

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Public Health Service

Chapter CC23--Staffing
Subchapter CC23.8--Retirement
Personnel INSTRUCTION 2--Computation of Retired Pay

CONTENTS

| <u>Section</u> | <u>Subject</u> | <u>Page</u> |
|----------------|------------------------------------------------------------------------|-------------|
| A. | Purpose and Scope | 1 |
| B. | Authorities | 2 |
| C. | Initial Computation of Retired Pay | 2 |
| D. | Cost of Living Increases | 6 |
| E. | Correction of Retired Pay Inversion | 8 |
| F. | Recomputation of Retired Pay to Reflect Later Active Duty | 9 |
| G. | Privacy Act Provisions | 11 |
| Exhibit I | Cost of Living Increases in Retired Pay Since 1971 | 12 |

Section A. Purpose and Scope

1. This INSTRUCTION explains how retired pay is computed at the time of retirement. This INSTRUCTION also explains how retired pay is adjusted after retirement based on: (1) when the officer first entered a uniformed service; (2) cost of living increases; and (3) later active duty.
2. For information on retirement eligibility, refer to other INSTRUCTIONS of this subchapter.

Section B. Authorities

Statutory authorities for computing retired pay as stated in this INSTRUCTION include:

- 42 U.S.C. 212(a)(4) - General and alternative formulas for computing retired pay;
- 42 U.S.C. 212(a)(5) - General grade retirement;
- 42 U.S.C. 212(d) - Creditable active service for nondisability retirement;
- 42 U.S.C. 212(f) and 10 U.S.C. 1208(a)(2) - Creditable active service for disability retirement;
- 10 U.S.C. 1401 - Computation of retired pay;
- 10 U.S.C. 1401a, as amended - Adjustment of retired pay to reflect changes in Consumer Price Index; correction of the inversion of retired pay rates;
- 10 U.S.C. 1402, as amended - Recomputation of retired pay to reflect later active duty of members who first became members before September 8, 1980;
- 10 U.S.C. 1402(a), as amended - Recomputation of retired pay to reflect later active duty of members who first became members after September 7, 1980;
- 10 U.S.C. 1406 - Retired pay base for officers who first become members before September 8, 1980; final base pay;
- 10 U.S.C. 1407, as amended - High 36-month average;
- 10 U.S.C. 1410 - Restoral of full retirement amount at age 62 for officers who first become members on or after August 1, 1986;
- 10 U.S.C. 1411 - Rules of construction;
- 10 U.S.C. 1412 - Rounding to next lower dollar.

Section C. Initial Computation of Retired Pay

1. Nondisability Retirement. An officer's nondisability retired pay is computed under the general method as indicated in Section C.l.a., below, as well as under the alternate method as indicated in Section C.l.b., below. The method that results in the highest percentage will then be used in computing the officer's monthly retired pay base. For an exception, see Section C.l.c., below.

- a. General Method. Retired pay under this method is computed by multiplying the monthly retired pay base (see Section C.5., below) by 2 1/2 percent times years of creditable service for retirement eligibility which includes:
- (1) All active service (enlisted and commissioned) in any of the uniformed services; plus
 - (2) Employment with PHS, other than as a PHS commissioned officer, which is comparable to service performed by an officer, not to exceed the last five years of such employment. For purposes of this paragraph, creditable service includes PHS employment in professional positions subsequent to receipt of a baccalaureate degree (i.e., positions normally classified at two-grade intervals under the General Schedule (GS) pay system) at grade levels GS-5 and above as well as equivalent level positions (e.g., Senior Executive Service);¹ plus
 - (3) All active service (other than service included in Section C.1.a.(1) and (2) above,) which is creditable for retirement purposes under the laws governing the retirement of members of any of the other uniformed services.
- b. Alternate Method. Under the alternate method, retired pay is computed by multiplying the monthly retired pay base (see Section C.5., below) by 2 1/2 percent times years of creditable service as indicated below:
- (1) All active and inactive service credited to an officer for basic pay purposes as of May 31, 1958; plus
 - (2) Active service in the uniformed services after May 31, 1958; plus
 - (3) Four years for professional schooling for a medical officer or dental officer and, for the medical officer who has completed one year of medical internship or its equivalent, one additional year. Such credit, however, is reduced by any service in the uniformed services during the period of professional schooling or internship if such service is credited to the officer under Section C.1.b(1) and (2), above.

