

any day on which the applicability of section 991 of title 10 to the member is suspended under subsection (d) of that section.

(Added Pub. L. 106-65, div. A, title V, §586(b), Oct. 5, 1999, 113 Stat. 638, §435; renumbered §436 and amended, Pub. L. 106-398, §1 [[div. A], title V, §574(c), title X, §1087(b)(4)], Oct. 30, 2000, 114 Stat. 1654, 1654A-137, 1654A-292.)

AMENDMENTS

2000—Pub. L. 106-398, §1 [[div. A], title X, §1087(b)(4)], renumbered section 435 of this title as this section.

Subsec. (a). Pub. L. 106-398, §1 [[div. A], title V, §574(c)(1)], substituted “401 or more days out of the preceding 730 days” for “251 days or more out of the preceding 365 days”.

Subsec. (b). Pub. L. 106-398, §1 [[div. A], title V, §574(c)(2)], substituted “prescribed under paragraph (4)” for “prescribed under paragraph (3)”.

EFFECTIVE DATE

Pub. L. 106-65, div. A, title V, §586(d)(2), Oct. 5, 1999, 113 Stat. 639, provided that: “Section 435 [now 436] of title 37, United States Code (as added by subsection (b)) [this section], shall take effect on October 1, 2001.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12503 of this title.

CHAPTER 9—LEAVE

Sec.	
501.	Payments for unused accrued leave.
502.	Absences due to sickness, wounds, and certain other causes.
503.	Absence without leave or over leave.
504.	Cadets and midshipmen: chapter does not apply to.

AMENDMENTS

1990—Pub. L. 101-510, div. A, title XIV, §1484(f)(1), Nov. 5, 1990, 104 Stat. 1717, revised chapter heading so as to appear in all capital letters.

§ 501. Payments for unused accrued leave

(a) In this section, the term “discharge” means—

(1) in the case of an enlisted member, separation or release from active duty under honorable conditions, termination of an enlistment in conjunction with the commencement of a successive enlistment (without regard to the date of the expiration of the term of the enlistment being terminated), or appointment as an officer;

(2) in the case of an officer, separation or release from active duty under honorable conditions; and

(3) in the case of either an officer or an enlisted member, death while on active duty unless the decedent was put to death as lawful punishment for a crime or a military offense.

(b)(1) A member of the Army, Navy, Air Force, Marine Corps, Coast Guard, or National Oceanic and Atmospheric Administration, who has accrued leave to his credit at the time of his discharge, is entitled to be paid in cash or by a check on the Treasurer of the United States for such leave on the basis of the basic pay to which he was entitled on the date of discharge.

(2) Payment may not be made under this subsection to a member who is discharged for the

purpose of accepting an appointment or a warrant in any uniformed service.

(3) Payment may not be made to a member for any leave he elects to have carried over to a new enlistment in any uniformed service on the day after the date of his discharge; but payment may be made to a member for any leave he elects not to carry over to a new enlistment. However, the number of days of leave for which payment is made may not exceed sixty, less the number of days for which payment was previously made under this section after February 9, 1976.

(4) A member to whom a payment may not be made under this subsection, or a member who reverts from officer to enlisted status, carries the accrued leave standing to his credit from the one status to the other within any uniformed service.

(5) The limitation in the second sentence of paragraph (3) and in subsection (f) shall not apply with respect to leave accrued—

(A) by a member of a reserve component while serving on active duty in support of a contingency operation;

(B) by a member of the armed forces in the Retired Reserve while serving on active duty in support of a contingency operation; or

(C) by a retired member of the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps or a member of the Fleet Reserve or Fleet Marine Corps Reserve while the member is serving on active duty in support of a contingency operation.

(c) Unused accrued leave for which payment is made under subsection (b) is not considered as service for any purpose.

(d)(1) Payments for unused accrued leave under subsections (b) and (g), in the case of a member who dies while on active duty or in the case of a member or former member who dies after retirement or discharge and before he receives that payment, shall be made in accordance with section 2771 of title 10. In the case of a member who dies while on active duty, payment for unused accrued leave under subsections (b) and (g) shall be based upon the unused accrued leave the member carried forward into the leave year during which he died plus the unused leave that accrued to him during that leave year.

