

ous amendments to style and punctuation. Prior to amendment, subsec. (f) read as follows: "Unless sooner terminated, an appointment under this section terminates—

- "(1) on the second anniversary of the appointment;
"(2) at the end of the six-month period beginning on the last day of the war or national emergency during which the appointment was made; or
"(3) on the date the person appointed is released from active duty; whichever is earliest."

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-190 effective Feb. 1, 1992, see section 1132 of Pub. L. 102-190, set out as a note under section 521 of this title.

DELEGATION OF FUNCTIONS

Functions of President under subsecs. (a) and (b) to make or vacate certain temporary commissioned appointments delegated to Secretary of Defense to perform during a time of war or national emergency, without approval, ratification, or other action by President, and with authority for Secretary to redelegate, provided that, during a national emergency declared by President, exercise of any such authority be specifically directed by President in accordance with section 1631 of Title 50, War and National Defense, and that Secretary ensure any authority so delegated be accounted for as required by section 1641 of Title 50, see Ex. Ord. No. 12396, §§2, 3, Dec. 9, 1982, 47 F.R. 55897, 55898, set out as a note under section 301 of Title 3, The President.

EX. ORD. NO. 13321. APPOINTMENTS DURING NATIONAL EMERGENCY

Ex. Ord. No. 13321, Dec. 17, 2003, 68 F.R. 74465, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Emergencies Act (50 U.S.C. 1601 et seq.), and section 301 of title 3, United States Code, and in order to further respond to the national emergency I declared in Proclamation 7463 of September 14, 2001 [50 U.S.C. 1621 note], I hereby order as follows:

SECTION 1. Emergency Appointments Authority. The emergency appointments authority at section 603 of title 10, United States Code, is invoked and made available to the Secretary of Defense in accordance with the terms of that statute and of Executive Order 12396 of December 9, 1982 [3 U.S.C. 301 note].

SEC. 2. Judicial Review. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, entities, officers, employees or agents, or any person.

SEC. 3. Administration. This order shall be transmitted to the Congress and published in the Federal Register.

GEORGE W. BUSH.

§ 604. Senior joint officer positions: recommendations to the Secretary of Defense

(a) JOINT 4-STAR OFFICER POSITIONS.—(1) Whenever a vacancy occurs, or is anticipated to occur, in a position specified in subsection (b)—

(A) the Secretary of Defense shall require the Secretary of the Army to submit the name of at least one Army officer, the Secretary of the Navy to submit the name of at least one Navy officer and the name of at least one Marine Corps officer, and the Secretary of the Air Force to submit the name of at least one Air Force officer for consideration by the Secretary for recommendation to the President for appointment to that position; and

(B) the Chairman of the Joint Chiefs of Staff may submit to the Secretary of Defense the name of one or more officers (in addition to the officers whose names are submitted pursuant to subparagraph (A)) for consideration by the Secretary for recommendation to the President for appointment to that position.

(2) Whenever the Secretaries of the military departments are required to submit the names of officers under paragraph (1)(A), the Chairman of the Joint Chiefs of Staff shall submit to the Secretary of Defense the Chairman's evaluation of the performance of each officer whose name is submitted under that paragraph (and of any officer whose name the Chairman submits to the Secretary under paragraph (1)(B) for consideration for the same vacancy). The Chairman's evaluation shall primarily consider the performance of the officer as a member of the Joint Staff and in other joint duty assignments, but may include consideration of other aspects of the officer's performance as the Chairman considers appropriate.

(b) COVERED POSITIONS.—Subsection (a) applies to the following positions:

- (1) Commander of a combatant command.
(2) Commander, United States Forces, Korea.
(3) Deputy commander, United States European Command, but only if the commander of that command is also the Supreme Allied Commander, Europe.

(Added Pub. L. 103-337, div. A, title IV, §405(c)(1), Oct. 5, 1994, 108 Stat. 2745; amended Pub. L. 104-201, div. A, title IV, §404(a), Sept. 23, 1996, 110 Stat. 2506; Pub. L. 106-65, div. A, title V, §509(a), Oct. 5, 1999, 113 Stat. 592; Pub. L. 107-314, div. A, title IV, §405(a), Dec. 2, 2002, 116 Stat. 2526; Pub. L. 108-136, div. A, title V, §504(a), Nov. 24, 2003, 117 Stat. 1456.)

AMENDMENTS

2003—Subsec. (c). Pub. L. 108-136 struck out heading and text of subsec. (c). Text read as follows: "This section shall cease to be effective at the end of December 31, 2004."

2002—Subsec. (c). Pub. L. 107-314 substituted "December 31, 2004" for "September 30, 2003".

1999—Subsec. (c). Pub. L. 106-65 substituted "September 30, 2003" for "September 30, 2000".

1996—Subsec. (c). Pub. L. 104-201 substituted "September 30, 2000" for "September 30, 1997".

CHAPTER 36—PROMOTION, SEPARATION, AND INVOLUNTARY RETIREMENT OF OFFICERS ON THE ACTIVE-DUTY LIST

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SUBCHAPTER I—SELECTION BOARDS

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616.	Recommendations for promotion by selection boards.
617.	Reports of selection boards.
618.	Action on reports of selection boards.

## AMENDMENTS

2006—Pub. L. 109-364, div. A, title V, § 547(d)(1), Oct. 17, 2006, 120 Stat. 2216, added item 613a.

1991—Pub. L. 102-190, div. A, title V, § 504(a)(2)(B), Dec. 5, 1991, 105 Stat. 1357, struck out “; communications with boards” after “selection boards” in item 614.

**§ 611. Convening of selection boards**

(a) Whenever the needs of the service require, the Secretary of the military department concerned shall convene selection boards to recommend for promotion to the next higher permanent grade, under subchapter II of this chapter, officers on the active-duty list in each permanent grade from first lieutenant through brigadier general in the Army, Air Force, or Marine Corps and from lieutenant (junior grade) through rear admiral (lower half) in the Navy. The preceding sentence does not require the convening of a selection board in the case of officers in the permanent grade of first lieutenant or, in the case of the Navy, lieutenant (junior grade) when the Secretary concerned recommends for promotion to the next higher grade under section 624(a)(3) of this title all such officers whom the Secretary finds to be fully qualified for promotion.

(b) Whenever the needs of the service require, the Secretary of the military department concerned may convene selection boards to recommend officers for continuation on active duty under section 637 of this title or for early retirement under section 638 of this title.

(c) The convening of selection boards under subsections (a) and (b) shall be under regulations prescribed by the Secretary of Defense.

(Added Pub. L. 96-513, title I, § 105, Dec. 12, 1980, 94 Stat. 2851; amended Pub. L. 97-86, title IV, § 405(b)(1), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 99-145, title V, § 514(b)(1), Nov. 8, 1985, 99 Stat. 628; Pub. L. 107-107, div. A, title V, § 505(a)(3), Dec. 28, 2001, 115 Stat. 1086.)

## AMENDMENTS

2001—Subsec. (a). Pub. L. 107-107, § 505(a)(3)(A), substituted “Whenever the needs of the service require, the Secretary of the military department concerned” for “Under regulations prescribed by the Secretary of Defense, the Secretary of the military department concerned, whenever the needs of the service require,” and inserted at end “The preceding sentence does not require the convening of a selection board in the case of officers in the permanent grade of first lieutenant or, in the case of the Navy, lieutenant (junior grade) when the Secretary concerned recommends for promotion to the next higher grade under section 624(a)(3) of this title all such officers whom the Secretary finds to be fully qualified for promotion.”

Subsec. (b). Pub. L. 107-107, § 505(a)(3)(B), substituted “Whenever the needs of the service require, the Secretary of the military department concerned” for “Under regulations prescribed by the Secretary of Defense, the Secretary of the military department concerned, whenever the needs of the service require.”

Subsec. (c). Pub. L. 107-107, § 505(a)(3)(C), added subsec. (c).

1985—Subsec. (a). Pub. L. 99-145 substituted “rear admiral (lower half)” for “commodore”.

1981—Subsec. (a). Pub. L. 97-86 substituted “commodore” for “commodore admiral”.

## EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97-86, set out as a note under section 101 of this title.

## EFFECTIVE DATE

Subchapter effective Sept. 15, 1981, but the authority to prescribe regulations under this subchapter effective on Dec. 12, 1980, see section 701 of Pub. L. 96-513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

## TRANSITION FROM GRADE OF COMMODORE TO GRADE OF REAR ADMIRAL (LOWER HALF)

Section 514(e) of Pub. L. 99-145 provided that:

“(1) An officer who on the day before the date of the enactment of this Act [Nov. 8, 1985] is serving in or has the grade of commodore shall as of the date of the enactment of this Act be serving in or have the grade of rear admiral (lower half).

“(2) An officer who on the day before the date of the enactment of this Act is on a list of officers selected for promotion to the grade of commodore shall as of the date of the enactment of this Act be considered to be on a list of officers selected for promotion to the grade of rear admiral (lower half).”

## TRANSITION PROVISIONS COVERING 1980 AMENDMENTS BY DEFENSE OFFICER PERSONNEL MANAGEMENT ACT [Pub. L. 96-513]

Parts A to C of title VI of Pub. L. 96-513, Dec. 12, 1980, 94 Stat. 2940, as amended by Pub. L. 97-22, § 8(a)-(n), July 10, 1981, 95 Stat. 132-135; Pub. L. 97-86, title IV, § 405(d)(1), (2)(A), (e), (f), Dec. 1, 1981, 95 Stat. 1106, eff. Sept. 15, 1981; Pub. L. 98-525, title V, §§ 530-532, Oct. 19, 1984, 98 Stat. 2527; Pub. L. 100-456, div. A, title V, § 503, Sept. 29, 1988, 102 Stat. 1967, provided that:

## “PART A—TRANSITION PROVISIONS RELATING ONLY TO THE ARMY AND AIR FORCE

## “REGULAR OFFICERS SERVING IN A HIGHER TEMPORARY GRADE BELOW LIEUTENANT GENERAL OR RECOMMENDED FOR PROMOTION TO A HIGHER GRADE

“SEC. 601. (a) Except as provided in sections 603 and 604, any regular officer of the Army or Air Force who on the effective date of this Act [Sept. 15, 1981, except as otherwise provided in section 701 of Pub. L. 96-513, set out as an Effective Date of 1980 Amendment note under section 101 of this title] is on active duty and—

“(1) is serving in a temporary grade below lieutenant general that is higher than his regular grade;

“(2) is on a list of officers recommended for promotion to a temporary grade below lieutenant general; or

“(3) is on a list of officers recommended for promotion to a regular grade higher than the grade in which he is serving;

shall be considered to have been recommended by a board convened under section 611(a) of title 10, United States Code, as added by this Act, for promotion to the regular grade equivalent to the grade in which he is serving or for which he has been recommended for promotion, as the case may be.

“(b) An officer referred to in clause (1) of subsection (a) who is not promoted to the grade to which he is considered under such subsection to have been recommended for promotion because his name is removed from a list of officers who are considered under such subsection to have been recommended for promotion shall be considered under chapter 36 of title 10, United States Code, as added by this Act, for promotion to the regular grade equivalent to the temporary grade in which he was serving on the effective date of this Act

[Sept. 15, 1981] as if he were serving in his regular grade.

“(c) Notwithstanding section 741(d) of title 10, United States Code, as added by this Act, the date of rank of an officer referred to in subsection (a)(1) who is promoted to the temporary grade in which he is serving on the effective date of this Act [Sept. 15, 1981] is the date of his temporary appointment in that grade.

“(d)(1) Any delay of a promotion of an officer referred to in clause (2) or (3) of subsection (a) that was in effect on September 14, 1981, under the laws and regulations in effect on such date shall continue in effect on and after September 15, 1981, as if such promotion had been delayed under section 624(d) of title 10, United States Code, as added by this Act.

“(2) Any action to remove from a promotion list the name of an officer referred to in clause (2) or (3) of subsection (a) that was initiated before September 15, 1981, under the laws and regulations in effect before such date shall continue on and after such date as if such removal action had been initiated under section 629 of title 10, United States Code, as added by this Act.

“RESERVE OFFICERS SERVING IN A HIGHER TEMPORARY GRADE BELOW LIEUTENANT GENERAL OR RECOMMENDED FOR PROMOTION TO A HIGHER GRADE

“SEC. 602. (a)(1) Except as provided in subsection (b) and sections 605 and 606, any reserve officer of the Army or Air Force who on the effective date of this Act [Sept. 15, 1981] is subject to placement on the active-duty list of his armed force and—

“(A) is serving in a temporary grade below lieutenant general that is higher than his reserve grade; or

“(B) is on a list of officers recommended for promotion to a temporary grade below lieutenant general that is the same as or higher than his reserve grade; shall be considered to have been recommended by a board convened under section 611(a) of title 10, United States Code, as added by this Act, for promotion to the reserve grade equivalent to the grade in which he is serving or for which he has been recommended for promotion, as the case may be.

“(2) Notwithstanding section 741(d) of title 10, United States Code, as added by this Act, the date of rank of an officer referred to in paragraph (1)(A) who is promoted to the grade to which he is considered under such paragraph to have been recommended for promotion is the date of his temporary appointment in that grade.

“(b) A reserve officer of the Army or Air Force who on the effective date of this Act [Sept. 15, 1981]—

“(1) is subject to placement on the active-duty list of his armed force;

“(2) is serving on active duty in a temporary grade; and

“(3) either holds a reserve grade higher than the temporary grade in which he is serving or is on a list of officers recommended for promotion to a reserve grade higher than the temporary grade in which he is serving,

shall while continuing on active duty retain such temporary grade and shall be considered for promotion under chapter 36 of title 10, United States Code, as added by this Act, to a grade equal to or lower than his reserve grade as if such temporary grade is a permanent grade. If such officer is recommended for promotion under such chapter to such a grade, his appointment to such grade shall be a temporary appointment.

“(c)(1) Any delay of a promotion of an officer referred to in clause (B) of subsection (a)(1) that was in effect on September 14, 1981, under the laws and regulations in effect on such date shall continue in effect on and after September 15, 1981, as if such promotion has been delayed under section 624(d) of title 10, United States Code, as added by this Act.

“(2) Any action to remove from a promotion list the name of an officer referred to in clause (B) of subsection (a)(1) that was initiated before September 15, 1981, under the laws and regulations in effect before

such date shall continue on and after such date as if such removal action had been initiated under section 629 of title 10, United States Code, as added by this Act.

“REGULAR OFFICERS ONCE FAILED OF SELECTION FOR PROMOTION

“SEC. 603. (a) An officer of the Army or Air Force who on the effective date of this Act [Sept. 15, 1981]—

“(1) holds the regular grade of first lieutenant, captain, or major; and

“(2) has been considered once but not recommended for promotion to the next higher regular grade by a selection board convened under the laws in effect on the day before the effective date of this Act, shall, within one year after the effective date of this Act, be considered for promotion to the next higher regular grade by a selection board convened by the Secretary concerned under the laws in effect on the day before the effective date of this Act.

“(b)(1)(A) An officer described in subsection (a) who is recommended for promotion by the selection board which considers him pursuant to such subsection shall be considered to have been recommended for promotion to the next higher regular grade or the grade in which he is serving, whichever grade is higher, by a board convened under section 611(a) of title 10, United States Code, as added by this Act. Notwithstanding section 741(d) of title 10, United States Code, as added by this Act, the date of rank of an officer referred to in the preceding sentence who was serving in the temporary grade equivalent to the grade to which he is considered to have been recommended for promotion and who is promoted to that grade is the date of his temporary appointment in that grade.

“(2) An officer described in subsection (a) who is not recommended for promotion by such board shall, unless continued on active duty under section 637 of such title, as added by this Act, be retired, if eligible to retire, be discharged, or be continued on active duty until eligible to retire and then be retired, under the laws applicable on the day before the effective date of this Act [Sept. 15, 1981].

“REGULAR OFFICERS TWICE FAILED OF SELECTION FOR PROMOTION

“SEC. 604. An officer of the Army or Air Force who on the day before the effective date of this Act [Sept. 15, 1981]—

“(1) holds the regular grade of first lieutenant, captain, or major; and

“(2) has twice failed of selection for promotion to the next higher regular grade, shall, unless continued on active duty under section 637 of title 10, United States Code, as added by this Act, be retired, if eligible to retire, be discharged, or be continued on active duty until eligible to retire and then be retired, under the laws in effect on the day before the effective date of this Act.

“RESERVE OFFICERS ONCE FAILED OF SELECTION FOR PROMOTION

“SEC. 605. (a) A reserve officer of the Army or Air Force who on the effective date of this Act [Sept. 15, 1981]—

“(1) is on active duty and subject to placement on the active-duty list of his armed force;

“(2) holds the reserve grade of first lieutenant, captain, or major; and

“(3) has been considered once but not selected for promotion to the next higher reserve grade under section 3366, 3367, 8366, or 8367 [see section 14301 et seq. of this title], as appropriate, of title 10, United States Code, shall, unless sooner promoted, be considered again for promotion to that grade by a selection board convened under section 3366, 3367, 8366, or 8367, as appropriate, of such title.

“(b)(1) An officer described in subsection (a) who is serving on active duty in a temporary grade higher

than his reserve grade on the effective date of this Act [Sept. 15, 1981] and who is recommended by the selection board which considers him pursuant to such subsection for promotion to the reserve grade equivalent to the temporary grade in which he is serving on such date shall be considered as having been recommended for promotion to that reserve grade in the report of a selection board convened under section 611(a) of title 10, United States Code, as added by this Act. Notwithstanding section 741(d) of title 10, United States Code, as added by this Act, the date of rank of an officer referred to in the preceding sentence who is promoted to the reserve grade equivalent to the temporary grade in which he is serving on such date is the date of his temporary appointment in that grade.

“(2) An officer described in subsection (a) who is serving on active duty in a temporary grade equivalent to or lower than his reserve grade on the effective date of this Act [Sept. 15, 1981] and who is recommended by the selection board which considers him pursuant to such subsection for promotion to a reserve grade higher than the temporary grade in which he was serving on such date shall be considered as having been recommended for promotion to that reserve grade in the report of a selection board convened under section 3366, 3367, 8366, or 8367 [see section 14301 et seq. of this title], as appropriate, of such title. If such an officer is not ordered to active duty in his reserve grade, he shall while continuing on active duty retain such temporary grade and shall be considered for promotion under chapter 36 of title 10, United States Code, as added by this Act, to a grade equal to or lower than his reserve grade as if such temporary grade is a permanent grade. If such officer is recommended for promotion under such chapter to such a grade, his appointment to such grade shall be a temporary appointment to such grade.

“(3) An officer described in subsection (a) who is not recommended for promotion by the selection board which considers him pursuant to such subsection shall be governed by section 3846 or 8846, as appropriate, of title 10, United States Code, as a deferred officer.

“RESERVE OFFICERS TWICE FAILED OF SELECTION FOR PROMOTION

“SEC. 606. An officer of the Army or Air Force who on the day before the effective date of this Act [Sept. 15, 1981]—

“(1) was on active duty and subject to placement on the active-duty list of his armed force; and

“(2) held the reserve grade of first lieutenant, captain, or major; and

“(3) was considered to have twice failed of selection for promotion to the next higher reserve grade,

shall be governed by [former] section 3846 or 8846, as appropriate, of title 10, United States Code, as a deferred officer.

“ENTITLEMENT TO SEVERANCE PAY OR SEPARATION PAY OF OFFICERS SEPARATED OR DISCHARGED PURSUANT TO THIS PART

“SEC. 607. (a) An officer who is discharged in accordance with section 603(b)(2) or 604 is entitled, at his election, to—

“(1) the severance pay to which he would have been entitled under the laws in effect before the effective date of this Act [Sept. 15, 1981]; or

“(2) separation pay, if eligible therefor, under section 1174(a) of title 10, United States Code, as added by this Act.

“(b) An officer who is separated in accordance with section 605(b)(3) or 606 is entitled, at his election, to—

“(1) readjustment pay under section 687 of title 10, United States Code, as in effect on the day before the effective date of this Act [Sept. 15, 1981]; or

“(2) separation pay, if eligible therefor, under section 1174(c) of title 10, United States Code, as added by this Act.

“SPECIAL TENURE PROVISIONS FOR OFFICERS SERVING IN TEMPORARY GRADES OF BRIGADIER GENERAL AND MAJOR GENERAL

“SEC. 608. (a) Notwithstanding section 635 or 636 of title 10, United States Code, as added by this Act, but subject to subsection (b), a regular officer of the Army or Air Force—

“(1) who on the effective date of this Act [Sept. 15, 1981] is serving in or is on a list of officers recommended for promotion to the temporary grade of brigadier general or major general;

“(2) whose regular grade on such date is below such temporary grade; and

“(3) who is promoted pursuant to section 601(a) to the regular grade equivalent to such temporary grade,

shall be subject to mandatory retirement for years of service in accordance with the laws applicable on the day before the effective date of this Act to officers in the permanent grade he held on such date. However, such an officer shall not be subject to a mandatory retirement date which is earlier than the first day of the month following the month of the thirtieth day after he completes 30 years of service as computed under section 3927(a) or 8927(a), as appropriate, of title 10, United States Code, as in effect on the day before the effective date of this Act.

“(b)(1) The Secretary of the Army or the Secretary of the Air Force, as appropriate, may convene selection boards under this section for the purpose of recommending from among officers described in subsection (a) officers to be selected to be subject to mandatory retirement for years of service in accordance with the laws applicable on the day before the effective date of this Act [Sept. 15, 1981] to officers in the permanent grade to which such officers were promoted pursuant to section 601(a) or to officers in a lower permanent grade higher than the permanent grade held by such officers on the day before the effective date of this Act.

“(2) Upon the recommendation of a selection board convened under this section, the Secretary concerned may select officers described in subsection (a) to be subject to mandatory retirement in accordance with the provisions of section 3922, 3923, 8922, or 8923, as appropriate, of title 10, United States Code, as in effect on the day before the effective date of this Act [Sept. 15, 1981], rather than in the manner described in subsection (a).

“(3) Any selection board convened under this section shall be convened in accordance with the provisions of section 3297 or 8297, as appropriate, of title 10, United States Code, as in effect on the day before the effective date of this Act [Sept. 15, 1981].

“(c) This section does not apply to an officer who—

“(1) is sooner retired or separated under another provision of law;

“(2) is promoted to the permanent grade of brigadier general pursuant to section 601(a) and is subsequently promoted to the permanent grade of major general under chapter 36 of title 10, United States Code, as added by this Act; or

“(3) is continued on active duty under section 637 of title 10, United States Code, as added by this Act.

“RIGHT OF MAJORS AND COLONELS TO COMPLETE YEARS OF SERVICE ALLOWED UNDER PRIOR LAW

“SEC. 609. (a)(1) Subject to paragraph (2), an officer of the Army or Air Force who on the effective date of this Act [Sept. 15, 1981]—

“(A) holds the regular grade of major; or

“(B) is on a list of officers recommended for promotion to the regular grade of major,

shall be retained on active duty until he completes twenty-one years of service as computed under section 3927(a) or 8927(a), as appropriate, of title 10, United

States Code (as in effect on the day before the effective date of this Act), and then be retired under the provisions of section 3913 or 8913 of such title (as in effect on the day before the effective date of this Act) on the first day of the month after the month in which he completes that service.

“(2) Paragraph (1) does not apply to an officer who—

“(A) is sooner retired or separated under another provision of law;

“(B) is promoted to the regular grade of lieutenant colonel; or

“(C) is continued on active duty under section 637 of title 10, United States Code, as added by this Act.

“(b)(1) Subject to paragraph (2), an officer of the Army or Air Force who on the effective date of this Act [Sept. 15, 1981]—

“(A) holds the regular grade of colonel; or

“(B) is on a list of officers recommended for promotion to the regular grade of colonel, shall be retired under section 3921 or 8921, as appropriate, of such title (as in effect on the day before the effective date of this Act).

“(2) Paragraph (1) does not apply to an officer who—

“(A) is sooner retired or separated under another provision of law;

“(B) is promoted to the regular grade of brigadier general; or

“(C) is continued on active duty under section 637 of title 10, United States Code, as added by this Act.

“REGULAR OFFICERS WHOSE RETIREMENT HAS BEEN DEFERRED

“SEC. 610. A regular officer of the Army or Air Force serving on active duty on the effective date of this Act [Sept. 15, 1981] whose retirement under chapter 367 or 867 of title 10, United States Code, has been deferred before that date—

“(1) under a provision of such chapter; or

“(2) by virtue of a suspension, under any provision of law, of provisions of such chapter which would otherwise require such retirement, may continue to serve on active duty to complete the period for which his retirement was deferred or until such suspension is removed.

“PART B—TRANSITION PROVISIONS RELATING ONLY TO THE NAVY AND MARINE CORPS

“OFFICERS SERVING IN A TEMPORARY GRADE BELOW VICE ADMIRAL OR LIEUTENANT GENERAL OR RECOMMENDED FOR PROMOTION

“SEC. 611. (a) Subject to subsection (b), any regular officer of the Navy or Marine Corps, and any reserve officer of the Navy and Marine Corps who on the effective date of this Act [Sept. 15, 1981] is subject to placement on the active-duty list, who on the effective date of this Act—

“(1) is serving on active duty in a temporary grade below vice admiral or lieutenant general that is higher than his permanent grade; or

“(2) is on a promotion list, shall be considered to have been recommended for promotion to the permanent grade equivalent to the grade in which he is serving or for which he has been recommended for promotion, as the case may be, by a board convened under section 611(a) of title 10, United States Code, as added by this Act.

“(b) This section does not apply to an officer—

“(1) serving in a temporary grade which, by its own terms, is limited in duration;

“(2) designated for limited duty in a grade to which he was appointed under section 5596 of title 10, United States Code, before the effective date of this Act [Sept. 15, 1981]; or

“(3) recommended for promotion or promoted to a grade under section 5787 of such title, as in effect before the effective date of this Act.

“(c)(1) Any delay of a promotion of an officer referred to in clause (2) of subsection (a) that was in effect on September 14, 1981, under the laws and regulations in

effect on such date, shall continue in effect on and after September 15, 1981, as if such promotion had been delayed under section 624(d) of title 10, United States Code, as added by this Act.

“(2) Any action to remove from a promotion list the name of an officer referred to in clause (2) of subsection (a) which was initiated before September 15, 1981, under the laws and regulations in effect before such date shall continue on and after such date as if such removal action had been initiated under section 629 of title 10, United States Code, as added by this Act.

“OFFICERS FAILED OF SELECTION FOR PROMOTION

“SEC. 612. (a) Except as provided in subsection (b), an officer of the Navy or Marine Corps who on the effective date of this Act [Sept. 15, 1981] is considered to have failed of selection for promotion one or more times to a grade below the grade of captain, in the case of an officer of the Navy, or below the grade of colonel, in the case of an officer of the Marine Corps, is subject to chapter 36 of title 10, United States Code, as added by this Act, as if such failure or failures had occurred under the provisions of such chapter.

“(b) An officer who during fiscal year 1981—

“(1) failed twice of selection for promotion to the grade of either lieutenant or lieutenant commander, in the case of an officer in the Navy, or to either captain or major, in the case of an officer in the Marine Corps; and

“(2) had not previously failed of selection for promotion to that grade, may not, because of such failures of selection, be involuntarily separated, involuntarily discharged, or retired under chapter 36 of title 10, United States Code, as added by this Act, before June 30, 1982, unless the officer so requests.

“RIGHT OF CERTAIN OFFICERS TO RETIRE UNDER PRIOR LAW

“SEC. 613. (a)(1) Subject to paragraph (2), an officer who on September 15, 1981—

“(A) holds the grade of lieutenant commander, commander, or captain in the Regular Navy or the grade of major, lieutenant colonel, or colonel in the Regular Marine Corps; or

“(B) is on a promotion list to any such grade, shall be retired on the date provided under the laws in effect on September 14, 1981, except that an officer for whom no means can be established under the laws in effect on September 14, 1981, for computing creditable service in determining whether the officer is subject to involuntary retirement shall be retired under chapter 573 of title 10, United States Code, as in effect on September 14, 1981, on the basis of the years of service of such officer as determined under regulations prescribed under section 624(b).

“(2) This subsection does not apply to an officer—

“(A) removed from active duty under section 1184 of title 10, United States Code, as added by this Act;

“(B) promoted to a higher grade in the Regular Navy or Regular Marine Corps;

“(C) continued on active duty under section 637 of title 10, United States Code, as added by this Act; or

“(D) selected for early retirement under section 638 of title 10, United States Code.

