AMENDMENTS

2009—Subsec. (b)(1). Pub. L. 111–84, which directed substitution of ''July 28 of every even-numbered year'' for ''180 days after date of the enactment of this section, and every even-numbered year thereafter'', was executed by making the substitution for ''180 days after the date of the enactment of this section, and every even-numbered year thereafter'' to reflect the probable intent of Congress.

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AMENDMENTS

2011—Pub. L. 111–383, div. A, title X, §1075(b)(1), Jan. 7, 2011, 124 Stat. 4368, substituted ''1030'' for ''1031'' in item for chapter 53.

2009—Pub. L. 111–84, div. A, title X, §1073(a)(7), Oct. 28, 2009, 123 Stat. 2472, substituted ''1580'' for ''1581'' in item for chapter 81.

2006—Pub. L. 109–366, §3(a)(2), Oct. 17, 2006, 120 Stat. 2630, added item for chapter 47A.

2001—Pub. L. 107–107, div. A, title X, §1048(a)(1), Dec. 28, 2001, 115 Stat. 1222, struck out period after ''1111'' in item for chapter 56.

2000—Pub. L. 106–398, §1 [[div. A], title VII, §713(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–184, added item for chapter 56.

1999—Pub. L. 106–65, div. A, title V, §586(c)(1), title VII, §721(c)(2), Oct. 5, 1999, 113 Stat. 638, 694, added item for chapter 50 and substituted ''Deceased Personnel'' for ''Death Benefits'' and ''1471'' for ''1475'' in item for chapter 75.

1997—Pub. L. 105–85, div. A, title V, §591(a)(2), Nov. 18, 1997, 111 Stat. 1762, added item for chapter 80.

1996—Pub. L. 104–201, div. A, title XVI, §1633(c)(3), Sept. 23, 1996, 110 Stat. 2751, substituted ''Civilian Defense Intelligence Employees'' for ''Defense Intelligence Agency and Central Imagery Office Civilian Personnel'' in item for chapter 83.

Pub. L. 104–106, div. A, title V, §§568(a)(2), 569(b)(2), title X, §1061(a)(2), Feb. 10, 1996, 110 Stat. 335, 351, 442, added items for chapters 76 and 88 and struck out item for chapter 89 ''Volunteers Investing in Peace and Security''.

1994—Pub. L. 103–359, title V, §501(b)(2), Oct. 14, 1994, 108 Stat. 3429, substituted ''Defense Intelligence Agency and Central Imagery Office Civilian Personnel'' for ''Defense Intelligence Agency Civilian Personnel'' in item for chapter 83.

1992—Pub. L. 102–484, div. A, title XIII, §1322(a)(2), Oct. 23, 1992, 106 Stat. 2553, added item for chapter 89.

1991—Pub. L. 102–190, div. A, title X, §1061(a)(26)(C)(ii), Dec. 5, 1991, 105 Stat. 1474, effective Oct. 1, 1993, struck out item for chapter 85 ''Procurement Management Personnel''.

Pub. L. 102–190, div. A, title XI, §1112(b)(2), Dec. 5, 1991, 105 Stat. 1501, substituted ''Original Appointments of Regular Officers in Grades Above Warrant Officer Grades'' for ''Appointments in Regular Components'' in item for chapter 33 and added item for chapter 33A.

Pub. L. 102–25, title VII, §701(e)(1), Apr. 6, 1991, 105 Stat. 114, added item for chapter 85.

1990—Pub. L. 101–510, div. A, title V, §502(a)(2), title XII, §1202(b), Nov. 5, 1990, 104 Stat. 1557, 1656, added items for chapters 58 and 87 and struck out item for chapter 85 ''Procurement Management Personnel''.

1988—Pub. L. 100–370, §1(c)(3), July 19, 1988, 102 Stat. 841, added item for chapter 54.

1986—Pub. L. 99–433, title IV, §401(b), Oct. 1, 1986, 100 Stat. 1030, added item for chapter 38.

1985—Pub. L. 99–145, title IX, §924(a)(2), Nov. 8, 1985, 99 Stat. 698, added item for chapter 85.

1983—Pub. L. 98–94, title IX, §925(a)(2), title XII, §1268(15), Sept. 24, 1983, 97 Stat. 648, 707, added item for chapter 74, and substituted ''or'' for ''and'' in item for chapter 60.

1981—Pub. L. 97–89, title VII, §701(a)(2), Dec. 4, 1981, 95 Stat. 1160, added item for chapter 83.

1980—Pub. L. 96–513, title V, §§501(1), 511(29), (54)(B), Dec. 12, 1980, 94 Stat. 2907, 2922, 2925, added item for chapter 32, substituted ''531'' for ''541'' as section number in item for chapter 33, substituted ''34'' for ''35'' as chapter number of chapter relating to appointments as

reserve officers, added items for chapters 35 and 36, substituted ''Reserve Components: Standards and Procedures for Retention and Promotion'' for ''Retention of Reserves'' in item for chapter 51, added item for chapter 60, substituted ''1251'' for ''1255'' as section number in item for chapter 63, substituted ''Retirement of Warrant Officers'' for ''Retirement'' in item for chapter 65, substituted ''1370'' for ''1371'' as section number in item for chapter 69, and amended item for chapter 73 to read: ''Annuities Based on Retired or Retainer Pay''.

1972—Pub. L. 92–425, § 2, Sept. 21, 1972, 86 Stat. 711, amended item for chapter 73 by inserting ''; Survivor Benefit Plan'' after ''Pay'' which could not be executed as directed in view of amendment by Pub. L. 87–381. See 1961 Amendment note below.

1968—Pub. L. 90–377, § 2, July 5, 1968, 82 Stat. 288, added item for chapter 48.

1967—Pub. L. 90–83, § 3(2), Sept. 11, 1967, 81 Stat. 220, struck out item for chapter 80 ''Exemplary Rehabilitation Certificates''.

1966—Pub. L. 89–690, § 2, Oct. 15, 1966, 80 Stat. 1017, added item for chapter 80.

1962—Pub. L. 87–649, § 3(2), Sept. 7, 1962, 76 Stat. 493, added item for chapter 40.

1961—Pub. L. 87–381, § 1(2), Oct. 4, 1961, 75 Stat. 810, substituted ''Retired Servicemen's Family Protection Plan'' for ''Annuities Based on Retired or Retainer Pay'' in item for chapter 73.

1958—Pub. L. 85–861, §§ 1(21), (26), (33), 33(a)(4)(B), Sept. 2, 1958, 72 Stat. 1443, 1450, 1455, 1564, substituted ''General Service Requirements'' for ''Service Requirements for Reserves'' in item for chapter 37, ''971'' for ''[No present sections]'' in item for chapter 49, ''Medical and Dental Care'' for ''Voting by Members of Armed Forces'' in item for chapter 55, and struck out ''Care of the Dead'' and substituted ''1475'' for ''1481'' in item for chapter 75.

CHAPTER 31—ENLISTMENTS

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[520a. Repealed.]
520b. Applicants for enlistment: authority to use funds for the issue of authorized articles.
520c. Recruiting functions: provision of meals and refreshments.

AMENDMENTS

2004—Pub. L. 108–375, div. A, title V, § 551(a)(2), Oct. 28, 2004, 118 Stat. 1911, added item 511.

2003—Pub. L. 108–136, div. A, title X, § 1031(a)(8)(B), Nov. 24, 2003, 117 Stat. 1597, substituted ''provision of meals and refreshments'' for ''use of funds'' in item 520c.

2002—Pub. L. 107–314, div. A, title V, § 531(a)(2), Dec. 2, 2002, 116 Stat. 2544, added item 510.

2000—Pub. L. 106–398, § 1 [[div. A], title X, § 1076(g)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–282, struck out item 520a ''Criminal history information for military recruiting purposes''.

1996—Pub. L. 104–201, div. A, title III, § 361(b), Sept. 23, 1996, 110 Stat. 2491, added item 520c.

1994—Pub. L. 103–337, div. A, title XVI, § 1671(b)(3), Oct. 5, 1994, 108 Stat. 3013, as amended by Pub. L. 104–106, div. A, title XV, § 1501(a)(8)(A), Feb. 10, 1996, 110 Stat. 495, struck out items 510 ''Reserve components: qualifications'', 511 ''Reserve components: terms'', and 512 ''Reserve components: transfers''.

1989—Pub. L. 101–189, div. A, title V, § 501(a)(2), Nov. 29, 1989, 103 Stat. 1435, added item 513.

1985—Pub. L. 99–145, title XIII, § 1303(a)(4)(B), Nov. 8, 1985, 99 Stat. 738, substituted ''enlistment'' for ''enlistments'' in item 520b.

1984—Pub. L. 98–525, title XIV, § 1401(a)(2), Oct. 19, 1984, 98 Stat. 2614, added item 520b.

1982—Pub. L. 97–252, title XI, § 1114(b)(3), (c)(2), Sept. 8, 1982, 96 Stat. 749, 750, inserted ''; compilation of directory information'' in item 503, and added item 520a.

1980—Pub. L. 96–342, title III, § 302(b)(2), Sept. 8, 1980, 94 Stat. 1083, added item 520.

1968—Pub. L. 90–623, § 2(2), Oct. 22, 1968, 82 Stat. 1314, struck out ''or national emergency'' after ''extension of enlistments during war'' in item 506.

Pub. L. 90–235, § 2(a)(1)(C), Jan. 2, 1968, 81 Stat. 755, redesignated item 501 as 502, and added items 501, 503 to 509, 518 and 519.

1962—Pub. L. 87–649, § 2(2), Sept. 7, 1962, 76 Stat. 492, added item 517.

1958—Pub. L. 85–861, § 1(9)(B), (C), Sept. 2, 1958, 72 Stat. 1440, struck out item 513 ''Reserve components: promotions'' and added item 516.

§ 501. Definition

In this chapter ''enlistment'' means original enlistment or reenlistment.

(Added Pub. L. 90–235, § 2(a)(1)(B), Jan. 2, 1968, 81 Stat. 753.)

PRIOR PROVISIONS

A prior section 501 was renumbered 502 of this title.

§ 502. Enlistment oath: who may administer

(a) ENLISTMENT OATH.—Each person enlisting in an armed force shall take the following oath:

''I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to regulations and the Uniform Code of Military Justice. So help me God.''

(b) WHO MAY ADMINISTER.—The oath may be taken before the President, the Vice-President, the Secretary of Defense, any commissioned officer, or any other person designated under regulations prescribed by the Secretary of Defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 17, § 501; Pub. L. 87–751, § 1, Oct. 5, 1962, 76 Stat. 748; renumbered § 502, Pub. L. 90–235, § 2(a)(1)(A), Jan. 2, 1968, 81 Stat. 753; Pub. L. 101–189, div. A, title VI, § 653(a)(1), Nov. 29, 1989, 103 Stat. 1462; Pub. L.

109–364, div. A, title V, § 595(a), Oct. 17, 2006, 120 Stat. 2235.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
501	50:737.	May 5, 1950, ch. 169, § 8, 64 Stat. 146.

The words ''or affirmation'' are omitted as covered by the definition of the word ''oath'' in section 1 of title 1. The words ''of any armed force'' are inserted in the last sentence, since they are necessarily implied by their use in the source statute.

REFERENCES IN TEXT

The Uniform Code of Military Justice, referred to in the oath, is classified to chapter 47 (§ 801 et seq.) of this title.

AMENDMENTS

2006—Pub. L. 109–364 designated existing provisions as subsec. (a), inserted heading, struck out concluding provisions which read as follows: ''This oath may be taken before any commissioned officer of any armed force.'', and added subsec. (b).

1989—Pub. L. 101–189 struck out ''or affirmation'' after ''This oath''.

1962—Pub. L. 87–751 substituted ''support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same'' for ''bear true faith and allegiance to the United States of America; that I will serve them honestly and faithfully against all their enemies whomsoever'' and inserted ''So help me God'' in the oath, and ''or affirmation'' in text.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 3 of Pub. L. 87–751 provided that: ''This Act [amending this section and section 304 of Title 32, National Guard] does not affect any oath taken before one year after its enactment [Oct. 5, 1962].''

§ 503. Enlistments: recruiting campaigns; compilation of directory information

(a) RECRUITING CAMPAIGNS.—(1) The Secretary concerned shall conduct intensive recruiting campaigns to obtain enlistments in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, and Regular Coast Guard.

(2) The Secretary of Defense shall act on a continuing basis to enhance the effectiveness of recruitment programs of the Department of Defense (including programs conducted jointly and programs conducted by the separate armed forces) through an aggressive program of advertising and market research targeted at prospective recruits for the armed forces and those who may influence prospective recruits. Subchapter I of chapter 35 of title 44 shall not apply to actions taken as part of that program.

(b) COMPILATION OF DIRECTORY INFORMATION.—(1) The Secretary of Defense may collect and compile directory information pertaining to each student who is 17 years of age or older or in the eleventh grade (or its equivalent) or higher and who is enrolled in a secondary school in the United States or its territories, possessions, or the Commonwealth of Puerto Rico.

(2) The Secretary may make directory information collected and compiled under this subsection available to the armed forces for military recruiting purposes. Such information may not be disclosed for any other purpose.

(3) Directory information pertaining to any person may not be maintained for more than 3 years after the date the information pertaining to such person is first collected and compiled under this subsection.

(4) Directory information collected and compiled under this subsection shall be confidential, and a person who has had access to such information may not disclose such information except for the purposes described in paragraph (2).

(5) The Secretary of Defense shall prescribe regulations to carry out this subsection. Regulations prescribed under this subsection shall be submitted to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives. Regulations prescribed by the Secretaries concerned to carry out this subsection shall be as uniform as practicable.

(6) Nothing in this subsection shall be construed as requiring, or authorizing the Secretary of Defense to require, that any educational institution furnish directory information to the Secretary.

(c) ACCESS TO SECONDARY SCHOOLS.—(1)(A) Each local educational agency receiving assistance under the Elementary and Secondary Education Act of 1965—

(i) shall provide to military recruiters the same access to secondary school students as is provided generally to postsecondary educational institutions or to prospective employers of those students; and

(ii) shall, upon a request made by military recruiters for military recruiting purposes, provide access to secondary school student names, addresses, and telephone listings, notwithstanding section 444(a)(5)(B) of the General Education Provisions Act (20 U.S.C. 1232g(a)(5)(B)).

(B) A local educational agency may not release a student's name, address, and telephone listing under subparagraph (A)(ii) without the prior written consent of a parent of the student if the student, or a parent of the student, has submitted a request to the local educational agency that the student's information not be released for a purpose covered by that subparagraph without prior written parental consent. Each local educational agency shall notify parents of the rights provided under the preceding sentence.

(2) If a local educational agency denies a request by the Department of Defense for recruiting access, the Secretary of Defense, in cooperation with the Secretary of the military department concerned, shall designate an officer in a grade not below the grade of colonel or, in the case of the Navy, captain, or a senior executive of that military department to meet with representatives of that local educational agency in person, at the offices of that agency, for the purpose of arranging for recruiting access. The designated officer or senior executive shall seek to have that meeting within 120 days of the date of the denial of the request for recruiting access.

(3) If, after a meeting under paragraph (2) with representatives of a local educational agency that has denied a request for recruiting access or (if the educational agency declines a request for the meeting) after the end of such 120-day pe-

riod, the Secretary of Defense determines that the agency continues to deny recruiting access, the Secretary shall transmit to the chief executive of the State in which the agency is located a notification of the denial of recruiting access and a request for assistance in obtaining that access. The notification shall be transmitted within 60 days after the date of the determination. The Secretary shall provide to the Secretary of Education a copy of such notification and any other communication between the Secretary and that chief executive with respect to such access.

(4) If a local educational agency continues to deny recruiting access one year after the date of the transmittal of a notification regarding that agency under paragraph (3), the Secretary—

(A) shall determine whether the agency denies recruiting access to at least two of the armed forces (other than the Coast Guard when it is not operating as a service in the Navy); and

(B) upon making an affirmative determination under subparagraph (A), shall transmit a notification of the denial of recruiting access to—

(i) the specified congressional committees;

(ii) the Senators of the State in which the local educational agency is located; and

(iii) the member of the House of Representatives who represents the district in which the local educational agency is located.

(5) The requirements of this subsection do not apply to a private secondary school that maintains a religious objection to service in the armed forces and which objection is verifiable through the corporate or other organizational documents or materials of that school.

(6) In this subsection:

(A) The term ''local educational agency'' means—

(i) a local educational agency, within the meaning of that term in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801); and

(ii) a private secondary school.

(B) The term ''recruiting access'' means access requested as described in paragraph (1).

(C) The term ''senior executive'' has the meaning given that term in section 3132(a)(3) of title 5.

(D) The term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

(E) The term ''specified congressional committees'' means the following:

(i) The Committee on Armed Services and the Committee on Health, Education, Labor, and Pensions of the Senate.

(ii) The Committee on Armed Services and the Committee on Education and the Workforce of the House of Representatives.

(F) The term ''member of the House of Representatives'' includes a Delegate or Resident Commissioner to Congress.

(d) DIRECTORY INFORMATION DEFINED.—In this section, the term ''directory information'' has the meaning given that term in subsection (a)(5)(A) of section 444 of the General Education Provisions Act (20 U.S.C. 1232g).

(Added Pub. L. 90–235, § 2(a)(1)(B), Jan. 2, 1968, 81 Stat. 754; amended Pub. L. 97–252, title XI, § 1114(b)(1), (2), Sept. 8, 1982, 96 Stat. 749; 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, § 571, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 622, 774; Pub. L. 106–398, § 1 [[div. A], title V, §§ 562, 563(a)–(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–131 to 1654A–133; Pub. L. 107–107, div. A, title V, § 544(a), title X, § 1048(a)(5)(A), Dec. 28, 2001, 115 Stat. 1112, 1222; Pub. L. 108–136, div. A, title V, § 543, Nov. 24, 2003, 117 Stat. 1478; Pub. L. 108–375, div. A, title X, § 1084(d)(5), Oct. 28, 2004, 118 Stat. 2061.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsec. (c)(1)(A), is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27, as amended, which is classified generally to chapter 70 (§ 6301 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

AMENDMENTS

2004—Subsec. (c)(1)(B). Pub. L. 108–375 substituted ''educational'' for ''education'' after ''Each local''.

2003—Subsec. (c)(5). Pub. L. 108–136, § 543(a), substituted ''apply to a private secondary school that'' for ''apply to—

''(A) a local educational agency with respect to access to secondary school students or access to directory information concerning such students for any period during which there is in effect a policy of that agency, established by majority vote of the governing body of the agency, to deny recruiting access to those students or to that directory information, respectively; or

''(B) a private secondary school which''.

Subsec. (c)(6)(A)(i). Pub. L. 108–136, § 543(b), substituted ''9101'' and ''7801'' for ''14101'' and ''8801'', respectively.

2001—Subsec. (c). Pub. L. 107–107, § 544(a), reenacted heading without change and amended text of par. (1) generally. Prior to amendment, par. (1) read as follows: ''Each local educational agency shall (except as provided under paragraph (5)) provide to the Department of Defense, upon a request made for military recruiting purposes, the same access to secondary school students, and to directory information concerning such students, as is provided generally to post-secondary educational institutions or to prospective employers of those students.''

Subsec. (c)(6)(A)(i). Pub. L. 107–107, § 1048(a)(5)(A), substituted ''14101'' for ''14101(18)'' and ''8801'' for ''8801(18)''.

2000—Subsec. (a). Pub. L. 106–398, § 1 [[div. A], title V, §§ 562, 563(c)(1)], inserted heading, designated existing provisions as par. (1), and added par. (2).

Subsec. (b). Pub. L. 106–398, § 1 [[div. A], title V, § 563(c)(2)], inserted heading.

Subsec. (b)(7). Pub. L. 106–398, § 1 [[div. A], title V, § 563(b)(1)], struck out par. (7) which read as follows: ''In this subsection, 'directory information' means, with respect to a student, the student's name, address, telephone listing, date and place of birth, level of education, degrees received, and the most recent previous educational agency or institution attended by the student.''

Subsec. (c). Pub. L. 106–398, § 1 [[div. A], title V, § 563(a)], amended subsec. (c) generally. Prior to amend-

ment, subsec. (c) read as follows: ''Each local educational agency is requested to provide to the Department of Defense, upon a request made for military recruiting purposes, the same access to secondary school students, and to directory information concerning such students, as is provided generally to post-secondary educational institutions or to prospective employers of those students.''

Subsec. (d). Pub. L. 106–398, §1 [[div. A], title V, §563(b)(2)], added subsec. (d).

1999—Subsec. (b)(5). Pub. L. 106–65, §1067(1), substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

Subsec. (c). Pub. L. 106–65, §571, added subsec. (c).

1996—Subsec. (b)(5). 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''.

1982—Pub. L. 97–252, §1114(b)(2), inserted ''; compilation of directory information'' in section catchline.

Subsec. (a). Pub. L. 97–252, §1114(b)(1)(A), designated existing provisions as subsec. (a).

Subsec. (b). Pub. L. 97–252, §1114(b)(1)(B), added subsec. (b).

CHANGE OF NAME

Committee on Education and the Workforce of House of Representatives changed to Committee on Education and Labor of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title V, §544(b), Dec. 28, 2001, 115 Stat. 1113, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on July 1, 2002, immediately after the amendment to section 503(c) of title 10, United States Code, made, effective that date, by section 563(a) 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–131).''

Pub. L. 107–107, div. A, title X, §1048(a)(5)(B), Dec. 28, 2001, 115 Stat. 1222, provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect on July 1, 2002, immediately after the amendment to such section [this section] effective that date by section 563(a) 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–131).''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, §1 [[div. A], title V, §563(d)], Oct. 30, 2000, 114 Stat. 1654, 1654A–133, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on July 1, 2002.''

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.

RECRUITMENT AND ENLISTMENT OF HOME-SCHOOLED STUDENTS IN THE ARMED FORCES

Pub. L. 109–163, div. A, title V, §591, Jan. 6, 2006, 119 Stat. 3280, provided that:

''(a) POLICY ON RECRUITMENT AND ENLISTMENT.—

''(1) POLICY REQUIRED.—The Secretary of Defense shall prescribe a policy on the recruitment and enlistment of home-schooled students in the Armed Forces.

''(2) UNIFORMITY ACROSS THE ARMED FORCES.—The Secretary shall ensure that the policy prescribed under paragraph (1) applies, to the extent practicable, uniformly across the Armed Forces.

''(b) ELEMENTS.—The policy under subsection (a) shall include the following:

''(1) An identification of a graduate of home schooling for purposes of recruitment and enlistment in the Armed Forces that is in accordance with the requirements described in subsection (c).

''(2) A communication plan to ensure that the policy described in subsection (c) is understood by recruiting officials of all the Armed Forces, to include field recruiters at the lowest level of command.

''(3) An exemption of graduates of home schooling from the requirement for a secondary school diploma or an equivalent (GED) as a precondition for enlistment in the Armed Forces.

''(c) HOME SCHOOL GRADUATES.—In prescribing the policy under subsection (a), the Secretary of Defense shall prescribe a single set of criteria to be used by the Armed Forces in determining whether an individual is a graduate of home schooling. The Secretary concerned shall ensure compliance with education credential coding requirements.

''(d) SECRETARY CONCERNED DEFINED.—In this section, the term 'Secretary concerned' has the meaning given such term in section 101(a)(9) of title 10, United States Code.''

TEMPORARY ARMY AUTHORITY TO PROVIDE ADDITIONAL RECRUITMENT INCENTIVES

Pub. L. 109–163, div. A, title VI, §681, Jan. 6, 2006, 119 Stat. 3320, as amended by Pub. L. 111–84, div. A, title VI, §621, Oct. 28, 2009, 123 Stat. 2358, provided that:

''(a) AUTHORITY TO DEVELOP AND PROVIDE RECRUITMENT INCENTIVES.—The Secretary of the Army may develop and provide incentives not otherwise authorized by law to encourage individuals to accept commissions as officers or to enlist in the Army.

''(b) RELATION TO OTHER PERSONNEL AUTHORITIES.—A recruitment incentive developed under subsection (a) may be provided—

''(1) without regard to the lack of specific authority for the incentive under title 10 or 37, United States Code; and

''(2) notwithstanding any provision of such titles, or any rule or regulation prescribed under such provision, relating to methods of—

''(A) determining requirements for, and the compensation of, members of the Army who are assigned duty as military recruiters; or

''(B) providing incentives to individuals to accept commissions or enlist in the Army, including the provision of group or individual bonuses, pay, or other incentives.

''(c) WAIVER OF OTHERWISE APPLICABLE LAWS.—A provision of title 10 or 37, United States Code, may not be waived with respect to, or otherwise determined to be inapplicable to, the provision of a recruitment incentive developed under subsection (a) without the approval of the Secretary of Defense.

''(d) NOTICE AND WAIT REQUIREMENT.—A recruitment incentive developed under subsection (a) may not be provided to individuals until—

''(1) the Secretary of the Army submits to Congress, the appropriate elements of the Department of Defense, and the Comptroller General a plan that includes—

''(A) a description of the incentive, including the purpose of the incentive and the potential recruits to be addressed by the incentive;

''(B) a description of the provisions of titles 10 and 37, United States Code, from which the incentive would require a waiver and the rationale to support the waiver;

''(C) a statement of the anticipated outcomes as a result of providing the incentive; and

''(D) the method to be used to evaluate the effectiveness of the incentive; and

''(2) a 45-day period beginning on the date on which the plan was received by Congress expires.

''(e) LIMITATION ON NUMBER OF INCENTIVES.—Not more than four recruitment incentives may be provided at the same time under the authority of this section.

''(f) LIMITATION ON NUMBER OF INDIVIDUALS RECEIVING INCENTIVES.—The number of individuals who receive one or more of the recruitment incentives provided under subsection (a) during a fiscal year may not exceed the number of individuals equal to 20 percent of the accession mission of the Army for that fiscal year.

''(g) DURATION OF DEVELOPED INCENTIVE.—A recruitment incentive developed under subsection (a) may be provided for not longer than a three-year period beginning on the date on which the incentive is first provided, except that the Secretary of the Army may extend the period if the Secretary determines that additional time is needed to fully evaluate the effectiveness of the incentive.

''(h) REPORTING REQUIREMENTS.—

''(1) SECRETARY OF THE ARMY REPORT.—The Secretary of the Army shall submit to Congress an annual report on the recruitment incentives provided under subsection (a) during the preceding year, including—

''(A) a description of the incentives provided under subsection (a) during that fiscal year; and

''(B) an assessment of the impact of the incentives on the recruitment of individuals as officers or enlisted members.

''(2) COMPTROLLER GENERAL REPORT.—As soon as practicable after receipt of each plan under subsection (d), the Comptroller General shall submit to Congress a report evaluating the expected outcomes of the recruitment incentive covered by the plan in terms of cost effectiveness and mission achievement.

''(i) DURATION OF AUTHORITY.—

''(1) IN GENERAL.—The Secretary may not develop an incentive under this section, or first provide an incentive developed under this section to an individual, after December 31, 2012.

''(2) CONTINUATION OF INCENTIVES.—Nothing in paragraph (1) shall be construed to prohibit or limit the continuing provision to an individual after the date specified in that paragraph of an incentive first provided the individual under this section before that date.''

ENHANCED SCREENING METHODS AND PROCESS IMPROVEMENTS FOR RECRUITMENT OF HOME SCHOOLED AND NATIONAL GUARD CHALLENGE PROGRAM GED RECIPIENTS

Pub. L. 108–375, div. A, title V, § 593, Oct. 28, 2004, 118 Stat. 1934, as amended by Pub. L. 109–364, div. A, title X, § 1071(g)(4), Oct. 17, 2006, 120 Stat. 2402, provided that:

''(a) ENHANCED SCREENING METHODS AND PROCESS IMPROVEMENTS.—(1) The Secretary of the Army shall carry out an initiative—

''(A) to develop screening methods and process improvements for recruiting specified GED recipients so as to achieve attrition patterns, among the GED recipients so recruited, that match attrition patterns for Army recruits who are high school diploma graduates; and

''(B) subject to subsection (b), to implement such screening methods and process improvements on a test basis.

''(2) For purposes of this section, the term 'specified GED recipients' means persons who receive a General Educational Development (GED) certificate as a result of home schooling or the completion of a program under the National Guard Challenge program.

''(b) SECRETARY OF DEFENSE REVIEW.—Before the screening methods and process improvements developed under subsection (a)(1) are put into effect under subsection (a)(2), the Secretary of Defense shall review the proposed screening methods and process improvements. Based on such review, the Secretary of Defense either shall approve the use of such screening methods and process improvements for testing (with such modifications as the Secretary may direct) or shall disapprove the use of such methods and process improvements on a test basis.

''(c) SECRETARY OF DEFENSE DECISION.—If the Secretary of Defense determines under subsection (b) that the screening methods and process improvements developed under subsection (a)(1) should be implemented on a test basis, then upon completion of the test period, the Secretary of Defense shall, after reviewing the results of the test program, determine whether the new screening methods and process improvements developed by the Army should be extended throughout the Department for recruit candidates identified by the new procedures to be considered tier 1 recruits.

''(d) REPORTS.—(1) If the Secretary of Defense determines under subsection (b) that the screening methods and process improvements developed under subsection (a)(1) should not be implemented on a test basis, the Secretary of Defense shall, not later than 90 days thereafter, notify the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives of such determination, together with the reasons of the Secretary for such determination.

''(2) If the Secretary of Defense determines under subsection (b) that the screening methods and process improvements developed under subsection (a)(1) should be implemented on a test basis, the Secretary of the Army shall submit to the committees specified in paragraph (1) a report on the results of the testing. The report shall be submitted not later than March 31, 2009, except that if the Secretary of Defense directs an earlier termination of the testing initiative, the Secretary of the Army shall submit the report under this paragraph not later than 180 days after such termination. Such report shall include the determination of the Secretary of Defense under subsection (c). If that determination is that the methods and processes tested should not be extended to the other services, the report shall include the Secretary's rationale for not recommending such extension.''

DEPARTMENT OF DEFENSE JOINT ADVERTISING, MARKET RESEARCH, AND STUDIES PROGRAM

Pub. L. 108–136, div. A, title V, § 548, Nov. 24, 2003, 117 Stat. 1481, provided that:

''(a) PROGRAM AUTHORIZED.—The Secretary of Defense may carry out a joint advertising, market research, and studies program to complement the recruiting advertising programs of the military departments and improve the ability of the military departments to attract and recruit qualified individuals to serve in the Armed Forces.

''(b) FUNDING.—Of the amount authorized to be appropriated by section 301(5) [117 Stat. 1426] for operation and maintenance for Defense-wide activities, $7,500,000 may be made available to carry out the joint advertising, market research, and studies program.''

NOTIFICATION TO LOCAL EDUCATIONAL AGENCIES

Pub. L. 107–107, div. A, title V, § 544(c), Dec. 28, 2001, 115 Stat. 1113, directed the Secretary of Education to provide to local educational agencies notice of the provisions of subsec. (c) of this section, as amended by Pub. L. 107–107, not later than 120 days after Dec. 28, 2001.

ARMY RECRUITING PILOT PROGRAMS

Pub. L. 106–398, § 1 [[div. A], title V, § 561], Oct. 30, 2000, 114 Stat. 1654, 1654A–129, as amended by Pub. L. 107–107, div. A, title V, § 543, Dec. 28, 2001, 115 Stat. 1112, provided that:

''(a) REQUIREMENT FOR PROGRAMS.—The Secretary of the Army shall carry out pilot programs to test various recruiting approaches under this section for the following purposes:

''(1) To assess the effectiveness of the recruiting approaches for creating enhanced opportunities for recruiters to make direct, personal contact with potential recruits.

''(2) To improve the overall effectiveness and efficiency of Army recruiting activities.

''(b) OUTREACH THROUGH MOTOR SPORTS.—(1) One of the pilot programs shall be a pilot program of public outreach that associates the Army with motor sports competitions to achieve the objectives set forth in paragraph (2).

''(2) The events and activities undertaken under the pilot program shall be designed to provide opportunities for Army recruiters to make direct, personal contact with high school students to achieve the following objectives:

''(A) To increase enlistments by students graduating from high school.

''(B) To reduce attrition in the Delayed Entry Program of the Army by sustaining the personal commitment of students who have elected delayed entry into the Army under the program.

''(3) Under the pilot program, the Secretary of the Army shall provide for the following:

''(A) For Army recruiters or other Army personnel—

''(i) to organize Army sponsored career day events in association with national motor sports competitions; and

''(ii) to arrange for or encourage attendance at the competitions by high school students, teachers, guidance counselors, and administrators of high schools located near the competitions.

''(B) For Army recruiters and other soldiers to attend national motor sports competitions—

''(i) to display exhibits depicting the contemporary Army and career opportunities in the Army; and

''(ii) to discuss those opportunities with potential recruits.

''(C) For the Army to sponsor a motor sports racing team as part of an integrated program of recruitment and publicity for the Army.

''(D) For the Army to sponsor motor sports competitions for high school students at which recruiters meet with potential recruits.

''(E) For Army recruiters or other Army personnel to compile in an Internet accessible database the names, addresses, telephone numbers, and electronic mail addresses of persons who are identified as potential recruits through activities under the pilot program.

''(F) Any other activities associated with motor sports competition that the Secretary determines appropriate for Army recruitment purposes.

''(c) OUTREACH AT VOCATIONAL SCHOOLS AND COMMUNITY COLLEGES.—(1) One of the pilot programs shall be a pilot program under which Army recruiters are assigned, as their primary responsibility, at postsecondary vocational institutions and community colleges for the purpose of recruiting students graduating from those institutions and colleges, recent graduates of those institutions and colleges, and students withdrawing from enrollments in those institutions and colleges.

''(2) The Secretary of the Army shall select the institutions and colleges to be invited to participate in the pilot program.

''(3) The conduct of the pilot program at an institution or college shall be subject to an agreement which the Secretary shall enter into with the governing body or authorized official of the institution or college, as the case may be.

''(4) Under the pilot program, the Secretary shall provide for the following:

''(A) For Army recruiters to be placed in postsecondary vocational institutions and community colleges to serve as a resource for guidance counselors and to recruit for the Army.

''(B) For Army recruiters to recruit from among students and graduates described in paragraph (1).

''(C) For the use of telemarketing, direct mail, interactive voice response systems, and Internet website capabilities to assist the recruiters in the postsecondary vocational institutions and community colleges.

''(D) For any other activities that the Secretary determines appropriate for recruitment activities in postsecondary vocational institutions and community colleges.

''(5) In this subsection, the term 'postsecondary vocational institution' has the meaning given the term in section 102(c) of the Higher Education Act of 1965 (20 U.S.C. 1002(c)).

''(d) CONTRACT RECRUITING INITIATIVES.—(1) One of the pilot programs shall be a program that expands in accordance with this subsection the scope of the Army's contract recruiting initiatives that are ongoing as of the date of the enactment of this Act [Oct. 30, 2000]. Under the pilot program, the Secretary of the Army shall select at least 10 recruiting companies to apply the initiatives in efforts to recruit personnel for the Army.

''(2) Under the pilot program, the Secretary shall provide for the following:

''(A) For replacement of the Regular Army and Army Reserve recruiters by contract recruiters in the 10 recruiting companies selected under paragraph (1).

''(B) For operation of the 10 companies under the same rules as the other Army recruiting companies.

''(C) For use of the offices, facilities, and equipment of the 10 companies by the contract recruiters.

''(D) For reversion to performance of the recruiting activities by Regular Army and Army Reserve soldiers in the 10 companies upon termination of the pilot program.

''(E) For any other uses of contractor personnel for Army recruiting activities that the Secretary determines appropriate.

''(e) DURATION OF PILOT PROGRAMS.—The pilot programs required by this section shall be carried out during the period beginning on October 1, 2000, and, subject to subsection (f), ending on September 30, 2007.

''(f) AUTHORITY TO EXPAND OR EXTEND PILOT PROGRAMS.—The Secretary may expand the scope of any of the pilot programs (under subsection (b)(3)(F), (c)(4)(D), (d)(2)(E), or otherwise) or extend the period for any of the pilot programs. Before doing so in the case of a pilot program, the Secretary of the Army shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a written notification of the expansion of the pilot program (together with the scope of the expansion) or the continuation of the pilot program (together with the period of the extension), as the case may be.

''(g) REPORTS.—Not later than February 1, 2008, the Secretary of the Army shall submit to the Committees on Armed Services of the Senate and the House of Representatives a separate report on each of the pilot programs carried out under this section. The report on a pilot program shall include the following:

''(1) The Secretary's assessment of the value of the actions taken in the administration of the pilot program for increasing the effectiveness and efficiency of Army recruiting.

''(2) Any recommendations for legislation or other action that the Secretary considers appropriate to increase the effectiveness and efficiency of Army recruiting.''

PILOT PROGRAM TO ENHANCE MILITARY RECRUITING BY IMPROVING MILITARY AWARENESS OF SCHOOL COUNSELORS AND EDUCATORS

Pub. L. 106–398, §1 [[div. A], title V, §564], Oct. 30, 2000, 114 Stat. 1654, 1654A–133, as amended by Pub. L. 109–364, div. A, title X, §1046(d), Oct. 17, 2006, 120 Stat. 2394, directed the Secretary of Defense to conduct a three-year pilot program in a qualifying interactive Internet site beginning not later than 180 days after Oct. 30, 2000, to determine if cooperation with military recruiters by local educational agencies and by institutions of higher education could be enhanced by improving the understanding of school counselors and educators about military recruiting and military career opportunities.

MEASURES TO IMPROVE RECRUIT QUALITY AND REDUCE RECRUIT ATTRITION

Pub. L. 105–85, div. A, title V, subtitle D, Nov. 18, 1997, 111 Stat. 1738, provided that:

''SEC. 531. REFORM OF MILITARY RECRUITING SYSTEMS.

''(a) IN GENERAL.—The Secretary of Defense shall carry out reforms in the recruiting systems of the Army, Navy, Air Force, and Marine Corps in order to improve the quality of new recruits and to reduce attrition among recruits.

''(b) SPECIFIC REFORMS.—As part of the reforms in military recruiting systems to be undertaken under subsection (a), the Secretary shall take the following steps:

''(1) Improve the system of pre-enlistment waivers and separation codes used for recruits by (A) revising and updating those waivers and codes to allow more accurate and useful data collection about those separations, and (B) prescribing regulations to ensure that those waivers and codes are interpreted in a uniform manner by the military services.

''(2) Develop a reliable database for (A) analyzing (at both the Department of Defense and service-level) data on reasons for attrition of new recruits, and (B) undertaking Department of Defense or service-specific measures (or both) to control and manage such attrition.

''(3) Require that the Secretary of each military department (A) adopt or strengthen incentives for recruiters to thoroughly prescreen potential candidates for recruitment, and (B) link incentives for recruiters, in part, to the ability of a recruiter to screen out unqualified candidates before enlistment.

''(4) Require that the Secretary of each military department include as a measurement of recruiter performance the percentage of persons enlisted by a recruiter who complete initial combat training or basic training.

''(5) Assess trends in the number and use of waivers over the 1991–1997 period that were issued to permit applicants to enlist with medical or other conditions that would otherwise be disqualifying.

''(6) Require the Secretary of each military department to implement policies and procedures (A) to ensure the prompt separation of recruits who are unable to successfully complete basic training, and (B) to remove those recruits from the training environment while separation proceedings are pending.

''(c) REPORT.—Not later than March 31, 1998, the Secretary shall submit to Congress a report of the trends assessed under subsection (b)(5). The information on those trends provided in the report shall be shown by armed force and by category of waiver. The report shall include recommendations of the Secretary for changing, revising, or limiting the use of waivers referred to in that subsection.

''SEC. 532. IMPROVEMENTS IN MEDICAL PRESCREENING OF APPLICANTS FOR MILITARY SERVICE.

''(a) IN GENERAL.—The Secretary of Defense shall improve the medical prescreening of applicants for entrance into the Army, Navy, Air Force, or Marine Corps.

''(b) SPECIFIC STEPS.—As part of those improvements, the Secretary shall take the following steps:

''(1) Require that each applicant for service in the Army, Navy, Air Force, or Marine Corps (A) provide to the Secretary the name of the applicant's medical insurer and the names of past medical providers, and (B) sign a release allowing the Secretary to request and obtain medical records of the applicant.

''(2) Require that the forms and procedures for medical prescreening of applicants that are used by recruiters and by Military Entrance Processing Commands be revised so as to ensure that medical questions are specific, unambiguous, and tied directly to the types of medical separations most common for recruits during basic training and follow-on training.

''(3) Add medical screening tests to the examinations of recruits carried out by Military Entrance Processing Stations, provide more thorough medical examinations to selected groups of applicants, or both, to the extent that the Secretary determines that to do so could be cost effective in reducing attrition at basic training.

''(4) Provide for an annual quality control assessment of the effectiveness of the Military Entrance Processing Commands in identifying medical conditions in recruits that existed before enlistment in the Armed Forces, each such assessment to be performed by an agency or contractor other than the Military Entrance Processing Commands.

''SEC. 533. IMPROVEMENTS IN PHYSICAL FITNESS OF RECRUITS.

''(a) IN GENERAL.—The Secretary of Defense shall take steps to improve the physical fitness of recruits before they enter basic training.

''(b) SPECIFIC STEPS.—As part of those improvements, the Secretary shall take the following steps:

''(1) Direct the Secretary of each military department to implement programs under which new recruits who are in the Delayed Entry Program are encouraged to participate in physical fitness activities before reporting to basic training.

''(2) Develop a range of incentives for new recruits to participate in physical fitness programs, as well as for those recruits who improve their level of fitness while in the Delayed Entry Program, which may include access to Department of Defense military fitness facilities, and access to military medical facilities in the case of a recruit who is injured while participating in physical activities with recruiters or other military personnel.

''(3) Evaluate whether partnerships between recruiters and reserve components, or other innovative arrangements, could provide a pool of qualified personnel to assist in the conduct of physical training programs for new recruits in the Delayed Entry Program.''

DENIAL OF FUNDS FOR PREVENTING ROTC ACCESS TO CAMPUS OR FEDERAL MILITARY RECRUITING ON CAMPUS; EXCEPTIONS

Pub. L. 104–208, div. A, title I, § 101(e) [title V, § 514], Sept. 30, 1996, 110 Stat. 3009–233, 3009–270, which provided that none of the funds made available in any Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act for any fiscal year could be provided by contract or by grant to a covered educational entity if the Secretary of Defense determined that the covered educational entity had a policy or practice that prohibited or prevented the maintaining, establishing, or operation of a unit of the Senior Reserve Officer Training Corps at the covered educational entity, or a student at the covered educational entity from enrolling in a unit of the Senior Reserve Officer Training Corps at another institution of higher education, or prohibited or prevented entry to campuses, or access to students on campuses, for purposes of Federal military recruiting or access by military recruiters for purposes of Federal military recruiting to student names, addresses, and telephone listings and, if known, student ages, levels of education, and majors, was repealed and restated in section 983 of this title by Pub. L. 106–65, div. A, title V, § 549(a)(1), (b)(2), Oct. 5, 1999, 113 Stat. 609, 611.

MILITARY RECRUITING ON CAMPUS

Pub. L. 103–337, div. A, title V, § 558, Oct. 5, 1994, 108 Stat. 2776, as amended by Pub. L. 104–324, title II, § 206(a), Oct. 19, 1996, 110 Stat. 3908, which provided that no funds available to the Department of Defense or the Department of Transportation could be provided by grant or contract to any institution of higher education that had a policy of denying or preventing the Secretary of Defense or the Secretary of Transportation from obtaining for military recruiting purposes

entry to campuses or access to students on campuses or access to directory information pertaining to students, was repealed and restated in section 983 of this title by Pub. L. 106–65, div. A, title V, §549(a)(1), (b)(1), Oct. 5, 1999, 113 Stat. 609, 611.

MILITARY RECRUITING INFORMATION

Section 1114(a) of Pub. L. 97–252 provided that: ''The Congress finds that in order for Congress to carry out effectively its constitutional authority to raise and support armies, it is essential—

''(1) that the Secretary of Defense obtain and compile directory information pertaining to students enrolled in secondary schools throughout the United States; and

''(2) that such directory information be used only for military recruiting purposes and be retained in the case of each person with respect to whom such information is obtained and compiled for a limited period of time.''

ACCESS OF ARMED FORCES RECRUITING PERSONNEL TO SECONDARY EDUCATIONAL INSTITUTIONS; RELEASE OF DATA

Pub. L. 96–342, title III, §302(d), Sept. 8, 1980, 94 Stat. 1083, provided that: ''It is the sense of the Congress—

''(1) that secondary educational institutions in the United States, the Commonwealth of Puerto Rico, and the territories of the United States should cooperate with the Armed Forces by allowing recruiting personnel access to such institutions; and

''(2) that it is appropriate for such institutions to release to the Armed Forces information regarding students at such institutions (including such data as names, addresses, and education levels) which is relevant to recruiting individuals for service in the Armed Forces.''

§504. Persons not qualified

(a) INSANITY, DESERTION, FELONS, ETC.—No person who is insane, intoxicated, or a deserter from an armed force, or who has been convicted of a felony, may be enlisted in any armed force. However, the Secretary concerned may authorize exceptions, in meritorious cases, for the enlistment of deserters and persons convicted of felonies.

(b) CITIZENSHIP OR RESIDENCY.—(1) A person may be enlisted in any armed force only if the person is one of the following:

(A) A national of the United States, as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).

(B) An alien who is lawfully admitted for permanent residence, as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)).

(C) A person described in section 341 of one of the following compacts:

(i) The Compact of Free Association between the Federated States of Micronesia and the United States (section 201(a) of Public Law 108–188 (117 Stat. 2784; 48 U.S.C. 1921 note)).

(ii) The Compact of Free Association between the Republic of the Marshall Islands and the United States (section 201(b) of Public Law 108–188 (117 Stat. 2823; 48 U.S.C. 1921 note)).

(iii) The Compact of Free Association between Palau and the United States (section 201 of Public Law 99–658 (100 Stat. 3678; 48 U.S.C. 1931 note)).

(2) Notwithstanding paragraph (1), the Secretary concerned may authorize the enlistment of a person not described in paragraph (1) if the Secretary determines that such enlistment is vital to the national interest.

(Added Pub. L. 90–235, §2(a)(1)(B), Jan. 2, 1968, 81 Stat. 754; amended Pub. L. 109–163, div. A, title V, §542(a), Jan. 6, 2006, 119 Stat. 3253.)

AMENDMENTS

2006—Pub. L. 109–163 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

§505. Regular components: qualifications, term, grade

(a) The Secretary concerned may accept original enlistments in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard, as the case may be, of qualified, effective, and able-bodied persons who are not less than seventeen years of age nor more than forty-two years of age. However, no person under eighteen years of age may be originally enlisted without the written consent of his parent or guardian, if he has a parent or guardian entitled to his custody and control.

(b) A person is enlisted in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard in the grade or rating prescribed by the Secretary concerned.

(c) The Secretary concerned may accept original enlistments of persons for the duration of their minority or for a period of at least two but not more than eight years, in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard, as the case may be.

(d)(1) The Secretary concerned may accept a reenlistment in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard, as the case may be, for a period determined under this subsection.

(2) In the case of a member who has less than 10 years of service in the armed forces as of the day before the first day of the period for which reenlisted, the period for which the member reenlists shall be at least two years but not more than eight years.

(3) In the case of a member who has at least 10 years of service in the armed forces as of the day before the first day of the period for which reenlisted, the Secretary concerned may accept a reenlistment for either—

(A) a specified period of at least two years but not more than eight years; or

(B) an unspecified period.

(4) No enlisted member is entitled to be reenlisted for a period that would expire before the end of the member's current enlistment.

(Added Pub. L. 90–235, §2(a)(1)(B), Jan. 2, 1968, 81 Stat. 754; amended Pub. L. 93–290, May 24, 1974, 88 Stat. 173; Pub. L. 95–485, title VIII, §820(a), Oct. 20, 1978, 92 Stat. 1627; Pub. L. 98–94, title X, §1023, Sept. 24, 1983, 97 Stat. 671; Pub. L. 104–201, div. A, title V, §511, Sept. 23, 1996, 110 Stat. 2514; Pub. L. 109–163, div. A, title V, §§543, 544, Jan. 6, 2006, 119 Stat. 3253; Pub. L. 110–417, [div. A], title V, §531(a), Oct. 14, 2008, 122 Stat. 4449.)

AMENDMENTS

2008—Subsec. (d)(2), (3)(A). Pub. L. 110–417 substituted ''eight years'' for ''six years''.

2006—Subsec. (a). Pub. L. 109–163, § 543, in first sentence, substituted ''forty-two years of age'' for ''thirty-five years of age''.

Subsec. (c). Pub. L. 109–163, § 544, substituted ''eight years'' for ''six years''.

1996—Subsec. (d). Pub. L. 104–201 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''The Secretary concerned may accept reenlistments in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard, as the case may be, for period of at least two but not more than six years. No enlisted member is entitled to be reenlisted for a period that would expire before the end of his current enlistment.''

1983—Subsecs. (c), (d). Pub. L. 98–94 substituted ''at least two but not more than six years'' for ''two, three, four, five, or six years''.

1978—Subsecs. (d), (e). Pub. L. 95–485 redesignated subsec. (e) as (d). Former subsec. (d), which provided that in the Regular Army female persons may be enlisted only in the Women's Army Corps, was struck out.

1974—Subsec. (a). Pub. L. 93–290, § 1, struck out provisions which prohibited the Secretary from accepting original enlistments from female persons less than 18 years of age, and which required consent of the parent or guardian for an original enlistment of a female person under 21 years of age.

Subsec. (c). Pub. L. 93–290, § 2, substituted provisions permitting the Secretary to accept original enlistments of persons for the duration of their minority or for a period of two, three, four, five, or six years, for provisions which limited the Secretary to accept original enlistments from male persons for the duration of their minority or for a period of two, three, four, five, or six years, and from female persons for a period of two, three, four, five, or six years.

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.

§ 506. Regular components: extension of enlistments during war

An enlistment in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard in effect at the beginning of a war, or entered into during a war, unless sooner terminated by the President, continues in effect until six months after the termination of that war.

(Added Pub. L. 90–235, § 2(a)(1)(B), Jan. 2, 1968, 81 Stat. 754.)

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.

§ 507. Extension of enlistment for members needing medical care or hospitalization

(a) An enlisted member of an armed force on active duty whose term of enlistment expires while he is suffering from disease or injury incident to service and not due to his misconduct, and who needs medical care or hospitalization, may be retained on active duty, with his consent, until he recovers to the extent that he is able to meet the physical requirements for reenlistment, or it is determined that recovery to that extent is impossible.

(b) This section does not prevent the retention in service, without his consent, of an enlisted member of an armed force under section 972 of this title.

(Added Pub. L. 90–235, § 2(a)(1)(B), Jan. 2, 1968, 81 Stat. 754.)

§ 508. Reenlistment: qualifications

(a) No person whose service during his last term of enlistment was not honest and faithful may be reenlisted in an armed force. However, the Secretary concerned may authorize the reenlistment in the armed force under his jurisdiction of such a person if his conduct after that service has been good.

(b) A person discharged from a Regular component may be reenlisted in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard, as the case may be, under such regulations as the Secretary concerned may prescribe.

(c) This section does not deprive a person of any right to be reenlisted in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard under any other provision of law.

(Added Pub. L. 90–235, § 2(a)(1)(B), Jan. 2, 1968, 81 Stat. 755.)

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.

§ 509. Voluntary extension of enlistments: periods and benefits

(a) Under such regulations as the Secretary concerned may prescribe, the term of enlistment of a member of an armed force may be extended or reextended with his written consent for any period. However, the total of all such extensions of an enlistment may not exceed four years.

(b) When a member is discharged from an enlistment that has been extended under this section, he has the same rights, privileges, and benefits that he would have if discharged at the same time from an enlistment not so extended.

(Added Pub. L. 90–235, § 2(a)(1)(B), Jan. 2, 1968, 81 Stat. 755.)

§ 510. Enlistment incentives for pursuit of skills to facilitate national service

(a) ENLISTMENT INCENTIVE PROGRAM.—The Secretary of Defense shall carry out an enlistment incentive program in accordance with this section under which a person who is a National Call

to Service participant shall be entitled to one of the incentives specified in subsection (e). The program shall be carried out during the period ending on December 31, 2007, and may be carried out after that date.

(b) NATIONAL CALL TO SERVICE PARTICIPANT.—In this section, the term ''National Call to Service participant'' means a person who has not previously served in the armed forces who enters into an original enlistment pursuant to a written agreement with the Secretary of a military department (in such form and manner as may be prescribed by that Secretary) under which the person agrees to perform a period of national service as specified in subsection (c).

(c) NATIONAL SERVICE.—The total period of national service to which a National Call to Service participant is obligated under the agreement under this section shall be specified in the agreement. Under the agreement, the participant shall—

(1) upon completion of initial entry training (as prescribed by the Secretary of Defense), serve on active duty in a military occupational specialty designated by the Secretary of Defense under subsection (d) for a period of 15 months;

(2) upon completion of the period of active duty specified in paragraph (1) and without a break in service, serve either (A) an additional period of active duty as determined by the Secretary of Defense, or (B) a period of 24 months in an active status in the Selected Reserve; and

(3) upon completion of the period of service specified in paragraph (2), and without a break in service, serve the remaining period of obligated service specified in the agreement—

(A) on active duty in the armed forces;

(B) in the Selected Reserve;

(C) in the Individual Ready Reserve;

(D) in Americorps or another domestic national service program jointly designated by the Secretary of Defense and the head of such program for purposes of this section; or

(E) in any combination of service referred to in subparagraphs (A) through (D) that is approved by the Secretary of the military department concerned pursuant to regulations prescribed by the Secretary of Defense and specified in the agreement.

(d) DESIGNATED MILITARY OCCUPATIONAL SPECIALTIES.—The Secretary of Defense shall designate military occupational specialties for purposes of subsection (c)(1). Such military occupational specialties shall be military occupational specialties that, as determined by the Secretary, will facilitate pursuit of national service by National Call to Service participants and shall include military occupational specialties for enlistments for officer training and subsequent service as an officer, in cases in which the reason for the enlistment and entry into an agreement under subsection (b) is to enter an officer training program.

(e) INCENTIVES.—The incentives specified in this subsection are as follows:

(1) Payment of a bonus in the amount of $5,000.

(2) Payment in an amount not to exceed $18,000 of outstanding principal and interest on qualifying student loans of the National Call to Service participant.

(3) Entitlement to an allowance for educational assistance at the monthly rate equal to the monthly rate payable for basic educational assistance allowances under section 3015(a)(1) of title 38 for a total of 12 months.

(4) Entitlement to an allowance for educational assistance at the monthly rate equal to 50 percent of the monthly rate payable for basic educational assistance allowances under section 3015(b)(1) of title 38 for a total of 36 months.

(f) ELECTION OF INCENTIVE.—A National Call to Service participant shall elect in the agreement under subsection (b) which incentive under subsection (e) to receive. An election under this subsection is irrevocable.

(g) PAYMENT OF BONUS AMOUNTS.—(1) Payment to a National Call to Service participant of the bonus elected by the National Call to Service participant under subsection (e)(1) shall be made in such time and manner as the Secretary of Defense shall prescribe.

(2)(A) Payment of outstanding principal and interest on the qualifying student loans of a National Call to Service participant, as elected under subsection (e)(2), shall be made in such time and manner as the Secretary of Defense shall prescribe.

(B) Payment under this paragraph of the outstanding principal and interest on the qualifying student loans of a National Call to Service participant shall be made to the holder of such student loans, as identified by the National Call to Service participant to the Secretary of the military department concerned for purposes of such payment.

(3) Payment of a bonus or incentive in accordance with this subsection shall be made by the Secretary of the military department concerned.

(h) COORDINATION WITH MONTGOMERY GI BILL BENEFITS.—(1)(A) Subject to subparagraph (B), a National Call to Service participant who elects an incentive under paragraph (3) or (4) of subsection (e) is not entitled to additional educational assistance under chapter 1606 of this title or to basic educational assistance under subchapter II of chapter 30 of title 38.

(B) If a National Call to Service participant meets all eligibility requirements specified in chapter 1606 of this title or chapter 30 of title 38 for entitlement to allowances for educational assistance under either such chapter, the participant may become eligible for allowances for educational assistance benefits under either such chapter up to the maximum allowance provided less the total amount of allowance paid under paragraph (3) or (4) of subsection (e).

(2)(A) Educational assistance under paragraphs (3) or (4) of subsection (e) shall be provided through the Department of Veterans Affairs under an agreement to be entered into by the Secretary of Defense and the Secretary of Veterans Affairs. The agreements shall include administrative procedures to ensure the prompt and timely transfer of funds from the Secretary concerned to the Secretary of Veterans Affairs for the making of payments under this section.

(B) Except as otherwise provided in this section, the provisions of sections 503, 511, 3470,

3471, 3474, 3476, 3482(g), 3483, and 3485 of title 38 and the provisions of subchapters I and II of chapter 36 of such title (with the exception of sections 3686(a), 3687, and 3692) shall be applicable to the provision of educational assistance under this chapter. The term ''eligible veteran'' and the term ''person'', as used in those provisions, shall be deemed for the purpose of the application of those provisions to this section to refer to a person eligible for educational assistance under paragraph (3) or (4) of subsection (e).

(3)(A) Except as provided in paragraph (1), nothing in this section shall prohibit a National Call to Service participant who satisfies through service under subsection (c) the eligibility requirements for educational assistance under chapter 1606 of this title or basic educational assistance under chapter 30 of title 38 from an entitlement to such educational assistance under chapter 1606 of this title or basic educational assistance under chapter 30 of title 38, as the case may be.

(B)(i) A participant who made an election not to receive educational assistance under either such chapter at the applicable time specified under law or who was denied the opportunity to make an election may revoke that election or make an initial election, as the case may be, at such time and in such manner as the Secretary concerned may specify. A revocation or initial election under the preceding sentence is irrevocable.

(ii) The participant making a revocation or initial election under clause (i) shall be eligible for educational assistance under either such chapter at such time as the participant satisfies through service the applicable eligibility requirements under either such chapter.