(2) The limitations in the second sentence of subsection (b)(3), subsection (f), and the second sentence of subsection (g) shall not apply with respect to a payment made under this subsection.

(e)(1) A member of the Army, Navy, Air Force, Marine Corps, Coast Guard, or National Oceanic and Atmospheric Administration who is discharged under other than honorable conditions forfeits all accrued leave to his credit at the time of his discharge.

(2) The Secretary concerned may require that a member of a uniformed service who is discharged before completing six months of active duty because of a failure to serve satisfactorily (as determined by the Secretary concerned) forfeit all accrued leave to his credit at the time of his discharge.

(f) The number of days upon which payment under subsection (b) or (g) is based may not exceed sixty, less the number of days for which payment has been previously made under such subsections after February 9, 1976. For the purposes of this subsection, the number of days upon which payment may be based shall be determined without regard to any break in service or change in status in the uniformed services.

(g) An officer of the Regular Corps of the Public Health Service, or an officer of the Reserve Corps of the Public Health Service on active duty, who is credited with accumulated and accrued annual leave on the date of his separation, retirement, or release from active duty, shall, if his application for that leave is approved by the Secretary of Health and Human Services, be paid for that leave in a lump-sum on the basis of his basic pay, subsistence allowance, and allowance for quarters whether or not he is receiving that allowance on that date. However, the number of days upon which the lump-sum payment is based is subject to subsection (f). A lump-sum payment may not be made under this subsection to an officer—

- (1) whose appointment expires or is terminated and who, without a break in active service, accepts a new appointment;
- (2) who is retired for age in time of war and is continued on, or recalled to, active duty without a break in active service; or
- (3) who is transferred to another department or agency of the United States under circumstances in which, by any other law, his leave may be transferred.

In this subsection, the term “accumulated annual leave” means unused accrued annual leave carried forward from one leave year into the next leave year, and the term “accrued annual leave” means the annual leave accruing to an officer during one leave year.

(h) Payment shall be made for all leave accumulated under section 701(g) of title 10 as soon as possible after the name of the person concerned is removed from a missing status, as defined in section 551(2) of this title.

(Pub. L. 87-649, Sept. 7, 1962, 76 Stat. 480; Pub. L. 89-151, § 1, 2, Aug. 28, 1965, 79 Stat. 586; Pub. L. 89-718, §§ 49(a)(1), 65, Nov. 2, 1966, 80 Stat. 1121, 1123; Pub. L. 92-596, § 2, Oct. 27, 1972, 86 Stat. 1318; Pub. L. 94-361, title III, § 304(a)-(g), July 14, 1976, 90 Stat. 925, 926; Pub. L. 96-513, title V, § 516(14), Dec. 12, 1980, 94 Stat. 2938; Pub. L. 98-525, title VI, § 606(a), Oct. 19, 1984, 98 Stat. 2537; Pub. L. 99-145, title VI, § 682, Nov. 8, 1985, 99 Stat. 665; Pub. L. 100-26, § 8(e)(6), (9), Apr. 21, 1987, 101 Stat. 286, 287; Pub. L. 102-25, title VII, § 702(b)(1), (c), Apr. 6, 1991, 105 Stat. 117; Pub. L. 102-190, div. A, title VI, § 637, Dec. 5, 1991, 105 Stat. 1383; Pub. L. 104-106, div. A, title VI, § 641, Feb. 10, 1996, 110 Stat. 368; Pub. L. 106-65, div. A, title VI, § 671, Oct. 5, 1999, 113 Stat. 674.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
501(a)	37:32(b), (d), (e), and (h).	Aug. 9, 1946, ch. 931, § 2(b), (d), (e), (g), and (h), 60 Stat. 963; June 19, 1948, ch. 541, § 1(a), 62 Stat. 506.