“(b)(1) An officer of the Navy who on September 14, 1981—

“(A) has the grade of rear admiral in the Regular Navy; or

“(B) was on a promotion list to such grade, shall be continued on active duty or retired in accordance with the laws in effect on September 14, 1981.

“(2) An officer of the Marine Corps who on September 14, 1981—

“(A) has the grade of brigadier general in the Regular Marine Corps; or

“(B) was on a promotion list to such grade, shall be retired in accordance with the laws in effect on September 14, 1981.

“TRANSITION PROVISIONS TO NEW COMMODORE GRADE

“SEC. 614. (a)(1) An officer of the Navy who on the day before the effective date of this Act [Sept. 15, 1981]—

“(A) was serving on active duty in the grade of rear admiral and was receiving the basic pay of a rear admiral of the upper half; or

“(B) was serving on active duty in the grade of admiral or vice admiral and would have been entitled to receive the basic pay of a rear admiral of the upper half had he not been serving in such grade on such date,

shall after such date hold the permanent grade of rear admiral.

“(2) An officer of the Navy who on the day before the effective date of this Act [Sept. 15, 1981]—

“(A) was serving on active duty in the grade of rear admiral and was receiving the basic pay of a rear admiral of the lower half; or

“(B) was serving on active duty in the grade of admiral or vice admiral and would have been entitled to receive the basic pay of a rear admiral of the lower half had he not been serving in such grade on such date,

shall after such date hold the permanent grade of commodore, but shall retain the title of rear admiral.

“(3) An officer who on the day before the effective date of this Act [Sept. 15, 1981] was on a list of officers recommended for promotion to the grade of rear admiral shall, upon promotion, hold the grade of commodore with the title of rear admiral.

“(b) An officer who on the day before the effective date of this Act [Sept. 15, 1981]—

“(1) was serving on active duty in the grade of rear admiral and was entitled to the basic pay of a rear admiral of the lower half; or

“(2) was on a list of officers recommended for promotion to the grade of rear admiral, shall, on and after the effective date of this Act, or in the case of an officer on such a list, upon promotion to the grade of commodore, be entitled to wear the uniform and insignia of a rear admiral.

“(c) Except as otherwise provided by law, an officer of the Navy who on the day before the effective date of this Act [Sept. 15, 1981] held the grade of rear admiral on the retired list or the temporary disability retired list retains the grade of rear admiral and is entitled after such date to wear the uniform and insignia of a rear admiral. Such an officer, when ordered to active duty—

“(1) holds the grade and has the right to wear the uniform and insignia of a rear admiral; and

“(2) ranks among commissioned officers of the armed forces as and is entitled to the basic pay of—

“(A) a commodore, if his retired pay was based on the basic pay of a rear admiral of the lower half on the day before the effective date of this Act; or

“(B) a rear admiral, if his retired pay was based on the basic pay of a rear admiral of the upper half on the day before the effective date of this Act.

“(d)(1) An officer of the Navy who—

“(A) on the effective date of this Act [Sept. 15, 1981]—

“(i) was serving on active duty in the grade of rear admiral and was entitled to the basic pay of a rear admiral of the lower half or was serving on active duty in the grade of admiral or vice admiral and would have been entitled to receive the basic pay of a rear admiral of the lower half had he not been serving in such grade on such date; or

“(ii) was on a list of officers recommended for promotion to the grade of rear admiral; and

“(B) after such date holds the permanent grade of commodore pursuant to subsection (a),

shall not be subject to the provisions of chapter 36 of title 10, United States Code, as added by this Act, relating to selection for promotion and promotion to the next higher grade.

“(2) Officers to whom this subsection applies become entitled to hold the permanent grade of rear admiral

under the circumstances prescribed for entitlement to the basic pay of a rear admiral of the upper half under the provisions of subsections (a) through (d) of section 202 of title 37, United States Code, as in effect on the day before the effective date of this Act [Sept. 15, 1981]. For the purposes of this subsection, officers serving in the permanent grade of rear admiral or commodore in accordance with subsection (a) shall be considered as serving in the grade of rear admiral, as such grade was in effect on the day before the effective date of this Act.

“(e) Unless entitled to a higher grade under another provision of law, an officer of the Navy who on the day before the effective date of this Act [Sept. 15, 1981]—

“(1) was serving on active duty; and

“(2) held the grade of rear admiral;

and who retires on or after the effective date of this Act, retires in the grade of rear admiral and is entitled to wear the uniform and insignia of a rear admiral. If such an officer is ordered to active duty after his retirement, he is considered, for the purposes of determining his pay, uniform and insignia, and rank among other commissioned officers, as having held the grade of rear admiral on the retired list on the day before the effective date of this Act.

“(f) A reserve officer of the Navy who on the day before the effective date of this Act [Sept. 15, 1981] was in an active status and was serving in the grade of rear admiral or was on a list of reserve officers recommended for promotion to the grade of rear admiral is not subject to [former] subsection (f) of section 6389 of title 10, United States Code, as added by this Act.

“FEMALE OFFICERS

“SEC. 615. (a) Except as provided under subsection (c), each regular officer who on the effective date of this Act [Sept. 15, 1981] is serving on the active list in the line of the Navy or on the active list of the Marine Corps under an appointment made under section 5590 of title 10, United States Code, shall be reappointed in the line of the Navy or in the Marine Corps, as appropriate, in the grade and with the date of rank held by such officer immediately before such reappointment. Each such reappointment shall be made in accordance with the provisions of such title as amended by this Act but notwithstanding any limitation otherwise applicable with regard to age, grade, or physical standards.

“(b) Each officer of the Navy who on the effective date of this Act [Sept. 15, 1981] is serving in a staff corps under an appointment made under section 5590 of title 10, United States Code, shall be reappointed in that corps in the grade and with the date of rank held by such officer immediately before such reappointment. Each such reappointment shall be made in accordance with the provisions of such title as amended by this Act but notwithstanding any limitation otherwise applicable with regard to age, grade, or physical standards.

“(c) Any officer who on the effective date of this Act [Sept. 15, 1981] is serving on the active list in the line of the Navy under an appointment made under section 5590 of title 10, United States Code, and who meets the qualifications for appointment in a staff corps of the Navy may, request appointment in a staff corps and, with the approval of the Secretary of the Navy, be appointed in that staff corps. Any appointment under this subsection shall be in lieu of the reappointment of the officer under subsection (a).

“(d) Each officer reappointed in a staff corps pursuant to subsection (b) or appointed in a staff corps under subsection (c) shall be considered for all purposes as having been originally appointed in such staff corps in accordance with the provisions of title 10, United States Code, as amended by this Act.

“(e) Except as otherwise specifically provided by law, all provisions of law relating to appointment, promotion, separation, and retirement which are applicable to male officers of the Regular Navy or Regular Marine Corps, as appropriate, apply to officers reappointed pursuant to subsection (a) or (b) or appointed under subsection (c).

“(f)(1) As soon as practicable after completion of the appointments and reappointments provided for in subsections (a), (b), and (c), the name of each officer so appointed or reappointed shall be entered on the appropriate active-duty list of the Navy or the Marine Corps in a position among officers of her grade determined in accordance with regulations prescribed by the Secretary of the Navy. Such officers shall be placed on the appropriate active-duty list without change in their relative positions held on the lineal list or any list for promotion established for them while they were serving under an appointment under any provision of title 10, United States Code, repealed by this Act.

“(2) Any female officer—

“(A) who, by virtue of her date of rank and other considerations, would be placed on a list of officers eligible for consideration for promotion in a position senior to an officer who has failed of selection for promotion one or more times; and

“(B) who is considered to have failed of selection for promotion once or is considered to have never failed of selection for promotion,

shall, for purposes of determining her eligibility for consideration for promotion to the next higher grade, be considered with those officers who are considered to have failed of selection for promotion once, or who are considered never to have failed of selection for promotion, as the case may be.

“(3) A female officer who is considered to have failed of selection for promotion one or more times and whose position on the active-duty list is junior to the position of any male officer who is considered to have failed of selection for promotion a fewer number of times or not at all may not derive any advantage in the selection process by virtue of such position on the active-duty list.

“(g) Except as provided in section 638 of title 10, United States Code, as added by this Act, a regular officer of the Navy or Marine Corps appointed under section 5590 of such title who—

“(1) before the effective date of this Act [Sept. 15, 1981] had not twice failed of selection for promotion to the next higher grade; and

“(2) is not selected for promotion to a higher regular grade on or after such effective date, may not be retired earlier than such officer would have been retired had this Act not been enacted.

“(h)(1) Any officer who—

“(A) on the effective date of this Act [Sept. 15, 1981] is a lieutenant in the Navy or a captain in the Marine Corps;

“(B) under section 6396(c) or 6401 of title 10, United States Code (as in effect on the day before the effective date of this Act), would have been discharged on June 30 of the fiscal year in which that officer (i) was not on a promotion list, and (ii) had completed 13 years of active commissioned service; and

“(C) because of the enactment of this Act, is subject to discharge under section 632 of such title because such officer has twice failed of selection for promotion,

shall, if such officer has not completed 13 years of active commissioned service at the time otherwise prescribed for the discharge of such officer under such section and such officer so requests, not be discharged until June 30 of the fiscal year in which the officer completes 13 years of active commissioned service.

“(2) Any officer who—

“(A) on the effective date of this Act [Sept. 15, 1981] is a lieutenant (junior grade) in the Navy or a first lieutenant in the Marine Corps;

“(B) under section 6396(d) or 6402 of title 10, United States Code (as in effect on the day before the effective date of this Act), would have been discharged on June 30 of the fiscal year in which that officer (i) was not on a promotion list, and (ii) had completed 7 years of active commissioned service; and

“(C) because of the enactment of this Act, is subject to discharge under section 631 of such title because such officer has twice failed of selection for promotion,

shall, if that officer has not completed 7 years of active commissioned service at the time otherwise prescribed for such discharge under such section and such officer so requests, not be discharged until June 30 of the fiscal year in which the officer completes 7 years of active commissioned service.

#### “LIMITED-DUTY OFFICERS

“SEC. 616. (a) An officer of the Regular Navy or Regular Marine Corps who on the effective date of this Act [Sept. 15, 1981] is an officer who was designated for limited duty before that date under section 5589 of title 10, United States Code, is subject to section 6383 of such title (as in effect on the day before the effective date of this Act), unless promoted to a higher permanent grade under chapter 36 of title 10, United States Code, as added by this Act.

“(b) Any female member of the Navy who on April 2, 1981, was appointed under section 591 [now 12201] or 5590 of title 10, United States Code, in the grade of ensign as an officer designated for limited duty may after September 14, 1981, be reappointed as an officer designated for limited duty under section 5596 of title 10, United States Code, as amended by this Act. A member so reappointed shall have a date of rank as an ensign of April 2, 1981, and shall have the same permanent pay grade and status as that member held on April 1, 1981.

“(c) An officer of the Navy or Marine Corps who on September 15, 1981, was an officer designated for limited duty under section 5589 of title 10, United States Code, and who on the date of the enactment of this subsection [Oct. 19, 1984] is serving in a temporary grade above the grade of lieutenant, in the case of an officer of the Navy, or captain, in the case of an officer of the Marine Corps, may be reappointed under section 5589 of title 10, United States Code (as in effect on or after September 15, 1981), in the same permanent grade and with the same date of rank held by that officer on the active-duty list immediately before such reappointment if he is otherwise eligible for appointment under that section.

#### “CERTAIN NAVY LIEUTENANTS HOLDING TEMPORARY APPOINTMENTS IN THE GRADE OF LIEUTENANT COMMANDER

“SEC. 617. Any officer who on the effective date of this Act [Sept. 15, 1981] holds a temporary appointment in the grade of lieutenant commander under section 5787d of title 10, United States Code, shall on and after such date be considered to be serving in such grade as if such appointment had been made under section 5721 of such title, as added by this Act.

#### “DIRECTOR OF BUDGET AND REPORTS OF THE NAVY

“SEC. 618. (a) An officer of the Navy who on the day before the effective date of this Act [Sept. 15, 1981] was serving on active duty and entitled to rank and privileges of retirement under section 5064 of title 10, United States Code, as in effect on the day before the effective date of this Act, shall have his rank and retirement privileges determined under the laws in effect on such date.

#### “CONTINGENCY AUTHORITY FOR NAVY PROMOTIONS UNDER PRIOR LAW

“SEC. 619. If necessary because of unforeseen circumstances, the Secretary of the Navy, during fiscal year 1982, may convene boards to select officers for promotion under chapters 545 and 549 of title 10, United States Code, as in effect on September 14, 1981, and officers so selected may be promoted in accordance with such chapters. An officer promoted to a higher grade under the authority of this section shall be subject to sections 613 and 629 as if he held that grade on September 14, 1981, and shall have a date of rank to be determined under section 741 of title 10, United States Code, as amended by this Act.

“RETENTION ON ACTIVE DUTY OF CERTAIN RESERVE  
LIEUTENANT COMMANDERS

“SEC. 620. Notwithstanding section 6389 of title 10, United States Code, an officer who on September 14, 1981—

“(1) holds the grade of lieutenant commander in the Naval Reserve [now Navy Reserve];

“(2) is on active duty as the result of recall orders accepted subsequent to a break in active commissioned service;

“(3) is subject to placement on the active-duty list; and

“(4) is considered—

“(A) to have failed of selection for promotion to the grade of commander one or more times under chapter 545 of title 10, United States Code, as in effect on September 14, 1981; or

“(B) to have been later considered to have failed of selection for promotion to the grade of commander one or more times under chapter 36 of title 10, United States Code, as added by this Act,

may be retained on active duty by the Secretary of the Navy for such period as the Secretary considers appropriate.

“PART C—GENERAL TRANSITION PROVISIONS

“ESTABLISHMENT OF INITIAL ACTIVE-DUTY LISTS

“SEC. 621. (a)(1) Not later than 6 months after the effective date of this Act [Sept. 15, 1981], all officers of the Army, Navy, Air Force, and Marine Corps who are required to be placed on the active-duty list for their armed force under chapter 36 of title 10, United States Code, as added by this Act, shall be placed on such list with the same relative seniority which they held on the day before the effective date of this Act. An officer placed on an active-duty list under this section shall be considered to have been placed on such list as of the effective date of this Act.

“(2) Regulations prescribed under section 620 of title 10, United States Code, as added by this Act, shall be applicable to the placement of officers on the active-duty list under paragraph (1).

“(b) Under regulations prescribed by the Secretary of Defense, which shall apply uniformly among the Army, Navy, Air Force, and Marine Corps, the Secretary of the military department concerned, in order to maintain the relative seniority among officers of the Army, Navy, Air Force, and Marine Corps as it existed on September 14, 1981, may adjust the date of rank of officers—

“(1) below the grade of brigadier general or commodore during the one-year period beginning on September 15, 1981; and

“(2) above the grade of colonel or, in the case of the Navy, captain until there are no longer any officers to whom section 614(d) is applicable.

“OFFICERS SERVING IN THE SAME TEMPORARY GRADE  
AND PERMANENT GRADE; DATE OF RANK

“SEC. 622. (a) Any officer of the Army, Navy, Air Force, or Marine Corps who on the effective date of this Act [Sept. 15, 1981] is serving on active duty in a temporary grade which is the same as his permanent grade shall on such date be serving in such grade subject to this title and the amendments made by this Act. The date of rank of such officer in that grade is the date of his temporary appointment to that grade.

“OFFICERS SERVING IN GRADES ABOVE MAJOR GENERAL  
OR REAR ADMIRAL

“SEC. 623. (a) Any officer who on the day before the effective date of this Act [Sept. 15, 1981] held a temporary appointment in the grade of lieutenant general or general under section 3066, 5232, or 8066 of title 10, United States Code, or a temporary appointment in the grade of vice admiral or admiral under section 5231 of such title, shall on and after such date be considered to be serving in such grade as if such appointment had

been made under section 601 of such title, as added by this Act.

“(b)(1) Any designation of a position as a position of importance and responsibility made by the President under section 3066 or 8066 of title 10, United States Code, before the effective date of this Act [Sept. 15, 1981], shall remain in effect, unless changed by the President, as a designation of such position as a position of importance and responsibility under section 601 of such title, as added by this Act.

“(2) Any position held by an officer under section 5231 or 5232 of title 10, United States Code, on the effective date of this Act [Sept. 15, 1981] shall, unless changed by the President, be deemed to be a position of importance and responsibility designated by the President under section 601 of title 10, United States Code.

“(c) Any officer who before the effective date of this Act [Sept. 15, 1981] served in the grade of lieutenant general, general, vice admiral, or admiral but was not serving in such grade on the day before the effective date of this Act shall for the purposes of section 1370(c) of title 10, United States Code, as added by this Act, be deemed to have held such position under an appointment made under section 601 of such title, as added by this Act.

“YEARS OF SERVICE FOR INVOLUNTARY RETIREMENT OR  
DISCHARGE

“SEC. 624. (a) In determining whether any officer of the Army, Navy, Air Force, or Marine Corps who was on active duty on the day before the effective date of this Act [Sept. 15, 1981] is subject to involuntary retirement or discharge under chapter 36 of title 10, United States Code, as added by this Act, the years of service of the officer for such purpose shall be computed by adding—

“(1) the amount of service creditable to such officer on the day before the effective date of this Act for the purpose of determining whether the officer is subject to involuntary retirement or discharge; and

“(2) all subsequent active commissioned service of such officer.

“(b) In the case of an officer subject to placement on the active-duty list on September 15, 1981, for whom no means of computing service creditable in determining whether the officer is subject to involuntary retirement or discharge existed under the law in effect on the day before the effective date of this Act [Sept. 15, 1981], the amount of creditable service of such officer for such purpose for the period before the effective date of this Act shall be determined under regulations prescribed by the Secretary of the military department concerned, except that such an officer may not be credited with an amount of service less than the amount of his active commissioned service.

“SAVINGS PROVISION FOR CONSTRUCTIVE SERVICE  
PREVIOUSLY GRANTED

“SEC. 625. (a) The amendments made by this Act do not affect the crediting of years of service to any person who on the day before the effective date of this Act [Sept. 15, 1981]—

“(1) had been credited with years of service upon an original appointment as an officer or after such an appointment; or

“(2) was participating in a program leading to an appointment as an officer in the Army, Navy, Air Force, or Marine Corps and the crediting of years of service.

“(b)(1) Any officer who on the effective date of this Act [Sept. 15, 1981] is an officer of the Army or Navy in the Medical or Dental Corps of his armed force, an officer of the Air Force designated as a medical or dental officer, or an officer of the Public Health Service commissioned as a medical or dental officer is entitled to include in the years of service creditable to him for the computation of basic pay and retired pay the years of service creditable to him for such purposes under clauses (7) and (8) of section 205(a) of title 37, United

States Code, as in effect on the day before the effective date of this Act.

“(2) Any person who on the day before the effective date of this Act [Sept. 15, 1981] was enrolled in the Uniformed Services University of the Health Sciences under chapter 104 of this title or the Armed Forces Health Professions Scholarship Program under chapter 105 of this title and who on or after the effective date of this Act graduates from such university or completes such program, as the case may be, and is appointed in one of the categories specified in paragraph (1) is entitled to include in the years of service creditable to him for the computation of basic pay and retired pay the years of service that would have been credited to him under clauses (7) and (8) of section 205(a) of title 37, United States Code, as in effect on the day before the effective date of this Act, had such clauses not been repealed by this Act.

“MISCELLANEOUS PROVISIONS RELATING TO YEARS OF SERVICE

“SEC. 626. (a) For the purpose of computing the years of service for pay and allowances of an officer of the Army, Navy, Air Force, or Marine Corps, including retired pay, severance pay, readjustment pay, separation pay, and basic pay, the total years of service of such officer shall be computed by adding to that service so creditable on the day before the effective date of this Act [Sept. 15, 1981] all subsequent service as computed under title 10, United States Code, as amended by this Act.

“(b) An officer of the Army, Navy, Air Force, or Marine Corps who was on active duty on the effective date of this Act [Sept. 15, 1981] and who is retired under section 1251 of title 10, United States Code, as added by this Act, shall be entitled to retired pay in an amount equal to not less than 50 percent of the basic pay upon which his retired pay is based.

“(c) The service that an officer of the Army, Navy, Air Force, or Marine Corps has in a particular grade is the sum of—

“(A) the years, months, and days of service in that grade accrued under the laws in effect before the effective date of this Act [Sept. 15, 1981]; and

“(B) the years, months, and days of service in that grade accrued under the laws in effect on and after the effective date of this Act.

“TRANSITION TO OFFICER GRADE-STRENGTH TABLES DURING FISCAL YEAR 1981

“SEC. 627. For the fiscal year ending on September 30, 1981, the maximum number of officers authorized to be serving on active duty as of the end of such fiscal year in each of the grades of major, lieutenant colonel, and colonel for the Army, Air Force, and Marine Corps, and in each of the grades of lieutenant commander, commander, and captain for the Navy, under section 523 of title 10, United States Code, as added by this Act, is increased by the number equal to one-half the difference between (1) the actual number of officers of that armed force serving on active duty in that grade on September 30, 1980 (excluding officers in categories specified in subsection (b) of such section), and (2) the number specified in the table contained in such section for such armed force and grade based upon the total number of commissioned officers of such armed force on active duty on September 30, 1981 (excluding officers in categories specified in subsection (b) of such section).

“RIGHT OF COMMISSIONED OFFICERS WITH PERMANENT ENLISTED OR WARRANT OFFICER STATUS TO RETIRE IN HIGHEST ENLISTED OR WARRANT OFFICER GRADE HELD

“SEC. 628. (a) A member of the Army, Navy, Air Force, or Marine Corps who—

“(1) on the day before the effective date of this Act [Sept. 15, 1981] had a permanent status as an enlisted member or as a warrant officer (or had a statutory right to be enlisted or to be appointed as a warrant officer) and was serving as an officer under a temporary appointment; and

“(2) on or after the effective date of this Act and before completing 10 years of commissioned service for purposes of retirement eligibility under section 3911, 6323, or 8911 of title 10, United States Code, completes 20 years of total service, as determined under section 1405 of such title,

is entitled to retire or transfer to the Fleet Reserve or Fleet Marine Corps Reserve in the highest grade he held as an enlisted member or a warrant officer.

“SAVINGS PROVISION FOR RETIRED GRADE FOR OFFICERS NOT SUBSEQUENTLY PROMOTED

“SEC. 629. In applying section 1370(a)(2) of title 10, United States Code, as added by this Act, to an officer of the Army, Navy, Air Force, or Marine Corps who was on active duty on the day before the effective date of this Act [Sept. 15, 1981] and who on or after the effective date of this Act is not promoted to a grade higher than the grade he held on the day before the effective date of this Act or, in the case of an officer who was on a list of officers recommended for promotion on such date, is not promoted to a grade higher than the grade to which he was recommended for promotion, ‘two years’ shall be substituted for ‘three years’. The Secretary of the military department concerned may waive the requirements of this section and of section 1370(a)(2) of title 10, United States Code, as added by this Act, with respect to any officer described in the preceding sentence.

“EXEMPTION OF CERTAIN OFFICERS FROM SELECTIVE EARLY RETIREMENT PROVISIONS

“SEC. 630. An officer of the Army, Navy, Air Force, or Marine Corps who was recommended for continuation on the active list under the Act entitled ‘An Act to provide improved opportunity for promotion for certain officers in the naval service, and for other purposes’, approved August 11, 1959 (Public Law 86-155; 10 U.S.C. 5701 note), or under section 10 of the Act entitled ‘An Act relating to the promotion and separation of certain officers of the regular components of the armed forces’, approved July 12, 1960 (Public Law 86-616; 10 U.S.C. 3297 note), is not subject to section 638 of title 10, United States Code, as added by this Act, relating to selective early retirement.

“SAVINGS PROVISION FOR ENTITLEMENT TO READJUSTMENT PAY OR SEVERANCE PAY UNDER PRIOR PROVISIONS OF LAW

“SEC. 631. (a) A member of the Army, Navy, Air Force, or Marine Corps who—

“(1) was on active duty (other than for training) on Sept. 14, 1981; and

“(2) after such date is involuntarily discharged or released from active duty under any provision of title 10, United States Code, as in effect after such date, is entitled to receive any readjustment payment or severance pay to which he would have been entitled under laws in effect on Sept. 14, 1981, unless (in the case of a member discharged or released on or after the date of the enactment of the Department of Defense Authorization Act, 1985 [Oct. 19, 1984]) the Secretary concerned determines that the conditions under which the member is discharged or separated do not warrant such pay.

“(b) If a member who is entitled to receive a readjustment payment or severance pay under subsection (a) is also eligible to receive separation pay under section 1174 of title 10, United States Code, as added by this Act, the member may not receive both the readjustment payment and severance pay under laws in effect on Sept. 14, 1981, and separation pay under such section, but shall elect which he will receive. If the member fails to make an election in a timely manner, he shall be paid the amount which is more favorable to him.

“OFFICERS ON ACTIVE DUTY IN GRADE ABOVE GENERAL

“SEC. 632. Section 1251 of title 10, United States Code, as added by this Act, relating to mandatory retirement for age, shall not apply to any officer who on the effec-

tive date of this Act [Sept. 15, 1981] was on active duty in a grade above general.

“DEFINITIONS

“SEC. 633. For the purposes of this title:

“(1) The term ‘officer’ does not include warrant officers.

“(2) The term ‘active-duty list’ means the active-duty list established by the Secretary of the military department concerned pursuant to section 620 of title 10, United States Code, as added by this Act.

“SAVINGS PROVISION FOR RETIRED GRADE OF CERTAIN RESERVE OFFICERS

“SEC. 634. Unless entitled to a higher grade under any other provision of law, a member of the Army or Air Force who is a reserve officer and who—

“(1) is on active duty on September 14, 1981; and

“(2) after such date retires under section 3911 or 8911 of title 10, United States Code,

is entitled to retire in the reserve grade which he held or to which he had been selected for promotion on September 14, 1981.

“SAVINGS PROVISION FOR ORIGINAL APPOINTMENT IN CERTAIN GRADES UNDER EXISTING REGULATIONS

“SEC. 635. Any person who before September 15, 1981—

“(1) was selected for participation in a postbaccalaureate educational program leading to an appointment as a commissioned officer or had completed a postbaccalaureate program and was selected for appointment as a commissioned officer of the Army, Navy, Air Force, or Marine Corps;

“(2) under regulations of the Secretary of the military department concerned in effect on December 12, 1980, would have been appointed and ordered to active duty in a grade specified or determined in accordance with such regulations; and

“(3) had not been so appointed and ordered to active duty,

may be appointed and ordered to active duty in such grade with a date of rank and position on the active-duty list junior to that of all other officers of the same grade and competitive category serving on active duty.

“RETENTION IN GRADE OF CERTAIN RESERVE OFFICERS

“SEC. 636. A reserve officer of the Army, Navy, Air Force, or Marine Corps who on September 14, 1981—

“(1) is serving on active duty (A) under section 10(b)(2) of the Military Selective Service Act (50 U.S.C. App. 460(b)(2)) for the administration of the Selective Service System, or (B) under section 708 of title 32; and

“(2) is serving in a temporary grade or is selected for promotion to a temporary grade,

may continue to serve in or may be promoted to and serve in such grade until promoted to a higher grade, separated, or retired.

“SAVINGS PROVISION REGARDING DISCHARGE OF REGULAR OFFICERS

“SEC. 637. An officer of the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps who on September 14, 1981, was serving on active duty may not be discharged under section 630(1)(A) of title 10, United States Code, as added by this Act, on or after the day on which that officer completes three years of continuous service as a regular commissioned officer.

“REPAYMENT OF READJUSTMENT AND SEVERANCE PAY

“SEC. 638. Notwithstanding section 1174(h) of title 10, United States Code, as added by this Act, a person who received readjustment or severance pay before September 15, 1981, and who, on or after September 15, 1981, becomes entitled to retired or retainer pay under any provision of title 10 or title 14, United States Code, shall be required to repay that readjustment pay or severance pay in accordance with the laws in effect on September 14, 1981.

“SAVINGS PROVISION FOR PROMOTION CONSIDERATION OF CERTAIN RETIRED OFFICERS

“SEC. 639. Notwithstanding sections 619, 620, and 641(4) of title 10, United States Code, a retired officer serving on active duty on the date of the enactment of this section [Oct. 19, 1984] who on September 14, 1981, was on active duty as a retired officer recalled to active duty and who—

“(1) was eligible for consideration for promotion on that date; and

“(2) has served continuously on active duty since that date,

may be considered for promotion (under regulations prescribed by the Secretary of the military department concerned) by a selection board that convenes after the date of the enactment of this section as if he had been placed on the active-duty list pursuant to section 621 of this Act.”