(i) REPAYMENT.—If a National Call to Service participant who has entered into an agreement under subsection (b) and received or benefitted from an incentive under paragraph (1) or (2) of subsection (e) fails to complete the total period of service specified in the agreement, the National Call to Service participant shall be subject to the repayment provisions of section 303a(e) of title 37.

(j) FUNDING.—(1) Amounts for the payment of incentives under paragraphs (1) and (2) of subsection (e) shall be derived from amounts available to the Secretary of the military department concerned for the payment of pay, allowances and other expenses of the members of the armed force concerned.

(2) Amounts for the payment of incentives under paragraphs (3) and (4) of subsection (e) shall be derived from the Department of Defense Education Benefits Fund under section 2006 of this title.

(k) REGULATIONS.—The Secretary of Defense and the Secretaries of the military departments shall prescribe regulations for purposes of the program under this section.

(*l*) DEFINITIONS.—In this section:

(1) The term ''Americorps'' means the Americorps program carried out under subtitle C of title I of the National and Community Service Act of 1990 (42 U.S.C. 12571 et seq.).

(2) The term ''qualifying student loan'' means a loan, the proceeds of which were used to pay any part or all of the cost of attendance (as defined in section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087*ll*) at an institution of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

(3) The term ''Secretary of a military department'' includes, with respect to matters concerning the Coast Guard when it is not operating as a service in the Navy, the Secretary of the Department in which the Coast Guard is operating.

(Added Pub. L. 107–314, div. A, title V, § 531(a)(1), Dec. 2, 2002, 116 Stat. 2541; amended Pub. L. 108–136, div. A, title V, § 535(a), Nov. 24, 2003, 117 Stat. 1474; Pub. L. 109–163, div. A, title V, § 545, title VI, § 687(c)(1), Jan. 6, 2006, 119 Stat. 3254, 3333; Pub. L. 109–364, div. A, title X, § 1071(e)(2), Oct. 17, 2006, 120 Stat. 2401.)

REFERENCES IN TEXT

The National and Community Service Act of 1990, referred to in subsec. (*l*)(1), is Pub. L. 101–610, Nov. 16, 1990, 104 Stat. 3127, as amended. Subtitle C of title I of the Act is classified generally to division C (§ 12571 et seq.) of subchapter I of chapter 129 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 12501 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 510 was renumbered section 12102 of this title.

AMENDMENTS

2006—Subsec. (c)(3)(D). Pub. L. 109–163, § 545(a), substituted ''in Americorps or another domestic national service program'' for ''in the Peace Corps, Americorps, or another national service program''.

Subsec. (d). Pub. L. 109–163, § 545(b), as amended by Pub. L. 109–364, inserted ''and shall include military occupational specialties for enlistments for officer training and subsequent service as an officer, in cases in which the reason for the enlistment and entry into an agreement under subsection (b) is to enter an officer training program'' before period at end.

Subsec. (h)(2). Pub. L. 109–163, § 545(c), amended par. (2) generally. Prior to amendment, par. (2) read as follows:

''(2)(A) The Secretary of Defense shall, to the maximum extent practicable, administer the receipt by National Call to Service participants of incentives under paragraph (3) or (4) of subsection (e) as if such National Call to Service participants were, in receiving such incentives, receiving educational assistance for members of the Selected Reserve under chapter 1606 of this title.

''(B) The Secretary of Defense shall, in consultation with the Secretary of Veterans Affairs, prescribe regulations for purposes of subparagraph (A). Such regulations shall, to the maximum extent practicable, take into account the administrative provisions of chapters 30 and 36 of title 38 that are specified in section 16136 of this title.''

Subsec. (i). Pub. L. 109–163, § 687(c)(1), amended heading and text of subsec. (i) generally. Prior to amendment, text consisted of pars. (1) to (4) which related to pro rata repayments by failed National Call to Service participants, the nature of the debt owed, waiver and discharge in bankruptcy.

2003—Subsec. (j). Pub. L. 108–136 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Amounts for payment of incentives under subsection (e), including payment of allowances for educational assistance under that subsection, shall be derived from amounts available to the Secretary of the military department con-

cerned for payment of pay, allowances, and other expenses of the members of the armed force concerned.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–364, div. A, title X, §1071(e), Oct. 17, 2006, 120 Stat. 2401, provided that the amendment made by section 1071(e)(2) is effective as of Jan. 6, 2006, and as if included in Pub. L. 109–163 as enacted.

SAVINGS PROVISION

Pub. L. 109–163, div. A, title VI, §687(f), Jan. 6, 2006, 119 Stat. 3336, provided that: ''In the case of any bonus, incentive pay, special pay, or similar payment, such as education assistance or a stipend, which the United States became obligated to pay before April 1, 2006, under a provision of law amended by subsection (b), (c), or (d) of this section [amending this section and sections 2005, 2007, 2105, 2123, 2130a, 2173, 2200a, 4348, 6959, 9348, 16135, 16203, 16303, and 16401 of this title, section 182 of Title 14, Coast Guard, and sections 301b, 301d, 301e, 302, 302a, 302b, 302d to 302h, 302j, 307a, 308, 308b, 308c, 308g to 308i, 309, 312, 312b, 314 to 319, and 321 to 327 of Title 37, Pay and Allowances of the Uniformed Services], such provision of law, as in effect on the day before the date of the enactment of this Act [Jan. 6, 2006], shall continue to apply to the payment, or any repayment, of the bonus, incentive pay, special pay, or similar payment under such provision of law.''

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.

COMMENCEMENT OF PROGRAM

Pub. L. 107–314, div. A, title V, §531(b), Dec. 2, 2002, 116 Stat. 2544, directed the Secretary of Defense to prescribe the date, not later than Oct. 1, 2003, on which the program provided for under this section was to commence.

IMPLEMENTATION REPORT

Pub. L. 107–314, div. A, title V, §531(d), Dec. 2, 2002, 116 Stat. 2544, directed the Secretary of Defense to submit to committees of Congress a report on the Secretary's plans for implementation of this section not later than Mar. 31, 2003.

EFFECTIVENESS REPORTS

Pub. L. 107–314, div. A, title V, §531(e), Dec. 2, 2002, 116 Stat. 2545, provided that: ''Not later than March 31, 2005, and March 31, 2007, the Secretary of Defense shall submit to the committees specified in subsection (d) reports on the effectiveness of the program under section 510 of title 10, United States Code, as added by subsection (a), in attracting new recruits to national service.''

§511. College First Program

(a) PROGRAM AUTHORITY.—The Secretary of each military department may establish a program to increase the number of, and the level of the qualifications of, persons entering the armed forces as enlisted members by encouraging recruits to pursue higher education or vocational or technical training before entry into active service.

(b) DELAYED ENTRY WITH ALLOWANCE FOR HIGHER EDUCATION.—The Secretary concerned may—

(1) exercise the authority under section 513 of this title—

(A) to accept the enlistment of a person as a Reserve for service in the Selected Reserve or Individual Ready Reserve of a reserve component, notwithstanding the scope of the authority under subsection (a) of that section, in the case of the Army National Guard of the United States or Air National Guard of the United States; and

(B) to authorize, notwithstanding the period limitation in subsection (b) of that section, a delay of the enlistment of any such person in a regular component under that subsection for the period during which the person is enrolled in, and pursuing a program of education at, an institution of higher education, or a program of vocational or technical training, on a full-time basis that is to be completed within the maximum period of delay determined for that person under subsection (c); and

(2) subject to paragraph (2) of subsection (d) and except as provided in paragraph (3) of that subsection, pay an allowance to a person accepted for enlistment under paragraph (1)(A) for each month of the period during which that person is enrolled in and pursuing a program described in paragraph (1)(B).

(c) MAXIMUM PERIOD OF DELAY.—The period of delay authorized a person under paragraph (1)(B) of subsection (b) may not exceed the 30-month period beginning on the date of the person's enlistment accepted under paragraph (1)(A) of such subsection.

(d) ALLOWANCE.—(1) The monthly allowance paid under subsection (b)(2) shall be equal to the amount of the subsistence allowance provided for certain members of the Senior Reserve Officers' Training Corps with the corresponding number of years of participation under section 209(a) of title 37. The Secretary concerned may supplement that stipend by an amount not to exceed $225 per month.

(2) An allowance may not be paid to a person under this section for more than 24 months.

(3) A member of the Selected Reserve of a reserve component may be paid an allowance under this section only for months during which the member performs satisfactorily as a member of a unit of the reserve component that trains as prescribed in section 10147(a)(1) of this title or section 502(a) of title 32. Satisfactory performance shall be determined under regulations prescribed by the Secretary concerned.

(4) An allowance under this section is in addition to any other pay or allowance to which a member of a reserve component is entitled by reason of participation in the Ready Reserve of that component.

(e) RECOUPMENT OF ALLOWANCE.—(1) A person who, after receiving an allowance under this section, fails to complete the total period of service required of that person in connection with delayed entry authorized for the person under section 513 shall repay the United States the amount which bears the same ratio to the total amount of that allowance paid to the person as the unserved part of the total required period of service bears to the total period.

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

(3) A discharge of a person in bankruptcy under title 11 that is entered less than five years after the date on which the person was, or was to be, enlisted in the regular Army pursuant to the delayed entry authority under section 513 does not discharge that person from a debt arising under paragraph (1).

(4) The Secretary concerned may waive, in whole or in part, a debt arising under paragraph (1) in any case for which the Secretary determines that recovery would be against equity and good conscience or would be contrary to the best interests of the United States.

(f) SPECIAL PAY AND BONUSES.—Upon enlisting in the regular component of the member's armed force, a person who initially enlisted as a Reserve under this section may, at the discretion of the Secretary concerned, be eligible for all regular special pays, bonuses, education benefits, and loan repayment programs.

(Added Pub. L. 108–375, div. A, title V, § 551(a)(1), Oct. 28, 2004, 118 Stat. 1909.)

PRIOR PROVISIONS

A prior section 511 was renumbered section 12103 of this title.

CONTINUATION FOR ARMY OF PRIOR ARMY COLLEGE FIRST PROGRAM

Pub. L. 108–375, div. A, title V, § 551(b), Oct. 28, 2004, 118 Stat. 1911, provided that: ''The Secretary of the Army shall treat the program under section 511 of title 10, United States Code, as added by subsection (a), as a continuation of the program under section 573 of the National Defense Authorization Act for Fiscal Year 2000 [Pub. L. 106–65] ([formerly] 10 U.S.C. 513 note), and for such purpose the Secretary may treat such section 511 as having been enacted on October 1, 2004.''

[§ 512. Renumbered § 12104]

§ 513. Enlistments: Delayed Entry Program

(a) A person with no prior military service who is qualified under section 505 of this title and applicable regulations for enlistment in a regular component of an armed force may (except as provided in subsection (c)) be enlisted as a Reserve for service in the Army Reserve, Navy Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve for a term of not less than six years nor more than eight years.

(b)(1) Unless sooner ordered to active duty under chapter 39 of this title or another provision of law, a person enlisted under subsection (a) shall, within 365 days after such enlistment, be discharged from the reserve component in which enlisted and immediately be enlisted in the regular component of an armed force. The Secretary concerned may extend the 365-day period for any person for up to an additional 365 days if the Secretary determines that it is in the best interests of the armed force of which that person is a member to do so.

(2) During the period beginning on the date on which the person enlists under subsection (a) and ending on the date on which the person is enlisted in a regular component under paragraph (1), the person shall be in the Ready Reserve of the armed force concerned.

(c) A person who is under orders to report for induction into an armed force under the Military Selective Service Act (50 U.S.C. App. 451 et seq.), except as provided in clause (ii) or (iii) of section 6(c)(2)(A) of that Act, may not be enlisted under subsection (a).

(d) This section shall be carried out under regulations to be prescribed by the Secretary of Defense or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy.

(Added Pub. L. 101–189, div. A, title V, § 501(a)(1), Nov. 29, 1989, 103 Stat. 1435; amended Pub. L. 101–510, div. A, title XIV, § 1484(k)(2), Nov. 5, 1990, 104 Stat. 1719; Pub. L. 104–201, div. A, title V, § 512, Sept. 23, 1996, 110 Stat. 2514; Pub. L. 106–65, div. A, title V, § 572(a), Oct. 5, 1999, 113 Stat. 623; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 109–163, div. A, title V, § 515(b)(1)(A), Jan. 6, 2006, 119 Stat. 3233.)

REFERENCES IN TEXT

The Military Selective Service Act, referred to in subsec. (c), is act June 24, 1948, ch. 625, 62 Stat. 604, as amended, which is classified principally to section 451 et seq. of Title 50, Appendix, War and National Defense. Section 6 of the Act is classified to section 456 of Title 50, Appendix. For complete classification of this Act to the Code, see References in Text note set out under section 451 of Title 50, Appendix, and Tables.

PRIOR PROVISIONS

A prior section 513, act Aug. 10, 1956, ch. 1041, 70A Stat. 18, related to promotion of enlisted members of Reserve components, prior to repeal by Pub. L. 85–861, § 36B(1), Sept. 2, 1958, 72 Stat. 1570.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–163 substituted ''Navy Reserve'' for ''Naval Reserve''.

2002—Subsec. (d). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1999—Subsec. (b)(1). Pub. L. 106–65 substituted ''additional 365 days'' for ''additional 180 days'' in second sentence.

1996—Subsec. (b). Pub. L. 104–201 inserted ''The Secretary concerned may extend the 365-day period for any person for up to an additional 180 days if the Secretary determines that it is in the best interests of the armed force of which that person is a member to do so.'' after first sentence, ''(1)'' before ''Unless'', and ''(2)'' before ''During'' and substituted ''paragraph (1)'' for ''the preceding sentence''.

1990—Subsecs. (b), (c). Pub. L. 101–510 substituted ''subsection (a)'' for ''paragraph (1)''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–65, div. A, title V, § 572(b), Oct. 5, 1999, 113 Stat. 623, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on October 1, 1999, and shall apply with respect to enlistments entered into, on or after that date.''

ARMY COLLEGE FIRST PILOT PROGRAM

Pub. L. 106–65, div. A, title V, § 573, Oct. 5, 1999, 113 Stat. 623, as amended by Pub. L. 107–107, div. A, title V, § 542(a)–(c), Dec. 28, 2001, 115 Stat. 1110, 1111; Pub. L. 107–314, div. A, title V, § 535, title X, § 1062(j)(1), Dec. 2, 2002, 116 Stat. 2548, 2651, directed the Secretary of the

Army to establish a pilot program, known as the ''Army College First'' program, to be in effect from Oct. 1, 1999, to Sept. 30, 2004, to assess whether the Army could increase the number and qualifications of persons entering the Army as enlisted members by encouraging recruits to pursue higher education or vocational or technical training before entry into active service, and to submit to committees of Congress a report on the program not later than Feb. 1, 2004. See section 511 of this title and section 551(b) of Pub. L. 108–375, set out as a note under section 511 of this title.

§ 514. Bounties prohibited; substitutes prohibited

(a) No bounty may be paid to induce any person to enlist in an armed force. A clothing allowance or enlistment bonus authorized by law is not a bounty for the purposes of this subsection.

(b) No person liable for active duty in an armed force under this subtitle may furnish a substitute for that active duty. No person may be enlisted or appointed in an armed force as a substitute for another person.

(Aug. 10, 1956, ch. 1041, 70A Stat. 19.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
514(a)	50 App.:458 (1st sentence, less applicability to induction).	June 24, 1948, ch. 625, § 8 (less applicability to induction), 62 Stat. 614.
514(b)	50 App.:458 (last sentence, less applicability to induction).	

In subsection (b), the words ''active duty'' are substituted for the words ''training and service''. The word ''may'' is substituted for the words ''shall be permitted or allowed''. The last sentence is substituted for 50 App.:458 (words between 1st and last semicolons). 50 App.:458 (words after last semicolon) is omitted as applicable only to induction.

§ 515. Reenlistment after discharge as warrant officer

A person who has been discharged from a regular component of an armed force under section 1165 or 1166 of this title may, upon his request and in the discretion of the Secretary concerned, be enlisted in that armed force in the grade prescribed by the Secretary. However, a person discharged under section 1165 of this title may not be enlisted in a grade lower than the grade that he held immediately before appointment as a warrant officer.

(Aug. 10, 1956, ch. 1041, 70A Stat. 19.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
515	10:600d (last 36 words of last sentence). 34:135d (last 36 words of last sentence). 10:600m (last 21 words of 3d sentence). 34:430a (last 21 words of 3d sentence).	May 29, 1954, ch. 249, §§ 6 (last 36 words of last sentence), 15 (last 21 words of 3d sentence), 68 Stat. 159, 164.

The first 20 words are inserted for clarity. The word ''request'' is substituted for the word ''application''.

§ 516. Effect upon enlisted status of acceptance of appointment as cadet or midshipman

(a) The enlistment or period of obligated service of an enlisted member of the armed forces who accepts an appointment as a cadet at the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy, or as a midshipman at the United States Naval Academy or in the Navy Reserve, may not be terminated because of the acceptance of that appointment. However, while serving as a cadet or midshipman at an Academy, he is entitled only to the pay, allowances, compensation, pensions, and other benefits provided by law for such a cadet or midshipman or, if he is a midshipman in the Navy Reserve, to the compensation and emoluments of a midshipman in the Navy Reserve.

(b) If a person covered by subsection (a) is separated from service as a cadet or midshipman, or from service as a midshipman in the Navy Reserve, for any reason other than his appointment as a commissioned officer of a regular or reserve component of an armed force or because of a physical disability, he resumes his enlisted status and shall complete the period of service for which he was enlisted or for which he has an obligation, unless he is sooner discharged. In computing the unexpired part of an enlistment or period of obligated service for the purposes of this subsection, all service as a cadet or midshipman is counted as service under that enlistment or period of obligated service.

(Added Pub. L. 85–861, § 1(9)(A), Sept. 2, 1958, 72 Stat. 1439; amended Pub. L. 109–163, div. A, title V, § 515(b)(1)(B), Jan. 6, 2006, 119 Stat. 3233.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
516(a)	50:1411.	June 25, 1956, ch. 439, §§ 1, 2, 70 Stat. 333.
516(b)	50:1412.	

In subsection (a), the words ''on or after June 25, 1956'' are omitted as executed. The words ''Regular, Reserve'' and ''during the continuation of the cadet or midshipman status of such member'' are omitted as surplusage. The words ''if he is a midshipman in the Naval Reserve * * * of a midshipman in the Naval Reserve'' are substituted for the words ''accruing to such reserve midshipman by virtue of his status in the Naval Reserve''.

In subsection (b), the words ''a person covered by subsection (a)'' are substituted for 50:1412 (1st 84 words of 1st sentence). The words ''his appointment as a commissioned officer of'' are substituted for the words ''the acceptance of a commission in''. The words ''and shall complete the period of service for which he was enlisted or for which he has an obligation, unless he is sooner discharged'' are substituted for 50:1412 (2d sentence). The words ''promoted or'' are omitted as unnecessary, since the only kind of promotion involved is that to officer, in which case the member is discharged from his enlisted status. The words ''as service under that enlistment'' are substituted for the words ''as time serviced under such contract''.

AMENDMENTS

2006—Pub. L. 109–163 substituted ''Navy Reserve'' for ''Naval Reserve'' wherever appearing.

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 Secu-

rity, 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.

§ 517. Authorized daily average: members in pay grades E–8 and E–9

(a) The authorized daily average number of enlisted members on active duty (other than for training) in an armed force in pay grades E–8 and E–9 in a fiscal year may not be more than 2.5 percent and 1.25 percent, respectively, of the number of enlisted members of that armed force who are on active duty (other than for training) on the first day of that fiscal year. In computing the limitations prescribed in the preceding sentence, there shall be excluded enlisted members of an armed force on active duty as authorized under section 115(a)(1)(B) or 115(b) of this title, or excluded from counting for active duty end strengths under section 115(i) of this title.

(b) Whenever the number of members serving in pay grade E–9 is less than the number authorized for that grade under subsection (a), the difference between the two numbers may be applied to increase the number authorized under such subsection for pay grade E–8.

(c) Whenever under section 527 of this title the President may suspend the operation of any provision of section 523, 525, or 526 of this title, the Secretary of Defense may suspend the operation of any provision of this section. Any such suspension shall, if not sooner ended, end in the manner specified in section 527 for a suspension under that section.

(Added Pub. L. 87–649, § 2(1), Sept. 7, 1962, 76 Stat. 492; amended Pub. L. 96–584, § 4, Dec. 23, 1980, 94 Stat. 3377; Pub. L. 97–86, title V, § 503(1), (2), Dec. 1, 1981, 95 Stat. 1107, 1108; Pub. L. 97–252, title V, § 503(a), Sept. 8, 1982, 96 Stat. 727; Pub. L. 98–94, title V, § 503(a), Sept. 24, 1983, 97 Stat. 631; Pub. L. 98–525, title IV, §§ 413(a), 414(a)(2), Oct. 19, 1984, 98 Stat. 2517, 2518; Pub. L. 99–145, title IV, § 413(a), Nov. 8, 1985, 99 Stat. 619; Pub. L. 100–180, div. A, title IV, § 413(a), Dec. 4, 1987, 101 Stat. 1083; Pub. L. 101–189, div. A, title IV, § 413(a), Nov. 29, 1989, 103 Stat. 1433; Pub. L. 102–190, div. A, title IV, § 413(a), Dec. 5, 1991, 105 Stat. 1352; Pub. L. 103–160, div. A, title IV, § 413(a), Nov. 30, 1993, 107 Stat. 1642; Pub. L. 103–337, div. A, title V, § 552(a), title XVI, § 1662(a)(4), Oct. 5, 1994, 108 Stat. 2772, 2988; Pub. L. 105–261, div. A, title IV, § 407(a), title X, § 1069(a)(2), Oct. 17, 1998, 112 Stat. 1996, 2135; Pub. L. 106–398, § 1 [[div. A], title IV, § 421(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–95; Pub. L. 107–107, div. A, title IV, § 403, Dec. 28, 2001, 115 Stat. 1069; Pub. L. 108–375, div. A, title IV, § 416(f), Oct. 28, 2004, 118 Stat. 1868; Pub. L. 110–181, div. A, title IV, § 406, Jan. 28, 2008, 122 Stat. 89.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
517	37:232(c) (last sentence).	Oct. 12, 1949, ch. 681, § 201(c) (last sentence); added May 20, 1958, Pub. L. 85–422, § 1(3) (last sentence), 72 Stat. 124.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–181 substituted ''1.25 percent'' for ''1 percent''.

2004—Subsec. (a). Pub. L. 108–375 substituted ''as authorized under section 115(a)(1)(B) or 115(b) of this title, or excluded from counting for active duty end strengths under section 115(i) of this title.'' for ''(other than for training) in connection with organizing, administering, recruiting, instructing, or training the reserve component of an armed force.''

2001—Subsec. (a). Pub. L. 107–107 substituted ''2.5 percent'' for ''2 percent (or, in the case of the Army, 2.5 percent)''.

2000—Subsec. (c). Pub. L. 106–398 added subsec. (c).

1998—Subsec. (a). Pub. L. 105–261, § 1069(a)(2), substituted ''The authorized'' for ''Except as provided in section 307 of title 37, the authorized''.

Pub. L. 105–261, § 407(a), substituted ''a fiscal year'' for ''a calendar year'' and ''the first day of that fiscal year'' for ''January 1 of that year''.

1994—Subsec. (a). Pub. L. 103–337, § 552(a), inserted ''(or, in the case of the Army, 2.5 percent)'' after ''may not be more than 2 percent''.

Subsec. (b). Pub. L. 103–337, § 1661(a)(4)(B), redesignated subsec. (c) as (b) and struck out ''or whenever the number of members serving in pay grade E–9 for duty described in subsection (b) is less than the number authorized for that grade under subsection (b),'' after ''under subsection (a),''.

Pub. L. 103–337, § 1662(a)(4)(A), struck out subsec. (b) which limited the number of enlisted members in pay grades E–8 and E–9 who could be on active duty (other than for training) or on full-time National Guard duty under the authority of section 502(f) of title 32 (other than for training) as of the end of any fiscal year in connection with organizing, administering, recruiting, instructing, or training the reserve components or the National Guard.

Subsec. (c). Pub. L. 103–337, § 1662(a)(4)(B), redesignated subsec. (c) as (b).

1993—Subsec. (b). Pub. L. 103–160, in table, increased fiscal year limitation on number of enlisted men in pay grades E–8 and E–9 on active duty affecting reserve components of the Air Force to 328 and 840 from 279 and 800, respectively.

1991—Subsec. (b). Pub. L. 102–190, in table, increased fiscal year limitation on number of enlisted men in pay grade E–8 on active duty affecting reserve components of the Air Force from 670 to 800, and increased limitation on number of enlisted men in pay grade E–9 on active duty affecting reserve components of the Army from 557 to 569, the Air Force from 231 to 279, and the Marine Corps from 13 to 14.

1989—Subsec. (b). Pub. L. 101–189, § 413(a)(2), in table, increased fiscal year limitation on number of enlisted men in pay grades E–8 and E–9 on active duty affecting reserve components of the armed forces: Army, to 557 and 2,585 from 542 and 2,504, respectively; Navy, to 202 and 429 from 200 and 425, respectively; Air Force, to 231 and 670 from 224 and 637, respectively. Marine Corps figures remained unchanged.

Pub. L. 101–189, § 413(a)(1), in table, increased fiscal year limitation on number of enlisted men in pay grades E–8 and E–9 on active duty affecting reserve components of the armed forces: Army, to 542 and 2,504 from 529 and 2,350, respectively; Navy, to 200 and 425 from 180 and 400, respectively; Air Force, to 224 and 637 from 150 and 425, respectively. Marine Corps figures remained unchanged.

1987—Subsec. (b). Pub. L. 100–180, § 413(a)(2), in table, increased fiscal year limitation on number of enlisted men in pay grades E–8 and E–9 on active duty affecting reserve components of the armed forces: Army, to 529 and 2,350 from 517 and 2,295, respectively; Navy, to 180 and 400 from 175 and 390, respectively; Air Force, to 150 and 425 from 125 and 425, respectively. Marine Corps figures remained unchanged.

Pub. L. 100–180, § 413(a)(1), in table, increased fiscal year limitation on number of enlisted men in pay grades E–8 and E–9 on active duty affecting reserve components of the armed forces: Navy, to 175 and 390 from 165 and 381, respectively; Air Force, to 125 and 425 from 80 and 358, respectively; Marine Corps, to 13 and 74

from 9 and 74, respectively. Army figures remained unchanged.

1985—Subsec. (b). Pub. L. 99–145 in table, changed fiscal year limitation on number of enlisted men in pay grades E–8 and E–9 on active duty affecting reserve components of the armed forces: Navy, to 165 and 381 from 156 and 381, respectively; Air Force, to 80 and 358 from 87 and 455, respectively. Army and Marine Corps figures remained unchanged.

1984—Subsec. (b). Pub. L. 98–525, § 414(a)(2), inserted ''(other than for training) or on full-time National Guard duty under the authority of section 502(f) of title 32 (other than for training)'' and substituted ''or the National Guard'' for ''of the armed forces'' and ''for that grade and armed force'' for ''prescribed for the grade and the armed force''.

Pub. L. 98–525, § 413(a), in table, increased fiscal year limitation on number of enlisted men in pay grades E–8 and E–9 on active duty affecting reserve components of the armed forces: Army, to 2,295 and 517 from 1,494 and 314; Air Force, to 455 and 87 from 617 and 143; Marine Corps, to 74 and 9 from 56 and 6. Navy figures remained unchanged.

1983—Subsec. (b). Pub. L. 98–94 increased fiscal year limitation on number of enlisted men in pay grades E–8 and E–9 on active duty affecting reserve components of the armed forces: Army, to 1,494 and 314 from 1,244 and 265; Navy, to 381 and 156 from 329 and 156; Air Force, to 617 and 143 from 441 and 132; Marine Corps figures remained unchanged.

1982—Subsec. (b). Pub. L. 97–252 increased the numbers in columns from 222, 146, 76, and 4 in the line for E–9 to 265, 156, 132, and 6, respectively, and from 908, 319, 307, and 12 in line for E–8 to 1,244, 329, 441, and 56, respectively.

1981—Subsec. (b). Pub. L. 97–86, § 503(1), inserted column for ''Marine Corps'' in table and increased numbers in existing columns headed ''Army'', ''Navy'', and ''Air Force'' from 209, 140, and 71 in line for E–9 to 222, 146, and 76, respectively, and from 823, 302, and 302 in line for E–8 to 908, 319, and 307, respectively.

Subsec. (c). Pub. L. 97–86, § 503(2), added subsec. (c).

1980—Pub. L. 96–584 designated existing provisions as subsec. (a), inserted provisions respecting computation of limitations, and added subsec. (b).

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–261, div. A, title IV, § 407(b), Oct. 17, 1998, 112 Stat. 1996, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1999.''

EFFECTIVE DATE OF 1994 AMENDMENT

Section 552(c) of Pub. L. 103–337 provided that: ''The amendment made by subsection (a) [amending this section] shall not apply with respect to the number of enlisted members of the Army on active duty in pay grade E–8 during 1994.''

Amendment by section 1662(a)(4) of Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 413(a)(2) of Pub. L. 101–189 provided that the amendment made by that section is effective Oct. 1, 1990.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 413(a)(2) of Pub. L. 100–180 provided that the amendment made by that section is effective Oct. 1, 1988.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 413(c) of Pub. L. 99–145 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 524 [now 12011] of this title] shall take effect on October 1, 1985.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 413(c) of Pub. L. 98–525 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 524 [now 12011] of this title] shall take effect on October 1, 1984.''

EFFECTIVE DATE OF 1983 AMENDMENT

Section 503(c) of Pub. L. 98–94 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 524 [now 12011] of this title] shall take effect on October 1, 1983.''

EFFECTIVE DATE

Section effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

AUTHORIZED ACTIVE DUTY STRENGTHS FOR ARMY ENLISTED MEMBERS IN PAY GRADE E–8; SPECIAL RULE FOR 1995

Pub. L. 103–337, div. A, title V, § 552(b), Oct. 5, 1994, 108 Stat. 2772, provided that the percentage applicable to enlisted members of the Army in pay grade E–8 under subsec. (a) of this section during 1995 would be 2.3 percent, rather than the percentage provided by the amendment made by Pub. L. 103–337, § 552(a).

AUTHORITY TO WAIVE GRADE STRENGTH LAWS FOR FISCAL YEAR 1991; CERTIFICATION; RELATIONSHIP TO OTHER SUSPENSION AUTHORITY

Pub. L. 102–25, title II, §§ 201(b), 202, 205(b), Apr. 6, 1991, 105 Stat. 79, 80, authorized Secretary of a military department to suspend, for fiscal year 1991, the operation of any provision of this section and section 523, 524 (now 12011), 525, or 526 of this title with respect to that military department, that such Secretary may exercise such authority only after submission to the congressional defense committees of a certification in writing that such authority is necessary because of personnel actions associated with Operation Desert Storm, and that such authority is in addition to the authority provided in section 527 of this title.

§ 518. Temporary enlistments

Temporary enlistments may be made only in the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be, without specification of component.

(Added Pub. L. 90–235, § 2(a)(1)(B), Jan. 2, 1968, 81 Stat. 755.)

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.

§ 519. Temporary enlistments: during war or emergency

Except as provided in section 505 of this title and except for enlistments as Reserves of an armed force—

(1) temporary enlistments in an armed force entered into in time of war or of emergency declared by Congress shall be for the duration of the war or emergency plus six months; and

(2) only persons at least eighteen years of age and otherwise qualified under regulations to be prescribed by the Secretary concerned are eligible for such enlistments.

(Added Pub. L. 90–235, § 2(a)(1)(B), Jan. 2, 1968, 81 Stat. 755.)

§ 520. Limitation on enlistment and induction of persons whose score on the Armed Forces Qualification Test is below a prescribed level

(a) The number of persons originally enlisted or inducted to serve on active duty (other than active duty for training) in any armed force during any fiscal year whose score on the Armed Forces Qualification Test is at or above the tenth percentile and below the thirty-first percentile may not exceed 20 percent of the total number of persons originally enlisted or inducted to serve on active duty (other than active duty for training) in such armed force during such fiscal year.

(b) A person who is not a high school graduate may not be accepted for enlistment in the armed forces unless the score of that person on the Armed Forces Qualification Test is at or above the thirty-first percentile; however, a person may not be denied enlistment in the armed forces solely because of his not having a high school diploma if his enlistment is needed to meet established strength requirements.

(Added Pub. L. 96–342, title III, § 302(b)(1), Sept. 8, 1980, 94 Stat. 1082; amended Pub. L. 96–579, § 9, Dec. 23, 1980, 94 Stat. 3368; Pub. L. 97–86, title IV, § 402(b)(1), Dec. 1, 1981, 95 Stat. 1104; Pub. L. 98–94, title XII, § 1268(3), Sept. 24, 1983, 97 Stat. 705; Pub. L. 100–370, § 1(a)(1), July 19, 1988, 102 Stat. 840.)

HISTORICAL AND REVISION NOTES

1988 ACT

Amendment of subsection (b) is based on Pub. L. 93–307, title IV, § 401, June 8, 1974, 88 Stat. 234, as amended by Pub. L. 93–365, title VII, § 705, Aug. 5, 1974, 88 Stat. 406.

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–370 inserted before period at end "; however, a person may not be denied enlistment in the armed forces solely because of his not having a high school diploma if his enlistment is needed to meet established strength requirements".

1983—Subsec. (a). Pub. L. 98–94 struck out provisions under which, for fiscal years beginning on October 1, 1980, and October 1, 1981, the total number of persons originally enlisted or inducted to serve on active duty (other than active duty for training) in the armed forces during such fiscal years whose score on the Armed Forces Qualification Test was at or above the tenth percentile and below the thirty-first percentile could not exceed 25 percent of the number of such persons enlisted or inducted into the armed forces during such fiscal years, and, in the provisions remaining applicable to fiscal years beginning after Sept. 30, 1982, substituted "20 percent of the total number of persons originally enlisted or inducted to serve on active duty (other than active duty for training) in such armed force" for "20 percent of the number of such persons enlisted or inducted into such armed force".

1981—Pub. L. 97–86 designated existing provisions as subsec. (a) and added subsec. (b).

1980—Pub. L. 96–579 struck out subsec. (a) designation and subsec. (b) authorizing the Secretary of Defense for national security reasons to waive the enlistment and induction limitation based on percentile limits conditioned upon notification of the Congress and a concurrent resolution of approval.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 402(b)(2) of Pub. L. 97–86 provided that: "The amendments made by paragraph (1) [amending this section] shall take effect at the end of the 30-day period beginning on the date of the enactment of this Act [Dec. 1, 1981]."

PILOT PROGRAM FOR TREATING GED AND HOME SCHOOL DIPLOMA RECIPIENTS AS HIGH SCHOOL GRADUATES FOR DETERMINATIONS OF ELIGIBILITY FOR ENLISTMENT IN ARMED FORCES

Pub. L. 105–261, div. A, title V, § 571, Oct. 17, 1998, 112 Stat. 2033, as amended by Pub. L. 106–65, div. A, title X, § 1067(3), Oct. 5, 1999, 113 Stat. 774, directed the Secretary of Defense to establish a pilot program during the period Oct. 1, 1998, to Sept. 30, 2003, to assess whether the Armed Forces could better meet recruiting requirements by treating GED recipients and home school diploma recipients as having graduated from high school with a high school diploma for the purpose of determining eligibility of those persons to enlist in the Armed Forces, and to submit to committees of Congress a report on the program not later than Feb. 1, 2004.

MAXIMUM NUMBER OF ARMY ENLISTEES AND INDUCTEES WHO ARE NOT HIGH SCHOOL GRADUATES

Pub. L. 96–342, title III, § 302(a), Sept. 8, 1980, 94 Stat. 1082, as amended by Pub. L. 97–86, title IV, § 402(a), Dec. 1, 1981, 95 Stat. 1104; Pub. L. 97–252, title IV, § 403, Sept. 8, 1982, 96 Stat. 725; Pub. L. 98–94, title IV, § 402, Sept. 24, 1983, 97 Stat. 629; Pub. L. 98–525, title IV, § 402, Oct. 19, 1984, 98 Stat. 2516; Pub. L. 99–145, title IV, § 402, Nov. 8, 1985, 99 Stat. 618, provided that the number of male individuals enlisted or inducted into the Army during the fiscal year beginning on Oct. 1, 1985, who were not high school graduates could not exceed, as of Sept. 30, 1986, 35 percent of all male individuals enlisted or inducted into the Army during such fiscal year.

DENIAL OF ENLISTMENT FOR LACK OF HIGH SCHOOL DIPLOMA PROHIBITED

Pub. L. 93–307, title IV, § 401, June 8, 1974, 88 Stat. 234, as amended by Pub. L. 93–365, title VII, § 705, Aug. 5, 1974, 88 Stat. 406, which provided that no volunteer for enlistment into the Armed Forces shall be denied enlistment solely because of his not having a high school diploma when his enlistment is needed to meet established strength requirements, was repealed and restated in sections 520(b) and 3262 of this title by Pub. L. 100–370, § 1(a), July 19, 1988, 102 Stat. 840.

[§ 520a. Repealed. Pub. L. 106–398, § 1 [[div. A], title X, § 1076(g)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–282]

Section, added Pub. L. 97–252, title XI, § 1114(c)(1), Sept. 8, 1982, 96 Stat. 749; 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 X, § 1067(1), Oct. 5, 1999, 113 Stat. 774, related to criminal history information for military recruiting purposes.

§ 520b. Applicants for enlistment: authority to use funds for the issue of authorized articles

Funds appropriated to the Department of Defense may be used for the issue of authorized articles to applicants for enlistment.

(Added Pub. L. 98–525, title XIV, § 1401(a)(1), Oct. 19, 1984, 98 Stat. 2614; amended Pub. L. 99–145, title XIII, § 1303(a)(4)(A), Nov. 8, 1985, 99 Stat. 738.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following appropriation acts:

Oct. 12, 1984, Pub. L. 98–473, title I, § 101(h) [title VIII, § 8006], 98 Stat. 1904, 1923.

Dec. 8, 1983, Pub. L. 98–212, title VII, § 709, 97 Stat. 1439.

Dec. 21, 1982, Pub. L. 97–377, title I, § 101(c) [title VII, § 709], 96 Stat. 1833, 1851.
Dec. 29, 1981, Pub. L. 97–114, title VII, § 709, 95 Stat. 1579.
Dec. 15, 1980, Pub. L. 96–527, title VII, § 709, 94 Stat. 3081.
Dec. 21, 1979, Pub. L. 96–154, title VII, § 709, 93 Stat. 1153.
Oct. 13, 1978, Pub. L. 95–457, title VIII, § 809, 92 Stat. 1244.
Sept. 21, 1977, Pub. L. 95–111, title VIII, § 808, 91 Stat. 900.
Sept. 22, 1976, Pub. L. 94–419, title VII, § 708, 90 Stat. 1292.
Feb. 9, 1976, Pub. L. 94–212, title VII, § 708, 90 Stat. 169.
Oct. 8, 1974, Pub. L. 93–437, title VIII, § 808, 88 Stat. 1225.
Jan. 2, 1974, Pub. L. 93–238, title VII, § 708, 87 Stat. 1039.
Oct. 26, 1972, Pub. L. 92–570, title VII, § 708, 86 Stat. 1197.
Dec. 18, 1971, Pub. L. 92–204, title VII, § 708, 85 Stat. 728.
Jan. 11, 1971, Pub. L. 91–668, title VIII, § 808, 84 Stat. 2031.
Dec. 29, 1969, Pub. L. 91–171, title VI, § 608, 83 Stat. 480.
Oct. 17, 1968, Pub. L. 90–580, title V, § 507, 82 Stat. 1130.
Sept. 29, 1967, Pub. L. 90–96, title VI, § 607, 81 Stat. 242.
Oct. 15, 1966, Pub. L. 89–687, title VI, § 607, 80 Stat. 991.
Sept. 29, 1965, Pub. L. 89–213, title VI, § 607, 79 Stat. 874.
Aug. 19, 1964, Pub. L. 88–446, title V, § 507, 78 Stat. 475.
Oct. 17, 1963, Pub. L. 88–149, title V, § 507, 77 Stat. 264.
Aug. 9, 1962, Pub. L. 87–577, title V, § 507, 76 Stat. 328.
Aug. 17, 1961, Pub. L. 87–144, title II, § 201, 75 Stat. 367, 369.
July 7, 1960, Pub. L. 86–601, title II, § 201, 74 Stat. 340, 342.
Aug. 18, 1959, Pub. L. 86–166, title II, § 201, 73 Stat. 368, 370.
Aug. 22, 1958, Pub. L. 85–724, title III, § 301, title V, § 501, 72 Stat. 714, 721.
Aug. 2, 1957, Pub. L. 85–117, title III, § 301, title V, § 501, 71 Stat. 314, 321.
July 2, 1956, ch. 488, title III, § 301, title V, § 501, 70 Stat. 457, 464.
July 13, 1955, ch. 358, title III, § 301, title V, § 501, 69 Stat. 304, 312.
June 30, 1954, ch. 432, title IV, § 401, title VI, § 601, 68 Stat. 339, 347.
Aug. 1, 1953, ch. 305, title III, § 301, title V, § 501, 67 Stat. 339, 348.
July 10, 1952, ch. 630, title III, § 301, title V, § 501, 66 Stat. 520, 530.
Oct. 18, 1951, ch. 512, title III, § 301, title V, § 501, 65 Stat. 429, 443.
Sept. 6, 1950, ch. 896, Ch. X, title III, § 301, title V, § 501, 64 Stat. 735, 750.
Oct. 29, 1949, ch. 787, title III, § 301, title V, § 501, 63 Stat. 992, 1015.
June 24, 1948, ch. 632, 62 Stat. 655.
July 30, 1947, ch. 357, title I, § 1, 61 Stat. 557.
July 16, 1946, ch. 583, § 1, 60 Stat. 547, 548.
July 3, 1945, ch. 265, § 1, 59 Stat. 390.
June 28, 1944, ch. 303, § 1, 58 Stat. 580.
July 1, 1943, ch. 185, § 1, 57 Stat. 354.
July 2, 1942, ch. 477, § 1, 56 Stat. 617.
June 30, 1941, ch. 262, § 1, 55 Stat. 373.
June 13, 1940, ch. 343, § 1, 54 Stat. 358, 359.
Apr. 26, 1939, ch. 88, § 1, 53 Stat. 600.
June 11, 1938, ch. 37, § 1, 52 Stat. 649.
July 1, 1937, ch. 423, § 1, 50 Stat. 450.
May 15, 1936, ch. 404, § 1, title I, 49 Stat. 1286.
Apr. 9, 1935, ch. 54, § 1, title I, 49 Stat. 128.
Apr. 26, 1934, ch. 165, title I, 48 Stat. 621.
Mar. 4, 1933, ch. 281, title I, 47 Stat. 1577.
July 14, 1932, ch. 482, title I, 47 Stat. 670, 671.
Feb. 23, 1931, ch. 279, title I, 46 Stat. 1283, 1284.
May 28, 1930, ch. 348, title I, 46 Stat. 438.
Feb. 28, 1929, ch. 366, title I, 45 Stat. 1356.
Mar. 23, 1928, ch. 232, title I, 45 Stat. 332.
Feb. 23, 1927, ch. 167, title I, 44 Stat. 1113.
Apr. 15, 1926, ch. 146, title I, 44 Stat. 262.
Feb. 12, 1925, ch. 225, title I, 43 Stat. 900.

AMENDMENTS

1985—Pub. L. 99–145 substituted ''enlistment'' for ''enlistments''.

EFFECTIVE DATE

Section 1404 of Pub. L. 98–525 provided that: ''The amendments made by sections 1401 [enacting this section and sections 956, 979 to 981, 1047 to 1050, 1074b [now 1074c], 1093, 1589, 2007 to 2009, 2484, 2638, and 2639 of this title, amending sections 1074, 1077, 1079, 2104, and 7204 of this title, and repealing section 7208 of this title], 1402 [enacting section 306a of Title 37, Pay and Allowances of the Uniformed Services, and amending sections 206 and 404 of Title 37], and 1403 [amending provisions set out as a note under section 138 of this title and repealing provisions set out as notes under sections 138 and 2102 of this title] take effect on October 1, 1985.''

§ 520c. Recruiting functions: provision of meals and refreshments

Under regulations prescribed by the Secretary concerned, funds appropriated to the Department of Defense for recruitment of military personnel may be expended for small meals and refreshments during recruiting functions for the following persons:

(1) Persons who have enlisted under the Delayed Entry Program authorized by section 513 of this title.

(2) Persons who are objects of armed forces recruiting efforts.

(3) Persons whose assistance in recruiting efforts of the military departments is determined to be influential by the Secretary concerned.

(4) Members of the armed forces and Federal employees when attending recruiting functions in accordance with a requirement to do so.

(5) Other persons whose presence at recruiting functions will contribute to recruiting efforts.

(Added Pub. L. 104–201, div. A, title III, § 361(a), Sept. 23, 1996, 110 Stat. 2491; amended Pub. L. 107–107, div. A, title V, § 545, Dec. 28, 2001, 115 Stat. 1113; Pub. L. 108–136, div. A, title X, § 1031(a)(8)(A), Nov. 24, 2003, 117 Stat. 1596.)

AMENDMENTS

2003—Pub. L. 108–136 substituted ''provision of meals and refreshments'' for ''use of funds'' in section catchline, struck out ''(a) PROVISION OF MEALS AND REFRESHMENTS.—'' before ''Under regulations'', and struck out heading and text of subsec. (b). Text read as follows: ''Not later than February 1 of each of the years 1998 through 2002, the Secretary of Defense shall submit to Congress a report on the extent to which the authority under subsection (a) was exercised during the fiscal year ending in the preceding year.''

2001—Subsec. (a)(4). Pub. L. 107–107, § 545(b)(1), substituted ''recruiting functions'' for ''recruiting events''.

Subsec. (a)(5). Pub. L. 107–107, § 545(b)(2), substituted ''presence at recruiting functions'' for ''presence at recruiting efforts''.

Subsec. (c). Pub. L. 107–107, § 545(a), struck out heading and text of subsec. (c). Text read as follows: ''The authority in subsection (a) may not be exercised after September 30, 2001.''

CHAPTER 32—OFFICER STRENGTH AND DISTRIBUTION IN GRADE

Sec.
521. Authority to prescribe total strengths of officers on active duty and officer strengths in various categories.
[522. Repealed.]
523. Authorized strengths: commissioned officers on active duty in grades of major, lieutenant colonel, and colonel and Navy grades of lieutenant commander, commander, and captain.
[524. Renumbered.]
525. Distribution of commissioned officers on active duty in general officer and flag officer grades.
526. Authorized strength: general and flag officers on active duty.
527. Authority to suspend sections 523, 525, and 526.
528. Officers serving in certain intelligence positions: military status; exclusion from distribution and strength limitations; pay and allowances.

AMENDMENTS

2006—Pub. L. 109–364, div. A, title V, § 501(b)(2), Oct. 17, 2006, 120 Stat. 2176, substituted ''Officers serving in certain intelligence positions: military status; exclusion from distribution and strength limitations; pay and allowances'' for ''Exclusion: officers serving in certain intelligence positions'' in item 528.

Pub. L. 109–163, div. A, title V, § 507(b), Jan. 6, 2006, 119 Stat. 3228, substituted ''Exclusion: officers serving in certain intelligence positions'' for ''Exclusion: Associate Director of Central Intelligence for Military Support'' in item 528.

2004—Pub. L. 108–375, div. A, title V, § 501(b)(2), Oct. 28, 2004, 118 Stat. 1873, struck out item 522 ''Authorized total strengths: regular commissioned officers on active duty''.

2003—Pub. L. 108–136, div. A, title V, § 507(b), Nov. 24, 2003, 117 Stat. 1458, added item 528.

2001—Pub. L. 107–107, div. A, title V, § 501(b), Dec. 28, 2001, 115 Stat. 1079, struck out item 528 ''Limitation on number of officers on active duty in grades of general and admiral''.

1994—Pub. L. 103–337, div. A, title IV, § 405(b)(2), title XVI, § 1671(b)(4), Oct. 5, 1994, 108 Stat. 2745, 3013, struck out item 524 ''Authorized strengths: reserve officers on active duty or on full-time National Guard duty for administration of the reserves or the National Guard in grades of major, lieutenant colonel, and colonel and Navy grades of lieutenant commander, commander, and captain'', struck out ''524,'' after ''523,'' in item 527, and added item 528.

1988—Pub. L. 100–370, § 1(b)(3), July 19, 1988, 102 Stat. 840, struck out former item 526 ''Authority to suspend sections 523, 524, and 525'', and added items 526 and 527.

1984—Pub. L. 98–525, title IV, § 414(a)(4)(B)(ii), inserted references to the National Guard and to full-time National Guard duty in item 524.

§ 521. Authority to prescribe total strengths of officers on active duty and officer strengths in various categories

(a) Whenever the needs of the services require, but at least once each fiscal year, the Secretary of Defense shall prescribe the total authorized active-duty strength as of the end of the fiscal year for officers in grades above chief warrant officer, W–5, for each of the armed forces under the jurisdiction of the Secretary of a military department.

(b) Under regulations prescribed by the Secretary of Defense, the Secretary of each military department may, for an armed force under his jurisdiction, prescribe the strength of any category of officers that may serve on active duty.

(Added Pub. L. 96–513, title I, § 103, Dec. 12, 1980, 94 Stat. 2841; amended Pub. L. 102–190, div. A, title XI, § 1131(1)(A), Dec. 5, 1991, 105 Stat. 1505.)

AMENDMENTS

1991—Subsec. (a). Pub. L. 102–190 substituted ''chief warrant officer, W–5,'' for ''warrant officer (W–4)''.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 1132 of title XI of Pub. L. 102–190 provided that: ''This title [enacting sections 571 to 583 and 742 of this title, amending this section, sections 522, 597 [now 12241], 598 [now 12242], 603, 628, 644, 741, 1166, 1174, 1305, 1406, 5414, 5457, 5458, 5501 to 5503, 5596, 5600, 5665, 6389, and 6391 of this title, sections 286a and 334 of Title 14, Coast Guard, and sections 201, 301, 301c, 305a, and 406 of Title 37, Pay and Allowances of the Uniformed Services, repealing sections 555 to 565, 602, and 745 of this title, and enacting provisions set out as notes under sections 555 and 571 of this title and section 1009 of Title 37] and the amendments made by this title shall take effect on February 1, 1992.''

EFFECTIVE DATE

Chapter effective Sept. 15, 1981, but the authority to prescribe regulations under this chapter effective 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.

EVALUATION OF EFFECTS OF OFFICER STRENGTH REDUCTIONS ON OFFICER PERSONNEL MANAGEMENT SYSTEMS

Pub. L. 102–484, div. A, title V, § 502, Oct. 23, 1992, 106 Stat. 2402, directed the Secretary of Defense to provide for an independent, federally funded research and development center to review the officer personnel management system of each of the military departments and to determine and evaluate the effects of post-Cold War officer strength reductions on that officer personnel management system, required the center to submit to the Secretary of Defense a report on the results of the review and evaluation not later than Dec. 31, 1993, and directed the Secretary to transmit the report to committees of Congress within 60 days after receipt.

STRENGTH OF ACTIVE DUTY OFFICER CORPS

Pub. L. 100–456, div. A, title IV, § 402(c), Sept. 29, 1988, 102 Stat. 1963, provided that:

''(1) The number of officers serving on active duty (excluding officers in categories specified in paragraph (2)) as of September 30, 1990, may not exceed—

''(A) in the case of the Army, 106,427; and

''(B) in the case of the Air Force, 102,438.

''(2) Officers in the categories described in section 403(b) of the National Defense Authorization Act for Fiscal Year 1987 [Pub. L. 99–661, set out below] shall be excluded in counting officers under this subsection.''

Pub. L. 100–180, div. A, title IV, § 402, Dec. 4, 1987, 101 Stat. 1081, as amended by Pub. L. 100–456, div. A, title IV, § 402(b), Sept. 29, 1988, 102 Stat. 1963, provided that:

''(a) AUTHORITY TO INCREASE FOR FISCAL YEAR 1988.—Subject to subsection (b), the Secretary of Defense may

increase by not more than 1 percentage point (to not more than 98 percent) the percentage limitation prescribed in section 403(a) of the National Defense Authorization Act for Fiscal Year 1987 (Public Law 99–661; 100 Stat. 3859) [set out below] applicable to the total number of commissioned officers of the Army, Navy, Air Force, and Marine Corps that may be serving on active duty as of September 30, 1988.

''(b) CERTIFICATION AND REPORT.—The Secretary may exercise the authority under subsection (a) only if—

''(1) the Secretary makes a determination that such increase is necessary in order to avoid severe personnel management problems in the Army, Navy, Air Force, and Marine Corps during fiscal year 1988 and certifies such determination to the Committees on Armed Services of the Senate and the House of Representatives; and

''(2) the Secretary submits to those Committees with such certification a report providing legislative recommendations for temporary changes in chapter 36 of title 10, United States Code, and other provisions of law enacted by the Defense Officer Personnel Management Act (Public Law 96–513) [see Tables for classification] that the Secretary considers necessary in order to implement the required officer reductions under such section 403 [set out below] with the least possible adverse effect on the Armed Forces.''

Pub. L. 99–661, div. A, title IV, § 403, Nov. 14, 1986, 100 Stat. 3859, as amended by Pub. L. 100–456, div. A, title IV, § 402(a), Sept. 29, 1988, 102 Stat. 1963; Pub. L. 101–189, div. A, title VI, § 653(e)(2), Nov. 29, 1989, 103 Stat. 1463; Pub. L. 103–337, div. A, title XVI, § 1677(e), Oct. 5, 1994, 108 Stat. 3020, provided that:

''(a) REDUCTION IN SIZE OF OFFICER CORPS.—On and after each of the dates set forth in column 1 of the following table, the total number of commissioned officers serving on active duty in the Army, Navy, Air Force, and Marine Corps (excluding officers in categories specified in subsection (b)) may not exceed the percentage, set forth in column 2 opposite such date, of the total number of commissioned officers serving on active duty as of September 30, 1986 (excluding officers in categories specified in subsection (b)):

Column 1	Column 2
On and after:	Percentage of total commissioned officers serving on active duty as of September 30, 1986:
September 30, 1987	99
September 30, 1988	97

''(b) EXCLUSIONS.—In computing the authorized strength of commissioned officers under subsection (a), officers in the following categories shall be excluded:

''(1) Reserve officers—

''(A) on active duty for training;

''(B) on active duty under section 10148(a), 10211, 10302 through 10305, 12301(a), or 12402 of title 10, United States Code, or under section 708 of title 32, United States Code;

''(C) on active duty under section 12301(d) of title 10, United States Code, in connection with organizing, administering, recruiting, instructing, or training the reserve components or the National Guard;

''(D) on active duty to pursue special work;

''(E) ordered to active duty under section 12304 of title 10, United States Code; or

''(F) on full-time National Guard duty.

''(2) Retired officers on active duty under a call or order to active duty for 180 days or less.

''(3) Reserve or retired officers 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.

''(c) APPORTIONMENT OF REDUCTIONS BY SECRETARY OF DEFENSE.—The Secretary of Defense shall apportion the reductions in the number of commissioned officers serving on active duty required by subsection (a) among the Army, Navy, Air Force, and Marine Corps. Not later than February 1 of each fiscal year in which reductions are required under subsection (a), the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the manner in which the reductions have been or are to be apportioned for that fiscal year and for the next fiscal year for which such reductions are required.''

[§ 522. Repealed. Pub. L. 108–375, div. A, title V, § 501(b)(1), Oct. 28, 2004, 118 Stat. 1873]

Section, added Pub. L. 96–513, title I, § 103, Dec. 12, 1980, 94 Stat. 2841; amended Pub. L. 98–525, title V, § 522, Oct. 19, 1984, 98 Stat. 2523; Pub. L. 102–190, div. A, title XI, § 1131(1)(B), Dec. 5, 1991, 105 Stat. 1505, related to authorized total strengths of regular commissioned officers on active duty.

EFFECTIVE DATE OF REPEAL

Repeal 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.

§ 523. Authorized strengths: commissioned officers on active duty in grades of major, lieutenant colonel, and colonel and Navy grades of lieutenant commander, commander, and captain

(a)(1) Except as provided in subsection (c), of the total number of commissioned officers serving on active duty in the Army, Air Force, or Marine Corps at the end of any fiscal year (excluding officers in categories specified in subsection (b)), the number of officers who may be serving on active duty in each of the grades of major, lieutenant colonel, and colonel may not, as of the end of such fiscal year, exceed a number determined in accordance with the following table:

Total number of commissioned officers (excluding officers in categories specified in subsection (b)) on active duty:	Number of officers who may be serving on active duty in grade of:		
	Major	Lieutenant Colonel	Colonel
Army:			
20,000	7,768	5,253	1,613
25,000	8,689	5,642	1,796
30,000	9,611	6,030	1,980
35,000	10,532	6,419	2,163
40,000	11,454	6,807	2,347
45,000	12,375	7,196	2,530
50,000	13,297	7,584	2,713
55,000	14,218	7,973	2,897
60,000	15,140	8,361	3,080
65,000	16,061	8,750	3,264
70,000	16,983	9,138	3,447
75,000	17,903	9,527	3,631
80,000	18,825	9,915	3,814
85,000	19,746	10,304	3,997
90,000	20,668	10,692	4,181
95,000	21,589	11,081	4,364
100,000	22,511	11,469	4,548
110,000	24,354	12,246	4,915
120,000	26,197	13,023	5,281
130,000	28,040	13,800	5,648
170,000	35,412	16,908	7,116
Air Force:			
35,000	9,216	7,090	2,125
40,000	10,025	7,478	2,306
45,000	10,835	7,866	2,487

Total number of commissioned officers (excluding officers in categories specified in subsection (b)) on active duty:	Number of officers who may be serving on active duty in grade of:		
	Major	Lieutenant Colonel	Colonel
50,000	11,645	8,253	2,668
55,000	12,454	8,641	2,849
60,000	13,264	9,029	3,030
65,000	14,073	9,417	3,211
70,000	14,883	9,805	3,392
75,000	15,693	10,193	3,573
80,000	16,502	10,582	3,754
85,000	17,312	10,971	3,935
90,000	18,121	11,360	4,115
95,000	18,931	11,749	4,296
100,000	19,741	12,138	4,477
105,000	20,550	12,527	4,658
110,000	21,360	12,915	4,838
115,000	22,169	13,304	5,019
120,000	22,979	13,692	5,200
125,000	23,789	14,081	5,381
Marine Corps:			
10,000	2,525	1,480	571
12,500	2,900	1,600	632
15,000	3,275	1,720	653
17,500	3,650	1,840	673
20,000	4,025	1,960	694
22,500	4,400	2,080	715
25,000	4,775	2,200	735.