HISTORICAL AND REVISION NOTES—Continued

Revised section	Source (U.S. Code)	Source (Statutes at Large)
501(b)	37:33(c) (less 3d and last sentences). 37:32(g). 37:39 (less last proviso).	Aug. 9, 1946, ch. 931, § 4(c), (d), 60 Stat. 964; restated Aug. 4, 1947, ch. 475, § 1 (less 1st 2 pars.), 61 Stat. 748; July 24, 1956, ch. 682, § 1, 70 Stat. 625. Aug. 17, 1949, ch. 452, § 1 (less last proviso), 63 Stat. 611.
501(c)	37:33(c) (3d sentence).	Aug. 9, 1946, ch. 931, § 3(b) (proviso); added Sept. 23, 1950, ch. 998, § 1 (proviso), 64 Stat. 979. July 1, 1944, ch. 373, § 219(c) (last sentence), (d) (as applicable to (c) (last sentence)); added Aug. 9, 1950, ch. 654, § 2 (last sentence of 3d par., and 4th par., as applicable to last sentence of 3d par.), 64 Stat. 426.
501(d)	37:33(c) (last sentence).	
501(e)	37:33(d).	
501(f)	37:31a(b) (proviso).	
501(g)	42:210-1(c) (last sentence). 42:210-1(d) (as applicable to 42:210-1(c) (last sentence)).	

In subsection (a), the word “officer” is substituted for the words “commissioned officer or warrant officer”, in section 32(b) of existing title 37. The words “persons may be treated as parents for the purposes of this clause” are substituted for the words “parents may receive the benefits provided under said sections” in section 32(e) of existing title 37.

In subsections (b)-(d) and (f), the word “payment” is substituted for the word “settlement”.

In subsection (b), the words “in pay grade E-9, E-8, E-7, E-6, or E-5 with dependents, an allowance computed at the rate of \$1.25 a day for quarters” are substituted for the words “the allowances as provided for such enlisted persons in subsection (a)”. The words “after August 31, 1946” are omitted as executed. The word “basic” is substituted for the words “base and longevity” to reflect current terminology.

In subsection (c), the word “accrued” is inserted to conform to subsection (b). The words “and compensated for in cash” are omitted as surplusage.

In subsection (d), the words “and compensation” and “of the Armed Forces” are omitted as surplusage. The words “before he receives” are substituted for the words “without having received”.

In subsection (f), the words “cash” and “unused or accumulated” are omitted as surplusage. The words “subsequent to August 31, 1946” are omitted as executed.

In subsection (g), the word “retirement” is omitted as covered by the words “separation or release from active duty”. The words “under this subsection” are substituted for the words “for such unused leave”. The word “appointment” is substituted for the word “commission”.

AMENDMENTS

1999—Subsec. (a)(1). Pub. L. 106-65, § 671(1), inserted “, termination of an enlistment in conjunction with the commencement of a successive enlistment (without regard to the date of the expiration of the term of the enlistment being terminated),” after “honorable conditions”.

Subsec. (b)(2). Pub. L. 106-65, § 671(2), struck out “, or entering into an enlistment,” after “or a warrant”.

1996—Subsec. (d)(1). Pub. L. 104-106, § 641(a)(1), struck out at end “Except as provided in paragraph (2), the number of days upon which payment is based is subject to subsection (f).”

Subsec. (d)(2). Pub. L. 104-106, § 641(a)(2), added par. (2) and struck out former par. (2) which read as follows: “In the case of a member of the uniformed services who dies as a result of an injury or illness incurred while serving on active duty in support of a contingency operation, the limitations in the second sentence of sub-

section (b)(3), subsection (f), and the second sentence of subsection (g) shall not apply with respect to a payment made under this subsection for leave accrued during the contingency operation."

Subsec. (f). Pub. L. 104-106, §641(b), struck out " (d)," before "or (g) is based".

1991—Subsec. (b)(5). Pub. L. 102-190, §637(b), added par. (5).

Subsec. (c). Pub. L. 102-25, §702(b)(1), struck out "of this section" after "subsection (b)".

Subsec. (d). Pub. L. 102-190, §637(a), designated existing provisions as par. (1), substituted "Except as provided in paragraph (2)," for "However," and added par. (2).

Pub. L. 102-25, §702(b)(1), struck out "of this section" after "subsections (b) and (g)" in two places.