1. Exception: Before December 18, 1980, creditable service included employment as a nurse with PHS after registration as a graduate nurse under a nurse practice act of a State or the District of Columbia. The crediting of such service was eliminated effective December 18, 1980. Only those officers who entered on active duty before that date receive such service credit.

An officer's retired pay may not exceed 75 percent of his/her monthly retired pay base. An officer's retired pay will not be less than 50 percent of his/her monthly retired pay base if the officer retires at age 64 and, at the time he/she becomes eligible for age retirement, has at least 12 whole years of active service which is creditable for retirement eligibility as stated in Section C.1.a., above.

- c. An officer who first became a member of a uniformed service on or after August 1, 1986, and who retires with less than 30 years of creditable service for retired pay computation purposes, and who is under 62 years of age, will have his/her retired pay computation factor reduced by one percent for each full year less than thirty, and one-twelfth of one percent for each month less than a full year, after counting all full years.
- d. The retired pay of the officer described in c. above, shall be recomputed, effective the first day of the first month beginning after the officer attains 62 years of age, so as to be the amount equal to:

- (1) the amount of the initial unreduced retired pay, increased by the percent (adjusted to one-tenth of one percent) by which the price index for the most recent base quarter ending more than 31 days before the date the officer attains 62 years of age exceeds the price index for the calendar quarter immediately before the date the officer first became entitled to retired pay.

- 2. Disability Retirement. An officer who is retired for disability may elect to have his/her retired pay computed by multiplying his/her monthly retired pay base (see Section C.5., below) by the percentage of his/her disability or by 2 1/2 percent times years of creditable active service. Creditable active service is the same as the service listed under the general method for computing nondisability retired pay (see Section C.1.a., above), except that officers who were placed on a Temporary Disability Retired List (TDRL) do not receive longevity credit for retirement purposes for the period of time commencing when the officer was removed from active duty and placed on the TDRL until the officer is returned to active duty or retired. However, if the officer is also eligible for nondisability retirement, the officer may, if it is to his/her advantage, use the creditable service under the alternative method referred to in Section C.1.b., above. An officer's disability retired pay may not exceed 75 percent of his/her monthly retired pay base and, while the officer remains on the TDRL, will not be less than 50 percent of his/her monthly retired pay base.

Note: For officers on active duty in the reserve corps on June 30, 1960, creditable service for disability retirement includes all -- not just the last five years--of PHS employment, other than as a PHS commissioned officer.

3. General Grade Retirement. An officer who retires after completing a total of four or more years in the flag ranks (pay grades 0-7 and above), and a total of 25 years of active service with PHS, is entitled to the maximum amount of retired pay, i.e., 75 percent of his/her monthly retired pay base.
4. Fraction of Years. Officers who retire on or after October 1, 1983, and those who are eligible to have their retired pay recomputed after that date (retired officers recalled to active duty), will receive retired pay computation credit for each full month of creditable service that is completed.
5. Monthly Retired Pay Base. The "monthly retired pay base" is the rate of basic pay used in computing the amount of retired pay. The "base" depends on when the officer first became a member of any of the uniformed services, whether active or inactive, enlisted or commissioned, as indicated below:
 - a. If the officer had been a member of a uniformed service at any time before September 8, 1980, his/her monthly retired pay base is the basic pay of his/her permanent grade at the time of retirement or the highest temporary grade, including pay grades 0-7 and above, in which the officer served satisfactorily at any time. For nondisability retired pay, the officer must have served in the temporary grade for at least six months.
 - b. If the officer became a member of a uniformed service for the first time on or after September 8, 1980, his/her monthly retired pay base is computed as follows:
 - (1) The monthly retired pay base of an officer who served on active duty for 36 months or more is computed by averaging the highest monthly rates of basic pay that the officer received during any 36 months of his/her active service as a member of any of the uniformed services. The 36 months need not be consecutive. Because an officer's pay tends to increase during his/her active service, the "high-36" average will usually be the last 36 months of his/her active service as a member of a uniformed service. However, any other combination of months during an officer's active service may be used if it produces a higher average monthly basic pay.
 - (2) If the officer served on active duty for less than 36 months (e.g., retired for disability), his/her monthly retired pay base is computed by averaging the rates of basic pay that the officer received during his/her period of active duty.
 - (3) If the officer is retired for disability while on active duty under orders specifying duty for less than 30 days, his/her monthly retired pay base is computed by averaging the highest monthly rates of basic pay the officer would have received during

any of the 36 months that the officer was a member of a uniformed service preceding the date on which he/she became entitled to disability retired pay. If for less than 36 months, the monthly retired pay base is computed by averaging the rates of basic pay in effect during the period the officer was a member of a uniformed service.