(2) Except as provided in subsection (c), of the total number of commissioned officers serving on active duty in the Navy at the end of any fiscal year (excluding officers in categories specified in subsection (b)), the number of officers who may be serving on active duty in each of the grades of lieutenant commander, commander, and captain may not, as of the end of such fiscal year, exceed a number determined in accordance with the following table:

Total number of commissioned officers (excluding officers in categories specified in subsection (b)) on active duty:	Number of officers who may be serving on active duty in grade of:		
	Lieutenant Commander	Commander	Captain
Navy:			
30,000	7,698	5,269	2,222
33,000	8,189	5,501	2,334
36,000	8,680	5,733	2,447
39,000	9,172	5,965	2,559
42,000	9,663	6,197	2,671
45,000	10,155	6,429	2,784
48,000	10,646	6,660	2,896
51,000	11,136	6,889	3,007
54,000	11,628	7,121	3,120
57,000	12,118	7,352	3,232
60,000	12,609	7,583	3,344
63,000	13,100	7,813	3,457
66,000	13,591	8,044	3,568
70,000	14,245	8,352	3,718
90,000	17,517	9,890	4,467.

(3) If the total number of commissioned officers serving on active duty in an armed force (excluding officers in categories specified in subsection (b)) is between any two consecutive figures listed in the first column of the appropriate table in paragraph (1) or (2), the corresponding authorized strengths for each of the grades shown in that table for that armed force are determined by mathematical interpolation between the respective numbers of the two strengths. If the total number of commissioned officers serving on active duty in an armed force (excluding officers in categories specified in subsection (b)) is greater or less than the figures listed in the first column of the appropriate table in paragraph (1) or (2), the Secretary concerned shall fix the corresponding strengths for the grades shown in that table in the same proportion as reflected in the nearest limit shown in the table.

(b) Officers in the following categories shall be excluded in computing and determining authorized strengths under this section:

(1) Reserve officers—

(A) on active duty as 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 10211, 10302 through 10305, or 12402 of this title or under section 708 of title 32; or

(C) on full-time National Guard duty.

(2) General and flag officers.

(3) Medical officers.

(4) Dental officers.

(5) Warrant officers.

(6) Retired officers on active duty under a call or order to active duty for 180 days or less.

(7) Retired officers 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.

(8) Permanent professors of the United States Military Academy and the United States Air Force Academy and professors of the United States Naval Academy who are career military professors (as defined in regulations prescribed by the Secretary of the Navy), but not to exceed 50 from any such academy.

(c) Whenever the number of officers serving in any grade is less than the number authorized for that grade under this section, the difference between the two numbers may be applied to increase the number authorized under this section for any lower grade.

(d) An officer may not be reduced in grade, or have his pay or allowances reduced, because of a reduction in the number of commissioned officers authorized for his grade under this section.

(Added Pub. L. 96–513, title I, § 103, Dec. 12, 1980, 94 Stat. 2842; amended Pub. L. 98–525, title IV, § 414(a)(3), Oct. 19, 1984, 98 Stat. 2518; Pub. L. 99–145, title V, § 511(a), Nov. 8, 1985, 99 Stat. 623; Pub. L. 99–433, title V, § 531(a)(1), Oct. 1, 1986, 100 Stat. 1063; Pub. L. 102–190, div. A, title IV, § 431, Dec. 5, 1991, 105 Stat. 1354; Pub. L. 103–337, div. A, title XVI, § 1673(c)(3), Oct. 5, 1994, 108 Stat. 3014; Pub. L. 104–201, div. A, title IV, § 403(a), (b), Sept. 23, 1996, 110 Stat. 2504, 2505; Pub. L. 107–314, div. A, title IV, § 406, Dec. 2, 2002, 116 Stat. 2526; Pub. L. 108–375, div. A, title IV, §§ 404, 416(g), Oct. 28, 2004, 118 Stat. 1864, 1868; Pub. L. 109–364, div. A, title X, § 1071(g)(1)(B), Oct. 17, 2006, 120 Stat. 2402; Pub. L. 110–181, div. A, title IV, §§ 404, 405, Jan. 28, 2008, 122 Stat. 88.)

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110–181, § 404, in table, increased number of officers authorized to serve on active duty in the Army in the grade of Major to 7,768, 8,689,

9,611, 10,532, 11,454, 12,375, 13,297, 14,218, 15,140, 16,061, 16,983, 17,903, 18,825, 19,746, 20,668, 21,589, 22,511, 24,354, 26,197, 28,040, and 35,412 from 6,948, 7,539, 8,231, 8,922, 9,614, 10,305, 10,997, 11,688, 12,380, 13,071, 13,763, 14,454, 15,146, 15,837, 16,529, 17,220, 17,912, 19,295, 20,678, 22,061, and 27,593, respectively.

Subsec. (a)(2). Pub. L. 110–181, § 405, amended table generally, extensively revising the numbers in each grade covered.

2006—Subsec. (b)(1). Pub. L. 109–364 made technical correction to directory language of Pub. L. 108–375, § 416(g)(1). See 2004 Amendment note below.

2004—Subsec. (b)(1). Pub. L. 108–375, § 416(g)(1), as amended by Pub. L. 109–364, 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 10211, 10302 through 10305, or 12402 of this title or under 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 to pursue special work;

''(E) ordered to active duty under section 12304 of this title; or

''(F) on full-time National Guard duty.''

Subsec. (b)(7). Pub. L. 108–375, § 416(g)(2), substituted ''Retired officers'' for ''Reserve or retired officers''.

Subsec. (b)(8). Pub. L. 108–375, § 404, added par. (8).

2002—Subsec. (a)(1). Pub. L. 107–314, in table, increased number of officers authorized to serve on active duty in the Marine Corps in the grade of Colonel to 571, 632, 653, 673, 694, 715, and 735 from 571, 592, 613, 633, 654, 675, and 695, respectively.

1996—Subsec. (a)(1). Pub. L. 104–201, § 403(a), amended table generally, expanding the range of numbers of commissioned officers covered and extensively revising the numbers in each grade covered.

Subsec. (a)(2). Pub. L. 104–201, § 403(b), amended table generally, expanding the range of numbers of commissioned officers covered and extensively revising the numbers in each grade covered.

1994—Subsec. (b)(1)(B). Pub. L. 103–337, § 1671(c)(3)(A), substituted ''10211, 10302 through 10305, or 12402'' for ''265, 3021, 3496, 5251, 5252, 8021, or 8496''.

Subsec. (b)(1)(C). Pub. L. 103–337, § 1671(c)(3)(B), substituted ''12301(d)'' for ''672(d)''.

Subsec. (b)(1)(E). Pub. L. 103–337, § 1671(c)(3)(C), substituted ''12304'' for ''673b''.

1991—Subsec. (a)(1). Pub. L. 102–190, in table, decreased numbers of officers authorized to serve on active duty in the Air Force in the grade of Colonel to 3,392, 3,573, 3,754, 3,935, 4,115, 4,296, 4,477, 4,658, 4,838, 5,019, 5,200, and 5,381 from 3,642, 3,823, 4,004, 4,185, 4,365, 4,546, 4,727, 4,908, 5,088, 5,269, 5,450, and 5,631, respectively.

1986—Subsec. (b)(1)(B). Pub. L. 99–433 substituted ''3021'' and ''8021'' for ''3033'' and ''8033'', respectively.

1985—Subsec. (a)(1). Pub. L. 99–145 increased fiscal year limitation on authorized number of Marine Corps majors to 2,766, 3,085, 3,404, 3,723, and 4,042 from 2,717, 2,936, 3,154, 3,373, and 3,591, respectively.

1984—Subsec. (b)(1)(C). Pub. L. 98–525, § 414(a)(3)(A), struck out ''or section 502 or 503 of title 32'' after ''section 672(d) of this title''.

Subsec. (b)(1)(F). Pub. L. 98–525, § 414(a)(3)(B)–(D), added subpar. (F).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–364, div. A, title X, § 1071(g), Oct. 17, 2006, 120 Stat. 2402, provided that the amendment made by section 1071(g)(1)(B) is effective as of Oct. 28, 2004, and as if included in Pub. L. 108–375 as enacted.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 403(d) of Pub. L. 104–201 provided that: ''The amendments made by subsections (a), (b), and (c) [amending this section and repealing provisions set out as notes below] shall take effect on September 1, 1997.''

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 an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 511(b) of Pub. L. 99–145 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1985.''

TEMPORARY VARIATION IN DOPMA AUTHORIZED END STRENGTH LIMITATIONS FOR ACTIVE DUTY AIR FORCE AND NAVY OFFICERS IN CERTAIN GRADES

Pub. L. 104–106, div. A, title IV, § 402, Feb. 10, 1996, 110 Stat. 286, provided that the numbers of officers of the Air Force authorized under subsec. (a)(1) of this section to be serving on active duty in the grades of major, lieutenant colonel, and colonel for fiscal years 1996 and 1997 and the numbers of officers in the Navy authorized under subsec. (a)(2) of this section to be serving on active duty in the grades of lieutenant commander, commander, and captain for fiscal years 1996 and 1997 were limited to numbers in tables, prior to repeal by Pub. L. 104–201, div. A, title IV, § 403(c)(3), Sept. 23, 1996, 110 Stat. 2506.

TEMPORARY VARIATION OF END STRENGTH LIMITATIONS FOR ARMY MAJORS AND LIEUTENANT COLONELS

Section 402 of Pub. L. 103–337 provided that number of officers of the Army authorized under subsec. (a)(1) of this section to be serving on active duty in grades of major and lieutenant colonel for fiscal years 1995 through 1997 was limited to numbers set forth in table prior to repeal by Pub. L. 104–201, div. A, title IV, § 403(c)(2), Sept. 23, 1996, 110 Stat. 2506.

TEMPORARY VARIATION OF END STRENGTH LIMITATIONS FOR MARINE CORPS MAJORS AND LIEUTENANT COLONELS

Pub. L. 103–160, div. A, title IV, § 402, Nov. 30, 1993, 107 Stat. 1639, as amended by Pub. L. 103–337, div. A, title IV, § 403, Oct. 5, 1994, 108 Stat. 2743, provided that number of officers of the Marine Corps authorized under subsec. (a)(1) of this section to be serving on active duty in grades of major and lieutenant colonel for fiscal years 1994 through 1997 was limited to numbers set forth in table prior to repeal by Pub. L. 104–201, div. A, title IV, § 403(c)(1), Sept. 23, 1996, 110 Stat. 2505.

TEMPORARY INCREASE IN OFFICER GRADE LIMITATIONS

Pub. L. 101–189, div. A, title IV, § 403, Nov. 29, 1989, 103 Stat. 1431, authorized the Secretary of Defense, until Sept. 30, 1991, to increase the strength-in-grade limitations specified in subsec. (a) of this section by a total of 250 positions, to be distributed among grades and services as the Secretary considers appropriate and directed the Secretary to submit to Congress a comprehensive report on the adequacy of the strength-in-grade limitations prescribed in subsec. (a) of this section.

TEMPORARY REDUCTION IN NUMBER OF AIR FORCE COLONELS

Pub. L. 101–189, div. A, title IV, § 402, Nov. 29, 1989, 103 Stat. 1431, as amended by Pub. L. 101–510, div. A, title IV, § 404, Nov. 5, 1990, 104 Stat. 1545, provided that the number of officers authorized under subsec. (a) of this section to be serving on active duty in the Air Force in the grade of colonel during fiscal year 1992 was reduced by 250.

Pub. L. 100–456, div. A, title IV, § 403, Sept. 29, 1988, 102 Stat. 1963, provided that the number of officers authorized under this section to be serving on active duty in the Air Force in the grade of colonel during fiscal year 1989 was reduced by 125, and the number of such officers

authorized to be serving on active duty during fiscal year 1990 was reduced by 250.

CEILINGS ON COMMISSIONED OFFICERS ON ACTIVE DUTY

Pub. L. 95–79, title VIII, § 811(a), July 30, 1977, 91 Stat. 335, as amended by Pub. L. 96–107, title VIII, § 817, Nov. 9, 1979, 93 Stat. 818; Pub. L. 96–342, title X, § 1003, Sept. 8, 1980, 94 Stat. 1120; Pub. L. 97–86, title VI, § 602, Dec. 1, 1981, 95 Stat. 1110, which provided that after Oct. 1, 1981, the total number of commissioned officers on active duty in the Army, Air Force, and Marine Corps above the grade of colonel, and on active duty in the Navy above the grade of captain, could not exceed 1,073, and that in time of war, or of national emergency declared by Congress, the President could suspend the operation of this provision, was repealed and restated in section 526 of this title by Pub. L. 100–370, § 1(b)(1)(B), (4).

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provisions increasing for the fiscal year ending on Sept. 30, 1981, the maximum number of officers authorized by this section to be serving on active duty, see section 627 of Pub. L. 96–513, set out as a note under section 611 of this title.

[§ 524. Renumbered § 12011]

§ 525. Distribution of commissioned officers on active duty in general officer and flag officer grades

(a) For purposes of the applicable limitation in section 526(a) of this title on general and flag officers on active duty, no appointment of an officer on the active duty list may be made as follows:

(1) in the Army, if that appointment would result in more than—

(A) 7 officers in the grade of general;

(B) 45 officers in a grade above the grade of major general; or

(C) 90 officers in the grade of major general;

(2) in the Air Force, if that appointment would result in more than—

(A) 9 officers in the grade of general;

(B) 43 officers in a grade above the grade of major general; or

(C) 73 officers in the grade of major general;

(3) in the Navy, if that appointment would result in more than—

(A) 6 officers in the grade of admiral;

(B) 32 officers in a grade above the grade of rear admiral; or

(C) 50 officers in the grade of rear admiral;

(4) in the Marine Corps, if that appointment would result in more than—

(A) 2 officers in the grade of general;

(B) 15 officers in a grade above the grade of major general; or

(C) 22 officers in the grade of major general.

(b)(1) The limitations of subsection (a) do not include the following:

(A) An officer released from a joint duty assignment, but only during the 60-day period beginning on the date the officer departs the joint duty assignment, except that the Secretary of Defense may authorize the Secretary of a military department to extend the 60-day period by an additional 120 days, but no more than 3 officers from each armed forces may be on active duty who are excluded under this subparagraph.

(B) An officer while serving in the position of Staff Judge Advocate to the Commandant of the Marine Corps under section 5046 of this title.

(C) The number of officers required to serve in joint duty assignments as authorized by the Secretary of Defense under section 526(b) for each military service.

(D) An officer while serving as Chief of the National Guard Bureau.

(2) An officer of the Army while serving as Superintendent of the United States Military Academy, if serving in the grade of lieutenant general, is in addition to the number that would otherwise be permitted for the Army for officers serving on active duty in grades above major general under subsection (a). An officer of the Navy or Marine Corps while serving as Superintendent of the United States Naval Academy, if serving in the grade of vice admiral or lieutenant general, is in addition to the number that would otherwise be permitted for the Navy or Marine Corps, respectively, for officers serving on active duty in grades above major general or rear admiral under subsection (a). An officer while serving as Superintendent of the United States Air Force Academy, if serving in the grade of lieutenant general, is in addition to the number that would otherwise be permitted for the Air Force for officers serving on active duty in grades above major general under subsection (a).

(c)(1) Subject to paragraph (3), the President—

(A) may make appointments in the Army, Air Force, and Marine Corps in the grades of lieutenant general and general in excess of the applicable numbers determined under this section if each such appointment is made in conjunction with an offsetting reduction under paragraph (2); and

(B) may make appointments in the Navy in the grades of vice admiral and admiral in excess of the applicable numbers determined under this section if each such appointment is made in conjunction with an offsetting reduction under paragraph (2).

(2) For each appointment made under the authority of paragraph (1) in the Army, Air Force, or Marine Corps in the grade of lieutenant general or general or in the Navy in the grade of vice admiral or admiral, the number of appointments that may be made in the equivalent grade in one of the other armed forces (other than the Coast Guard) shall be reduced by one. When such an appointment is made, the President shall specify the armed force in which the reduction required by this paragraph is to be made.

(3)(A) The number of officers that may be serving on active duty in the grades of lieutenant general and vice admiral by reason of appointments made under the authority of paragraph (1) may not exceed 15.

(B) The number of officers that may be serving on active duty in the grades of general and admiral by reason of appointments made under the authority of paragraph (1) may not exceed 5.

(4) Upon the termination of the appointment of an officer in the grade of lieutenant general or vice admiral or general or admiral that was made in connection with an increase under paragraph (1) in the number of officers that may be serving on active duty in that armed force in that grade, the reduction made under paragraph (2) in the number of appointments permitted in such grade in another armed force by reason of that increase shall no longer be in effect.

(d) An officer continuing to hold the grade of general or admiral under section 601(b)(5) of this title after relief from the position of Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, or Commandant of the Marine Corps shall not be counted for purposes of this section.

(e) The following officers shall not be counted for purposes of this section:

(1) An officer of that armed force in the grade of brigadier general or above or, in the case of the Navy, in the grade of rear admiral (lower half) or above, who is on leave pending the retirement, separation, or release of that officer from active duty, but only during the 60-day period beginning on the date of the commencement of such leave of such officer.

(2) At the discretion of the Secretary of Defense, an officer of that armed force who has been relieved from a position designated under section 601(a) of this title or by law to carry one of the grades specified in such section, but only during the 60-day period beginning on the date on which the assignment of the officer to the first position is terminated or until the officer is assigned to a second such position, whichever occurs first.

(f) An officer while serving as Attending Physician to the Congress is in addition to the number that would otherwise be permitted for that officer's armed force for officers serving on active duty in grades above brigadier general or rear admiral (lower half) under subsection (a).

(g)(1) The limitations of this section do not apply to a reserve component general or flag officer who is on active duty for a period in excess of 365 days, but not to exceed three years, except that the number of officers from each reserve component who are covered by this subsection and are not serving in a position that is a joint duty assignment for purposes of chapter 38 of this title may not exceed 5 per component, unless authorized by the Secretary of Defense.

(2) The exception in paragraph (1) does apply to the position of Chief of the National Guard Bureau.

(3) Not later than 30 days after authorizing a number of reserve component general or flag officers in excess of the number specified in paragraph (1), the Secretary of Defense shall notify the Committees on Armed Services of the Senate and the House of Representatives of such authorization, and shall include with such notice a statement of the reason for such authorization.

(Added Pub. L. 96–513, title I, §103, Dec. 12, 1980, 94 Stat. 2844; 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. 99–433, title II, §202(a), Oct. 1, 1986, 100 Stat. 1010; Pub. L. 100–180, div. A, title V, §511(a), Dec. 4, 1987, 101 Stat. 1088; Pub. L. 101–510, div. A, title IV, §405, Nov. 5, 1990, 104 Stat. 1546; Pub. L. 103–337, div. A, title IV, §405(a), Oct. 5, 1994, 108 Stat. 2744; Pub. L. 104–106, div. A, title IV, §403(a), Feb. 10, 1996, 110 Stat. 286; Pub. L. 104–201, div. A, title IV, §404(b), Sept. 23, 1996, 110 Stat. 2506; Pub. L. 105–261, div. A, title IV, §§404, 406, Oct. 17, 1998, 112 Stat. 1996; Pub. L. 106–65, div. A, title V, §§509(b), (c), 532(b), Oct. 5, 1999, 113 Stat. 592, 604; Pub. L. 106–398, §1 [[div. A], title V, §507(g)], Oct. 30, 2000, 114 Stat. 1654, 1654A–105; Pub. L. 107–314, div. A, title IV, §§404(a), (b), 405(b), Dec. 2, 2002, 116 Stat. 2525, 2526; Pub. L. 108–136, div. A, title V, §504(b), Nov. 24, 2003, 117 Stat. 1456; Pub. L. 109–163, div. A, title V, §503(a), Jan. 6, 2006, 119 Stat. 3226; Pub. L. 109–364, div. A, title V, §507(b), Oct. 17, 2006, 120 Stat. 2180; Pub. L. 110–181, div. A, title V, §§501(b), 543(d), Jan. 28, 2008, 122 Stat. 94, 115; Pub. L. 110–417, [div. A], title V, §§503(d), 504(b), Oct. 14, 2008, 122 Stat. 4433, 4434; Pub. L. 111–84, div. A, title V, §502(b)–(d), Oct. 28, 2009, 123 Stat. 2273–2275; Pub. L. 111–383, div. A, title X, §1075(b)(12), (d)(2), Jan. 7, 2011, 124 Stat. 4369, 4372.)

AMENDMENTS

2011—Subsec. (c)(3)(B). Pub. L. 111–383, §1075(d)(2), made technical amendment to directory language of Pub. L. 111–84, §502(c)(3). See 2009 Amendment note below.

Subsec. (d). Pub. L. 111–383, §1075(b)(12)(A), substituted ''section 601(b)(5)'' for ''section 601(b)(4)''.

Subsec. (g)(1). Pub. L. 111–383, §1075(b)(12)(B), substituted ''and are not'' for ''and is not'' and inserted period at end.

2009—Subsecs. (a), (b). Pub. L. 111–84, §502(b), added subsecs. (a) and (b) and struck out former subsecs. (a) and (b) which related to limitations on appointments in a grade above brigadier general in the Army, Air Force, or Marine Corps or in a grade above rear admiral (lower half) in the Navy and limitations on appointments in a grade above major general in the Army, Air Force, or Marine Corps or in a grade above rear admiral in the Navy, respectively.

Subsec. (c)(1)(A). Pub. L. 111–84, §502(c)(1)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''may make appointments in the Army, Air Force, and Marine Corps in the grade of lieutenant general and in the Army and Air Force in the grade of general in excess of the applicable numbers determined under subsection (b)(1), and may make appointments in the Marine Corps in the grade of general in addition to the Commandant and Assistant Commandant, if each such appointment is made in conjunction with an offsetting reduction under paragraph (2); and''.

Subsec. (c)(1)(B). Pub. L. 111–84, §502(c)(1)(B), substituted ''this section'' for ''subsection (b)(2)''.

Subsec. (c)(3)(A). Pub. L. 111–84, §502(c)(2), substituted ''15'' for ''the number equal to 10 percent of the total number of officers that may be serving on active duty in those grades in the Army, Navy, Air Force, and Marine Corps under subsection (b)''.

Subsec. (c)(3)(B). Pub. L. 111–84, §502(c)(3), as amended by Pub. L. 111–383, §1075(d)(2), substituted ''5'' for ''the number equal to 15 percent of the total number of general officers and flag officers that may be serving on active duty in those grades in the Army, Navy, Air Force, and Marine Corps''.

Subsec. (e). Pub. L. 111–84, §502(d)(1), in introductory provisions, substituted ''The following officers shall not be counted for purposes of this section:'' for ''In determining the total number of general officers or flag officers of an armed force on active duty for purposes

of this section, the following officers shall not be counted:''.

Subsec. (g). Pub. L. 111–84, § 502(d)(2), added subsec. (g).

2008—Subsec. (a). Pub. L. 110–417, § 504(b), designated existing provisions as par. (1) and added par. (2).

Pub. L. 110–417, § 503(d)(1), substituted ''the Army or Air Force, or more than 51 percent of the general officers of the Marine Corps,'' for ''that armed force''.

Subsec. (b)(1), (2)(A). Pub. L. 110–417, § 503(d)(2)(A), substituted ''16.4 percent'' for ''16.3 percent'' wherever appearing.

Pub. L. 110–181, § 543(d), substituted ''16.3 percent'' for ''15.7 percent'' wherever appearing.

Subsec. (b)(2)(B). Pub. L. 110–417, § 503(d)(2)(B), substituted ''19 percent'' for ''17.5 percent''.

Subsec. (e)(2). Pub. L. 110–181, § 501(b), added par. (2) and struck out former par. (2) which read as follows: ''An officer of that armed force who has been relieved from a position designated under section 601(a) of this title and is under orders to assume another such position, but only during the 60-day period beginning on the date on which those orders are published.''

2006—Subsec. (e). Pub. L. 109–163 added subsec. (e).

Subsec. (f). Pub. L. 109–364 added subsec. (f).

2003—Subsec. (b)(5)(C). Pub. L. 108–136 struck out subpar. (C) which read as follows: ''This paragraph shall cease to be effective at the end of December 31, 2004.''

2002—Subsec. (b)(2)(B). Pub. L. 107–314, § 404(b), substituted ''17.5 percent'' for ''16.2 percent''.

Subsec. (b)(5)(C). Pub. L. 107–314, § 405(b), substituted ''December 31, 2004'' for ''September 30, 2003''.

Subsec. (b)(8). Pub. L. 107–314, § 404(a), added par. (8).

2000—Subsec. (b)(1). Pub. L. 106–398, § 1 [[div. A], title V, § 507(g)(1)], in first sentence, substituted ''Army or Air Force'' for ''Army, Air Force, or Marine Corps'' and ''15.7 percent'' for ''15 percent'' and, in second sentence, substituted ''Of'' for ''In the case of the Army and Air Force, of'' and ''15.7 percent'' for ''15 percent'' and inserted ''of the Army or Air Force'' after ''general officers''.

Subsec. (b)(2). Pub. L. 106–398, § 1 [[div. A], title V, § 507(g)(2)], designated existing provisions as subpar. (A), substituted ''15.7 percent'' for ''15 percent'' in two places, and added subpar. (B).

1999—Subsec. (b)(5)(A). Pub. L. 106–65, § 509(c), inserted at end ''Any increase by reason of the preceding sentence in the number of officers of an armed force serving on active duty in grades above major general or rear admiral may only be realized by an increase in the number of lieutenant generals or vice admirals, as the case may be, serving on active duty, and any such increase may not be construed as authorizing an increase in the limitation on the total number of general or flag officers for that armed force under section 526(a) of this title or in the number of general and flag officers that may be designated under section 526(b) of this title.''

Subsec. (b)(5)(C). Pub. L. 106–65, § 509(b), substituted ''September 30, 2003'' for ''September 30, 2000''.

Subsec. (b)(7). Pub. L. 106–65, § 532(b), added par. (7).

1998—Subsec. (b)(4)(B). Pub. L. 105–261, § 404, substituted ''seven'' for ''six''.

Subsec. (b)(6). Pub. L. 105–261, § 406, added par. (6).

1996—Subsec. (b)(5)(C). Pub. L. 104–201 substituted ''September 30, 2000'' for ''September 30, 1997''.

Subsec. (d). Pub. L. 104–106 added subsec. (d).

1994—Subsec. (b)(5). Pub. L. 103–337 added par. (5).

1990—Subsec. (b)(3). Pub. L. 101–510, § 405(b), substituted ''that would otherwise be permitted for'' for ''authorized''.

Subsec. (b)(4). Pub. L. 101–510, § 405(a), added par. (4).

1987—Pub. L. 100–180 added subsec. (c).

1986—Subsec. (b)(3). Pub. L. 99–433 inserted ''or Vice Chairman''.

1985—Subsec. (a). Pub. L. 99–145 substituted ''rear admiral (lower half)'' for ''commodore'' in two places.

1981—Subsec. (a). Pub. L. 97–86 substituted ''commodore'' for ''commodore admiral'' in two places.

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 111–383, div. A, title X, § 1075(d), Jan. 7, 2011, 124 Stat. 4372, provided that the amendment by section 1075(d)(2) is effective as of Oct. 28, 2009, and as if included in Pub. L. 111–84 as enacted.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–314, div. A, title IV, § 404(d), Dec. 2, 2002, 116 Stat. 2526, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the receipt by Congress of the report required by subsection (c) [set out below].''

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.

IMPLEMENTATION OF 2000 AMENDMENTS

Pub. L. 106–398, § 1 [[div. A], title V, § 507(i)], Oct. 30, 2000, 114 Stat. 1654, 1654A–106, provided that:

''(1) An appointment or reappointment, in the case of the incumbent in a reserve component chief position, shall be made to each of the reserve component chief positions not later than 12 months after the date of the enactment of this Act [Oct. 30, 2000], in accordance with the amendments made by subsections (a) through (e) [amending sections 3038, 5143, 5144, 8038, and 10506 of this title].

''(2) An officer serving in a reserve component chief position on the date of the enactment of this Act [Oct. 30, 2000] may be reappointed to that position under the amendments made by subsection (a) through (e), if eligible and otherwise qualified in accordance with those amendments. If such an officer is so reappointed, the appointment may be made for the remainder of the officer's original term or for a full new term, as specified at the time of the appointment.

''(3) An officer serving on the date of the enactment of this Act [Oct. 30, 2000] in a reserve component chief position may continue to serve in that position in accordance with the provisions of law in effect immediately before the amendments made by this section [amending this section and sections 3038, 5143, 5144, 8038, and 10506 of this title and repealing section 12505 of this title] until a successor is appointed under paragraph (1) (or that officer is reappointed under paragraph (1)).

''(4) The amendments made by subsection (g) [amending this section] shall be implemented so that each increase authorized by those amendments in the number of officers in the grades of lieutenant general and vice admiral is implemented on a case-by-case basis with an initial appointment made after the date of the enactment of this Act [Oct. 30, 2000], as specified in paragraph (1), to a reserve component chief position.

''(5) For purposes of this subsection, the term 'reserve component chief position' means a position specified in section 3038, 5143, 5144, or 8038 of title 10, United States Code, or the position of Director, Army National Guard or Director, Air National Guard under section 10506(a)(1) of such title.''

SAVINGS PROVISION

Section 511(b) of Pub. L. 100–180 provided that: ''An officer of the Armed Forces on active duty holding an appointment in the grade of lieutenant general or vice admiral or general or admiral on September 30, 1987, shall not have that appointment terminated by reason of the numerical limitations determined under section 525(b) of title 10, United States Code. In the case of an officer of the Marine Corps serving in the grade of general by reason of an appointment authorized by section 511(3) of the National Defense Authorization Act for Fiscal Year 1987 (Public Law 99–661; 100 Stat. 3869) [see below], that appointment shall not be terminated except as provided in section 601 of title 10, United States Code.''

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 relat-

ing 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.

DELAYED AUTHORITY TO ALTER DISTRIBUTION REQUIREMENTS FOR COMMISSIONED OFFICERS ON ACTIVE DUTY IN GENERAL OFFICER AND FLAG OFFICER GRADES AND LIMITATIONS ON AUTHORIZED STRENGTHS OF GENERAL AND FLAG OFFICERS ON ACTIVE DUTY

Pub. L. 110–417, [div. A], title V, § 506, Oct. 14, 2008, 122 Stat. 4434, related to distribution requirements for commissioned officers on active duty in general officer and flag officer grades and limitations on authorized strengths of general and flag officers on active duty, prior to repeal by Pub. L. 111–84, div. A, title V, § 502(j), Oct. 28, 2009, 123 Stat. 2277.

REVIEW OF ACTIVE DUTY AND RESERVE GENERAL AND FLAG OFFICER AUTHORIZATIONS

Pub. L. 107–314, div. A, title IV, § 404(c), Dec. 2, 2002, 116 Stat. 2525, provided that:

''(1) The Secretary of Defense shall submit to Congress a report containing any recommendations of the Secretary (together with the rationale of the Secretary for the recommendations) concerning the following:

''(A) Revision of the limitations on general and flag officer grade authorizations and distribution in grade prescribed by sections 525, 526, and 12004 of title 10, United States Code.

''(B) Statutory designation of the positions and grades of any additional general and flag officers in the commands specified in chapter 1006 of title 10, United States Code, and the reserve component offices specified in sections 3038, 5143, 5144, and 8038 of such title.

''(2) The provisions of subsection (b) through (e) of section 1213 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 110 Stat. 2694) shall apply to the report under paragraph (1) in the same manner as they applied to the report required by subsection (a) of that section.''

REPORT ON MANAGEMENT OF SENIOR GENERAL AND FLAG OFFICER POSITIONS

Pub. L. 103–337, div. A, title IV, § 405(d), Oct. 5, 1994, 108 Stat. 2745, directed the Secretary of Defense to submit to Congress a report on the implementation of the amendments made by Pub. L. 103–337, § 405, enacting sections 528 and 604 of this title and amending this section, not later than Mar. 1, 1996.

TEMPORARY EXCLUSION OF SUPERINTENDENT OF NAVAL ACADEMY FROM COUNTING TOWARD NUMBER OF SENIOR ADMIRALS AUTHORIZED TO BE ON ACTIVE DUTY

Section 406 of Pub. L. 103–337 provided that: ''The officer serving as Superintendent of the United States Naval Academy on the date of the enactment of this Act [Oct. 5, 1994], while so serving, shall not be counted for purposes of the limitations contained in section 525(b)(2) of title 10, United States Code.''

TEMPORARY INCREASE IN NUMBER OF GENERAL AND FLAG OFFICERS AUTHORIZED TO BE ON ACTIVE DUTY

Temporary increases in the number of officers authorized in particular grades under this section were contained in the following authorization acts:

Pub. L. 99–661, div. A, title V, § 511, Nov. 14, 1986, 100 Stat. 3869.

Pub. L. 99–570, title III, § 3058, Oct. 27, 1986, 100 Stat. 3207–79.

Pub. L. 99–145, title V, § 515, Nov. 8, 1985, 99 Stat. 630.

Pub. L. 98–525, title V, § 511, Oct. 19, 1984, 98 Stat. 2521.

Pub. L. 98–94, title X, § 1001, Sept. 24, 1983, 97 Stat. 654.

Pub. L. 97–252, title XI, § 1116, Sept. 8, 1982, 96 Stat. 750.

§ 526. Authorized strength: general and flag officers on active duty

(a) LIMITATIONS.—The number of general officers on active duty in the Army, Air Force, and Marine Corps, and the number of flag officers on active duty in the Navy, may not exceed the number specified for the armed force concerned as follows:

(1) For the Army, 230.

(2) For the Navy, 160.

(3) For the Air Force, 208.

(4) For the Marine Corps, 60.

(b) LIMITED EXCLUSION FOR JOINT DUTY REQUIREMENTS.—(1) The Secretary of Defense may designate up to 324 general officer and flag officer positions that are joint duty assignments for purposes of chapter 38 of this title for exclusion from the limitations in subsection (a). The Secretary of Defense shall allocate those exclusions to the armed forces based on the number of general or flag officers required from each armed force for assignment to these designated positions.

(2) Unless the Secretary of Defense determines that a lower number is in the best interest of the Department, the minimum number of officers serving in positions designated under paragraph (1) for each armed force shall be as follows:

(A) For the Army, 85.

(B) For the Navy, 61.

(C) For the Air Force, 76.

(D) For the Marine Corps, 21.

(3) The number excluded under paragraph (1) and serving in positions designated under that paragraph—

(A) in the grade of general or admiral may not exceed 20;

(B) in a grade above the grade of major general or rear admiral may not exceed 68; and

(C) in the grade of major general or rear admiral may not exceed 144.

(4) Not later than 30 days after determining to raise or lower a number specified in paragraph (2), the Secretary of Defense shall notify the Committees on Armed Services of the Senate and the House of Representatives of such determination.

(5)(A) The Chairman of the Joint Chiefs of Staff may designate up to 15 general and flag officer positions in the unified and specified combatant commands, and up to three general and flag officer positions on the Joint Staff, as positions to be held only by reserve component officers who are in a general or flag officer grade below lieutenant general or vice admiral. Each position so designated shall be considered to be a joint duty assignment position for purposes of chapter 38 of this title.

(B) A reserve component officer serving in a position designated under subparagraph (A) while on active duty under a call or order to active duty that does not specify a period of 180 days or less shall not be counted for the purposes of the limitations under subsection (a) and under section 525 of this title if the officer was selected for service in that position in accordance with the procedures specified in subparagraph (C).

(C) Whenever a vacancy occurs, or is anticipated to occur, in a position designated under subparagraph (A)—

(i) the Secretary of Defense shall require the Secretary of the Army to submit the name of at least one Army reserve component officer, the Secretary of the Navy to submit the name of at least one Navy Reserve officer and the name of at least one Marine Corps Reserve officer, and the Secretary of the Air Force to submit the name of at least one Air Force reserve component officer for consideration by the Secretary for assignment to that position; and

(ii) 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 clause (i)) for consideration by the Secretary for assignment to that position.

(D) Whenever the Secretaries of the military departments are required to submit the names of officers under subparagraph (C)(i), 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 subparagraph (and of any officer whose name the Chairman submits to the Secretary under subparagraph (C)(ii) for consideration for the same vacancy).

(E) Subparagraph (B) does not apply in the case of an officer serving in a position designated under subparagraph (A) if the Secretary of Defense, when considering officers for assignment to fill the vacancy in that position which was filled by that officer, did not have a recommendation for that assignment from each Secretary of a military department who (pursuant to subparagraph (C)) was required to make such a recommendation.

[(c) Repealed. Pub. L. 107–314, div. A, title X, § 1041(a)(3), Dec. 2, 2002, 116 Stat. 2645.]

(d) EXCLUSION OF CERTAIN RESERVE OFFICERS.—(1) The limitations of this section do not apply to a reserve component general or flag officer who is on active duty for training or who is on active duty under a call or order specifying a period of less than 180 days.

(2) The limitations of this section also do not apply to a number, as specified by the Secretary of the military department concerned, of reserve component general or flag officers authorized to serve on active duty for a period of not more than 365 days. The number so specified for an armed force may not exceed the number equal to 10 percent of the authorized number of general or flag officers, as the case may be, of that armed force under section 12004 of this title. In determining such number, any fraction shall be rounded down to the next whole number, except that such number shall be at least one.

(3) The limitations of this section do not apply to a reserve component general or flag officer who is on active duty for a period in excess of 365 days but not to exceed three years, except that the number of such officers from each reserve component who are covered by this paragraph and not serving in a position that is a joint duty assignment for purposes of chapter 38 of this title may not exceed 5 per component, unless authorized by the Secretary of Defense.

(e) EXCLUSION OF CERTAIN OFFICERS PENDING SEPARATION OR RETIREMENT OR BETWEEN SENIOR POSITIONS.—The limitations of this section do not apply to a general or flag officer who is covered by an exclusion under section 525(e) of this title.

(f) EXCLUSION OF ATTENDING PHYSICIAN TO THE CONGRESS.—The limitations of this section do not apply to the general or flag officer who is serving as Attending Physician to the Congress.

(g) TEMPORARY EXCLUSION FOR ASSIGNMENT TO CERTAIN TEMPORARY BILLETS.—(1) The limitations in subsection (a) and in section 525(a) of this title do not apply to a general or flag officer assigned to a temporary joint duty assignment designated by the Secretary of Defense.

(2) A general or flag officer assigned to a temporary joint duty assignment as described in paragraph (1) may not be excluded under this subsection from the limitations in subsection (a) for a period of longer than one year.

(h) EXCLUSION OF OFFICERS DEPARTING FROM JOINT DUTY ASSIGNMENTS.—The limitations in subsection (a) do not apply to an officer released from a joint duty assignment, but only during the 60-day period beginning on the date the officer departs the joint duty assignment. The Secretary of Defense may authorize the Secretary of a military department to extend the 60-day period by an additional 120 days, except that not more than three officers on active duty from each armed force may be covered by an extension under this sentence at the same time.

(Added Pub. L. 100–370, § 1(b)(1)(B), July 19, 1988, 102 Stat. 840; amended Pub. L. 101–510, div. A, title IV, § 403(a), Nov. 5, 1990, 104 Stat. 1545; Pub. L. 102–484, div. A, title IV, § 403, Oct. 23, 1992, 106 Stat. 2398; Pub. L. 103–337, div. A, title IV, § 404, title V, § 512, Oct. 5, 1994, 108 Stat. 2744, 2752; Pub. L. 104–106, div. A, title XV, §§ 1502(a)(1), 1503(a)(3), Feb. 10, 1996, 110 Stat. 502, 510; Pub. L. 104–201, div. A, title IV, § 405, Sept. 23, 1996, 110 Stat. 2506; Pub. L. 105–261, div. A, title IV, § 405, Oct. 17, 1998, 112 Stat. 1996; Pub. L. 106–65, div. A, title V, § 553, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 615, 774; Pub. L. 107–314, div. A, title IV, § 405(c), title X, § 1041(a)(3), Dec. 2, 2002, 116 Stat. 2526, 2645; Pub. L. 108–136, div. A, title V, § 504(c), Nov. 24, 2003, 117 Stat. 1457; Pub. L. 109–163, div. A, title V, §§ 503(b), 510, 515(b)(1)(C), Jan. 6, 2006, 119 Stat. 3226, 3231, 3233; Pub. L. 109–364, div. A, title V, § 507(c), Oct. 17, 2006, 120 Stat. 2180; Pub. L. 110–181, div. A, title V, § 502, title XVIII, § 1824(c), Jan. 28, 2008, 122 Stat. 95, 501; Pub. L. 110–417, [div. A], title V, §§ 503(a)–(c), 525, Oct. 14, 2008, 122 Stat. 4433, 4448; Pub. L. 111–84, div. A, title V, § 502(e)–(g), Oct. 28, 2009, 123 Stat. 2275, 2276.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 95–79, title VIII, § 811(a), July 30, 1977, 91 Stat. 335, as amended by Pub. L. 96–107, title VIII, § 817, Nov. 9, 1979, 93 Stat. 818; Pub. L. 96–342, title X, § 1003, Sept. 8, 1980, 94 Stat. 1120; Pub. L. 97–86, title VI, § 602, Dec. 1, 1981, 95 Stat. 1110.

Present law (section 811(a) of Public Law 95–79, as amended) provides that the authority to suspend the limitation on the number of general and flag officers who may be serving on active duty applies during war or national emergency. In codifying the limitation (in section 526 of title 10 as proposed to be added by section 1(b) of the bill), the committee determined that the same war and emergency waiver authority as applies to

other limitations on the number of officers on active duty under the existing 10 U.S.C. 526 (redesignated as 10 U.S.C. 527 by the bill) should apply with respect to this limitation and accordingly amended the suspension authority in present law to include the codified general and flag officer limitation. This authority is slightly different from the waiver authority in the source law in that the suspension would expire 2 years after it takes effect or 1 year after the end of the war or national emergency, whichever occurs first, rather than upon termination of the war or emergency.

PRIOR PROVISIONS

A prior section 526 was renumbered section 527 of this title.

AMENDMENTS

2009—Subsec. (a). Pub. L. 111–84, §502(e), substituted ''230'' for ''307'' in par. (1), ''160'' for ''216'' in par. (2), ''208'' for ''279'' in par. (3), and ''60'' for ''81'' in par. (4).

Subsec. (b)(1). Pub. L. 111–84, §502(f)(1), substituted ''Secretary of Defense'' for ''Chairman of the Joint Chiefs of Staff'', ''324'' for ''65'', and ''The Secretary of Defense shall allocate those exclusions to the armed forces based on the number of general or flag officers required from each armed force for assignment to these designated positions.'' for ''Officers in positions so designated shall not be counted for the purposes of those limitations.''

Subsec. (b)(2) to (5). Pub. L. 111–84, §502(f)(2), (3), added pars. (2) to (4) and redesignated former par. (2) as (5).

Subsec. (d)(3). Pub. L. 111–84, §502(g)(1), added par. (3).

Subsecs. (g), (h). Pub. L. 111–84, §502(g)(2), added subsecs. (g) and (h).

2008—Subsec. (a)(1). Pub. L. 110–417, §503(a), substituted ''307'' for ''302''.

Subsec. (a)(4). Pub. L. 110–417, §503(b), substituted ''81'' for ''80''.

Subsec. (b)(1). Pub. L. 110–417, §503(c), substituted ''65'' for ''12''.

Subsec. (b)(2)(A). Pub. L. 110–417, §525, substituted ''up to three general and flag officer positions'' for ''a general and flag officer position''.

Pub. L. 110–181, §1824(c), substituted ''15 general and flag officer positions in'' for ''10 general and flag officer positions on the staffs of the commanders of''.

Subsec. (d). Pub. L. 110–181, §502, designated existing provisions as par. (1) and added par. (2).

2006—Subsec. (b)(2)(A). Pub. L. 109–163, §510, inserted '', and a general and flag officer position on the Joint Staff,'' after ''combatant commands''.

Subsec. (b)(2)(C)(i). Pub. L. 109–163, §515(b)(1)(C), substituted ''Navy Reserve'' for ''Naval Reserve''.

Subsec. (d). Pub. L. 109–163, §503(b)(2), substituted ''Certain Reserve Officers'' for ''Certain Officers'' in heading.

Subsec. (e). Pub. L. 109–163, §503(b)(1), added subsec. (e).

Subsec. (f). Pub. L. 109–364 added subsec. (f).

2003—Subsec. (b)(3). Pub. L. 108–136 struck out par. (3) which read as follows: ''This subsection shall cease to be effective on December 31, 2004.''

2002—Subsec. (b)(3). Pub. L. 107–314, §405(c), substituted ''December 31, 2004'' for ''October 1, 2002''.

Subsec. (c). Pub. L. 107–314, §1041(a)(3), struck out heading and text of subsec. (c). Text read as follows:

''(1) Not later than 60 days before an action specified in paragraph (2) may become effective, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report providing notice of the intended action and an analytically based justification for the intended action.

''(2) Paragraph (1) applies in the case of the following actions:

''(A) A change in the grade authorized as of July 1, 1994, for a general officer position in the National Guard Bureau, a general or flag officer position in the Office of a Chief of a reserve component, or a general or flag officer position in the headquarters of a reserve component command.

''(B) Assignment of a reserve component officer to a general officer position in the National Guard Bureau, to a general or flag officer position in the Office of a Chief of a reserve component, or to a general or flag officer position in the headquarters of a reserve component command in a grade other than the grade authorized for that position as of July 1, 1994.

''(C) Assignment of an officer other than a general or flag officer as the military executive to the Reserve Forces Policy Board.''

1999—Subsec. (b)(2), (3). Pub. L. 106–65, §553, added par. (2) and redesignated former par. (2) as (3).

Subsec. (c)(1). Pub. L. 106–65, §1067(1), substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1998—Subsec. (b)(2). Pub. L. 105–261 substituted ''October 1, 2002'' for ''October 1, 1998''.

1996—Subsec. (a)(1) to (3). Pub. L. 104–106, §1503(a)(3)(A), added pars. (1) to (3) and struck out former pars. (1) to (3) which read as follows:

''(1) For the Army, 386 before October 1, 1995, and 302 on and after that date.

''(2) For the Navy, 250 before October 1, 1995, and 216 on and after that date.

''(3) For the Air Force, 326 before October 1, 1995, and 279 on and after that date.''

Subsec. (a)(4). Pub. L. 104–201 substituted ''80'' for ''68''.

Subsec. (b). Pub. L. 104–106, §1503(a)(3)(B)–(D), redesignated subsec. (c) as (b), struck out ''that are applicable on and after October 1, 1995'' after ''limitations in subsection (a)'', and struck out former subsec. (b) which read as follows: ''TRANSFERS BETWEEN SERVICES.—During the period before October 1, 1995, the Secretary of Defense may increase the number of general officers on active duty in the Army, Air Force, or Marine Corps, or the number of flag officers on active duty in the Navy, above the applicable number specified in subsection (a) by a total of not more than five. Whenever any such increase is made, the Secretary shall make a corresponding reduction in the number of such officers that may serve on active duty in general or flag officer grades in one of the other armed forces.''

Subsec. (c). Pub. L. 104–106, §1503(a)(3)(C), (E), redesignated subsec. (d) as (c) and, in par. (2)(B), struck out ''the'' after ''general officer position in the'' and inserted ''to'' after ''reserve component, or'' and ''than'' after ''in a grade other''. Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 104–106, §1503(a)(3)(C), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (d)(1). Pub. L. 104–106, §1502(a)(1), 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''.

Subsec. (e). Pub. L. 104–106, §1503(a)(3)(C), redesignated subsec. (e) as (d).

1994—Subsec. (a)(4). Pub. L. 103–337, §404, struck out ''before October 1, 1995, and 61 on and after that date'' after ''Corps, 68''.

Subsecs. (d), (e). Pub. L. 103–337, §512, added subsecs. (d) and (e).

1992—Subsec. (b). Pub. L. 102–484, §403(b), inserted heading.

Subsec. (c). Pub. L. 102–484, §403(a), added subsec. (c).

1990—Pub. L. 101–510 amended section generally. Prior to amendment, text read as follows: ''The total number of general officers on active duty in the Army, Air Force, and Marine Corps and flag officers on active duty in the Navy may not exceed 1,073.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 403(a) of Pub. L. 101–510 provided that the amendment made by that section is effective Sept. 30, 1991.

ACQUISITION AND CONTRACTING BILLETS

Pub. L. 110–417, [div. A], title V, § 503(e), Oct. 14, 2008, 122 Stat. 4434, provided that:

''(1) RESERVATION OF ARMY INCREASE.—The increase in the number of general officers on active duty in the Army, as authorized by the amendment made by subsection (a) [amending this section] is reserved for general officers in the Army who serve in an acquisition position.

''(2) RESERVATION OF PORTION OF INCREASE IN JOINT DUTY ASSIGNMENTS EXCLUDED FROM LIMITATION.—Of the increase in the number of general officer and flag officer joint duty assignments that may be designated for exclusion from the limitations on the number of general officers and flag officers on active duty, as authorized by the amendment made by subsection (c) [amending this section], five of the designated assignments are reserved for general officers or flag officers who serve in an acquisition position, including one assignment in the Defense Contract Management Agency.''

§ 527. Authority to suspend sections 523, 525, and 526

In time of war, or of national emergency declared by Congress or the President after November 30, 1980, the President may suspend the operation of any provision of section 523, 525, or 526 of this title. So long as such war or national emergency continues, any such suspension may be extended by the President. Any such suspension shall, if not sooner ended, end on the last day of the two-year period beginning on the date on which the suspension (or the last extension thereof) takes effect or on the last day of the one-year period beginning on the date of the termination of the war or national emergency, whichever occurs first. With respect to the end of any such suspension, the preceding sentence supersedes the provisions of title II of the National Emergencies Act (50 U.S.C. 1621–1622) which provide that powers or authorities exercised by reason of a national emergency shall cease to be exercised after the date of the termination of the emergency.

(Added Pub. L. 96–513, title I, § 103, Dec. 12, 1980, 94 Stat. 2845, § 526; renumbered § 527 and amended Pub. L. 100–370, § 1(b)(1)(A), (2), July 19, 1988, 102 Stat. 840; Pub. L. 103–337, div. A, title XVI, § 1671(c)(4), Oct. 5, 1994, 108 Stat. 3014.)

REFERENCES IN TEXT

The National Emergencies Act, referred to in text, is Pub. L. 94–412, Sept. 14, 1976, 90 Stat. 1255, as amended. Title II of the National Emergencies Act is classified generally to subchapter II (§ 1621 et seq.) of chapter 34 of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 50 and Tables.

AMENDMENTS

1994—Pub. L. 103–337 struck out ''524,'' after ''523,'' in section catchline and in text.

1988—Pub. L. 100–370 renumbered section 526 of this title as this section, substituted ''524, 525, and 526'' for ''524, and 525'' in section catchline, and ''524, 525, or 526'' for ''524, or 525'' in text.

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 an Effective Date note under section 10001 of this title.

DELEGATION OF FUNCTIONS

Functions of President under this section to suspend operation of sections 523, 524 [now 12011], and 525 of this title, relating to authorized strength of commissioned officers, 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, the 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 that actions taken pursuant to 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.

DELEGATION OF AUTHORITY

Authority of President under this section as invoked by sections 2 and 3 of Ex. Ord. No. 13223, Sept. 14, 2001, 66 F.R. 48201, as amended, delegated to Secretary of Defense by section 4 of Ex. Ord. No. 13223, set out as a note under section 12302 of this title.

AUTHORITY TO WAIVE GRADE STRENGTH LAWS FOR FISCAL YEAR 1991; CERTIFICATION; RELATIONSHIP TO OTHER SUSPENSION AUTHORITY

Pub. L. 102–25, title II, §§ 201(b), 202, 205(b), Apr. 6, 1991, 105 Stat. 79, 80, authorized Secretary of a military department to suspend, for fiscal year 1991, the operation of any provision of section 517, 523, 524, 525, or 526 of this title with respect to that military department, that such Secretary may exercise such authority only after submission to the congressional defense committees of a certification in writing that such authority is necessary because of personnel actions associated with Operation Desert Storm, and that such authority is in addition to the authority provided in this section.

§ 528. Officers serving in certain intelligence positions: military status; exclusion from distribution and strength limitations; pay and allowances

(a) MILITARY STATUS.—An officer of the armed forces, while serving in a position covered by this section—

(1) shall not be subject to supervision or control by the Secretary of Defense or any other officer or employee of the Department of Defense, except as directed by the Secretary of Defense concerning reassignment from such position; and

(2) may not exercise, by reason of the officer's status as an officer, any supervision or control with respect to any of the military or civilian personnel of the Department of Defense except as otherwise authorized by law.

(b) DIRECTOR AND DEPUTY DIRECTOR OF CIA.—When the position of Director or Deputy Director of the Central Intelligence Agency is held by an officer of the armed forces, the officer serving in that position, while so serving, shall be excluded from the limitations in sections 525 and 526 of this title. However, if both such positions are held by an officer of the armed forces, only one such officer may be excluded from those limitation while so serving.

(c) ASSOCIATE DIRECTOR OF MILITARY AFFAIRS, CIA.—An officer of the armed forces serving in the position of Associate Director of Military Affairs, Central Intelligence Agency, or any successor position, while serving in that position, shall be excluded from the limitations in sections 525 and 526 of this title.

(d) OFFICERS SERVING IN OFFICE OF DNI.—A general or flag officer of the armed forces as-

signed to a position in the Office of the Director of National Intelligence designated by agreement between the Secretary of Defense and the Director of National Intelligence, while serving in that position, shall be excluded from the limitations in sections 525 and 526 of this title, except that not more than five such officers may be so excluded at any time.

(e) EFFECT OF APPOINTMENT.—Except as provided in subsection (a), the appointment or assignment of an officer of the armed forces to a position covered by this section shall not affect—

(1) the status, position, rank, or grade of such officer in the armed forces; or

(2) any emolument, perquisite, right, privilege, or benefit incident to or arising out of such status, position, rank, or grade.

(f) MILITARY PAY AND ALLOWANCES.—(1) An officer of the armed forces on active duty who is appointed or assigned to a position covered by this section shall, while serving in such position and while remaining on active duty, continue to receive military pay and allowances and shall not receive the pay prescribed for such position.

(2) Funds from which pay and allowances under paragraph (1) are paid to an officer while so serving shall be reimbursed as follows:

(A) For an officer serving in a position within the Central Intelligence Agency, such reimbursement shall be made from funds available to the Director of the Central Intelligence Agency.

(B) For an officer serving in a position within the Office of the Director of National Intelligence, such reimbursement shall be made from funds available to the Director of National Intelligence.

(g) COVERED POSITIONS.—The positions covered by this section are the positions specified in subsections (b) and (c) and the positions designated under subsection (d).

(Added Pub. L. 108–136, div. A, title V, § 507(a), Nov. 24, 2003, 117 Stat. 1458; amended Pub. L. 109–163, div. A, title V, § 507(a), Jan. 6, 2006, 119 Stat. 3228; Pub. L. 109–364, div. A, title V, § 501(a), (b)(1), Oct. 17, 2006, 120 Stat. 2175, 2176; Pub. L. 110–417, [div. A], title IX, § 933, Oct. 14, 2008, 122 Stat. 4576; Pub. L. 111–259, title VIII, § 803, Oct. 7, 2010, 124 Stat. 2746.)

PRIOR PROVISIONS

A prior section 528, added Pub. L. 103–337, div. A, title IV, § 405(b)(1), Oct. 5, 1994, 108 Stat. 2744; amended Pub. L. 104–106, div. A, title IV, § 403(b), title XV, § 1503(a)(4), Feb. 10, 1996, 110 Stat. 287, 511; Pub. L. 104–201, div. A, title X, § 1074(a)(3), Sept. 23, 1996, 110 Stat. 2658, which related to limitation on number of officers on active duty in grades of general and admiral, was repealed by Pub. L. 107–107, div. A, title V, § 501(a), Dec. 28, 2001, 115 Stat. 1079.

AMENDMENTS

2010—Subsec. (c). Pub. L. 111–259 substituted ''Associate Director of Military Affairs, CIA'' for ''Associate Director of CIA for Military Affairs'' in heading and ''Associate Director of Military Affairs, Central Intelligence Agency, or any successor position'' for ''Associate Director of the Central Intelligence Agency for Military Affairs'' in text.

2008—Subsec. (c). Pub. L. 110–417 substituted ''Military Affairs'' for ''Military Support'' in heading and text.

2006—Pub. L. 109–364, § 501(b)(1), amended section catchline generally, substituting ''Officers serving in certain intelligence positions: military status; exclusion from distribution and strength limitations; pay and allowances'' for ''Exclusion: officers serving in certain intelligence positions''.

Pub. L. 109–163 amended section catchline and text generally. Prior to amendment, text read as follows:

''(a) When none of the individuals serving in a position specified in subsection (b) is an officer of the armed forces, an officer of the armed forces assigned to the position of Associate Director of Central Intelligence for Military Support, while serving in that position, shall not be counted against the numbers and percentages of officers of the grade of that officer authorized for that officer's armed force.

''(b) The positions referred to in subsection (a) are the following:

''(1) Director of Central Intelligence.

''(2) Deputy Director of Central Intelligence.