**§ 612. Composition of selection boards**

(a)(1) Members of selection boards shall be appointed by the Secretary of the military department concerned in accordance with this section. A selection board shall consist of five or more officers of the same armed force as the officers under consideration by the board. Each member of a selection board (except as provided in paragraphs (2), (3), and (4)) shall be an officer on the active-duty list. Each member of a selection board must be serving in a grade higher than the grade of the officers under consideration by the board, except that no member of a board may be serving in a grade below major or lieutenant commander.

(2)(A) Except as provided in subparagraph (B), a selection board shall include at least one officer from each competitive category of officers to be considered by the board.

(B) A selection board need not include an officer from a competitive category to be considered by the board when there are no officers of that competitive category on the active-duty list in a grade higher than the grade of the officers to be considered by the board and eligible to serve on the board. However, in such a case the Secretary of the military department concerned, in his discretion, may appoint as a member of the board an officer of that competitive category who is not on the active-duty list from among officers of the same armed force as the officers under consideration by the board who hold a higher grade than the grade of the officers under consideration and who are retired officers, reserve officers serving on active duty but not on the active-duty list, or members of the Ready Reserve.

(3) When reserve officers of an armed force are to be considered by a selection board, the membership of the board shall include at least one reserve officer of that armed force on active duty (whether or not on the active-duty list). The actual number of reserve officers shall be determined by the Secretary of the military department concerned, in the Secretary’s discretion. Notwithstanding the first sentence of this paragraph, in the case of a board which is considering officers in the grade of colonel or brigadier general or, in the case of officers of the Navy, captain or rear admiral (lower half), no reserve officer need be included if there are no reserve officers of that armed force on active duty in the next higher grade who are eligible to serve on the board.

(4) Except as provided in paragraphs (2) and (3), if qualified officers on the active-duty list are not available in sufficient number to comprise a selection board, the Secretary of the military department concerned shall complete the membership of the board by appointing as members of the board officers who are members of the same armed force and hold a grade higher than the grade of the officers under consideration by the board and who are retired officers, reserve officers serving on active duty but not on the active-duty list, or members of the Ready Reserve.

(5) A retired general or flag officer who is on active duty for the purpose of serving on a selection board shall not, while so serving, be counted against any limitation on the number of general and flag officers who may be on active duty.

(b) No officer may be a member of two successive selection boards convened under section 611(a) of this title for the consideration of officers of the same competitive category and grade.

(c)(1) Each selection board convened under section 611(a) of this title that will consider an officer described in paragraph (2) shall include at least one officer designated by the Chairman of the Joint Chiefs of Staff who is a joint qualified officer.

(2) Paragraph (1) applies with respect to an officer who—

(A) is serving on, or has served on, the Joint Staff; or

(B) is a joint qualified officer.

(3) The Secretary of Defense may waive the requirement in paragraph (1) in the case of—

(A) any selection board of the Marine Corps; or

(B) any selection board that is considering officers in specialties identified in paragraph (2) or (3) of section 619a(b) of this title.

(Added Pub. L. 96-513, title I, §105, Dec. 12, 1980, 94 Stat. 2851; amended Pub. L. 97-22, §4(a), July 10, 1981, 95 Stat. 125; Pub. L. 97-86, title IV, §405(b)(1), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 99-145, title V, §514(b)(1), Nov. 8, 1985, 99 Stat. 628; Pub. L. 99-433, title IV, §402(a), Oct. 1, 1986, 100 Stat. 1030; Pub. L. 106-398, §1 [[div. A], title V, §504(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A-101; Pub. L. 111-383, div. A, title V, §522(a), Jan. 7, 2011, 124 Stat. 4214.)

#### AMENDMENTS

2011—Subsec. (c). Pub. L. 111-383 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “Each selection board convened under section 611(a) of this title that will consider officers who are serving in, or have served in, joint duty assignments shall include at least one officer designated by the Chairman of the Joint Chiefs of Staff who is currently serving in a joint duty assignment. The Secretary of Defense may waive the preceding sentence in the case of any selection board of the Marine Corps.”

2000—Subsec. (a)(1). Pub. L. 106-398, §1 [[div. A], title V, §504(a)(1)], struck out “who are on the active-duty list” after “five or more officers” in second sentence and inserted after second sentence “Each member of a selection board (except as provided in paragraphs (2), (3), and (4)) shall be an officer on the active-duty list.”

Subsec. (a)(3). Pub. L. 106-398, §1 [[div. A], title V, §504(a)(2)], substituted “of that armed force on active duty (whether or not on the active-duty list). The ac-

tual number of reserve officers shall be” for “of that armed force, with the exact number of reserve officers to be” and “the Secretary’s discretion. Notwithstanding the first sentence of this paragraph,” for “his discretion, except that”.

1986—Subsec. (c). Pub. L. 99-433 added subsec. (c).

1985—Subsec. (a)(3). Pub. L. 99-145 substituted “rear admiral (lower half)” for “commodore”.

1981—Subsec. (a)(2). Pub. L. 97-22, §4(a)(1), designated existing provisions as subpar. (A), substituted “Except as provided in subparagraph (B), a selection board” for “A selection board”, and added subpar. (B).

Subsec. (a)(3). Pub. L. 97-86 substituted “commodore” for “commodore admiral”.

Pub. L. 97-22, §4(a)(2), inserted “, with the exact number of reserve officers to be determined by the Secretary of the military department concerned in his discretion” after “at least one reserve officer of that armed force” and inserted “who are eligible to serve on the board” after “the next higher grade”.

Subsec. (a)(4). Pub. L. 97-22, §4(a)(3), substituted “Except as provided in paragraphs (2) and (3)” for “Except as provided in paragraph (3)” and “officers who are members of the same armed force and hold a grade higher than the grade of the officers under consideration by the board and who are retired officers, reserve officers serving on active duty but not on the active-duty list, or members of the Ready Reserve” for “retired officers of the same armed force who hold a retired grade higher than the grade of the officers under consideration by the board” and designated as par. (5) provisions that retired general or flag officers on active duty for the purpose of serving on a selection board not be counted against any limitation on the number of general and flag officers who may be on active duty.

Subsec. (a)(5). Pub. L. 97-22, §4(a)(3), added par. (5) consisting of provisions, formerly contained in par. (4).

Subsec. (b). Pub. L. 97-22, §4(a)(4), inserted “convened under section 611(a) of this title” after “selection boards”.

#### EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-398, §1 [[div. A], title V, §504(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-102, provided that: “The amendments made by subsection (a) [amending this section] shall apply to any selection board convened under section 611(a) of title 10, United States Code, on or after August 1, 1981.”

#### EFFECTIVE DATE OF 1986 AMENDMENT

Section 406(f) of Pub. L. 99-433 provided that: “The amendments made by section 402 [amending this section and sections 615 and 618 of this title] shall take effect with respect to selection boards convened under section 611(a) of title 10, United States Code, after the end of the 120-day period beginning on the date of the enactment of this Act [Oct. 1, 1986].”

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97-86, set out as a note under section 101 of this title.

### § 613. Oath of members of selection boards

Each member of a selection board shall swear that he will perform his duties as a member of the board without prejudice or partiality and having in view both the special fitness of officers and the efficiency of his armed force.

(Added Pub. L. 96-513, title I, §105, Dec. 12, 1980, 94 Stat. 2851.)

### § 613a. Nondisclosure of board proceedings

(a) PROHIBITION ON DISCLOSURE.—The proceedings of a selection board convened under section 573, 611, or 628 of this title may not be disclosed

to any person not a member of the board, except as authorized or required to process the report of the board. This prohibition is a statutory exemption from disclosure, as described in section 552(b)(3) of title 5.

(b) **PROHIBITED USES OF BOARD DISCUSSIONS, DELIBERATIONS, NOTES, AND RECORDS.**—The discussions and deliberations of a selection board described in subsection (a) and any written or documentary record of such discussions and deliberations—

- (1) are immune from legal process;
- (2) may not be admitted as evidence; and
- (3) may not be used for any purpose in any action, suit, or judicial or administrative proceeding without the consent of the Secretary of the military department concerned.

(c) **APPLICABILITY.**—This section applies to all selection boards convened under section 573, 611, or 628 of this title, regardless of the date on which the board was convened.

(Added Pub. L. 109-364, div. A, title V, §547(a)(1), Oct. 17, 2006, 120 Stat. 2215; amended Pub. L. 111-383, div. A, title V, §503(a), Jan. 7, 2011, 124 Stat. 4207.)

#### AMENDMENTS

2011—Subsec. (a). Pub. L. 111-383, §503(a)(1), added subsec. (a) and struck out former subsec. (a). Prior to amendment, text read as follows: “The proceedings of a selection board convened under section 611 of this title may not be disclosed to any person not a member of the board.”

Subsec. (b). Pub. L. 111-383, §503(a)(2), substituted “Notes, and Records” for “and Records” in heading.

Subsec. (c). Pub. L. 111-383, §503(a)(3), added subsec. (c).

#### EFFECTIVE DATE

Pub. L. 109-364, div. A, title V, §547(c), Oct. 17, 2006, 120 Stat. 2216, provided that: “Section 613a of title 10, United States Code, as added by subsection (a), shall apply with respect to the proceedings of all selection boards convened under section 611 of that title, including selection boards convened before the date of the enactment of this Act [Oct. 17, 2006]. Section 14104 of such title, as amended by subsection (b), shall apply with respect to the proceedings of all selection boards convened under section 14101 of that title, including selection boards convened before the date of the enactment of this Act.”

### § 614. Notice of convening of selection boards

(a) At least 30 days before a selection board is convened under section 611(a) of this title to recommend officers in a grade for promotion to the next higher grade, the Secretary concerned (1) shall notify in writing the officers eligible for consideration for promotion of the date on which the board is to convene and the name and date of rank of the junior officer, and of the senior officer, in the promotion zone as of the date of the notification, or (2) shall issue a general written notice to the armed force concerned regarding the convening of the board which shall include the convening date of the board and the name and date of rank of the junior officer, and of the senior officer, in the promotion zone as of the date of the notification.

(b) An officer eligible for consideration by a selection board convened under section 611(a) of this title may send a written communication to

the board, to arrive not later than the day before the date the board convenes, calling attention to any matter concerning himself that the officer considers important to his case. The selection board shall give consideration to any timely communication under this subsection.

(Added Pub. L. 96-513, title I, §105, Dec. 12, 1980, 94 Stat. 2852; amended Pub. L. 97-22, §4(b), July 10, 1981, 95 Stat. 126; Pub. L. 102-190, div. A, title V, §504(a)(2)(A), Dec. 5, 1991, 105 Stat. 1357; Pub. L. 109-163, div. A, title V, §505(a), Jan. 6, 2006, 119 Stat. 3227.)

#### AMENDMENTS

2006—Subsec. (b). Pub. L. 109-163 inserted “the day before” after “not later than” in first sentence.

1991—Pub. L. 102-190 struck out “; communications with boards” after “selection boards” in section catchline.

1981—Subsec. (a). Pub. L. 97-22 substituted “which shall include the convening date of the board” for “; the names of the officers eligible for consideration by the board as of the date of the notification, the convening date of the board,”.

#### EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-163, div. A, title V, §505(c), Jan. 6, 2006, 119 Stat. 3227, provided that: “The amendments made by this section [amending this section and section 14106 of this title] shall take effect on March 1, 2006, and shall apply with respect to selection boards convened on or after that date.”

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-190 applicable to selection boards convened under section 611(a) of this title after end of 60-day period beginning Dec. 5, 1991, see section 504(e) of Pub. L. 102-190, set out as a note under section 615 of this title.

### § 615. Information furnished to selection boards

(a)(1) The Secretary of Defense shall prescribe regulations governing information furnished to selection boards convened under section 611(a) of this title. Those regulations shall apply uniformly among the military departments. Any regulations prescribed by the Secretary of a military department to supplement those regulations may not take effect without the approval of the Secretary of Defense in writing.

(2) No information concerning a particular eligible officer may be furnished to a selection board except for the following:

(A) Information that is in the officer’s official military personnel file and that is provided to the selection board in accordance with the regulations prescribed by the Secretary of Defense pursuant to paragraph (1).

(B) Other information that is determined by the Secretary of the military department concerned, after review by that Secretary in accordance with standards and procedures set out in the regulations prescribed by the Secretary of Defense pursuant to paragraph (1), to be substantiated, relevant information that could reasonably and materially affect the deliberations of the selection board.

(C) Subject to such limitations as may be prescribed in those regulations, information communicated to the board by the officer in accordance with this section, section 614(b) of this title (including any comment on information referred to in subparagraph (A) regarding that officer), or other applicable law.

(D) A factual summary of the information described in subparagraphs (A), (B), and (C) that, in accordance with the regulations prescribed pursuant to paragraph (1), is prepared by administrative personnel for the purpose of facilitating the work of the selection board.

(3) In the case of an eligible officer considered for promotion to a grade above colonel or, in the case of the Navy, captain, any credible information of an adverse nature, including any substantiated adverse finding or conclusion from an officially documented investigation or inquiry, shall be furnished to the selection board in accordance with standards and procedures set out in the regulations prescribed by the Secretary of Defense pursuant to paragraph (1).

(4) Information provided to a selection board in accordance with paragraphs (2) and (3) shall be made available to all members of the board and shall be made a part of the record of the board. Communication of such information shall be in a written form or in the form of an audio or video recording. If a communication is in the form of an audio or video recording, a written transcription of the recording shall also be made a part of the record of the selection board.

(5) Paragraphs (2), (3), and (4) do not apply to the furnishing of appropriate administrative processing information to the selection board by administrative staff designated to assist the board, but only to the extent that oral communications are necessary to facilitate the work of the board.

(6) Information furnished to a selection board that is described in subparagraph (B), (C), or (D) of paragraph (2), or in paragraph (3), may not be furnished to a later selection board unless—

(A) the information has been properly placed in the official military personnel file of the officer concerned; or

(B) the information is provided to the later selection board in accordance with paragraph (2) or (3), as applicable.

(7)(A) Before information described in paragraph (2)(B) or (3) regarding an eligible officer is furnished to a selection board, the Secretary of the military department concerned shall ensure—

(i) that such information is made available to such officer; and

(ii) that the officer is afforded a reasonable opportunity to submit comments on that information to the selection board.

(B) If an officer cannot be given access to the information referred to in subparagraph (A) because of its classification status, the officer shall, to the maximum extent practicable, be furnished with an appropriate summary of the information.

(b) The Secretary of the military department concerned shall furnish each selection board convened under section 611(a) of this title with—

(1) the maximum number, as determined in accordance with section 622 of this title, of officers in each competitive category under consideration that the board may recommend for promotion to the next higher grade;

(2) the names of all officers in each competitive category to be considered by the board for promotion;

(3) the pertinent records (as determined by the Secretary) of each officer whose name is furnished to the board;

(4) information or guidelines relating to the needs of the armed force concerned for officers having particular skills, including guidelines or information relating to the need for either a minimum number or a maximum number of officers with particular skills within a competitive category;

(5) guidelines, based upon guidelines received by the Secretary from the Secretary of Defense under subsection (c), for the purpose of ensuring that the board gives appropriate consideration to the performance of officers who are serving on, or have served on, the Joint Staff or are joint qualified officers; and

(6) such other information and guidelines as may be necessary to enable the board to properly perform its functions.

(c) The Secretary of Defense, with the advice and assistance of the Chairman of the Joint Chiefs of Staff, shall furnish to the Secretaries of the military departments guidelines for the purpose of ensuring that each selection board convened under section 611(a) of this title gives appropriate consideration to the performance of officers who are serving on, or have served on, the Joint Staff or are joint qualified officers.

(d) Information or guidelines furnished to a selection board under subsection (b) may not be modified, withdrawn, or supplemented after the board submits the report to the Secretary of the military department concerned pursuant to section 617(a) of this title, except that, in the case of a report returned to a board pursuant to section 618(a)(2) of this title for further proceedings because of a determination by the Secretary of the military department concerned that the board acted contrary to law, regulation, or guidelines, the Secretary may modify, withdraw, or supplement such information or guidelines as part of a written explanation to the board as provided in that section.

(e) The Secretary of each military department, under uniform regulations prescribed by the Secretary of Defense, shall include in guidelines furnished to a selection board convened under section 611(a) of this title that is considering officers in a health-professions competitive category for promotion to a grade below colonel or, in the case of the Navy, captain, a direction that the board give consideration to an officer's clinical proficiency and skill as a health professional to at least as great an extent as the board gives to the officer's administrative and management skills.

(Added Pub. L. 96-513, title I, § 105, Dec. 12, 1980, 94 Stat. 2852; amended Pub. L. 99-433, title IV, § 402(b), Oct. 1, 1986, 100 Stat. 1030; Pub. L. 100-456, div. A, title V, § 501(a), Sept. 29, 1988, 102 Stat. 1965; Pub. L. 101-189, div. A, title V, § 519, Nov. 29, 1989, 103 Stat. 1444; Pub. L. 102-190, div. A, title V, § 504(a)(1), Dec. 5, 1991, 105 Stat. 1355; Pub. L. 102-484, div. A, title X, § 1052(7), Oct. 23, 1992, 106 Stat. 2499; Pub. L. 109-163, div. A, title V, § 506(a), Jan. 6, 2006, 119 Stat. 3227; Pub. L. 111-383, div. A, title V, § 522(b), Jan. 7, 2011, 124 Stat. 4215.)

## AMENDMENTS

2011—Subsecs. (b)(5), (c). Pub. L. 111-383 substituted “of officers who are serving on, or have served on, the Joint Staff or are joint qualified officers” for “in joint duty assignments of officers who are serving, or have served, in such assignments”.

2006—Subsec. (a)(3). Pub. L. 109-163, § 506(a)(1)(B), added par. (3). Former par. (3) redesignated (4).

Subsec. (a)(4). Pub. L. 109-163, § 506(a)(2)(A), substituted “paragraphs (2) and (3)” for “paragraph (2)”.

Pub. L. 109-163, § 506(a)(1)(A), redesignated par. (3) as (4). Former par. (4) redesignated (5).

Subsec. (a)(5). Pub. L. 109-163, § 506(a)(2)(B), substituted “, (3), and (4)” for “and (3)”.

Pub. L. 109-163, § 506(a)(1)(A), redesignated par. (4) as (5). Former par. (5) redesignated (6).

Subsec. (a)(6). Pub. L. 109-163, § 506(a)(2)(C)(i), inserted “, or in paragraph (3),” after “paragraph (2)” in introductory provisions.

Pub. L. 109-163, § 506(a)(1)(A), redesignated par. (5) as (6). Former par. (6) redesignated (7).

Subsec. (a)(6)(B). Pub. L. 109-163, § 506(a)(2)(C)(ii), inserted “or (3), as applicable” before period at end.

Subsec. (a)(7). Pub. L. 109-163, § 506(a)(1)(A), redesignated par. (6) as (7).

Subsec. (a)(7)(A). Pub. L. 109-163, § 506(a)(2)(D), inserted “or (3)” after “paragraph (2)(B)” in introductory provisions.

1992—Subsec. (b)(5). Pub. L. 102-484, § 1052(7)(A), substituted “subsection (c)” for “subsection (b)”.

Subsec. (d). Pub. L. 102-484, § 1052(7)(B), substituted “subsection (b)” for “subsection (a)”.

1991—Pub. L. 102-190 added subsec. (a) and redesignated former subsecs. (a) to (d) as (b) to (e), respectively.

1989—Subsec. (d). Pub. L. 101-189 added subsec. (d).

1988—Subsec. (a)(4). Pub. L. 100-456, § 501(a)(1), added cl. (4) and struck out former cl. (4) which read as follows: “information relating to the needs of the armed force concerned for officers having particular skills;”.

Subsec. (c). Pub. L. 100-456, § 501(a)(2), added subsec. (c).

1986—Pub. L. 99-433 designated existing provisions as subsec. (a), added par. (5), redesignated former par. (5) as (6), and added subsec. (b).

## EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-163, div. A, title V, § 506(c), Jan. 6, 2006, 119 Stat. 3228, provided that: “The amendments made by this section [amending this section and section 14107 of this title] shall take effect on October 1, 2006, and shall apply with respect to promotion selection boards convened on or after that date.”

## EFFECTIVE DATE OF 1991 AMENDMENT

Section 504(e) of Pub. L. 102-190 provided that: “The amendments made by this section [amending this section and sections 614, 616, 618, and 619 of this title] shall apply to selection boards convened under section 611(a) of title 10, United States Code, after the end of the 60-day period beginning on the date of the enactment of this Act [Dec. 5, 1991].”

## EFFECTIVE DATE OF 1988 AMENDMENT

Section 501(e) of Pub. L. 100-456 provided that: “The amendments made by this section [amending this section and sections 616 to 618 of this title] shall take effect 60 days after the date of the enactment of this Act [Sept. 29, 1988] and shall apply with respect to selection boards convened under section 611(a) of title 10, United States Code, on or after that effective date.”

## EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-433 effective with respect to selection boards convened under section 611(a) of this title after end of 120-day period beginning on Oct. 1, 1986, see section 406(f) of Pub. L. 99-433, set out as a note under section 612 of this title.

**§ 616. Recommendations for promotion by selection boards**

(a) A selection board convened under section 611(a) of this title shall recommend for promotion to the next higher grade those officers considered by the board whom the board, giving due consideration to the needs of the armed force concerned for officers with particular skills (as noted in the guidelines or information furnished the board under section 615(b) of this title), considers best qualified for promotion within each competitive category considered by the board.

(b) The Secretary of the military department concerned shall establish the number of officers such a selection board may recommend for promotion from among officers being considered from below the promotion zone in any competitive category. Such number may not exceed the number equal to 10 percent of the maximum number of officers that the board is authorized to recommend for promotion in such competitive category, except that the Secretary of Defense may authorize a greater number, not to exceed 15 percent of the total number of officers that the board is authorized to recommend for promotion, if the Secretary of Defense determines that the needs of the service so require. If the number determined under this subsection is less than one, the board may recommend one such officer. The number of officers recommended for promotion from below the promotion zone does not increase the maximum number of officers which the board is authorized under section 615 of this title to recommend for promotion.

(c) A selection board convened under section 611(a) of this title may not recommend an officer for promotion unless—

(1) the officer receives the recommendation of a majority of the members of the board;

(2) a majority of the members of the board finds that the officer is fully qualified for promotion; and

(3) a majority of the members of the board, after consideration by all members of the board of any adverse information about the officer that is provided to the board under section 615 of this title, finds that the officer is among the officers best qualified for promotion to meet the needs of the armed force concerned consistent with the requirement of exemplary conduct set forth in section 3583, 5947, or 8583 of this title, as applicable.

(d) Except as otherwise provided by law, an officer on the active-duty list may not be promoted to a higher grade under this chapter unless he is considered and recommended for promotion to that grade by a selection board convened under this chapter.

(e) The recommendations of a selection board may be disclosed only in accordance with regulations prescribed by the Secretary of Defense. Those recommendations may not be disclosed to a person not a member of the board (or a member of the administrative staff designated by the Secretary concerned to assist the board) until the written report of the recommendations of the board, required by section 617 of this title, is signed by each member of the board.

(f) The Secretary convening a selection board under section 611(a) of this title, and an officer or other official exercising authority over any member of a selection board, may not—

(1) censure, reprimand, or admonish the selection board or any member of the board with respect to the recommendations of the board or the exercise of any lawful function within the authorized discretion of the board; or

(2) attempt to coerce or, by any unauthorized means, influence any action of a selection board or any member of a selection board in the formulation of the board's recommendations.

(Added Pub. L. 96-513, title I, §105, Dec. 12, 1980, 94 Stat. 2852; amended Pub. L. 100-456, div. A, title V, §501(b), Sept. 29, 1988, 102 Stat. 1966; Pub. L. 102-190, div. A, title V, §504(b), Dec. 5, 1991, 105 Stat. 1357; Pub. L. 102-484, div. A, title X, §1052(8), Oct. 23, 1992, 106 Stat. 2499; Pub. L. 109-364, div. A, title V, §512(a), Oct. 17, 2006, 120 Stat. 2184.)

#### AMENDMENTS

2006—Subsec. (c)(3). Pub. L. 109-364 added par. (3).

1992—Pub. L. 102-484 substituted “section 615(b)” for “section 615(a)”.

1991—Subsecs. (e), (f). Pub. L. 102-190 added subsecs. (e) and (f).

1988—Subsec. (a). Pub. L. 100-456 inserted “(as noted in the guidelines or information furnished the board under section 615(a) of this title)” after “particular skills”.

#### EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-364, div. A, title V, §512(c), Oct. 17, 2006, 120 Stat. 2184, provided that: “The amendments made by this section [amending this section and section 14108 of this title] shall take effect on the date of the enactment of this Act [Oct. 17, 2006] and shall apply with respect to selection boards convened on or after that date.”

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-190 applicable to selection boards convened under section 611(a) of this title after end of 60-day period beginning Dec. 5, 1991, see section 504(e) of Pub. L. 102-190, set out as a note under section 615 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-456 effective 60 days after Sept. 29, 1988, and applicable with respect to selection boards convened under section 611(a) of this title on or after that effective date, see section 501(e) of Pub. L. 100-456, set out as a note under section 615 of this title.

### § 617. Reports of selection boards

(a) Each selection board convened under section 611(a) of this title shall submit to the Secretary of the military department concerned a written report, signed by each member of the board, containing a list of the names of the officers it recommends for promotion and certifying (1) that the board has carefully considered the record of each officer whose name was furnished to it under section 615 of this title, and (2) that, in the opinion of a majority of the members of the board, the officers recommended for promotion by the board are best qualified for promotion to meet the needs of the armed force concerned (as noted in the guidelines or information furnished the board under section 615(b)

of this title) among those officers whose names were furnished to the selection board.

(b) A selection board convened under section 611(a) of this title shall include in its report to the Secretary concerned the name of any regular or reserve officer before it for consideration for promotion whose record, in the opinion of a majority of the members of the board, indicates that the officer should be required under chapter 60 or 1411 of this title to show cause for his retention on active duty.

(c) A selection board convened under section 611(a) of this title shall include in its report to the Secretary concerned the name of any officer considered and not recommended for promotion by the board who submitted to the board a request not to be selected for promotion or who otherwise directly caused his nonselection through written communication to the Board under section 614(b) of this title.

(Added Pub. L. 96-513, title I, §105, Dec. 12, 1980, 94 Stat. 2853; amended Pub. L. 100-456, div. A, title V, §501(c), Sept. 29, 1988, 102 Stat. 1966; Pub. L. 102-484, div. A, title X, §1052(8), Oct. 23, 1992, 106 Stat. 2499; Pub. L. 103-337, div. A, title XVI, §1623, Oct. 5, 1994, 108 Stat. 2961; Pub. L. 105-261, div. A, title V, §502(b), Oct. 17, 1998, 112 Stat. 2003; Pub. L. 106-65, div. A, title V, §503(a), Oct. 5, 1999, 113 Stat. 590.)

#### AMENDMENTS

1999—Subsec. (c). Pub. L. 106-65 struck out “regular” before “officer”.

1998—Subsec. (c). Pub. L. 105-261 added subsec. (c).

1994—Subsec. (b). Pub. L. 103-337 inserted “or reserve” after “any regular” and “or 1411” after “chapter 60”.

1992—Subsec. (a). Pub. L. 102-484 substituted “section 615(b)” for “section 615(a)”.

1988—Subsec. (a)(2). Pub. L. 100-456 inserted “(as noted in the guidelines or information furnished the board under section 615(a) of this title)” after “concerned”.

#### EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-65, div. A, title V, §503(b), Oct. 5, 1999, 113 Stat. 590, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to boards convened under section 611(a) of title 10, United States Code, on or after the date of the enactment of this Act [Oct. 5, 1999].”

#### EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-261, div. A, title V, §502(c), Oct. 17, 1998, 112 Stat. 2003, provided that: “The amendments made by this section [amending this section and section 1174 of this title] shall apply with respect to selection boards convened under section 611(a) of title 10, United States Code, on or after the date of the enactment of this Act [Oct. 17, 1998].”

#### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-337 effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103-337, set out as a note under section 10001 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-456 effective 60 days after Sept. 29, 1988, and applicable with respect to selection boards convened under section 611(a) of this title on or after that effective date, see section 501(e) of Pub. L. 100-456, set out as a note under section 615 of this title.