An example: Assume the officer was appointed in the PHS Commissioned Corps in an inactive status on December 1, 1985. The officer is called to active duty on November 1, 1986, for a period of two weeks. While on active duty, he/she is injured and is found qualified for disability retirement. The officer's monthly retired pay base is computed by averaging the rates of basic pay that the officer would have received had he/she been serving on active duty for the entire period that the officer held his/her appointment in the PHS Commissioned Corps, i.e., from December 1, 1985, until the date of retirement.

(4) When an officer has less than 36 months of service, the monthly basic pay will be averaged by including any fractions of a month.

6. Gross Retired Pay Computations. All gross retired pay computations which include an amount less than one dollar shall be rounded down to the next lower dollar.

Section D. Cost of Living Increases

1. For purposes of this section:

- a. The term "base quarter" as used with respect to a year, means the calendar quarter ending on September 30 of each year;
- b. The consumer price index (CPI) for a base quarter is the arithmetical mean of such index for the three months comprising that quarter; and
- c. The term "base index" means the price index for the base quarter of the most recent cost of living adjustment.

2. a. Adjustments to retired pay are derived from increases in nationwide living costs as measured by the CPI. 10 U.S.C. 1401a(b) provides that a cost of living adjustment (COLA) shall be effective December 1 of each year, beginning December 1, 1984.*

* Exception: No COLA was authorized for 1985.

- b. For an officer who first became a member of a uniformed service before August 1, 1986, retired pay shall be increased on December 1 of each year by the percent by which the CPI for the base quarter of that year exceeds the base index. Adjustments are made to the nearest one-tenth of one percent.
- c. For an officer who first became a member of a uniformed service on or after August 1, 1986, cost of living adjustments in retired pay are computed as follows. If the percent determined pursuant to Section D.2.b., above, is greater than one percent, retired pay shall be increased by the difference between the percent determined pursuant to Section D.2.b., above, and one percent.
- d. If an officer who first became a member of a uniformed service before August 1, 1986, becomes entitled to retired pay on or after the effective date of an adjustment in retired pay, but before the effective date of the next increase in the rates of monthly basic pay, the retired pay of that officer shall be increased, effective on the date the officer becomes entitled to that pay, by the percent (adjusted to the nearest one-tenth of one percent) by which the base index exceeds the price index for the calendar quarter immediately before the calendar quarter in which the rates of monthly basic pay on which the retired pay is based became effective.
- e. If an officer who first became a member of a uniformed service before August 1, 1986, becomes entitled to retired pay based on rates of monthly basic pay that became effective after the last day of the calendar quarter of the base index, the retired pay of the officer shall be increased on the effective date of the next adjustment of retired pay only by the percent (adjusted to the nearest one-tenth of one percent) by which the price index for the base quarter of that year exceeds the price index for the calendar quarter immediately before the calendar quarter in which the rates of monthly basic pay on which the retired pay is based became effective.
- f. The retired pay of an officer who first became a member of a uniformed service on or after August 1, 1986, shall be increased on the effective date of the first adjustment of retired pay under D.2.a. above, after the officer becomes entitled to retired pay, only by the percent (adjusted to the nearest one-tenth of one percent) by which the price index for the base quarter of that year exceeds the price index for the calendar quarter immediately before the calendar quarter in which the officer became entitled to retired pay.
- g. The calculations of COLAs for all uniformed services are supplied by the Department of Defense (DoD). Because of the frequency of changes in these calculations, officers and other PHS personnel should contact the office listed below when information is required.