''(3) Deputy Director of Central Intelligence for Community Management.''

Subsecs. (a), (b). Pub. L. 109–364, § 501(a)(1), added subsecs. (a) and (b) and struck out former subsecs. (a) and (b) which read as follows:

''(a) EXCLUSION OF OFFICER SERVING IN CERTAIN CIA POSITIONS.—When either of the individuals serving in a position specified in subsection (b) is an officer of the armed forces, one of those officers, while serving in that position, shall be excluded from the limitations in sections 525 and 526 of this title.

''(b) COVERED POSITIONS.—The positions referred to in this subsection are the following:

''(1) Director of the Central Intelligence Agency.

''(2) Deputy Director of the Central Intelligence Agency.''

Subsecs. (e) to (g). Pub. L. 109–364, § 501(a)(2), added subsecs. (e) to (g).

CHAPTER 33—ORIGINAL APPOINTMENTS OF REGULAR OFFICERS IN GRADES ABOVE WARRANT OFFICER GRADES

Sec.
531. Original appointments of commissioned officers.
532. Qualifications for original appointment as a commissioned officer.
533. Service credit upon original appointment as a commissioned officer.
541. Graduates of the United States Military, Naval, and Air Force Academies.
[555 to 565. Repealed.]

AMENDMENTS

1991—Pub. L. 102–190, div. A, title XI, § 1112(b)(1), Dec. 5, 1991, 105 Stat. 1501, substituted ''ORIGINAL APPOINTMENTS OF REGULAR OFFICERS IN GRADES ABOVE WARRANT OFFICER GRADES'' for ''APPOINTMENTS IN REGULAR COMPONENTS'' as chapter heading, struck out analysis of subchapters listing subchapter I ''Original Appointments of Regular Officers in Grades above Warrant Officer Grades'' and subchapter II ''Appointments of Regular Warrant Officers'', and struck out subchapter I heading.

1980—Pub. L. 96–513, title I, § 104(a), Dec. 12, 1980, 94 Stat. 2845, inserted an analysis of subchapters immediately following chapter heading, added subchapter I heading, and, in analysis of sections following subchapter I heading, added items 531, 532, and 533 preceding item 541, re-enacted item 541 without change, and struck out, following item 541, items 555 to 565. The items 555 to 565 formerly set out in the analysis of sections immediately following chapter heading were transferred to a position following a new heading for subchapter II preceding section 555.

§ 531. Original appointments of commissioned officers

(a)(1) Original appointments in the grades of second lieutenant, first lieutenant, and captain

in the Regular Army, Regular Air Force, and Regular Marine Corps and in the grades of ensign, lieutenant (junior grade), and lieutenant in the Regular Navy shall be made by the President alone.

(2) Original appointments in the grades of major, lieutenant colonel, and colonel in the Regular Army, Regular Air Force, and Regular Marine Corps and in the grades of lieutenant commander, commander, and captain in the Regular Navy shall be made by the President, by and with the advice and consent of the Senate.

(b) The grade of a person receiving an appointment under this section who at the time of appointment (1) is credited with service under section 533 of this title, and (2) is not a commissioned officer of a reserve component shall be determined under regulations prescribed by the Secretary of Defense based upon the amount of service credited. The grade of a person receiving an appointment under this section who at the time of the appointment is a commissioned officer of a reserve component is determined under section 533(f) of this title.

(c) Subject to the authority, direction, and control of the President, an original appointment as a commissioned officer in the Regular Army, Regular Air Force, Regular Navy, or Regular Marine Corps may be made by the Secretary concerned in the case of a reserve commissioned officer upon the transfer of such officer from the reserve active-status list of a reserve component of the armed forces to the active-duty list of an armed force, notwithstanding the requirements of subsection (a).

(Added Pub. L. 96–513, title I, § 104(a), Dec. 12, 1980, 94 Stat. 2845; amended Pub. L. 97–22, § 3(a), July 10, 1981, 95 Stat. 124; Pub. L. 108–375, div. A, title V, § 501(a)(4), (c)(5), Oct. 28, 2004, 118 Stat. 1873, 1874.)

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–375, § 501(a)(4), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Original appointments in the grades of second lieutenant through colonel in the Regular Army, Regular Air Force, and Regular Marine Corps and in the grades of ensign through captain in the Regular Navy shall be made by the President, by and with the advice and consent of the Senate.''

Subsec. (c). Pub. L. 108–375, § 501(c)(5), added subsec. (c).

1981—Pub. L. 97–22 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–375, div. A, title V, § 501(g), Oct. 28, 2004, 118 Stat. 1875, provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [enacting section 647 of this title, amending this section and sections 532, 619, 641, 1174, 2114, 12201, 12203, and 12731 of this title, and repealing section 522 of this title] shall take effect on the first day of the first month beginning more than 180 days after the date of the enactment of this Act [Oct. 28, 2004].

''(2) The amendment made by subsection (a)(1) [amending section 532 of this title] shall take effect on May 1, 2005.''

EFFECTIVE DATE

Chapter effective Sept. 15, 1981, but the authority to prescribe regulations under this chapter 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.

PROGRAM TO INCREASE USE OF CERTAIN NURSES BY MILITARY DEPARTMENTS

Pub. L. 101–189, div. A, title VII, § 708, Nov. 29, 1989, 103 Stat. 1475, provided that:

''(a) PROGRAM REQUIRED.—(1) Not later than September 30, 1991, the Secretary of each military department shall implement a program to appoint persons who have an associate degree or diploma in nursing (but have not received a baccalaureate degree in nursing) as officers and to assign such officers to duty as nurses.

''(2) An officer appointed pursuant to the program required by subsection (a) shall be appointed in a warrant officer grade or in a commissioned grade not higher than O–3. Such officer may not be promoted above the grade of O–3 unless the officer receives a baccalaureate degree in nursing.

''(b) REPORT ON IMPLEMENTATION.—Not later than April 1, 1990, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the actions taken by the Secretaries of the military departments to implement the program required by this section.''

EX. ORD. NO. 13384. ASSIGNMENT OF FUNCTIONS RELATING TO ORIGINAL APPOINTMENTS AS COMMISSIONED OFFICERS AND CHIEF WARRANT OFFICER APPOINTMENTS IN THE ARMED FORCES

Ex. Ord. No. 13384, July 27, 2005, 70 F.R. 43739, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, it is hereby ordered as follows:

SECTION 1. *Assignment of Functions to the Secretary of Defense*. The Secretary of Defense shall perform the functions of the President under the following provisions of title 10, United States Code:

(a) subsection 531(a)(1); and

(b) the second sentence of subsection 571(b).

SEC. 2. *Reassignment of Functions Assigned*. The Secretary of Defense may not reassign the functions assigned to him by this order.

SEC. 3. *General Provisions*. (a) Nothing in this order shall be construed to limit or otherwise affect the authority of the President as Commander in Chief of the Armed Forces of the United States, or under the Constitution and laws of the United States to nominate or to make or terminate appointments.

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

GEORGE W. BUSH.

§ 532. Qualifications for original appointment as a commissioned officer

(a) Under regulations prescribed by the Secretary of Defense, an original appointment as a commissioned officer (other than as a commissioned warrant officer) in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps may be given only to a person who—

(1) is a citizen of the United States;

(2) is able to complete 20 years of active commissioned service before his sixty-second birthday;

(3) is of good moral character;

(4) is physically qualified for active service; and

(5) has such other special qualifications as the Secretary of the military department concerned may prescribe by regulation.

(b)(1) Original appointments in the Regular Army in the Medical Corps or Dental Corps, and original appointments in the Regular Air Force with a view to designation of an officer as a medical or dental officer, may be made in the grades of first lieutenant through colonel. Original appointments in the Regular Navy in the Medical Corps or Dental Corps may be made in the grades of lieutenant (junior grade) through captain. Such appointments may be made only from persons who are qualified doctors of medicine, osteopathy, or dentistry.

(2) To be eligible for an original appointment as a medical officer, a doctor of osteopathy must—

(A) be a graduate of a college of osteopathy whose graduates are eligible to be licensed to practice medicine or surgery in a majority of the States;

(B) be licensed to practice medicine, surgery, or osteopathy in a State or in the District of Columbia;

(C) under regulations prescribed by the Secretary of Defense, have completed a number of years of osteopathic and preosteopathic education equal to the number of years of medical and premedical education prescribed for persons entering recognized schools of medicine who become doctors of medicine and who would be qualified for an original appointment in the grade for which that person is being considered for appointment; and

(D) have such other qualifications as the Secretary of the military department concerned prescribes after considering the recommendations, if any, of the Surgeon General of the armed force concerned.

(c) Original appointments in the Regular Navy or Regular Marine Corps of officers designated for limited duty shall be made under section 5589 or 5596 of this title.

(d)(1) A person receiving an original appointment as a medical or dental officer, as a chaplain, or as an officer designated for limited duty in the Regular Navy or Regular Marine Corps is not subject to clause (2) of subsection (a).

(2) A commissioned 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) is not subject to clause (2) of subsection (a).

[(e) Repealed. Pub. L. 108–375, div. A, title V, § 501(a)(1), Oct. 28, 2004, 118 Stat. 1872.]

(f) The Secretary of Defense may waive the requirement of paragraph (1) of subsection (a) with respect to a person who has been lawfully admitted to the United States for permanent residence, or for a United States national otherwise eligible for appointment as a cadet or midshipman under section 2107(a) of this title or as a cadet under section 2107a of this title, when the Secretary determines that the national security so requires, but only for an original appointment in a grade below the grade of major or lieutenant commander.

(Added Pub. L. 96–513, title I, § 104(a), Dec. 12, 1980, 94 Stat. 2845; amended Pub. L. 97–22, § 3(b), July 10, 1981, 95 Stat. 124; Pub. L. 97–295, § 1(7), Oct. 12, 1982, 96 Stat. 1289; Pub. L. 102–190, div. A, title V, § 501, Dec. 5, 1991, 105 Stat. 1354; Pub. L. 103–160, div. A, title V, § 510, Nov. 30, 1993, 107 Stat. 1648; Pub. L. 108–375, div. A, title V, § 501(a)(1)–(3)(A), Oct. 28, 2004, 118 Stat. 1872; Pub. L. 109–163, div. A, title V, § 534(c), Jan. 6, 2006, 119 Stat. 3248; Pub. L. 111–383, div. A, title V, § 501(a), Jan. 7, 2011, 124 Stat. 4206.)

AMENDMENTS

2011—Subsec. (d)(2). Pub. L. 111–383 struck out ''reserve'' before ''commissioned officer''.

2006—Subsec. (f). Pub. L. 109–163 inserted '', or for a United States national otherwise eligible for appointment as a cadet or midshipman under section 2107(a) of this title or as a cadet under section 2107a of this title,'' after ''for permanent residence''.

2004—Subsec. (a)(2). Pub. L. 108–375, § 501(a)(2), substituted ''sixty-second birthday'' for ''fifty-fifth birthday''.

Subsec. (e). Pub. L. 108–375, § 501(a)(1), struck out subsec. (e) which read as follows: ''After September 30, 1996, no person may receive an original appointment as a commissioned officer in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps until that person has completed one year of service on active duty as a commissioned officer (other than a warrant officer) of a reserve component.''

Subsec. (f). Pub. L. 108–375, § 501(a)(3)(A), added subsec. (f).

1993—Subsec. (d). Pub. L. 103–160 designated existing provisions as par. (1) and added par. (2).

1991—Subsec. (e). Pub. L. 102–190 added subsec. (e).

1982—Pub. L. 97–295 inserted ''a'' after ''original appointment as'' in section catchline.

1981—Subsec. (d). Pub. L. 97–22 substituted ''medical or dental officer, as a chaplain, or as an officer designated for limited duty in the Regular Navy or Regular Marine Corps'' for ''medical officer or dental officer or as a chaplain''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 501(a)(1) of Pub. L. 108–375 effective on May 1, 2005, and amendment by section 501(a)(2), (3)(A) 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.

APPOINTMENT OF CITIZENS OF NORTHERN MARIANA ISLANDS AS COMMISSIONED OFFICERS

Pub. L. 98–94, title X, § 1006, Sept. 24, 1983, 97 Stat. 661, provided that a citizen of the Northern Mariana Islands who indicates in writing to a commissioned officer of the Armed Forces of the United States an intent to become a citizen, and not a national, of the United States, and who is otherwise qualified for military service under applicable laws and regulations, may be appointed as an officer in the Armed Forces of the United States, may be appointed or enrolled in the Senior Reserve Officers' Training Corps program of any of the Armed Forces under chapter 103 of title 10, United States Code, and may be selected to be a participant in the Armed Forces Health Professions Scholarship program under chapter 105 of such title, and that this section shall expire upon the establishment of the Commonwealth of the Northern Mariana Islands. The Commonwealth was established as of 12:01 a.m., Nov. 4, 1986, see section 2(a), (b) of Proc. No. 5564, set out as a note

under section 1801 of Title 48, Territories and Insular Possessions.

§ 533. Service credit upon original appointment as a commissioned officer

(a)(1) For the purpose of determining the grade and rank within grade of a person receiving an original appointment in a commissioned grade (other than a warrant officer grade) in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps, such person shall be credited at the time of such appointment with any active commissioned service (other than service as a commissioned warrant officer) that he performed in any armed force, the National Oceanic and Atmospheric Administration, or the Public Health Service before such appointment.

(2) The Secretary of Defense shall prescribe regulations, which shall apply uniformly among the Army, Navy, Air Force, and Marine Corps, to authorize the Secretary of the military department concerned to limit the amount of prior active commissioned service with which a person receiving an original appointment may be credited under paragraph (1), or to deny any such credit, in the case of a person who at the time of such appointment is credited with constructive service under subsection (b).

(b)(1) Under regulations prescribed by the Secretary of Defense, the Secretary of the military department concerned shall credit a person who is receiving an original appointment in a commissioned grade (other than a commissioned warrant officer grade) in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps and who has advanced education or training or special experience with constructive service for such education, training, or experience as follows:

(A) One year for each year of advanced education beyond the baccalaureate degree level, for persons appointed, designated, or assigned in officer categories requiring such advanced education or an advanced degree as a prerequisite for such appointment, designation, or assignment. In determining the number of years of constructive service to be credited under this clause to officers in any professional field, the Secretary concerned shall credit an officer with, but with not more than, the number of years of advanced education required by a majority of institutions that award degrees in that professional field for completion of the advanced education or award of the advanced degree.

(B)(i) Credit for any period of advanced education in a health profession (other than medicine and dentistry) beyond the baccalaureate degree level which exceeds the basic education criteria for appointment, designation, or assignment, if such advanced education will be directly used by the armed force concerned.

(ii) Credit for experience in a health profession (other than medicine or dentistry), if such experience will be directly used by the armed force concerned.

(C) Additional credit of (i) not more than one year for internship or equivalent graduate medical, dental, or other formal professional training required by the armed forces, and (ii) not more than one year for each additional year of such graduate-level training or experience creditable toward certification in a specialty required by the armed forces.

(D) Additional credit, in unusual cases, based on special experience in a particular field.

(E) Additional credit for experience as a physician or dentist, if appointed as a medical or dental officer in the Army or Navy or, in the case of the Air Force, with a view to designation as a medical or dental officer.

(2) Except as authorized by the Secretary concerned in individual cases and under regulations prescribed by the Secretary of Defense in the case of a medical or dental officer, the amount of constructive service credited an officer under this subsection may not exceed the amount required in order for the officer to be eligible for an original appointment in the grade of major in the Army, Air Force, or Marine Corps or lieutenant commander in the Navy.

(3) Constructive service credited an officer under this subsection is in addition to any service credited that officer under subsection (a) and shall be credited at the time of the original appointment of the officer.

(c) Constructive service credited an officer under subsection (b) shall be used only for determining the officer's—

(1) initial grade as a regular officer;

(2) rank in grade; and

(3) service in grade for promotion eligibility.

(d)(1) Constructive service may not be credited under subsection (b) for education, training, or experience obtained while serving as a commissioned officer (other than a warrant officer) on active duty or in an active status. However, in the case of an officer who completes advanced education or receives an advanced degree while on active duty or in an active status and in less than the number of years normally required to complete such advanced education or receive such advanced degree, constructive service may, subject to regulations prescribed under subsection (a)(2), be credited to the officer under subsection (b)(1)(A) to the extent that the number of years normally required to complete such advanced education or receive such advanced degree exceeds the actual number of years in which such advanced education or degree is obtained by the officer.

(2) A graduate of the United States Military Academy, the United States Naval Academy, or the United States Air Force Academy is not entitled to service credit under this section for service performed, or education, training, or experience obtained, before graduation from such Academy.

(e) If the Secretary of Defense determines that the number of qualified judge advocates serving on active duty in the Army, Navy, Air Force, or Marine Corps in grades below major or lieutenant commander is critically below the number needed by such armed force in such grades, he may authorize the Secretary of the military department concerned to credit any person receiving an original appointment in the Judge Advocate General's Corps of the Army or Navy, or any person receiving an original appointment in the Air Force or Marine Corps with a view to

designation as a judge advocate, with a period of constructive service in such an amount (in addition to any period of service credited such person under subsection (b)(1)) as will result in the grade of such person being that of captain or, in the case of an officer of the Navy, lieutenant and the date of rank of such person being junior to that of all other officers of the same grade serving on active duty.

(f) A reserve officer (other than a warrant officer) who receives an original appointment as an officer (other than as a warrant officer) in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps shall—

(1) in the case of an officer on the active-duty list immediately before that appointment as a regular officer, be appointed in the same grade and with the same date of rank as the grade and date of rank held by the officer on the active-duty list immediately before the appointment; and

(2) in the case of an officer not on the active-duty list immediately before that appointment as a regular officer, be appointed in the same grade and with the same date of rank as the grade and date of rank which the officer would have held had the officer been serving on the active-duty list on the date of the appointment as a regular officer.

(Added Pub. L. 96–513, title I, §104(a), Dec. 12, 1980, 94 Stat. 2846; amended Pub. L. 97–22, §3(c), July 10, 1981, 95 Stat. 125; Pub. L. 98–94, title X, §1007(c)(1), Sept. 24, 1983, 97 Stat. 662; Pub. L. 100–180, div. A, title VII, §714(a), Dec. 4, 1987, 101 Stat. 1112; Pub. L. 103–160, div. A, title V, §509(a), Nov. 30, 1993, 107 Stat. 1647.)

AMENDMENTS

1993—Subsec. (b)(1)(A). Pub. L. 103–160, §509(a)(1), in second sentence, substituted ''In determining'' for ''Except as provided in clause (E), in determining'' and ''advanced education required'' for ''postsecondary education in excess of four that are required''.

Subsec. (b)(1)(E), (F). Pub. L. 103–160, §509(a)(2), (3), redesignated subpar. (F) as (E) and struck out former subpar. (E) which read as follows: ''Additional credit of one year for advanced education in a health profession if the number of years of baccalaureate education completed by 75 percent or more of the students entering advanced training in that health profession exceeds, by one or more, the minimum number of years of preprofessional education required by a majority of institutions which award degrees in that health profession. The percentage of such persons shall be computed on an annual basis for each health profession from the data for the year in which the person being appointed, designated, or assigned was admitted to a professional school. However, a person may not receive additional credit under this clause if the amount of his baccalaureate education does not exceed, by one or more, the minimum number of years of preprofessional education required by a majority of institutions which award degrees for that health profession, determined on the basis prescribed in the preceding sentence.''

1987—Subsec. (b)(1)(B). Pub. L. 100–180 designated existing provisions as cl. (i) and added cl. (ii).

1983—Subsec. (a)(1). Pub. L. 98–94 inserted '', the National Oceanic and Atmospheric Administration, or the Public Health Service''.

1981—Subsec. (b)(1)(A). Pub. L. 97–22, §3(c)(1), inserted '', designated, or assigned'' in first sentence after ''persons appointed'' and substituted ''Except as provided in clause (E), in determining the number of years of constructive service to be credited under this clause to officers in any professional field, the Secretary concerned shall credit an officer with, but with not more than, the number of years of postsecondary education in excess of four that are required by a majority of institutions that award degrees in that professional field for completion of the advanced education or award of the advanced degree'' for ''(Except as provided in clause (E), in determining the years of constructive service under this clause, the Secretary concerned shall grant credit for only the number of years normally required to complete the advanced education or receive the advanced degree''.

Subsec. (b)(1)(B). Pub. L. 97–22, §3(c)(2), substituted ''appointment, designation, or assignment, if such advanced education'' for ''appointment as an officer, if such advanced education''.

Subsec. (b)(1)(E). Pub. L. 97–22, §3(c)(3), substituted ''person being appointed, designated, or assigned was admitted'' for ''person being appointed was admitted''.

Subsec. (d)(1). Pub. L. 97–22, §3(c)(4), inserted provision that, in the case of an officer who completes advanced education or receives an advanced degree while on active duty or in an active status and in less than the number of years normally required to complete such advanced education or receive such advanced degree, constructive service may, subject to regulations prescribed under subsection (a)(2), be credited to the officer under subsection (b)(1)(A) to the extent that the number of years normally required to complete such advanced education or receive such advanced degree exceeds the actual number of years in which such advanced education or degree is obtained by the officer.

Subsec. (f). Pub. L. 97–22, §3(c)(5), substituted ''A reserve officer (other than a warrant officer) who receives an original appointment as an officer (other than as a warrant officer) in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps shall (1) in the case of an officer on the active-duty list immediately before that appointment as a regular officer, be appointed in the same grade and with the same date of rank as the grade and date of rank held by the officer on the active-duty list immediately before the appointment; and (2) in the case of an officer not on the active-duty list immediately before that appointment as a regular officer, be appointed in the same grade and with the same date of rank as the grade and date of rank which the officer would have held had the officer been serving on the active-duty list on the date of the appointment as a regular officer'' for ''An officer of a reserve component who receives an original appointment as an officer (other than a warrant officer) in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps shall be appointed in the grade and with the date of rank to which he would have been entitled had he been serving on active duty as an officer of a reserve component on the date of such original appointment as a regular officer''.

RATIFICATION OF SERVICE CREDIT AWARDED PRIOR TO NOVEMBER 30, 1993

Pub. L. 103–160, div. A, title V, §509(e), Nov. 30, 1993, 107 Stat. 1648, provided that: ''To the extent that service credit awarded before the date of the enactment of this Act [Nov. 30, 1993] under section 533, 3353, 5600, or 8353 of title 10, United States Code, based on advanced education in medicine or dentistry was awarded consistent with that section as amended by this section (whether or not properly awarded under that section as in effect before such amendment), the awarding of that service credit is hereby ratified.''

TRANSITION PROVISION UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For savings provision relating to constructive service previously granted, see section 625 of Pub. L. 96–513, set out as a note under section 611 of this title.

§541. Graduates of the United States Military, Naval, and Air Force Academies

(a) Notwithstanding any other provision of law, each cadet at the United States Military

Academy or the United States Air Force Academy, and each midshipman at the United States Naval Academy, is entitled, before graduating from that Academy, to state his preference for appointment, upon graduation, as a commissioned officer in either the Army, Navy, Air Force, or Marine Corps.

(b) With the consent of the Secretary of the military department administering the Academy from which the cadet or midshipman is to be graduated, and of the Secretary of the military department having jurisdiction over the armed force for which that graduate stated his preference, the graduate is entitled to be accepted for appointment in that armed force. However, not more than 12½ percent of any graduating class at an Academy may be appointed in armed forces not under the jurisdiction of the military department administering that Academy.

(c) The Secretary of Defense shall, by regulation, provide for the equitable distribution of appointments in cases where more than 12½ percent of the graduating class of any Academy request appointment in armed forces not under the jurisdiction of the military department administering that Academy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 19.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
541(a)	10:1092c–1(a) (1st 59 words of 1st sentence). 10:1856(a) (1st 59 words of 1st sentence). 34:1057–1(a) (1st 59 words of 1st sentence).	Apr. 1, 1954, ch. 127, § 8, 68 Stat. 48.
541(b)	10:1092c–1(a) (1st sentence, less 1st 59 words). 10:1856(a) (1st sentence, less 1st 59 words). 34:1057–1(a) (1st sentence, less 1st 59 words).	
541(c)	10:1092c–1 (less (a)). 10:1856 (less (a)). 34:1057–1 (less (a)).	

In subsection (a), the words ''is entitled * * * to'' are substituted for the words ''shall * * * be afforded an opportunity to''.

In subsection (b), the words ''is entitled'' are substituted for the word ''shall''.

In subsection (c), the words ''and fair'' are omitted as surplusage. 10:1092c–1(c), 10:1856(c), and 34:1057–1(c) are omitted as covered by section 51(a) of the bill.

EFFECTIVE DATE

Section 52(a) of act Aug. 10, 1956, provided that: ''Section 541 of title 10, United States Code, enacted by section 1 of this Act, takes effect (1) in the year in which the initial class graduates from the United States Air Force Academy, or (2) upon the rescission of the agreement under which graduates of the United States Military Academy and the United States Naval Academy may volunteer for appointment in the Air Force, whichever is earlier.''

APPOINTMENT OF UNITED STATES MILITARY ACADEMY GRADUATES IN AIR FORCE

Act Aug. 10, 1956, ch. 1041, § 44, 70A Stat. 637, provided that a cadet who had graduated from the United States Military Academy could, upon graduation and before the effective date of section 541 of this title, be appointed a second lieutenant in the Regular Air Force, and set forth provisions relating to date of appointment, service credit, rank among graduates, and increase in authorized strength.

[§§ 555 to 565. Repealed. Pub. L. 102–190, div. A, title XI, § 1112(a), Dec. 5, 1991, 105 Stat. 1492]

Section 555, acts Aug. 10, 1956, ch. 1041, 70A Stat. 20; Sept. 7, 1962, Pub. L. 87–649, §§ 6(f)(2), 14c(2), 76 Stat. 494, 501; July 30, 1977, Pub. L. 95–79, title III, § 302(a)(4), 91 Stat. 326; Nov. 8, 1985, Pub. L. 99–145, title V, § 531(a), title XIII, § 1303(a)(5), 99 Stat. 633, 739, related to warrant officer grades. See section 571(a) and (b) of this title.

Section 556, act Aug. 10, 1956, ch. 1041, 70A Stat. 20, related to credit for service of persons originally appointed in regular warrant officer grades under section 555 of this title. See section 572 of this title.

Section 557, act Aug. 10, 1956, ch. 1041, 70A Stat. 20, related to qualifications for promotion of regular warrant officers.

Section 558, act Aug. 10, 1956, ch. 1041, 70A Stat. 20, related to appointment of selection boards to consider promotions of regular warrant officers. See section 573(a), (b), (e), and (f) of this title.

Section 559, act Aug. 10, 1956, ch. 1041, 70A Stat. 21, related to eligibility of regular warrant officers for promotion.

Section 560, acts Aug. 10, 1956, ch. 1041, 70A Stat. 21; Sept. 2, 1958, Pub. L. 85–861, § 33(a)(3), 72 Stat. 1564, related to selection procedure for promotion of warrant officers. See section 576(a) to (e) of this title.

Section 561, act Aug. 10, 1956, ch. 1041, 70A Stat. 22, related to effect of failure of selection of regular warrant officers for promotion. See section 577 of this title.

Section 562, act Aug. 10, 1956, ch. 1041, 70A Stat. 22, related to disapproval of promotion of regular warrant officers by Secretary concerned, President, or Senate. See section 579 of this title.

Section 563, act Aug. 10, 1956, ch. 1041, 70A Stat. 22, related to effective date of promotion of regular warrant officer.

Section 564, acts Aug. 10, 1956, ch. 1041, 70A Stat. 22; Sept. 7, 1962, Pub. L. 87–649, § 6(f)(3), 76 Stat. 494; Nov. 2, 1966, Pub. L. 89–718, § 3, 80 Stat. 1115; Dec. 12, 1980, Pub. L. 96–513, title V, § 501(6), 94 Stat. 2907, related to effect of second failure of promotion for regular warrant officers. See section 580(a) to (d) of this title.

Section 565, act Aug. 10, 1956, ch. 1041, 70A Stat. 24, related to suspension of laws for promotion or mandatory retirement or separation of regular warrant officers during war or emergency.

EFFECTIVE DATE OF REPEAL

Repeal effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as an Effective Date of 1991 Amendment note under section 521 of this title.

PRESERVATION OF EXISTING LAW FOR COAST GUARD

Pub. L. 102–190, div. A, title XI, § 1125(a), Dec. 5, 1991, 105 Stat. 1505, provided that sections 555 to 565 of this title, as in effect on the day before Feb. 1, 1992, would continue to apply to the Coast Guard on and after that date, prior to repeal by Pub. L. 103–337, div. A, title V, § 541(f)(1), Oct. 5, 1994, 108 Stat. 2766.

CHAPTER 33A—APPOINTMENT, PROMOTION, AND INVOLUNTARY SEPARATION AND RETIREMENT FOR MEMBERS ON THE WARRANT OFFICER ACTIVE-DUTY LIST

Sec.
571. Warrant officers: grades.
572. Warrant officers: original appointment; service credit.
573. Convening of selection boards.
574. Warrant officer active-duty lists; competitive categories; number to be recommended for promotion; promotion zones.
575. Recommendations for promotion by selection boards.
576. Information to be furnished to selection boards; selection procedures.

Sec.
577. Promotions: effect of failure of selection for.
578. Promotions: how made; effective date.
579. Removal from a promotion list.
580. Regular warrant officers twice failing of selection for promotion: involuntary retirement or separation.
580a. Enhanced authority for selective early discharges.
581. Selective retirement.
582. Warrant officer active-duty list: exclusions.
583. Definitions.

AMENDMENTS

1993—Pub. L. 103–160, div. A, title V, §504(b), Nov. 30, 1993, 107 Stat. 1645, added item 580a.

1992—Pub. L. 102–484, div. A, title X, §1052(6), Oct. 23, 1992, 106 Stat. 2499, inserted ''to be'' after ''Information'' in item 576 and substituted ''Promotions:'' for ''Promotions;'' in item 578.

§571. Warrant officers: grades

(a) The regular warrant officer grades in the armed forces corresponding to the pay grades prescribed for warrant officers by section 201(b) of title 37 are as follows:

Warrant officer grade:
Chief warrant officer, W–5.
Chief warrant officer, W–4.
Chief warrant officer, W–3.
Chief warrant officer, W–2.
Warrant officer, W–1.

(b) Appointments in the grade of regular warrant officer, W–1, shall be made by warrant, except that with respect to an armed force under the jurisdiction of the Secretary of a military department, the Secretary concerned may provide by regulation that appointments in that grade in that armed force shall be made by commission. Appointments in regular chief warrant officer grades shall be made by commission by the President, and appointments (whether by warrant or commission) in the grade of regular warrant officer, W–1, shall be made by the President, except that appointments in that grade in the Coast Guard shall be made by the Secretary concerned.

(c) An appointment may not be made in any of the armed forces in the regular warrant officer grade of chief warrant officer, W–5, if the appointment would result in more than 5 percent of the warrant officers of that armed force on active duty being in the grade of chief warrant officer, W–5. In computing the limitation prescribed in the preceding sentence, there shall be excluded warrant officers described in section 582 of this title.

(Added Pub. L. 102–190, div. A, title XI, §1112(a), Dec. 5, 1991, 105 Stat. 1493; amended Pub. L. 102–484, div. A, title X, §1052(2), Oct. 23, 1992, 106 Stat. 2499; Pub. L. 103–337, div. A, title V, §541(a)(2), Oct. 5, 1994, 108 Stat. 2764; Pub. L. 111–383, div. A, title V, §502(a), Jan. 7, 2011, 124 Stat. 4207.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 555 of this title prior to repeal by Pub. L. 102–190, §1112(a).

AMENDMENTS

2011—Subsec. (b). Pub. L. 111–383 substituted '', except that with respect to an armed force under the jurisdiction of the Secretary of a military department, the Secretary concerned may provide by regulation that appointments in that grade in that armed force shall be made by commission'' for ''by the Secretary concerned'' and inserted '', and appointments (whether by warrant or commission) in the grade of regular warrant officer, W–1, shall be made by the President, except that appointments in that grade in the Coast Guard shall be made by the Secretary concerned'' after ''commission by the President''.

1994—Subsec. (a). Pub. L. 103–337 substituted ''armed forces'' for ''Army, Navy, Air Force, and Marine Corps''.

1992—Subsec. (a). Pub. L. 102–484 inserted a period at end of each item in table.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 541(h) of Pub. L. 103–337 provided that: ''This section [enacting section 215 of Title 14, Coast Guard, amending this section, sections 573 to 576, 580, 580a, 581, and 583 of this title, and sections 41, 214, 286a, and 334 of Title 14, repealing sections 212 and 213 of Title 14, enacting provisions set out as notes under this section, and repealing a provision set out as a note under former section 555 of this title] and the amendments made by this section shall take effect on the first day of the fourth month beginning after the date of the enactment of this Act [Oct. 5, 1994].''

EFFECTIVE DATE

Chapter effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as an Effective Date of 1991 Amendment note under section 521 of this title.

SHORT TITLE

Section 1101 of title XI of Pub. L. 102–190 provided that: ''This title [enacting this chapter and section 742 of this title, amending sections 521, 522, 597, 598 [now 12242], 603, 628, 644, 741, 1166, 1174, 1305, 1406, 5414, 5457, 5458, 5501 to 5503, 5596, 5600, 5665, 6389, and 6391 of this title, sections 286a and 334 of Title 14, Coast Guard, and sections 201, 301, 301c, 305a, and 406 of Title 37, Pay and Allowances of the Uniformed Services, repealing sections 555 to 565, 602, and 745 of this title, and enacting provisions set out as notes under this section, sections 521 and 555 of this title, and section 1009 of Title 37] may be cited as the 'Warrant Officer Management Act'.''

TRANSITION AND SAVINGS PROVISIONS

Section 541(c), (d) of Pub. L. 103–337, as amended by Pub. L. 104–106, div. A, title XV, §1504(a)(3), Feb. 10, 1996, 110 Stat. 513, provided that:

''(c) TRANSITION FOR CERTAIN REGULAR WARRANT OFFICERS SERVING IN A HIGHER TEMPORARY GRADE BELOW CHIEF WARRANT OFFICER, W–5.—(1) A regular warrant officer of the Coast Guard who on the effective date of this section [see Effective Date of 1994 Amendment note above] is on active duty and—

''(A) is serving in a temporary grade below chief warrant officer, W–5, that is higher than that warrant officer's permanent grade;

''(B) is on a list of officers recommended for promotion to a temporary grade below chief warrant officer, W–5; or

''(C) is on a list of officers recommended for promotion to a permanent grade higher than the grade in which that warrant officer is serving;

shall be considered to have been recommended by a board convened under section 573 of title 10, United States Code, as amended by subsection (b), for promotion to the permanent grade equivalent to the grade in which that warrant officer is serving or for which that warrant officer has been recommended for promotion, as the case may be.

''(2) An officer referred to in subparagraph (A) of paragraph (1) who is not promoted to the grade to which that warrant officer is considered under such subsection to have been recommended for promotion

because that officer's name is removed from a list of officers who are considered under such paragraph to have been recommended for promotion shall be considered by a board convened under section 573 of title 10, United States Code, as amended by subsection (b), for promotion to the permanent grade equivalent to the temporary grade in which that warrant officer was serving on the effective date of this section as if that warrant officer were serving in the permanent grade.

''(3) The date of rank of an officer referred to in paragraph (1)(A) who is promoted to the grade in which that warrant officer is serving on the effective date of this section is the date of that officer's temporary appointment in that grade.

''(d) TRANSITION FOR CERTAIN RESERVE WARRANT OFFICERS SERVING IN A HIGHER TEMPORARY GRADE BELOW CHIEF WARRANT OFFICER, W–5.—(1)(A) Except as provided in paragraph (2), a reserve warrant officer of the Coast Guard who on the effective date of this section [see Effective Date of 1994 Amendment note above] is subject to placement on the warrant officer active-duty list and who—

''(i) is serving in a temporary grade below chief warrant officer, W–5, that is higher than that warrant officer's permanent grade; or

''(ii) is on a list of warrant officers recommended for promotion to a temporary grade below chief warrant officer, W–5, that is the same as or higher than that warrant officer's permanent grade;

shall be considered to have been recommended by a board convened under section 598 [now 12242] of title 10, United States Code, for promotion to the permanent grade equivalent to the grade in which the warrant officer is serving or for which that warrant officer has been recommended for promotion, as the case may be.

''(B) The date of rank of a warrant officer referred to in subparagraph (A)(i) who is promoted to the grade in which that warrant officer is considered under such subparagraph to have been recommended for promotion is the date of the temporary appointment of that warrant officer in that grade.

''(2) A reserve warrant officer of the Coast Guard who on the effective date of this section—

''(A) is subject to placement on the warrant officer active-duty list;

''(B) is serving on active duty in a temporary grade; and

''(C) holds a permanent grade higher than the temporary grade in which that warrant officer is serving;

shall while continuing on active duty retain such temporary grade and shall be considered for promotion to a grade equal to or lower than the permanent grade as if such temporary grade is a permanent grade. If such warrant officer is recommended for promotion, the appointment of that warrant officer to such grade shall be a temporary appointment.''

Part B (§§1121–1124) of title XI of Pub. L. 102–190 provided that:

''SEC. 1121. TRANSITION FOR CERTAIN REGULAR WARRANT OFFICERS SERVING IN A HIGHER TEMPORARY GRADE BELOW CHIEF WARRANT OFFICER, W–5.

''(a) CERTAIN OFFICERS TO BE CONSIDERED AS RECOMMENDED FOR PROMOTION.—A regular warrant officer of the Armed Forces (other than the Coast Guard) who on the effective date of this title [Feb. 1, 1992] is on active duty and—

''(1) is serving in a temporary grade below chief warrant officer, W–5, that is higher than his permanent grade;

''(2) is on a list of officers recommended for promotion to a temporary grade below chief warrant officer, W–5; or

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

shall be considered to have been recommended by a board convened under section 573 of title 10, United States Code, as added by this title, 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.

''(b) BOARD CONSIDERATION FOR OFFICERS REMOVED FROM PROMOTION LIST.—An officer referred to in paragraph (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 paragraph to have been recommended for promotion shall be considered by a board convened under section 573 of title 10, United States Code, as amended by this title, for promotion to the permanent grade equivalent to the temporary grade in which he was serving on the effective date of this title as if he were serving in his permanent grade.

''(c) DATE OF RANK.—The date of rank of an officer referred to in subsection (a)(1) who is promoted to the grade in which he is serving on the effective date of this title is the date of his temporary appointment in that grade.

''SEC. 1122. TRANSITION FOR CERTAIN RESERVE WARRANT OFFICERS SERVING IN A HIGHER TEMPORARY GRADE BELOW CHIEF WARRANT OFFICER, W–5.

''(a) CERTAIN OFFICERS TO BE CONSIDERED AS RECOMMENDED FOR PROMOTION.—(1) Except as provided in subsection (b), a reserve warrant officer of the Armed Forces (other than the Coast Guard) who on the effective date of this title [Feb. 1, 1992] is subject to placement on the warrant officer active-duty list and who—

''(A) is serving in a temporary grade below chief warrant officer, W–5, that is higher than his permanent grade; or

''(B) is on a list of warrant officers recommended for promotion to a temporary grade below chief warrant officer, W–5, that is the same as or higher than his permanent grade;

shall be considered to have been recommended by a board convened under section 598 [now 12242] of title 10, United States Code, 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.

''(2) The date of rank of a warrant officer referred to in paragraph (1)(A) who is promoted to the grade in which he is considered under such paragraph to have been recommended for promotion is the date of his temporary appointment in that grade.

''(b) RESERVES ON ACTIVE DUTY.—A reserve warrant officer who on the effective date of this title—

''(1) is subject to placement on the warrant officer active-duty list;

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

''(3) holds a permanent 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 to a grade equal to or lower than his permanent grade as if such temporary grade is a permanent grade. If such warrant officer is recommended for promotion, his appointment to such grade shall be a temporary appointment.

''SEC. 1123. CONTINUATION OF CERTAIN TEMPORARY APPOINTMENTS OF NAVY AND MARINE CORPS WARRANT OFFICERS.

''A warrant officer of the Navy or Marine Corps who, on the effective date of this title [Feb. 1, 1992], is subject to placement on the warrant officer active-duty list and who—

''(1) was appointed as a temporary warrant officer under section 5596 of title 10, United States Code, and

''(2) has retained a permanent enlisted status,

shall, while continuing on active duty, retain such temporary status and grade. Such an officer shall be considered for promotion to a higher warrant officer grade under this title [see Short Title note above] as if that temporary grade is a permanent grade. If the officer is

recommended for promotion, the officer's appointment to that grade shall be a temporary appointment.

''SEC. 1124. SAVINGS PROVISION FOR CERTAIN REGULAR ARMY WARRANT OFFICERS FACING MANDATORY RETIREMENT FOR LENGTH OF SERVICE.

''(a) SAVINGS PROVISION.—Subject to subsection (b), a regular warrant officer of the Army who on the effective date of this title [Feb. 1, 1992]—

''(1) is a permanent regular chief warrant officer; or

''(2) is on a list of officers recommended for promotion to a regular chief warrant officer grade,

may be retained on active duty until he completes 30 years of active service or 24 years of active warrant officer service, whichever is later, that could be credited to him under section 511 of the Career Compensation Act of 1949 (70 Stat. 114) [act Oct. 12, 1949, formerly set out as a note under section 580 of this title] (as in effect on the day before the effective date of this part [Feb. 1, 1992]), and then be retired under the appropriate provision of title 10, United States Code, on the first day of the month after the month in which he completes that service.

''(b) EXCEPTIONS.—Subsection (a) does not apply to a regular warrant officer who—

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

''(2) is promoted to the regular grade of chief warrant officer, W–5; or

''(3) is continued on active duty under section 580(e) of title 10, United States Code, as added by this title.''

DELEGATION OF FUNCTIONS

Functions of President under second sentence of subsec. (b) of this section delegated to Secretary of Defense by section 1(b) of Ex. Ord. No. 13384, July 27, 2005, 70 F.R. 43739, set out as a note under section 531 of this title.

ESTABLISHMENT OF PERMANENT GRADE OF CHIEF WARRANT OFFICER, W–5

Section 541(a)(1) of Pub. L. 103–337 provided that: ''The grade of chief warrant officer, W–5, is hereby established in the Coast Guard.''

[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.]

Section 1111(a) of Pub. L. 102–190 provided that: ''The grade of chief warrant officer, W–5, is hereby established in the Army, Navy, Air Force, and Marine Corps.''

§ 572. Warrant officers: original appointment; service credit

For the purposes of promotion, persons originally appointed in regular or reserve warrant officer grades shall be credited with such service as the Secretary concerned may prescribe. However, such a person may not be credited with a period of service greater than the period of active service performed in the grade, or pay grade corresponding to the grade, in which so appointed, or in any higher grade or pay grade.

(Added Pub. L. 102–190, div. A, title XI, § 1112(a), Dec. 5, 1991, 105 Stat. 1493.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 556 of this title prior to repeal by Pub. L. 102–190, § 1112(a).

§ 573. Convening of selection boards

(a)(1) Whenever the Secretary concerned determines that the needs of the service so require, he shall convene a selection board to recommend for promotion to the next higher warrant officer grade warrant officers on the warrant officer active-duty list who are in the grade of chief warrant officer, W–2, chief warrant officer, W–3, or chief warrant officer, W–4.

(2) Warrant officers serving on the warrant officer active-duty list in the grade of warrant officer, W–1, shall be promoted to the grade of chief warrant officer, W–2, in accordance with regulations prescribed by the Secretary concerned. Such regulations shall require that an officer have served not less than 18 months on active duty in the grade of warrant officer, W–1, before promotion to the grade of warrant officer, W–2.

(b) A selection board shall consist of five or more officers who are on the active-duty list of the same armed force as the warrant officers under consideration by the board. At least five members of a selection board must be serving in a permanent grade above major or lieutenant commander. The Secretary concerned may appoint warrant officers, senior in grade to those under consideration, as additional members of the selection board. If warrant officers are appointed members of the selection board and if competitive categories have been established by the Secretary under section 574(b) of this title, at least one must be appointed from each warrant officer competitive category under consideration by the board, unless there is an insufficient number of warrant officers in the competitive category concerned who are senior in grade to those under consideration and qualified, as determined by the Secretary concerned, to be appointed as additional members of the board.

(c) The Secretary concerned may convene selection boards to recommend regular warrant officers for continuation on active duty under section 580 of this title and for retirement under section 581 of this title.

(d) When reserve warrant officers of one of the armed forces are to be considered by a selection board convened under subsection (a), the membership of the board shall, if practicable, include at least one reserve officer of that armed force, with the exact number of reserve officers to be determined by the Secretary concerned.

(e) No officer may serve on two consecutive boards under this section, if the second board considers any warrant officer who was considered by the first board.

(f) The Secretary concerned shall prescribe all other matters relating to the functions and duties of the boards, including the number of members constituting a quorum, and instructions concerning notice of convening of boards and communications with boards.

(Added Pub. L. 102–190, div. A, title XI, § 1112(a), Dec. 5, 1991, 105 Stat. 1493; amended Pub. L. 103–337, div. A, title V, § 541(b)(1), Oct. 5, 1994, 108 Stat. 2764; Pub. L. 104–106, div. A, title XV, § 1503(a)(5), Feb. 10, 1996, 110 Stat. 511.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 558 of this title prior to repeal by Pub. L. 102–190, § 1112(a).

AMENDMENTS

1996—Subsec. (a)(2). Pub. L. 104–106 substituted ''active-duty list'' for ''active duty list''.

1994—Subsec. (a)(1). Pub. L. 103–337, § 541(b)(1)(A), substituted ''Secretary concerned'' for ''Secretary of a military department''.

Subsec. (a)(2). Pub. L. 103–337, § 541(b)(1)(B), struck out ''of the military department'' after ''Secretary''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective on the first day of the fourth month beginning after Oct. 5, 1994, see section 541(h) of Pub. L. 103–337, set out as a note under section 571 of this title.

§ 574. Warrant officer active-duty lists; competitive categories; number to be recommended for promotion; promotion zones

(a) The Secretary concerned shall maintain for each armed force under the jurisdiction of that Secretary a single list of all warrant officers (other than warrant officers described in section 582 of this title) who are on active duty.

(b) The Secretary concerned may establish competitive categories for promotion. Warrant officers in the same competitive category shall compete among themselves for promotion.

(c) Before convening a selection board under section 573 of this title, the Secretary concerned shall determine for each grade (or grade and competitive category) to be considered by the board the following:

(1) The maximum number of warrant officers to be recommended for promotion.

(2) A promotion zone for warrant officers on the warrant officer active-duty list.

(d) The position of a warrant officer on the warrant officer active-duty list shall be determined as follows:

(1) Warrant officers shall be carried in the order of seniority of the grade in which they are serving on active duty.

(2) Warrant officers serving in the same grade shall be carried in the order of their rank in that grade.

(3) A warrant officer on the warrant officer active-duty list who receives a temporary appointment or a temporary assignment in a grade other than a warrant officer grade or chief warrant officer grade shall retain his position on the warrant officer active-duty list while so serving.

(e) A chief warrant officer may not be considered for promotion to the next higher grade under this chapter until the officer has completed two years of service on active duty in the grade in which the officer is serving.

(Added Pub. L. 102–190, div. A, title XI, § 1112(a), Dec. 5, 1991, 105 Stat. 1494; amended Pub. L. 102–484, div. A, title X, § 1052(3), Oct. 23, 1992, 106 Stat. 2499; Pub. L. 103–337, div. A, title V, § 541(b)(2), Oct. 5, 1994, 108 Stat. 2764; Pub. L. 104–201, div. A, title V, § 506(a), Sept. 23, 1996, 110 Stat. 2512.)

AMENDMENTS

1996—Subsec. (e). Pub. L. 104–201 substituted ''two years of service'' for ''three years of service''.

1994—Subsecs. (a), (b). Pub. L. 103–337 substituted ''Secretary concerned'' for ''Secretary of each military department''.

1992—Subsec. (d)(3). Pub. L. 102–484 substituted ''active-duty list'' for ''active duty list'' before ''while''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective on the first day of the fourth month beginning after Oct. 5, 1994, see section 541(h) of Pub. L. 103–337, set out as a note under section 571 of this title.

§ 575. Recommendations for promotion by selection boards

(a) A selection board convened under section 573(a) of this title shall recommend for promotion to the next higher grade those warrant officers considered by the board whom the board, giving due consideration to the needs of the armed force concerned for warrant officers with particular skills, considers best qualified for promotion within each grade (or grade and competitive category) considered by the board.

(b)(1) In the case of a selection board to consider warrant officers for selection for promotion to the grade of chief warrant officer, W–3, chief warrant officer, W–4, or chief warrant officer, W–5, the Secretary concerned shall establish the number of warrant officers that the selection board may recommend from among warrant officers being considered from below the promotion zone within each grade (or grade and competitive category). The number of warrant officers recommended for promotion from below the promotion zone does not increase the maximum number of warrant officers which the board is authorized under section 574 of this title to recommend for promotion.

(2) The number of officers recommended for promotion from below the promotion zone may not exceed 10 percent of the total number recommended, except that the Secretary of Defense and the Secretary of Homeland Security, when the Coast Guard is not operating as a service in the Navy, may authorize such percentage to be increased to not more than 15 percent. If the number determined under this subsection with respect to a promotion zone within a grade (or grade and competitive category) is less than one, the board may recommend one such officer for promotion from below the zone within that grade (or grade and competitive category).

(c) A selection board convened under section 573(a) of this title may not recommend a warrant officer for promotion unless—

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

(2) a majority of the members of the board find that the officer is fully qualified for promotion.

(d) Each time a selection board is convened under section 573(a) of this title to consider warrant officers in a competitive category for promotion to the next higher grade, each warrant officer in the promotion zone, and each warrant officer above the promotion zone, for the grade and competitive category under consideration (except for a warrant officer precluded from consideration under regulations prescribed by the Secretary concerned under section 577 of this title) shall be considered for promotion.

(Added Pub. L. 102–190, div. A, title XI, § 1112(a), Dec. 5, 1991, 105 Stat. 1495; amended Pub. L.

103–337, div. A, title V, §§ 501(a), 541(b)(3), Oct. 5, 1994, 108 Stat. 2748, 2764; Pub. L. 104–201, div. A, title V, § 506(b), Sept. 23, 1996, 110 Stat. 2512; Pub. L. 106–65, div. A, title V, § 505, Oct. 5, 1999, 113 Stat. 591; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Subsec. (b)(2). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1999—Subsec. (b)(2). Pub. L. 106–65 inserted at end ''If the number determined under this subsection with respect to a promotion zone within a grade (or grade and competitive category) is less than one, the board may recommend one such officer for promotion from below the zone within that grade (or grade and competitive category).''

1996—Subsec. (b)(1). Pub. L. 104–201 inserted ''chief warrant officer, W–3,'' after ''promotion to the grade of'' in first sentence.

1994—Subsec. (b)(2). Pub. L. 103–337, § 541(b)(3), inserted ''and the Secretary of Transportation, when the Coast Guard is not operating as a service in the Navy,'' after ''Secretary of Defense''.

Subsec. (d). Pub. L. 103–337, § 501(a), inserted ''(except for a warrant officer precluded from consideration under regulations prescribed by the Secretary concerned under section 577 of this title)'' after ''under consideration''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 541(b)(3) of Pub. L. 103–337 effective on the first day of the fourth month beginning after Oct. 5, 1994, see section 541(h) of Pub. L. 103–337, set out as a note under section 571 of this title.

§ 576. Information to be furnished to selection boards; selection procedures

(a) The Secretary concerned shall furnish to each selection board convened under section 573 of this title the following:

(1) The maximum number of warrant officers that may be recommended for promotion from those serving in any grade (or grade and competitive category) to be considered, as determined in accordance with section 574 of this title.

(2) The names and pertinent records of all officers in each grade (or grade and competitive category) to be considered.

(3) Such information or guidelines relating to the needs of the armed force concerned for warrant 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 grade or competitive category, as the Secretary concerned determines to be relevant in relation to the requirements of that armed force.

(b) From each promotion zone for a grade (or grade and competitive category), the selection board shall recommend for promotion to the next higher warrant officer grade those warrant officers whom it considers best qualified for promotion, but no more than the number specified by the Secretary concerned.

(c) The names of warrant officers selected for promotion under this section shall be arranged in the board's report in order of the seniority on the warrant officer active-duty list.

(d) Under such regulations as the Secretary concerned may prescribe, the selection board shall report the names of those warrant officers considered by it whose records establish, in its opinion, their unfitness or unsatisfactory performance. A regular warrant officer whose name is so reported shall be considered, under regulations provided by the Secretary concerned, for retirement or separation under section 1166 of this title.

(e) The report of the selection board shall be submitted to the Secretary concerned. The Secretary may approve or disapprove all or part of the report.

(f)(1) Upon receipt of the report of a selection board submitted to him under subsection (e), the Secretary concerned shall review the report to determine whether the board has acted contrary to law or regulation or to guidelines furnished the board under this section.

(2) If, on the basis of a review of the report under paragraph (1), the Secretary concerned determines that the board acted contrary to law or regulation or to guidelines furnished the board under this section, 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 573 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 subsection (e).

(Added Pub. L. 102–190, div. A, title XI, § 1112(a), Dec. 5, 1991, 105 Stat. 1496; amended Pub. L. 103–337, div. A, title V, §§ 501(b), 541(b)(4), Oct. 5, 1994, 108 Stat. 2748, 2764.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 560 of this title prior to repeal by Pub. L. 102–190, § 1112(a).

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–337, § 541(b)(4)(A), struck out ''of the military department'' after ''The Secretary'' in introductory provisions.

Subsec. (e). Pub. L. 103–337, § 541(b)(4)(B), struck out ''of the military department'' after ''submitted to the Secretary''.

Subsec. (f)(1). Pub. L. 103–337, § 501(b), struck out after first sentence ''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 (e).''

Subsec. (f)(2). Pub. L. 103–337, § 541(b)(4)(C), struck out ''of the military department'' after ''paragraph (1), the Secretary''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 541(b)(4) of Pub. L. 103–337 effective on the first day of the fourth month beginning after Oct. 5, 1994, see section 541(h) of Pub. L. 103–337, set out as a note under section 571 of this title.

§ 577. Promotions: effect of failure of selection for

A warrant officer who has been considered for promotion by a selection board convened under section 573 of this title, but not selected, shall be considered for promotion by each subsequent selection board that considers officers in his grade (or grade and competitive category) until he is retired or separated or he is selected for promotion. However, the Secretary concerned may, by regulation, preclude from consideration by a selection board by which he would otherwise be eligible to be considered, a warrant officer who has an established separation date that is within 90 days after the date on which the board is convened.

(Added Pub. L. 102–190, div. A, title XI, § 1112(a), Dec. 5, 1991, 105 Stat. 1497.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 561 of this title prior to repeal by Pub. L. 102–190, § 1112(a).

§ 578. Promotions: how made; effective date

(a) When the report of a selection board convened under this chapter is approved by the Secretary concerned, the Secretary shall place the names of the warrant officers approved for promotion on a single promotion list for each grade (or grade and competitive category), in the order of the seniority of such officers on the warrant officer active-duty list.

(b) Promotions of warrant officers on the warrant officer promotion list shall be made when, in accordance with regulations issued by the Secretary concerned, additional warrant officers in that grade (or grade and competitive category), are needed.

(c) A regular warrant officer who is promoted is appointed in the regular grade to which promoted, and a reserve warrant officer who is promoted is appointed in the reserve grade to which promoted. The date of appointment in that grade and date of rank shall be prescribed by the Secretary concerned. A warrant officer is entitled to the pay and allowances for the grade to which appointed from the date specified in the appointment order.

(d) Promotions shall be made in the order in which the names of warrant officers appear on the promotion list and after warrant officers previously selected for promotion in the applicable grade (or grade and competitive category) have been promoted.

(e) A warrant officer who is appointed to a higher grade under this section is considered to have accepted such appointment on the date on which the appointment is made unless the officer expressly declines the appointment.

(f) A warrant officer who has served continuously as an officer since subscribing 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 this section.

(Added Pub. L. 102–190, div. A, title XI, § 1112(a), Dec. 5, 1991, 105 Stat. 1497; amended Pub. L. 102–484, div. A, title X, § 1052(4), Oct. 23, 1992, 106 Stat. 2499; Pub. L. 103–337, div. A, title V, § 501(c), Oct. 5, 1994, 108 Stat. 2748.)

AMENDMENTS

1994—Subsecs. (e), (f). Pub. L. 103–337 added subsecs. (e) and (f).

1992—Pub. L. 102–484 substituted ''Promotions:'' for ''Promotions;'' in section catchline.

§ 579. Removal from a promotion list

(a) The name of a warrant officer recommended for promotion by a selection board convened under this chapter may be removed from the report of the selection board by the President.

(b) The Secretary concerned may remove the name of a warrant officer who is on a promotion list as a result of being recommended for promotion by a selection board convened under this chapter at any time before the promotion is effective.

(c) An officer whose name is removed from the list of officers recommended for promotion by a selection board continues to be eligible for consideration for promotion.

(d) If the next selection board that considers the warrant officer for promotion under this chapter selects the warrant officer for promotion and the warrant officer is promoted, the Secretary concerned may, upon his promotion, grant him the same effective date for pay and allowances and the same date of rank, and the same position on the warrant officer active-duty list as the warrant officer would have had if his name had not been so removed.

(e) If the next selection board does not select the warrant officer for promotion, or if his name is again removed under subsection (a) from the list of officers recommended for promotion by the selection board or under subsection (b) from the warrant officer promotion list, he shall be treated for all purposes as if he has twice failed of selection for promotion.

(Added Pub. L. 102–190, div. A, title XI, § 1112(a), Dec. 5, 1991, 105 Stat. 1497.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 562 of this title prior to repeal by Pub. L. 102–190, § 1112(a).

§ 580. Regular warrant officers twice failing of selection for promotion: involuntary retirement or separation

(a)(1) Unless retired or separated sooner under some other provision of law, a regular chief warrant officer who has twice failed of selection for promotion to the next higher regular warrant officer grade shall be retired under paragraph (2) or (3) or separated from active duty under paragraph (4).