### § 618. Action on reports of selection boards

(a)(1) Upon receipt of the report of a selection board submitted to him under section 617(a) of

this title, the Secretary of the military department concerned shall review the report to determine whether the board has acted contrary to law or regulation or to guidelines furnished the board under section 615(b) of this title. Following such review, unless the Secretary concerned makes a determination as described in paragraph (2), the Secretary shall submit the report as required by subsection (b) or (c), as appropriate.

(2) If, on the basis of a review of the report under paragraph (1), the Secretary of the military department concerned determines that the board acted contrary to law or regulation or to guidelines furnished the board under section 615(b) of this title, the Secretary shall return the report, together with a written explanation of the basis for such determination, to the board for further proceedings. Upon receipt of a report returned by the Secretary concerned under this paragraph, the selection board (or a subsequent selection board convened under section 611(a) of this title for the same grade and competitive category) shall conduct such proceedings as may be necessary in order to revise the report to be consistent with law, regulation, and such guidelines and shall resubmit the report, as revised, to the Secretary in accordance with section 617 of this title.

(b)(1) After completing the requirements of subsection (a), the Secretary concerned, in the case of the report of a selection board that considered officers who are serving on, or have served on, the Joint Staff or are joint qualified officers, shall submit the report to the Chairman of the Joint Chiefs of Staff.

(2) The Chairman, in accordance with guidelines furnished to the Chairman by the Secretary of Defense, shall review the report for the purpose of determining if—

(A) the selection board acted consistent with the guidelines of the Secretary of Defense under section 615(c) of this title to ensure that selection boards give appropriate consideration to the performance of officers who are serving on, or have served on, the Joint Staff or are joint qualified officers; and

(B) the selection board otherwise gave appropriate consideration to the performance of officers who are serving on, or have served on, the Joint Staff or are joint qualified officers.

(3) After reviewing the report, the Chairman shall return the report, with his determinations and comments, to the Secretary concerned.

(4) If the Chairman determines that the board acted contrary to the guidelines of the Secretary of Defense under section 615(c) of this title or otherwise failed to give appropriate consideration to the performance of officers who are serving on, or have served on, the Joint Staff or are joint qualified officers, the Secretary concerned may—

(A) return the report, together with the Chairman's determinations and comments, to the selection board (or a subsequent selection board convened under section 611(a) of this title for the same grade and competitive category) for further proceedings in accordance with subsection (a);

(B) convene a special selection board in the manner provided for under section 628 of this title; or

(C) take other appropriate action to satisfy the concerns of the Chairman.

(5) If, after completion of all actions taken under paragraph (4), the Secretary concerned and the Chairman remain in disagreement with respect to the report of a selection board, the Secretary concerned shall indicate such disagreement, and the reasons for such disagreement, as part of his transmittal of the report of the selection board to the Secretary of Defense under subsection (c). Such transmittal shall include any comments submitted by the Chairman.

(c)(1) After his final review of the report of a selection board, the Secretary concerned shall submit the report, with his recommendations thereon, to the Secretary of Defense for transmittal to the President for his approval or disapproval. The Secretary of Defense shall, before transmitting the report of a selection board to the President, take appropriate action to resolve any disagreement between the Secretary concerned and the Chairman transmitted to him under subsection (b)(5). If the authority of the President under this paragraph to approve or disapprove the report of a selection board is delegated to the Secretary of Defense, it may not be redelegated except to an official in the Office of the Secretary of Defense.

(2) If the report of a selection board names an officer as having a record which indicates that the officer should be required to show cause for his retention on active duty, the Secretary concerned may provide for the review of the record of that officer as provided for under regulations prescribed under section 1181 of this title.

(d)(1) Except as provided in paragraph (2), the name of an officer recommended for promotion by a selection board may be removed from the report of the selection board only by the President.

(2) In the case of an officer recommended by a selection board for promotion to a grade below brigadier general or rear admiral (lower half), the name of the officer may also be removed from the report of the selection board by the Secretary of Defense or the Deputy Secretary of Defense.

(e)(1) The names of the officers recommended for promotion in the report of a selection board shall be disseminated to the armed force concerned as follows:

(A) In the case of officers recommended for promotion to a grade below brigadier general or rear admiral (lower half), such names may be disseminated upon, or at any time after, the transmittal of the report to the President.

(B) In the case of officers recommended for promotion to a grade above colonel or, in the case of the Navy, captain, such names may be disseminated upon, or at any time after, the approval of the report by the President.

(C) In the case of officers whose names have not been sooner disseminated, such names shall be promptly disseminated upon confirmation by the Senate.

(2) A list of names of officers disseminated under paragraph (1) may not include—

(A) any name removed by the President from the report of the selection board containing

that name, if dissemination is under the authority of subparagraph (B) of such paragraph; or

(B) the name of any officer whose promotion the Senate failed to confirm, if dissemination is under the authority of subparagraph (C) of such paragraph.

[*(f)* Repealed. Pub. L. 109-364, div. A, title V, § 547(a)(2), Oct. 17, 2006, 120 Stat. 2216.]

(g) If the Secretary of a military department or the Secretary of Defense makes a recommendation under this section that the name of an officer be removed from a report of a selection board and the recommendation is accompanied by information that was not presented to that selection board, that information shall be made available to that officer. The officer shall then be afforded a reasonable opportunity to submit comments on that information to the officials making the recommendation and the officials reviewing the recommendation. If an eligible officer cannot be given access to such information because of its classification status, the officer shall, to the maximum extent practicable, be provided with an appropriate summary of the information.

(Added Pub. L. 96-513, title I, § 105, Dec. 12, 1980, 94 Stat. 2853; amended Pub. L. 98-525, title V, § 524(a), Oct. 19, 1984, 98 Stat. 2524; Pub. L. 99-433, title IV, § 402(c), Oct. 1, 1986, 100 Stat. 1030; Pub. L. 100-456, div. A, title V, § 501(d), Sept. 29, 1988, 102 Stat. 1966; Pub. L. 102-190, div. A, title V, § 504(c), Dec. 5, 1991, 105 Stat. 1357; Pub. L. 102-484, div. A, title X, § 1052(8), (9), Oct. 23, 1992, 106 Stat. 2499; Pub. L. 106-398, § 1 [[div. A], title V, § 503(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A-100; Pub. L. 109-364, div. A, title V, §§ 513(a), 547(a)(2), Oct. 17, 2006, 120 Stat. 2184, 2216; Pub. L. 111-383, div. A, title V, § 522(c), Jan. 7, 2011, 124 Stat. 4215.)

#### AMENDMENTS

2011—Subsec. (b)(1). Pub. L. 111-383, § 522(c)(1), substituted “are serving on, or have served on, the Joint Staff or are joint qualified officers” for “are serving, or have served, in joint duty assignments”.

Subsec. (b)(2). Pub. L. 111-383, § 522(c)(2), substituted “of officers who are serving on, or have served on, the Joint Staff or are joint qualified officers” for “in joint duty assignments of officers who are serving, or have served, in such assignments” in subpars. (A) and (B).

Subsec. (b)(4). Pub. L. 111-383, § 522(c)(3), substituted “who are serving on, or have served on, the Joint Staff or are joint qualified officers” for “in joint duty assignments” in introductory provisions.

2006—Subsec. (d). Pub. L. 109-364, § 513(a), designated existing provisions as par. (1), substituted “Except as provided in paragraph (2), the name” for “The name”, and added par. (2).

Subsec. (f). Pub. L. 109-364, § 547(a)(2), struck out subsec. (f) which read as follows: “Except as authorized or required by this section, proceedings of a selection board convened under section 611(a) of this title may not be disclosed to any person not a member of the board.”

2000—Subsec. (e). Pub. L. 106-398 amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: “Upon approval by the President of the report of a selection board, the names of the officers recommended for promotion by the selection board (other than any name removed by the President) may be disseminated to the armed force concerned. If such names have not been sooner disseminated, such names (other than the name of any officer whose promotion the Sen-

ate failed to confirm) shall be promptly disseminated to the armed force concerned upon confirmation by the Senate.”

1992—Subsec. (a)(1), (2). Pub. L. 102-484, § 1052(8), substituted “section 615(b)” for “section 615(a)”.

Subsec. (b)(2)(A), (4). Pub. L. 102-484, § 1052(9), substituted “section 615(c)” for “section 615(b)”.

1991—Subsec. (g). Pub. L. 102-190 added subsec. (g).

1988—Subsec. (a). Pub. L. 100-456, § 501(d)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “If, after reviewing the report of a selection board submitted to him under section 617(a) of this title, the Secretary of the military department concerned determines that the board has acted contrary to law or regulation, the Secretary shall return the report to the board for further proceedings. Upon receipt of a report returned by the Secretary concerned under this subsection, the selection board (or a subsequent selection board convened under section 611(a) of this title for the same grade and competitive category) shall conduct such proceedings as may be necessary in order to revise the report and shall resubmit the report, as revised, to the Secretary in accordance with section 617 of this title.”

Subsec. (c)(1). Pub. L. 100-456, § 501(d)(2), struck out “, modification,” after “for his approval” and inserted at end “If the authority of the President under this paragraph to approve or disapprove the report of a selection board is delegated to the Secretary of Defense, it may not be redelegated except to an official in the Office of the Secretary of Defense.”

1986—Subsec. (b). Pub. L. 99-433, § 402(c)(1), (2), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 99-433, § 402(c)(1), (3), redesignated subsec. (b) as (c) and in par. (1) inserted provisions directing the Secretary of Defense, before transmitting the report, to take appropriate action to resolve any disagreement between the Secretary concerned and the Chairman. Former subsec. (c) redesignated (d).

Subsecs. (d) to (f). Pub. L. 99-433, § 402(c)(1), redesignated subsecs. (c) to (e) as (d) to (f), respectively.

1984—Subsec. (b)(2). Pub. L. 98-525 substituted “If the report of a selection board names an officer as having a record which indicates that the officer should be required to show cause for his retention on active duty, the Secretary concerned may provide for the review of the record of that officer as provided for under regulations prescribed under section 1181 of this title” for “The Secretary concerned may submit to a board of officers convened under section 1181 of this title the name of any officer who is named in the report of a selection board as having a record which indicates that the officer should be required to show cause for his retention on active duty”.

#### EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-364, div. A, title V, § 513(c), Oct. 17, 2006, 120 Stat. 2185, provided that: “The amendments made by this section [amending this section and section 14111 of this title] shall apply with respect to selection boards convened on or after the date of the enactment of this Act [Oct. 17, 2006].”

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-190 applicable to selection boards convened under section 611(a) of this title after end of 60-day period beginning Dec. 5, 1991, see section 504(e) of Pub. L. 102-190, set out as a note under section 615 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-456 effective 60 days after Sept. 29, 1988, and applicable with respect to selection boards convened under section 611(a) of this title on or after that effective date, see section 501(e) of Pub. L. 100-456, set out as a note under section 615 of this title.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-433 effective with respect to selection boards convened under section 611(a) of

this title after end of 120-day period beginning on Oct. 1, 1986, see section 406(f) of Pub. L. 99-433, set out as a note under section 612 of this title.

#### DELEGATION OF FUNCTIONS

Functions of President under subsec. (b)(1) to approve, modify, or disapprove report of a selection board delegated to Secretary of Defense to perform, without approval, ratification, or other action by President, and with authority for Secretary to redelegate, see Ex. Ord. No. 12396, §§1(a), 3, Dec. 9, 1982, 47 F.R. 55897, 55898, set out as a note under section 301 of Title 3, The President.

Nothing in section 1 of Ex. Ord. No. 12396 deemed to delegate authority vested in President by subsec. (c) of this section to remove a name from a selection board report, see section 1(g) of Ex. Ord. No. 12396.

#### SUBCHAPTER II—PROMOTIONS

- Sec.
619. Eligibility for consideration for promotion: time-in-grade and other requirements.
- 619a. Eligibility for consideration for promotion: designation as joint qualified officer required before promotion to general or flag grade; exceptions.
620. Active-duty lists.
621. Competitive categories for promotion.
622. Numbers to be recommended for promotion.
623. Establishment of promotion zones.
624. Promotions: how made.
625. Authority to vacate promotions to grades of brigadier general and rear admiral (lower half).
626. Acceptance of promotions; oath of office.

#### AMENDMENTS

2008—Pub. L. 110-417, [div. A], title V, §521(b)(2), Oct. 14, 2008, 122 Stat. 4444, added item 619a and struck out former item 619a “Eligibility for consideration for promotion: joint duty assignment required before promotion to general or flag grade; exceptions”.

1993—Pub. L. 103-160, div. A, title IX, §931(c)(2), Nov. 30, 1993, 107 Stat. 1734, added items 619 and 619a and struck out former item 619 “Eligibility for consideration for promotion”.

1985—Pub. L. 99-145, title V, §514(b)(4)(B), Nov. 8, 1985, 99 Stat. 628, substituted “rear admiral (lower half)” for “commodore” in item 625.

1981—Pub. L. 97-86, title IV, §405(b)(4)(B), Dec. 1, 1981, 95 Stat. 1106, substituted “commodore” for “commodore admiral” in item 625.

#### § 619. Eligibility for consideration for promotion: time-in-grade and other requirements

(a) TIME-IN-GRADE REQUIREMENTS.—(1) An officer who is on the active-duty list of the Army, Air Force, or Marine Corps and holds a permanent appointment in the grade of second lieutenant or first lieutenant or is on the active-duty list of the Navy and holds a permanent appointment in the grade of ensign or lieutenant (junior grade) may not be promoted to the next higher permanent grade until he has completed the following period of service in the grade in which he holds a permanent appointment:

(A) Eighteen months, in the case of an officer holding a permanent appointment in the grade of second lieutenant or ensign.

(B) Two years, in the case of an officer holding a permanent appointment in the grade of first lieutenant or lieutenant (junior grade), except that the minimum period of service in effect under this subparagraph before October 1, 2008, shall be eighteen months.

(2) Subject to paragraph (4), an officer who is on the active-duty list of the Army, Air Force, or Marine Corps and holds a permanent appointment in a grade above first lieutenant or is on the active-duty list of the Navy and holds a permanent appointment in a grade above lieutenant (junior grade) may not be considered for selection for promotion to the next higher permanent grade until he has completed the following period of service in the grade in which he holds a permanent appointment:

(A) Three years, in the case of an officer of the Army, Air Force, or Marine Corps holding a permanent appointment in the grade of captain, major, or lieutenant colonel or of an officer of the Navy holding a permanent appointment in the grade of lieutenant, lieutenant commander, or commander.

(B) One year, in the case of an officer of the Army, Air Force, or Marine Corps holding a permanent appointment in the grade of colonel or brigadier general or of an officer of the Navy holding a permanent appointment in the grade of captain or rear admiral (lower half).

(3) When the needs of the service require, the Secretary of the military department concerned may prescribe a longer period of service in grade for eligibility for promotion, in the case of officers to whom paragraph (1) applies, or for eligibility for consideration for promotion, in the case of officers to whom paragraph (2) applies.

(4) The Secretary of the military department concerned may waive paragraph (2) to the extent necessary to assure that officers described in subparagraph (A) of such paragraph have at least two opportunities for consideration for promotion to the next higher grade as officers below the promotion zone.

(5) In computing service in grade for purposes of this section, service in a grade held as a result of assignment to a position is counted as service in the grade in which the officer would have served except for such assignment or appointment.

(b) CONTINUED ELIGIBILITY FOR CONSIDERATION FOR PROMOTION OF OFFICERS WHO HAVE PREVIOUSLY FAILED OF SELECTION.—(1) Except as provided in paragraph (2), an officer who has failed of selection for promotion to the next higher grade remains eligible for consideration for promotion to that grade as long as he continues on active duty in other than a retired status and is not promoted.

(2) Paragraph (1) does not apply to a regular officer who is ineligible for consideration for promotion under section 631(c) of this title or to a reserve officer who has failed of selection for promotion to the grade of captain or, in the case of an officer of the Navy, lieutenant for the second time.

(c) OFFICERS TO BE CONSIDERED BY PROMOTION BOARDS.—(1) Each time a selection board is convened under section 611(a) of this title for consideration of officers in a competitive category for promotion to the next higher grade, each officer in the promotion zone (except as provided under paragraph (2)), and each officer above the promotion zone, for the grade and competitive category under consideration shall be considered for promotion.

(2) The Secretary of the military department concerned—

(A) may, in accordance with standards and procedures prescribed by the Secretary of Defense in regulations which shall apply uniformly among the military departments, limit the officers to be considered by a selection board from below the promotion zone to those officers who are determined to be exceptionally well qualified for promotion;

(B) may, by regulation, prescribe a period of time, not to exceed one year, from the time an officer is placed on the active-duty list during which the officer shall be ineligible for consideration for promotion; and

(C) may, by regulation, preclude from consideration by a selection board by which he would otherwise be eligible to be considered, an officer who has an established separation date that is within 90 days after the date the board is convened.

(3)(A) The Secretary of Defense may authorize the Secretaries of the military departments to preclude from consideration by selection boards for promotion to the grade of brigadier general or rear admiral (lower half) officers in the grade of colonel or, in the case of the Navy, captain who—

(i) have been considered and not selected for promotion to the grade of brigadier general or rear admiral (lower half) by at least two selection boards; and

(ii) are determined, in accordance with standards and procedures prescribed pursuant to subparagraph (B), as not being exceptionally well qualified for promotion.

(B) If the Secretary of Defense authorizes the Secretaries of the military departments to have the authority described in subparagraph (A), the Secretary shall prescribe by regulation the standards and procedures for the exercise of such authority. Those regulations shall apply uniformly among the military departments and shall include the following provisions:

(i) A requirement that the Secretary of a military department may exercise such authority in the case of a particular selection board only if the Secretary of Defense approves the exercise of that authority for that board.

(ii) A requirement that an officer may be precluded from consideration by a selection board under this paragraph only upon the recommendation of a preselection board of officers convened by the Secretary of the military department concerned and composed of at least three officers all of whom are serving in a grade higher than the grade of such officer.

(iii) A requirement that such a preselection board may not recommend that an officer be precluded from such consideration unless the Secretary concerned has given the officer advance written notice of the convening of such board and of the military records that will be considered by the board and has given the officer a reasonable period before the convening of the board in which to submit comments to the board.

(iv) A requirement that the Secretary convening such a preselection board shall provide general guidance to the board in accordance with standards and procedures prescribed by the Secretary of Defense in those regulations.

(v) A requirement that the preselection board may recommend that an officer be precluded from consideration by a selection board only on the basis of the general guidance provided by the Secretary of the military department concerned, information in the officer's official military personnel records that has been described in the notice provided the officer as required pursuant to clause (iii), and any communication to the board received from that officer before the board convenes.

(d) CERTAIN OFFICERS NOT TO BE CONSIDERED.—A selection board convened under section 611(a) of this title may not consider for promotion to the next higher grade any of the following officers:

(1) An officer whose name is on a promotion list for that grade as a result of his selection for promotion to that grade by an earlier selection board convened under that section.

(2) An officer who is recommended for promotion to that grade in the report of an earlier selection board convened under that section, in the case of such a report that has not yet been approved by the President.

(3) An officer of the Marine Corps who is an officer designated for limited duty and who holds a grade above major.

(4) An officer in the grade of first lieutenant or, in the case of the Navy, lieutenant (junior grade) who is on an approved all-fully-qualified-officers list under section 624(a)(3) of this title.

(5) An officer in the grade of captain or, in the case of the Navy, lieutenant who is not a citizen of the United States.

(Added Pub. L. 96-513, title I, §105, Dec. 12, 1980, 94 Stat. 2854; amended Pub. L. 97-22, §4(c), July 10, 1981, 95 Stat. 126; Pub. L. 97-86, title IV, §405(b)(1), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 98-525, title V, §§525(a), (b), 529(a), Oct. 19, 1984, 98 Stat. 2524, 2525, 2526; Pub. L. 99-145, title V, §514(b)(1), Nov. 8, 1985, 99 Stat. 628; Pub. L. 99-433, title IV, §404, Oct. 1, 1986, 100 Stat. 1032; Pub. L. 100-180, div. A, title XIII, §§1305(a), 1314(b)(4), Dec. 4, 1987, 101 Stat. 1173, 1175; Pub. L. 100-456, div. A, title V, §515(a)(1), (b), Sept. 29, 1988, 102 Stat. 1970; Pub. L. 102-190, div. A, title V, §504(d), Dec. 5, 1991, 105 Stat. 1357; Pub. L. 103-160, div. A, title IX, §931(b), (c)(1), Nov. 30, 1993, 107 Stat. 1734; Pub. L. 103-337, div. A, title X, §1070(b)(7), Oct. 5, 1994, 108 Stat. 2857; Pub. L. 105-85, div. A, title V, §503(a), Nov. 18, 1997, 111 Stat. 1724; Pub. L. 107-107, div. A, title V, §§504, 505(c)(1)(A), Dec. 28, 2001, 115 Stat. 1085, 1087; Pub. L. 108-375, div. A, title V, §501(a)(3)(B), Oct. 28, 2004, 118 Stat. 1873; Pub. L. 109-364, div. A, title V, §506, Oct. 17, 2006, 120 Stat. 2179.)

#### AMENDMENTS

2006—Subsec. (a)(1)(B). Pub. L. 109-364 substituted “October 1, 2008” for “October 1, 2005”.

2004—Subsec. (d)(5). Pub. L. 108-375 added par. (5).

2001—Subsec. (a). Pub. L. 107-107, §504(b)(1), inserted heading.

Subsec. (a)(1)(B). Pub. L. 107-107, §504(a), inserted “, except that the minimum period of service in effect under this subparagraph before October 1, 2005, shall be eighteen months” before period at end.

Subsec. (a)(4). Pub. L. 107-107, §504(c), substituted “subparagraph (A)” for “clause (A)”.

Subsec. (b). Pub. L. 107-107, § 504(b)(2), inserted heading.

Subsec. (c). Pub. L. 107-107, § 504(b)(3), inserted heading.

Subsec. (d). Pub. L. 107-107, § 504(b)(4), inserted heading.

Subsec. (d)(4). Pub. L. 107-107, § 505(c)(1)(A), added par. (4).

1997—Subsec. (d). Pub. L. 105-85, § 503(a)(1), substituted “grade any of the following officers:” for “grade—” in introductory provisions.

Subsec. (d)(1). Pub. L. 105-85, § 503(a)(2), substituted “An officer” for “an officer” and a period for “; or”.

Subsec. (d)(2). Pub. L. 105-85, § 503(a)(4), added par. (2). Former par. (2) redesignated (3).

Subsec. (d)(3). Pub. L. 105-85, § 503(a)(3), redesignated par. (2) as (3) and substituted “An officer” for “an officer”.

1994—Pub. L. 103-337 made technical correction to directory language of Pub. L. 103-160, § 931(c)(1). See 1993 Amendment note below.

1993—Pub. L. 103-160, § 931(c)(1), as amended by Pub. L. 103-337, inserted “; time-in-grade and other requirements” in section catchline.

Subsec. (e). Pub. L. 103-160, § 931(b), struck out subsec. (e) which specified certain requirements for appointment to grade of brigadier general or rear admiral (lower half). See section 619a of this title.

1991—Subsec. (c)(2). Pub. L. 102-190, § 504(d)(1), added subpar. (A), redesignated subpars. (C) and (D) as (B) and (C) respectively, and struck out former subpars. (A) and (B) which read as follows:

“(A) may, by regulation, prescribe procedures to limit the officers to be considered by a selection board—

“(i) from below the promotion zone; or

“(ii) in the case of a selection board to recommend officers for promotion to the grade of brigadier general or rear admiral (lower half),

to those officers who are determined to be exceptionally well qualified for promotion;

“(B) may, by regulation, prescribe criteria for determining which officers below the promotion zone or in the grades of colonel and, in the case of officers of the Navy, captain are exceptionally well qualified for promotion for the purposes of clause (A);”.

Subsec. (c)(3). Pub. L. 102-190, § 504(d)(2), added par. (3).

1988—Subsec. (e)(1). Pub. L. 100-456, § 515(a)(1)(A), substituted “January 1, 1994” for “January 1, 1992” in second sentence.

Subsec. (e)(2)(D), (E). Pub. L. 100-456, § 515(b)(1), added subpars. (D) and (E) and struck out former subpar. (D) which read as follows: “until January 1, 1992, in the case of an officer who served before October 1, 1986, in an assignment (other than a joint duty assignment) that involved significant experience in joint matters (as determined by the Secretary).”

Subsec. (e)(3)(C). Pub. L. 100-456, § 515(b)(2), substituted “paragraph (2) (other than under subparagraph (A) of that paragraph)” for “paragraph (2)(B), (2)(C), or (2)(D)”.

Subsec. (e)(5). Pub. L. 100-456, § 515(a)(1)(B), added par. (5).

1987—Subsec. (e)(1). Pub. L. 100-180, § 1305(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “An officer may not be selected for promotion to the grade of brigadier general or rear admiral (lower half) unless the officer has served in a joint duty assignment.”

Subsec. (e)(2)(D). Pub. L. 100-180, § 1314(b)(4), substituted “October 1, 1986,” for “the date of the enactment of this subsection”.

1986—Subsec. (e). Pub. L. 99-433 added subsec. (e).

1985—Subsecs. (a)(2)(B), (c)(2)(A)(ii). Pub. L. 99-145 substituted “rear admiral (lower half)” for “commodore”.

1984—Subsec. (b). Pub. L. 98-525, § 525(a), designated existing provisions as par. (1), substituted “Except as provided in paragraph (2), an officer” for “An officer”, and added par. (2).

Subsec. (c)(2)(D). Pub. L. 98-525, § 525(b), added subpar. (D).

Subsec. (d)(2). Pub. L. 98-525, § 529(a), struck out “Navy or” before “Marine Corps” and struck out “lieutenant commander or” before “major”.

1981—Subsec. (a)(2)(B). Pub. L. 97-86 substituted “commodore” for “commodore admiral”.

Subsec. (c)(2)(A). Pub. L. 97-22, § 4(c)(1), struck out “and” after “promotion;”.

Subsec. (c)(2)(A)(ii). Pub. L. 97-86 substituted “commodore” for “commodore admiral”.

Subsec. (c)(2)(B). Pub. L. 97-22, § 4(c)(2), substituted “for the purposes of clause (A); and” for the period at end of cl. (B).

Subsec. (c)(2)(C). Pub. L. 97-22, § 4(c)(3), added cl. (C).

#### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-375 effective on the first day of the first month beginning more than 180 days after Oct. 28, 2004, see section 501(g) of Pub. L. 108-375, set out as a note under section 531 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Section 503(d) of Pub. L. 105-85 provided that: “The amendments made by this section [amending this section and section 14301 of this title] shall take effect on the date of the enactment of this Act [Nov. 18, 1997] and shall apply with respect to selection boards that are convened under section 611(a), 14101(a), or 14502 of title 10, United States Code, on or after that date.”

#### EFFECTIVE DATE OF 1994 AMENDMENT

Section 1070(b) of Pub. L. 103-337 provided that the amendment made by that section is effective as of Nov. 30, 1993, and as if included in the National Defense Authorization Act for Fiscal Year 1994, Pub. L. 103-160, as enacted.

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-190 applicable to selection boards convened under section 611(a) of this title after end of 60-day period beginning Dec. 5, 1991, see section 504(e) of Pub. L. 102-190, set out as a note under section 615 of this title.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97-86, set out as a note under section 101 of this title.

#### EFFECTIVE DATE

Subchapter effective Sept. 15, 1981, but the authority to prescribe regulations under this subchapter effective on Dec. 12, 1980, see section 701 of Pub. L. 96-513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

#### TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provisions to prevent extinction or premature termination of rights, duties, penalties, or proceedings that existed or were begun prior to the effective date of Pub. L. 96-513 and otherwise to allow for an orderly transition to the system of officer personnel management put in place under Pub. L. 96-513, see section 601 et seq. of Pub. L. 96-513, set out as a note under section 611 of this title.

#### § 619a. Eligibility for consideration for promotion: designation as joint qualified officer required before promotion to general or flag grade; exceptions

(a) GENERAL RULE.—An officer on the active-duty list of the Army, Navy, Air Force, or Marine Corps may not be appointed to the grade of brigadier general or rear admiral (lower half) unless the officer has been designated as a joint

qualified officer in accordance with section 661 of this title.

(b) EXCEPTIONS.—Subject to subsection (c), the Secretary of Defense may waive subsection (a) in the following circumstances:

(1) When necessary for the good of the service.

