 and is not on a list of officers recommended for promotion, at the time the officer applies to enter into the agreement;

(2) has completed at least 6, but not more than 14, years of active commissioned service; and

(3) has completed any service commitment incurred to be commissioned as an officer.

(d) AMOUNT OF BONUS.—The amount of a retention bonus paid under this section may not be more than \$15,000 for each year covered by the agreement.

(e) PRORATION.—The term of an agreement under subsection (b) and the amount of the retention bonus payable under subsection (d) may be prorated as long as the agreement does not extend beyond the date on which the officer executing the agreement would complete 14 years of active commissioned service.

(f) PAYMENT METHODS.—(1) Upon acceptance of an agreement under subsection (b) by the Secretary concerned, the total amount payable pursuant to the agreement becomes fixed.

(2) The amount of the retention bonus may be paid as follows:

(A) At the time the agreement is accepted by the Secretary concerned, the Secretary may make a lump sum payment equal to half the total amount payable under the agreement. The balance of the bonus amount shall be paid in equal annual installments on the anniversary of the acceptance of the agreement.

(B) The Secretary concerned may make graduated annual payments under regulations prescribed by the Secretary, with the first payment being payable at the time the agreement is accepted by the Secretary and subsequent payments being payable on the anniversary of the acceptance of the agreement.

(g) ADDITIONAL PAY.—A retention bonus paid under this section is in addition to any other pay and allowances to which an officer is entitled.

(h) REPAYMENT.—(1) If an officer who has entered into an agreement under subsection (b) and has received all or part of a retention bonus under this section fails to complete the total period of active duty in special warfare service as specified in the agreement, the Secretary concerned may require the officer to repay the United States, on a pro rata basis and to the extent that the Secretary determines conditions and circumstances warrant, all sums paid the officer under this section.

(2) An obligation to repay the United States imposed under paragraph (1) is for all purposes a debt owed to the United States.

(3) A discharge in bankruptcy under title 11 that is entered less than five years after the termination of an agreement entered into under subsection (a)<sup>1</sup> does not discharge the officer signing the agreement from a debt arising under such agreement or under paragraph (1).

(i) REGULATIONS.—The Secretaries concerned shall prescribe regulations to carry out this section, including the definition of the term “special warfare service” for purposes of this section. Regulations prescribed by the Secretary of a military department under this section shall be subject to the approval of the Secretary of Defense.

(Added Pub. L. 106-65, div. A, title VI, § 626(a)(1), Oct. 5, 1999, 113 Stat. 655.)

#### EFFECTIVE DATE

Pub. L. 106-65, div. A, title VI, § 626(b), Oct. 5, 1999, 113 Stat. 656, provided that: “The amendments made by subsection (a) [enacting this section] shall take effect on October 1, 1999.”

### § 319. Special pay: surface warfare officer continuation pay

(a) ELIGIBLE SURFACE WARFARE OFFICER DEFINED.—In this section, the term “eligible surface warfare officer” means an officer of the Regular Navy or Naval Reserve on active duty who—

(1) is qualified and serving as a surface warfare officer;

(2) has been selected for assignment as a department head on a surface vessel; and

<sup>1</sup> So in original. Probably should be subsection “(b)”.