(2) If a warrant officer described in paragraph (1) has more than 20 years of creditable active service on (A) the date on which the Secretary concerned approves the report of the board under section 576(e) of this title, or (B) the date on which his name was removed from the recommended list under section 579 of this title, whichever applies, the warrant officer shall be retired. The date of such retirement shall be not later than the first day of the seventh calendar month beginning after the applicable date under the preceding sentence, except as provided by

section 8301 of title 5. A warrant officer retired under this paragraph shall receive retired pay computed under section 1401 of this title.

(3) If a warrant officer described in paragraph (1) has at least 18 but not more than 20 years of creditable active service on (A) the date on which the Secretary concerned approves the report of the board under section 576(e) of this title, or (B) the date on which his name was removed from the recommended list under section 579 of this title, whichever applies, the warrant officer shall be retired not later than the date determined under the next sentence unless he is selected for promotion to the next higher regular warrant officer grade before that date. The date of the retirement of a warrant officer under the preceding sentence shall be on a date specified by the Secretary concerned, but not later than the first day of the seventh calendar month beginning after the date upon which he completes 20 years of active service, except as provided by section 8301 of title 5. A warrant officer retired under this paragraph shall receive retired pay computed under section 1401 of this title.

(4)(A) If a warrant officer described in paragraph (1) has less than 18 years of creditable active service on (i) the date on which the Secretary concerned approves the report of the board under section 576(e) of this title, or (ii) the date on which his name was removed from the recommended list under section 579 of this title, whichever applies, the warrant officer shall be separated (except as provided in subparagraph (C)). The date of such separation shall be not later than the first day of the seventh calendar month beginning after the applicable date under the preceding sentence.

(B) A warrant officer separated under this paragraph shall receive separation pay computed under section 1174 of this title, or severance pay computed under section 286a of title 14, as appropriate, except in a case in which—

(i) upon his request and in the discretion of the Secretary concerned, he is enlisted in the grade prescribed by the Secretary; or

(ii) he is serving on active duty in a grade above chief warrant officer, W–5, and he elects, with the consent of the Secretary concerned, to remain on active duty in that status.

(C) If on the date on which a warrant officer is to be separated under subparagraph (A) the warrant officer has at least 18 years of creditable active service, the warrant officer shall be retained on active duty until retired under paragraph (3) in the same manner as if the warrant officer had had at least 18 years of service on the applicable date under subparagraph (A) or (B) of that paragraph.

(5) A warrant officer who is subject to retirement or discharge under this subsection is not eligible for further consideration for promotion.

(6) In this subsection, the term ''creditable active service'' means active service that could be credited to a warrant officer under section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114).

(b) The Secretary concerned may defer, for not more than four months, the retirement or separation under this section of a warrant officer if, because of unavoidable circumstances, evaluation of his physical condition and determination of his entitlement to retirement or separation for physical disability require hospitalization or medical observation that cannot be completed before the date on which he would otherwise be required to retire or be separated under this section.

(c) The Secretary concerned may defer, until such date as he prescribes, the retirement under subsection (a) of a warrant officer who is serving on active duty in a grade above chief warrant officer, W–5, and who elects to continue to so serve.

(d) If a warrant officer who also holds a grade above chief warrant officer, W–5, is retired or separated under subsection (a), his commission in the higher grade shall be terminated on the date on which he is so retired or separated.

(e)(1) A regular warrant officer subject to discharge or retirement under this section may, subject to the needs of the service, be continued on active duty if—

(A) in the case of a warrant officer in the grade of chief warrant officer, W–2, or chief warrant officer, W–3, the warrant officer is selected for continuation on active duty by a selection board convened under section 573(c) of this title; and

(B) in the case of a warrant officer in the grade of chief warrant officer, W–4, the warrant officer is selected for continuation on active duty by the Secretary concerned under such procedures as the Secretary may prescribe.

(2)(A) A warrant 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 this section.

(B) A warrant officer in the grade of chief warrant officer, W–4, who is retained on active duty pursuant to procedures prescribed under paragraph (1)(B) is eligible for further consideration for promotion while remaining on active duty.

(3) Each warrant officer who is continued on active duty under this subsection, not subsequently promoted or continued on active duty, and not on a list of warrant 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 subparagraph (A), a warrant officer who would otherwise be discharged under such subparagraph and who is within two years of qualifying for retirement under section 1293 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.

(4) The retirement or discharge of a warrant officer pursuant to this subsection shall be con-

sidered to be an involuntary retirement or discharge for purposes of any other provision of law.

(5) Continuation of a warrant officer on active duty under this subsection pursuant to the action of a selection board convened under section 573(c) of this title is subject to the approval of the Secretary concerned.

(6) The Secretary of Defense and the Secretary of Homeland Security, when the Coast Guard is not operating as a service in the Navy, shall prescribe regulations for the administration of this subsection.

(f) A warrant officer subject to discharge or retirement under this section, but against whom any action has been commenced with a view to trying the officer by court-martial, may be continued on active duty, without prejudice to such action, until the completion of such action.

(Added Pub. L. 102–190, div. A, title XI, § 1112(a), Dec. 5, 1991, 105 Stat. 1498; amended Pub. L. 103–160, div. A, title V, § 505(a), Nov. 30, 1993, 107 Stat. 1645; Pub. L. 103–337, div. A, title V, § 541(b)(5), Oct. 5, 1994, 108 Stat. 2765; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 109–364, div. A, title V, § 505(a), (b), Oct. 17, 2006, 120 Stat. 2179; Pub. L. 111–383, div. A, title V, § 541, Jan. 7, 2011, 124 Stat. 4218.)

REFERENCES IN TEXT

Section 511 of the Career Compensation Act of 1949, referred to in subsec. (a)(6), is section 511 of act Oct. 12, 1949, ch. 681, which was formerly set out as a note below.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 564 of this title prior to repeal by Pub. L. 102–190, § 1112(a).

AMENDMENTS

2011—Subsec. (f). Pub. L. 111–383 added subsec. (f).

2006—Subsec. (e)(1). Pub. L. 109–364, § 505(a), substituted ''continued on active duty if—'' and subpars. (A) and (B) for ''continued on active duty if he is selected for continuation on active duty by a selection board convened under section 573(c) of this title.''

Subsec. (e)(2). Pub. L. 109–364, § 505(b), designated existing provisions as subpar. (A) and added subpar. (B).

2002—Subsec. (e)(6). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1994—Subsec. (a)(4)(B). Pub. L. 103–337, § 541(b)(5)(A), inserted '', or severance pay computed under section 286a of title 14, as appropriate,'' after ''section 1174 of this title''.

Subsec. (e)(6). Pub. L. 103–337, § 541(b)(5)(B), inserted ''and the Secretary of Transportation, when the Coast Guard is not operating as a service in the Navy,'' after ''Secretary of Defense''.

1993—Subsec. (a)(4)(A). Pub. L. 103–160, § 505(a)(1), inserted ''(except as provided in subparagraph (C))'' after ''shall be separated''.

Subsec. (a)(4)(C). Pub. L. 103–160, § 505(a)(2), added subpar. (C).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective on the first day of the fourth month beginning after Oct. 5, 1994, see section 541(h) of Pub. L. 103–337, set out as a note under section 571 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 505(b) of Pub. L. 103–160 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to warrant officers who have not been separated pursuant to section 580(a)(4) of title 10, United States Code, before the date of enactment of this Act [Nov. 30, 1993].''

RETIRED AND RETAINER PAY OF MEMBERS ON RETIRED LISTS OR RECEIVING RETAINER PAY

Act Oct. 12, 1949, ch. 681, title V, § 511, 63 Stat. 829, as amended May 19, 1952, ch. 310, § 4, 66 Stat. 80; Apr. 23, 1956, ch. 208, § 1, 70 Stat. 114, set forth methods of computing retired pay, retirement pay, retainer pay, or equivalent pay on and after Oct. 1, 1949, for members of the uniformed services who had retired for reasons other than for physical disability before Oct. 1, 1949, members who had transferred to the Fleet Reserve or the Fleet Marine Corps Reserve before such date, and certain members of the Army Nurse Corps or the Navy Nurse Corps who had retired before such date, and provided that the amount of such pay would not exceed 75 percentum of the monthly basic pay upon which the computation had been based.

§ 580a. Enhanced authority for selective early discharges

(a) The Secretary of Defense may authorize the Secretary of a military department, during the period beginning on November 30, 1993, and ending on October 1, 1999, to take the action set forth in subsection (b) with respect to regular warrant officers of an armed force under the jurisdiction of that Secretary.

(b) The Secretary of a military department may, with respect to regular warrant officers of an armed force, when authorized to do so under subsection (a), convene selection boards under section 573(c) of this title to consider for discharge regular warrant officers on the warrant officer active-duty list—

(1) who have served at least one year of active duty in the grade currently held;

(2) whose names are not on a list of warrant officers recommended for promotion; and

(3) who are not eligible to be retired under any provision of law and are not within two years of becoming so eligible.

(c)(1) In the case of an action under subsection (b), the Secretary of the military department concerned may submit to a selection board convened pursuant to that subsection—

(A) the names of all regular warrant officers described in that subsection in a particular grade and competitive category; or

(B) the names of all regular warrant 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 warrant officers to be recommended for discharge by a selection board convened pursuant to subsection (b). That number may not be more than 30 percent of the number of officers considered—

(A) in each grade in each competitive category; or

(B) in each grade, year group, or specialty (or combination thereof) in each competitive category.

(3) The total number of regular warrant officers described in subsection (b) 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 warrant officers of that armed force (or the number of warrant officers of that armed force in that grade) authorized to be serving on active duty as of the end of that fiscal year.

(4) A warrant officer who is recommended for discharge by a selection board convened pursuant to subsection (b) and whose discharge is approved by the Secretary concerned shall be discharged on a date specified by the Secretary concerned.

(5) Selection of warrant officers for discharge under this subsection shall be based on the needs of the service.

(d) The discharge of any warrant officer pursuant to this section shall be considered involuntary for purposes of any other provision of law.

(e) This section applies to the Secretary of Homeland Security in the same manner and to the same extent as it applies to the Secretary of Defense. The Commandant of the Coast Guard shall take the action set forth in subsection (b) with respect to regular warrant officers of the Coast Guard.

(Added Pub. L. 103–160, div. A, title V, §504(a), Nov. 30, 1993, 107 Stat. 1644; amended Pub. L. 103–337, div. A, title V, §541(g), title X, §1070(a)(3), Oct. 5, 1994, 108 Stat. 2767, 2855; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Subsec. (e). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1994—Subsec. (a). Pub. L. 103–337, §1070(a)(3), substituted ''November 30, 1993,'' for ''the date of the enactment of this section''.

Subsec. (e). Pub. L. 103–337, §541(g), added subsec. (e).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 541(g) of Pub. L. 103–337 effective on the first day of the fourth month beginning after Oct. 5, 1994, see section 541(h) of Pub. L. 103–337, set out as a note under section 571 of this title.

§581. Selective retirement

(a) A regular warrant officer who holds a warrant officer grade above warrant officer, W–1, and whose name is not on a list of warrant officers recommended for promotion and who is eligible to retire under any provision of law may be considered for retirement by a selection board convened under section 573(c) of this title. The Secretary concerned shall specify the maximum number of warrant officers that such a board may recommend for retirement.

(b) A warrant officer who is recommended for retirement under this section and whose 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 seventh calendar month beginning after the month in which the Secretary concerned approves the report of the board which recommended the officer for retirement.

(c) The retirement of a warrant officer pursuant to this section shall be considered to be an involuntary retirement for purposes of any other provision of law.

(d)(1) The Secretary concerned shall prescribe regulations for the administration of this section. Such regulations shall require that when the Secretary concerned submits a list of regular warrant officers to a selection board convened under section 573(c) of this title to consider regular warrant officers for selection for retirement under this section, the list shall include each warrant officer on the active-duty list in the same grade or same grade and competitive category whose position on the active-duty list is between that of the most junior regular warrant officer in that grade whose name is submitted to the board and that of the most senior regular warrant officer in that grade whose name is submitted to the board.

(2) Such regulations shall establish procedures to exclude from consideration by the board any warrant officer who has been approved for voluntary retirement, or who is to be mandatorily retired under any other provision of law, during the fiscal year in which the board is convened or during the following fiscal year. An officer not considered by a selection board convened under section 573(c) of this title under such regulations because the officer has been approved for voluntary retirement shall be retired on the date approved for the retirement of such 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.

(e) The Secretary concerned may defer for not more than 90 days the retirement of an officer otherwise approved for early retirement under this section 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.

(Added Pub. L. 102–190, div. A, title XI, §1112(a), Dec. 5, 1991, 105 Stat. 1500; amended Pub. L. 102–484, div. A, title X, §1052(5), Oct. 23, 1992, 106 Stat. 2499; Pub. L. 103–337, div. A, title V, §541(b)(6), Oct. 5, 1994, 108 Stat. 2765; Pub. L. 104–106, div. A, title V, §504(a), Feb. 10, 1996, 110 Stat. 295.)

AMENDMENTS

1996—Subsec. (e). Pub. L. 104–106 added subsec. (e).

1994—Subsec. (a). Pub. L. 103–337 struck out ''in the Army, Navy, Air Force, or Marine Corps'' after ''A regular warrant officer''.

1992—Subsec. (d)(2). Pub. L. 102–484 substituted ''board'' for ''Board'' in two places in first sentence.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective on the first day of the fourth month beginning after Oct. 5, 1994, see

section 541(h) of Pub. L. 103–337, set out as a note under section 571 of this title.

§ 582. Warrant officer active-duty list: exclusions

Warrant officers in the following categories are not subject to this chapter:

(1) Reserve warrant officers—

(A) on active duty as 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; or

(B) on full-time National Guard duty.

(2) Retired warrant officers on active duty (other than retired warrant officers who were recalled to active duty before February 1, 1992, and have served continuously on active duty since that date).

(3) Students enrolled in the Army Physician's Assistant Program.

(Added Pub. L. 102–190, div. A, title XI, § 1112(a), Dec. 5, 1991, 105 Stat. 1500; amended Pub. L. 103–337, div. A, title V, § 501(d), Oct. 5, 1994, 108 Stat. 2748; Pub. L. 104–106, div. A, title XV, § 1501(c)(5), Feb. 10, 1996, 110 Stat. 498; Pub. L. 108–375, div. A, title IV, § 416(i), Oct. 28, 2004, 118 Stat. 1869.)

AMENDMENTS

2004—Par. (1). Pub. L. 108–375 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Reserve warrant officers—

''(A) on active duty for training;

''(B) on active duty under section 12301(d) of this title in connection with organizing, administering, recruiting, instructing, or training the reserve components;

''(C) on active duty to pursue special work;

''(D) ordered to active duty under section 12304 of this title; or

''(E) on full-time National Guard duty.''

1996—Par. (1)(B). Pub. L. 104–106 substituted ''section 12301(d)'' for ''section 672(d)''.

Par. (1)(D). Pub. L. 104–106 substituted ''section 12304'' for ''section 673b''.

1994—Par. (2). Pub. L. 103–337 inserted before period at end ''(other than retired warrant officers who were recalled to active duty before February 1, 1992, and have served continuously on active duty since that date)''.

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.

§ 583. Definitions

In this chapter:

(1) The term ''promotion zone'' means a promotion eligibility category consisting of officers on a warrant officer active-duty list in the same grade (or the same grade and competitive category) who—

(A) in the case of grades below chief warrant officer, W–5, have neither (i) failed of selection for promotion to the next higher grade, nor (ii) been removed from a list of warrant 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 warrant officer designated by the Secretary concerned to be the junior warrant officer in the promotion zone eligible for promotion to the next higher grade.

(2) The term ''warrant officers above the promotion zone'' means a group of officers on a warrant officer active-duty list in the same grade (or 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 warrant officers in the promotion zone; and

(C) are senior to the senior warrant officer in the promotion zone.

(3) The term ''warrant officers below the promotion zone'' means a group of officers on a warrant officer active-duty list in the same grade (or 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 warrant officers in the promotion zone; and

(C) are junior to the junior warrant officer in the promotion zone.

(4) The active-duty list referred to in section 573(b) of this title includes the active-duty promotion list established by section 41a of title 14.

(Added Pub. L. 102–190, div. A, title XI, § 1112(a), Dec. 5, 1991, 105 Stat. 1501; amended Pub. L. 103–337, div. A, title V, § 541(f)(7), Oct. 5, 1994, 108 Stat. 2767.)

AMENDMENTS

1994—Par. (4). Pub. L. 103–337 added par. (4).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective on the first day of the fourth month beginning after Oct. 5, 1994, see section 541(h) of Pub. L. 103–337, set out as a note under section 571 of this title.

CHAPTER 34—APPOINTMENTS AS RESERVE OFFICERS

Sec.
591. Reference to chapters 1205 and 1207.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title XVI, § 1662(d)(3), Oct. 5, 1994, 108 Stat. 2991, amended analysis generally, substituting item 591 for former items 591 to 600a.

1992—Pub. L. 102–484, div. A, title V, § 515(b), Oct. 23, 1992, 106 Stat. 2407, added item 596.

1986—Pub. L. 99–661, div. A, title V, § 508(d)(1)(B), Nov. 14, 1986, 100 Stat. 3867, added item 600a.

1980—Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2849, substituted ''34'' for ''35'' as chapter number.

1958—Pub. L. 85–861, § 1(11), Sept. 2, 1958, 72 Stat. 1440, added item 592 and struck out item 596 ''Officers: promotion''.

§ 591. Reference to chapters 1205 and 1207

Provisions of law relating to appointments of reserve officers other than warrant officers are set forth in chapter 1205 of this title (beginning with section 12201). Provisions of law relating to appointments and promotion of reserve warrant officers are set forth in chapter 1207 (beginning with section 12241).

(Added Pub. L. 103–337, div. A, title XVI, § 1662(d)(3), Oct. 5, 1994, 108 Stat. 2991.)

PRIOR PROVISIONS

Prior sections 591 to 594, 595, and 596 were renumbered sections 12201 to 12204, 12208, and 12205 of this title, respectively.

Another prior section 596, act Aug. 10, 1956, ch. 1041, 70A Stat. 25, related to promotion of officers in the Reserve components, prior to repeal by Pub. L. 85–861, §36B(2), Sept. 2, 1958, 72 Stat. 1570.

Prior sections 596a, 596b, 597 to 599, 600, and 600a were renumbered sections 12206, 12207, 12241 to 12243, 12209, and 12210 of this title, respectively.

EFFECTIVE DATE

Section 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.

CHAPTER 35—TEMPORARY APPOINTMENTS IN OFFICER GRADES

Sec.
601. Positions of importance and responsibility: generals and lieutenant generals; admirals and vice admirals.
[602. Repealed.]
603. Appointments in time of war or national emergency.
604. Senior joint officer positions: recommendations to the Secretary of Defense.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title IV, §405(c)(2), Oct. 5, 1994, 108 Stat. 2745, added item 604.

1991—Pub. L. 102–190, div. A, title XI, §1113(d)(1)(B), Dec. 5, 1991, 105 Stat. 1502, struck out item 602 ''Warrant officers: temporary promotions'' and substituted ''Appointments in time of war or national emergency'' for ''Commissioned officer grades: time of war or national emergency'' in item 603.

§601. Positions of importance and responsibility: generals and lieutenant generals; admirals and vice admirals

(a) The President may designate positions of importance and responsibility to carry the grade of general or admiral or lieutenant general or vice admiral. The President may assign to any such position an officer of the Army, Navy, Air Force, or Marine Corps who is serving on active duty in any grade above colonel or, in the case of an officer of the Navy, any grade above captain. An officer assigned to any such position has the grade specified for that position if he is appointed to that grade by the President, by and with the advice and consent of the Senate. Except as provided in subsection (b), the appointment of an officer to a grade under this section for service in a position of importance and responsibility ends on the date of the termination of the assignment of the officer to that position.

(b) An officer who is appointed to the grade of general, admiral, lieutenant general, or vice admiral for service in a position designated under subsection (a) or by law to carry that grade shall continue to hold that grade—

(1) while serving in that position;

(2) while under orders transferring him to another position designated under subsection (a) or by law to carry one of those grades, beginning on the day his assignment to the first position is terminated and ending on the day before the day on which he assumes the second position;

(3) while hospitalized, beginning on the day of the hospitalization and ending on the day he is discharged from the hospital, but not for more than 180 days;

(4) at the discretion of the Secretary of Defense, while the officer is awaiting orders after being relieved from the position designated under subsection (a) or by law to carry one of those grades, but not for more than 60 days beginning on the day the officer is relieved from the position, unless, during such period, the officer is placed under orders to another position designated under subsection (a) or by law to carry one of those grades, in which case paragraph (2) will also apply to the officer; and

(5) while awaiting retirement, beginning on the day he is relieved from the position designated under subsection (a) or by law to carry one of those grades and ending on the day before his retirement, but not for more than 60 days.

(c)(1) An appointment of an officer under subsection (a) does not vacate the permanent grade held by the officer.

(2) An officer serving in a grade above major general or rear admiral who holds the permanent grade of brigadier general or rear admiral (lower half) shall be considered for promotion to the permanent grade of major general or rear admiral, as appropriate, as if he were serving in his permanent grade.

(d)(1) When an officer is recommended to the President for an initial appointment to the grade of lieutenant general or vice admiral, or for an initial appointment to the grade of general or admiral, the Chairman of the Joint Chiefs of Staff shall submit to the Secretary of Defense the Chairman's evaluation of the performance of that officer as a member of the Joint Staff and in other joint duty assignments. The Secretary of Defense shall submit the Chairman's evaluation to the President at the same time the recommendation for the appointment is submitted to the President.

(2) Whenever a vacancy occurs in a position within the Department of Defense that the President has designated as a position of importance and responsibility to carry the grade of general or admiral or lieutenant general or vice admiral or in an office that is designated by law to carry such a grade, the Secretary of Defense shall inform the President of the qualifications needed by an officer serving in that position or office to carry out effectively the duties and responsibilities of that position or office.

(Added Pub. L. 96–513, title I, §105, Dec. 12, 1980, 94 Stat. 2849; amended Pub. L. 97–86, title IV, §405(b)(1), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 98–525, title V, §523, Oct. 19, 1984, 98 Stat. 2523; Pub. L. 99–145, title V, §514(b)(1), Nov. 8, 1985, 99 Stat. 628; Pub. L. 99–433, title IV, §403, Oct. 1, 1986, 100 Stat. 1031; Pub. L. 102–190, div. A, title V, §502(a), Dec. 5, 1991, 105 Stat. 1354; Pub. L. 104–106, div. A, title IV, §403(c), Feb. 10, 1996, 110 Stat. 287; Pub. L. 110–181, div. A, title V, §501(a), Jan. 28, 2008, 122 Stat. 94.)

AMENDMENTS

2008—Subsec. (b)(4), (5). Pub. L. 110–181 added par. (4) and redesignated former par. (4) as (5).

1996—Subsec. (b). Pub. L. 104–106, §403(c)(1), in introductory provisions substituted ''designated under subsection (a) or by law'' for ''of importance and responsibility designated''.

Subsec. (b)(1). Pub. L. 104–106, § 403(c)(2), struck out ''of importance and responsibility'' after ''position''.

Subsec. (b)(2). Pub. L. 104–106, § 403(c)(3), substituted ''designated under subsection (a) or by law'' for ''designating''.

Subsec. (b)(4). Pub. L. 104–106, § 403(c)(4), inserted ''under subsection (a) or by law'' after ''designated''.

1991—Subsec. (b)(4). Pub. L. 102–190 substituted ''60 days'' for ''90 days''.

1986—Subsec. (d). Pub. L. 99–433 added subsec. (d).

1985—Subsec. (c)(2). Pub. L. 99–145 substituted ''rear admiral (lower half)'' for ''commodore''.

1984—Subsec. (b). Pub. L. 98–525 amended subsec. (b) generally, which prior to amendment had provided that if the assignment of an officer who was serving in a position designated to carry the grade of general, admiral, lieutenant general, or vice admiral was terminated (1) by the assignment of such officer to another position designated to carry one of those grades, such officers would hold, during the period beginning on the day of that termination and ending on the day before the day on which he assumed the other position, the grade that he had held on the day before the termination; (2) by the hospitalization of such officer, such officer would hold, during the period beginning on the day of that termination and ending on the day he was discharged from the hospital, but not for more than 180 days, the grade that he had held on the day before the termination; or (3) by the retirement of such officer, such officer would hold, during the period beginning on the day of that termination and ending on the day before his retirement, but not for more than 90 days, the grade that he had held on the day before the termination.

1981—Subsec. (c)(2). Pub. L. 97–86 substituted ''commodore'' for ''commodore admiral''.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 502(b) of Pub. L. 102–190 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the first day of the first month that begins more than 90 days after the date of the enactment of this Act [Dec. 5, 1991].''

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

Chapter effective Sept. 15, 1981, but the authority to prescribe regulations under this chapter 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 relating to temporary appointments of officers serving in grades above major general or rear admiral, see section 623 of Pub. L. 96–513, set out as a note under section 611 of this title.

[§ 602. Repealed. Pub. L. 102–190, div. A, title XI, § 1113(a), Dec. 5, 1991, 105 Stat. 1502]

Section, Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2849, related to temporary promotions of warrant officers.

EFFECTIVE DATE OF REPEAL

Repeal effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as an Effective Date of 1991 Amendment note under section 521 of this title.

§ 603. Appointments in time of war or national emergency

(a) In time of war, or of national emergency declared by the Congress or the President after November 30, 1980, the President may appoint any qualified person (whether or not already a member of the armed forces) to any officer grade in the Army, Navy, Air Force, or Marine Corps, except that appointments under this section may not be made in grades above major general or rear admiral. Appointments under this section shall be made by the President alone, except that an appointment in the grade warrant officer, W–1, shall be made by warrant by the Secretary concerned.

(b) Any appointment under this section is a temporary appointment and may be vacated by the President at any time.

(c)(1) Any person receiving an original appointment under this section is entitled to service credit as authorized under section 533 of this title.

(2) An appointment under this section of a person who is not on active duty becomes effective when that person begins active duty under that appointment.

(d) An appointment under this section does not change the permanent status of a member of the armed forces so appointed. A member who is appointed under this section shall not incur any reduction in the pay and allowances to which the member was entitled, by virtue of his permanent status, at the time of his appointment under this section.

(e)(1) An officer who receives an appointment to a higher grade under this section is considered to have accepted such appointment on the date of the order announcing the appointment unless he expressly declines the appointment.

(2) 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 this section.

(f) Unless sooner terminated, an appointment under this section terminates on the earliest of the following:

(1) The second anniversary of the appointment.

(2) The end of the six-month period beginning on the last day of the war or national emergency during which the appointment was made.

(3) The date the person appointed is released from active duty.

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2850; amended Pub. L. 101–189, div. A, title VI, § 653(a)(2), Nov. 29, 1989, 103 Stat. 1462; Pub. L. 102–190, div. A, title XI, § 1113(b), (d)(1)(A), Dec. 5, 1991, 105 Stat. 1502.)

AMENDMENTS

1991—Pub. L. 102–190, § 1113(d)(1)(A), substituted ''Appointments in time of war or national emergency'' for ''Commissioned officer grades: time of war or national emergency'' in section catchline.

Subsec. (a). Pub. L. 102–190, § 1113(b), struck out ''commissioned'' before ''officer grade in the Army'' and ''in warrant officer grades or'' before ''in grades above major general'' and inserted before period at end '', except that an appointment in the grade warrant officer, W–1, shall be made by warrant by the Secretary concerned''.

1989—Subsec. (f). Pub. L. 101–189 substituted ''terminates on the earliest of the following:'' for ''terminates—'' in introductory provisions, and made numer-

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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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 number 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 actual 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 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 Senate 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 members 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 then 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. Deferment 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.

9, 1979, 93 Stat. 813; Pub. L. 96–513, title V, § 511(18), Dec. 12, 1980, 94 Stat. 2921; Pub. L. 98–94, title X, § 1022(b)(1), Sept. 24, 1983, 97 Stat. 670; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 110–181, div. A, title V, § 505, Jan. 28, 2008, 122 Stat. 96.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
651(a)	50 App.:454(d)(3) (1st sentence, and less applicability to members of National Security Training Corps).	June 24, 1948, ch. 625, § 4(d)(3) (less 4th sentence, and less applicability to members of National Security Training Corps); added June 19, 1951, ch. 144, § 1(g) (last par., less 4th sentence, and less applicability to members of National Security Training Corps), 65 Stat. 79; July 9, 1952, ch. 608, § 813, 66 Stat. 509.
651(b)	50 App.:454(d)(3) (2d sentence, and less applicability to members of National Security Training Corps).	
651(c)	50 App.:454(d)(3) (3d and last sentences).	

In subsection (a), the word ''male'' is inserted, since the source statute (Universal Military Training and Service Act (50 U.S.C. App. 451 et seq.)) applies only to male persons. The words ''subsequent to the date of enactment of this paragraph [June 19, 1951]'' are omitted as executed. The words ''becomes a member'' are substituted for the words ''is inducted, enlisted, or appointed * * * in''. The words ''in the armed forces'' are substituted for the words ''on active training and service in the Armed Forces * * * and in a reserve component''. The last sentence is substituted for the words ''or in training in the National Security Training Corps''. The words ''under any provision of law'' and ''including the reserve components thereof'' are omitted as surplusage.

In subsection (b), the words ''who is not a Reserve'' are inserted, since the eight year obligation for Reserves is covered by subsection (a). The words ''active duty'' are substituted for the words ''active training and service''. The last eight words are substituted for the words ''and shall serve therein for the remainder of the period which he is required to serve under this paragraph''. The words ''physically and mentally'' and 50 App.:454(d)(3) (last 15 words of 2d sentence) are omitted as surplusage.

In [former] subsection (c), the words ''who is released from active duty'' are inserted for clarity. The words ''shall become a member'' are substituted for the words ''it shall be the duty of such person to enlist, enroll, or accept appointment in, or accept assignment to''. The words ''there is a vacancy'' are substituted for the words ''enlistment, enrollment, or appointment in, or assignment to''. 50 App.:454(d)(3) (last sentence) is omitted as surplusage.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
651(a)	50 App.:454(d)(3) (2d sentence).	Aug. 9, 1955, ch. 665, § 3(a) (last sentence), 69 Stat. 603.

In subsection (a), the word ''male'' is inserted, since the source statute applies only to male persons. The words ''subsequent to the date of enactment of the Reserve Forces Act of 1955'' are omitted as executed. The words ''becomes a member'' are substituted for the words ''is inducted, enlisted, or appointed . . . in''. The last sentence is substituted for the words ''on active training and service . . . and in a reserve component''. The requirement of transfer to and service in a reserve component, after active training and service is covered by subsection (b) of this section. The words ''under any provision of law'' and ''including the reserve components thereof'' are omitted as surplusage.

AMENDMENTS

2008—Subsec. (c). Pub. L. 110–181 added subsec. (c).

2002—Subsec. (a). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1983—Subsec. (a). Pub. L. 98–94 amended subsec. (a) generally, substituting a reference to service in the armed forces for a total initial period of not less than six years nor more than eight years under prescribed regulations for the prior reference to service in the armed forces for a total of six years.

1980—Subsec. (a). Pub. L. 96–513, substituted ''Secretary of Transportation'' for ''Secretary of the Treasury'', and ''section 6(d)(1) of the Military Selective Service Act (50 U.S.C. App. 456(d)(1))'' for ''section 456(d)(1) of title 50, appendix''.

1979—Subsec. (a). Pub. L. 96–107 struck out ''before his twenty-sixth birthday'' after ''force''.

1977—Subsec. (a). Pub. L. 95–79 struck out ''male'' after ''Each'' and ''after August 9, 1955,'' after ''who''.

1966—Subsec. (a). Pub. L. 89–718 struck out reference to persons who enlisted under section 1013 of title 50 in the description of persons not required to serve in the armed forces for a total of six years.

1958—Subsec. (a). Pub. L. 85–861, § 1(12), restricted section to male persons who became members of the armed forces after Aug. 9, 1955, excluded persons enlisted under section 1013 of Title 50 or deferred under the next to last sentence of section 456(d)(1) of Title 50, Appendix, reduced from eight to six years the required period of service, required any part of such service that is not active duty or is active duty for training to be performed in a reserve component, and struck out provisions which permitted members of the armed forces to count service in the National Security Training Corps as if it were service in the armed forces for the purposes of this subsection.

Subsec. (c). Pub. L. 85–861, § 36B(3), repealed subsec. (c) which required members released from active duty to become members of an organized unit of a reserve component of an officers' training program.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 1022(b)(2) of Pub. L. 98–94 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply only with respect to persons who enter the Armed Forces 60 or more days after the date of the enactment of this Act [Sept. 24, 1983].''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–107 applicable to individuals who become members of an Armed Force after Nov. 9, 1979, see section 805(c) of Pub. L. 96–107, set out as a note under section 511 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 803(b) of Pub. L. 95–79 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on the first day of the seventh calendar month beginning after the month in which this Act is enacted [July 1977] and shall apply to any female person who becomes a member of an Armed Force on or after such day.''

§ 652. Notice to Congress of proposed changes in units, assignments, etc. to which female members may be assigned

(a) RULE FOR GROUND COMBAT PERSONNEL POLICY.—(1) If the Secretary of Defense proposes to

make any change described in paragraph (2)(A) or (2)(B) to the ground combat exclusion policy or proposes to make a change described in paragraph (2)(C), the Secretary shall, before any such change is implemented, submit to Congress a report providing notice of the proposed change. Such a change may then be implemented only after the end of a period of 30 days of continuous session of Congress (excluding any day on which either House of Congress is not in session) following the date on which the report is received.

(2) A change referred to in paragraph (1) is a change that—

(A) closes to female members of the armed forces any category of unit or position that at that time is open to service by such members;

(B) opens to service by female members of the armed forces any category of unit or position that at that time is closed to service by such members; or

(C) opens or closes to the assignment of female members of the armed forces any military career designator as described in paragraph (6).

(3) The Secretary shall include in any report under paragraph (1)—

(A) a detailed description of, and justification for, the proposed change; and

(B) a detailed analysis of legal implication of the proposed change with respect to the constitutionality of the application of the Military Selective Service Act (50 App. U.S.C. 451 et seq.) to males only.

(4) In this subsection, the term ''ground combat exclusion policy'' means the military personnel policies of the Department of Defense and the military departments, as in effect on October 1, 1994, by which female members of the armed forces are restricted from assignment to units and positions below brigade level whose primary mission is to engage in direct combat on the ground.

(5) For purposes of this subsection, the continuity of a session of Congress is broken only by an adjournment of the Congress sine die.

(6) For purposes of this subsection, a military career designator is one that is related to military operations on the ground as of May 18, 2005, and applies—

(A) for enlisted members and warrant officers, to military occupational specialties, specialty codes, enlisted designators, enlisted classification codes, additional skill identifiers, and special qualification identifiers; and

(B) for officers (other than warrant officers), to officer areas of concentration, occupational specialties, specialty codes, designators, additional skill identifiers, and special qualification identifiers.

(b) OTHER PERSONNEL POLICY CHANGES.—(1) Except in a case covered by section 6035 of this title or by subsection (a), whenever the Secretary of Defense proposes to make a change to military personnel policies described in paragraph (2), the Secretary shall, not less than 30 days before such change is implemented, submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives notice, in writing, of the proposed change.

(2) Paragraph (1) applies to a proposed military personnel policy change, other than a policy change covered by subsection (a), that would make available to female members of the armed forces assignment to any of the following that, as of the date of the proposed change, is closed to such assignment:

(A) Any type of unit not covered by subsection (a).

(B) Any class of combat vessel.

(C) Any type of combat platform.

(Added Pub. L. 109–163, div. A, title V, § 541(a)(1), Jan. 6, 2006, 119 Stat. 3251.)

REFERENCES IN TEXT

The Military Selective Service Act, referred to in subsec. (a)(3)(B), is act June 24, 1948, ch. 625, 62 Stat. 604, as amended, which is classified principally to section 451 et seq. of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see References in Text note set out under section 451 of Title 50, Appendix, and Tables.

PRIOR PROVISIONS

A prior section 652, added Pub. L. 95–485, title IV, § 405(d)(1), Oct. 20, 1978, 92 Stat. 1616, related to Ready Reserve requirement of notification of change of status, prior to repeal by Pub. L. 103–337, div. A, title XVI, §§ 1661(a)(3)(A), 1691, Oct. 5, 1994, 108 Stat. 2980, 3026, effective Dec. 1, 1994. See section 10205 of this title.

Provisions similar to those in this section were contained in Pub. L. 103–160, div. A, title V, § 542, Nov. 30, 1993, 107 Stat. 1659, which was set out as a note under section 113 of this title, prior to repeal by Pub. L. 109–163, § 541(c).

§ 653. Minimum service requirement for certain flight crew positions

(a) PILOTS.—The minimum service obligation of any member who successfully completes training in the armed forces as a pilot shall be 8 years, if the member is trained to fly fixed-wing jet aircraft, or 6 years, if the member is trained to fly any other type of aircraft.

(b) NAVIGATORS AND NAVAL FLIGHT OFFICERS.—The minimum service obligation of any member who successfully completes training in the armed forces as a navigator or naval flight officer shall be 6 years.

(c) DEFINITION.—In this section, the term ''service obligation'' means the period of active duty or, in the case of a member of a reserve component who completed flight training in an active duty for training status as a member of a reserve component, the period of service in an active status in the Selected Reserve required to be served after—

(1) completion of undergraduate pilot training, in the case of training as a pilot;

(2) completion of undergraduate navigator training, in the case of training as a navigator; or

(3) completion of undergraduate training as a naval flight officer, in the case of training as a naval flight officer.

(Added Pub. L. 101–189, div. A, title VI, § 634(a)(1), Nov. 29, 1989, 103 Stat. 1454; amended Pub. L. 101–510, div. A, title XIV, § 1484(k)(3), Nov. 5, 1990, 104 Stat. 1719; Pub. L. 102–484, div. A, title V, § 506(a), Oct. 23, 1992, 106 Stat. 2404.)

AMENDMENTS

1992—Subsecs. (a), (b). Pub. L. 102–484, § 506(a)(1), substituted ''service obligation'' for ''active duty obligation''.

Subsec. (c). Pub. L. 102–484, § 506(a)(2), substituted ''the term 'service obligation' means the period of active duty or, in the case of a member of a reserve component who completed flight training in an active duty for training status as a member of a reserve component, the period of service in an active status in the Selected Reserve'' for ''the term 'active duty obligation' means the period of active duty''.

1990—Subsec. (a). Pub. L. 101–510, § 1484(k)(3)(A), substituted ''or'' for ''and'' before ''6 years''.

Subsec. (c). Pub. L. 101–510, § 1484(k)(3)(B), inserted a comma after first reference to ''training'' in pars. (1) and (2) and after first reference to ''naval flight officer'' in par. (3).

EFFECTIVE DATE OF 1992 AMENDMENT

Section 506(b) of Pub. L. 102–484 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect as of November 29, 1989.''

EFFECTIVE DATE

Section 634(b) of Pub. L. 101–189 provided that:

''(1) Except as provided in paragraphs (2) and (3), section 653 of title 10, United States Code, as added by subsection (a)(1), shall apply to persons who begin undergraduate pilot training, undergraduate navigator training, or undergraduate naval flight officer training, as the case may be, after September 30, 1990.

''(2) Such section shall apply to persons who graduate from the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, and the Coast Guard Academy after December 31, 1991, and to persons who satisfactorily complete the academic and military requirements of the Senior Reserve Officers' Training Corps program (provided for in chapter 103 of title 10, United States Code) after December 31, 1991.

''(3) The minimum service requirements provided for such section shall not apply in the case of any person who entered into an agreement with the Secretary concerned before October 1, 1990, and who is obligated under the terms of such agreement to serve on active duty for a period less than the applicable period specified in section 653 of such title.

''(4) For purposes of this subsection, the term 'Secretary concerned' has the meaning given that term in section 101(8) of title 10, United States Code.''

[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.]

§ 654. Policy concerning homosexuality in the armed forces

(a) FINDINGS.—Congress makes the following findings:

(1) Section 8 of article I of the Constitution of the United States commits exclusively to the Congress the powers to raise and support armies, provide and maintain a Navy, and make rules for the government and regulation of the land and naval forces.

(2) There is no constitutional right to serve in the armed forces.

(3) Pursuant to the powers conferred by section 8 of article I of the Constitution of the United States, it lies within the discretion of the Congress to establish qualifications for and conditions of service in the armed forces.

(4) The primary purpose of the armed forces is to prepare for and to prevail in combat should the need arise.

(5) The conduct of military operations requires members of the armed forces to make extraordinary sacrifices, including the ultimate sacrifice, in order to provide for the common defense.

(6) Success in combat requires military units that are characterized by high morale, good order and discipline, and unit cohesion.

(7) One of the most critical elements in combat capability is unit cohesion, that is, the bonds of trust among individual service members that make the combat effectiveness of a military unit greater than the sum of the combat effectiveness of the individual unit members.

(8) Military life is fundamentally different from civilian life in that—

(A) the extraordinary responsibilities of the armed forces, the unique conditions of military service, and the critical role of unit cohesion, require that the military community, while subject to civilian control, exist as a specialized society; and

(B) the military society is characterized by its own laws, rules, customs, and traditions, including numerous restrictions on personal behavior, that would not be acceptable in civilian society.

(9) The standards of conduct for members of the armed forces regulate a member's life for 24 hours each day beginning at the moment the member enters military status and not ending until that person is discharged or otherwise separated from the armed forces.

(10) Those standards of conduct, including the Uniform Code of Military Justice, apply to a member of the armed forces at all times that the member has a military status, whether the member is on base or off base, and whether the member is on duty or off duty.

(11) The pervasive application of the standards of conduct is necessary because members of the armed forces must be ready at all times for worldwide deployment to a combat environment.

(12) The worldwide deployment of United States military forces, the international responsibilities of the United States, and the potential for involvement of the armed forces in actual combat routinely make it necessary for members of the armed forces involuntarily to accept living conditions and working conditions that are often spartan, primitive, and characterized by forced intimacy with little or no privacy.

(13) The prohibition against homosexual conduct is a longstanding element of military law that continues to be necessary in the unique circumstances of military service.

(14) The armed forces must maintain personnel policies that exclude persons whose presence in the armed forces would create an unacceptable risk to the armed forces' high standards of morale, good order and discipline, and unit cohesion that are the essence of military capability.

(15) The presence in the armed forces of persons who demonstrate a propensity or intent to engage in homosexual acts would create an unacceptable risk to the high standards of morale, good order and discipline, and unit cohesion that are the essence of military capability.

(b) POLICY.—A member of the armed forces shall be separated from the armed forces under regulations prescribed by the Secretary of Defense if one or more of the following findings is made and approved in accordance with procedures set forth in such regulations:

(1) That the member has engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts unless there are further findings, made and approved in accordance with procedures set forth in such regulations, that the member has demonstrated that—

(A) such conduct is a departure from the member's usual and customary behavior;

(B) such conduct, under all the circumstances, is unlikely to recur;

(C) such conduct was not accomplished by use of force, coercion, or intimidation;

(D) under the particular circumstances of the case, the member's continued presence in the armed forces is consistent with the interests of the armed forces in proper discipline, good order, and morale; and

(E) the member does not have a propensity or intent to engage in homosexual acts.

(2) That the member has stated that he or she is a homosexual or bisexual, or words to that effect, unless there is a further finding, made and approved in accordance with procedures set forth in the regulations, that the member has demonstrated that he or she is not a person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts.

(3) That the member has married or attempted to marry a person known to be of the same biological sex.

(c) ENTRY STANDARDS AND DOCUMENTS.—(1) The Secretary of Defense shall ensure that the standards for enlistment and appointment of members of the armed forces reflect the policies set forth in subsection (b).

(2) The documents used to effectuate the enlistment or appointment of a person as a member of the armed forces shall set forth the provisions of subsection (b).

(d) REQUIRED BRIEFINGS.—The briefings that members of the armed forces receive upon entry into the armed forces and periodically thereafter under section 937 of this title (article 137 of the Uniform Code of Military Justice) shall include a detailed explanation of the applicable laws and regulations governing sexual conduct by members of the armed forces, including the policies prescribed under subsection (b).

(e) RULE OF CONSTRUCTION.—Nothing in subsection (b) shall be construed to require that a member of the armed forces be processed for separation from the armed forces when a determination is made in accordance with regulations prescribed by the Secretary of Defense that—

(1) the member engaged in conduct or made statements for the purpose of avoiding or terminating military service; and

(2) separation of the member would not be in the best interest of the armed forces.

(f) DEFINITIONS.—In this section:

(1) The term ''homosexual'' means a person, regardless of sex, who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts, and includes the terms ''gay'' and ''lesbian''.

(2) The term ''bisexual'' means a person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual and heterosexual acts.

(3) The term ''homosexual act'' means—

(A) any bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires; and

(B) any bodily contact which a reasonable person would understand to demonstrate a propensity or intent to engage in an act described in subparagraph (A).

(Added Pub. L. 103–160, div. A, title V, §571(a)(1), Nov. 30, 1993, 107 Stat. 1670.)

REPEAL OF SECTION

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 below, this section is repealed.

REFERENCES IN TEXT

The Uniform Code of Military Justice, referred to in subsec. (a)(10), is classified to chapter 47 (§801 et seq.) of this title.

DON'T ASK, DON'T TELL REPEAL

Pub. L. 111–321, Dec. 22, 2010, 124 Stat. 3515, provided that:

''SECTION 1. SHORT TITLE.

''This Act may be cited as the 'Don't Ask, Don't Tell Repeal Act of 2010'.

''SEC. 2. DEPARTMENT OF DEFENSE POLICY CONCERNING HOMOSEXUALITY IN THE ARMED FORCES.

''(a) COMPREHENSIVE REVIEW ON THE IMPLEMENTATION OF A REPEAL OF 10 U.S.C. 654.—

''(1) IN GENERAL.—On March 2, 2010, the Secretary of Defense issued a memorandum directing the Comprehensive Review on the Implementation of a Repeal of 10 U.S.C. 654 (section 654 of title 10, United States Code).

''(2) OBJECTIVES AND SCOPE OF REVIEW.—The Terms of Reference accompanying the Secretary's memorandum established the following objectives and scope of the ordered review:

''(A) Determine any impacts to military readiness, military effectiveness and unit cohesion, recruiting/retention, and family readiness that may result from repeal of the law and recommend any actions that should be taken in light of such impacts.

''(B) Determine leadership, guidance, and training on standards of conduct and new policies.

''(C) Determine appropriate changes to existing policies and regulations, including but not limited to issues regarding personnel management, leadership and training, facilities, investigations, and benefits.

''(D) Recommend appropriate changes (if any) to the Uniform Code of Military Justice [10 U.S.C. 801 et seq.].

''(E) Monitor and evaluate existing legislative proposals to repeal 10 U.S.C. 654 and proposals that may be introduced in the Congress during the period of the review.

''(F) Assure appropriate ways to monitor the workforce climate and military effectiveness that support successful follow-through on implementation.

''(G) Evaluate the issues raised in ongoing litigation involving 10 U.S.C. 654.

''(b) EFFECTIVE DATE.—The amendments made by subsection (f) shall take effect 60 days after the date on which the last of the following occurs:

''(1) The Secretary of Defense has received the report required by the memorandum of the Secretary referred to in subsection (a).

''(2) The President transmits to the congressional defense committees a written certification, signed by the President, the Secretary of Defense, and the Chairman of the Joint Chiefs of Staff, stating each of the following:

''(A) That the President, the Secretary of Defense, and the Chairman of the Joint Chiefs of Staff have considered the recommendations contained in the report and the report's proposed plan of action.

''(B) That the Department of Defense has prepared the necessary policies and regulations to exercise the discretion provided by the amendments made by subsection (f).

''(C) That the implementation of necessary policies and regulations pursuant to the discretion provided by the amendments made by subsection (f) is consistent with the standards of military readiness, military effectiveness, unit cohesion, and recruiting and retention of the Armed Forces.

''(c) NO IMMEDIATE EFFECT ON CURRENT POLICY.—Section 654 of title 10, United States Code, shall remain in effect until such time that all of the requirements and certifications required by subsection (b) are met. If these requirements and certifications are not met, section 654 of title 10, United States Code, shall remain in effect.

''(d) BENEFITS.—Nothing in this section, or the amendments made by this section, shall be construed to require the furnishing of benefits in violation of section 7 of title 1, United States Code (relating to the definitions of 'marriage' and 'spouse' and referred to as the 'Defense of Marriage Act').

''(e) NO PRIVATE CAUSE OF ACTION.—Nothing in this section, or the amendments made by this section, shall be construed to create a private cause of action.

''(f) TREATMENT OF 1993 POLICY.—

''(1) TITLE 10.—Upon the effective date established by subsection (b), chapter 37 of title 10, United States Code, is amended—

''(A) by striking section 654; and

''(B) in the table of sections at the beginning of such chapter, by striking the item relating to section 654.

''(2) CONFORMING AMENDMENT.—Upon the effective date established by subsection (b), section 571 of the National Defense Authorization Act for Fiscal Year 1994 [Pub. L. 103–160] (10 U.S.C. 654 note) is amended by striking subsections (b), (c), and (d).''

IMPLEMENTATION OF SECTION; REGULATIONS; SAVINGS PROVISION; SENSE OF CONGRESS

Pub. L. 103–160, div. A, title V, § 571(b)–(d), Nov. 30, 1993, 107 Stat. 1671, 1672, as amended by Pub. L. 111–321, § 2(f)(2), Dec. 22, 2010, 124 Stat. 3516, provided that:

''(b) REGULATIONS.—Not later than 90 days after the date of enactment of this Act [Nov. 30, 1993], the Secretary of Defense shall revise Department of Defense regulations, and issue such new regulations as may be necessary, to implement section 654 of title 10, United States Code, as added by subsection (a).

''(c) SAVINGS PROVISION.—Nothing in this section or section 654 of title 10, United States Code, as added by subsection (a), may be construed to invalidate any inquiry, investigation, administrative action or proceeding, court-martial, or judicial proceeding conducted before the effective date of regulations issued by the Secretary of Defense to implement such section 654.

''(d) SENSE OF CONGRESS.—It is the sense of Congress that—

''(1) the suspension of questioning concerning homosexuality as part of the processing of individuals for accession into the Armed Forces under the interim policy of January 29, 1993, should be continued, but the Secretary of Defense may reinstate that questioning with such questions or such revised questions as he considers appropriate if the Secretary determines that it is necessary to do so in order to effectuate the policy set forth in section 654 of title 10, United States Code, as added by subsection (a); and

''(2) the Secretary of Defense should consider issuing guidance governing the circumstances under which members of the Armed Forces questioned about homosexuality for administrative purposes should be afforded warnings similar to the warnings under section 831(b) of title 10, United States Code (article 31(b) of the Uniform Code of Military Justice).''

[Pub. L. 111–321, § 2(b), (f)(2), 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 above, section 571 of Pub. L. 103–160, set out above, is amended by striking out subsections (b), (c), and (d).]

§ 655. Designation of persons having interest in status of a missing member

(a) The Secretary concerned shall, upon the enlistment or appointment of a person in the armed forces, require that the person specify in writing the person or persons, if any, other than that person's primary next of kin or immediate family, to whom information on the whereabouts and status of the member shall be provided if such whereabouts and status are investigated under chapter 76 of this title. The Secretary shall periodically, and whenever the member is deployed as part of a contingency operation or in other circumstances specified by the Secretary, require that such designation be reconfirmed, or modified, by the member.

(b) The Secretary concerned shall, upon the request of a member, permit the member to revise the person or persons specified by the member under subsection (a) at any time. Any such revision shall be in writing.

(Added Pub. L. 104–106, div. A, title V, § 569(d)(1), Feb. 10, 1996, 110 Stat. 352.)

CHAPTER 38—JOINT OFFICER MANAGEMENT

Sec.
661. Management policies for joint qualified officers.
662. Promotion policy objectives for joint officers.
663. Joint duty assignments after completion of joint professional military education.
664. Length of joint duty assignments.
665. Procedures for monitoring careers of joint qualified officers.
666. Reserve officers not on the active-duty list.
667. Annual report to Congress.
668. Definitions.

AMENDMENTS

2008—Pub. L. 110–417, [div. A], title V, § 522(a)(3), (c)(3), Oct. 14, 2008, 122 Stat. 4445, added items 661 and 665 and struck out former items 661 ''Management policies for officers who are joint qualified'' and 665 ''Procedures for monitoring careers of joint officers''.

2006—Pub. L. 109–364, div. A, title V, § 516(e)(2), Oct. 17, 2006, 120 Stat. 2189, substituted ''officers who are joint qualified'' for ''joint specialty officers'' in item 661.

2004—Pub. L. 108–375, div. A, title V, § 532(c)(2)(B), Oct. 28, 2004, 118 Stat. 1900, substituted ''Joint duty assignments after completion of joint professional military education'' for ''Education'' in item 663.

§ 661. Management policies for joint qualified officers

(a) ESTABLISHMENT.—The Secretary of Defense shall establish policies, procedures, and practices for the effective management of officers of the Army, Navy, Air Force, and Marine Corps on the active-duty list who are particularly trained in, and oriented toward, joint matters (as defined in section 668 of this title). Such officers shall be identified or designated (in addition to their principal military occupational specialty) as a joint qualified officer or in such other manner as the Secretary of Defense directs.

(b) LEVELS, DESIGNATION, AND NUMBERS.—(1)(A) The Secretary of Defense shall establish different levels of joint qualification, as well as the criteria for qualification at each level. Such levels of joint qualification shall be established by the Secretary with the advice of the Chairman of the Joint Chiefs of Staff. Each level shall, as a minimum, have both joint education criteria and joint experience criteria. The purpose of establishing such qualification levels is to ensure a systematic, progressive, career-long development of officers in joint matters and to ensure that officers serving as general and flag officers have the requisite experience and education to be highly proficient in joint matters.

(B) The number of officers who are joint qualified shall be determined by the Secretary of Defense, with the advice of the Chairman of the Joint Chiefs of Staff. Such number shall be large enough to meet the requirements of subsection (d).

(2) Certain officers shall be designated as joint qualified by the Secretary of Defense with the advice of the Chairman of the Joint Chiefs of Staff.

(3) An officer may be designated as joint qualified under paragraph (2) only if the officer—

(A) meets the education and experience criteria of subsection (c);

(B) meets such additional criteria as prescribed by the Secretary of Defense; and

(C) holds the grade of captain or, in the case of the Navy, lieutenant or a higher grade.

(4) The authority of the Secretary of Defense under paragraph (2) to designate officers as joint qualified may be delegated only to the Deputy Secretary of Defense or an Under Secretary of Defense.

(c) EDUCATION AND EXPERIENCE REQUIREMENTS.—(1) An officer may not be designated as joint qualified until the officer—

(A) successfully completes an appropriate program of joint professional military education, as described in subsections (b) and (c) of section 2155 of this title, at a joint professional military education school; and

(B) successfully completes—

(i) a full tour of duty in a joint assignment, as described in section 664(f) of this title; or

(ii) such other assignments and experiences in a manner that demonstrate the officer's mastery of knowledge, skills, and abilities in joint matters, as determined under such regulations and policy as the Secretary of Defense may prescribe.

(2) Subject to paragraphs (3) through (6), the Secretary of Defense may waive the requirement under paragraph (1)(A) that an officer has successfully completed a program of education, as described in subsections (b) and (c) of section 2155 of this title.

(3) In the case of an officer in a grade below brigadier general or rear admiral (lower half), a waiver under paragraph (2) may be granted only if—

(A) the officer has completed two full tours of duty in a joint duty assignment, as described in section 664(f) of this title, in such a manner as to demonstrate the officer's mastery of knowledge, skills, and abilities on joint matters; and

(B) the Secretary of Defense determines that the types of joint duty experiences completed by the officer have been of sufficient breadth to prepare the officer adequately for service as a general or flag officer in a joint duty assignment position.

(4) In the case of a general or flag officer, a waiver under paragraph (2) may be granted only—

(A) under unusual circumstances justifying the variation from the education requirement under paragraph (1)(A); and

(B) under circumstances in which the waiver is necessary to meet a critical need of the armed forces, as determined by the Chairman of the Joint Chiefs of Staff.

(5) In the case of officers in grades below brigadier general or rear admiral (lower half), the total number of waivers granted under paragraph (2) for officers in the same pay grade during a fiscal year may not exceed 10 percent of the total number of officers in that pay grade designated as joint qualified during that fiscal year.

(6) There may not be more than 32 general and flag officers on active duty at the same time who, while holding a general or flag officer position, were designated joint qualified (or were selected for the joint specialty before October 1, 2007) and for whom a waiver was granted under paragraph (2).

(d) NUMBER OF JOINT DUTY ASSIGNMENTS.—(1) The Secretary of Defense shall ensure that approximately one-half of the joint duty assignment positions in grades above major or, in the case of the Navy, lieutenant commander are filled at any time by officers who have the appropriate level of joint qualification.

(2) The Secretary of Defense, with the advice of the Chairman of the Joint Chiefs of Staff, shall designate an appropriate number of joint duty assignment positions as critical joint duty assignment positions. A position may be designated as a critical joint duty assignment position only if the duties and responsibilities of the position make it important that the occupant be particularly trained in, and oriented toward, joint matters.

(3)(A) Subject to subparagraph (B), a position designated under paragraph (2) may be held only by an officer who—

(i) was designated as joint qualified in accordance with this chapter; or

(ii) was selected for the joint specialty before October 1, 2007.

(B) The Secretary of Defense may waive the requirement in subparagraph (A) with respect to the assignment of an officer to a position designated under paragraph (2). Any such waiver shall be granted on a case-by-case basis. The authority of the Secretary to grant such a waiver may be delegated only to the Chairman of the Joint Chiefs of Staff.

(4) The Secretary of Defense shall ensure that, of those joint duty assignment positions that are filled by general or flag officers, a substantial portion are among those positions that are designated under paragraph (2) as critical joint duty assignment positions.