(2) In the case of an officer whose proposed selection for promotion is based primarily upon scientific and technical qualifications for which joint requirements do not exist.

(3) In the case of—

(A) a medical officer, dental officer, veterinary officer, medical service officer, nurse, or biomedical science officer;

(B) a chaplain; or

(C) a judge advocate.

(4) In the case of an officer selected by a promotion board for appointment to the grade of brigadier general or rear admiral (lower half) while serving in a joint duty assignment if the officer's total consecutive service in joint duty assignments is not less than two years and the officer has successfully completed a program of education described in subsections (b) and (c) of section 2155 of this title.

(5) In the case of an officer who served in a joint duty assignment that began before January 1, 1987, if the officer served in that assignment for a period of sufficient duration (which may not be less than 12 months) for the officer's service to have been considered a full tour of duty under the policies and regulations in effect on September 30, 1986.

(c) WAIVER TO BE INDIVIDUAL.—A waiver may be granted under subsection (b) only on a case-by-case basis in the case of an individual officer.

(d) SPECIAL RULE FOR GOOD-OF-THE-SERVICE WAIVER.—In the case of a waiver under subsection (b)(1), the Secretary shall provide that the first duty assignment as a general or flag officer of the officer for whom the waiver is granted shall be in a joint duty assignment.

(e) LIMITATION ON DELEGATION OF WAIVER AUTHORITY.—The authority of the Secretary of Defense to grant a waiver under subsection (b) (other than under paragraph (1) of that subsection) may be delegated only to the Deputy Secretary of Defense, an Under Secretary of Defense, or an Assistant Secretary of Defense.

(f) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section. The regulations shall specifically identify for purposes of subsection (b)(2) those categories of officers for which selection for promotion to brigadier general or, in the case of the Navy, rear admiral (lower half) is based primarily upon scientific and technical qualifications for which joint requirements do not exist.

(g) LIMITATION FOR GENERAL AND FLAG OFFICERS PREVIOUSLY RECEIVING JOINT DUTY ASSIGNMENT WAIVER.—A general officer or flag officer who before January 1, 1999, received a waiver of subsection (a) under the authority of this subsection (as in effect before that date) may not be appointed to the grade of lieutenant general or vice admiral until the officer completes a full tour of duty in a joint duty assignment.

(Added Pub. L. 103-160, div. A, title IX, §931(a), Nov. 30, 1993, 107 Stat. 1732; amended Pub. L.

104-106, div. A, title XV, §1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106-65, div. A, title V, §508, Oct. 5, 1999, 113 Stat. 591; Pub. L. 107-107, div. A, title V, §525(a), (b), Dec. 28, 2001, 115 Stat. 1099; Pub. L. 108-375, div. A, title V, §533, Oct. 28, 2004, 118 Stat. 1901; Pub. L. 110-417, [div. A], title V, §521(a), (b)(1), Oct. 14, 2008, 122 Stat. 4444.)

#### AMENDMENTS

2008—Pub. L. 110-417, §521(b)(1), substituted “Eligibility for consideration for promotion: designation as joint qualified officer required before promotion to general or flag grade; exceptions” for “Eligibility for consideration for promotion: joint duty assignment required before promotion to general or flag grade; exceptions” in section catchline.

Subsec. (a). Pub. L. 110-417, §521(a)(1), substituted “unless the officer has been designated as a joint qualified officer” for “unless—

“(1) the officer has completed a full tour of duty in a joint duty assignment (as described in section 664(f) of this title); and

“(2) for appointments after September 30, 2008, the officer has been selected for the joint specialty”.

Subsec. (b). Pub. L. 110-417, §521(a)(2)(A), substituted “subsection (a)” for “paragraph (1) or paragraph (2) of subsection (a), or both paragraphs (1) and (2) of subsection (a),” in introductory provisions.

Subsec. (b)(4). Pub. L. 110-417, §521(a)(2)(B), substituted “is not less than two years and the officer has successfully completed a program of education described in subsections (b) and (c) of section 2155 of this title” for “within that immediate organization is not less than two years”.

Subsec. (h). Pub. L. 110-417, §521(a)(3), struck out heading and text of subsec. (h). Text read as follows: “An officer of the Navy designated as a qualified nuclear propulsion officer who before January 1, 1997, is appointed to the grade of rear admiral (lower half) without regard to subsection (a) may not be appointed to the grade of rear admiral until the officer completes a full tour of duty in a joint duty assignment.”

2004—Subsec. (a)(2). Pub. L. 108-375, §533(a), substituted “September 30, 2008” for “September 30, 2007”.

Subsec. (b)(4). Pub. L. 108-375, §533(b), substituted “if the officer's” for “if—

“(A) at least 180 days of that joint duty assignment have been completed on the date of the convening of that selection board; and

“(B) the officer's”.

2001—Subsec. (a). Pub. L. 107-107, §525(a), substituted “unless—” and pars. (1) and (2) for “unless the officer has completed a full tour of duty in a joint duty assignment (as described in section 664(f) of this title).”

Subsec. (b). Pub. L. 107-107, §525(b), in introductory provisions, substituted “may waive paragraph (1) or paragraph (2) of subsection (a), or both paragraphs (1) and (2) of subsection (a), in the following circumstances:” for “may waive subsection (a) in the following circumstances:”.

1999—Subsec. (g). Pub. L. 106-65, §508(a), amended heading and text of subsec. (g) generally. Prior to amendment, subsec. (g) authorized the Secretary until Jan. 1, 1999, to waive subsecs. (a) and (d) for certain officers and contained restrictions on appointments of those officers.

Subsec. (h). Pub. L. 106-65, §508(b), substituted “An officer of the Navy” for “(1) Until January 1, 1997, an officer of the Navy” and “who before January 1, 1997, is” for “may be” and struck out “. An officer so appointed” before “may not be appointed” and par. (2) which read as follows: “Not later than March 1 of each year from 1994 through 1997, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives a report on the implementation during the preceding calendar year of the transition plan developed by the Secretary pursuant to section 1305(b) of Public Law 100-180 (10 U.S.C. 619a note)

with respect to service by qualified nuclear propulsion officers in joint duty assignments.”

1996—Subsec. (h)(2). Pub. L. 104-106 substituted “Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives” for “Committees on Armed Services of the Senate and House of Representatives”.

#### PROPOSED LEGISLATIVE CHANGES

Pub. L. 107-107, div. A, title V, §525(c), Dec. 28, 2001, 115 Stat. 1099, directed the Secretary of Defense to submit to Congress, not later than Dec. 1, 2002, a draft proposal for such legislative changes to this section as the Secretary considered were needed to implement the amendment made to this section by section 525(a), (b) of Pub. L. 107-107.

#### REPORT ON PLANS FOR COMPLIANCE

Pub. L. 103-160, div. A, title IX, §931(d), Nov. 30, 1993, 107 Stat. 1734, directed the Secretary of Defense to certify to Congress, not later than Feb. 1, 1994, that the Army, Navy, Air Force, and Marine Corps had each developed and implemented a plan for officer personnel assignment and promotion policies so as to ensure compliance with the requirements of this section, and provided that each such plan should ensure that by Jan. 1, 1999, the service covered by the plan would have enough officers who had completed a full tour of duty in a joint duty assignment so as to permit the orderly promotion of officers to brigadier general or, in the case of the Navy, rear admiral (lower half).

#### PLAN FOR SERVICE BY QUALIFIED NUCLEAR PROPULSION OFFICERS IN JOINT DUTY ASSIGNMENTS BY JANUARY 1, 1997; IMPLEMENTATION; REPORT

Pub. L. 103-160, div. A, title IX, §931(f)(2), Nov. 30, 1993, 107 Stat. 1734, as amended by Pub. L. 103-337, div. A, title X, §1070(b)(8)(A), Oct. 5, 1994, 108 Stat. 2857, directed the Secretary of Defense to revise the transition plan developed pursuant to Pub. L. 100-180, §1305(b), formerly set out below, and to report on the revisions.

Pub. L. 100-456, div. A, title V, §515(a)(3), Sept. 29, 1988, 102 Stat. 1970, directed the Secretary of Defense to revise the transition plan developed pursuant to Pub. L. 100-180, §1305(b), formerly set out below, and to report on the revisions.

Pub. L. 100-180, div. A, title XIII, §1305(b)-(d), Dec. 4, 1987, 101 Stat. 1173, 1174, as amended by Pub. L. 100-456, div. A, title V, §515(a)(2), Sept. 29, 1988, 102 Stat. 1970; Pub. L. 103-160, div. A, title IX, §931(f)(1), (3), Nov. 30, 1993, 107 Stat. 1734; Pub. L. 103-337, div. A, title X, §1070(b)(8), Oct. 5, 1994, 108 Stat. 2857, directed the Secretary of Defense to develop and carry out a transition plan, to be implemented no later than six months after Dec. 4, 1987, for ensuring that during the period before Jan. 1, 1997, the maximum practicable number of officers of the Navy who were qualified nuclear propulsion officers had served in joint duty assignments and that by Jan. 1, 1997, the maximum practicable number of qualified nuclear propulsion officers in the grade of captain had qualified for appointment to the grade of rear admiral (lower half) by completing a full tour of duty in a joint duty assignment, and directed the Secretary to submit to committees of Congress on the date on which the plan was implemented a copy of the plan and a report explaining how the plan had fulfilled objectives.

#### § 620. Active-duty lists

(a) The Secretary of the military department concerned shall maintain a single list of all officers (other than officers described in section 641 of this title) who are on active duty for each armed force under his jurisdiction (other than the Coast Guard when it is operating as a service in the Navy).

(b) Officers shall be carried on the active-duty list of the armed force of which they are mem-

bers in the order of seniority of the grade in which they are serving on active duty. Officers serving in the same grade shall be carried in the order of their rank in that grade.

(c) An officer whose position on the active-duty list results from service under a temporary appointment or in a grade held by reason of assignment to a position has, when that appointment or assignment ends, the grade and position on the active-duty list that he would have held if he had not received that appointment or assignment.

(d) Under regulations prescribed by the Secretary of the military department concerned, a reserve officer who is ordered to active duty (whether voluntarily or involuntarily) during a war or national emergency and who would otherwise be placed on the active-duty list may be excluded from that list as determined by the Secretary concerned. Exclusion of an officer from the active-duty list as the result of action by the Secretary concerned under the preceding sentence shall expire not later than 24 months after the date on which the officer enters active duty under an order to active duty covered by that sentence.

(Added Pub. L. 96-513, title I, §105, Dec. 12, 1980, 94 Stat. 2855; amended Pub. L. 103-337, div. A, title XVI, §1624, Oct. 5, 1994, 108 Stat. 2961; Pub. L. 104-106, div. A, title XV, §1501(a)(1), Feb. 10, 1996, 110 Stat. 495.)

#### AMENDMENTS

1996—Subsec. (d). Pub. L. 104-106 made technical amendment to Pub. L. 103-337, §1624. See 1994 Amendment note below.

1994—Subsec. (d). Pub. L. 103-337, §1624, as amended by Pub. L. 104-106, added subsec. (d).

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103-337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104-106, set out as a note under section 113 of this title.

#### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-337 effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103-337, set out as a note under section 10001 of this title.

#### 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.

#### TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

Regulations prescribed under this section applicable to establishment of initial active-duty lists, see section 621(a) of Pub. L. 96-513, set out as a note under section 611 of this title.

#### § 621. Competitive categories for promotion

Under regulations prescribed by the Secretary of Defense, the Secretary of each military department shall establish competitive categories

for promotion. Each officer whose name appears on an active-duty list shall be carried in a competitive category of officers. Officers in the same competitive category shall compete among themselves for promotion.

(Added Pub. L. 96-513, title I, §105, Dec. 12, 1980, 94 Stat. 2856.)

**§ 622. Numbers to be recommended for promotion**

Before convening a selection board under section 611(a) of this title for any grade and competitive category, the Secretary of the military department concerned, under regulations prescribed by the Secretary of Defense, shall determine (1) the number of positions needed to accomplish mission objectives which require officers of such competitive category in the grade to which the board will recommend officers for promotion, (2) the estimated number of officers needed to fill vacancies in such positions during the period in which it is anticipated that officers selected for promotion will be promoted, and (3) the number of officers authorized by the Secretary of the military department concerned to serve on active duty in the grade and competitive category under consideration. Based on such determinations, the Secretary of the military department concerned shall determine the maximum number of officers in such competitive category which the selection board may recommend for promotion.

(Added Pub. L. 96-513, title I, §105, Dec. 12, 1980, 94 Stat. 2856.)

**§ 623. Establishment of promotion zones**

(a) Before convening a selection board under section 611(a) of this title to consider officers for promotion to any grade above first lieutenant or lieutenant (junior grade), the Secretary of the military department concerned shall establish a promotion zone for officers serving in each grade and competitive category to be considered by the board.

(b) The Secretary concerned shall determine the number of officers in the promotion zone for officers serving in any grade and competitive category from among officers who are eligible for promotion in that grade and competitive category. Such determination shall be made on the basis of an estimate of—

(1) the number of officers needed in that competitive category in the next higher grade in each of the next five years;

(2) the number of officers to be serving in that competitive category in the next higher grade in each of the next five years;

(3) in the case of a promotion zone for officers to be promoted to a grade to which section 523 of this title is applicable, the number of officers authorized for such grade under such section to be on active duty on the last day of each of the next five fiscal years; and

(4) the number of officers that should be placed in that promotion zone in each of the next five years to provide to officers in those years relatively similar opportunity for promotion.

(Added Pub. L. 96-513, title I, §105, Dec. 12, 1980, 94 Stat. 2856.)

**§ 624. Promotions: how made**

(a)(1) When the report of a selection board convened under section 611(a) of this title is approved by the President, the Secretary of the military department concerned shall place the names of all officers approved for promotion within a competitive category on a single list for that competitive category, to be known as a promotion list, in the order of the seniority of such officers on the active-duty list. A promotion list is considered to be established under this section as of the date of the approval of the report of the selection board under the preceding sentence.

(2) Except as provided in subsection (d), officers on a promotion list for a competitive category shall be promoted to the next higher grade when additional officers in that grade and competitive category are needed. Promotions shall be made in the order in which the names of officers appear on the promotion list and after officers previously selected for promotion in that competitive category have been promoted. Officers to be promoted to the grade of first lieutenant or lieutenant (junior grade) shall be promoted in accordance with regulations prescribed by the Secretary concerned.

(3)(A) Except as provided in subsection (d), officers on the active-duty list in the grade of first lieutenant or, in the case of the Navy, lieutenant (junior grade) who are on an approved all-fully-qualified-officers list shall be promoted to the next higher grade in accordance with regulations prescribed by the Secretary concerned.

(B) An all-fully-qualified-officers list shall be considered to be approved for purposes of subparagraph (A) when the list is approved by the President. When so approved, such a list shall be treated in the same manner as a promotion list under this chapter.

(C) The Secretary of a military department may make a recommendation to the President for approval of an all-fully-qualified-officers list only when the Secretary determines that all officers on the list are needed in the next higher grade to accomplish mission objectives.

(D) For purposes of this paragraph, an all-fully-qualified-officers list is a list of all officers on the active-duty list in a grade who the Secretary of the military department concerned determines—

(i) are fully qualified for promotion to the next higher grade; and

(ii) would be eligible for consideration for promotion to the next higher grade by a selection board convened under section 611(a) of this title upon the convening of such a board.

(b)(1) A regular officer who is promoted under this section is appointed in the regular grade to which promoted and a reserve officer who is promoted under this section is appointed in the reserve grade to which promoted.

(2) The date of rank of an officer appointed to a higher grade under this section is determined under section 741(d) of this title.

(c) Appointments under this section shall be made by the President, by and with the advice and consent of the Senate, except that appointments under this section in the grade of first lieutenant or captain, in the case of officers of

the Army, Air Force, or Marine Corps, or lieutenant (junior grade) or lieutenant, in the case of officers of the Navy, shall be made by the President alone.

(d)(1) Under regulations prescribed by the Secretary of Defense, the appointment of an officer under this section may be delayed if—

(A) sworn charges against the officer have been received by an officer exercising general court-martial jurisdiction over the officer and such charges have not been disposed of;

(B) an investigation is being conducted to determine whether disciplinary action of any kind should be brought against the officer;

(C) a board of officers has been convened under chapter 60 of this title to review the record of the officer;

(D) a criminal proceeding in a Federal or State court is pending against the officer; or

(E) substantiated adverse information about the officer that is material to the decision to appoint the officer is under review by the Secretary of Defense or the Secretary concerned.

If no disciplinary action is taken against the officer, if the charges against the officer are withdrawn or dismissed, if the officer is not ordered removed from active duty by the Secretary concerned under chapter 60 of this title, if the officer is acquitted of the charges brought against him, or if, after a review of substantiated adverse information about the officer regarding the requirement for exemplary conduct set forth in section 3583, 5947, or 8583 of this title, as applicable, the officer is determined to be among the officers best qualified for promotion, as the case may be, then unless action to delay an appointment has also been taken under paragraph (2) the officer shall be retained on the promotion list (including an approved all-fully-qualified-officers list, if applicable) and shall, upon promotion to the next higher grade, have the same date of rank, the same effective date for the pay and allowances of the grade to which promoted, and the same position on the active-duty list as he would have had if no delay had intervened, unless the Secretary concerned determines that the officer was unqualified for promotion for any part of the delay. If the Secretary makes such a determination, the Secretary may adjust such date of rank, effective date of pay and allowances, and position on the active-duty list as the Secretary considers appropriate under the circumstances.

(2) Under regulations prescribed by the Secretary of Defense, the appointment of an officer under this section may also be delayed in any case in which there is cause to believe that the officer has not met the requirement for exemplary conduct set forth in section 3583, 5947, or 8583 of this title, as applicable, or is mentally, physically, morally, or professionally unqualified to perform the duties of the grade for which he was selected for promotion. If it is later determined by a civilian official of the Department of Defense (not below the level of Secretary of a military department) that the officer is qualified for promotion to such grade and, after a review of adverse information regarding the requirement for exemplary conduct set forth in section 3583, 5947, or 8583 of this title, as applicable, the officer is determined to be among the

officers best qualified for promotion to such grade, the officer shall be retained on the promotion list (including an approved all-fully-qualified-officers list, if applicable) and shall, upon such promotion, have the same date of rank, the same effective date for pay and allowances in the higher grade to which appointed, and the same position on the active-duty list as he would have had if no delay had intervened, unless the Secretary concerned determines that the officer was unqualified for promotion for any part of the delay. If the Secretary makes such a determination, the Secretary may adjust such date of rank, effective date of pay and allowances, and position on the active-duty list as the Secretary considers appropriate under the circumstances.

(3) The appointment of an officer may not be delayed under this subsection unless the officer has been given written notice of the grounds for the delay, unless it is impracticable to give such written notice before the effective date of the appointment, in which case such written notice shall be given as soon as practicable. An officer whose promotion has been delayed under this subsection shall be afforded an opportunity to make a written statement to the Secretary concerned in response to the action taken. Any such statement shall be given careful consideration by the Secretary.

(4) An appointment of an officer may not be delayed under this subsection for more than six months after the date on which the officer would otherwise have been appointed unless the Secretary concerned specifies a further period of delay. An officer's appointment may not be delayed more than 90 days after final action has been taken in any criminal case against such officer in a Federal or State court, more than 90 days after final action has been taken in any court-martial case against such officer, or more than 18 months after the date on which such officer would otherwise have been appointed, whichever is later.

(Added Pub. L. 96-513, title I, §105, Dec. 12, 1980, 94 Stat. 2857; amended Pub. L. 97-22, §4(d), July 10, 1981, 95 Stat. 126; Pub. L. 97-295, §1(8), Oct. 12, 1982, 96 Stat. 1289; Pub. L. 98-525, title V, §526, Oct. 19, 1984, 98 Stat. 2525; Pub. L. 107-107, div. A, title V, §505(a)(1), (c)(2)(A), (d)(1), Dec. 28, 2001, 115 Stat. 1085, 1087, 1088; Pub. L. 107-314, div. A, title X, §1062(a)(2), Dec. 2, 2002, 116 Stat. 2649; Pub. L. 109-364, div. A, title V, §511(a), (d)(1), Oct. 17, 2006, 120 Stat. 2181, 2183; Pub. L. 110-181, div. A, title X, §1063(c)(3), Jan. 28, 2008, 122 Stat. 322.)

#### AMENDMENTS

2008—Subsec. (d)(1). Pub. L. 110-181 amended directory language of Pub. L. 109-364, §511(a)(2)(D)(i). See 2006 Amendment note below.

2006—Subsec. (a)(1). Pub. L. 109-364, §511(d)(1), inserted at end “A promotion list is considered to be established under this section as of the date of the approval of the report of the selection board under the preceding sentence.”

Subsec. (d)(1). Pub. L. 109-364, §511(a)(2)(D)(ii), inserted “or if, after a review of substantiated adverse information about the officer regarding the requirement for exemplary conduct set forth in section 3583, 5947, or 8583 of this title, as applicable, the officer is determined to be among the officers best qualified for pro-

motion,” after “brought against him,” in concluding provisions.

Pub. L. 109-364, §511(a)(2)(D)(i), as amended by Pub. L. 110-181, struck out “or” after “chapter 60 of this title.”

Pub. L. 109-364, §511(a)(1), substituted “prescribed by the Secretary of Defense” for “prescribed by the Secretary concerned” in introductory provisions.

Subsec. (d)(1)(E). Pub. L. 109-364, §511(a)(2)(A)-(C), added subpar. (E).

Subsec. (d)(2). Pub. L. 109-364, §511(a)(3), in first sentence inserted “has not met the requirement for exemplary conduct set forth in section 3583, 5947, or 8583 of this title, as applicable, or” before “is mentally, physically,” and in second sentence substituted “If it is later determined by a civilian official of the Department of Defense (not below the level of Secretary of a military department) that the officer is qualified for promotion to such grade and, after a review of adverse information regarding the requirement for exemplary conduct set forth in section 3583, 5947, or 8583 of this title, as applicable, the officer is determined to be among the officers best qualified for promotion to such grade” for “If the Secretary concerned later determines that the officer is qualified for promotion to such grade”.

Pub. L. 109-364, §511(a)(1), substituted “prescribed by the Secretary of Defense” for “prescribed by the Secretary concerned”.

2002—Subsec. (d)(1). Pub. L. 107-314 substituted “paragraph (2)” for “subsection (d)(2)” in concluding provisions.

2001—Subsec. (a)(3). Pub. L. 107-107, §505(a)(1), added par. (3).

Subsec. (c). Pub. L. 107-107, §505(d)(1), inserted “, in the case of officers of the Army, Air Force, or Marine Corps,” after “captain” and “, in the case of officers of the Navy,” after “(junior grade) or lieutenant”.

Subsec. (d)(1). Pub. L. 107-107, §505(c)(2)(A)(i), inserted “(including an approved all-fully-qualified-officers list, if applicable)” after “retained on the promotion list” in concluding provisions.

Subsec. (d)(2). Pub. L. 107-107, §505(c)(2)(A)(ii), inserted “shall be retained on the promotion list (including an approved all-fully-qualified-officers list, if applicable) and” after “to such grade, the officer” in second sentence.

1984—Subsec. (d)(1), (2). Pub. L. 98-525 inserted provision for a determination by the Secretary concerned that the officer was unqualified for promotion for any part of the delay in the officer’s promotion, with the inserted provision that if the Secretary made such a determination, the Secretary could adjust such date of rank, effective date of pay and allowances, and position on the active-duty list as the Secretary considered appropriate under the circumstances.

1982—Subsec. (d)(4). Pub. L. 97-295 substituted “this subsection” for “the subsection”.

1981—Subsec. (a)(1). Pub. L. 97-22, §4(d)(1)(A), struck out “or in the case of officers selected for promotion to the grade of first lieutenant or lieutenant (junior grade), when a list of officers selected for promotion is approved by the President,” after “by the President.”

Subsec. (a)(2). Pub. L. 97-22, §4(d)(1)(B), inserted provision that officers to be promoted to grade of first lieutenant or lieutenant (junior grade) shall be promoted in accordance with regulations prescribed by the Secretary concerned.

Subsec. (c). Pub. L. 97-22, §4(d)(2), substituted “under this section in the grade of first lieutenant or captain or lieutenant (junior grade) or lieutenant” for “in the grade of first lieutenant or lieutenant (junior grade) under this section”.

Subsec. (d)(1). Pub. L. 97-22, §4(d)(3)(A), (B), substituted “Under regulations prescribed by the Secretary concerned, the appointment of an officer under this section may be delayed” for “The Secretary concerned may delay the appointment of an officer under this section” in provisions preceding subpar. (A) and, in provisions following subpar. (D), inserted “then unless action to delay an appointment has also been taken under subsection (d)(2)” after “as the case may be.”

Subsec. (d)(2). Pub. L. 97-22, §4(d)(3)(C), substituted “Under regulations prescribed by the Secretary concerned, the appointment of an officer under this section may also be delayed in any case in which” for “The Secretary concerned may also delay the appointment of an officer to the next higher grade under this section in any case in which the Secretary finds that”.

Subsec. (d)(3). Pub. L. 97-22, §4(d)(3)(D), (E), inserted “, unless it is impracticable to give such written notice before the effective date of the appointment, in which case such written notice shall be given as soon as practicable” after “grounds for the delay” and struck out “by the Secretary” after “the action taken”.

#### EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-181, div. A, title X, §1063(c), Jan. 28, 2008, 122 Stat. 322, provided that the amendment made by section 1063(c) is effective Oct. 17, 2006, and as if included in the John Warner National Defense Authorization Act for Fiscal Year 2007, Pub. L. 109-364, as enacted.

#### EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-364, div. A, title V, §511(e), Oct. 17, 2006, 120 Stat. 2184, provided that: “The amendments made by this section [amending this section and sections 14308 and 14311 of this title] shall take effect on the date of the enactment of this Act [Oct. 17, 2006] and shall apply with respect to officers on promotion lists established on or after the date of the enactment of this Act.”

#### DELEGATION OF FUNCTIONS

Functions of President under subsec. (c) to appoint officers in grades of first lieutenant and captain in Army, Air Force, and Marine Corps or in grades of lieutenant (junior grade) and lieutenant in Navy delegated to Secretary of Defense to perform, without approval, ratification, or other action by President, and with authority for Secretary to redelegate, see Ex. Ord. No. 12396, §§1(c), 3, Dec. 9, 1982, 47 F.R. 55897, 55898, set out as a note under section 301 of Title 3, The President.

#### DEADLINE FOR UNIFORM REGULATIONS ON DELAY OF PROMOTIONS

Pub. L. 109-364, div. A, title V, §511(c), Oct. 17, 2006, 120 Stat. 2183, provided that:

“(1) DEADLINE.—The Secretary of Defense shall prescribe the regulations required by section 624(d) of title 10, United States Code (as amended by subsection (a)(1) of this section), and the regulations required by section 14311 of such title (as amended by subsection (b)(1) of this section) not later than March 1, 2008.

“(2) SAVINGS CLAUSE FOR EXISTING REGULATIONS.—Until the Secretary of Defense prescribes regulations pursuant to paragraph (1), regulations prescribed by the Secretaries of the military departments under the sections referred to in paragraph (1) shall remain in effect.”

#### § 625. Authority to vacate promotions to grades of brigadier general and rear admiral (lower half)

(a) The President may vacate the promotion to the grade of brigadier general or rear admiral (lower half) of an officer who has served less than 18 months in that grade after promotion to that grade under this chapter.

(b) An officer of the Army, Air Force, or Marine Corps whose promotion is vacated under this section holds the regular grade of colonel, if he is a regular officer, or the reserve grade of colonel, if he is a reserve officer. An officer of the Navy whose promotion is vacated under this section holds the regular grade of captain, if he is a regular officer, or the reserve grade of captain, if he is a reserve officer.

(c) The position on the active-duty list of an officer whose promotion is vacated under this section is the position he would have held had he not been promoted to the grade of brigadier general or rear admiral (lower half).

(Added Pub. L. 96-513, title I, §105, Dec. 12, 1980, 94 Stat. 2858; amended Pub. L. 97-86, title IV, §405(b)(1), (4)(A), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 99-145, title V, §514(b)(1), (4)(A), Nov. 8, 1985, 99 Stat. 628.)

#### AMENDMENTS

1985—Pub. L. 99-145 substituted “rear admiral (lower half)” for “commodore” in section catchline and subsecs. (a) and (c).

1981—Pub. L. 97-86 substituted “commodore” for “commodore admiral” in section catchline and subsecs. (a) and (c).