Subsec. (f). Pub. L. 102-25, §702(b)(1), struck out "of this section" after "subsection (b), (d), or (g)".

1987—Subsec. (a). Pub. L. 100-26, §8(e)(6), inserted "the term" after "In this section."

Subsec. (g). Pub. L. 100-26, §8(e)(9), inserted "the term" before "accumulated annual leave" and "accrued annual leave".

1985—Subsecs. (b)(3), (f). Pub. L. 99-145 substituted "February 9, 1976" for "September 1, 1976".

1984—Subsec. (e). Pub. L. 98-525, §606(a), designated existing provisions as par. (1) and added par. (2).

1980—Subsec. (b)(3). Pub. L. 96-513, §516(14)(A), substituted "September 1, 1976" for "the first day of the second calendar month following the month in which the Department of Defense Appropriation Authorization Act, 1977, was enacted".

Subsec. (d). Pub. L. 96-513, §516(14)(B), substituted "unused" for "unusual".

Subsec. (f). Pub. L. 96-513, §516(14)(A), (C), substituted "September 1, 1976" for "the first day of the second calendar month following the month in which the Department of Defense Appropriation Authorization Act, 1977, was enacted", and inserted "of this section" after "(g)".

Subsec. (g). Pub. L. 96-513, §516(14)(C), substituted "Secretary of Health and Human Services" for "Surgeon General".

1976—Subsec. (a). Pub. L. 94-361, §304(a), (b), struck out cl. (1) designation for existing provisions, made definition applicable to the section rather than to subsecs. (b) to (f) of this section, and redesignated as cls. (1), (2), and (3) former subcls. (A), (B), and (C); and struck out former cls. (2), (3), and (4) defining "child", "parent", and "brother or sister", respectively.

Subsec. (b). Pub. L. 94-361, §304(c), in revising text, incorporated in provisions designated par. (1) provisions of former first and second sentences for payments for unused accrued leave of officers and enlisted members, striking out consideration of allowances to officers and of allowances to enlisted members computed at rate of 70 cents a day for subsistence and of allowance to enlisted members in pay grades E-9 through E-5 with dependents at rate of \$1.25 for quarters, and substituting "National Oceanic and Atmospheric Administration" for "Environmental Science Services Administration"; incorporated in par. (2) provisions of item (1) of former third sentence, substituting "in any uniformed service" for "in his armed force"; incorporated in par. (3) provisions of item (2) of former third sentence, substituting "in any uniformed service" for "in his armed force" and inserting provisions for payment for leave not carried over to a new enlistment and prescribing number of days of leave for which payment may be made; and designated last (the fourth) sentence as par. (4), substituting "within any uniformed service" for "within his armed force".

Subsec. (d). Pub. L. 94-361, §304(d), substituted provision making the number of days upon which payment is based subject to subsec. (f) for provision limiting to not more than 60 the number of days upon which the payment is based.

Subsec. (e). Pub. L. 94-361, §304(e), substituted "National Oceanic and Atmospheric Administration" for "Environmental Science Services Administration".

Subsec. (f). Pub. L. 94-361, §304(f), added subsec. (f). Former subsec. (f), prohibiting payment for leave in excess of 60 days upon discharge or retirement, was struck out.

Subsec. (g). Pub. L. 94-361, §304(g), substituted provision making the number of days upon which the lump-sum payment is based subject to subsec. (f) for provision limiting to not more than 60 the number of days upon which the lump-sum payment is based.

1972—Subsec. (d). Pub. L. 92-596, §2(1), inserted reference to accumulated leave under subsection (h) of this section.

Subsec. (h). Pub. L. 92-596, §2(2), added subsec. (h).

1966—Subsecs. (b), (e). Pub. L. 89-718, §49(a)(1), substituted "Environmental Science Services Administration" for "Coast and Geodetic Survey".

Subsec. (d). Pub. L. 89-718, §65, substituted "60" for "sixty".

1965—Subsec. (a)(1). Pub. L. 89-151, §1, added subpar. (C).