(e) CAREER GUIDELINES.—The Secretary, with the advice of the Chairman of the Joint Chiefs of Staff, shall establish career guidelines for officers to achieve joint qualification and for officers who have been designated as joint qualified. Such guidelines shall include guidelines for—

(1) selection;

(2) military education;

(3) training;

(4) types of duty assignments; and

(5) such other matters as the Secretary considers appropriate.

(f) TREATMENT OF CERTAIN SERVICE.—Any service by an officer in the grade of captain or, in the case of the Navy, lieutenant in a joint duty assignment shall be considered to be service in a joint duty assignment for purposes of all laws (including section 619a of this title) establishing a requirement or condition with respect to an officer's service in a joint duty assignment.

(Added Pub. L. 99–433, title IV, § 401(a), Oct. 1, 1986, 100 Stat. 1025; amended Pub. L. 100–180, div. A, title XIII, § 1301–1302(b), Dec. 4, 1987, 101 Stat. 1168, 1169; Pub. L. 100–456, div. A, title V, §§ 511, 512(a), 517(a), 518, Sept. 29, 1988, 102 Stat. 1968, 1971; Pub. L. 101–189, div. A, title XI, §§ 1113, 1122, Nov. 29, 1989, 103 Stat. 1554, 1556; Pub. L. 104–106, div. A, title V, § 501(a), (d), title XV, § 1503(a)(6), Feb. 10, 1996, 110 Stat. 290, 292, 511; Pub. L. 107–107, div. A, title V, § 521(a), Dec. 28, 2001, 115 Stat. 1097; Pub. L. 107–314, div. A, title V, § 502(c), title X, § 1062(a)(3), Dec. 2, 2002, 116 Stat. 2530, 2649; Pub. L. 109–364, div. A, title V, § 516(a)–(e)(1), Oct. 17, 2006, 120 Stat. 2187–2189; Pub. L. 110–417, [div. A], title V, § 522(a)(1), (2), Oct. 14, 2008, 122 Stat. 4444, 4445.)

AMENDMENTS

2008—Pub. L. 110–417 amended section catchline generally, substituting ''Management policies for joint qualified officers'' for ''Management policies for officers who are joint qualified'', and in subsec. (a), substituted ''as a joint qualified officer or in such other manner as the Secretary of Defense directs'' for ''in such manner as the Secretary of Defense directs''.

2006—Pub. L. 109–364, § 516(e)(1), substituted ''officers who are joint qualified'' for ''joint specialty officers'' in section catchline.

Subsec. (a). Pub. L. 109–364, § 516(a), struck out at end ''For purposes of this chapter, officers to be managed by such policies, procedures, and practices are referred to as having, or having been nominated for, the 'joint specialty'.''

Subsecs. (b) to (d). Pub. L. 109–364, § 516(b), amended subsecs. (b) to (d) generally. Prior to amendment, subsecs. (b) to (d) related to numbers and selection of officers with the joint specialty, education and experience requirements, and number of joint duty assignments.

Subsec. (e). Pub. L. 109–364, § 516(c), substituted ''officers to achieve joint qualification and for officers who have been designated as joint qualified'' for ''officers with the joint specialty'' in introductory provisions.

Subsec. (f). Pub. L. 109–364, § 516(d), substituted ''619a'' for ''619(e)(1)''.

2002—Subsec. (b)(2). Pub. L. 107–314, § 1062(a)(3), substituted ''December 28, 2001,'' for ''the date of the enactment of the National Defense Authorization Act for Fiscal Year 2002''.

Subsec. (c)(3)(E). Pub. L. 107–314, § 502(c), substituted ''paragraph'' for ''subparagraph''.

2001—Subsec. (b)(2). Pub. L. 107–107, in introductory provisions, substituted ''Each officer on the active-duty list on the date of the enactment of the National Defense Authorization Act for Fiscal Year 2002 who has not before that date been nominated for the joint specialty by the Secretary of a military department, and each officer who is placed on the active-duty list after such date, who meets the requirements of subsection (c) shall automatically be considered to have been nominated for the joint specialty. From among those officers considered to be nominated for the joint specialty, the Secretary may select for the joint specialty only officers—'' for ''The Secretaries of the military departments shall nominate officers for selection for the joint specialty. Nominations shall be made from among officers—''.

1996—Subsec. (c)(3)(D). Pub. L. 104–106, § 501(d)(1), in third sentence, substituted ''In the case of officers in grades below brigadier general and rear admiral (lower half), the total number'' for ''The total number''.

Subsec. (c)(3)(E). Pub. L. 104–106, § 501(d)(2), added subpar. (E).

Subsec. (d)(2)(A). Pub. L. 104–106, § 501(a), substituted ''800'' for ''1,000''.

Subsec. (d)(2)(B). Pub. L. 104–106, § 1503(a)(6)(A), substituted ''Each position designated by the Secretary under subparagraph (A)'' for ''Until January 1, 1994, at least 80 percent of the positions designated by the Secretary under subparagraph (A) shall be held at all times by officers who have the joint specialty. On and after January 1, 1994, each position so designated''.

Subsec. (d)(2)(C). Pub. L. 104–106, § 1503(a)(6)(B), struck out ''the second sentence of'' after ''the requirement in''.

Subsec. (d)(2)(D). Pub. L. 104–106, § 1503(a)(6)(C), struck out subpar. (D) which read as follows: ''During the period beginning on October 1, 1992, and ending on January 1, 1993, the Secretary of Defense shall submit to Congress a report on the operation, to the date of the report, of the first sentence of subparagraph (B) and on the Secretary's projection for the use of the waiver authority provided under subparagraph (C), including the Secretary's estimate of the average annual number of waivers to be provided under subparagraph (C).''

1989—Subsec. (c)(1)(B), (3)(A). Pub. L. 101–189, § 1113, substituted ''(as described in section 664(f) of this title (other than in paragraph (2) thereof))'' for ''(as described in section 664(f)(1) or (f)(3) of this title)''.

Subsec. (c)(4). Pub. L. 101–189, § 1122, added par. (4).

1988—Subsec. (c)(3)(D). Pub. L. 100–456, § 511, inserted ''for officers in the same pay grade'' after ''under this paragraph'', substituted ''10 percent'' for ''5 percent'', and inserted ''in that pay grade'' after ''numbers of officers''.

Subsec. (d)(2). Pub. L. 100–456, § 512(a), designated existing provisions as subpar. (A), struck out sentence at end which directed that each position so designated by the Secretary could be held only by an officer who had the joint specialty, and added subpars. (B) to (D).

Subsec. (d)(4). Pub. L. 100–456, § 517(a), substituted ''25 percent'' for ''one-third''.

Subsec. (f). Pub. L. 100–456, § 518, added subsec. (f).

1987—Subsec. (b)(3). Pub. L. 100–180, § 1301(a)(1), added par. (3).

Subsec. (c)(1)(B). Pub. L. 100–180, §1301(b)(1), inserted ''(as described in section 664(f)(1) or (f)(3) of this title)'' after ''joint duty assignment''.

Subsec. (c)(2)(A). Pub. L. 100–180, §1301(b)(2)(A)–(C), designated existing provisions as subpar. (A), substituted ''An officer (other than a general or flag officer) who has a military occupational specialty that is'' for ''An officer who has'' and ''full tour of duty in a joint duty assignment (as described in section 664(f)(2) of this title)'' for ''joint duty assignment of not less than two years'', and struck out provisions that an officer selected for the joint specialty complete generally applicable requirements for selection under par. (1)(B) as soon as practicable after such officer's selection.

Subsec. (c)(2)(B). Pub. L. 100–180, §1301(b)(2)(D), added subpar. (B).

Subsec. (c)(3). Pub. L. 100–180, §1301(b)(3), added par. (3).

Subsec. (d)(1). Pub. L. 100–180, §1302(a)(1), added subpars. (A) and (B) and substituted ''by officers who—'' for ''by officers who have (or have been nominated for) the joint specialty.'' in introductory provisions.

Subsec. (d)(2) to (4). Pub. L. 100–180, §1302(b), added pars. (2) to (4) and struck out former par. (2) which read as follows: ''The Secretary of Defense shall designate not fewer than 1,000 joint duty assignment positions as critical joint duty assignment positions. Each such position shall be held only by an officer with the joint specialty.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–364, div. A, title V, §516(f), Oct. 17, 2006, 120 Stat. 2189, provided that: ''The amendments made by this section [amending this section] shall take effect on October 1, 2007.''

TREATMENT OF CURRENT JOINT SPECIALTY OFFICERS

Pub. L. 109–364, div. A, title V, §516(g), Oct. 17, 2006, 120 Stat. 2189, provided that: ''For the purposes of chapter 38 of title 10, United States Code, and sections 154, 164, and 619a of such title, an officer who, as of September 30, 2007, has been selected for or has the joint specialty under section 661 of such title, as in effect on that date, shall be considered after that date to be an officer designated as joint qualified by the Secretary of Defense under section 661(b)(2) of such title, as amended by this section.''

IMPLEMENTATION PLAN

Pub. L. 109–364, div. A, title V, §516(h), Oct. 17, 2006, 120 Stat. 2189, provided that:

''(1) PLAN REQUIRED.—Not later than March 31, 2007, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a plan for the implementation of the joint officer management system, which will take effect on October 1, 2007, as provided in subsection (f) [set out above], as a result of the amendments made by this section [amending this section] and other provisions of this Act [see Tables for classification] to provisions of chapter 38 of title 10, United States Code.

''(2) ELEMENTS OF PLAN.—In developing the plan required by this subsection, the Secretary shall pay particular attention to matters related to the transition of officers from the joint specialty system in effect before October 1, 2007, to the joint officer management system in effect after that date. At a minimum, the plan shall include the following:

''(A) The policies and criteria to be used for designating officers as joint qualified on the basis of service performed by such officers before that date, had the amendments made by this section and other provisions of this Act to provisions of chapter 38 of title 10, United States Code, taken effect before the date of the enactment of this Act [Oct. 17, 2006].

''(B) The policies and criteria prescribed by the Secretary of Defense to be used in making determinations under section 661(c)(1)(B)(ii) of such title, as amended by this section.

''(C) The recommendations of the Secretary for any legislative changes that may be necessary to effectuate the joint officer management system.''

EXCLUSION OF CERTAIN OFFICERS FROM LIMITATION ON AUTHORITY TO GRANT A WAIVER OF REQUIRED COMPLETION OR SEQUENCING FOR JOINT PROFESSIONAL MILITARY EDUCATION

Pub. L. 107–314, div. A, title V, §502(a), (b), Dec. 2, 2002, 116 Stat. 2530, provided for exclusion from the limitation set forth in former subsec. (c)(3)(D) of this section of any officer selected for the joint specialty who, on Dec. 28, 2001, had met the requirements for nomination for the joint specialty, but had not been nominated before that date, and who had been automatically nominated before Dec. 2, 2002, and provided that such exclusion would terminate on Oct. 1, 2006.

INDEPENDENT STUDY OF JOINT OFFICER MANAGEMENT AND JOINT PROFESSIONAL MILITARY EDUCATION REFORMS

Pub. L. 107–107, div. A, title V, §526, Dec. 28, 2001, 115 Stat. 1099, directed the Secretary of Defense to provide for an independent study of the joint officer management system and the joint professional military education system and to require the entity conducting the study to submit a report to Congress on the study not later than one year after Dec. 28, 2001.

STUDY OF DISTRIBUTION OF GENERAL AND FLAG OFFICER POSITIONS IN JOINT DUTY ASSIGNMENTS

Pub. L. 102–484, div. A, title IV, §404, Oct. 23, 1992, 106 Stat. 2398, directed Secretary of Defense to conduct a study of whether joint organizations of Department of Defense are fully staffed with appropriate number of general and flag officers and, not later than one year after Oct. 23, 1992, submit a report to Congress.

TRANSITION TO JOINT OFFICER PERSONNEL POLICY

Section 406(a)–(c) of Pub. L. 99–433, as amended by Pub. L. 100–456, div. A, title V, §516, Sept. 29, 1988, 102 Stat. 1971, provided that:

''(a) JOINT DUTY ASSIGNMENTS.—(1) Section 661(d) of title 10, United States Code, shall be implemented as rapidly as possible and (except as provided under paragraph (2)) not later than October 1, 1989.

''(2) The first sentence of section 661(d)(2)(B) of such title shall apply with respect to positions designated under the first sentence of section 661(d)(2)(A) of that title as critical joint duty assignment positions which become vacant after January 1, 1989.

''(b) JOINT SPECIALTY.—

''(1) INITIAL SELECTIONS.—(A) In making the initial selections of officers for the joint specialty under section 661 of title 10, United States Code (as added by section 401 of this Act), the Secretary of Defense may waive the requirement of either subparagraph (A) or (B) (but not both) of subsection (c)(1) of such section in the case of any officer in a grade above captain or, in the case of the Navy, lieutenant.

''(B) In applying such subparagraph (B) to the initial selections of officers for the joint specialty, the Secretary may in the case of any officer—

''(i) waive the requirement that a joint duty assignment be served after the officer has completed an appropriate program at a joint professional military education school;

''(ii) waive the requirement for the length of a joint duty assignment in the case of a joint duty assignment begun by an officer 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) to have been considered a full tour of duty under the policies and regulations in effect on September 30, 1986; or

''(iii) consider as a joint duty assignment any tour of duty begun by an officer before October 1, 1986, that involved significant experience in joint matters (as determined by the Secretary) if the of-

ficer served in that assignment for a period of sufficient duration (which may not be less than 12 months) for his service to have been considered a full tour of duty under the policies and regulations in effect on September 30, 1986.

''(C) A waiver under subparagraph (A) of this paragraph or under any provision of subparagraph (B) of this paragraph may only be made on a case-by-case basis.

''(D) The authority of the Secretary of Defense to grant a waiver under subparagraph (A) or (B) of this paragraph may be delegated only to the Deputy Secretary of Defense.

''(2) REQUIREMENT FOR HIGH STANDARDS.—In exercising the authority provided by paragraph (1), the Secretary of Defense shall ensure that the highest standards of performance, education, and experience are established and maintained for officers selected for the joint specialty.

''(3) SUNSET.—The authority provided by paragraph (1) shall expire on October 1, 1989.

''(c) CAREER GUIDELINES.—The career guidelines required to be established by section 661(e) of such title, the procedures required to be established by section 665(a) of such title, and the personnel policies required to be established by section 666 of such title (as added by section 401) shall be established not later than the end of the eight-month period beginning on the date of the enactment of this Act [Oct. 1, 1986]. The provisions of section 665(b) of such title shall be implemented not later than the end of such period.''

§ 662. Promotion policy objectives for joint officers

(a) QUALIFICATIONS.—The Secretary of Defense shall ensure that the qualifications of officers assigned to joint duty assignments are such that—

(1) officers who are serving on, or have served on, the Joint Staff are expected, as a group, to be promoted to the next higher grade at a rate not less than the rate for officers of the same armed force in the same grade and competitive category who are serving on, or have served on, the headquarters staff of their armed force; and

(2) officers in the grade of major (or in the case of the Navy, lieutenant commander) or above who have been designated as a joint qualified officer are expected, as a group, to be promoted to the next higher grade at a rate not less than the rate for all officers of the same armed force in the same grade and competitive category.

(b) ANNUAL REPORT.—Not later than January 1 of each year, the Secretary of Defense shall submit to Congress a report on the promotion rates during the preceding fiscal year of officers who are serving in, or have served in, joint duty assignments or on the Joint Staff, and officers who have been designated as a joint qualified officer in the grades of major (or in the case of the Navy, lieutenant commander) through colonel (or in the case of the Navy, captain), especially with respect to the record of officer selection boards in meeting the objectives of paragraphs (1) and (2) of subsection (a). If such promotion rates fail to meet such objectives for any fiscal year, the Secretary shall include in the report for that fiscal year information on such failure and on what action the Secretary has taken or plans to take to prevent further failures.

(Added Pub. L. 99–433, title IV, § 401(a), Oct. 1, 1986, 100 Stat. 1026; amended Pub. L. 100–456, div. A, title V, § 513, Sept. 29, 1988, 102 Stat. 1969; Pub. L. 101–510, div. A, title XIII, § 1311(3), Nov. 5, 1990, 104 Stat. 1669; Pub. L. 104–201, div. A, title V, § 510, Sept. 23, 1996, 110 Stat. 2514; Pub. L. 107–107, div. A, title V, § 521(b), Dec. 28, 2001, 115 Stat. 1097; Pub. L. 107–314, div. A, title X, § 1062(a)(4), Dec. 2, 2002, 116 Stat. 2650; Pub. L. 108–375, div. A, title V, § 535, Oct. 28, 2004, 118 Stat. 1901; Pub. L. 109–364, div. A, title V, § 517, Oct. 17, 2006, 120 Stat. 2190; Pub. L. 110–181, div. A, title X, § 1063(a)(3), Jan. 28, 2008, 122 Stat. 321; Pub. L. 110–417, [div. A], title V, § 523, Oct. 14, 2008, 122 Stat. 4446; Pub. L. 111–84, div. A, title X, § 1073(c)(2), Oct. 28, 2009, 123 Stat. 2474.)

AMENDMENTS

2009—Subsec. (a)(2). Pub. L. 111–84 made technical amendment to directory language of Pub. L. 110–417, § 523(1). See 2008 Amendment note below.

2008—Subsec. (a)(2). Pub. L. 110–417, § 523(1), as amended by Pub. L. 111–84, substituted ''officers in the grade of major (or in the case of the Navy, lieutenant commander) or above who have been designated as a joint qualified officer'' for ''officers who are serving in or have served in joint duty assignments''.

Subsec. (b). Pub. L. 110–417, § 523(2), inserted ''or on the Joint Staff, and officers who have been designated as a joint qualified officer in the grades of major (or in the case of the Navy, lieutenant commander) through colonel (or in the case of the Navy, captain)'' after ''joint duty assignments''.

Pub. L. 110–181 substituted ''paragraphs (1) and (2) of subsection (a)'' for ''paragraphs (1), (2), and (3) of subsection (a)''.

2006—Subsec. (a). Pub. L. 109–364 inserted ''and'' at end of par. (1), added par. (2), and struck out former pars. (2) and (3) which read as follows:

''(2) officers who have the joint specialty are expected, as a group, to be promoted—

''(A) during the period beginning on December 28, 2001, and ending on December 27, 2006, at a rate not less than the rate for officers of the same armed force in the same grade and competitive category; and

''(B) after December 27, 2006, at a rate not less than the rate for officers of the same armed force in the same grade and competitive category who are serving on, or have served on, the headquarters staff of their armed force; and

''(3) officers who are serving in, or have served in, joint duty assignments (other than officers covered in paragraphs (1) and (2)) are expected, as a group, to be promoted to the next higher grade at a rate not less than the rate for all officers of the same armed force in the same grade and competitive category.''

2004—Subsec. (a)(2). Pub. L. 108–375 substituted ''December 27, 2006'' for ''December 27, 2004'' in two places.

2002—Subsec. (a)(2)(A). Pub. L. 107–314, § 1062(a)(4)(A), substituted ''during the period beginning on December 28, 2001, and ending on December 27, 2004,'' for ''during the three-year period beginning on the date of the enactment of the National Defense Authorization Act for Fiscal Year 2002,''.

Subsec. (a)(2)(B). Pub. L. 107–314, § 1062(a)(4)(B), substituted ''after December 27, 2004'' for ''after the end of the period specified in subparagraph (A)''.

2001—Subsec. (a)(2). Pub. L. 107–107 substituted ''promoted—'' for ''promoted at a rate'', added subpar. (A), designated ''not less than the rate for officers of the same armed force in the same grade and competitive category who are serving on, or have served on, the headquarters staff of their armed force; and'' as subpar. (B), and inserted ''after the end of the period specified in subparagraph (A), at a rate'' after subpar. (B) designation.

1996—Subsec. (b). Pub. L. 104–201, § 510(b), in first sentence, substituted ''paragraphs'' for ''clauses'' and, in second sentence, inserted ''for any fiscal year'' after ''such objectives'' and substituted ''report for that fis-

cal year'' for ''periodic report required by this subsection''.

Pub. L. 104–201, § 510(a), substituted ''Annual Report'' for ''Report'' in heading and ''Not later than January 1 of each year, the Secretary of Defense shall submit to Congress a report on the promotion rates during the preceding fiscal year'' for ''The Secretary of Defense shall periodically (and not less often than every six months) report to Congress on the promotion rates'' in text.

1990—Subsec. (b). Pub. L. 101–510 substituted ''the Secretary shall include in the periodic report required by this subsection information on such failure and on'' for ''the Secretary shall immediately notify Congress of such failure and of''.

1988—Subsec. (a)(1), (3). Pub. L. 100–456 inserted ''to the next higher grade'' after ''promoted''.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–84, div. A, title X, § 1073(c), Oct. 28, 2009, 123 Stat. 2474, provided that the amendment made by section 1073(c)(2) is effective as of Oct. 14, 2008, and as if included in Pub. L. 110–417 as enacted.

§ 663. Joint duty assignments after completion of joint professional military education

(a) JOINT QUALIFIED OFFICERS.—The Secretary of Defense shall ensure that each officer designated as a joint qualified officer who graduates from a school within the National Defense University specified in subsection (c) shall be assigned to a joint duty assignment for that officer's next duty assignment after such graduation (unless the officer receives a waiver of that requirement by the Secretary in an individual case).

(b) OTHER OFFICERS.—(1) The Secretary of Defense shall ensure that a high proportion (which shall be greater than 50 percent) of the officers graduating from a school within the National Defense University specified in subsection (c) who are not designated as a joint qualified officer shall receive assignments to a joint duty assignment as their next duty assignment after such graduation or, to the extent authorized in paragraph (2), as their second duty assignment after such graduation.

(2) The Secretary may, if the Secretary determines that it is necessary to do so for the efficient management of officer personnel, establish procedures to allow up to one-half of the officers subject to the joint duty assignment requirement in paragraph (1) to be assigned to a joint duty assignment as their second (rather than first) assignment after such graduation from a school referred to in paragraph (1).

(c) COVERED SCHOOLS WITHIN THE NATIONAL DEFENSE UNIVERSITY.—For purposes of this section, a school within the National Defense University specified in this subsection is one of the following:

(1) The National War College.

(2) The Industrial College of the Armed Forces.

(3) The Joint Forces Staff College.

(Added Pub. L. 99–433, title IV, § 401(a), Oct. 1, 1986, 100 Stat. 1027; amended Pub. L. 101–189, div. A, title XI, § 1123(c)(1), Nov. 29, 1989, 103 Stat. 1557; Pub. L. 102–190, div. A, title IX, § 912(a), Dec. 5, 1991, 105 Stat. 1452; Pub. L. 103–160, div. A, title IX, § 933(a), Nov. 30, 1993, 107 Stat. 1735; Pub. L. 107–107, div. A, title X, § 1048(a)(6), Dec. 28, 2001, 115 Stat. 1223; Pub. L. 107–314, div. A, title X, § 1062(a)(5), Dec. 2, 2002, 116 Stat. 2650; Pub. L. 108–375, div. A, title V, § 532(b)–(c)(2)(A), Oct. 28, 2004, 118 Stat. 1900; Pub. L. 109–364, div. A, title V, § 518, Oct. 17, 2006, 120 Stat. 2190; Pub. L. 110–417, [div. A], title V, § 522(b), Oct. 14, 2008, 122 Stat. 4445.)

AMENDMENTS

2008—Subsecs. (a), (b)(1). Pub. L. 110–417, in subsec. (a), substituted ''Qualified'' for ''Specialty'' in heading and ''designated as a joint qualified officer'' for ''with the joint specialty'' in text, and, in subsec. (b)(1), substituted ''are not designated as a joint qualified officer'' for ''do not have the joint specialty''.

2006—Subsecs. (a), (b)(1). Pub. L. 109–364, § 518(a)(1), (2)(A), substituted ''a school within the National Defense University specified in subsection (c)'' for ''a joint professional military education school''.

Subsec. (b)(2). Pub. L. 109–364, § 518(a)(2)(B), substituted ''a school referred to in paragraph (1)'' for ''a joint professional military education school''.

Subsec. (c). Pub. L. 109–364, § 518(b), added subsec. (c).

2004—Pub. L. 108–375, § 532(c)(2)(A), substituted ''Joint duty assignments after completion of joint professional military education'' for ''Education'' in section catchline.

Subsec. (a). Pub. L. 108–375, § 532(c)(1)(A), (B), redesignated subsec. (d)(1) as (a), inserted heading, and struck out heading and text of former subsec. (a) which related to capstone course for new general and flag officers. See section 2153 of this title.

Subsec. (b). Pub. L. 108–375, § 532(c)(1)(C)–(F), redesignated subsec. (d)(2)(A) as (b)(1) and substituted ''in paragraph (2)'' for ''in subparagraph (B)'', redesignated subsec. (d)(2)(B) as (b)(2) and substituted ''in paragraph (1)'' for ''in subparagraph (A)'', and inserted subsec. heading.

Pub. L. 108–375, § 532(b), transferred subsec. (b), relating to joint military education schools, to section 2152(b) of this title.

Subsec. (c). Pub. L. 108–375, § 532(b), transferred subsec. (c), relating to other professional military education schools, to section 2152(c) of this title.

Subsec. (d). Pub. L. 108–375, § 532(c)(1)(B), (C), (E), redesignated par. (1) as subsec. (a), redesignated subpars. (A) and (B) of par. (2) as pars. (1) and (2), respectively, of subsec. (b), and struck out heading ''Post-Education Joint Duty Assignments''.

Subsec. (e). Pub. L. 108–375, § 532(c)(1)(A), struck out heading and text of subsec. (e) which related to the duration of the principal course of instruction offered at the Joint Forces Staff College. See section 2156 of this title.

2002—Subsec. (e)(2). Pub. L. 107–314 substituted ''Joint Forces Staff College'' for ''Armed Forces Staff College''.

2001—Subsec. (e). Pub. L. 107–107 substituted ''Joint Forces Staff College'' for ''Armed Forces Staff College'' in subsec. heading and in text of par. (1).

1993—Subsec. (d). Pub. L. 103–160 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''POST-EDUCATION DUTY ASSIGNMENTS.—The Secretary of Defense shall ensure that—

''(1) unless waived by the Secretary in an individual case, each officer with the joint specialty who graduates from a joint professional military education school shall be assigned to a joint duty assignment for that officer's next duty assignment; and

''(2) a high proportion (which shall be greater than 50 percent) of the other officers graduating from a joint professional military education school also receive assignments to a joint duty assignment as their next duty assignment.''

1991—Subsec. (e). Pub. L. 102–190 designated existing provisions as par. (1) and added par. (2).

1989—Subsec. (e). Pub. L. 101–189 added subsec. (e).

EFFECTIVE DATE OF 1993 AMENDMENT

Section 933(b) of Pub. L. 103–160 provided that: ''The amendments made by subsection (a) [amending this

section] shall apply with respect to officers graduating from joint professional military education schools after the date of the enactment of this Act [Nov. 30, 1993].''

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102–190, div. A, title IX, § 912(b), Dec. 5, 1991, 105 Stat. 1452, as amended by Pub. L. 102–484, div. A, title IX, § 921, Oct. 23, 1992, 106 Stat. 2473, provided that the amendment made by section 912(a)(2) of Pub. L. 102–190 to this section was not to apply with respect to the Armed Forces Staff College until Jan. 1, 1994.

IMPLEMENTATION OF SUBSECTION (e)

Section 1123(c)(2) of Pub. L. 101–189 provided that: ''Subsection (e) of such section, as added by paragraph (1), shall be implemented by the Secretary of Defense not later than two years after the date of the enactment of this Act [Nov. 29, 1989].''

EDUCATION REQUIREMENTS; JOINT OFFICER MANAGEMENT PROGRAM

Pub. L. 99–433, title IV, § 406(d), Oct. 1, 1986, 100 Stat. 1033, provided that:

''(1) CAPSTONE COURSE.—Subsection (a) of section 663 of such title [10 U.S.C. 663(a)] (as added by section 401) shall apply with respect to officers selected in reports of officer selection boards submitted to the Secretary concerned after the end of the 120-day period beginning on the date of the enactment of this Act [Oct. 1, 1986].

''(2) REVIEW OF MILITARY EDUCATION SCHOOLS.—(A) The first review under subsections (b) and (c) of such section shall be completed not later than 120 days after the date of the enactment of this Act. The Secretary of Defense shall submit to Congress a report on the results of the review at each Department of Defense school not later than 60 days thereafter.

''(B) Such subsections shall be implemented so that the revised curricula take effect with respect to courses beginning after July 1987.

''(3) POST-EDUCATION DUTY ASSIGNMENTS.—Subsection (d) of such section shall take effect with respect to classes graduating from joint professional military education schools after January 1987.''

§ 664. Length of joint duty assignments

(a) GENERAL RULE.—The length of a joint duty assignment—

(1) for general and flag officers shall be not less than two years; and

(2) for other officers shall be not less than three years.

(b) WAIVER AUTHORITY.—The Secretary of Defense may waive subsection (a) in the case of any officer.

(c) INITIAL ASSIGNMENT OF OFFICERS WITH CRITICAL OCCUPATIONAL SPECIALTIES.—The Secretary may for purposes of section 661(c)(1)(B) of this title authorize a joint duty assignment of less than the period prescribed by subsection (a), but not less than two years, without the requirement for a waiver under subsection (b) in the case of an officer—

(1) who has a military occupational specialty designated under section 668(d) of this title as a critical occupational specialty; and

(2) for whom such joint duty assignment is the initial joint duty assignment.

(d) EXCLUSIONS FROM TOUR LENGTH.—The Secretary of Defense may exclude the following service from the standards prescribed in subsection (a):

(1) Service in a joint duty assignment in which the full tour of duty in the assignment is not completed by the officer because of—

(A) retirement;

(B) release from active duty;

(C) suspension from duty under section 155(f)(2) or 164(g) of this title; or

(D) a qualifying reassignment from a joint duty assignment—

(i) for unusual personal reasons, including extreme hardship and medical conditions, beyond the control of the officer or the armed forces; or

(ii) to another joint duty assignment immediately after—

(I) the officer was promoted to a higher grade, if the reassignment was made because no joint duty assignment was available within the same organization that was commensurate with the officer's new grade; or

(II) the officer's position was eliminated in a reorganization.

(2) Service in a joint duty assignment outside the United States or in Alaska or Hawaii which is less than the applicable standard prescribed in subsection (a).

(3) Service in a joint duty assignment in a case in which the officer's tour of duty in that assignment brings the officer's accrued service for purposes of subsection (f)(3) to the applicable standard prescribed in subsection (a).

(e) AVERAGE TOUR LENGTHS.—(1) The Secretary shall ensure that the average length of joint duty assignments during any fiscal year, measured by the lengths of the joint duty assignments ending during that fiscal year, meets the standards prescribed in subsection (a).

(2) In computing the average length of joint duty assignments for purposes of paragraph (1), the Secretary may exclude the following service:

(A) Service described in subsection (c).

(B) Service described in subsection (d).

(C) Service described in subsection (f)(6).

(f) FULL TOUR OF DUTY.—An officer shall be considered to have completed a full tour of duty in a joint duty assignment upon completion of any of the following:

(1) A joint duty assignment that meets the standards prescribed in subsection (a).

(2) A joint duty assignment under the circumstances described in subsection (c).

(3) Accrued joint experience in joint duty assignments as described in subsection (g).

(4) A joint duty assignment outside the United States or in Alaska or Hawaii for which the normal accompanied-by-dependents tour of duty is prescribed by regulation to be at least two years in length, if the officer serves in the assignment for a period equivalent to the accompanied-by-dependents tour length.

(5) A joint duty assignment with respect to which the Secretary of Defense has granted a waiver under subsection (b), but only in a case in which the Secretary determines that the service completed by that officer in that duty assignment shall be considered to be a full tour of duty in a joint duty assignment.

(6) A second and subsequent joint duty assignment that is less than the period required under subsection (a), but not less than two years.

(g) ACCRUED JOINT EXPERIENCE.—For the purposes of subsection (f)(3), the Secretary of Defense may prescribe, by regulation, certain joint experience, such as temporary duty in joint assignments, joint individual training, and participation in joint exercises, that may be aggregated to equal a full tour of duty. The Secretary shall prescribe the regulations with the advice of the Chairman of the Joint Chiefs of Staff.

(h) CONSTRUCTIVE CREDIT.—(1) The Secretary of Defense may accord constructive credit in the case of an officer (other than a general or flag officer) who, for reasons of military necessity, is reassigned from a joint duty assignment within 60 days of meeting the tour length criteria prescribed in paragraphs (1), (2), and (4) of subsection (f). The amount of constructive service that may be credited to such officer shall be the amount sufficient for the completion of the applicable tour of duty requirement, but in no case more than 60 days.

(2) For the purpose of computing under subsection (e) the average length of joint duty assignments during a fiscal year, the amount of any constructive service credited under this subsection with respect to a joint duty assignment to be counted in that computation shall be excluded.

(Added Pub. L. 99–433, title IV, §401(a), Oct. 1, 1986, 100 Stat. 1028; amended Pub. L. 100–180, div. A, title XIII, §1303(a), Dec. 4, 1987, 101 Stat. 1170; Pub. L. 100–456, div. A, title V, §§514, 517(b), Sept. 29, 1988, 102 Stat. 1969, 1971; Pub. L. 104–106, div. A, title V, §501(b), (e), (f), Feb. 10, 1996, 110 Stat. 290, 292; Pub. L. 106–65, div. A, title X, §1066(a)(5), Oct. 5, 1999, 113 Stat. 770; Pub. L. 107–107, div. A, title V, §522, Dec. 28, 2001, 115 Stat. 1097; Pub. L. 109–364, div. A, title V, §519(d)(1), Oct. 17, 2006, 120 Stat. 2191; Pub. L. 110–417, [div. A], title V, §524, Oct. 14, 2008, 122 Stat. 4446.)

AMENDMENTS

2008—Subsec. (d)(1)(D). Pub. L. 110–417, §524(a)(1), added subpar. (D) and struck out former subpar. (D) which read as follows: ''a qualifying reassignment (as described in subsection (g)(4)).''

Subsec. (d)(3). Pub. L. 110–417, §524(a)(2), added par. (3) and struck out former par. (3) which read as follows: ''Service in a joint duty assignment in a case in which—

''(A) the officer's tour of duty in that assignment brings the officer's cumulative service for purposes of subsection (f)(3) to the applicable standard prescribed in subsection (a); and

''(B) the length of time served in that assignment (in any case other than an assignment which is described in subsection (g)(4)(B)) was not less than two years.''

Subsec. (e)(2). Pub. L. 110–417, §524(b), added par. (2) and struck out former par. (2) which read as follows: ''In computing the average length of joint duty assignments for purposes of paragraph (1), the Secretary may exclude the following service:

''(A) Service described in subsection (c), except that not more than 12½ percent of all joint duty assignments shown on the list published pursuant to section 668(b)(2)(A) of this title may be so excluded in any year.

''(B) Service described in subsection (d).

''(C) Service described in subsection (f)(6), except that no more than 10 percent of all joint duty assignments shown on the list published pursuant to section 668(b)(2)(A) of this title may be so excluded in any year.''

Subsec. (f). Pub. L. 110–417, §524(c), in par. (3) substituted ''Accrued joint experience'' for ''Cumulative service'', in par. (4) struck out ''(except that not more than 6 percent of all joint duty assignments may be considered to be under this paragraph at any time)'' before period at end, added par. (6), and struck out former par. (6) which read as follows ''A second joint duty assignment that is less than the period required under subsection (a), but not less than two years, without regard to whether a waiver was granted for such assignment under subsection (b).''.

Subsec. (g). Pub. L. 110–417, §524(d), amended subsec. (g) generally. Prior to amendment, subsec. (g) related to cumulative service of an officer in joint duty assignments.

Subsec. (h). Pub. L. 110–417, §524(e), substituted ''paragraphs (1), (2), and (4) of subsection (f)'' for ''subsection (f)(1), (f)(2), (f)(4), or (g)(2)'' in par. (1) and struck out par. (3) which read as follows: ''This subsection shall not apply in the case of an officer who serves less than 10 months in the joint duty assignment.''

Subsec. (i). Pub. L. 110–417, §524(f), struck out subsec. (i) which related to joint duty credit for certain joint task force assignments.

2006—Subsec. (c). Pub. L. 109–364, in introductory provisions, substituted ''661(c)(1)(B)'' for ''661(c)(2)'', redesignated pars. (2) and (3) as (1) and (2), respectively, in par. (1), substituted ''668(d)'' for ''661(c)(2)'', and struck out former par. (1) which read as follows: ''who is nominated for the joint specialty;''.

2001—Subsec. (i)(4)(E). Pub. L. 107–107, §522(1), substituted ''Except as provided in subparagraph (F), the joint task force'' for ''The joint task force''.

Subsec. (i)(4)(F). Pub. L. 107–107, §522(2), added subpar. (F).

1999—Subsec. (i)(2)(A). Pub. L. 106–65 substituted ''February 10, 1996'' for ''the date of the enactment of this subsection'' in introductory provisions.

1996—Subsec. (e)(1). Pub. L. 104–106, §501(f), struck out ''(after fiscal year 1990)'' after ''any fiscal year''.

Subsec. (e)(2)(C). Pub. L. 104–106, §501(e)(1), added subpar. (E).

Subsec. (f). Pub. L. 104–106, §501(e)(2)(A), substituted ''completion of any of the following:'' for ''completion of—'' in introductory provisions.

Subsec. (f)(1). Pub. L. 104–106, §501(e)(2)(B), (D), substituted ''A joint duty'' for ''a joint duty'' and ''subsection (a).'' for ''subsection (a);''.

Subsec. (f)(2). Pub. L. 104–106, §501(e)(2)(B), (D), substituted ''A joint duty'' for ''a joint duty'' and ''subsection (c).'' for ''subsection (c);''.

Subsec. (f)(3). Pub. L. 104–106, §501(e)(2)(C), (D), substituted ''Cumulative'' for ''cumulative'' and ''subsection (g).'' for ''subsection (g);''.

Subsec. (f)(4). Pub. L. 104–106, §501(e)(2)(B), (D), substituted ''A joint duty'' for ''a joint duty'' and ''any time).'' for ''any time); or''.

Subsec. (f)(5). Pub. L. 104–106, §501(e)(2)(B), substituted ''A joint duty'' for ''a joint duty''.

Subsec. (f)(6). Pub. L. 104–106, §501(e)(2)(E), added par. (6).

Subsec. (i). Pub. L. 104–106, §501(b), added subsec. (i).

1988—Subsec. (a)(1). Pub. L. 100–456, §514(1)(A), substituted ''two years'' for ''three years''.

Subsec. (a)(2). Pub. L. 100–456, §514(1)(B), substituted ''three years'' for ''three and one-half years''.

Subsec. (c)(1). Pub. L. 100–456, §514(2), substituted ''is'' for ''has been'' and struck out ''before such assignment begins'' after ''specialty''.

Subsec. (d)(2). Pub. L. 100–456, §514(3), inserted ''which is less than the applicable standard prescribed in subsection (a)'' after ''Hawaii''.

Subsec. (e)(2)(A). Pub. L. 100–456, §517(b), substituted ''12½ percent'' for ''10 percent''.

Subsec. (f)(4), (5). Pub. L. 100–456, §514(4), added pars. (4) and (5).

Subsec. (g)(3). Pub. L. 100–456, §514(5), substituted ''shall be excluded if the officer served less than 10 months in that assignment'' for ''shall be excluded—

''(A) if the officer served less than 10 months in that assignment; and

''(B) to the extent that the assignment was served more than eight years before the date of computation of the cumulative service.''

Subsec. (h). Pub. L. 100–456, § 514(6), added subsec. (h).

1987—Subsec. (b). Pub. L. 100–180 added subsec. (b) and struck out former subsec. (b) which read as follows: ''The Secretary of Defense may waive subsection (a) in the case of any officer, but the Secretary shall ensure that the average length of joint duty assignments meets the standards prescribed in that subsection.''

Subsec. (c). Pub. L. 100–180 added subsec. (c) and struck out former subsec. (c), ''Certain officers with critical combat operations skills'', which read as follows: ''Joint duty assignments of less than the period prescribed by subsection (a), but not less than two years, may be authorized for the purposes of section 661(c)(2) of this title. Such an assignment may not be counted for the purposes of determining the average length of joint duty assignments under subsection (b).''

Subsec. (d). Pub. L. 100–180 added subsec. (d) and struck out former subsec. (d), ''Exception'', which read as follows:

''(1) Subsection (a) does not apply in the case of an officer who fails to complete a joint duty assignment as the result of—

''(A) retirement;

''(B) separation from active duty; or

''(C) suspension from duty under section 155(f)(2) or 164(g) of this title.

''(2) In computing the average length of joint duty assignments for purposes of this section, the Secretary of Defense shall exclude joint duty assignments not completed because of a reason specified in paragraph (1).''

Subsecs. (e) to (g). Pub. L. 100–180 added subsecs. (e) to (g).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–364, div. A, title V, § 519(e), Oct. 17, 2006, 120 Stat. 2191, provided that: ''The amendments made by this section [amending this section and sections 667 and 668 of this title] shall take effect on October 1, 2007.''

RETROACTIVE JOINT SERVICE CREDIT FOR DUTY IN CERTAIN JOINT TASK FORCES

Pub. L. 107–107, div. A, title V, § 523, Dec. 28, 2001, 115 Stat. 1097, provided that, in accordance with subsec. (i) of this section, the Secretary of Defense was authorized to award joint service credit to any officer who served on the staff of a United States joint task force headquarters in certain operations and during certain periods, and the Secretary was required to submit to Congress a report of the numbers, by service, grade, and operation, of the officers given joint service credit not later than one year after Dec. 28, 2001.

JOINT DUTY CREDIT FOR CERTAIN DUTY PERFORMED DURING OPERATIONS DESERT SHIELD AND DESERT STORM

Pub. L. 103–160, div. A, title IX, § 932, Nov. 30, 1993, 107 Stat. 1735, provided extension of authority until the end of the 90-day period beginning on Nov. 30, 1993, to give certain officers joint duty credit pursuant to Pub. L. 102–484, § 933, formerly set out below.

Pub. L. 102–484, div. A, title IX, § 933, Oct. 23, 1992, 106 Stat. 2476, as amended by Pub. L. 103–35, title II, § 202(a)(9), May 31, 1993, 107 Stat. 101; Pub. L. 103–160, div. A, title IX, § 932(c)(1), Nov. 30, 1993, 107 Stat. 1735, temporarily authorized the Secretary of Defense to give an officer who had completed service during the period beginning on Aug. 2, 1990, and ending on Feb. 28, 1991, in an assignment in the Persian Gulf combat zone, credit, on a case-by-case basis, for having completed a full tour of duty in a joint duty assignment, or credit countable for determining cumulative service in joint duty assignments, for the purposes of any provision of this title, notwithstanding the length of such service or whether that service had been within the definition of ''joint duty assignment'' in section 668 of this title, and provided that such authority would expire at the end of the six-month period beginning on Oct. 23, 1992.

LENGTH OF JOINT DUTY ASSIGNMENTS

Section 406(e) of Pub. L. 99–433 provided that: ''Subsection (a) of section 664 of title 10, United States Code (as added by section 401), shall apply to officers assigned to joint duty assignments after the end of the 90-day period beginning on the date of the enactment of this Act [Oct. 1, 1986]. In computing an average under subsection (b) of such section, only joint duty assignments to which such subsection applies shall be considered.''

WAIVER OF QUALIFICATIONS FOR APPOINTMENT AS SERVICE CHIEF

For waiver of the requirements of this section for the length of a joint duty assignment, see section 532(c) of Pub. L. 99–433, formerly set out as a note under section 3033 of this title.

§ 665. Procedures for monitoring careers of joint qualified officers

(a) PROCEDURES.—(1) The Secretary of Defense, with the advice of the Chairman of the Joint Chiefs of Staff, shall establish procedures for overseeing the careers of—

(A) officers designated as a joint qualified officer; and

(B) other officers who serve in joint duty assignments.

(2) Such oversight shall include monitoring of the implementation of the career guidelines established under section 661(e) of this title.

(b) FUNCTION OF JOINT STAFF.—The Secretary shall take such action as necessary to enhance the capabilities of the Joint Staff so that it can—

(1) monitor the promotions and career assignments of officers designated as a joint qualified officer and of other officers who have served in joint duty assignments; and

(2) otherwise advise the Chairman on joint personnel matters.

(Added Pub. L. 99–433, title IV, § 401(a), Oct. 1, 1986, 100 Stat. 1028; amended Pub. L. 110–417, [div. A], title V, § 522(c)(1), (2), Oct. 14, 2008, 122 Stat. 4445.)

AMENDMENTS

2008—Pub. L. 110–417 in section catchline substituted ''joint qualified officers'' for ''joint officers'' and in subsecs. (a)(1)(A) and (b)(1) substituted ''designated as a joint qualified officer'' for ''with the joint specialty''.

TRANSITION TO JOINT OFFICER PERSONNEL POLICY

Procedures under subsec. (a) of this section to be established not later than the end of the eight-month period beginning Oct. 1, 1986, and provisions of subsec. (b) of this section to be implemented not later than the end of such period, see section 406(c) of Pub. L. 99–433, set out as a note under section 661 of this title.

§ 666. Reserve officers not on the active-duty list

The Secretary of Defense shall establish personnel policies emphasizing education and experience in joint matters for reserve officers not on the active-duty list. Such policies shall, to the extent practicable for the reserve components, be similar to the policies provided by this chapter.

(Added Pub. L. 99–433, title IV, § 401(a), Oct. 1, 1986, 100 Stat. 1028.)

TRANSITION TO JOINT OFFICER PERSONNEL POLICY

Personnel policies under this section to be established not later than the end of the eight-month period beginning Oct. 1, 1986, see section 406(c) of Pub. L. 99–433, set out as a note under section 661 of this title.

§ 667. Annual report to Congress

The Secretary of Defense shall include in the annual report of the Secretary to Congress under section 113(c) of this title, for the period covered by the report, the following information (which shall be shown for the Department of Defense as a whole and separately for the Army, Navy, Air Force, and Marine Corps):

(1)(A) The number of officers designated as a joint qualified officer.

(B) The number of officers who meet the criteria for designation as a joint qualified officer, but were not selected, together with the reasons why.

(C) A comparison of the number of officers who were designated as a joint qualified officer who had served in a Joint Duty Assignment List billet and completed Joint Professional Military Education Phase II, with the number designated as a joint qualified officer based on their aggregated joint experiences and completion of Joint Professional Military Education Phase II.

(2) The number of officers designated as a joint qualified officer, shown by grade and branch or specialty and by education.

(3) The promotion rate for officers designated as a joint qualified officer, compared with the promotion rate for other officers considered for promotion from within the promotion zone in the same pay grade and the same competitive category. A similar comparison will be made for officers both below the promotion zone and above the promotion zone.

(4) The average length of tours of duty in joint duty assignments—

(A) for general and flag officers, shown separately for assignments to the Joint Staff and other joint duty assignments; and

(B) for other officers, shown separately for assignments to the Joint Staff and other joint duty assignments.

(5) The number of times, in the case of each category of exclusion, that service in a joint duty assignment was excluded in computing the average length of joint duty assignments.

(6)(A) An analysis of the extent to which the Secretary of each military department is providing officers to fill that department's share (as determined by law or by the Secretary of Defense) of Joint Staff and other joint duty assignments, including the reason for any significant failure by a military department to fill its share of such positions and a discussion of the actions being taken to correct the shortfall.

(B) An assessment of the extent to which the Secretary of each military department is assigning personnel to joint duty assignments in accordance with this chapter and the policies, procedures, and practices established by the Secretary of Defense under section 661(a) of this title.

(7) The number of times a waiver authority was exercised under this chapter (or under any other provision of law which permits the waiver of any requirement relating to joint duty assignments) and in the case of each such authority—

(A) whether the authority was exercised for a general or flag officer;

(B) an analysis of the reasons for exercising the authority; and

(C) the number of times in which action was taken without exercise of the waiver authority compared with the number of times waiver authority was exercised (in the case of each waiver authority under this chapter or under any other provision of law which permits the waiver of any requirement relating to joint duty assignments).

(8) The number of officers in the grade of captain (or in the case of the Navy, lieutenant) and above certified at each level of joint qualification as established in regulation and policy by the Secretary of Defense with the advice of the Chairman of the Joint Chiefs of Staff. Such numbers shall be reported by service and grade of the officer.

(9) With regard to the principal courses of instruction for Joint Professional Military Education Level II, the number of officers graduating from each of the following:

(A) The Joint Forces Staff College.

(B) The National Defense University.

(C) Senior Service Schools.

(10) Such other information and comparative data as the Secretary of Defense considers appropriate to demonstrate the performance of the Department of Defense and the performance of each military department in carrying out this chapter.

(Added Pub. L. 99–433, title IV, § 401(a), Oct. 1, 1986, 100 Stat. 1029; amended Pub. L. 100–180, div. A, title XIII, § 1304(a), Dec. 4, 1987, 101 Stat. 1172; Pub. L. 100–456, div. A, title V, § 512(b), Sept. 29, 1988, 102 Stat. 1968; Pub. L. 101–189, div. A, title XI, § 1123(d), Nov. 29, 1989, 103 Stat. 1557; Pub. L. 104–106, div. A, title V, § 501(c), Feb. 10, 1996, 110 Stat. 292; Pub. L. 107–107, div. A, title V, § 524, title X, § 1048(a)(7), Dec. 28, 2001, 115 Stat. 1098, 1223; Pub. L. 109–364, div. A, title V, § 519(d)(2), Oct. 17, 2006, 120 Stat. 2191; Pub. L. 110–417, [div. A], title V, § 522(d), Oct. 14, 2008, 122 Stat. 4445; Pub. L. 111–84, div. A, title V, § 503, Oct. 28, 2009, 123 Stat. 2277.)

AMENDMENTS

2009—Par. (1). Pub. L. 111–84, § 503(1), struck out "and their education and experience" after "qualified officer" in subpar. (A) and added subpar. (C).

Pars. (3) to (13). Pub. L. 111–84, § 503(2)–(6), added par. (9), redesignated pars. (5), (7) to (11), and (13) as (3), (4) to (8), and (10), respectively, and struck out former pars. (3), (4), (6), and (12), which related to the number of officers on the active-duty list with a military occupational speciality designated as a critical occupational speciality, the number of officers designated as joint qualified officer, analysis of their assignments after the designation, and the officers selected to attend the Joint Forces Staff College principal course of instruction.

2008—Par. (1). Pub. L. 110–417, § 522(d)(1), substituted ''designated as a joint qualified officer'' for ''selected for the joint specialty'' in subpar. (A) and ''designation as a joint qualified officer,'' for ''selection for the joint specialty'' in subpar. (B).

Par. (2). Pub. L. 110–417, § 522(d)(2), substituted ''designated as a joint qualified officer'' for ''with the joint specialty''.

Par. (3)(A), (B), (E). Pub. L. 110–417, § 522(d)(3), substituted ''designated as a joint qualified officer'' for ''selected for the joint specialty''.

Par. (4). Pub. L. 110–417, § 522(d)(4), substituted ''designated as a joint qualified officer'' for ''selected for the joint specialty'' in subpar. (A), added subpar. (B), and struck out former subpar. (B) which read as follows: ''a comparison of the number of officers who have the joint specialty who qualified for the joint specialty under section 661(c)(1) of this title with the number of officers who have the joint specialty who were selected for the joint specialty under section 661(c)(2) of this title.''

Pars. (5) to (18). Pub. L. 110–417, § 522(d)(5)–(7), added pars. (5), (6), and (11), redesignated former pars. (11), (12), (14), (15), (17), and (18) as (7) to (10), (12), and (13), respectively, and struck out former pars. (5) to (10), (13), and (16), which related to promotion rates for officers within the promotion zone who are serving on the Joint Staff, officers with the joint specialty, other officers serving in joint duty assignments, officers considered for promotion from below the promotion zone, officers considered for promotion from above the promotion zone, analysis of assignments after selection for the joint specialty, imbalances between officers serving in joint duty assignments or having the joint specialty and other officers, and the number of officers granted credit for service in joint duty assignments under section 664(i)(4)(E), (F) of this title.

2006—Par. (3). Pub. L. 109–364 substituted ''668(d)'' for ''661(c)(2)'' in introductory provisions.

2001—Par. (1). Pub. L. 107–107, § 524(1), designated existing provisions as subpar. (A) and added subpar. (B).

Par. (2). Pub. L. 107–107, § 524(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The military occupational specialties within each of the armed forces that have been designated as critical occupational specialties under section 661(c)(2) of this title, separately identifying those specialties for which there is a severe shortage of trained officers, together with an explanation of how those specialties meet the criteria for that designation in section 661(c)(2)(B) of this title.''

Par. (3)(A), (B). Pub. L. 107–107, § 524(3)(A), substituted ''selected'' for ''nominated''.

Par. (3)(D). Pub. L. 107–107, § 524(3)(B), inserted ''and'' after semicolon at end.

Par. (3)(E), (F). Pub. L. 107–107, § 524(3)(C), (D), redesignated subpar. (F) as (E) and struck out former subpar. (E) which read as follows: ''have been selected for the joint specialty; and''.

Par. (4)(A). Pub. L. 107–107, § 524(4), substituted ''selected'' for ''nominated''.

Par. (14). Pub. L. 107–107, § 524(5), designated existing provisions as subpar. (A) and added subpar. (B).

Par. (16). Pub. L. 107–107, § 524(6), substituted ''subparagraphs (E) and (F) of section 664(i)(4)'' for ''section 664(i)'' in introductory provisions and in subpar. (B).

Par. (17). Pub. L. 107–107, § 1048(a)(7), substituted ''Joint Forces Staff College'' for ''Armed Forces Staff College'' in introductory provisions and in subpar. (B).

1996—Par. (16). Pub. L. 104–106 added par. (16) and struck out former par. (16) which read as follows: ''During the period of the applicability of the first sentence of subparagraph (B) of section 661(d)(2) of this title, information on critical positions not filled by officers with the joint specialty, including—

''(A) a listing by organization of the joint duty assignment positions which were not filled by officers with the joint specialty;

''(B) an explanation of the reasons such positions were not filled by officers with the joint specialty, described by the categories of such reasons; and

''(C) the percentage of critical joint duty assignment positions held by officers who have the joint specialty.''

1989—Pars. (17), (18). Pub. L. 101–189 added par. (17) and redesignated former par. (17) as (18).

1988—Pars. (16), (17). Pub. L. 100–456 added par. (16) and redesignated former par. (16) as (17).

1987—Par. (2). Pub. L. 100–180, § 1304(a)(1), (2), added par. (2) and redesignated former par. (2) as (5).

Par. (3). Pub. L. 100–180, § 1304(a)(1), (2), added par. (3) and redesignated former par. (3) as (6).

Par. (4). Pub. L. 100–180, § 1304(a)(1), (2), added par. (4) and redesignated former par. (4) as (7).

Par. (5). Pub. L. 100–180, § 1304(a)(1), redesignated former par. (2) as (5) and former par. (5) as (8).

Par. (6). Pub. L. 100–180, § 1304(a)(1), (3), redesignated former par. (3) as (6) and substituted ''paragraph (5)'' for ''paragraph (2)''. Former par. (6) redesignated (10).

Par. (7). Pub. L. 100–180, § 1304(a)(1), (3), redesignated former par. (4) as (7) and substituted ''paragraph (5)'' for ''paragraph (2)''. Former par. (7) redesignated (11).

Par. (8). Pub. L. 100–180, § 1304(a)(1), (3), redesignated former par. (5) as (8) and substituted ''paragraph (5)'' for ''paragraph (2)''. Former par. (8) redesignated (13).

Par. (9). Pub. L. 100–180, § 1304(a)(1), (4), added par. (9) and redesignated former par. (9) as (14).

Par. (10). Pub. L. 100–180, § 1304(a)(1), redesignated former par. (6) as (10). Former par. (10) redesignated (16).

Par. (11). Pub. L. 100–180, § 1304(a)(1), redesignated former par. (7) as (11).

Par. (12). Pub. L. 100–180, § 1304(a)(5), added par. (12).

Par. (13). Pub. L. 100–180, § 1304(a)(1), (6), redesignated former par. (8) as (13) and substituted ''paragraphs (5) through (9)'' for ''paragraphs (2) through (5)''.

Par. (14). Pub. L. 100–180, § 1304(a)(1), redesignated former par. (9) as (14).

Par. (15). Pub. L. 100–180, § 1304(a)(7), added par. (15).

Par. (16). Pub. L. 100–180, § 1304(a)(1), redesignated former par. (10) as (16).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–364 effective Oct. 1, 2007, see section 519(e) of Pub. L. 109–364, set out as a note under section 664 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 1304(b) of Pub. L. 100–180 provided that: ''Paragraphs (3) and (4) of section 667 of title 10, United States Code, as added by subsection (a), shall apply with respect to fiscal years after fiscal year 1987.''

ADDITIONAL INFORMATION TO BE INCLUDED IN FIVE ANNUAL JOINT OFFICER POLICY REPORTS AFTER NOVEMBER 30, 1993

Pub. L. 103–160, div. A, title IX, § 931(e), Nov. 30, 1993, 107 Stat. 1734, directed the Secretary of Defense to include as part of the information submitted to Congress pursuant to this section for each of the next five years after Nov. 30, 1993, the degree of progress made toward meeting the requirements of section 619a of this title and the compliance achieved with each of the plans developed pursuant to Pub. L. 103–160, § 931(d), formerly set out as a note under section 619a of this title.

§ 668. Definitions

(a) JOINT MATTERS.—(1) In this chapter, the term ''joint matters'' means matters related to the achievement of unified action by integrated military forces in operations conducted across domains such as land, sea, or air, in space, or in the information environment, including matters relating to—

(A) national military strategy;

(B) strategic planning and contingency planning;

(C) command and control of operations under unified command;

(D) national security planning with other departments and agencies of the United States; or

(E) combined operations with military forces of allied nations.