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97-86, set out as a note under section 101 of this title.

### § 626. Acceptance of promotions; oath of office

(a) An officer who is appointed to a higher grade under section 624 of this title is considered to have accepted such appointment on the date on which the appointment is made unless he expressly declines the appointment.

(b) An officer who has served continuously since he subscribed to the oath of office prescribed in section 3331 of title 5 is not required to take a new oath upon appointment to a higher grade under section 624 of this title.

(Added Pub. L. 96-513, title I, §105, Dec. 12, 1980, 94 Stat. 2858.)

### SUBCHAPTER III—FAILURE OF SELECTION FOR PROMOTION AND RETIREMENT FOR YEARS OF SERVICE

Sec.	
627.	Failure of selection for promotion.
628.	Special selection boards.
629.	Removal from a list of officers recommended for promotion.
630.	Discharge of commissioned officers with less than six years of active commissioned service or found not qualified for promotion for first lieutenant or lieutenant (junior grade).
631.	Effect of failure of selection for promotion: first lieutenants and lieutenants (junior grade).
632.	Effect of failure of selection for promotion: captains and majors of the Army, Air Force, and Marine Corps and lieutenants and lieutenant commanders of the Navy.
633.	Retirement for years of service: regular lieutenant colonels and commanders.
634.	Retirement for years of service: regular colonels and Navy captains.
635.	Retirement for years of service: regular brigadier generals and rear admirals (lower half).
636.	Retirement for years of service: regular officers in grades above brigadier general and rear admiral (lower half).

#### AMENDMENTS

2008—Pub. L. 110-181, div. A, title V, §503(a)(3), Jan. 28, 2008, 122 Stat. 95, substituted “six years” for “five years” in item 630.

2001—Pub. L. 107-107, div. A, title V, §505(d)(4), Dec. 28, 2001, 115 Stat. 1088, struck out “regular” before

“commissioned officers” in item 630, struck out “regular” before “first lieutenants” in item 631, and struck out “regular” before “captains and majors” and before “lieutenants and lieutenant commanders” in item 632.

1997—Pub. L. 105-85, div. A, title V, §506(c), Nov. 18, 1997, 111 Stat. 1726, substituted “regular officers in grades above brigadier general and rear admiral (lower half)” for “regular major generals and rear admirals” in item 636.

1985—Pub. L. 99-145, title V, §514(b)(5)(B), Nov. 8, 1985, 99 Stat. 628, substituted “rear admirals (lower half)” for “commodores” in item 635.

1981—Pub. L. 97-86, title IV, §405(b)(5)(B), Dec. 1, 1981, 95 Stat. 1106, substituted “commodores” for “commodore admirals” in item 635.

### § 627. Failure of selection for promotion

An officer in a grade below the grade of colonel or, in the case of an officer of the Navy, captain who is in or above the promotion zone established for his grade and competitive category under section 623 of this title and is considered but not selected for promotion by a selection board convened under section 611(a) of this title shall be considered to have failed of selection for promotion.

(Added Pub. L. 96-513, title I, §105, Dec. 12, 1980, 94 Stat. 2859.)

#### EFFECTIVE DATE

Subchapter effective Sept. 15, 1981, but the authority to prescribe regulations under this subchapter effective on Dec. 12, 1980, see section 701 of Pub. L. 96-513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

#### TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provisions to prevent extinction or premature termination of rights, duties, penalties, or proceedings that existed or were begun prior to the effective date of Pub. L. 96-513 and otherwise to allow for an orderly transition to the system of officer personnel management put in place under Pub. L. 96-513, see section 601 et seq. of Pub. L. 96-513, set out as a note under section 611 of this title.

### § 628. Special selection boards

(a) PERSONS NOT CONSIDERED BY PROMOTION BOARDS DUE TO ADMINISTRATIVE ERROR.—(1) If the Secretary of the military department concerned determines that because of administrative error a person who should have been considered for selection for promotion from in or above the promotion zone by a promotion board was not so considered, or the name of a person that should have been placed on an all-fully-qualified-officers list under section 624(a)(3) of this title was not so placed, the Secretary shall convene a special selection board under this subsection to determine whether that person (whether or not then on active duty) should be recommended for promotion.

(2) A special selection board convened under paragraph (1) shall consider the record of the person whose name was referred to it for consideration as that record would have appeared to the board that should have considered him. That record shall be compared with a sampling of the records of those officers of the same competitive category who were recommended for promotion, and those officers who were not recommended for promotion, by the board that should have considered him.

(3) If a special selection board convened under paragraph (1) does not recommend for promotion a person whose name was referred to it for consideration for selection for appointment to a grade other than a general officer or flag officer grade, the person shall be considered to have failed of selection for promotion.

(b) PERSONS CONSIDERED BY PROMOTION BOARDS IN UNFAIR MANNER.—(1) If the Secretary of the military department concerned determines, in the case of a person who was considered for selection for promotion by a promotion board but was not selected, that there was material unfairness with respect to that person, the Secretary may convene a special selection board under this subsection to determine whether that person (whether or not then on active duty) should be recommended for promotion. In order to determine that there was material unfairness, the Secretary must determine that—

(A) the action of the promotion board that considered the person was contrary to law in a matter material to the decision of the board or involved material error of fact or material administrative error; or

(B) the board did not have before it for its consideration material information.

(2) A special selection board convened under paragraph (1) shall consider the record of the person whose name was referred to it for consideration as that record, if corrected, would have appeared to the board that considered him. That record shall be compared with the records of a sampling of those officers of the same competitive category who were recommended for promotion, and those officers who were not recommended for promotion, by the board that considered him.

(3) If a special selection board convened under paragraph (1) does not recommend for promotion a person whose name was referred to it for consideration, the person incurs no additional failure of selection for promotion.

(c) REPORTS OF BOARDS.—(1) Each special selection board convened under this section shall submit to the Secretary of the military department concerned a written report, signed by each member of the board, containing the name of each person it recommends for promotion and certifying that the board has carefully considered the record of each person whose name was referred to it.

(2) The provisions of sections 617(b) and 618 of this title apply to the report and proceedings of a special selection board convened under this section in the same manner as they apply to the report and proceedings of a selection board convened under section 611(a) of this title. However, in the case of a board convened under this section to consider a warrant officer or former warrant officer, the provisions of sections 576(d), 576(f), and 613a of this title (rather than the provisions of sections 617(b) and 618 of this title) apply to the report and proceedings of the board in the same manner as they apply to the report and proceedings of a selection board convened under section 573 of this title.

(d) APPOINTMENT OF PERSONS SELECTED BY BOARDS.—(1) If the report of a special selection board convened under this section, as approved by the President, recommends for promotion to

the next higher grade a person whose name was referred to it for consideration, that person shall, as soon as practicable, be appointed to that grade in accordance with subsections (b), (c), and (d) of section 624 of this title. However, in the case of a board convened under this section to consider a warrant officer or former warrant officer, if the report of that board, as approved by the Secretary concerned, recommends that warrant officer or former warrant officer for promotion to the next higher grade, that person shall, as soon as practicable, be appointed to the next higher grade in accordance with provisions of section 578(c) of this title (rather than subsections (b), (c), and (d) of section 624 of this title).

(2) A person who is appointed to the next higher grade as the result of the recommendation of a special selection board convened under this section shall, upon that appointment, have the same date of rank, the same effective date for the pay and allowances of that grade, and the same position on the active-duty list as he would have had if he had been recommended for promotion to that grade by the board which should have considered, or which did consider, him. In the case of a person who is not on the active-duty list when appointed to the next higher grade, placement of that person on the active-duty list pursuant to the preceding sentence shall be only for purposes of determination of eligibility of that person for consideration for promotion by any subsequent special selection board under this section.

(e) DECEASED PERSONS.—If a person whose name is being considered for referral to a special selection board under this section dies before the completion of proceedings under this section with respect to that person, this section shall be applied to that person posthumously.

(f) CONVENING OF BOARDS.—A board convened under this section—

(1) shall be convened under regulations prescribed by the Secretary of Defense;

(2) shall be composed in accordance with section 612 of this title or, in the case of board to consider a warrant officer or former warrant officer, in accordance with section 573 of this title and regulations prescribed by the Secretary of the military department concerned; and

(3) shall be subject to the provisions of section 613 of this title.

(g) JUDICIAL REVIEW.—(1)(A) A court of the United States may review a determination by the Secretary of a military department under subsection (a)(1) or (b)(1) not to convene a special selection board in the case of any person. In any such case, the court may set aside the Secretary's determination only if the court finds the determination to be—

- (i) arbitrary or capricious;
- (ii) not based on substantial evidence;
- (iii) a result of material error of fact or material administrative error; or
- (iv) otherwise contrary to law.

(B) If a court sets aside a determination by the Secretary of a military department not to convene a special selection board under this section, it shall remand the case to the Secretary

concerned, who shall provide for consideration by such a board.

(2) A court of the United States may review the action of a special selection board convened under this section or an action of the Secretary of the military department concerned on the report of such a board. In any such case, a court may set aside the action only if the court finds that the action was—

- (A) arbitrary or capricious;
- (B) not based on substantial evidence;
- (C) a result of material error of fact or material administrative error; or
- (D) otherwise contrary to law.

(3)(A) If, six months after receiving a complete application for consideration by a special selection board under this section in any case, the Secretary concerned has not convened such a board and has not denied consideration by such a board in that case, the Secretary shall be deemed for the purposes of this subsection to have denied the consideration of the case by such a board.

(B) If, six months after the convening of a special selection board under this section in any case, the Secretary concerned has not taken final action on the report of the board, the Secretary shall be deemed for the purposes of this subsection to have denied relief in such case.

(C) Under regulations prescribed under subsection (j), the Secretary of a military department may waive the applicability of subparagraph (A) or (B) in a case if the Secretary determines that a longer period for consideration of the case is warranted. Such a waiver may be for an additional period of not more than six months. The Secretary concerned may not delegate authority to make a determination under this subparagraph.

(h) LIMITATIONS OF OTHER JURISDICTION.—No official or court of the United States may, with respect to a claim based to any extent on the failure of a person to be selected for promotion by a promotion board—

(1) consider the claim unless the person has first been referred by the Secretary concerned to a special selection board convened under this section and acted upon by that board and the report of the board has been approved by the President; or

(2) except as provided in subsection (g), grant any relief on the claim unless the person has been selected for promotion by a special selection board convened under this section to consider the person for recommendation for promotion and the report of the board has been approved by the President.

(i) EXISTING JURISDICTION.—Nothing in this section limits—

(1) the jurisdiction of any court of the United States under any provision of law to determine the validity of any law, regulation, or policy relating to selection boards; or

(2) the authority of the Secretary of a military department to correct a military record under section 1552 of this title.

(j) REGULATIONS.—(1) The Secretary of each military department shall prescribe regulations to carry out this section. Regulations under this subsection may not apply to subsection (g),

other than to paragraph (3)(C) of that subsection.

(2) The Secretary may prescribe in the regulations under paragraph (1) the circumstances under which consideration by a special selection board may be provided for under this section, including the following:

(A) The circumstances under which consideration of a person's case by a special selection board is contingent upon application by or for that person.

(B) Any time limits applicable to the filing of an application for such consideration.

(3) Regulations prescribed by the Secretary of a military department under this subsection may not take effect until approved by the Secretary of Defense.

(k) PROMOTION BOARD DEFINED.—In this section, the term “promotion board” means a selection board convened by the Secretary of a military department under section 573(a) or 611(a) of this title.

(Added Pub. L. 96-513, title I, §105, Dec. 12, 1980, 94 Stat. 2859; amended Pub. L. 98-525, title V, §527(a), Oct. 19, 1984, 98 Stat. 2525; Pub. L. 102-190, div. A, title XI, §1131(4), Dec. 5, 1991, 105 Stat. 1506; Pub. L. 102-484, div. A, title X, §1052(10), Oct. 23, 1992, 106 Stat. 2499; Pub. L. 105-261, div. A, title V, §501(a)-(e), Oct. 17, 1998, 112 Stat. 2000-2002; Pub. L. 106-398, §1 [[div. A], title X, §1087(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A-290; Pub. L. 107-107, div. A, title V, §§503(b), 505(c)(3)(A), Dec. 28, 2001, 115 Stat. 1083, 1088; Pub. L. 109-364, div. A, title V, §514(a), Oct. 17, 2006, 120 Stat. 2185; Pub. L. 111-383, div. A, title V, §503(b), Jan. 7, 2011, 124 Stat. 4208.)

#### AMENDMENTS

2011—Subsec. (c)(2). Pub. L. 111-383 substituted “sections 576(d), 576(f), and 613a” for “sections 576(d) and 576(f)”.

2006—Subsec. (a)(1). Pub. L. 109-364, §514(a)(1), inserted “from in or above the promotion zone” after “for selection for promotion”.

Subsec. (b)(1)(A). Pub. L. 109-364, §514(a)(2), inserted “in a matter material to the decision of the board” after “contrary to law”.

2001—Subsec. (a)(1). Pub. L. 107-107, §505(c)(3)(A), inserted “or the name of a person that should have been placed on an all-fully-qualified-officers list under section 624(a)(3) of this title was not so placed,” after “not so considered.”

Subsecs. (g) to (k). Pub. L. 107-107, §503(b), added subsecs. (g) to (j) and redesignated former subsec. (g) as (k).

2000—Subsec. (c)(2). Pub. L. 106-398 substituted “sections” for “section” after “rather than the provisions of”.

1998—Subsec. (a). Pub. L. 105-261, §501(a)(1), inserted subsec. heading, added par. (1), and struck out former par. (1) which read as follows: “In the case of an officer who is eligible for promotion who the Secretary of the military department concerned determines was not considered for selection for promotion by a selection board because of administrative error, the Secretary concerned, under regulations prescribed by the Secretary of Defense, shall convene a special selection board under this subsection (composed in accordance with section 612 of this title or, in the case of a warrant officer, composed in accordance with section 573 of this title and regulations prescribed by the Secretary of the military department concerned) to determine whether such officer should be recommended for promotion.”

Subsec. (a)(2). Pub. L. 105-261, §501(a)(2), substituted “the person whose name was referred to it for consideration as that record” for “the officer as his record”.

Subsec. (a)(3). Pub. L. 105-261, § 501(a)(3), substituted “a person whose name was referred to it for consideration for selection for appointment to a grade other than a general officer or flag officer grade, the person” for “an officer in a grade below the grade of colonel or, in the case of an officer of the Navy, captain whose name was referred to it for consideration, the officer”.

Subsec. (b). Pub. L. 105-261, § 501(b)(1), inserted subsec. heading, added par. (1), and struck out former par. (1) which read as follows: “In the case of an officer who is eligible for promotion who was considered for selection for promotion by a selection board but was not selected, the Secretary of the military department concerned, under regulations prescribed by the Secretary of Defense, may convene a special selection board under this subsection (composed in accordance with section 612 of this title or, in the case of a warrant officer, composed in accordance with section 573 of this title and regulations prescribed by the Secretary of the military department concerned) to determine whether such officer should be recommended for promotion if the Secretary concerned determines that—

“(A) the action of the board which considered the officer was contrary to law or involved material error of fact or material administrative error; or

“(B) the board did not have before it for its consideration material information.”

Subsec. (b)(2). Pub. L. 105-261, § 501(b)(2), substituted “the person whose name was referred to it for consideration as that record” for “the officer as his record”.

Subsec. (b)(3). Pub. L. 105-261, § 501(b)(3)(A), substituted “a person” for “an officer” and “the person” for “the officer”.

Subsec. (c). Pub. L. 105-261, § 501(c)(1)(A), inserted heading.

Subsec. (c)(1). Pub. L. 105-261, § 501(c)(1)(B), substituted “person” for “officer” in two places.

Subsec. (c)(2). Pub. L. 105-261, § 501(c)(1)(C), inserted at end “However, in the case of a board convened under this section to consider a warrant officer or former warrant officer, the provisions of sections 576(d) and 576(f) of this title (rather than the provisions of section 617(b) and 618 of this title) apply to the report and proceedings of the board in the same manner as they apply to the report and proceedings of a selection board convened under section 573 of this title.”

Subsec. (d). Pub. L. 105-261, § 501(c)(2)(A), inserted heading.

Subsec. (d)(1). Pub. L. 105-261, § 501(c)(2)(B)–(E), substituted “a person” for “an officer”, “that person” for “such officer”, and “that grade in” for “the next higher grade in” and inserted at end “However, in the case of a board convened under this section to consider a warrant officer or former warrant officer, if the report of that board, as approved by the Secretary concerned, recommends that warrant officer or former warrant officer for promotion to the next higher grade, that person shall, as soon as practicable, be appointed to the next higher grade in accordance with provisions of section 578(c) of this title (rather than subsections (b), (c), and (d) of section 624 of this title).”

Subsec. (d)(2). Pub. L. 105-261, § 501(c)(3), substituted “A person who is appointed” for “An officer who is promoted” and “that appointment” for “such promotion” and inserted at end “In the case of a person who is not on the active-duty list when appointed to the next higher grade, placement of that person on the active-duty list pursuant to the preceding sentence shall be only for purposes of determination of eligibility of that person for consideration for promotion by any subsequent special selection board under this section.”

Subsec. (e). Pub. L. 105-261, § 501(d), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: “The provisions of section 613 of this title apply to members of special selection boards convened under this section.”

Subsecs. (f), (g). Pub. L. 105-261, § 501(e), added subsecs. (f) and (g).

1992—Subsec. (b)(1). Pub. L. 102-484 substituted “section 573” for “section 558”.

1991—Subsec. (a)(1). Pub. L. 102-190 substituted “section 573” for “section 558”.

1984—Subsecs. (a)(1), (b)(1). Pub. L. 98-525 substituted “(composed in accordance with section 612 of this title or, in the case of a warrant officer, composed in accordance with section 558 of this title and regulations prescribed by the Secretary of the military department concerned)” for “(composed in accordance with section 612 of this title)”.

#### EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-364, div. A, title V, § 514(c), Oct. 17, 2006, 120 Stat. 2185, provided that: “The amendments made by this section [amending this section and section 14502 of this title] shall take effect on March 1, 2007, and shall apply with respect to selection boards convened on or after that date.”

#### EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-107, div. A, title V, § 503(c), Dec. 28, 2001, 115 Stat. 1084, provided that:

“(1) Except as provided in paragraph (2), the amendments made by this section [enacting section 1558 of this title and amending this section] shall apply with respect to any proceeding pending on or after the date of the enactment of this Act [Dec. 28, 2001] without regard to whether a challenge to an action of a selection board of any of the Armed Forces being considered in the proceeding was initiated before, on, or after that date.

“(2) The amendments made by this section shall not apply with respect to any action commenced in a court of the United States before the date of the enactment of this Act.”

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-190 effective Feb. 1, 1992, see section 1132 of Pub. L. 102-190, set out as a note under section 521 of this title.

#### DELEGATION OF FUNCTIONS

Functions of President under subsec. (d)(1) to approve, modify, or disapprove report of a selection board delegated to Secretary of Defense to perform, without approval, ratification, or other action by President, and with authority for Secretary to redelegate, see Ex. Ord. No. 12396, §§ 1(a), 3, Dec. 9, 1982, 47 F.R. 55897, 55898, set out as a note under section 301 of Title 3, The President.

#### RATIFICATION OF CODIFIED PRACTICE

Pub. L. 105-261, div. A, title V, § 501(f), Oct. 17, 1998, 112 Stat. 2002, provided that the consideration by a special selection board convened under this section before Oct. 17, 1998, of a person who, at the time of consideration, had been a retired officer or former officer of the Armed Forces (including a deceased retired or former officer) was ratified.

### § 629. Removal from a list of officers recommended for promotion

(a) REMOVAL BY PRESIDENT.—The President may remove the name of any officer from a list of officers recommended for promotion by a selection board convened under this chapter.

(b) REMOVAL DUE TO SENATE NOT GIVING ADVICE AND CONSENT.—If, after consideration of a list of officers approved for promotion by the President to a grade for which appointment is required by section 624(c) of this title to be made by and with the advice and consent of the Senate, the Senate does not give its advice and consent to the appointment of an officer whose name is on the list, that officer’s name shall be removed from the list.

(c) REMOVAL AFTER 18 MONTHS.—(1) If an officer whose name is on a list of officers approved

for promotion under section 624(a) of this title to a grade for which appointment is required by section 624(c) of this title to be made by and with the advice and consent of the Senate is not appointed to that grade under such section during the officer's promotion eligibility period, the officer's name shall be removed from the list unless as of the end of such period the Senate has given its advice and consent to the appointment.

(2) Before the end of the promotion eligibility period with respect to an officer under paragraph (1), the President may extend that period for purposes of paragraph (1) by an additional 12 months.

(3) In this subsection, the term "promotion eligibility period" means, with respect to an officer whose name is on a list of officers approved for promotion under section 624(a) of this title to a grade for which appointment is required by section 624(c) of this title to be made by and with the advice and consent of the Senate, the period beginning on the date on which the list is so approved and ending on the first day of the eighteenth month following the month during which the list is so approved.

(d) ADMINISTRATIVE REMOVAL.—Under regulations prescribed by the Secretary concerned, if an officer on the active-duty list is discharged or dropped from the rolls or transferred to a retired status after having been recommended for promotion to a higher grade under this chapter, but before being promoted, the officer's name shall be administratively removed from the list of officers recommended for promotion by a selection board.

(e) CONTINUED ELIGIBILITY FOR PROMOTION.—(1) An officer whose name is removed from a list under subsection (a), (b), or (c) continues to be eligible for consideration for promotion. If he is recommended for promotion by the next selection board convened for his grade and competitive category and he is promoted, the Secretary of the military department concerned may, upon such promotion, grant him the same date of rank, the same effective date for the pay and allowances of the grade to which promoted, and the same position on the active-duty list as he would have had if his name had not been so removed.

(2) If such an officer who is in a grade below the grade of colonel or, in the case of the Navy, captain is not recommended for promotion by the next selection board convened for his grade and competitive category, or if his name is again removed from the list of officers recommended for promotion, or if the Senate again does not give its advice and consent to his promotion, he shall be considered for all purposes to have twice failed of selection for promotion.

(Added Pub. L. 96-513, title I, §105, Dec. 12, 1980, 94 Stat. 2860; amended Pub. L. 109-364, div. A, title V, §515(a), Oct. 17, 2006, 120 Stat. 2185; Pub. L. 110-181, div. A, title X, §1063(a)(2), Jan. 28, 2008, 122 Stat. 321; Pub. L. 111-383, div. A, title V, §504(a), Jan. 7, 2011, 124 Stat. 4208.)

#### AMENDMENTS

2011—Subsecs. (d), (e). Pub. L. 111-383 added subsec. (d) and redesignated former subsec. (d) as (e).

2008—Subsec. (d)(1). Pub. L. 110-181 inserted comma after "(a)".

2006—Subsec. (a). Pub. L. 109-364, §515(a)(4)(A), inserted heading.

Subsec. (b). Pub. L. 109-364, §515(a)(1), inserted heading and inserted "to a grade for which appointment is required by section 624(c) of this title to be made by and with the advice and consent of the Senate" after "the President".

Subsec. (c). Pub. L. 109-364, §515(a)(2)(B), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 109-364, §515(a)(2)(A), (4)(B), redesignated subsec. (c) as (d) and inserted heading.

Subsec. (d)(1). Pub. L. 109-364, §515(a)(3), substituted "(b), or (c)" for "or (b)".

#### EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-364, div. A, title V, §515(c), Oct. 17, 2006, 120 Stat. 2187, provided that: "The amendments made by this section [amending this section and section 14310 of this title] shall apply to any promotion list approved by the President after January 1, 2007."

#### DELEGATION OF FUNCTIONS

Functions of President under subsec. (a) to remove name of any officer from a promotion list to any grade below commodore or brigadier general delegated to Secretary of Defense to perform, without approval, ratification, or other action by President, and with authority for Secretary to redelegate, see Ex. Ord. No. 12396, §1(b), 3, Dec. 9, 1982, 47 F.R. 55897, 55898, set out as a note under section 301 of Title 3, The President.

### § 630. Discharge of commissioned officers with less than six years of active commissioned service or found not qualified for promotion for first lieutenant or lieutenant (junior grade)

The Secretary of the military department concerned, under regulations prescribed by the Secretary of Defense—

(1) may discharge any officer on the active-duty list who—

(A) has less than six years of active commissioned service; or

(B) is serving in the grade of second lieutenant or ensign and has been found not qualified for promotion to the grade of first lieutenant or lieutenant (junior grade); and

(2) shall, unless the officer has been promoted, discharge any officer described in paragraph (1)(B) at the end of the 18-month period beginning on the date on which the officer is first found not qualified for promotion.

(Added Pub. L. 96-513, title I, §105, Dec. 12, 1980, 94 Stat. 2861; amended Pub. L. 98-525, title XIV, §1405(11), Oct. 19, 1984, 98 Stat. 2622; Pub. L. 107-107, div. A, title V, §505(d)(2), (4)(A), Dec. 28, 2001, 115 Stat. 1088; Pub. L. 108-136, div. A, title V, §505(b), Nov. 24, 2003, 117 Stat. 1457; Pub. L. 110-181, div. A, title V, §503(a)(1), (2), Jan. 28, 2008, 122 Stat. 95.)

#### AMENDMENTS

2008—Pub. L. 110-181, §503(a)(2), substituted "six years" for "five years" in section catchline.

Par. (1)(A). Pub. L. 110-181, §503(a)(1), substituted "six years" for "five years".

2003—Par. (2). Pub. L. 108-136 substituted "paragraph" for "clause".

2001—Pub. L. 107-107, §505(d)(4)(A), struck out "regular" before "commissioned officers" in section catchline.

Par. (1). Pub. L. 107-107, §505(d)(2), struck out "regular" before "officer" in introductory provisions and before "grade of first lieutenant" in subpar. (B).

1984—Par. (2). Pub. L. 98-525 substituted “18-month” for “eighteen-month”.

**§ 631. Effect of failure of selection for promotion: first lieutenants and lieutenants (junior grade)**

(a) Except an officer of the Navy and Marine Corps who is an officer designated for limited duty (to whom section 5596(e) or 6383 of this title applies), each officer of the Army, Air Force, or Marine Corps on the active-duty list who holds the grade of first lieutenant and has failed of selection for promotion to the grade of captain for the second time, and each officer of the Navy on the active-duty list who holds the grade of lieutenant (junior grade) and has failed of selection for promotion to the grade of lieutenant for the second time, whose name is not on a list of officers recommended for promotion to the next higher grade shall—

(1) be discharged on the date requested by him and approved by the Secretary of the military department concerned, which date shall be not later than the first day of the seventh calendar month beginning after the month in which the President approves the report of the board which considered him for the second time;

(2) if he is eligible for retirement under any provision of law, be retired under that law on the date requested by him and approved by the Secretary concerned, which date shall be not later than the first day of the seventh calendar month beginning after the month in which the President approves the report of the board which considered him for the second time; or

(3) if on the date on which he is to be discharged under paragraph (1) he is within two years of qualifying for retirement under section 3911, 6323, or 8911 of this title, be retained on active duty until he is qualified for retirement and then be retired under that section, unless he is sooner retired or discharged under another provision of law.

(b) The retirement or discharge of an officer pursuant to this section shall be considered to be an involuntary retirement or discharge for purposes of any other provision of law.

(c) An officer who is subject to discharge under subsection (a)(1) is not eligible for further consideration for promotion.

(d) For the purposes of this chapter, an officer of the Army, Air Force, or Marine Corps who holds the grade of first lieutenant, and an officer of the Navy who holds the grade of lieutenant (junior grade), shall be treated as having failed of selection for promotion if the Secretary of the military department concerned determines that the officer would be eligible for consideration for promotion to the next higher grade by a selection board convened under section 611(a) of this title if such a board were convened but is not fully qualified for promotion when recommending for promotion under section 624(a)(3) of this title all fully qualified officers of the officer's armed force in such grade who would be eligible for such consideration.

(Added Pub. L. 96-513, title I, §105, Dec. 12, 1980, 94 Stat. 2861; amended Pub. L. 98-525, title V,

§525(c), Oct. 19, 1984, 98 Stat. 2525; Pub. L. 107-107, div. A, title V, §505(a)(2), (d)(3), (4)(B), Dec. 28, 2001, 115 Stat. 1086, 1088; Pub. L. 108-136, div. A, title V, §505(b), Nov. 24, 2003, 117 Stat. 1457.)

AMENDMENTS

2003—Subsec. (a)(3). Pub. L. 108-136 substituted “paragraph” for “clause”.