Compensation Branch, Division of Commissioned Personnel
Office of the Surgeon General, PHS
Room 4-50 Parklawn Building
Rockville, Maryland 20857

Section E. Correction of Retired Pay Inversion

1. Normally, an officer whose retired pay is computed under the pay rates in effect on the date of his/her retirement receives more retired pay than the officer whose retired pay was computed under earlier pay rates. To maintain equity for officers who would receive less retired pay than officers who retired earlier in the same grade and with the same number of years of service, legislation [commonly referred to as the "Tower Amendment" (see 10 U.S.C. 1401a(f))] was enacted to provide that retired pay of an officer retired on or after January 1, 1971, shall not be less than the retired pay to which he/she would have been entitled if he/she had become entitled to retired pay at an earlier date, adjusted to reflect any cost of living increases subsequent to that earlier date. For purposes of this Section, the "earlier date" is the first of any month following the month in which the officer had more than the required 20 years of creditable service for retirement eligibility.
 - a. Officers Not Eligible. To be eligible for computation of retired pay under this Section, an officer must have been eligible to retire at an earlier date. Any officer who retires for age, length of service, failure of promotion, or disability with 20 years or less of service is not eligible.
 - b. Computation. If an officer was eligible for retirement at an earlier date, his/her retired pay will be computed under this Section on the basis of:
 - (1) The grade held by the officer on the earlier date. If the officer had been promoted subsequent to that earlier date, the retired pay will be computed on the basis of the lower grade. (See Section C.5, above.)
 - (2) The pay rate in effect for the grade referred to in Section E.1.b.(1), above, and the years of service credited to the officer for basic pay purposes on the earlier date.
 - (3) The years of service credited to the officer for computation of retired pay on the earlier date.
 - (4) The cost of living increases authorized after the earlier date.

Beginning with the pay rates in effect before the current rates of pay, the officer's retired pay will be computed on the basis of each of the preceding pay rates (as long as the officer was eligible for

retirement) until the computation results in no increase in retired pay. Exhibit I of this INSTRUCTION lists the cost of living increases in retired pay since 1971. The computation which results in the highest rate of retired pay will be the rate of the officer's retired pay on the effective date of his/her retirement. The personnel order authorizing the officer's retirement will identify the factors used in the computation of his/her retired pay.

- c. Disability Retirees. An officer who retires for disability and has more than 20 years of creditable service for retirement eligibility may have his/her retired pay computed under this Section only if the officer elects to have his/her retired pay computed on the basis of "years of service" rather than percentage of disability.
2. The DoD Authorization Act of 1984 (September 24, 1983) repealed the provision of law (10 U.S.C. 1401a(e)) that allowed an individual to have his/her retired pay computed using the pay scale in effect one year prior to his/her retirement, plus subsequent cost of living increases, commonly known as the "one-year look back." However, an officer who was eligible to retire on the date of enactment of the DoD Authorization Act of 1984 may continue to use the one-year look back provision for the three-year period following enactment. An officer eligible to retire on the date of enactment but who remains on active duty beyond the three-year grace period and retires October 1, 1986, or later, may not receive retired pay in an amount less than it would have been had he/she become entitled to retired pay on the day before the end of such three-year period.

Section F. Recomputation of Retired Pay
to Reflect Later Active Duty

1. General.
 - a. Notwithstanding any of the provisions stated in this Section, an officer may elect to have, upon his/her release from recall to active duty, his/her retired pay computed by using the rate of basic pay under which the officer's retired pay was computed when the officer entered on active duty, and increased by any applicable cost of living adjustments authorized for retired officers after the officer initially became entitled to that pay.
 - b. An officer who is recalled to active duty after retirement is not entitled to recomputation of retired pay under the "Tower" amendment. (See Section E.)
2. Officers First Appointed Before September 8, 1980.
 - a. Creditable Service. The percentage factor used in computing the retired pay of an officer who serves on active duty after becoming entitled to retired pay is recomputed after release from that active duty as follows:

- (1) Nondisability Retirement. An officer's creditable service for computation of his/her retired pay is recomputed to include active service after becoming entitled to retired pay, unless the officer is already entitled to 75 percent of his/her monthly retired pay base.
 - (2) Disability Retirement. An officer's retired pay is recomputed at his/her election, as stated below, if the officer retired for nondisability and incurred, while on active duty after retirement, a disability of at least 30 percent; or the officer retired for disability and incurred a disability while on active duty after retirement that is in addition to, or that aggravated, the disability for which he/she was retired:
 - (a) Two and one-half percent times years of creditable service listed under Section C., above, to include active duty after becoming entitled to retired pay; or
 - (b) The highest percentage of disability attained while on active duty after becoming entitled to retired pay.
- b. Monthly Retired Pay Base. An officer's monthly retired pay is recomputed upon release from recall to active duty as follows:
- (1) Nondisability Retiree. If the officer has been entitled to the basic pay rate in effect upon release from active duty for a continuous period of at least two years, his/her retired pay is recomputed on the basis of that rate of basic pay. An officer who has been entitled to basic pay for a continuous period of at least two years (but not at the same basic pay rate for that period) has his/her retired pay recomputed on the basis of that rate of basic pay replaced by those in effect upon that release from active duty. If, however, the officer was on duty for less than two years of continuous active duty, his/her retired pay is recomputed under the rates of basic pay under which the officer's retired pay was computed when he/she entered on active duty.
 - (2) Disability Retiree. If an officer falls within one of the categories listed above, his/her retired pay is recomputed on the basis of the highest monthly basic pay that the officer received while on active duty after retirement or after the date when the officer's name was placed on the temporary disability retired list, as the case may be.
3. Officers First Appointed On or After September 8, 1980.
- a. Creditable Service. The percentage factor used in computing the retired pay of an officer who serves on active duty after becoming

entitled to retired pay is recomputed after release from that active duty as follows:

- (1) Nondisability Retirement. An officer's creditable service for computation of his/her retired pay is recomputed to include active service after becoming entitled to retired pay, unless the officer is already entitled to 75 percent of his/her monthly retired pay base.

- (2) Disability Retirement. An officer's retired pay is recomputed at his/her election, as stated below, if the officer retired for nondisability and incurred, while on active duty after retirement, a disability of at least 30 percent; or the officer retired for disability and incurred a disability while on active duty after retirement that is in addition to, or that aggravated, the disability for which he/she was retired:
 - (a) Two and one-half percent times years of creditable service listed under Section C., above, to include active duty after becoming entitled to retired pay; or

 - (b) The highest percentage of disability attained while on active duty after becoming entitled to retired pay.

- b. Monthly Retired Pay Base. The officer's retired pay is recomputed after release from his/her recall to active duty as though the officer first became entitled to retired pay upon release from that active duty, i.e., the monthly retired pay base is recomputed to take into account the higher rates of monthly basic pay while on recall to active duty.

Section G. Privacy Act Provisions

Payroll records, including all records related to retired pay, are subject to the Privacy Act of 1974. Commissioned Corps Personnel Manual, INSTRUCTION 7, Subchapter CC26.1, "Rights, Responsibilities, and Personnel Records of PHS Officers Under the Privacy Act," sets forth the procedures to be followed in the maintenance of these records, and contains the notices describing the record systems in which these records are maintained, which are: 09-37-0002, "PHS Commissioned Corps General Personnel Records, HHS/OASH/OM"; and 09-90-0017, "Pay, Leave, and Attendance Records, HHS/OS/ASPER."

EXHIBIT I

Cost of Living Increases in Retired Pay since 1971

| <u>Date of Increase</u> | <u>Percentage Increase</u> |
|-------------------------|-------------------------------------|
| June 1, 1971 | 4.5 |
| July 1, 1972 | 4.8 |
| July 1, 1973 | 6.1 |
| Jan. 1, 1974 | 5.5 |
| July 1, 1974 | 6.3 |
| Jan. 1, 1975 | 7.3 |
| Aug. 1, 1975 | 5.1 |
| Mar. 1, 1976 | 5.4 |
| Mar. 1, 1977 | 4.8 |
| Sep. 1, 1977 | 4.3 |
| Mar. 1, 1978 | 2.4 |
| Sep. 1, 1978 | 4.9 |
| Mar. 1, 1979 | 3.9 |
| Sep. 1, 1979 | 6.9 |
| Mar. 1, 1980 | 6.0 |
| Sep. 1, 1980 | 7.7 |
| Mar. 1, 1981 | 4.4 |
| Mar. 1, 1982 | 8.7 |
| Apr. 1, 1983 | 3.9 (for over age 62 as of 3/1/83) |
| Apr. 1, 1983 | 3.3 (for under age 62 as of 3/1/83) |
| Dec. 1, 1984 | 3.5 |
| Dec. 1, 1985* | |
| Dec. 1, 1986 | 1.3 |

* No COLA was authorized for 1985.