Subsec. (d). Pub. L. 89-151, §2, included members who die while on active service and payments for unused accrued leave of members of the Public Health Service, substituted provisions referring to section 2771 of title 10 to find the mode of payment for provision spelling out the mode of payment in detail, omitted provisions prohibiting payment under this section in the event of no survivor and making valid any payments to survivors between the ages of 17 and 21, and inserted provisions basing payment for unused leave in the event of members dying while on active duty upon accrued leave carried forward into the year plus leave accruing during the year with a limit of 60 days.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 606(b) of Pub. L. 98-525 provided that: "The amendments made by subsection (a) [amending this section] shall apply in the case of members of the uniformed service (as defined in section 101(3) of title 37, United States Code) who enlist or are commissioned on or after the date of the enactment of this Act [Oct. 19, 1984]."

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 Title 10, Armed Forces.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-596 effective Feb. 28, 1961, see section 3 of Pub. L. 92-596, set out as a note under section 701 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1965 AMENDMENT

Section 4 of Pub. L. 89-151 provided that: "This Act [amending this section and section 701 of Title 10, Armed Forces] applies only in the case of members who die on or after the date of enactment [Aug. 28, 1965]."

TREATMENT OF ACCUMULATED LEAVE IN CONNECTION WITH ACTIVE DUTY DURING PERSIAN GULF CONFLICT

Section 309(a) of Pub. L. 102-25 provided that: "In the case of a member of the uniformed services who dies as a result of an injury or illness incurred while serving on active duty during the Persian Gulf conflict, the limitation in the second sentence of subsection (b)(3) of section 501 of title 37, United States Code, and in subsection (f) of that section shall not apply with respect to a payment made pursuant to subsection (d) of that section for leave accrued during fiscal year 1990 or 1991."

Pub. L. 101-510, div. A, title XI, §1115, Nov. 5, 1990, 104 Stat. 1636, as amended by Pub. L. 102-25, title III, §§309(b), 314(1), (3), Apr. 6, 1991, 105 Stat. 83, 86, provided that:

"(a) INAPPLICABILITY OF ELIGIBILITY LIMITATION.—The limitation in the second sentence of subsection (b)(3) of

section 501 of title 37, United States Code, and in subsection (f) of that section does not apply with respect to the following leave:

“(1) Leave accrued by a member of a reserve component of the Armed Forces while serving on active duty (other than for training) in connection with the Persian Gulf conflict pursuant to an order to active duty authorized under section 672, 673, 673b, or 674 [now 12301, 12302, 12304, or 12306] of title 10, United States Code.

“(2) Leave accrued by a member of the Armed Forces in the Retired Reserve while serving on active duty in connection with the Persian Gulf conflict pursuant to an order to active duty authorized by section 675 [now 12307] of title 10, United States Code.

“(3) Leave accrued by a retired member of the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps, a member of the Retired Reserve, or a member of the Fleet Reserve or Fleet Marine Corps Reserve while such retired member or member, as the case may be, is serving on active duty in connection with the Persian Gulf conflict pursuant to an order to active duty authorized by section 688 of title 10, United States Code.

“(4) Leave accrued by a member referred to in paragraph (1), (2), or (3) while serving on active duty (other than for training) in connection with the Persian Gulf conflict pursuant to an order to such active duty issued with the consent of the member during a period in which members of the Armed Forces are being ordered to active duty in connection with such operation pursuant to a provision of title 10, United States Code, referred to in such paragraph.

“(b) SAVING PROVISION FOR CERTAIN ACCRUED LEAVE.—(1) Subject to paragraph (2), a member of the Armed Forces who, under section 701(f) of title 10, United States Code—

“(A) would lose any accumulated leave in excess of 60 days at the end of fiscal year 1991 shall be permitted to retain such leave until the end of fiscal year 1992; or

“(B) would lose any accumulated leave in excess of 60 days at the end of fiscal year 1992 (other than by reason of clause (A)) shall be permitted to retain such leave until the end of fiscal year 1993.

“(2) In no case may a member be permitted to accumulate leave under this section in excess of 90 days.

“(c) REGULATIONS.—The Secretary of Defense shall prescribe regulations establishing standards and procedures for the administration of this section.”