2001—Pub. L. 107-107, §505(d)(4)(B), struck out “regular” before “first lieutenants” in section catchline.

Subsec. (a). Pub. L. 107-107, §505(d)(3), in introductory provisions, substituted “Army, Air Force, or Marine Corps on the active-duty list” for “Regular Army, Regular Air Force, or Regular Marine Corps” and “Navy on the active-duty list” for “Regular Navy” and struck out “regular” before “grade” wherever appearing.

Subsec. (d). Pub. L. 107-107, §505(a)(2), added subsec. (d).

1984—Subsec. (c). Pub. L. 98-525 added subsec. (c).

**§ 632. Effect of failure of selection for promotion: captains and majors of the Army, Air Force, and Marine Corps and lieutenants and lieutenant commanders of the Navy**

(a) Except an officer of the Navy and Marine Corps who is an officer designated for limited duty (to whom section 5596(e) or 6383 of this title applies) and except as provided under section 637(a) of this title, each officer of the Army, Air Force, or Marine Corps on the active-duty list who holds the grade of captain or major, and each officer of the Navy on the active-duty list who holds the grade of lieutenant or lieutenant commander, who has failed of selection for promotion to the next higher grade for the second time and whose name is not on a list of officers recommended for promotion to the next higher grade shall—

(1) except as provided in paragraph (3) and in subsection (c), be discharged on the date requested by him and approved by the Secretary concerned, which date shall be not later than the first day of the seventh calendar month beginning after the month in which the President approves the report of the board which considered him for the second time;

(2) if he is eligible for retirement under any provision of law, be retired under that law on the date requested by him and approved by the Secretary concerned, which date shall be not later than the first day of the seventh calendar month beginning after the month in which the President approves the report of the board which considered him for the second time; or

(3) if on the date on which he is to be discharged under paragraph (1) he is within two years of qualifying for retirement under section 3911, 6323, or 8911 of this title, be retained on active duty until he is qualified for retirement and then retired under that section, unless he is sooner retired or discharged under another provision of law.

(b) The retirement or discharge of an officer pursuant to this section shall be considered to be an involuntary retirement or discharge for purposes of any other provision of law.

(c)(1) If a health professions officer described in paragraph (3) is subject to discharge under subsection (a)(1) and, as of the date on which the officer is to be discharged under that subsection,

the officer has not completed a period of active duty service obligation that the officer incurred under section 2005, 2114, 2123, or 2603 of this title, the officer shall be retained on active duty until completion of such active duty service obligation, and then be discharged under that subsection, unless sooner retired or discharged under another provision of law.

(2) The Secretary concerned may waive the applicability of paragraph (1) to any officer if the Secretary determines that completion of the active duty service obligation of that officer is not in the best interest of the service.

(3) This subsection applies to a medical officer or dental officer or an officer appointed in a medical skill other than as a medical officer or dental officer (as defined in regulations prescribed by the Secretary of Defense).

(Added Pub. L. 96-513, title I, §105, Dec. 12, 1980, 94 Stat. 2862; amended Pub. L. 107-107, div. A, title V, §505(d)(3), (4)(C), Dec. 28, 2001, 115 Stat. 1088; Pub. L. 108-136, div. A, title V, §505(a), (b), Nov. 24, 2003, 117 Stat. 1457; Pub. L. 108-375, div. A, title X, §1084(d)(6), Oct. 28, 2004, 118 Stat. 2061.)

#### AMENDMENTS

2004—Subsec. (c)(1). Pub. L. 108-375 substituted “paragraph (3)” for “paragraph (2)” and “under that subsection” for “under that paragraph” before “, the officer has not”.

2003—Subsec. (a)(1). Pub. L. 108-136, §505(a)(1), inserted “except as provided in paragraph (3) and in subsection (c),” before “be discharged”.

Subsec. (a)(3). Pub. L. 108-136, §505(b), substituted “paragraph” for “clause”.

Subsec. (c). Pub. L. 108-136, §505(a)(2), added subsec. (c).

2001—Pub. L. 107-107, §505(d)(4)(C), struck out “regular” before “captains and majors” and before “lieutenants and lieutenant commanders” in section catchline.

Subsec. (a). Pub. L. 107-107, §505(d)(3), in introductory provisions, substituted “Army, Air Force, or Marine Corps on the active-duty list” for “Regular Army, Regular Air Force, or Regular Marine Corps” and “Navy on the active-duty list” for “Regular Navy” and struck out “regular” before “grade” wherever appearing.

#### EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108-136, div. A, title V, §505(c), Nov. 24, 2003, 117 Stat. 1457, provided that: “The amendments made by subsection (a) [amending this section] shall not apply in the case of an officer who as of the date of the enactment of this Act [Nov. 24, 2003] is required to be discharged under section 632(a)(1) of title 10, United States Code, by reason of having failed of selection for promotion to the next higher regular grade a second time.”

### § 633. Retirement for years of service: regular lieutenant colonels and commanders

(a) 28 YEARS OF ACTIVE COMMISSIONED SERVICE.—Except as provided in subsection (b) and as provided under section 637(b) of this title, each officer of the Regular Army, Regular Air Force, or Regular Marine Corps who holds the regular grade of lieutenant colonel, and each officer of the Regular Navy who holds the regular grade of commander, who is not on a list of officers recommended for promotion to the regular grade of colonel or captain, respectively, shall, if not earlier retired, be retired on the first day of the month after the month in which he completes 28 years of active commissioned service.

(b) EXCEPTIONS.—Subsection (a) does not apply to the following:

(1) An officer of the Navy or Marine Corps who is an officer designated for limited duty to whom section 5596(e) or 6383 of this title applies.

(2) An officer of the Navy or Marine Corps who is a permanent professor at the United States Naval Academy.

(Added Pub. L. 96-513, title I, §105, Dec. 12, 1980, 94 Stat. 2862; amended Pub. L. 98-525, title V, §529(b), title XIV, §1405(12), Oct. 19, 1984, 98 Stat. 2526, 2622; Pub. L. 102-484, div. A, title V, §504(a), Oct. 23, 1992, 106 Stat. 2403; Pub. L. 103-160, div. A, title V, §561(e), Nov. 30, 1993, 107 Stat. 1667; Pub. L. 105-261, div. A, title V, §504(a), Oct. 17, 1998, 112 Stat. 2004; Pub. L. 109-163, div. A, title V, §509(a)(1), Jan. 6, 2006, 119 Stat. 3229.)

#### AMENDMENTS

2006—Pub. L. 109-163 designated existing provisions as subsec. (a), inserted heading, substituted “Except as provided in subsection (b) and as provided” for “Except an officer of the Navy or Marine Corps who is an officer designated for limited duty to whom section 5596(e) or 6383 of this title applies and except as provided”, and added subsec. (b).

1998—Pub. L. 105-261 substituted “Except an officer of the Navy or Marine Corps who is an officer designated for limited duty to whom section 5596(e) or 6383 of this title applies” for “Except an officer of the Navy designated for limited duty to whom section 5596(e) of this title applies and an officer of the Marine Corps designated for limited duty to whom section 5596(e) or section 6383 of this title applies” and struck out at end “During the period beginning on July 1, 1993, and ending on October 1, 1999, the preceding sentence shall not apply to an officer of the Navy designated for limited duty to whom section 6383 of this title applies.”

1993—Pub. L. 103-160 substituted “October 1, 1999” for “October 1, 1995”.

1992—Pub. L. 102-484 inserted at end “During the period beginning on July 1, 1993, and ending on October 1, 1995, the preceding sentence shall not apply to an officer of the Navy designated for limited duty to whom section 6383 of this title applies.”

1984—Pub. L. 98-525, §1405(12), substituted “28” for “twenty-eight”.

Pub. L. 98-525, §529(b), substituted “Except an officer of the Navy designated for limited duty to whom section 5596(e) of this title applies and an officer of the Marine Corps designated for limited duty to whom section 5596(e) or section 6383 of this title applies” for “Except an officer of the Navy and Marine Corps who is an officer designated for limited duty (to whom section 5596(e) or 6383 of this title applies)”.

### § 634. Retirement for years of service: regular colonels and Navy captains

(a) 30 YEARS OF ACTIVE COMMISSIONED SERVICE.—Except as provided in subsection (b) and as provided under section 637(b) of this title, each officer of the Regular Army, Regular Air Force, or Regular Marine Corps who holds the regular grade of colonel, and each officer of the Regular Navy who holds the regular grade of captain, who is not on a list of officers recommended for promotion to the regular grade of brigadier general or rear admiral (lower half), respectively, shall, if not earlier retired, be retired on the first day of the month after the month in which he completes 30 years of active commissioned service.

(b) EXCEPTIONS.—Subsection (a) does not apply to the following:

(1) An officer of the Navy who is designated for limited duty to whom section 6383(a)(4) of this title applies.

(2) An officer of the Navy or Marine Corps who is a permanent professor at the United States Naval Academy.

(Added Pub. L. 96-513, title I, §105, Dec. 12, 1980, 94 Stat. 2862; amended Pub. L. 97-86, title IV, §405(b)(1), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 98-525, title XIV, §1405(13), Oct. 19, 1984, 98 Stat. 2622; Pub. L. 99-145, title V, §514(b)(1), Nov. 8, 1985, 99 Stat. 628; Pub. L. 102-484, div. A, title V, §504(b), Oct. 23, 1992, 106 Stat. 2403; Pub. L. 103-160, div. A, title V, §561(e), Nov. 30, 1993, 107 Stat. 1667; Pub. L. 105-261, div. A, title V, §504(b), Oct. 17, 1998, 112 Stat. 2004; Pub. L. 109-163, div. A, title V, §509(a)(2), Jan. 6, 2006, 119 Stat. 3229.)

#### AMENDMENTS

2006—Pub. L. 109-163 designated existing provisions as subsec. (a), inserted heading, substituted “Except as provided in subsection (b) and as provided” for “Except an officer of the Navy who is designated for limited duty to whom section 6383(a)(4) of this title applies and except as provided”, and added subsec. (b).

1998—Pub. L. 105-261 inserted “an officer of the Navy who is designated for limited duty to whom section 6383(a)(4) of this title applies and except” after “Except” and struck out at end “During the period beginning on July 1, 1993, and ending on October 1, 1999, the preceding sentence shall not apply to an officer of the Regular Navy designated for limited duty to whom section 6383(a)(4) of this title applies.”

1993—Pub. L. 103-160 substituted “October 1, 1999” for “October 1, 1995”.

1992—Pub. L. 102-484 inserted at end “During the period beginning on July 1, 1993, and ending on October 1, 1995, the preceding sentence shall not apply to an officer of the Regular Navy designated for limited duty to whom section 6383(a)(4) of this title applies.”

1985—Pub. L. 99-145 substituted “rear admiral (lower half)” for “commodore”.

1984—Pub. L. 98-525 substituted “30” for “thirty”.

1981—Pub. L. 97-86 substituted “commodore” for “commodore admiral”.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97-86, set out as a note under section 101 of this title.

### § 635. Retirement for years of service: regular brigadier generals and rear admirals (lower half)

Except as provided under section 637(b) of this title, each officer of the Regular Army, Regular Air Force, or Regular Marine Corps who holds the regular grade of brigadier general, and each officer of the Regular Navy who holds the regular grade of rear admiral (lower half), who is not on a list of officers recommended for promotion to the regular grade of major general or rear admiral, respectively, shall, if not earlier retired, be retired on the first day of the first month beginning after the date of the fifth anniversary of his appointment to that grade or on the first day of the month after the month in which he completes 30 years of active commissioned service, whichever is later.

(Added Pub. L. 96-513, title I, §105, Dec. 12, 1980, 94 Stat. 2863; amended Pub. L. 97-86, title IV, §405(b)(1), (5)(A), Dec. 1, 1981, 95 Stat. 1105, 1106; Pub. L. 98-525, title XIV, §1405(13), Oct. 19, 1984,

98 Stat. 2622; Pub. L. 99-145, title V, §514(b)(1), (5)(A), Nov. 8, 1985, 99 Stat. 628.)

#### AMENDMENTS

1985—Pub. L. 99-145 substituted “rear admirals (lower half)” for “commodores” in section catchline and “rear admiral (lower half)” for “commodore” in text.

1984—Pub. L. 98-525 substituted “30” for “thirty”.

1981—Pub. L. 97-86 substituted “commodores” for “commodore admirals” in section catchline and “commodore” for “commodore admiral” in text.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97-86, set out as a note under section 101 of this title.

### § 636. Retirement for years of service: regular officers in grades above brigadier general and rear admiral (lower half)

(a) MAJOR GENERALS AND REAR ADMIRALS SERVING IN GRADE.—Except as provided in subsection (b) or (c) and under section 637(b) of this title, each officer of the Regular Army, Regular Air Force, or Regular Marine Corps who holds the regular grade of major general, and each officer of the Regular Navy who holds the regular grade of rear admiral, shall, if not earlier retired, be retired on the first day of the first month beginning after the date of the fifth anniversary of his appointment to that grade or on the first day of the month after the month in which he completes 35 years of active commissioned service, whichever is later.

(b) LIEUTENANT GENERALS AND VICE ADMIRALS.—In the administration of subsection (a) in the case of an officer who is serving in the grade of lieutenant general or vice admiral, the number of years of active commissioned service applicable to the officer is 38 years.

(c) GENERALS AND ADMIRALS.—In the administration of subsection (a) in the case of an officer who is serving in the grade of general or admiral, the number of years of active commissioned service applicable to the officer is 40 years.

(Added Pub. L. 96-513, title I, §105, Dec. 12, 1980, 94 Stat. 2863; amended Pub. L. 98-525, title XIV, §1405(14), Oct. 19, 1984, 98 Stat. 2622; Pub. L. 105-85, div. A, title V, §506(a), (b), Nov. 18, 1997, 111 Stat. 1726.)

#### AMENDMENTS

1997—Pub. L. 105-85, §506(b), substituted “regular officers in grades above brigadier general and rear admiral (lower half)” for “regular major generals and rear admirals” in section catchline.

Pub. L. 105-85, §506(a), designated existing provisions as subsec. (a), inserted heading, substituted “Except as provided in subsection (b) or (c) and” for “Except as provided”, and added subsecs. (b) and (c).

1984—Pub. L. 98-525 substituted “35” for “thirty-five”.

### SUBCHAPTER IV—CONTINUATION ON ACTIVE DUTY AND SELECTIVE EARLY RETIREMENT

Sec.	
637.	Selection of regular officers for continuation on active duty.
638.	Selective early retirement.
638a.	Modification to rules for continuation on active duty; enhanced authority for selective early retirement and early discharges.

Sec.	
639.	Continuation on active duty to complete disciplinary action.
640.	Deferment of retirement or separation for medical reasons.

## AMENDMENTS

1990—Pub. L. 101-510, div. A, title V, §521(a)(2), Nov. 5, 1990, 104 Stat. 1561, added item 638a.

**§ 637. Selection of regular officers for continuation on active duty**

(a)(1) An officer subject to discharge or retirement in accordance with section 632 of this title may, subject to the needs of the service, be continued on active duty if he is selected for continuation on active duty by a selection board convened under section 611(b) of this title.

(2) An officer who holds the regular grade of captain in the Army, Air Force, or Marine Corps, or the regular grade of lieutenant in the Navy, and who is subject to discharge or retirement in accordance with section 632 of this title may not be continued on active duty under this subsection for a period which extends beyond the last day of the month in which he completes 20 years of active commissioned service unless he is promoted to the regular grade of major or lieutenant commander, respectively.

(3) An officer who holds the regular grade of major or lieutenant commander who is subject to discharge or retirement in accordance with section 632 of this title may not be continued on active duty under this subsection for a period which extends beyond the last day of the month in which he completes 24 years of active commissioned service unless he is promoted to the regular grade of lieutenant colonel or commander, respectively.

(4) An officer who is selected for continuation on active duty under this subsection but declines to continue on active duty shall be discharged, retired, or retained on active duty, as appropriate, in accordance with section 632 of this title.

(5) Each officer who is continued on active duty under this subsection, is not subsequently promoted or continued on active duty, and is not on a list of officers recommended for continuation or for promotion to the next higher regular grade shall, unless sooner retired or discharged under another provision of law—

(A) be discharged upon the expiration of his period of continued service; or

(B) if he is eligible for retirement under any provision of law, be retired under that law on the first day of the first month following the month in which he completes his period of continued service.

Notwithstanding the provisions of clause (A), any officer who would otherwise be discharged under such clause and is within two years of qualifying for retirement under section 3911, 6323, or 8911 of this title, shall unless he is sooner retired or discharged under some other provision of law, be retained on active duty until he is qualified for retirement under that section and then be retired.

(6) The retirement or discharge of an officer pursuant to this subsection shall be considered to be an involuntary retirement or discharge for purposes of any other provision of law.

(b)(1) An officer subject to retirement under section 633 or 634 of this title may, subject to the needs of the service, have his retirement deferred and be continued on active duty if he is selected for continuation on active duty by a selection board convened under section 611(b) of this title.

(2) An officer subject to retirement under section 635 or 636 of this title who is serving in the grade of brigadier general, rear admiral (lower half), major general, or rear admiral may, subject to the needs of the service, have his retirement deferred and be continued on active duty by the Secretary concerned. An officer subject to retirement under section 635 or 636 of this title who is serving in a grade above major general or rear admiral may have his retirement deferred and be continued on active duty by the President.

(3) Any deferral of retirement and continuation on active duty under this subsection shall be for a period not to exceed five years, except as provided under section 1251 or 1253 of this title.

(c) Continuation of an officer on active duty under this section pursuant to the action of a selection board convened under section 611(b) of this title is subject to the approval of the Secretary of the military department concerned. The period of the continuation on active duty of an officer under this section may be reduced by the Secretary concerned in the case of any officer as provided in section 638a of this title.

(d) For purposes of this section, a period of continuation on active duty under this section expires or is completed on the earlier of (1) the date originally established for the termination of such period, or (2) the date established for the termination of such period by any shortening of such period under section 638a of this title.

(e) The Secretary of Defense shall prescribe regulations for the administration of this section.

(Added Pub. L. 96-513, title I, §105, Dec. 12, 1980, 94 Stat. 2863; amended Pub. L. 97-22, §4(e), July 10, 1981, 95 Stat. 127; Pub. L. 97-86, title IV, §405(b)(1), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 98-525, title XIV, §1405(15), Oct. 19, 1984, 98 Stat. 2622; Pub. L. 99-145, title V, §514(b)(1), Nov. 8, 1985, 99 Stat. 628; Pub. L. 101-510, div. A, title V, §521(b)(1), Nov. 5, 1990, 104 Stat. 1561; Pub. L. 110-181, div. A, title V, §504, Jan. 28, 2008, 122 Stat. 95.)

## AMENDMENTS

2008—Subsec. (b)(3). Pub. L. 110-181 substituted “except as provided under section 1251 or 1253 of this title” for “but such period may not (except as provided under section 1251(b) of this title) extend beyond the date of the officer’s sixty-second birthday”.

1990—Subsec. (c). Pub. L. 101-510, §521(b)(1)(A), inserted at end “The period of the continuation on active duty of an officer under this section may be reduced by the Secretary concerned in the case of any officer as provided in section 638a of this title.”

Subsecs. (d), (e). Pub. L. 101-510, §521(b)(1)(B), (C), added subsec. (d) and redesignated former subsec. (d) as (e).

1985—Subsec. (b)(2). Pub. L. 99-145 substituted “rear admiral (lower half)” for “commodore”.

1984—Subsec. (a)(2). Pub. L. 98-525, §1405(15)(A), substituted “20” for “twenty”.

Subsec. (a)(3). Pub. L. 98-525, §1405(15)(B), substituted "24" for "twenty-four".

1981—Subsec. (b)(1). Pub. L. 97-22, §4(e)(1), substituted "section 633 or 634" for "section 633, 634, 635, or 636".

Subsec. (b)(2). Pub. L. 97-86 substituted "commodore" for "commodore admiral".

Pub. L. 97-22, §4(e)(2), inserted provision that an officer subject to retirement under section 635 or 636 of this title who is serving in the grade of brigadier general, commodore admiral, major general, or rear admiral may, subject to the needs of the service, have his retirement deferred and be continued on active duty by the Secretary concerned and struck out requirement that the deferral of the retirement of an officer subject to retirement under section 635 or 636 of this title serving in a grade above major general or rear admiral was subject to the needs of the service.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97-86, set out as a note under section 101 of this title.

#### EFFECTIVE DATE

Subchapter effective Sept. 15, 1981, but the authority to prescribe regulations under this subchapter effective on Dec. 12, 1980, see section 701 of Pub. L. 96-513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

#### TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provisions to prevent extinction or premature termination of rights, duties, penalties, or proceedings that existed or were begun prior to the effective date of Pub. L. 96-513 and otherwise to allow for an orderly transition to the system of officer personnel management put in place under Pub. L. 96-513, see section 601 et seq. of Pub. L. 96-513, set out as a note under section 611 of this title.

### § 638. Selective early retirement

(a)(1) A regular officer on the active-duty list of the Army, Navy, Air Force, or Marine Corps may be considered for selective early retirement by a selection board convened under section 611(b) of this title if the officer is described in any of subparagraphs (A) through (D) as follows:

(A) An officer holding the regular grade of lieutenant colonel or commander who has failed of selection for promotion to the grade of colonel or, in the case of an officer of the Navy, captain two or more times and whose name is not on a list of officers recommended for promotion.

(B) An officer holding the regular grade of colonel or, in the case of an officer of the Navy, captain who has served at least four years of active duty in that grade and whose name is not on a list of officers recommended for promotion.

(C) An officer holding the regular grade of brigadier general or rear admiral (lower half) who has served at least three and one-half years of active duty in that grade and whose name is not on a list of officers recommended for promotion.

(D) An officer holding the regular grade of major general or rear admiral who has served at least three and one-half years of active duty in that grade.

(2) The Secretary of the military department concerned shall specify the number of officers described in paragraphs (1)(A) and (1)(B) which a

selection board convened under section 611(b) of this title may recommend for early retirement. Such number may not be more than 30 percent of the number of officers considered in each grade in each competitive category.

(3) A regular officer on the active-duty list of the Army, Navy, Air Force, or Marine Corps may also be considered for early retirement under the circumstances prescribed in section 638a of this title.

(b)(1) An officer in a grade below brigadier general or rear admiral (lower half) who is recommended for early retirement under this section or section 638a of this title and whose early retirement is approved by the Secretary concerned shall—

(A) be retired, under any provision of law under which he is eligible to retire, on the date requested by him and approved by the Secretary concerned, which date shall be not later than the first day of the seventh calendar month beginning after the month in which the Secretary concerned approves the report of the board which recommended the officer for early retirement; or

(B) if the officer is not eligible for retirement under any provision of law, be retained on active duty until he is qualified for retirement under section 3911, 6323, or 8911 of this title, and then be retired under that section, unless he is sooner retired or discharged under some other provision of law.

(2) An officer who holds the regular grade of brigadier general, major general, rear admiral (lower half), or rear admiral who is recommended for early retirement under this section and whose early retirement is approved by the Secretary concerned shall be retired, under any provision of law under which he is eligible to retire, on the date requested by him and approved by the Secretary concerned, which date shall be not later than the first day of the tenth calendar month beginning after the month in which the Secretary concerned approved the report of the board which recommended the officer for early retirement.

(3) The Secretary concerned may defer for not more than 90 days the retirement of an officer otherwise approved for early retirement under this section or section 638a of this title in order to prevent a personal hardship to the officer or for other humanitarian reasons. Any such deferral shall be made on a case-by-case basis considering the circumstances of the case of the particular officer concerned. The authority of the Secretary to grant such a deferral may not be delegated.

(c) So long as an officer in a grade below brigadier general or rear admiral (lower half) holds the same grade, he may not be considered for early retirement under this section more than once in any five-year period.

(d) The retirement of an officer pursuant to this section shall be considered to be an involuntary retirement for purposes of any other provision of law.

(e)(1) The Secretary of Defense shall prescribe regulations for the administration of this section.

(2)(A) Such regulations shall require that when the Secretary of the military department

concerned submits a list of officers to a selection board convened under section 611(b) of this title to consider officers for selection for early retirement under this section, such list (except as provided in subparagraph (B)) shall include each officer on the active-duty list in the same grade and competitive category whose position on the active-duty list is between that of the most junior officer in that grade and competitive category whose name is submitted to the board and that of the most senior officer in that grade and competitive category whose name is submitted to the board.

(B) A list under subparagraph (A) may not include an officer in that grade and competitive category (i) who has been approved for voluntary retirement under section 3911, 6323, or 8911 of this title, or (ii) who is to be involuntarily retired under any provision of law during the fiscal year in which the selection board is convened or during the following fiscal year.

(C) An officer not considered by a selection board convened under section 611(b) of this title by reason of subparagraph (B) shall be retired on the date approved for the retirement of that officer as of the convening date of such selection board unless the Secretary concerned approves a modification of such date in order to prevent a personal hardship for the officer or for other humanitarian reasons.

(Added Pub. L. 96-513, title I, §105, Dec. 12, 1980, 94 Stat. 2864; amended Pub. L. 97-22, §4(f), July 10, 1981, 95 Stat. 127; Pub. L. 97-86, title IV, §405(b)(1), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 99-145, title V, §514(b)(1), Nov. 8, 1985, 99 Stat. 628; Pub. L. 100-456, div. A, title V, §504, Sept. 29, 1988, 102 Stat. 1967; Pub. L. 101-510, div. A, title V, §521(b)(2), Nov. 5, 1990, 104 Stat. 1561; Pub. L. 102-190, div. A, title V, §503(a), Dec. 5, 1991, 105 Stat. 1355; Pub. L. 103-160, div. A, title V, §506, Nov. 30, 1993, 107 Stat. 1646; Pub. L. 104-106, div. A, title V, §504(b), Feb. 10, 1996, 110 Stat. 295.)

#### AMENDMENTS

1996—Subsec. (b)(3). Pub. L. 104-106 added par. (3).

1993—Subsec. (e)(2)(B). Pub. L. 103-160 inserted “(i)” after “grade and competitive category”, inserted “(ii)” after “of this title, or”, and struck out comma after “any provision of law”.

1991—Subsec. (e). Pub. L. 102-190 designated existing provisions as pars. (1) and (2)(A), in par. (2)(A) inserted “(except as provided in subparagraph (B))” after “under this section, such list”, and added subpars. (B) and (C).

1990—Subsec. (a)(3). Pub. L. 101-510, §521(b)(2)(A), added par. (3).

Subsec. (b)(1). Pub. L. 101-510, §521(b)(2)(B), inserted “or section 638a of this title” after “under this section”.

1988—Subsec. (a). Pub. L. 100-456 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “A regular officer on the active-duty list of the Army, Navy, Air Force, or Marine Corps—

“(1) who holds the regular grade of lieutenant colonel or commander and has failed of selection for promotion to the grade of colonel or, in the case of an officer of the Navy, captain two or more times and whose name is not on a list of officers recommended for promotion;

“(2) who holds the regular grade of colonel or, in the case of an officer of the Navy, captain and has served at least four years of active duty in that grade and whose name is not on a list of officers recommended for promotion;

“(3) who holds the regular grade of brigadier general or rear admiral (lower half) and has served at

least three and one-half years of active duty in that grade and whose name is not on a list of officers recommended for promotion; or

“(4) who holds the regular grade of major general or rear admiral and has served at least three and one-half years of active duty in that grade,

may be considered for early retirement by a selection board convened under section 611(b) of this title. The Secretary of the military department concerned shall specify the number of officers described in clauses (1) and (2) which such a board may recommend for early retirement, but such number may not be more than 30 percent of the number of officers considered in each grade in each competitive category.”

1985—Subsecs. (a)(3), (b), (c). Pub. L. 99-145 substituted “rear admiral (lower half)” for “commodore” wherever appearing.

1981—Subsec. (a)(3). Pub. L. 97-86 substituted “commodore” for “commodore admiral”.

Subsec. (a)(3), (4). Pub. L. 97-22 substituted “three and one-half years of active duty” for “four years of active duty”.

Subsecs. (b), (c). Pub. L. 97-86 substituted “commodore” for “commodore admiral” wherever appearing.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97-86, set out as a note under section 101 of this title.

#### § 638a. Modification to rules for continuation on active duty; enhanced authority for selective early retirement and early discharges

(a) The Secretary of Defense may authorize the Secretary of a military department, during the period beginning on October 1, 1990, and ending on December 31, 2001, and for the purpose of subsection (b)(4) during the period beginning on October 1, 2006, and ending on December 31, 2012, to take any of the actions set forth in subsection (b) with respect to officers of an armed force under the jurisdiction of that Secretary.