(2) In the context of joint matters, the term ''integrated military forces'' refers to military forces that are involved in the planning or execution (or both) of operations involving participants from—

(A) more than one military department; or

(B) a military department and one or more of the following:

(i) Other departments and agencies of the United States.

(ii) The military forces or agencies of other countries.

(iii) Non-governmental persons or entities.

(b) JOINT DUTY ASSIGNMENT.—(1) The Secretary of Defense shall by regulation define the term ''joint duty assignment'' for the purposes of this chapter. That definition—

(A) shall be limited to assignments in which the officer gains significant experience in joint matters; and

(B) shall exclude assignments for joint training and education, except an assignment as an instructor responsible for preparing and presenting courses in areas of the curricula designated in section 2155(c) of this title as part of a program designated by the Secretary of Defense as joint professional military education Phase II.

(2) The Secretary shall publish a joint duty assignment list showing—

(A) the positions that are joint duty assignment positions under such regulation and the number of such positions and, of those positions, those that are positions held by general or flag officers and the number of such positions; and

(B) of the positions listed under subparagraph (A), those that are critical joint duty assignment positions and the number of such positions and, of those positions, those that are positions held by general or flag officers and the number of such positions.

(c) CLARIFICATION OF ''TOUR OF DUTY''.—For purposes of this chapter, a tour of duty in which an officer serves in more than one joint duty assignment without a break between such assignments shall be considered to be a single tour of duty in a joint duty assignment.

(d) CRITICAL OCCUPATIONAL SPECIALTY.—(1) In this chapter, the term ''critical occupational specialty'' means a military occupational specialty involving combat operations within the combat arms, in the case of the Army, or the equivalent arms, in the case of the Navy, Air Force, and Marine Corps, that the Secretary of Defense designates as critical.

(2) At a minimum, the Secretary of Defense shall designate as a critical occupational specialty under paragraph (1) any military occupational specialty within a combat arms (or the equivalent) that is experiencing a severe shortage of trained officers in that specialty, as determined by the Secretary.

(Added Pub. L. 99–433, title IV, §401(a), Oct. 1, 1986, 100 Stat. 1029; amended Pub. L. 100–180, div. A, title XIII, §§1302(c)(1), 1303(b), Dec. 4, 1987, 101 Stat. 1170, 1172; Pub. L. 100–456, div. A, title V, §519(b), Sept. 29, 1988, 102 Stat. 1972; Pub. L. 108–375, div. A, title V, §534(a), (b), Oct. 28, 2004, 118 Stat. 1901; Pub. L. 109–364, div. A, title V, §519(a)–(c), Oct. 17, 2006, 120 Stat. 2190, 2191; Pub. L. 111–383, div. A, title V, §521, Jan. 7, 2011, 124 Stat. 4214.)

AMENDMENTS

2011—Subsec. (a)(1). Pub. L. 111–383, §521(1)(A), substituted ''integrated'' for ''multiple'' in introductory provisions.

Subsec. (a)(1)(D). Pub. L. 111–383, §521(1)(B), substituted ''or'' for ''and''.

Subsec. (a)(2). Pub. L. 111–383, §521(2), added par. (2) and struck out former par. (2), which read as follows: ''In the context of joint matters, the term 'multiple military forces' refers to forces that involve participants from the armed forces and one or more of the following:

''(A) Other departments and agencies of the United States.

''(B) The military forces or agencies of other countries.

''(C) Non-governmental persons or entities.''

2006—Subsec. (a). Pub. L. 109–364, §519(a), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: ''In this chapter, the term 'joint matters' means matters relating to the integrated employment of land, sea, and air forces, including matters relating to—

''(1) national military strategy;

''(2) strategic planning and contingency planning; and

''(3) command and control of combat operations under unified command.''

Subsec. (b)(1). Pub. L. 109–364, §519(b), substituted provisions limiting the definition of ''joint duty assignment'' to assignments in which the officer gains significant experience in joint matters and excluding assignments for joint training and education, except an assignment as an instructor responsible for courses as part of a program designated as joint professional military education Phase II, for provisions limiting the definition of ''joint duty assignment'' to assignments in which the officer gains significant experience in joint matters and excluding assignments for joint training or joint education and assignments within an officer's own military department.

Subsec. (d). Pub. L. 109–364, §519(c), added subsec. (d).

2004—Subsec. (b)(2). Pub. L. 108–375, §534(a), substituted ''a joint duty assignment list'' for ''a list'' in introductory provisions.

Subsec. (c). Pub. L. 108–375, §534(b), struck out ''within the same organization'' before ''without a break''.

1988—Subsecs. (c), (f). Pub. L. 100–456 redesignated subsec. (f) as (c).

1987—Subsec. (b)(2). Pub. L. 100–180, §1302(c)(1), inserted ''and, of those positions, those that are positions held by general or flag officers and the number of such positions'' in subpars. (A) and (B).

Subsec. (f). Pub. L. 100–180, §1303(b), added subsec. (f).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–364 effective Oct. 1, 2007, see section 519(e) of Pub. L. 109–364, set out as a note under section 664 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–375, div. A, title V, §534(c), Oct. 28, 2004, 118 Stat. 1901, provided that: ''The amendment made by subsection (b) [amending this section] shall not apply in the case of a joint duty assignment completed by an officer before the date of the enactment of this Act [Oct. 28, 2004], except in the case of an officer who has continued in joint duty assignments, without a break in service in such assignments, between the end of such assignment and the date of the enactment of this Act.''

PUBLICATION OF REVISED JOINT DUTY ASSIGNMENT LIST

Pub. L. 100–180, div. A, title XIII, § 1302(c)(2), Dec. 4, 1987, 101 Stat. 1170, directed the Secretary of Defense to publish a revised list under subsec. (b)(2) of this section not later than six months after Dec. 4, 1987, which would take into account the amendments to this section and section 661 of this title made by Pub. L. 100–180, § 1302.

TRANSITION TO JOINT OFFICER PERSONNEL POLICY

The list of positions required to be published by subsec. (b)(2) of this section to be published not later than six months after Oct. 1, 1986, see section 406(a)(2) of Pub. L. 99–433, set out as a note under section 661 of this title.

CHAPTER 39—ACTIVE DUTY

Sec.
671. Members not to be assigned outside United States before completing training.
671a. Members: service extension during war.
671b. Members: service extension when Congress is not in session.
672. Reference to chapter 1209.
[673 to 687. Renumbered.]
688. Retired members: authority to order to active duty; duties.
688a. Retired members: temporary authority to order to active duty in high-demand, low-density assignments.
689. Retired members: grade in which ordered to active duty and upon release from active duty.
690. Retired members ordered to active duty: limitation on number.
691. Permanent end strength levels to support two major regional contingencies.

AMENDMENTS

2006—Pub. L. 109–364, div. A, title VI, § 621(d)(2)(B), Oct. 17, 2006, 120 Stat. 2255, substituted ''Retired members: temporary authority to order to active duty in high-demand, low-density assignments'' for ''Retired aviators: temporary authority to order to active duty'' in item 688a.

2002—Pub. L. 107–314, div. A, title V, § 503(a)(2), Dec. 2, 2002, 116 Stat. 2530, added item 688a.

1996—Pub. L. 104–201, div. A, title V, § 521(c), Sept. 23, 1996, 110 Stat. 2517, added items 688, 689, and 690 and struck out former item 688 ''Retired members''.

Pub. L. 104–106, div. A, title IV, § 401(b)(2), title XV, § 1501(c)(7), Feb. 10, 1996, 110 Stat. 286, 499, struck out items 687 ''Ready Reserve: muster duty'' and 690 ''Limitation on duty with Reserve Officer Training Corps units'' and added item 691.

1994—Pub. L. 103–337, div. A, title XVI, § 1671(b)(7), Oct. 5, 1994, 108 Stat. 3013, substituted ''Reference to chapter 1209'' for ''Reserve components generally'' in item 672 and struck out former items 673 to 686 and 689.

1991—Pub. L. 102–190, div. A, title X, § 1061(a)(4)(B), Dec. 5, 1991, 105 Stat. 1472, substituted ''Corps'' for ''Corp'' in item 690.

Pub. L. 102–25, title VII, § 701(e)(3), Apr. 6, 1991, 105 Stat. 114, transferred item 687 ''Limitation on duty with Reserve Officer Training Corp units'' to appear after item 689 and redesignated that item as 690.

1990—Pub. L. 101–510, div. A, title V, § 559(a)(2), Nov. 5, 1990, 104 Stat. 1571, added item 687 ''Limitation on duty with Reserve Officer Training Corp units''.

1989—Pub. L. 101–189, div. A, title V, § 502(a)(2), Nov. 29, 1989, 103 Stat. 1436, added item 687.

1987—Pub. L. 100–180, div. A, title XII, § 1231(4), Dec. 4, 1987, 101 Stat. 1160, amended analysis by transferring item 686 from the end to a position immediately below item 685.

1986—Pub. L. 99–661, div. A, title IV, § 412(b)(2), Nov. 14, 1986, 100 Stat. 3862, added item 686 at end of analysis.

1983—Pub. L. 98–94, title X, §§ 1017(b)(4), 1021(b), Sept. 24, 1983, 97 Stat. 669, 670, substituted ''Retired members'' for ''Regular components: retired members'' in item 688, and added item 673c.

1980—Pub. L. 96–513, title V, § 501(8), Dec 12, 1980, 94 Stat. 2907, struck out item 687 ''Non-Regulars: readjustment payment upon involuntary release from active duty'' and added items 688 and 689.

1979—Pub. L. 96–107, title III, § 303(a)(2), Nov. 9, 1979, 93 Stat. 806, struck out item 686 ''Reports to Congress''.

1976—Pub. L. 94–286, § 1, May 14, 1976, 90 Stat. 517, added item 673b.

1968—Pub. L. 90–235, § 1(a)(1)(B), Jan. 2, 1968, 81 Stat. 753, added items 671a and 671b.

1967—Pub. L. 90–40, § 6(2), June 30, 1967, 81 Stat. 106, added item 673a.

1962—Pub. L. 87–651, title I, § 102(b), Sept. 7, 1962, 76 Stat. 508, added item 687.

1958—Pub. L. 85–861, § 1(16), Sept. 2, 1958, 72 Stat. 1441, added items 684 and 685.

§ 671. Members not to be assigned outside United States before completing training

(a) A member of the armed forces may not be assigned to active duty on land outside the United States and its territories and possessions until the member has completed the basic training requirements of the armed force of which he is a member.

(b) In time of war or a national emergency declared by Congress or the President, the period of required basic training (or its equivalent) may not (except as provided in subsection (c)) be less than 12 weeks.

(c)(1) A period of basic training (or equivalent training) shorter than 12 weeks may be established by the Secretary concerned for members of the armed forces who have been credentialed in a medical profession or occupation and are serving in a health-care occupational specialty, as determined under regulations prescribed under paragraph (2). Any such period shall be established under regulations prescribed under paragraph (2) and may be established notwithstanding section 4(a) of the Military Selective Service Act (50 U.S.C. App. 454(a)).

(2) The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations for the purposes of paragraph (1). The regulations prescribed by the Secretary of Defense shall apply uniformly to the military departments.

(Aug. 10, 1956, ch. 1041, 70A Stat. 27; Pub. L. 94–106, title VIII, § 802(b), Oct. 7, 1975, 89 Stat. 537; Pub. L. 99–661, div. A, title V, § 501, Nov. 14, 1986, 100 Stat. 3863; Pub. L. 103–160, div. A, title V, § 511, Nov. 30, 1993, 107 Stat. 1648; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
671	50 App.:454(a) (words between semicolon and proviso of 6th par.).	June 24, 1948, ch. 625, § 4(a) (words between semicolon and proviso of 6th par.); restated June 19, 1951, ch. 144, § 1(d) (words between semicolon and proviso of 6th par.), 65 Stat. 78.

The words ''four months of basic training or its equivalent'' are substituted for the words ''the equiva-

lent of at least four months of basic training''. The words ''who is enlisted, inducted, appointed, or ordered to active duty after the date of enactment of the 1951 Amendments to the Universal Military Training and Service Act [June 19, 1951]'' and ''at any installation located'' are omitted as surplusage.

AMENDMENTS

2002—Subsec. (c)(2). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1993—Subsec. (b). Pub. L. 103–160, § 511(1), inserted ''(except as provided in subsection (c))'' after ''may not''.

Subsec. (c). Pub. L. 103–160, § 511(2), added subsec. (c).

1986—Pub. L. 99–661 amended section generally. Prior to amendment, section read as follows: ''No member of an armed force may be assigned to active duty on land outside the United States and its Territories and possessions, until he has had twelve weeks of basic training or its equivalent.''

1975—Pub. L. 94–106 reduced minimum period of basic training from four months to twelve weeks.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

§ 671a. Members: service extension during war

Unless terminated at an earlier date by the Secretary concerned, the period of active service of any member of an armed force is extended for the duration of any war in which the United States may be engaged and for six months thereafter.

(Added Pub. L. 90–235, § 1(a)(1)(A), Jan. 2, 1968, 81 Stat. 753.)

§ 671b. Members: service extension when Congress is not in session

(a) Notwithstanding any other provision of law, when the President determines that the national interest so requires, he may, if Congress is not in session, having adjourned sine die, authorize the Secretary of Defense to extend for not more than six months enlistments, appointments, periods of active duty, periods of active duty for training, periods of obligated service, or other military status, in any component of the armed forces, that expire before the thirtieth day after Congress next convenes or reconvenes.

(b) An extension under this section continues until the sixtieth day after Congress next convenes or reconvenes or until the expiration of the period of extension specified by the Secretary of Defense, whichever occurs earlier, unless sooner terminated by law or Executive order.

(Added Pub. L. 90–235, § 1(a)(1)(A), Jan. 2, 1968, 81 Stat. 753; amended Pub. L. 101–189, div. A, title VI, § 653(a)(3), Nov. 29, 1989, 103 Stat. 1462.)

AMENDMENTS

1989—Subsec. (a). Pub. L. 101–189 substituted ''armed forces'' for ''Armed Forces of the United States''.

§ 672. Reference to chapter 1209

Provisions of law relating to service of members of reserve components on active duty are set forth in chapter 1209 of this title (beginning with section 12301).

(Added Pub. L. 103–337, div. A, title XVI, § 1662(e)(4), Oct. 5, 1994, 108 Stat. 2992.)

PRIOR PROVISIONS

A prior section 672 was renumbered section 12301 of this title.

EFFECTIVE DATE

Section 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.

[§ 673. Renumbered § 12302]

[§ 673a. Renumbered § 12303]

[§ 673b. Renumbered § 12304]

[§ 673c. Renumbered § 12305]

[§ 674. Renumbered § 12306]

[§ 675. Renumbered § 12307]

[§ 676. Renumbered § 12308]

[§ 677. Renumbered § 12309]

[§ 678. Renumbered § 12310]

[§ 679. Renumbered § 12311]

[§ 680. Renumbered § 12312]

[§ 681. Renumbered § 12313]

[§ 682. Renumbered § 12314]

[§ 683. Renumbered § 12315]

[§ 684. Renumbered § 12316]

[§ 685. Renumbered § 12317]

[§ 686. Renumbered § 12318]

PRIOR PROVISIONS

A prior section 686, acts Aug. 10, 1956, ch. 1041, 70A Stat. 32; Apr. 21, 1976, Pub. L. 94–273, § 11(2), 90 Stat. 378, provided for an annual officer grade distribution report, prior to repeal by Pub. L. 96–107, title III, § 303(a)(1), Nov. 9, 1979, 93 Stat. 806.

[§ 687. Renumbered § 12319]

CODIFICATION

Another section 687 was renumbered section 12321 of this title.

PRIOR PROVISIONS

A prior section 687, added Pub. L. 87–651, title I, § 102(a), Sept. 7, 1962, 76 Stat. 506; amended Pub. L. 89–718, § 6, Nov. 2, 1966, 80 Stat. 1115, related to readjustment payment upon involuntary release of non-regulars from active duty, prior to repeal by Pub. L. 96–513, title I, § 109(a), Dec. 12, 1980, 94 Stat. 2870, effective Sept. 15, 1981.

§ 688. Retired members: authority to order to active duty; duties

(a) AUTHORITY.—Under regulations prescribed by the Secretary of Defense, a member described in subsection (b) may be ordered to active duty by the Secretary of the military department concerned at any time.

(b) COVERED MEMBERS.—Except as provided in subsection (d), subsection (a) applies to the following members of the armed forces:

(1) A retired member of the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps.

(2) A member of the Retired Reserve who was retired under section 1293, 3911, 3914, 6323, 8911, or 8914 of this title.

(3) A member of the Fleet Reserve or Fleet Marine Corps Reserve.

(c) DUTIES OF MEMBER ORDERED TO ACTIVE DUTY.—The Secretary concerned may, to the extent consistent with other provisions of law, assign a member ordered to active duty under this section to such duties as the Secretary considers necessary in the interests of national defense.

(d) EXCLUSION OF OFFICERS RETIRED ON SELECTIVE EARLY RETIREMENT BASIS.—The following officers may not be ordered to active duty under this section:

(1) An officer who retired under section 638 of this title.

(2) An officer who—

(A) after having been notified that the officer was to be considered for early retirement under section 638 of this title by a board convened under section 611(b) of this title and before being considered by that board, requested retirement under section 3911, 6323, or 8911 of this title; and

(B) was retired pursuant to that request.

(e) LIMITATION OF PERIOD OF RECALL SERVICE.—(1) A member ordered to active duty under subsection (a) may not serve on active duty pursuant to orders under that subsection for more than 12 months within the 24 months following the first day of the active duty to which ordered under that subsection.

(2) Paragraph (1) does not apply to the following officers:

(A) A chaplain who is assigned to duty as a chaplain for the period of active duty to which ordered.

(B) A health care professional (as characterized by the Secretary concerned) who is assigned to duty as a health care professional for the period of active duty to which ordered.

(C) An officer assigned to duty with the American Battle Monuments Commission for the period of active duty to which ordered.

(D) An officer who is assigned to duty as a defense attaché or service attaché for the period of active duty to which ordered.

(f) WAIVER FOR PERIODS OF WAR OR NATIONAL EMERGENCY.—Subsections (d) and (e) do not apply in time of war or of national emergency declared by Congress or the President.

(Added Pub. L. 104–201, div. A, title V, § 521(a), Sept. 23, 1996, 110 Stat. 2515; amended Pub. L. 105–85, div. A, title V, § 502, Nov. 18, 1997, 111 Stat. 1724; Pub. L. 107–107, div. A, title V, § 509(a), Dec. 28, 2001, 115 Stat. 1091.)

PRIOR PROVISIONS

A prior section 688, added Pub. L. 96–513, title I, § 106, Dec. 12, 1980, 94 Stat. 2868; amended Pub. L. 98–94, title X, § 1017(b)(1)–(3), Sept. 24, 1983, 97 Stat. 669; Pub. L. 99–145, title V, § 516, Nov. 8, 1985, 99 Stat. 630; Pub. L. 102–190, div. A, title V, § 506(a), Dec. 5, 1991, 105 Stat. 1359; Pub. L. 103–160, div. A, title V, § 563, Nov. 30, 1993, 107 Stat. 1669, provided that certain retired members of the armed forces could be ordered to active duty, prior to repeal by Pub. L. 104–201, div. A, title V, § 521(a), (b), Sept. 23, 1996, 110 Stat. 2515, 2517, effective Sept. 30, 1997. See sections 688 to 690 of this title.

AMENDMENTS

2001—Subsec. (e)(2)(D). Pub. L. 107–107 added subpar. (D).

1997—Subsec. (e). Pub. L. 105–85 designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title V, § 509(c), Dec. 28, 2001, 115 Stat. 1091, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 690 of this title] shall apply with respect to officers serving on active duty as a defense attaché or service attaché on or after the date of the enactment of this Act [Dec. 28, 2001].''

EFFECTIVE DATE

Section 521(b) of Pub. L. 104–201 provided that: ''The amendments made by this section [enacting this section and sections 689 and 690 of this title, amending section 6151 of this title, and repealing former section 688 of this title] shall take effect on September 30, 1997.''

§ 688a. Retired members: temporary authority to order to active duty in high-demand, low-density assignments

(a) AUTHORITY.—The Secretary of a military department may order to active duty a retired member who agrees to serve on active duty in an assignment intended to alleviate a high-demand, low-density military capability or in any other specialty designated by the Secretary as critical to meet wartime or peacetime requirements. Any such order may be made only with the consent of the member ordered to active duty and in accordance with an agreement between the Secretary and the member.

(b) DURATION.—The period of active duty of a member under an order to active duty under subsection (a) shall be specified in the agreement entered into under that subsection.

(c) LIMITATION.—No more than a total of 1,000 members may be on active duty at any time under subsection (a).

(d) RELATIONSHIP TO OTHER AUTHORITY.—The authority to order a retired member to active duty under this section is in addition to the authority under section 688 of this title or any other provision of law authorizing the Secretary concerned to order a retired member to active duty.

(e) INAPPLICABILITY OF CERTAIN PROVISIONS.—Retired members ordered to active duty under subsection (a) shall not be counted for purposes of section 688 or 690 of this title.

(f) EXPIRATION OF AUTHORITY.—A retired member may not be ordered to active duty under this section after December 31, 2011.

(g) HIGH-DEMAND, LOW-DENSITY MILITARY CAPABILITY DEFINED.—In this section, the term ''high-demand, low-density military capability'' means a combat, combat support or service support capability, unit, system, or occupational specialty that the Secretary of Defense determines has funding, equipment, or personnel levels that are substantially below the levels required to fully meet or sustain actual or expected operational requirements set by regional commanders.

(Added Pub. L. 107–314, div. A, title V, § 503(a)(1), Dec. 2, 2002, 116 Stat. 2530; amended Pub. L.

109–364, div. A, title VI, § 621(b), (d)(2)(A), Oct. 17, 2006, 120 Stat. 2254, 2255; Pub. L. 111–383, div. A, title V, § 531(a), Jan. 7, 2011, 124 Stat. 4215.)

AMENDMENTS

2011—Subsec. (f). Pub. L. 111–383 substituted ''December 31, 2011'' for ''December 31, 2010''.

2006—Pub. L. 109–364, § 621(d)(2)(A), substituted ''Retired members: temporary authority to order to active duty in high-demand, low-density assignments'' for ''Retired aviators: temporary authority to order to active duty'' in section catchline.

Subsec. (a). Pub. L. 109–364, § 621(b)(1), in first sentence, substituted ''The Secretary of a military department may order to active duty a retired member who agrees to serve on active duty in an assignment intended to alleviate a high-demand, low-density military capability or in any other specialty designated by the Secretary as critical to meet wartime or peacetime requirements'' for ''The Secretary of a military department may order to active duty a retired officer having expertise as an aviator to fill staff positions normally filled by aviators on active duty'' and, in second sentence, substituted ''member'' for ''officer'' in two places.

Subsec. (b). Pub. L. 109–364, § 621(b)(2), substituted ''a member'' for ''an officer''.

Subsec. (c). Pub. L. 109–364, § 621(b)(3), substituted ''1,000 members'' for ''500 officers''.

Subsec. (d). Pub. L. 109–364, § 621(b)(4), substituted ''member to active duty under'' for ''officer to active duty under''.

Subsec. (e). Pub. L. 109–364, § 621(b)(5), substituted ''Retired members'' for ''Officers''.

Subsec. (f). Pub. L. 109–364, § 621(b)(6), substituted ''A retired member'' for ''An officer'' and ''December 31, 2010'' for ''September 30, 2008''.

Subsec. (g). Pub. L. 109–364, § 621(b)(7), added subsec. (g).

TRANSITION PROVISION

Pub. L. 107–314, div. A, title V, § 503(c), Dec. 2, 2002, 116 Stat. 2531, provided that: ''Any officer ordered to active duty under section 501 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65; 113 Stat. 589) who continues on active duty under such order to active duty after the date of the enactment of this Act [Dec. 2, 2002] shall be counted for purposes of the limitation under subsection (c) of section 688a of title 10, United States Code, as added by subsection (a).''

§ 689. Retired members: grade in which ordered to active duty and upon release from active duty

(a) GENERAL RULE FOR GRADE IN WHICH ORDERED TO ACTIVE DUTY.—Except as provided in subsections (b) and (c), a retired member ordered to active duty under section 688 or 688a of this title shall be ordered to active duty in the member's retired grade.

(b) MEMBERS RETIRED IN O–9 AND O–10 GRADES.—A retired member ordered to active duty under section 688 or 688a of this title whose retired grade is above the grade of major general or rear admiral shall be ordered to active duty in the highest permanent grade held by such member while serving on active duty.

(c) MEMBERS WHO PREVIOUSLY SERVED IN GRADE HIGHER THAN RETIRED GRADE.—(1) A retired member ordered to active duty under section 688 or 688a of this title who has previously served on active duty satisfactorily, as determined by the Secretary of the military department concerned, in a grade higher than that member's retired grade may be ordered to active duty in the highest grade in which the member had so served satisfactorily, except that such a member may not be so ordered to active duty in a grade above major general or rear admiral.

(2) A retired member ordered to active duty in a grade that is higher than the member's retired grade pursuant to subsection (a) shall be treated for purposes of section 690 of this title as if the member was promoted to that higher grade while on that tour of active duty.

(3) If, upon being released from that tour of active duty, such a retired member has served on active duty satisfactorily, as determined by the Secretary concerned, for not less than a total of 36 months in a grade that is a higher grade than the member's retired grade, the member is entitled to placement on the retired list in that grade.

(d) GRADE UPON RELEASE FROM ACTIVE DUTY.—A member ordered to active duty under section 688 or 688a of this title who, while on active duty, is promoted to a grade that is higher than that member's retired grade is entitled, upon that member's release from that tour of active duty, to placement on the retired list in the highest grade in which the member served on active duty satisfactorily, as determined by the Secretary of the military department concerned, for not less than six months.

(Added Pub. L. 104–201, div. A, title V, § 521(a), Sept. 23, 1996, 110 Stat. 2516; amended Pub. L. 107–314, div. A, title V, § 503(b)(1), Dec. 2, 2002, 116 Stat. 2531.)

PRIOR PROVISIONS

A prior section 689 was renumbered section 12320 of this title.

Provisions similar to those in this section were contained in section 688(b) and (d) of this title prior to repeal by Pub. L. 104–201, § 521(a).

AMENDMENTS

2002—Subsecs. (a), (b), (c)(1), (d). Pub. L. 107–314 inserted ''or 688a'' after ''section 688''.

EFFECTIVE DATE

Section effective Sept. 30, 1997, see section 521(b) of Pub. L. 104–201, set out as a note under section 688 of this title.

APPLICABILITY

Pub. L. 107–314, div. A, title V, § 503(b)(2), Dec. 2, 2002, 116 Stat. 2531, provided that: ''The provisions of section 689(d) of title 10, United States Code, shall apply with respect to an officer ordered to active duty under section 501 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65; 113 Stat. 589) before the date of the enactment of this Act [Dec. 2, 2002] in the same manner as such provisions apply to an officer ordered to active duty under section 688 of such title.''

§ 690. Retired members ordered to active duty: limitation on number

(a) GENERAL AND FLAG OFFICERS.—Not more than 15 retired general officers of the Army, Air Force, or Marine Corps, and not more than 15 retired flag officers of the Navy, may be on active duty at any one time. For the purposes of this subsection a retired officer ordered to active duty for a period of 60 days or less is not counted.

(b) LIMITATION BY SERVICE.—(1) Not more than 25 officers of any one armed force may be serv-

ing on active duty concurrently pursuant to orders to active duty issued under section 688 of this title.

(2) In the administration of paragraph (1), the following officers shall not be counted:

(A) A chaplain who is assigned to duty as a chaplain for the period of active duty to which ordered.

(B) A health care professional (as characterized by the Secretary concerned) who is assigned to duty as a health care professional for the period of the active duty to which ordered.

(C) Any officer assigned to duty with the American Battle Monuments Commission for the period of active duty to which ordered.

(D) Any member of the Retiree Council of the Army, Navy, or Air Force for the period on active duty to attend the annual meeting of the Retiree Council.

(E) An officer who is assigned to duty as a defense attaché or service attaché for the period of active duty to which ordered.

(c) WAIVER FOR PERIODS OF WAR OR NATIONAL EMERGENCY.—Subsection (a) does not apply in time of war or of national emergency declared by Congress or the President after November 30, 1980. Subsection (b) does not apply in time of war or of national emergency declared by Congress or the President.

(Added Pub. L. 104–201, div. A, title V, § 521(a), Sept. 23, 1996, 110 Stat. 2516; amended Pub. L. 106–65, div. A, title V, § 507, Oct. 5, 1999, 113 Stat. 591; Pub. L. 107–107, div. A, title V, § 509(b), Dec. 28, 2001, 115 Stat. 1091.)

PRIOR PROVISIONS

A prior section 690 was renumbered section 12321 of this title.

Provisions similar to those in subsecs. (a) and (c) of this section were contained in section 688(c) of this title prior to repeal by Pub. L. 104–201, § 521(a).

AMENDMENTS

2001—Subsec. (b)(2)(E). Pub. L. 107–107 added subpar. (E).

1999—Subsec. (b)(2)(D). Pub. L. 106–65 added subpar. (D).

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–107 applicable with respect to officers serving on active duty as a defense attaché or service attaché on or after Dec. 28, 2001, see section 509(c) of Pub. L. 107–107, set out as a note under section 688 of this title.

EFFECTIVE DATE

Section effective Sept. 30, 1997, see section 521(b) of Pub. L. 104–201, set out as a note under section 688 of this title.

§ 691. Permanent end strength levels to support two major regional contingencies

(a) The end strengths specified in subsection (b) are the minimum strengths necessary to enable the armed forces to fulfill a national defense strategy calling for the United States to be able to successfully conduct two nearly simultaneous major regional contingencies.

(b) Unless otherwise provided by law, the number of members of the armed forces (other than the Coast Guard) on active duty at the end of any fiscal year shall be not less than the following:

(1) For the Army, 547,400.

(2) For the Navy, 324,300.

(3) For the Marine Corps, 202,100.

(4) For the Air Force, 332,200.

(c) The budget for the Department of Defense for any fiscal year as submitted to Congress shall include amounts for funding for each of the armed forces (other than the Coast Guard) at least in the amounts necessary to maintain the active duty end strengths prescribed in subsection (b), as in effect at the time that such budget is submitted.

(d) No funds appropriated to the Department of Defense may be used to implement a reduction of the active duty end strength for any of the armed forces (other than the Coast Guard) for any fiscal year below the level specified in subsection (b) unless the reduction in end strength for that armed force for that fiscal year is specifically authorized by law.

[(e) Repealed. Pub. L. 107–314, div. A, title IV, § 402(b), Dec. 2, 2002, 116 Stat. 2525.]

(f) The number of members of the armed forces on active duty shall be counted for purposes of this section in the same manner as applies under section 115(a)(1) of this title.

(Added Pub. L. 104–106, div. A, title IV, § 401(b)(1), Feb. 10, 1996, 110 Stat. 285; amended Pub. L. 104–201, div. A, title IV, § 402, Sept. 23, 1996, 110 Stat. 2503; Pub. L. 105–85, div. A, title IV, § 402, Nov. 18, 1997, 111 Stat. 1719; Pub. L. 105–261, div. A, title IV, § 402(a), (b), Oct. 17, 1998, 112 Stat. 1995, 1996; Pub. L. 106–65, div. A, title IV, § 402(a), title X, § 1066(b)(1), Oct. 5, 1999, 113 Stat. 585, 772; Pub. L. 106–398, § 1 [[div. A], title IV, §§ 402(a), 403], Oct. 30, 2000, 114 Stat. 1654, 1654A–92; Pub. L. 107–107, div. A, title IV, § 402, Dec. 28, 2001, 115 Stat. 1069; Pub. L. 107–314, div. A, title IV, § 402, Dec. 2, 2002, 116 Stat. 2524; Pub. L. 108–136, div. A, title IV, § 402, Nov. 24, 2003, 117 Stat. 1450; Pub. L. 108–375, div. A, title IV, § 402, Oct. 28, 2004, 118 Stat. 1862; Pub. L. 109–163, div. A, title IV, § 402, Jan. 6, 2006, 119 Stat. 3219; Pub. L. 109–364, div. A, title IV, § 402, Oct. 17, 2006, 120 Stat. 2169; Pub. L. 110–181, div. A, title IV, § 402, Jan. 28, 2008, 122 Stat. 86; Pub. L. 110–417, [div. A], title IV, § 402, Oct. 14, 2008, 122 Stat. 4428; Pub. L. 111–84, div. A, title IV, § 402, Oct. 28, 2009, 123 Stat. 2265; Pub. L. 111–383, div. A, title IV, § 402, Jan. 7, 2011, 124 Stat. 4202.)

AMENDMENTS

2011—Subsec. (b). Pub. L. 111–383 substituted ''324,300'' for ''328,800'' in par. (2) and ''332,200'' for ''331,700'' in par. (4).

2009—Subsec. (b). Pub. L. 111–84 substituted ''547,400'' for ''532,400'' in par. (1), ''328,800'' for ''325,300'' in par. (2), ''202,100'' for ''194,000'' in par. (3), and ''331,700'' for ''317,050'' in par. (4).

2008—Subsec. (b). Pub. L. 110–417 substituted ''532,400'' for ''525,400'' in par. (1), ''325,300'' for ''328,400'' in par. (2), ''194,000'' for ''189,000'' in par. (3), and ''317,050'' for ''328,600'' in par. (4).

Pub. L. 110–181 substituted ''525,400'' for ''502,400'' in par. (1), ''328,400'' for ''340,700'' in par. (2), ''189,000'' for ''180,000'' in par. (3), and ''328,600'' for ''334,200'' in par. (4).

2006—Subsec. (b)(2) to (4). Pub. L. 109–364 substituted ''340,700'' for ''352,700'' in par. (2), ''180,000'' for ''179,000'' in par. (3), and ''334,200'' for ''357,400'' in par. (4).

Pub. L. 109–163 substituted ''352,700'' for ''365,900'' in par. (2), ''179,000'' for ''178,000'' in par. (3), and ''357,400'' for ''359,700'' in par. (4).

2004—Subsec. (b). Pub. L. 108–375 substituted ''502,400'' for ''482,400'' in par. (1), ''365,900'' for ''373,800'' in par. (2), ''178,000'' for ''175,000'' in par. (3), and ''359,700'' for ''359,300'' in par. (4).

2003—Subsec. (b)(1). Pub. L. 108–136, §402(1), substituted ''482,400'' for ''480,000''.

Subsec. (b)(2). Pub. L. 108–136, §402(2), substituted ''373,800'' for ''375,700''.

Subsec. (b)(4). Pub. L. 108–136, §402(3), substituted ''359,300'' for ''359,000''.

2002—Subsec. (b)(2) to (4). Pub. L. 107–314, §402(a), substituted ''375,700'' for ''376,000'' in par. (2), ''175,000'' for ''172,600'' in par. (3), and ''359,000'' for ''358,800'' in par. (4).

Subsec. (e). Pub. L. 107–314, §402(b), struck out subsec. (e) which read as follows: ''For a fiscal year for which the active duty end strength authorized by law pursuant to section 115(a)(1)(A) of this title for any of the armed forces is identical to or greater than the number applicable to that armed force under subsection (b), the Secretary of Defense may reduce that number by not more than 0.5 percent.''

2001—Subsec. (b)(2). Pub. L. 107–107, §402(1), substituted ''376,000'' for ''372,000''.

Subsec. (b)(4). Pub. L. 107–107, §402(2), substituted ''358,800'' for ''357,000''.

2000—Subsec. (b)(2) to (4). Pub. L. 106–398, §1 [[div. A], title IV, §402(a)], substituted ''372,000'' for ''371,781'' in par. (2), ''172,600'' for ''172,148'' in par. (3), and ''357,000'' for ''360,877'' in par. (4).

Subsec. (e). Pub. L. 106–398, §1 [[div. A], title IV, §403], inserted ''or greater than'' after ''identical to''.

1999—Subsec. (b)(2) to (4). Pub. L. 106–65, §402(a), substituted ''371,781'' for ''372,696'' in par. (2), ''172,148'' for ''172,200'' in par. (3), and ''360,877'' for ''370,802'' in par. (4).

Subsec. (e). Pub. L. 106–65, §1066(b)(1), made technical amendment to directory language of Pub. L. 105–261, §402(b). See 1998 Amendment note below.

1998—Subsec. (b). Pub. L. 105–261, §402(a), substituted ''480,000'' for ''495,000'' in par. (1), ''372,696'' for ''390,802'' in par. (2), ''172,200'' for ''174,000'' in par. (3), and ''370,802'' for ''371,577'' in par. (4).

Subsec. (e). Pub. L. 105–261, §402(b), as amended by Pub. L. 106–65, §1066(b)(1), substituted ''0.5 percent.'' for ''1 percent or, in the case of the Army, by not more than 1.5 percent.''

1997—Subsec. (b)(2). Pub. L. 105–85, §402(a)(1), substituted ''390,802'' for ''395,000''.

Subsec. (b)(4). Pub. L. 105–85, §402(a)(2), substituted ''371,577'' for ''381,000''.

Subsec. (e). Pub. L. 105–85, §402(b), inserted ''or, in the case of the Army, by not more than 1.5 percent'' before period at end.

1996—Subsec. (c). Pub. L. 104–201, §402(a)(2), added subsec. (c) and struck out former subsec. (c) which read as follows: ''No funds appropriated to the Department of Defense may be used to implement a reduction of the active duty end strength for any of the armed forces for any fiscal year below the level specified in subsection (b) unless the Secretary of Defense submits to Congress notice of the proposed lower end strength levels and a justification for those levels. No action may then be taken to implement such a reduction for that fiscal year until the end of the six-month period beginning on the date of the receipt of such notice by Congress.''

Subsec. (d). Pub. L. 104–201, §402(a)(2), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 104–201, §402(a)(1), (b), redesignated subsec. (d) as (e) and substituted ''not more than 1 percent'' for ''not more than 0.5 percent''. Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 104–201, §402(a)(1), redesignated subsec. (e) as (f).

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, §1 [[div. A], title IV, §402(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–92, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on October 1, 2000.''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–65, div. A, title IV, §402(b), Oct. 5, 1999, 113 Stat. 585, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1999.''

Pub. L. 106–65, div. A, title X, §1066(b), Oct. 5, 1999, 113 Stat. 772, provided that the amendment made by section 1066(b) is effective Oct. 17, 1998, and as if included in the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, Pub. L. 105–261, as enacted.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–261, div. A, title IV, §402(c), Oct. 17, 1998, 112 Stat. 1996, provided that: ''The amendments made by this section [amending this section] shall take effect on October 1, 1998.''

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.

CHAPTER 40—LEAVE

Sec.
701. Entitlement and accumulation.
702. Cadets and midshipmen.
703. Reenlistment leave.
704. Use of leave; regulations.
705. Rest and recuperation absence: qualified members extending duty at designated locations overseas.
705a. Rest and recuperation absence: certain members undergoing extended deployment to a combat zone.
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707. Payment upon disapproval of certain court-martial sentences for excess leave required to be taken.
707a. Payment upon disapproval of certain board of inquiry recommendations for excess leave required to be taken.
708. Educational leave of absence.
709. Emergency leave of absence.

AMENDMENTS

2011—Pub. L. 111–383, div. A, title V, §532(b), Jan. 7, 2011, 124 Stat. 4216, added item 705a.

2003—Pub. L. 108–136, div. A, title VI, §621(b)(2), Nov. 24, 2003, 117 Stat. 1505, struck out ''enlisted'' before ''members'' in item 705.

2002—Pub. L. 107–314, div. A, title V, §§506(d), 572(b), 574(b)(2)(B), Dec. 2, 2002, 116 Stat. 2536, 2558, substituted ''Rest and recuperation absence: qualified enlisted members extending duty at designated locations overseas'' for ''Rest and recuperative absence for qualified enlisted members extending duty at designated locations overseas'' in item 705, added items 706, 707a, and 709, and struck out former item 706 ''Administration of leave required to be taken pending review of certain court-martial convictions''.

1984—Pub. L. 98–525, title VII, §707(a)(2), Oct. 19, 1984, 98 Stat. 2572, added item 708.

1981—Pub. L. 97–81, §2(b)(2), Nov. 20, 1981, 95 Stat. 1087, added items 706 and 707.

1980—Pub. L. 96–579, §5(b)(2), Dec. 23, 1980, 94 Stat. 3367, added item 705.

PILOT PROGRAMS ON CAREER FLEXIBILITY TO ENHANCE RETENTION OF MEMBERS OF THE ARMED FORCES

Pub. L. 110–417, [div. A], title V, §533, Oct. 14, 2008, 122 Stat. 4449, provided that:

''(a) PILOT PROGRAMS AUTHORIZED.—

''(1) IN GENERAL.—Each Secretary of a military department may carry out pilot programs under which officers and enlisted members of the regular components of the Armed Forces under the jurisdiction of such Secretary may be inactivated from active duty in order to meet personal or professional needs and returned to active duty at the end of such period of inactivation from active duty.

''(2) PURPOSE.—The purpose of the pilot programs under this section shall be to evaluate whether permitting inactivation from active duty and greater flexibility in career paths for members of the Armed Forces will provide an effective means to enhance retention of members of the Armed Forces and the capacity of the Department of Defense to respond to the personal and professional needs of individual members of the Armed Forces.

''(b) LIMITATION ON ELIGIBLE MEMBERS.—A member of the Armed Forces is not eligible to participate in a pilot program under this section during any period of service required of the member—

''(1) under an agreement upon entry of the member on active duty; or

''(2) due to receipt by the member of a retention bonus as a member qualified in a critical military skill or assigned to a high priority unit under section 355 of title 37, United States Code.

''(c) LIMITATION ON NUMBER OF PARTICIPANTS.—Not more than 20 officers and 20 enlisted members of each Armed Force may be selected during each of calendar years 2009 through 2012 to participate in the pilot programs under this section.

''(d) PERIOD OF INACTIVATION FROM ACTIVE DUTY; EFFECT OF INACTIVATION.—

''(1) LIMITATION.—The period of inactivation from active duty under a pilot program under this section of a member participating in the pilot program shall be such period as the Secretary of the military department concerned shall specify in the agreement of the member under subsection (e), except that such period may not exceed three years.

''(2) EXCLUSION FROM COMPUTATION OF RESERVE OFFICER'S TOTAL YEARS OF SERVICE.—Any service by a Reserve officer while participating in a pilot program under this section shall be excluded from computation of the officer's total years of service pursuant to section 14706(a) of title 10, United States Code.

''(3) RETIREMENT AND RELATED PURPOSES.—Any period of participation of a member in a pilot program under this section shall not count toward—

''(A) eligibility for retirement or transfer to the Ready Reserve under either chapter 571 or 1223 of title 10, United States Code; or

''(B) computation of retired or retainer pay under chapter 71 or 1223 of title 10, United States Code.

''(e) AGREEMENT.—Each member of the Armed Forces who participates in a pilot program under this section shall enter into a written agreement with the Secretary of the military department concerned under which agreement that member shall agree as follows:

''(1) To accept an appointment or enlist, as applicable, and serve in the Ready Reserve of the Armed Force concerned during the period of the member's inactivation from active duty under the pilot program.

''(2) To undergo during the period of the inactivation of the member from active duty under the pilot program such inactive duty training as the Secretary concerned shall require in order to ensure that the member retains proficiency, at a level determined by the Secretary concerned to be sufficient, in the member's military skills, professional qualifications, and physical readiness during the inactivation of the member from active duty.

''(3) Following completion of the period of the inactivation of the member from active duty under the pilot program, to serve two months as a member of the Armed Forces on active duty for each month of the period of the inactivation of the member from active duty under the pilot program.

''(f) CONDITIONS OF RELEASE.—The Secretary of Defense shall issue regulations specifying the guidelines regarding the conditions of release that must be considered and addressed in the agreement required by subsection (e). At a minimum, the Secretary shall prescribe the procedures and standards to be used to instruct a member on the obligations to be assumed by the member under paragraph (2) of such subsection while the member is released from active duty.

''(g) ORDER TO ACTIVE DUTY.—Under regulations prescribed by the Secretary of the military department concerned, a member of the Armed Forces participating in a pilot program under this section may, in the discretion of such Secretary, be required to terminate participation in the pilot program and be ordered to active duty.

''(h) PAY AND ALLOWANCES.—

''(1) BASIC PAY.—During each month of participation in a pilot program under this section, a member who participates in the pilot program shall be paid basic pay in an amount equal to two-thirtieths of the amount of monthly basic pay to which the member would otherwise be entitled under section 204 of title 37, United States Code, as a member of the uniformed services on active duty in the grade and years of service of the member when the member commences participation in the pilot program.

''(2) PROHIBITION ON RECEIPT OF SPECIAL AND INCENTIVE PAYS.—

''(A) PROHIBITION ON RECEIPT DURING PARTICIPATION.—A member who participates in a pilot program shall not, while participating in the pilot program, be paid any special or incentive pay or bonus to which the member is otherwise entitled under an agreement under chapter 5 of title 37, United States Code, that is in force when the member commences participation in the pilot program.

''(B) TREATMENT OF REQUIRED SERVICE.—The inactivation from active duty of a member participating in a pilot program shall not be treated as a failure of the member to perform any period of service required of the member in connection with an agreement for a special or incentive pay or bonus under chapter 5 of title 37, United States Code, that is in force when the member commences participation in the pilot program.

''(3) REVIVAL OF SPECIAL PAYS UPON RETURN TO ACTIVE DUTY.—

''(A) REVIVAL REQUIRED.—Subject to subparagraph (B), upon the return of a member to active duty after completion by the member of participation in a pilot program—

''(i) any agreement entered into by the member under chapter 5 of title 37, United States Code, for the payment of a special or incentive pay or bonus that was in force when the member commenced participation in the pilot program shall be revived, with the term of such agreement after revival being the period of the agreement remaining to run when the member commenced participation in the pilot program; and

''(ii) any special or incentive pay or bonus shall be payable to the member in accordance with the terms of the agreement concerned for the term specified in clause (i).

''(B) LIMITATIONS.—

''(i) LIMITATION AT TIME OF RETURN TO ACTIVE DUTY.—Subparagraph (A) shall not apply to any special or incentive pay or bonus otherwise covered by that subparagraph with respect to a member if, at the time of the return of the member to active duty as described in that subparagraph—

''(I) such pay or bonus is no longer authorized by law; or

''(II) the member does not satisfy eligibility criteria for such pay or bonus as in effect at the time of the return of the member to active duty.

''(ii) CESSATION DURING LATER SERVICE.—Subparagraph (A) shall cease to apply to any special

or incentive pay or bonus otherwise covered by that subparagraph with respect to a member if, during the term of the revived agreement of the member under subparagraph (A)(i), such pay or bonus ceases being authorized by law.

''(C) REPAYMENT.—A member who is ineligible for payment of a special or incentive pay or bonus otherwise covered by this paragraph by reason of subparagraph (B)(i)(II) shall be subject to the requirements for repayment of such pay or bonus in accordance with the terms of the applicable agreement of the member under chapter 5 of title 37, United States Code.

''(D) CONSTRUCTION OF REQUIRED SERVICE.—Any service required of a member under an agreement covered by this paragraph after the member returns to active duty as described in subparagraph (A) shall be in addition to any service required of the member under an agreement under subsection (e).

''(4) CERTAIN TRAVEL AND TRANSPORTATION ALLOWANCES.—

''(A) IN GENERAL.—Subject to subparagraph (B), a member who participates in a pilot program is entitled, while participating in the pilot program, to the travel and transportation allowances authorized by section 404 of title 37, United States Code, for—

''(i) travel performed from the member's residence, at the time of release from active duty to participate in the pilot program, to the location in the United States designated by the member as his residence during the period of participation in the pilot program; and

''(ii) travel performed to the member's residence upon return to active duty at the end of the member's participation in the pilot program.

''(B) LIMITATION.—An allowance is payable under this paragraph only with respect to travel of a member to and from a single residence.

''(i) PROMOTION.—

''(1) OFFICERS.—

''(A) LIMITATION ON PROMOTION.—An officer participating in a pilot program under this section shall not, while participating in the pilot program, be eligible for consideration for promotion under chapter 36 or 1405 of title 10, United States Code.

''(B) PROMOTION AND RANK UPON RETURN TO ACTIVE DUTY.—Upon the return of an officer to active duty after completion by the officer of participation in a pilot program—

''(i) the Secretary of the military department concerned shall adjust the officer's date of rank in such manner as the Secretary of Defense shall prescribe in regulations for purposes of this section; and

''(ii) the officer shall be eligible for consideration for promotion when officers of the same competitive category, grade, and seniority are eligible for consideration for promotion.

''(2) ENLISTED MEMBERS.—An enlisted member participating in a pilot program shall not be eligible for consideration for promotion during the period that—

''(A) begins on the date of the member's inactivation from active duty under the pilot program; and

''(B) ends at such time after the return of the member to active duty under the pilot program that the member is treatable as eligible for promotion by reason of time in grade and such other requirements as the Secretary of the military department concerned shall prescribe in regulations for purposes of the pilot program.

''(j) MEDICAL AND DENTAL CARE.—A member participating in a pilot program under this section shall, while participating in the pilot program, be treated as a member of the Armed Forces on active duty for a period of more than 30 days for purposes of the entitlement of the member and the member's dependents to medical and dental care under the provisions of chapter 55 of title 10, United States Code.

''(k) REPORTS.—

''(1) INTERIM REPORTS.—Not later than June 1, 2011, and June 1, 2013, the Secretary of each military department shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the implementation and current status of the pilot programs conducted by such Secretary under this section.

''(2) FINAL REPORT.—Not later than March 1, 2016, the Secretary of Defense shall submit to the congressional defense committees a report on the pilot programs conducted under this section.

''(3) ELEMENTS OF REPORT.—Each interim report and the final report under this subsection shall include the following:

''(A) A description of each pilot program conducted under this section, including a description of the number of applicants for such pilot program and the criteria used to select individuals for participation in such pilot program.

''(B) An assessment by the Secretary concerned of the pilot programs, including an evaluation of whether—

''(i) the authorities of the pilot programs provided an effective means to enhance the retention of members of the Armed Forces possessing critical skills, talents, and leadership abilities;

''(ii) the career progression in the Armed Forces of individuals who participate in the pilot program has been or will be adversely affected; and

''(iii) the usefulness of the pilot program in responding to the personal and professional needs of individual members of the Armed Forces.

''(C) Such recommendations for legislative or administrative action as the Secretary concerned considers appropriate for the modification or continuation of the pilot programs.

''(*l*) DURATION OF PROGRAM AUTHORITY.—The authority to conduct a pilot program under this section shall commence on January 1, 2009. No member of the Armed Forces may be released from active duty under a pilot program under this section after December 31, 2012.''

§ 701. Entitlement and accumulation

(a) A member of an armed force is entitled to leave at the rate of 2½ calendar days for each month of active service, excluding periods of—

(1) absence from duty without leave;

(2) absence over leave;

(3) confinement as the result of a sentence of a court-martial; and

(4) leave required to be taken under section 876a of this title.

Full-time training, or other full-time duty for a period of more than 29 days, performed under section 316, 502, 503, 504, or 505 of title 32 by a member of the Army National Guard of the United States or the Air National Guard of the United States in his status as a member of the National Guard, and for which he is entitled to pay, is active service for the purposes of this section.

(b) Except as provided in subsections (d), (f), and (g), a member may not accumulate more than 60 days' leave. However, leave taken during a fiscal year may be charged to leave accumulated during that fiscal year without regard to this limitation.

(c) A member who retired after August 9, 1946, who is continued on, or is recalled to active duty, may have his leave which accumulated during his service before retirement carried over to his period of service after retirement.

(d) Notwithstanding subsection (b), during the period beginning on October 1, 2008, through

September 30, 2013, a member may accumulate up to 75 days of leave.

(e) Leave taken before discharge is considered to be active service.

(f)(1)(A) The Secretary concerned, under uniform regulations to be prescribed by the Secretary of Defense, may authorize a member described in subparagraph (B) who, except for this paragraph, would lose at the end of the fiscal year any accumulated leave in excess of the number of days of leave authorized to be accumulated under subsection (b) or (d), to retain an accumulated total of 120 days leave.

(B) This subsection applies to a member who—

(i) serves on active duty for a continuous period of at least 120 days in an area in which the member is entitled to special pay under section 310(a) of title 37;

(ii) is assigned to a deployable ship or mobile unit or to other duty designated for the purpose of this section; or

(iii) on or after August 29, 2005, performs duty designated by the Secretary of Defense as qualifying duty for purposes of this subsection.

(C) Except as provided in paragraph (2), leave in excess of the days of leave authorized to be accumulated under subsection (b) or (d) that are accumulated under this paragraph is lost unless it is used by the member before the end of the third fiscal year (or fourth fiscal year, if accumulated while subsection (d) is in effect) after the fiscal year in which the continuous period of service referred to in subparagraph (B) terminated.

(2) Under the uniform regulations referred to in paragraph (1), a member of an armed force who serves on active duty in a duty assignment in support of a contingency operation during a fiscal year and who, except for this paragraph, would lose at the end of that fiscal year any accumulated leave in excess of the number of days of leave authorized to be accumulated under subsection (b) or (d), shall be permitted to retain such leave until the end of the second fiscal year after the fiscal year in which such service on active duty is terminated.

(g) A member who is in a missing status, as defined in section 551(2) of title 37, accumulates leave without regard to the limitations in subsections (b), (d), and (f). Notwithstanding the death of a member while in a missing status, he continues to earn leave through the date—

(1) the Secretary concerned receives evidence that the member is dead; or

(2) that his death is prescribed or determined under section 555 of title 37.

Leave accumulated while in missing status shall be accounted for separately. It may not be taken, but shall be paid for under section 501(h) of title 37. However, a member whose death is prescribed or determined under section 555 or 556 of title 37 may, in addition to leave accrued before entering a missing status, accrue not more than 150 days' leave during the period he is in a missing status, unless his actual death occurs on a date when, had he lived, he would have accrued leave in excess of 150 days, in which event settlement will be made for the number of days accrued to the actual date of death. Leave so accrued in a missing status shall be accounted for separately and paid for under the provisions of section 501 of title 37.

(h) A member who has taken leave in excess of that authorized by this section and who is being discharged or released from active duty for the purpose of accepting an appointment or a warrant in an armed force, or of entering into an enlistment or an extension of an enlistment in an armed force, may elect to have excess leave of up to 30 days or the maximum number of days of leave that could be earned in the new term of service, whichever is less, carried over to that new term of service to count against leave that will accrue on the new term of service. A member shall be required, at the time of his discharge or release from active duty, to pay for excess leave not carried over under this subsection.

(i)(1) Under regulations prescribed by the Secretary of Defense, a member of the armed forces adopting a child in a qualifying child adoption is allowed up to 21 days of leave in a calendar year to be used in connection with the adoption.

(2) For the purpose of this subsection, an adoption of a child by a member is a qualifying child adoption if the member is eligible for reimbursement of qualified adoption expenses for such adoption under section 1052 of this title.

(3) In the event that two members of the armed forces who are married to each other adopt a child in a qualifying child adoption, only one such member shall be allowed leave under this subsection.

(4) Leave under paragraph (1) is in addition to other leave provided under other provisions of this section.

(j)(1) Under regulations prescribed by the Secretary concerned, a married member of the armed forces on active duty whose wife gives birth to a child shall receive 10 days of leave to be used in connection with the birth of the child.

(2) Leave under paragraph (1) is in addition to other leave authorized under this section.

(k) A member of a reserve component who accumulates leave during a period of active service may carry over any leave so accumulated to the member's next period of active service, subject to the accumulation limits in subsections (b), (d), and (f), without regard to separation or release from active service if the separation or release is under honorable conditions. The taking of leave carried over under this subsection shall be subject to the provisions of this section.

(Added Pub. L. 87–649, § 3(1), Sept. 7, 1962, 76 Stat. 492; amended Pub. L. 89–151, § 3, Aug. 28, 1965, 79 Stat. 586; Pub. L. 90–245, § 1, Jan. 2, 1968, 81 Stat. 782; Pub. L. 92–596, § 1, Oct. 27, 1972, 86 Stat. 1317; Pub. L. 96–579, § 10, Dec. 23, 1980, 94 Stat. 3368; Pub. L. 97–81, § 2(a), Nov. 20, 1981, 95 Stat. 1085; Pub. L. 98–94, title X, § 1031(a), Sept. 24, 1983, 97 Stat. 671; Pub. L. 98–525, title XIV, § 1405(18), Oct. 19, 1984, 98 Stat. 2622; Pub. L. 99–661, div. A, title V, § 506(a), Nov. 14, 1986, 100 Stat. 3864; Pub. L. 102–190, div. A, title VI, § 638, Dec. 5, 1991, 105 Stat. 1384; Pub. L. 108–136, div. A, title V, § 542(a), Nov. 24, 2003, 117 Stat. 1478; Pub. L. 109–163, div. A, title V, § 593(a), title VI, § 682, Jan. 6, 2006, 119 Stat. 3280, 3321; Pub. L. 110–181, div. A, title V, § 551(a)–(c), Jan. 28, 2008, 122 Stat. 117; Pub. L.

110–417, [div. A], title V, §532(a), Oct. 14, 2008, 122 Stat. 4449; Pub. L. 111–84, div. A, title V, §504, Oct. 28, 2009, 123 Stat. 2277; Pub. L. 111–383, div. A, title V, §516(a), Jan. 7, 2011, 124 Stat. 4213.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
701(a)	37:31a(a) (1st, 2d, and last sentences).	Aug. 9, 1946, ch. 931, §3(a) (less 4th, 5th, 6th, and 7th sentences), (b) (less proviso), 60 Stat. 963; Sept. 23, 1950, ch. 998, §1, 64 Stat. 978; Aug. 10, 1956, ch. 1041, §23, 70A, Stat. 630.
701(b)	37:31a(b) (less proviso).	
701(c)	37:31a(a) (8th sentence).	
701(d)	37:31a(a) (3d sentence).	
701(e)	37:31a(a) (9th sentence).	

In subsection (a), the 2d sentence of section 31a(a) of existing title 37 is omitted as inconsistent with subsection (b).