[Section 309(c) of Pub. L. 102-25 provided that: “The amendment made by subsection (b) [amending section 1115(a) of Pub. L. 101-510, set out above] shall take effect as of November 5, 1990.”]

OPTIONS OF MEMBERS AS TO BASIS OF PAYMENT FOR ACCRUED LEAVE

Section 304(h) of Pub. L. 94-361 provided that: “Notwithstanding the provisions of section 501(b)(1) of title 37, United States Code, as amended by subsection (c), and subject to the limitations prescribed in section 501(b)(3) of such title, as amended by subsection (c), any leave accrued by any member of the Army, Navy, Air Force, Marine Corps, Coast Guard, or National Oceanic and Atmospheric Administration prior to the first day of the second calendar month following the month [July, 1976] in which this section is enacted shall, at the option of such member, be paid for on the same basis such leave would have been paid for under the provisions of section 501(b) of title 37, United States Code, on the day prior to the first day of the second calendar month following the month in which this section is enacted”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 701.

§ 502. Absences due to sickness, wounds, and certain other causes

(a) A member of the Army, Navy, Air Force, Marine Corps, Coast Guard, or National Oceanic and Atmospheric Administration, who is absent because of sickness or wounds, or who is directed by the Secretary concerned, or his designated representative, to be absent from duty to await orders pending disability retirement proceedings for a period that is longer than the leave authorized by section 701 of title 10, is entitled to the pay and allowances to which he would be entitled if he were not so absent. A member who is absent with leave for any other reason for not longer than the leave authorized by that section is entitled to the same pay and allowances to which he would be entitled if he were not on leave, and to any additional allowances otherwise provided by law for members on leave.

(b) Except as provided in subsection (a) and section 701(h) of title 10, a member who is authorized by the Secretary concerned, or his designated representative, to be absent for a period that is longer than the leave authorized by section 701 of title 10 is not entitled to pay or allowances during the part of his absence that is more than the number of days' leave authorized by that section.

(Pub. L. 87-649, Sept. 7, 1962, 76 Stat. 482; Pub. L. 89-718, §49(a)(1), Nov. 2, 1966, 80 Stat. 1121; Pub. L. 96-513, title V, §516(15), Dec. 12, 1980, 94 Stat. 2939; Pub. L. 99-661, div. A, title V, §506(b), Nov. 14, 1986, 100 Stat. 3865; Pub. L. 102-25, title VII, §702(b)(1), (c), Apr. 6, 1991, 105 Stat. 117.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
502(a)	37:33(b) (1st and last sentences). 37:39 (less last proviso). 37:32(f) (last 8 words).	Aug. 9, 1946, ch. 931, §4(b) (less 3d sentence); re-stated Aug. 4, 1947, ch. 475, §1 (2d par., less 3d sentence), 61 Stat. 748. Aug. 9, 1946, ch. 931, §2(f) (last 8 words), 60 Stat. 963.
502(b)	37:33(b) (2d sentence). 37:32(f) (last 8 words).	Aug. 17, 1949, ch. 452, §1 (less last proviso), 63 Stat. 611. Aug. 9, 1946, ch. 931, §2(f) (last 8 words), 60 Stat. 963.

In subsection (a), the words “After August 31, 1946”, in section 33(b) of existing title 37, are omitted as executed. The words “allowance or”, in section 33(b) of existing title 37, are omitted as surplusage. The last sentence of section 33(b) of existing title 37 is omitted as executed, since the Act of December 28, 1945 (59 Stat. 663) was repealed by section 506(g) of the Officer Personnel Act of 1947 (61 Stat. 892).

In subsections (a) and (b), the words “, or his designated representative,” are substituted for the last 8 words of section 32(f) of existing title 37.

In subsection (b), the words “Except as provided in subsection (a) of this section” are inserted for clarity. The words “the part of his absence that is more than the number of days' leave authorized by that section” are substituted for the words “such absence”.

AMENDMENTS

1991—Subsec. (b). Pub. L. 102-25 struck out “of this section” after “subsection (a)”.

1986—Subsec. (b). Pub. L. 99-661 inserted “and section 701(h) of title 10”.