(b) Actions which the Secretary of a military department may take with respect to officers of an armed force when authorized to do so under subsection (a) are the following:

(1) Shortening the period of the continuation on active duty established under section 637 of this title for a regular officer who is serving on active duty pursuant to a selection under that section for continuation on active duty.

(2) Providing that regular officers on the active-duty list may be considered for early retirement by a selection board convened under section 611(b) of this title in the case of officers described in any of subparagraphs (A) through (C) as follows:

(A) Officers in the regular grade of lieutenant colonel or commander who would be subject to consideration for selection for early retirement under section 638(a)(1)(A) of this title except that they have failed of selection for promotion only one time (rather than two or more times).

(B) Officers in the regular grade of colonel or, in the case of the Navy, captain who would be subject to consideration for selection for early retirement under section 638(a)(1)(B) of this title except that they have served on active duty in that grade less than four years (but not less than two years).

(C) Officers, other than those described in subparagraphs (A) and (B), holding a regular

grade below the grade of colonel, or in the case of the Navy, captain, who are eligible for retirement under section 3911, 6323, or 8911 of this title, or who after two additional years or less of active service would be eligible for retirement under one of those sections and whose names are not on a list of officers recommended for promotion.

(3) Suspending section 638(c) of this title.

(4) Convening selection boards under section 611(b) of this title to consider for discharge regular officers on the active-duty list in a grade below lieutenant colonel or commander—

(A) who have served at least one year of active duty in the grade currently held;

(B) whose names are not on a list of officers recommended for promotion; and

(C) who are not eligible to be retired under any provision of law (other than by reason of eligibility pursuant to section 4403 of the National Defense Authorization Act for Fiscal Year 1993) and are not within two years of becoming so eligible.

(c)(1) In the case of an action under subsection (b)(2), the Secretary of the military department concerned shall specify the number of officers described in that subsection which a selection board convened under section 611(b) of this title pursuant to the authority of that subsection may recommend for early retirement. Such number may not be more than 30 percent of the number of officers considered in each grade in each competitive category.

(2) In the case of an action authorized under subsection (b)(2), the Secretary of Defense may also authorize the Secretary of the military department concerned when convening a selection board under section 611(b) of this title to consider regular officers on the active-duty list for early retirement to include within the officers to be considered by the board reserve officers on the active-duty list on the same basis as regular officers.

(3) In the case of an action under subsection (b)(2), the Secretary of the military department concerned may submit to a selection board convened pursuant to that subsection—

(A) the names of all eligible officers described in that subsection in a particular grade and competitive category; or

(B) the names of all eligible officers described in that subsection in a particular grade and competitive category who are also in particular year groups, specialties, or retirement categories, or any combination thereof, within that competitive category.

(d)(1) In the case of an action under subsection (b)(4), the Secretary of the military department concerned may submit to a selection board convened pursuant to that subsection—

(A) the names of all officers described in that subsection in a particular grade and competitive category; or

(B) the names of all officers described in that subsection in a particular grade and competitive category who also are in particular year groups or specialties, or both, within that competitive category.

(2) The Secretary concerned shall specify the total number of officers to be recommended for

discharge by a selection board convened pursuant to subsection (b)(4). That number may not be more than 30 percent of the number of officers considered—

(A) in each grade in each competitive category, except that during the period beginning on October 1, 2006, and ending on December 31, 2012, such number may be more than 30 percent of the officers considered in each competitive category, but may not be more than 30 percent of the number of officers considered in each grade; or

(B) in each grade, year group, or specialty (or combination thereof) in each competitive category, except that during the period beginning on October 1, 2006, and ending on December 31, 2012, such number may be more than 30 percent of the officers considered in each competitive category, but may not be more than 30 percent of the number of officers considered in each grade.

(3) The total number of officers described in subsection (b)(4) from any of the armed forces (or from any of the armed forces in a particular grade) who may be recommended during a fiscal year for discharge by a selection board convened pursuant to the authority of that subsection may not exceed 70 percent of the decrease, as compared to the preceding fiscal year, in the number of officers of that armed force (or the number of officers of that armed force in that grade) authorized to be serving on active duty as of the end of that fiscal year.

(4) An officer who is recommended for discharge by a selection board convened pursuant to the authority of subsection (b)(4) and whose discharge is approved by the Secretary concerned shall be discharged on a date specified by the Secretary concerned.

(5) Selection of officers for discharge under this subsection shall be based on the needs of the service.

(e) The discharge or retirement of an officer pursuant to this section shall be considered to be involuntary for purposes of any other provision of law.

(Added Pub. L. 101-510, div. A, title V, § 521(a)(1), Nov. 5, 1990, 104 Stat. 1559; amended Pub. L. 102-190, div. A, title V, § 503(b), Dec. 5, 1991, 105 Stat. 1355; Pub. L. 102-484, div. A, title V, § 503, title LXIV, § 4403(g)(2), Oct. 23, 1992, 106 Stat. 2402, 2703; Pub. L. 103-160, div. A, title V, § 561(b), Nov. 30, 1993, 107 Stat. 1667; Pub. L. 105-261, div. A, title V, § 561(c), Oct. 17, 1998, 112 Stat. 2025; Pub. L. 106-398, § 1 [[div. A], title V, § 571(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A-134; Pub. L. 109-364, div. A, title VI, § 623(b), Oct. 17, 2006, 120 Stat. 2256.)

#### REFERENCES IN TEXT

Section 4403 of the National Defense Authorization Act for Fiscal Year 1993, referred to in subsec. (b)(4)(C), is section 4403 of Pub. L. 102-484, which is set out as a note under section 1293 of this title.

#### AMENDMENTS

2006—Subsec. (a). Pub. L. 109-364, § 623(b)(1), inserted “and for the purpose of subsection (b)(4) during the period beginning on October 1, 2006, and ending on December 31, 2012,” after “December 31, 2001.”

Subsec. (d)(2)(A). Pub. L. 109-364, § 623(b)(2)(A), inserted “, except that during the period beginning on

October 1, 2006, and ending on December 31, 2012, such number may be more than 30 percent of the officers considered in each competitive category, but may not be more than 30 percent of the number of officers considered in each grade" before "; or" at end.

Subsec. (d)(2)(B). Pub. L. 109-364, § 623(b)(2)(B), inserted ", except that during the period beginning on October 1, 2006, and ending on December 31, 2012, such number may be more than 30 percent of the officers considered in each competitive category, but may not be more than 30 percent of the number of officers considered in each grade" before period at end.

2000—Subsec. (a). Pub. L. 106-398 substituted "December 31, 2001" for "September 30, 2001".

1998—Subsec. (a). Pub. L. 105-261 substituted "during the period beginning on October 1, 1990, and ending on September 30, 2001" for "during the nine-year period beginning on October 1, 1990".

1993—Subsec. (a). Pub. L. 103-160 substituted "nine-year period" for "five-year period".

1992—Subsec. (b)(4)(C). Pub. L. 102-484, § 4403(g)(2), inserted "(other than by reason of eligibility pursuant to section 4403 of the National Defense Authorization Act for Fiscal Year 1993)" after "any provision of law".

Subsec. (c)(3). Pub. L. 102-484, § 503, added par. (3).

1991—Subsec. (b)(2)(C). Pub. L. 102-190, § 503(b)(1), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "Officers holding a regular grade below the grade of colonel or, in the case of the Navy, captain who are not eligible for retirement under section 3911, 6323, or 8911 of this title but who after two additional years of active service as a commissioned officer would be eligible for retirement under one of those sections and whose names are not on a list of officers recommended for promotion."

Subsec. (c). Pub. L. 102-190, § 503(b)(2), designated existing provisions as par. (1) and added par. (2).

### § 639. Continuation on active duty to complete disciplinary action

When any action has been commenced against an officer with a view to trying such officer by court-martial and such officer is to be separated or retired in accordance with this chapter, the Secretary of the military department concerned may delay the separation or retirement of the officer, without prejudice to such action, until the completion of the action.

(Added Pub. L. 96-513, title I, § 105, Dec. 12, 1980, 94 Stat. 2866.)

### § 640. Deferral of retirement or separation for medical reasons

(a) If the Secretary of the military department concerned determines that the evaluation of the physical condition of an officer and determination of the officer's entitlement to retirement or separation for physical disability require hospitalization or medical observation and that such hospitalization or medical observation cannot be completed with confidence in a manner consistent with the member's well being before the date on which the officer would otherwise be required to retire or be separated under this title, the Secretary may defer the retirement or separation of the officer under this title.

(b) A deferral of retirement or separation under subsection (a) may not extend for more than 30 days after completion of the evaluation requiring hospitalization or medical observation.

(Added Pub. L. 96-513, title I, § 105, Dec. 12, 1980, 94 Stat. 2866; amended Pub. L. 107-107, div. A, title V, § 507, Dec. 28, 2001, 115 Stat. 1090.)

#### AMENDMENTS

2001—Pub. L. 107-107 amended text generally. Prior to amendment, text read as follows: "The Secretary of the military department concerned may defer the retirement or separation under this title of any officer if the evaluation of the physical condition of the officer and determination of the officer's entitlement to retirement or separation for physical disability require hospitalization or medical observation that cannot be completed before the date on which the officer would otherwise be required to retire or be separated under this title."

#### SUBCHAPTER V—ADDITIONAL PROVISIONS RELATING TO PROMOTION, SEPARATION, AND RETIREMENT

Sec.

- 641. Applicability of chapter.
- 642. Entitlement of officers discharged or retired under this chapter to separation pay or retired pay.
- 643. Chaplains: discharge or retirement upon loss of professional qualifications.
- [644. Repealed.]
- 645. Definitions.
- 646. Consideration of performance as a member of the Joint Staff.
- 647. Force shaping authority.

#### AMENDMENTS

2004—Pub. L. 108-375, div. A, title V, § 501(c)(1)(B), Oct. 28, 2004, 118 Stat. 1874, added item 647.

1994—Pub. L. 103-337, div. A, title XVI, § 1671(b)(5), Oct. 5, 1994, 108 Stat. 3013, struck out item 644 "Authority to suspend officer personnel laws".

1984—Pub. L. 98-525, title XIII, § 1301(d)(2), Oct. 19, 1984, 98 Stat. 2612, added item 646.

### § 641. Applicability of chapter

Officers in the following categories are not subject to this chapter (other than section 640 and, in the case of warrant officers, section 628):

(1) Reserve officers—

(A) on active duty authorized under section 115(a)(1)(B) or 115(b)(1) of this title, or excluded from counting for active duty end strengths under section 115(i) of this title;

(B) on active duty under section 3038, 5143, 5144, 8038, 10211, 10301 through 10305, 10502, 10505, 10506(a), 10506(b), 10507, or 12402 of this title or section 708 of title 32; or

(C) on full-time National Guard duty.

(2) The director of admissions, dean, and permanent professors at the United States Military Academy, the registrar, dean, and permanent professors at the United States Air Force Academy, and permanent professors of the Navy (as defined in regulations prescribed by the Secretary of the Navy).

(3) Warrant officers.

(4) Retired officers on active duty.

(5) Students at the Uniformed Services University of the Health Sciences.

(6) Officers appointed pursuant to an agreement under section 329 of title 37.

(Added Pub. L. 96-513, title I, § 105, Dec. 12, 1980, 94 Stat. 2866; amended Pub. L. 98-525, title IV, § 414(a)(5), title V, § 527(b), Oct. 19, 1984, 98 Stat. 2519, 2525; Pub. L. 99-433, title V, § 531(a)(2), Oct. 1, 1986, 100 Stat. 1063; Pub. L. 103-337, div. A, title XVI, § 1671(c)(5), Oct. 5, 1994, 108 Stat. 3014; Pub. L. 104-106, div. A, title XV, § 1501(c)(6), Feb. 10,

1996, 110 Stat. 498; Pub. L. 104-201, div. A, title XII, § 1212(e), Sept. 23, 1996, 110 Stat. 2694; Pub. L. 106-398, § 1 [div. A], title V, § 521], Oct. 30, 2000, 114 Stat. 1654, 1654A-108; Pub. L. 107-107, div. A, title V, § 511(a), Dec. 28, 2001, 115 Stat. 1092; Pub. L. 108-375, div. A, title IV, § 416(j), title V, § 501(d), Oct. 28, 2004, 118 Stat. 1869, 1874; Pub. L. 109-364, div. A, title VI, § 621(c), Oct. 17, 2006, 120 Stat. 2255; Pub. L. 110-181, div. A, title V, § 508(b), Jan. 28, 2008, 122 Stat. 97.)

#### CODIFICATION

Pub. L. 103-337, div. A, title XVI, §§ 1624, 1691(b)(1), Oct. 5, 1994, 108 Stat. 2961, 3026, which directed amendment of this section effective Oct. 1, 1996, by inserting “(a)” before “Officers in the following” and by adding at the end a new subsec. (b), was amended by Pub. L. 104-106, div. A, title XV, § 1501(a)(1)(A), Feb. 10, 1996, 110 Stat. 495, and, as so amended, amends section 620 of this title instead of this section.

#### AMENDMENTS

2008—Par. (2). Pub. L. 110-181 substituted “, the registrar” for “and the registrar” and inserted “, and permanent professors of the Navy (as defined in regulations prescribed by the Secretary of the Navy)” before period at end.

2006—Par. (6). Pub. L. 109-364 added par. (6).

2004—Par. (1). Pub. L. 108-375, § 416(j), amended par. (1) generally. Prior to amendment, par. (1) read as follows:

“(1) Reserve officers—

“(A) on active duty for training;

“(B) on active duty under section 3038, 5143, 5144, 8038, 10211, 10301 through 10305, 10502, 10505, 10506(a), 10506(b), 10507, or 12402 of this title or section 708 of title 32;

“(C) on active duty under section 12301(d) of this title in connection with organizing, administering, recruiting, instructing, or training the reserve components;

“(D) on active duty under section 12301(d) of this title, other than as provided under subparagraph (C), if the call or order to active duty, under regulations prescribed by the Secretary concerned, specifies a period of three years or less and continued placement on the reserve active-status list;

“(E) on active duty to pursue special work;

“(F) ordered to active duty under section 12304 of this title;

“(G) on active duty under section 10(b)(2) of the Military Selective Service Act (50 U.S.C. App. 460(b)(2)) for the administration of the Selective Service System; or

“(H) on full-time National Guard duty.”

Par. (1)(F). Pub. L. 108-375, § 501(d), which directed substitution of “sections 12302 and 12304” for “section 12304” in subpar. (F), could not be executed because par. (1) did not contain a subpar. (F) subsequent to amendment by Pub. L. 108-375, § 416(j). See above.

2001—Par. (1)(D). Pub. L. 107-107 amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: “on the reserve active-status list who are on active duty under section 12301(d) of this title, other than as provided in subparagraph (C), under a call or order to active duty specifying a period of three years or less.”

2000—Par. (1)(D) to (H). Pub. L. 106-398 added subpar. (D) and redesignated former subpars. (D) to (G) as (E) to (H), respectively.

1996—Par. (1)(B). Pub. L. 104-201 inserted “5143, 5144,” after “3038.”

Pub. L. 104-106 substituted “10502, 10505, 10506(a), 10506(b), 10507” for “10501”.

1994—Par. (1)(B). Pub. L. 103-337, § 1671(c)(5)(A), substituted “3038, 8038, 10211, 10301 through 10305, 10501, or 12402” for “175, 265, 3021, 3038, 3040, 3496, 5251, 5252, 8021, 8038, or 8496”.

Par. (1)(C). Pub. L. 103-337, § 1671(c)(5)(B), substituted “12301(d)” for “672(d)”.

Par. (1)(E). Pub. L. 103-337, § 1671(c)(5)(C), substituted “12304” for “673b”.

1986—Par. (1)(B). Pub. L. 99-433 substituted “3021, 3038, 3040, 3496, 5251, 5252, 8021, 8038” for “3015, 3019, 3033, 3496, 5251, 5252, 8019, 8033”.

1984—Pub. L. 98-525, § 527(b), substituted “(other than section 640 and, in the case of warrant officers, section 628)” for “(other than section 640)” in provisions preceding par. (1).

Par. (1)(C). Pub. L. 98-525, § 414(a)(5)(A), struck out “or under section 502 or 503 of title 32” after “section 672(d) of this title”.

Par. (1)(G). Pub. L. 98-525, § 414(a)(5)(B)-(D), added subpar. (G).

#### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 501(d) of Pub. L. 108-375 effective on the first day of the first month beginning more than 180 days after Oct. 28, 2004, see section 501(g) of Pub. L. 108-375, set out as a note under section 531 of this title.

#### 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 1994 AMENDMENT

Amendment by Pub. L. 103-337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103-337, set out as a note under section 10001 of this title.

#### EFFECTIVE DATE

Subchapter effective Sept. 15, 1981, but the authority to prescribe regulations under this subchapter effective on Dec. 12, 1980, see section 701 of Pub. L. 96-513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

#### RETROACTIVE APPLICATION

Pub. L. 107-107, div. A, title V, § 511(b), Dec. 28, 2001, 115 Stat. 1092, provided that:

“(1) The Secretary of the military department concerned may provide that an officer who was excluded from the active-duty list under section 641(1)(D) of title 10, United States Code, as amended by section 521 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106-398; 114 Stat. 1654A-108), shall be considered to have been on the active-duty list during the period beginning on the date on which the officer was so excluded and ending on the date of the enactment of this Act [Dec. 28, 2001].

“(2) The Secretary of the military department concerned may provide that a Reserve officer who was placed on the active-duty list on or after October 30, 1997, shall be placed on the reserve active-status list if the officer otherwise meets the conditions specified in section 641(1)(D) of title 10, United States Code, as amended by subsection (a).”

#### TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provisions to prevent extinction or premature termination of rights, duties, penalties, or proceedings that existed or were begun prior to the effective date of Pub. L. 96-513 and otherwise to allow for an orderly transition to the system of officer personnel management put in place under Pub. L. 96-513, see section 601 et seq. of Pub. L. 96-513, set out as a note under section 611 of this title.

**§ 642. Entitlement of officers discharged or retired under this chapter to separation pay or retired pay**

(a) An officer who is discharged under this chapter is entitled, if eligible therefor, to separation pay under section 1174 of this title.

(b) An officer who is retired under this chapter is entitled to retired pay computed under chapter 71 of this title.

(Added Pub. L. 96-513, title I, § 105, Dec. 12, 1980, 94 Stat. 2867.)

**§ 643. Chaplains: discharge or retirement upon loss of professional qualifications**

Under regulations prescribed by the Secretary of Defense, a commissioned officer on the active-duty list of the Army, Navy, or Air Force who is appointed or designated as a chaplain may, if he fails to maintain the qualifications needed to perform his professional function, be discharged or, if eligible for retirement, may be retired.

(Added Pub. L. 96-513, title I, § 105, Dec. 12, 1980, 94 Stat. 2867.)

**[§ 644. Repealed. Pub. L. 103-337, div. A, title XVI, § 1622(b), Oct. 5, 1994, 108 Stat. 2961]**

Section, added Pub. L. 96-513, title I, § 105, Dec. 12, 1980, 94 Stat. 2867; amended Pub. L. 102-190, div. A, title XI, § 1115, Dec. 5, 1991, 105 Stat. 1503, related to authority to suspend officer personnel laws. See section 123 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103-337, set out as an Effective Date note under section 10001 of this title.

**§ 645. Definitions**

In this chapter:

(1) The term “promotion zone” means a promotion eligibility category consisting of the officers on an active-duty list in the same grade and competitive category—

(A) who—

(i) in the case of officers in grades below colonel, for officers of the Army, Air Force, and Marine Corps, or captain, for officers of the Navy, have neither (I) failed of selection for promotion to the next higher grade, nor (II) been removed from a list of officers recommended for promotion to that grade (other than after having been placed on that list after a selection from below the promotion zone); or

(ii) in the case of officers in the grade of colonel or brigadier general, for officers of the Army, Air Force, and Marine Corps, or captain or rear admiral (lower half), for officers of the Navy, have neither (I) not been recommended for promotion to the next higher grade when considered in the promotion zone, nor (II) been removed from a list of officers recommended for promotion to that grade (other than after having been placed on that list after a selection from below the promotion zone); and

(B) are senior to the officer designated by the Secretary of the military department

concerned to be the junior officer in the promotion zone eligible for consideration for promotion to the next higher grade.

(2) The term “officers above the promotion zone” means a group of officers on an active-duty list in the same grade and competitive category who—

(A) are eligible for consideration for promotion to the next higher grade;

(B) are in the same grade as those officers in the promotion zone for that competitive category; and

(C) are senior to the senior officer in the promotion zone for that competitive category.

(3) The term “officers below the promotion zone” means a group of officers on the active-duty list in the same grade and competitive category who—

(A) are eligible for consideration for promotion to the next higher grade;

(B) are in the same grade as the officers in the promotion zone for that competitive category; and

(C) are junior to the junior officer in the promotion zone for that competitive category.

(Added Pub. L. 96-513, title I, § 105, Dec. 12, 1980, 94 Stat. 2867; amended Pub. L. 97-86, title IV, § 405(b)(1), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 98-525, title V, § 533(a), Oct. 19, 1984, 98 Stat. 2528; Pub. L. 99-145, title V, § 514(b)(1), Nov. 8, 1985, 99 Stat. 628; Pub. L. 102-25, title VII, § 701(i)(1), Apr. 6, 1991, 105 Stat. 115.)

AMENDMENTS

1991—Pars. (1) to (3). Pub. L. 102-25 inserted “The term” after par. designations and lowercased initial letter of quoted phrases.

1985—Par. (1)(A)(ii). Pub. L. 99-145 substituted “rear admiral (lower half)” for “commodore”.

1984—Par. (1)(A)(i)(II), (ii)(II). Pub. L. 98-525, § 533(a)(1), inserted “(other than after having been placed on that list after a selection from below the promotion zone)”.

Par. (1)(B). Pub. L. 98-525, § 533(a)(2), inserted “in the promotion zone” after “the junior officer” and struck out “in the promotion zone” after “higher grade”.

1981—Par. (1)(A)(ii). Pub. L. 97-86 substituted “commodore” for “commodore admiral”.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97-86, set out as a note under section 101 of this title.

**§ 646. Consideration of performance as a member of the Joint Staff**

The Secretary of Defense, in consultation with the Chairman of the Joint Chiefs of Staff, shall ensure that officer personnel policies of the Army, Navy, Air Force, and Marine Corps concerning promotion, retention, and assignment give appropriate consideration to the performance of an officer as a member of the Joint Staff.

(Added Pub. L. 98-525, title XIII, § 1301(d)(1), Oct. 19, 1984, 98 Stat. 2612.)

**§ 647. Force shaping authority**

(a) AUTHORITY.—The Secretary concerned may, solely for the purpose of restructuring an

armed force under the jurisdiction of that Secretary—

(1) discharge an officer described in subsection (b); or

(2) transfer such an officer from the active-duty list of that armed force to the reserve active-status list of a reserve component of that armed force.

(b) COVERED OFFICERS.—(1) The authority under this section may be exercised in the case of an officer who—

(A) has completed not more than six years of service as a commissioned officer in the armed forces; or

(B) has completed more than six years of service as a commissioned officer in the armed forces, but has not completed a minimum service obligation applicable to that member.

(2) In this subsection, the term “minimum service obligation” means the initial period of required active duty service together with any additional period of required active duty service incurred during the initial period of required active duty service.

(c) APPOINTMENT OF TRANSFERRED OFFICERS.—An officer of the Regular Army, Regular Air Force, Regular Navy, or Regular Marine Corps who is transferred to a reserve active-status list under this section shall be discharged from the regular component concerned and appointed as a reserve commissioned officer under section 12203 of this title.

(d) REGULATIONS.—The Secretary concerned shall prescribe regulations for the exercise of the Secretary’s authority under this section.

(Added Pub. L. 108–375, div. A, title V, §501(c)(1)(A), Oct. 28, 2004, 118 Stat. 1873; amended Pub. L. 110–181, div. A, title V, §503(b), Jan. 28, 2008, 122 Stat. 95.)

#### AMENDMENTS

2008—Subsec. (b)(1)(A), (B). Pub. L. 110–181 substituted “six years” for “5 years”.

#### EFFECTIVE DATE

Section effective on the first day of the first month beginning more than 180 days after Oct. 28, 2004, see section 501(g) of Pub. L. 108–375, set out as an Effective Date of 2004 Amendment note under section 531 of this title.

### CHAPTER 37—GENERAL SERVICE REQUIREMENTS

Sec.	
651.	Members: required service.
652.	Notice to Congress of proposed changes in units, assignments, etc. to which female members may be assigned.
653.	Minimum service requirement for certain flight crew positions.
654.	Policy concerning homosexuality in the armed forces.
655.	Designation of persons having interest in status of a missing member.

#### REPEAL OF ITEM

*Pub. L. 111–321, §2(b), (f)(1), Dec. 22, 2010, 124 Stat. 3516, provided that, effective on the date established by section 2(b) of Pub. L. 111–321, set out in a note under section 654 of this title, the table of sections for this chapter is amended by striking the item relating to section 654.*

#### AMENDMENTS

2006—Pub. L. 109–163, div. A, title V, §541(a)(2), Jan. 6, 2006, 119 Stat. 3252, added item 652.

1996—Pub. L. 104–106, div. A, title V, §569(d)(2), Feb. 10, 1996, 110 Stat. 352, added item 655.

1994—Pub. L. 103–337, div. A, title XVI, §1671(b)(6), Oct. 5, 1994, 108 Stat. 3013, struck out item 652 “Ready Reserves: requirement of notification of change of status”.

1993—Pub. L. 103–160, div. A, title V, §571(a)(2), Nov. 30, 1993, 107 Stat. 1673, added item 654.

1989—Pub. L. 101–189, div. A, title VI, §634(a)(2), Nov. 29, 1989, 103 Stat. 1454, added item 653.

1978—Pub. L. 95–485, title IV, §405(d)(2), Oct. 20, 1978, 92 Stat. 1616, added item 652.

1958—Pub. L. 85–861, §33(a)(4)(A), Sept. 2, 1958, 72 Stat. 1564, substituted “GENERAL SERVICE REQUIREMENTS” for “SERVICE REQUIREMENTS FOR RESERVES” in chapter heading.

#### PROHIBITION AGAINST MEMBERS OF THE ARMED FORCES PARTICIPATING IN CRIMINAL STREET GANGS

Pub. L. 110–181, div. A, title V, §544, Jan. 28, 2008, 122 Stat. 116, provided that: “The Secretary of Defense shall prescribe regulations to prohibit the active participation by members of the Armed Forces in a criminal street gang.”

### § 651. Members: required service

(a) Each person who becomes a member of an armed force, other than a person deferred under the next to the last sentence of section 6(d)(1) of the Military Selective Service Act (50 U.S.C. App. 456(d)(1)) shall serve in the armed forces for a total initial period of not less than six years nor more than eight years, as provided in regulations prescribed by the Secretary of Defense for the armed forces under his jurisdiction and by the Secretary of Homeland Security for the Coast Guard when it is not operating as service in the Navy, unless such person is sooner discharged under such regulations because of personal hardship. Any part of such service that is not active duty or that is active duty for training shall be performed in a reserve component.

(b) Each person covered by subsection (a) who is not a Reserve, and who is qualified, shall, upon his release from active duty, be transferred to a reserve component of his armed force to complete the service required by subsection (a).

(c)(1) For the armed forces under the jurisdiction of the Secretary of Defense, the Secretary may waive the initial period of required service otherwise established pursuant to subsection (a) in the case of the initial appointment of a commissioned officer in a critically short health professional specialty specified by the Secretary for purposes of this subsection.

(2) The minimum period of obligated service for an officer under a waiver under this subsection shall be the greater of—

(A) two years; or

(B) in the case of an officer who has accepted an accession bonus or executed a contract or agreement for the multiyear receipt of special pay for service in the armed forces, the period of obligated service specified in such contract or agreement.

(Aug. 10, 1956, ch. 1041, 70A Stat. 27; Pub. L. 85–861, §§1(12), 36B(3), Sept. 2, 1958, 72 Stat. 1440, 1570; Pub. L. 89–718, §5, Nov. 2, 1966, 80 Stat. 1115; Pub. L. 95–79, title VIII, §803(a), July 30, 1977, 91 Stat. 333; Pub. L. 96–107, title VIII, §805(b), Nov.