In subsection (b), the words ''(other than a member on terminal leave on September 1, 1946)'' and ''at any time after August 31, 1946'' are omitted as executed. The words ''or regulation'' are omitted, since a regulation cannot override a statute. The words ''or have to his credit'' are omitted as surplusage.

In subsections (b) and (c), the word ''accrued'' is omitted as covered by the word ''accumulated''.

In subsection (e), the words ''before or after August 9, 1946'' and section 31a(a) (words after semicolon in 9th sentence) of existing title 37 are omitted as executed.

AMENDMENTS

2011—Subsec. (k). Pub. L. 111–383 added subsec. (k).

2009—Subsec. (d). Pub. L. 111–84 substituted ''September 30, 2013'' for ''December 31, 2010''.

2008—Subsec. (b). Pub. L. 110–181, §551(a)(1), substituted ''subsections (d), (f), and (g)'' for ''subsection (f) and subsection (g)''.

Subsec. (d). Pub. L. 110–181, §551(a)(2), added subsec. (d).

Subsec. (f)(1)(A). Pub. L. 110–181, §551(b)(1), substituted ''at the end of the fiscal year any accumulated leave in excess of the number of days of leave authorized to be accumulated under subsection (b) or (d)'' for ''any accumulated leave in excess of 60 days at the end of the fiscal year''.

Subsec. (f)(1)(C). Pub. L. 110–181, §551(b)(2), substituted ''the days of leave authorized to be accumulated under subsection (b) or (d) that are'' for ''60 days'' and inserted ''(or fourth fiscal year, if accumulated while subsection (d) is in effect)'' after ''third fiscal year''.

Subsec. (f)(2). Pub. L. 110–181, §551(b)(3), substituted ''except for this paragraph, would lose at the end of that fiscal year any accumulated leave in excess of the number of days of leave authorized to be accumulated under subsection (b) or (d), shall be permitted to retain such leave until the end of the second fiscal year after the fiscal year in which such service on active duty is terminated'' for ''except for this paragraph—

''(A) would lose any accumulated leave in excess of 60 days at the end of that fiscal year, shall be permitted to retain such leave (not to exceed 90 days) until the end of the succeeding fiscal year; or

''(B) would lose any accumulated leave in excess of 60 days at the end of the succeeding fiscal year (other than by reason of subparagraph (A)), shall be permitted to retain such leave (not to exceed 90 days) until the end of the next succeeding fiscal year.''

Subsec. (g). Pub. L. 110–181, §551(c), substituted ''limitations in subsections (b), (d), and (f)'' for ''60-day limitation in subsection (b) and the 90-day limitation in subsection (f)'' in introductory provisions.

Subsec. (j). Pub. L. 110–417 added subsec. (j).

2006—Subsec. (f)(1)(B). Pub. L. 109–163, §682, amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''This subsection applies to a member who serves on active duty for a continuous period of at least 120 days—

''(i) in an area in which the member is entitled to special pay under section 310(a) of title 37; or

''(ii) while assigned to a deployable ship or mobile unit or to other duty comparable to that specified in clause (i) that is designated for the purpose of this subsection.''

Subsec. (i). Pub. L. 109–163, §593(a), added subsec. (i).

2003—Subsec. (f)(1). Pub. L. 108–136 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Under uniform regulations to be prescribed by the Secretary concerned, and approved by the Secretary of Defense, a member who serves on active duty for a continuous period of at least 120 days in an area in which he is entitled to special pay under section 310(a) of title 37 or a member assigned to a deployable ship, mobile unit, or to other duty designated for the purpose of this section, may accumulate 90 days' leave. Except as provided in paragraph (2), leave in excess of 60 days accumulated under this subsection is lost unless it is used by the member before the end of the third fiscal year after the fiscal year in which the service terminated.''

1991—Subsec. (f). Pub. L. 102–190 designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), leave'' for ''Leave'' in last sentence, and added par. (2).

1986—Subsec. (h). Pub. L. 99–661 added subsec. (h).

1984—Subsec. (g). Pub. L. 98–525 substituted ''60-day'' for ''sixty-day'', ''90-day'' for ''ninety-day'', and ''150'' for ''one hundred and fifty'' in two places.

1983—Subsec. (f). Pub. L. 98–94 substituted ''the end of the third fiscal year'' for ''the end of the fiscal year''.

1981—Subsec. (a)(2). Pub. L. 97–81, §2(a)(1), struck out ''and'' at end of par. (2).

Subsec. (a)(3). Pub. L. 97–81, §2(a)(2), substituted ''; and'' for a period at end of par. (3).

Subsec. (a)(4). Pub. L. 97–81, §2(a)(3), added par. (4).

1980—Subsec. (f). Pub. L. 96–579 authorized accumulation of leave for service as a member assigned to a deployable ship, mobile unit, or to other duty designated for the purpose of this section.

1972—Subsec. (b). Pub. L. 92–596, §1(1), inserted reference to subsec. (g).

Subsec. (g). Pub. L. 92–596, §1(2), added subsec. (g).

1968—Subsec. (b). Pub. L. 90–245, §1(1), inserted reference to subsec. (f).

Subsec. (f). Pub. L. 90–245, §1(2), added subsec. (f).

1965—Subsec. (d). Pub. L. 89–151 repealed subsec. (d) which provided that accumulated leave did not survive the death of a member during active service.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–417, [div. A], title V, §532(b), Oct. 14, 2008, 122 Stat. 4449, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Oct. 14, 2008] and applies only with respect to children born on or after that date.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–163, div. A, title V, §593(b), Jan. 6, 2006, 119 Stat. 3281, provided that: ''Subsection (i) of section 701 of title 10, United States Code (as added by subsection (a)), shall take effect on January 1, 2006, and shall apply only with respect to adoptions completed on or after that date.''

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–136, div. A, title V, §542(b), Nov. 24, 2003, 117 Stat. 1478, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on October 1, 2003, or the date of the enactment of this Act [Nov. 24, 2003], whichever is later.''

EFFECTIVE DATE OF 1983 AMENDMENT

Section 1031(b)(1), (2) of Pub. L. 98–94 provided that:

''(1) The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Sept. 24, 1983] and shall apply to leave accumulated under section 701(f) of such title [this title] after September 30, 1980.

''(2) A member of the Armed Forces who was authorized under section 701(f) of such title to accumulate 90 days' leave during fiscal year 1980, 1981, or 1982 and lost any leave at the end of fiscal year 1981, 1982, or 1983, respectively, because of the provisions of the last sentence of such section, as in effect on the day before the date of the enactment of this Act, shall be credited with the amount of the leave lost and may retain leave in excess of 60 days until (A) September 30, 1984, or (B) the end of the third fiscal year after the year in which such leave was accumulated, whichever is later, but in no case may such a member accumulate leave in excess of 90 days.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–81 to take effect at the end of the 60-day period beginning on Nov. 20, 1981, and to apply to each member whose sentence by court-martial is approved on or after Jan. 20, 1982, under section 864 or 865 of this title by the officer exercising general court-martial jurisdiction under the provisions of such section as it existed on the day before the effective date of the Military Justice Act of 1983 (Pub. L. 98–209), or under section 860 of this title by the officer empowered to act on the sentence on or after that effective date, see section 7(a) and (b)(1) of Pub. L. 97–81, set out as an Effective Date note under section 706 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 3 of Pub. L. 92–596 provided that: ''The first and second sections of this Act [amending this section and section 501 of Title 37, Pay and Allowances of the Uniformed Services] become effective as of February 28, 1961.''

EFFECTIVE DATE OF 1968 AMENDMENT

Section 2 of Pub. L. 90–245 provided that: ''Section 1 of this Act [amending this section] applies only to active duty performed after January 1, 1968.''

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–151 effective only in the case of members who die on or after Aug. 28, 1965, see section 4 of Pub. L. 89–151, set out as a note under section 501 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE

Section effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Authority vested by this chapter in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to commissioned officer corps of National Oceanic and Atmospheric Administration, by Secretary of Commerce or Secretary's designee, see section 3071 of Title 33, Navigation and Navigable Waters.

PUBLIC HEALTH SERVICE

Authority vested by this chapter in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to commissioned officers of Public Health Service, by Secretary of Health and Human Services or his designee, see section 213a of Title 42, The Public Health and Welfare.

ACCUMULATION OF LEAVE AFTER SEPTEMBER 30, 1980, PURSUANT TO SUBSECTION (f)

Pub. L. 97–39, title VII, § 702, Aug. 14, 1981, 95 Stat. 943, provided that: ''The amendment made by section 10 of the Military Pay and Allowances Benefits Act of 1980 (Public Law 96–579; 94 Stat. 3368) [amending this section] shall apply with respect to the accumulation of leave by members of the Armed Forces who after September 30, 1979, are assigned (1) to a deployable ship or mobile unit, or (2) to other duty designated after the date of the enactment of this Act [Aug. 14, 1981] as duty qualifying for the purpose of section 701(f) of title 10, United States Code, as amended by that amendment.''

For savings provision extending period for which certain accrued leave under subsec. (f) of this section may be retained by members of Armed Forces, see section 1115 of Pub. L. 101–510, set out as a Treatment of Accumulated Leave note under section 501 of Title 37, Pay and Allowances of the Uniformed Services.

§ 702. Cadets and midshipmen

(a) GRADUATION LEAVE.—Graduates of the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, or the Coast Guard Academy who, upon graduation, are appointed in a component of an armed force, may, in the discretion of the Secretary concerned or his designated representative, be granted graduation leave of not more than 60 days. Leave granted under this subsection is in addition to any other leave and may not be deducted from or charged against other leave authorized by this chapter, and must be completed within three months of the date of graduation. Leave under this subsection may not be carried forward as credit beyond the date of reporting to the first permanent duty station or to a port of embarkation for permanent duty outside the United States or in Alaska or Hawaii.

(b) INVOLUNTARY LEAVE WITHOUT PAY FOR SUSPENDED ACADEMY CADETS AND MIDSHIPMEN.—(1) Under regulations prescribed under subsection (d), the Secretary concerned may place an academy cadet or midshipman on involuntary leave for any period during which the Superintendent of the Academy at which the cadet or midshipman is admitted has suspended the cadet or midshipman from duty at the Academy—

(A) pending separation from the Academy;

(B) pending return to the Academy to repeat an academic semester or year; or

(C) for other good cause.

(2) A cadet or midshipman placed on involuntary leave under paragraph (1) is not entitled to any pay under section 203(c) of title 37 for the period of the leave.

(3) Return of an academy cadet or midshipman to a pay status at the Academy concerned from involuntary leave status under paragraph (1) does not restore any entitlement of the cadet or midshipman to pay for the period of the involuntary leave.

(c) INAPPLICABLE LEAVE PROVISIONS.—Sections 701, 703, and 704 of this title and subsection (a) do not apply to academy cadets or midshipmen or cadets or midshipmen serving elsewhere in the armed forces.

(d) REGULATIONS.—The Secretary concerned, or his designated representative, may prescribe regulations relating to leave for cadets and midshipmen.

(e) DEFINITION.—In this section, the term ''academy cadet or midshipman'' means—

(1) a cadet of the United States Military Academy;

(2) a midshipman of the United States Naval Academy;

(3) a cadet of the United States Air Force Academy; or

(4) a cadet of the United States Coast Guard Academy.

(Added Pub. L. 87–649, § 3(1), Sept. 7, 1962, 76 Stat. 492; amended Pub. L. 96–513, title V, § 511(20), Dec. 12, 1980, 94 Stat. 2921; Pub. L. 103–160, div. A, title V, § 532, Nov. 30, 1993, 107 Stat. 1657; Pub. L. 105–261, div. A, title V, § 562, Oct. 17, 1998, 112 Stat. 2027; Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(3)], Oct. 30, 2000, 114 Stat. 1654, 1654A–290.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
702(a)	37:31a(c).	Aug. 9, 1946, ch. 931, § 3(c); added June 2, 1950, ch. 217, § 1, 64 Stat. 194.
	37:32(f) (last 8 words).	Aug. 9, 1946, ch. 931, § 2(f) (last 8 words), 60 Stat. 963.
702(b)	37:38 (less applicability to payment for leave).	Aug. 9, 1946, ch. 931, § 10 (less applicability to payment for leave); added Aug. 4, 1947, ch. 475, § 3 (less applicability to payment for leave), 61 Stat. 749.
	37:32(f) (last 8 words).	Aug. 9, 1946, ch. 931, § 2(f) (last 8 words), 60 Stat. 963.

In subsection (a), the words ''outside the United States or in Alaska or Hawaii'' are substituted for the words ''outside the continental limits of the United States'' to conform to the interpretation of those words in other sections of title 10 and revised title 37.

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

AMENDMENTS

2000—Subsec. (b)(2). Pub. L. 106–398 substituted ''section 203(c)'' for ''section 230(c)''.

1998—Subsec. (a). Pub. L. 105–261, § 562(c)(1), inserted heading.

Subsec. (b). Pub. L. 105–261, § 562(a)(3), added subsec. (b). Former first and second sentences of subsec. (b) redesignated subsecs. (c) and (d), respectively.

Subsec. (c). Pub. L. 105–261, § 562(a)(2), (b)(1), (c)(2), redesignated first sentence of subsec. (b) as subsec. (c), inserted heading, and substituted ''academy cadets or midshipmen'' for ''cadets at the United States Military Academy, the United States Air Force Academy, or the Coast Guard Academy, midshipmen at the United States Naval Academy,''.

Subsec. (d). Pub. L. 105–261, § 562(a)(1), (c)(3), redesignated second sentence of subsec. (b) as subsec. (d) and inserted heading.

Subsec. (e). Pub. L. 105–261, § 562(b)(2), added subsec. (e).

1993—Subsec. (a). Pub. L. 103–160 struck out ''regular'' before ''component'' in first sentence.

1980—Subsec. (b). Pub. L. 96–513 substituted ''Sections 701, 703, and 704 of this title and subsection (a)'' for ''Sections 701, 702(a), 703, and 704 of this chapter''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE

Section effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

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.

§ 703. Reenlistment leave

(a) Leave for not more than 90 days may be authorized, in the discretion of the Secretary concerned, or his designated representative, to a member of an armed force who reenlists. Leave authorized under this section shall be deducted from leave accrued during active service before reenlistment or charged against leave that may accrue during future active service, or both.

(b) Under regulations prescribed by the Secretary of Defense, and notwithstanding subsection (a), a member who is on active duty in an area described in section 310(a)(2) of title 37 and who, by reenlistment, extension of enlistment, or other voluntary action, extends his required tour of duty in that area for at least six months may be—

(1) authorized not more than thirty days of leave, exclusive of travel time, at an authorized place selected by the member; and

(2) transported at the expense of the United States to and from that place.

Leave under this subsection may not be charged or credited to leave that accrued or that may accrue under section 701 of this title. The provisions of this subsection shall be effective only in the case of members who extend their required tours of duty on or before June 30, 1973.

(Added Pub. L. 87–649, § 3(1), Sept. 7, 1962, 76 Stat. 493; amended Pub. L. 89–735, Nov. 2, 1966, 80 Stat. 1163; Pub. L. 90–330, June 5, 1968, 82 Stat. 170; Pub. L. 91–302, July 2, 1970, 84 Stat. 368; Pub. L. 92–481, Oct. 9, 1972, 86 Stat. 795.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
703	37:31a(a) (4th and 7th sentences).	Aug. 9, 1946, ch. 931, § 3(a) (4th and 7th sentences), 60 Stat. 963.
	37:32(f) (last 8 words)	Aug. 9, 1946, ch. 931, § 2(f) (last 8 words), 60 Stat. 963.

The 4th sentence of section 31a(a) of existing title 37 is omitted as executed. The words '', or his designated representative,'' are substituted for the last 8 words of section 32(f) of existing title 37.

AMENDMENTS

1972—Subsec. (b). Pub. L. 92–481 substituted ''June 30, 1973'' for ''June 30, 1972''.

1970—Subsec. (b). Pub. L. 91–302 substituted ''June 30, 1972'' for ''June 30, 1970''.

1968—Subsec. (b). Pub. L. 90–330 substituted ''June 30, 1970'' for ''June 30, 1968''.

1966—Pub. L. 89–735 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE

Section effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

§ 704. Use of leave; regulations

(a) Under regulations prescribed by the Secretary concerned, or his designated representa-

tive, leave may be taken by a member on a calendar-day basis as vacation or absence from duty with pay, annually as accruing, or otherwise.

(b) Regulations prescribed under subsection (a) shall—

(1) provide equal treatment of officers and enlisted members;

(2) establish to the fullest extent practicable uniform policies for the several armed forces;

(3) provide that leave shall be taken annually as accruing to the extent consistent with military requirements and other exigencies; and

(4) provide for the determination of the number of calendar days of leave to which a member is entitled, including the number of calendar days of absence from duty or vacation to be counted or charged against leave.

(c) FACILITATING GRANTING OF LEAVE FOR ATTENDANCE AT HEARINGS.—

(1) REGULATIONS.—The Secretary concerned shall prescribe regulations to facilitate the granting of leave to a member of the armed forces under the jurisdiction of that Secretary in a case in which—

(A) the leave is needed for the member to attend a hearing described in paragraph (2);

(B) the member is not serving in or with a unit deployed in a contingency operation; and

(C) the exigencies of military service (as determined by the Secretary concerned) do not otherwise require that such leave not be granted.

(2) COVERED HEARINGS.—Paragraph (1) applies to a hearing that is conducted by a court or pursuant to an administrative process established under State law, in connection with a civil action—

(A) to determine whether a member of the armed forces is a natural parent of a child; or

(B) to determine an obligation of a member of the armed forces to provide child support.

(3) DEFINITIONS.—In this subsection:

(A) The term ''court'' has the meaning given that term in section 1408(a) of this title.

(B) The term ''child support'' has the meaning given that term in section 459(i) of the Social Security Act (42 U.S.C. 659(i)).

(Added Pub. L. 87–649, § 3(1), Sept. 7, 1962, 76 Stat. 493; amended Pub. L. 108–375, div. A, title X, § 1084(k), Oct. 28, 2004, 118 Stat. 2064.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
704(a)	37:31a(a) (5th sentence).	Aug. 9, 1946, ch. 391, §§ 3(a) (5th and 6th sentences), 4(e), 60 Stat. 963; Aug. 4, 1947, ch. 475, § 1 (5th par.), 61 Stat. 749.
704(b)	37:31a(a) (6th sentence). 37:33(e). 37:32(f) (last 8 words).	Aug. 9, 1946, ch. 931, § 2(f) (last 8 words), 60 Stat. 963.

In subsection (a), the 1st 18 words of the 5th sentence of section 31a(a) of existing title 37 are omitted as executed. The words '', or his designated representative,'' are substituted for the last 8 words of section 32(f) of existing title 37.

In subsection (b), 37:33(e) (less 1st sentence) is omitted as executed.

CODIFICATION

The text of section 363(b) of Pub. L. 104–193, which was set out as a note under this section and was transferred to the end of this section and redesignated as subsec. (c), was based on Pub. L. 104–193, title III, § 363(b), Aug. 22, 1996, 110 Stat. 2248, as amended by Pub. L. 107–296, title XVII, § 1704(e)(1)(B), Nov. 25, 2002, 116 Stat. 2315.

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–375, § 1084(k)(1)–(3), transferred section 363(b) of Pub. L. 104–193 to the end of this section and redesignated it as subsec. (c). See Codification note above.

Subsec. (c)(1). Pub. L. 108–375, § 1084(k)(4)(A), (B)(i), in introductory provisions, substituted ''Secretary concerned'' for ''Secretary of each military department, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy,'' and ''armed forces'' for ''Armed Forces''.

Subsec. (c)(1)(B). Pub. L. 108–375, § 1084(k)(4)(B)(ii), struck out ''(as defined in section 101 of title 10, United States Code)'' after ''contingency operation''.

Subsec. (c)(2)(A), (B). Pub. L. 108–375, § 1084(k)(4)(A), substituted ''armed forces'' for ''Armed Forces''.

Subsec. (c)(3). Pub. L. 108–375, § 1084(k)(4)(C)(i), substituted ''In this subsection:'' for ''For purposes of this subsection—'' in introductory provisions.

Subsec. (c)(3)(A). Pub. L. 108–375, § 1084(k)(4)(C)(ii), substituted ''this title'' for ''title 10, United States Code''.

Subsec. (c)(3)(B). Pub. L. 108–375, § 1084(k)(4)(C)(iii), substituted ''that term'' for ''such term''.

EFFECTIVE DATE

Section effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

FACILITATING GRANTING OF LEAVE FOR ATTENDANCE AT HEARINGS INVOLVING PARENTAL SUPPORT OBLIGATIONS

Pub. L. 104–193, title III, § 363(b), Aug. 22, 1996, 110 Stat. 2248, as amended by Pub. L. 107–296, title XVII, § 1704(e)(1)(B), Nov. 25, 2002, 116 Stat. 2315, formerly set out as a note under this section, was transferred to subsec. (c) of this section.

§ 705. Rest and recuperation absence: qualified members extending duty at designated locations overseas

(a) Under regulations prescribed by the Secretary concerned, a member of an armed force who—

(1) is entitled to basic pay;

(2) has a specialty that is designated by the Secretary concerned for the purposes of this section;

(3) has completed a tour of duty (as defined in accordance with regulations prescribed by the Secretary concerned) at a location outside the 48 contiguous States and the District of Columbia that is designated by the Secretary concerned for the purposes of this section; and

(4) at the end of that tour of duty executes an agreement to extend that tour for a period of not less than one year;

may, in lieu of receiving special pay under section 314 of title 37 for duty performed during such extension of duty, elect to receive one of the benefits specified in subsection (b). Receipt

of any such benefit is in addition to any other leave or transportation to which the member may be entitled.

(b) The benefits authorized by subsection (a) are—

(1) a period of rest and recuperation absence for not more than 30 days; or

(2) a period of rest and recuperation absence for not more than 15 days for members whose qualifying tour of duty is 12 months or less, or for not more than 20 days for members whose qualifying tour of duty is longer than 12 months, and round-trip transportation at Government expense from the location of the extended tour of duty to the nearest port in the 48 contiguous States and return, or to an alternative destination and return at a cost not to exceed the cost of round-trip transportation from the location of the extended tour of duty to such nearest port.

(c) The provisions of this section shall not be effective unless the Secretary concerned determines that the application of this section will not adversely affect combat or unit readiness.

(Added Pub. L. 96–579, § 5(b)(1), Dec. 23, 1980, 94 Stat. 3366; amended Pub. L. 107–314, div. A, title V, § 574(a)–(b)(2)(A), Dec. 2, 2002, 116 Stat. 2558; Pub. L. 108–136, div. A, title VI, § 621(b), Nov. 24, 2003, 117 Stat. 1505; Pub. L. 110–181, div. A, title V, § 552, Jan. 28, 2008, 122 Stat. 117.)

AMENDMENTS

2008—Subsec. (b)(2). Pub. L. 110–181 inserted ''for members whose qualifying tour of duty is 12 months or less, or for not more than 20 days for members whose qualifying tour of duty is longer than 12 months,'' after ''for not more than 15 days''.

2003–Pub. L. 108–136, § 621(b)(2), struck out ''enlisted'' before ''members'' in section catchline.

Subsec. (a). Pub. L. 108–136, § 621(b)(1), substituted ''a member'' for ''an enlisted member'' in introductory provisions.

2002—Pub. L. 107–314, § 574(b)(2)(A), substituted ''recuperation absence: qualified enlisted members'' for ''recuperative absence for qualified enlisted members'' in section catchline.

Subsec. (b). Pub. L. 107–314 substituted ''recuperation'' for ''recuperative'' in pars. (1) and (2) and inserted before period at end of par. (2) '', or to an alternative destination and return at a cost not to exceed the cost of round-trip transportation from the location of the extended tour of duty to such nearest port''.

EFFECTIVE DATE

Section 5(c)(2) of Pub. L. 96–579 provided: ''Section 705 of title 10, United States Code, as added by subsection (b), shall take effect upon the date of the enactment of this section [Dec. 23, 1980] and shall apply only with respect to periods of extended duty overseas beginning on or after such date of enactment.''

§ 705a. Rest and recuperation absence: certain members undergoing extended deployment to a combat zone

(a) REST AND RECUPERATION AUTHORIZED.—Under regulations prescribed by the Secretary of Defense, the Secretary concerned may provide a member of the armed forces described in subsection (b) the benefits described in subsection (c).

(b) COVERED MEMBERS.—A member of the armed forces described in this subsection is any member who—

(1) is assigned or deployed for at least 270 days in an area or location—

(A) that is designated by the President as a combat zone; and

(B) in which hardship duty pay is authorized to be paid under section 305 of title 37; and

(2) meets such other criteria as the Secretary of Defense may prescribe in the regulations required by subsection (a).

(c) BENEFITS.—The benefits described in this subsection are the following:

(1) A period of rest and recuperation absence for not more than 15 days.

(2) Round-trip transportation at Government expense from the area or location in which the member is serving in connection with the exercise of the period of rest and recuperation.

(d) CONSTRUCTION WITH OTHER LEAVE.—Any benefits provided a member under this section are in addition to any other leave or absence to which the member may be entitled.

(Added Pub. L. 111–383, div. A, title V, § 532(a), Jan. 7, 2011, 124 Stat. 4216.)

§ 706. Administration of leave required to be taken

(a) A period of leave required to be taken under section 876a or 1182(c)(2) of this title shall be charged against any accrued leave to the member's credit on the day before the day such leave begins unless the member elects to be paid for such accrued leave under subsection (b). If the member does not elect to be paid for such accrued leave under subsection (b), or does not have sufficient accrued leave to his credit to cover the total period of leave required to be taken, the leave not covered by accrued leave shall be charged as excess leave. If the member elects to be paid for accrued leave under subsection (b), the total period of leave required to be taken shall be charged as excess leave.

(b)(1) A member who is required to take leave under section 876a or 1182(c)(2) of this title and who has accrued leave to his credit on the day before the day such leave begins may elect to be paid for such accrued leave. Any such payment shall be based on the rate of basic pay to which the member was entitled on the day before the day such leave began. If the member does not elect to be paid for such accrued leave, the member is entitled to pay and allowances during the period of accrued leave required to be taken.

(2) Except as provided in paragraph (1) and in sections 707 and 707a of this title, a member may not accrue or receive pay or allowances during a period of leave required to be taken under section 876a or 1182(c)(2) of this title.

(c) A member required to take leave under section 876a or 1182(c)(2) of this title is not entitled to any right or benefit under chapter 43 of title 38 solely because of employment during the period of such leave.

(Added Pub. L. 97–81, § 2(b)(1), Nov. 20, 1981, 95 Stat. 1085; amended Pub. L. 102–568, title V, § 506(c)(5), Oct. 29, 1992, 106 Stat. 4341; Pub. L. 103–337, div. A, title X, § 1070(e)(1), Oct. 5, 1994, 108 Stat. 2859; Pub. L. 103–353, § 2(b)(3), Oct. 13,

1994, 108 Stat. 3169; Pub. L. 104–106, div. A, title XV, § 1503(a)(7), Feb. 10, 1996, 110 Stat. 511; Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(4)], Oct. 30, 2000, 114 Stat. 1654, 1654A–290; Pub. L. 107–314, div. A, title V, § 506(c), Dec. 2, 2002, 116 Stat. 2535.)

AMENDMENTS

2002—Pub. L. 107–314, § 506(c)(2), struck out ''pending review of certain court-martial convictions'' at end of section catchline.

Subsec. (a). Pub. L. 107–314, § 506(c)(1)(A), inserted ''or 1182(c)(2)'' after ''section 876a''.

Subsec. (b). Pub. L. 107–314, § 506(c)(1), inserted ''or 1182(c)(2)'' after ''section 876a'' in pars. (1) and (2) and substituted ''sections 707 and 707a'' for ''section 707'' in par. (2).

Subsec. (c). Pub. L. 107–314, § 506(c)(1)(A), inserted ''or 1182(c)(2)'' after ''section 876a''.

2000—Subsec. (c). Pub. L. 106–398 struck out ''(1)'' before ''A member required'' and struck out par. (2) which read as follows: ''Section 974 of this title does not apply to a member required to take leave under section 876a of this title during the period of such leave.''

1996—Subsec. (c)(1). Pub. L. 104–106 substituted ''chapter 43 of title 38'' for ''section 4301 of title 38''.

1994—Subsec. (c)(1). Pub. L. 103–353, which directed the amendment of par. (1) by substituting ''chapter 43'' for ''section 4321'', could not be executed because intervening amendment by Pub. L. 103–337 had substituted ''section 4301'' for ''section 4321''. See below.

Pub. L. 103–337 substituted ''4301'' for ''4321''.

1992—Subsec. (c)(1). Pub. L. 102–568 substituted ''section 4321'' for ''section 2021''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–353 effective with respect to reemployments initiated on or after the first day after the 60-day period beginning Oct. 13, 1994, with transition rules, see section 8 of Pub. L. 103–353, set out as an Effective Date note under section 4301 of Title 38, Veterans' Benefits.

EFFECTIVE DATE

Section 7 of Pub. L. 97–81, as amended by Pub. L. 98–209, § 12(b), Dec. 6, 1983, 97 Stat. 1407, provided that:

''(a) The amendments made by this Act [enacting this section and sections 707 and 876a of this title and amending sections 701, 813, 832, 838, 867, and 869 of this title] shall take effect at the end of the sixty-day period beginning on the date of the enactment of this Act.

''(b)(1) The amendments made by section 2 [enacting this section and sections 707 and 876a of this title and amending section 701 of this title] shall apply to each member whose sentence by court-martial is approved on or after January 20, 1982—

''(A) under section 864 or 865 (article 64 or 65) of title 10, United States Code, by the officer exercising general court-martial jurisdiction under the provisions of such section as it existed on the day before the effective date of the Military Justice Act of 1983 [see Effective Date of 1983 Amendment note set out under section 801 of this title]; or

''(B) under section 860 (article 60) of title 10, United States Code, by the officer empowered to act on the sentence on or after the effective date of the Military Justice Act of 1983.

''(2) The amendments made by section 3 [amending section 813 of this title] shall apply to each person held as the result of a court-martial sentence announced on or after the effective date of such amendments.

''(3) The amendment made by section 4(a) [amending section 832 of this title] shall apply with respect to investigations under section 832 (article 32) of title 10, United States Code, that begin on or after the effective date of such amendment.

''(4) The amendment made by section 4(b) [amending section 838 of this title] shall apply to trials by courts-martial in which all charges are referred to trial on or after the effective date of such amendment.

''(5) The amendment made by section 5 [amending section 867 of this title] shall apply to any accused with respect to a Court of Military Review [now Court of Criminal Appeals] decision that is dated on or after the effective date of such amendment.''

§ 707. Payment upon disapproval of certain court-martial sentences for excess leave required to be taken

(a) A member—

(1) who is required to take leave under section 876a of this title, any period of which is charged as excess leave under section 706(a) of this title; and

(2) whose sentence by court-martial to a dismissal or a dishonorable or bad-conduct discharge is set aside or disapproved by a Court of Criminal Appeals under section 866 of this title or by the United States Court of Appeals for the Armed Forces under section 867 of this title,

shall be paid, as provided in subsection (b), for the period of leave charged as excess leave, unless a rehearing or new trial is ordered and a dismissal or a dishonorable or bad-conduct discharge is included in the result of the rehearing or new trial and such dismissal or discharge is later executed.

(b)(1) A member entitled to be paid under this section shall be deemed, for purposes of this section, to have accrued pay and allowances for each day of leave required to be taken under section 876a of this title that is charged as excess leave (except any day of accrued leave for which the member has been paid under section 706(b)(1) of this title and which has been charged as excess leave). If the pay grade of the member was reduced to a lower grade as a result of the court-martial sentence (including any reduction in pay grade under section 858a of this title) and such reduction has not been set aside, disapproved, or otherwise vacated, pay and allowances to be paid under this section shall be deemed to have accrued in such lower grade. Otherwise, such pay and allowances shall be deemed to have accrued in the pay grade held by the member on the day before the day on which his court-martial sentence was approved by the convening authority.

(2) Such a member shall be paid the amount of pay and allowances that he is deemed to have accrued, reduced by the total amount of his income from wages, salaries, tips, other personal service income, unemployment compensation, and public assistance benefits from any Government agency during the period he is deemed to have accrued pay and allowances. Except as provided in paragraph (3), such payment shall be made as follows:

(A) Payment shall be made within 60 days from the date of the order setting aside or disapproving the sentence by court-martial to a dismissal or a dishonorable or bad-conduct discharge if no rehearing or new trial has been ordered.

(B) Payment shall be made within 180 days from the date of the order setting aside or disapproving the sentence by court-martial to a dismissal or a dishonorable or bad-conduct dis-

charge if a rehearing or new trial has been ordered but charges have not been referred to a rehearing or new trial within 120 days from the date of that order.

(C) If a rehearing or new trial has been ordered and a dismissal or a dishonorable or bad-conduct discharge is not included in the result of such rehearing or new trial, payment shall be made within 60 days of the date of the announcement of the result of such rehearing or new trial.

(D) If a rehearing or new trial has been ordered and a dismissal or a dishonorable or bad-conduct discharge is included in the result of such rehearing or new trial, but such dismissal or discharge is not later executed, payment shall be made within 60 days of the date of the order which set aside, disapproved, or otherwise vacated such dismissal or discharge.

(3) If a member is entitled to be paid under this section but fails to provide sufficient information in a timely manner regarding his income when such information is requested under regulations prescribed under subsection (c), the periods of time prescribed in paragraph (2) shall be extended until 30 days after the date on which the member provides the information requested.

(c) This section shall be administered under uniform regulations prescribed by the Secretaries concerned. Such regulations may provide for the method of determining a member's income during any period the member is deemed to have accrued pay and allowances, including a requirement that the member provide income tax returns and other documentation to verify the amount of his income.

(Added Pub. L. 97–81, § 2(b)(1), Nov. 20, 1981, 95 Stat. 1086; amended Pub. L. 103–337, div. A, title IX, § 924(c)(1), (2), Oct. 5, 1994, 108 Stat. 2831.)

AMENDMENTS

1994—Subsec. (a)(2). Pub. L. 103–337 substituted ''Court of Criminal Appeals'' for ''Court of Military Review'' and ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals''.

EFFECTIVE DATE

Section to take effect at end of 60-day period beginning on Nov. 20, 1981, to apply to each member whose sentence by court-martial is approved on or after Jan. 20, 1982, under section 864 or 865 of this title by officer exercising general court-martial jurisdiction under provisions of such section as it existed on day before effective date of Military Justice Act of 1983 (Pub. L. 98–209), or under section 860 of this title by officer empowered to act on sentence on or after that effective date, see section 7(a), (b)(1) of Pub. L. 97–81, set out as a note under section 706 of this title.

§ 707a. Payment upon disapproval of certain board of inquiry recommendations for excess leave required to be taken

(a) An officer—

(1) who is required to take leave under section 1182(c)(2) of this title, any period of which is charged as excess leave under section 706(a) of this title, and

(2) whose recommendation for removal from active duty in a report of a board of inquiry is not approved by the Secretary concerned under section 1184 of this title,

shall be paid, as provided in subsection (b), for the period of leave charged as excess leave.

(b)(1) An officer entitled to be paid under this section shall be deemed, for purposes of this section, to have accrued pay and allowances for each day of leave required to be taken under section 1182(c)(2) of this title that is charged as excess leave (except any day of accrued leave for which the officer has been paid under section 706(b)(1) of this title and which has been charged as excess leave).

(2) The officer shall be paid the amount of pay and allowances that is deemed to have accrued to the officer under paragraph (1), reduced by the total amount of his income from wages, salaries, tips, other personal service income, unemployment compensation, and public assistance benefits from any Government agency during the period the officer is deemed to have accrued pay and allowances. Except as provided in paragraph (3), such payment shall be made within 60 days after the date on which the Secretary concerned decides not to remove the officer from active duty.

(3) If an officer is entitled to be paid under this section, but fails to provide sufficient information in a timely manner regarding the officer's income when such information is requested under regulations prescribed under subsection (c), the period of time prescribed in paragraph (2) shall be extended until 30 days after the date on which the member provides the information requested.

(c) This section shall be administered under uniform regulations prescribed by the Secretaries concerned. The regulations may provide for the method of determining an officer's income during any period the officer is deemed to have accrued pay and allowances, including a requirement that the officer provide income tax returns and other documentation to verify the amount of the officer's income.

(Added Pub. L. 107–314, div. A, title V, § 506(b), Dec. 2, 2002, 116 Stat. 2535.)

§ 708. Educational leave of absence

(a) Under such regulations as the Secretary of Defense may prescribe after consultation with the Secretary of Homeland Security and subject to subsection (b), the Secretary concerned may grant to any eligible member (as defined in subsection (e)) a leave of absence for the purpose of permitting the member to pursue a program of education. The period of a leave of absence granted under this section may not exceed two years, except that the period may exceed two years but may not exceed three years in the case of an eligible member pursuing a program of education in a health care profession.

(b)(1) A member may not be granted a leave of absence under this section unless—

(A) in the case of an enlisted member, the member agrees in writing to extend his current enlistment after completion (or other termination) of the program of education for which the leave of absence was granted for a period of two months for each month of the period of the leave of absence; and

(B) in the case of an officer, the member agrees to serve on active duty after comple-

tion (or other termination) of the program of education for which the leave of absence was granted for a period (in addition to any other period of obligated service on active duty) of two months for each month of the period of the leave of absence.

(2) A member may not be granted a leave of absence under this section until he has completed any extension of enlistment or reenlistment, or any period of obligated service, incurred by reason of any previous leave of absence granted under this section.

(c)(1) While on a leave of absence under this section, a member shall be paid basic pay but may not receive basic allowance for housing under section 403 of title 37, basic allowance for subsistence under section 402 of such title, or any other pay and allowances to which he would otherwise be entitled for such period.

(2) A period during which a member is on a leave of absence under this section shall be counted for the purposes of computing the amount of the member's basic pay, for the purpose of determining the member's eligibility for retired pay, and for the purpose of determining the member's time in grade for promotion purposes, but may not be counted for the purposes of completion of the term of enlistment of the member (in the case of an enlisted member) or for purposes of section 3021 of title 38, relating to entitlement to supplemental educational assistance.

(d)(1) In time of war, or of national emergency declared by the President or the Congress after October 19, 1984, the Secretary concerned may cancel any leave of absence granted under this section.

(2) The Secretary concerned may cancel a leave of absence granted to a member under this section if the Secretary determines that the member is not satisfactorily pursuing the program of education for which the leave was granted.

(e) In this section, the term ''eligible member'' means a member of the armed forces on active duty who is eligible for basic educational assistance under chapter 30 of title 38 and who—

(1) in the case of an enlisted member, has completed at least one term of enlistment and has reenlisted; and

(2) in the case of an officer, has completed the officer's initial period of obligated service on active duty.

(Added Pub. L. 98–525, title VII, § 707(a)(1), Oct. 19, 1984, 98 Stat. 2571; amended Pub. L. 100–26, § 7(i)(2), (k)(3), Apr. 21, 1987, 101 Stat. 282, 284; Pub. L. 103–337, div. A, title X, § 1070(e)(2), Oct. 5, 1994, 108 Stat. 2859; Pub. L. 105–85, div. A, title VI, § 603(d)(2)(A), Nov. 18, 1997, 111 Stat. 1782; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 108–375, div. A, title V, § 554, Oct. 28, 2004, 118 Stat. 1913; Pub. L. 109–364, div. A, title X, § 1071(g)(3), Oct. 17, 2006, 120 Stat. 2402.)

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–364 made technical correction to directory language of Pub. L. 108–375, § 554(1). See 2004 Amendment note below.

2004—Subsec. (a). Pub. L. 108–375, § 554(2), inserted at end ''The period of a leave of absence granted under this section may not exceed two years, except that the period may exceed two years but may not exceed three years in the case of an eligible member pursuing a program of education in a health care profession.''

Pub. L. 108–375, § 554(1), as amended by Pub. L. 109–364, struck out ''for a period of not to exceed two years'' after ''leave of absence''.

2002—Subsec. (a). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1997—Subsec. (c)(1). Pub. L. 105–85 substituted ''basic allowance for housing under section 403 of title 37, basic allowance for subsistence under section 402 of such title,'' for ''basic allowance for quarters or basic allowance for subsistence''.

1994—Subsec. (c)(2). Pub. L. 103–337 substituted ''section 3021 of title 38'' for ''section 1421 of title 38''.

1987—Subsec. (d)(1). Pub. L. 100–26, § 7(i)(2), substituted ''October 19, 1984'' for ''the date of the enactment of this section''.

Subsec. (e). Pub. L. 100–26, § 7(k)(3), inserted ''the term'' after ''In this section,''.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–364, div. A, title X, § 1071(g), Oct. 17, 2006, 120 Stat. 2402, provided that the amendment made by section 1071(g)(3) is effective as of Oct. 28, 2004, and as if included in Pub. L. 108–375 as enacted.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–85 effective Jan. 1, 1998, see section 603(e) of Pub. L. 105–85, set out as a note under section 5561 of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Section 707(b) of Pub. L. 98–525 provided that: ''Section 708 of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 1985.''

§ 709. Emergency leave of absence

(a) EMERGENCY LEAVE OF ABSENCE.—The Secretary concerned may grant a member of the armed forces emergency leave of absence for a qualifying emergency.

(b) LIMITATIONS.—An emergency leave of absence under this section—

(1) may be granted only once for any member;

(2) may be granted only to prevent the member from entering unearned leave status or excess leave status; and

(3) may not extend for a period of more than 14 days.

(c) QUALIFYING EMERGENCY.—In this section, the term ''qualifying emergency'', with respect to a member of the armed forces, means a circumstance that—

(1) is due to—

(A) a medical condition of a member of the immediate family of the member; or

(B) any other hardship that the Secretary concerned determines appropriate for purposes of this section; and

(2) is verified to the Secretary's satisfaction based upon information or opinion from a source in addition to the member that the Secretary considers to be objective and reliable.

(d) MILITARY DEPARTMENT REGULATIONS.—Regulations prescribed under this section by the Secretaries of the military department shall be as uniform as practicable and shall be subject to approval by the Secretary of Defense.

(e) DEFINITIONS.—In this section:

(1) The term ''unearned leave status'' means leave approved to be used by a member of the armed forces that exceeds the amount of leave credit that has been accrued as a result of the member's active service and that has not been previously used by the member.

(2) The term ''excess leave status'' means leave approved to be used by a member of the armed forces that is unearned leave for which a member is unable to accrue leave credit during the member's current term of service before the member's separation.

(Added Pub. L. 107–314, div. A, title V, §572(a), Dec. 2, 2002, 116 Stat. 2557.)

CHAPTER 41—SPECIAL APPOINTMENTS, ASSIGNMENTS, DETAILS, AND DUTIES

Sec.
711. Senior members of Military Staff Committee of United Nations: appointment.
711a. American National Red Cross: detail of commissioned officers.
712. Foreign governments: detail to assist.
713. State Department: assignment or detail as couriers and building inspectors.
[714, 715. Repealed.]
716. Commissioned officers: transfers among the armed forces, the National Oceanic and Atmospheric Administration, and the Public Health Service.
717. Members of the armed forces: participation in international sports.
[718. Repealed.]
719. Department of Commerce: assignment or detail of members of the armed forces to National Oceanic and Atmospheric Administration.
720. Chief of Staff to President: appointment.
[721. Repealed.]
722. Attending Physician to the Congress: grade.

AMENDMENTS

2009—Pub. L. 111–84, div. A, title V, §502(i)(2), Oct. 28, 2009, 123 Stat. 2277, struck out item 721 ''General and flag officers: limitation on appointments, assignments, details, and duties outside an officer's own service''.

2006—Pub. L. 109–364, div. A, title V, §507(a)(1)(B), Oct. 17, 2006, 120 Stat. 2180, added item 722.

2003—Pub. L. 108–136, div. A, title V, §503(b), Nov. 24, 2003, 117 Stat. 1456, struck out item 714 ''Defense attaché in France: required grade''.

1997—Pub. L. 105–85, div. A, title V, §§501(b), 597(b), Nov. 18, 1997, 111 Stat. 1724, 1766, added items 714 and 721.

1994—Pub. L. 103–337, div. A, title XVI, §1671(b)(8), Oct. 5, 1994, 108 Stat. 3013, struck out item 715 ''Reserve components: detail of members of regular and reserve components to assist''.

1986—Pub. L. 99–433, title I, §110(a)(2), Oct. 1, 1986, 100 Stat. 1001, struck out item 718 ''Secretary of Defense: detail of officers to assist''.

1983—Pub. L. 98–94, title X, §1007(a)(2), Sept. 24, 1983, 97 Stat. 662, included reference to the Public Health Service in item 716.

1980—Pub. L. 96–513, title V, §§501(9)(B), 511(23)(C), Dec. 12, 1980, 94 Stat. 2908, 2922, substituted ''assignment or detail of members of the armed forces to National Oceanic and Atmospheric Administration'' for ''assignment or detail to Environmental Science Services Administration'' in item 719 and added item 720.

Pub. L. 96–215, §2(b), Mar. 25, 1980, 94 Stat. 123, inserted ''and to and from National Oceanic and Atmospheric Administration'' after ''between armed forces'' in item 716.

1970—Pub. L. 91–392, §2, Sept. 1, 1970, 84 Stat. 834, substituted ''armed forces'' for ''Army, Navy, Air Force, and Marine Corps'' in item 716.

1968—Pub. L. 90–235, §4(a)(1)(B), Jan. 2, 1968, 81 Stat. 759, added item 711a.

1966—Pub. L. 89–683, §1(2), Oct. 15, 1966, 80 Stat. 960, added item 719.

1962—Pub. L. 87–651, title I, §103(b), title II, §205(b), Sept. 7, 1962, 76 Stat. 508, 519, redesignated item 716, relating to participation of members of the armed forces in international sports, as 717, and added item 718.

1960—Pub. L. 86–533, §1(5)(B), June 29, 1960, 74 Stat. 246, repealed item 714 ''Reports to Congress on length of tours of duty outside United States by members of Army and Air Force''.

1958—Pub. L. 85–861, §1(18), Sept. 2, 1958, 72 Stat. 1442, added item 716, relating to participation of members of the armed forces in international sports.

Pub. L. 85–599, §11(1), Aug. 6, 1958, 72 Stat. 521, added item 716, relating to transfers of commissioned officers.

REPORTS ON MEMBERS OF THE ARMED FORCES AND CIVILIAN EMPLOYEES OF THE DEPARTMENT OF DEFENSE SERVING IN THE LEGISLATIVE BRANCH

Pub. L. 109–364, div. A, title XI, §1104, Oct. 17, 2006, 120 Stat. 2409, provided that:

''(a) QUARTERLY REPORTS ON DETAILS AND FELLOWSHIPS OF LONG DURATION.—Not later than 120 days after the date of the enactment of this Act [Oct. 17, 2006], and quarterly thereafter, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the members of the Armed Forces and civilian employees of the Department of Defense who, as of the date of such report, have served continuously in the Legislative Branch for more than 12 consecutive months in one or a combination of covered legislative details or fellowships.

''(b) REPORTS ON CERTAIN MILITARY DETAILS AND FELLOWSHIPS.—If a member of the Armed Forces is assigned to a covered legislative detail or fellowship as the last tour of duty of such member before retirement or separation from the Armed Forces in contravention of the regulations of the Department of Defense, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the assignment of such member to such covered legislative detail or fellowship. The report shall include a rationale for the waiver of the regulations of the Department in order to permit the detail or fellowship.

''(c) REPORT ELEMENTS.—Each report under subsection (a) or (b) shall set forth, for each member of the Armed Forces or civilian employee of the Department of Defense covered by such report, the following:

''(1) The name of such member or employee.

''(2) In the case of a member, the Armed Force of such member.

''(3) The committee or member of Congress to which such member or employee is detailed or assigned.

''(4) A general description of the projects or tasks undertaken or to be undertaken, as applicable, by such member or employee as a detailee, fellow, or both.

''(5) The anticipated termination date of the current detail or fellowship of such member or employee.

''(d) COVERED LEGISLATIVE DETAIL OR FELLOWSHIP DEFINED.—In this section, the term 'covered legislative detail or fellowship' means the following:

''(1) A detail under the provisions of Department of Defense Directive 1000.17.

''(2) A legislative fellowship (including a legislative fellowship under the provisions of Department of Defense Directive 1322.6).''

§ 711. Senior members of Military Staff Committee of United Nations: appointment

The President, by and with the advice and consent of the Senate, may appoint an officer of the Army, an officer of the Navy or the Marine Corps, and an officer of the Air Force, as senior members of the Military Staff Committee of the United Nations. An officer so appointed has the grade of lieutenant general or vice admiral, as the case may be, while serving under that appointment.

(Aug. 10, 1956, ch. 1041, 70A Stat. 32.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
711	10:506b(c) (less last 12 words).	Aug. 7, 1947, ch. 512, § 504(c) (less last 12 words), 61 Stat 886.

The words ''Within the limitations as to numbers in grade prescribed in this Act'', so far as they relate to the Army and the Air Force, are omitted as executed by the declaration of the national emergency on December 16, 1950, in accordance with an opinion of the Judge Advocate General of the Army (JAGA 1951/6180, 17 Oct. 1951). So far as they relate to the Navy and the Marine Corps they are omitted as surplusage. The words ''may appoint'' are inserted to make it explicit that the revised section prescribes the appointment as well as the rank and pay that go with it. The word ''grade'' is substituted for the word ''rank''. The words ''Navy or Marine Corps'' are substituted for the words ''Navy, including the Marine Corps''. The words ''Army, * * * Air Force'' are substituted for the words ''Army less the Air Corps * * * Air Corps''. The words ''pay and allowances of a vice admiral or lieutenant general'' are omitted as surplusage, since this is implicit upon appointment to the grade. The words ''and Naval'' are omitted to conform to the name ''Military Staff Committee'' established by Article 47 of the United Nations Charter.

§ 711a. American National Red Cross: detail of commissioned officers

Commissioned officers of the Army, Navy, and Air Force may be detailed for duty with the American National Red Cross, by the Secretary of the military department concerned, as follows:

(1) for duty with the Service to the Armed Forces Division—

(A) one or more officers of the Army Medical Department;

(B) one or more officers of the Medical Department of the Navy; and

(C) one or more officers selected from among medical officers, dental officers, veterinary officers, medical service officers, nurses, and medical specialists of the Air Force; and

(2) to be in charge of the first-aid department—

(A) an officer of the Medical Corps of the Army;

(B) an officer of the Medical Corps of the Navy; or

(C) a medical officer of the Air Force.

(Added Pub. L. 90–235, § 4(a)(1)(A), Jan. 2, 1968, 81 Stat. 759; amended Pub. L. 90–329, June 4, 1968, 82 Stat. 170; Pub. L. 96–513, title V, § 511(21), Dec. 12, 1980, 94 Stat. 2921.)

AMENDMENTS

1980—Pub. L. 96–513 struck out ''(a)'' before ''Commissioned''.

1968—Subsec. (a)(1)(A). Pub. L. 90–329 substituted ''Army Medical Department'' for ''Army Medical Service''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 712. Foreign governments: detail to assist

(a) Upon the application of the country concerned, the President, whenever he considers it in the public interest, may detail members of the Army, Navy, Air Force, and Marine Corps to assist in military matters—

(1) any republic in North America, Central America, or South America;

(2) the Republic of Cuba, Haiti, or Santo Domingo; and

(3) during a war or a declared national emergency, any other country that he considers it advisable to assist in the interest of national defense.

(b) Subject to the prior approval of the Secretary of the military department concerned, a member detailed under this section may accept any office from the country to which he is detailed. He is entitled to credit for all service while so detailed, as if serving with the armed forces of the United States. Arrangements may be made by the President, with countries to which such members are detailed to perform functions under this section, for reimbursement to the United States or other sharing of the cost of performing such functions.

(Aug. 10, 1956, ch. 1041, 70A Stat. 32; Pub. L. 85–477, ch. V, § 502(k), June 30, 1958, 72 Stat. 275.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
712(a)	10:540 (less provisos). 34:441a (less provisos).	May 19, 1926, ch. 334, 44 Stat, 565; May 14, 1935, ch. 109, 49 Stat. 218; Oct. 1, 1942, ch. 571, 56 Stat. 763.
712(b)	10:540 (provisos). 34:441a (provisos).	

In subsection (a), the words ''and the Commonwealth of the Philippine Islands'', in the Act of May 19, 1926, ch. 334, added by the Act of May 14, 1935, ch. 109, 49 Stat. 218, are not contained in 10:540 or 34:441a. They are also omitted from the revised section, since Proclamation No. 2695, effective July 4, 1946, 60 Stat. 1352 (48 U.S.C. 1240 (note)), proclaimed the independence of the Philippine Islands. Similar provisions relating to the Philippines are now contained in section 5 of the Act of June 26, 1946, ch. 500, 60 Stat. 315. The word ''members'' is substituted for the words ''officers and enlisted men'', in 10:540 and 34:441a.

In subsection (b), the words ''entitled to credit for all service'' are substituted for the words ''and shall be allowed the same credit for longevity, retirement, and for all other purposes'', in 10:540 and 34:441a.

AMENDMENTS

1958—Subsec. (b). Pub. L. 85–477 struck out provisions which authorized members of the armed forces to accept compensation or emoluments from countries to which they are detailed, and inserted provisions permitting arrangements for reimbursement or other sharing of cost.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 502(k) of Pub. L. 85–477 provided that the amendment made by that section is effective nine months after June 30, 1958.

§ 713. State Department: assignment or detail as couriers and building inspectors

(a) Upon the request of the Secretary of State, the Secretary of a military department may assign or detail members of the armed forces under his jurisdiction for duty—

(1) as inspectors of buildings owned or occupied abroad by the United States;

(2) as inspectors or supervisors of buildings under construction or repair abroad by or for the United States; and

(3) as couriers of the Department of State.

(b) The Secretary concerned may assign or detail a member for duty under subsection (a) with or without reimbursement from the Department of State. However, a member so assigned or detailed may be paid the traveling expenses authorized for officers of the Foreign Service of the United States. These expenses shall be paid from appropriations of the Department of State.

(Aug. 10, 1956, ch. 1041, 70A Stat. 33.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
713(a)	22:956 (words before semicolon of 1st sentence).	Aug. 13, 1946, ch. 957, § 561, 60 Stat. 1011.
713(b)	22:956 (less words before semicolon of 1st sentence).	

In subsection (a), the words ''members of the armed forces under his jurisdiction'' are substituted for the words ''military and naval personnel serving under their supervision''.

In subsection (b), the words ''The Secretary concerned may'' are substituted for the words ''in the discretion of the head of the department concerned''.

[§ 714. Repealed. Pub. L. 108–136, div. A, title V, § 503(a), Nov. 24, 2003, 117 Stat. 1456]

Section, added Pub. L. 105–85, div. A, title V, § 597(a), Nov. 18, 1997, 111 Stat. 1766, related to required grade of officer selected for assignment to position of defense attaché to United States embassy in France.

PRIOR PROVISIONS

A prior section 714, act Aug. 10, 1956, ch. 1041, 70A Stat. 33, related to reports to Congress on length of tours of duty outside the United States by members of the Army and Air Force, prior to repeal by Pub. L. 86–533, § 1(5)(A), June 29, 1960, 74 Stat. 246.

[§ 715. Repealed. Pub. L. 103–337, div. A, title XVI, § 1662(g)(2), Oct. 5, 1994, 108 Stat. 2996]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 33, related to detail of members of regular and reserve components to assist those components. See section 12501 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

§ 716. Commissioned officers: transfers among the armed forces, the National Oceanic and Atmospheric Administration, and the Public Health Service

(a) Notwithstanding any other provision of law, the President, within authorized strengths and with the consent of the officer involved, may transfer any commissioned officer of a uniformed service from his uniformed service to, and appoint him in, another uniformed service. The Secretary of Defense, the Secretary of Homeland Security, the Secretary of Commerce, and the Secretary of Health and Human Services shall jointly establish, by regulations approved by the President, policies and procedures for such transfers and appointments.

(b) An officer transferred under this section may not be assigned precedence or relative rank higher than that which he held on the day before the transfer.

(Added Pub. L. 85–599, § 11(2), Aug. 6, 1958, 72 Stat. 521; amended Pub. L. 91–392, § 1, Sept. 1, 1970, 84 Stat. 834; Pub. L. 96–215, § 2(a), Mar. 25, 1980, 94 Stat. 123; Pub. L. 97–295, § 1(10), Oct. 12, 1982, 96 Stat. 1289; Pub. L. 98–94, title X, § 1007(a)(1), Sept. 24, 1983, 97 Stat. 661; Pub. L. 99–348, title III, § 304(a)(1), July 1, 1986, 100 Stat. 703; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

CODIFICATION

Another section 716 was renumbered section 717 of this title.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1986—Subsec. (c). Pub. L. 99–348 struck out subsec. (c) which defined ''uniformed service'' for purposes of this section. See section 101(43) of this title.

1983—Pub. L. 98–94 amended section generally, substituting ''transfers among the armed forces, the National Oceanic and Atmospheric Administration, and the Public Health Service'' for ''transfers between armed forces and to and from National Oceanic and Atmospheric Administration'' in section catchline and adding subsec. (c). Prior to amendment subsecs. (a) and (b) read as follows:

''(a) Notwithstanding any other provision of law, the President may, within authorized strengths, transfer any commissioned officer with his consent from his armed force or from the National Oceanic and Atmospheric Administration to, and appoint him in, another armed force or the National Oceanic and Atmospheric Administration. The Secretary of Defense, the Secretary of the department in which the Coast Guard is operating, and the Secretary of Commerce shall jointly establish, by regulations approved by the President, policies and procedures for such transfers and appointments.

''(b) An officer transferred under this section—

''(1) may not be assigned precedence or relative rank higher than that which he held on the day before his transfer; and

''(2) shall be credited for retirement and pay purposes with the same years of service with which he has been credited on the day before his transfer.''

1982—Subsec. (a). Pub. L. 97–295 struck out the comma after ''policies''.

1980—Pub. L. 96–215 inserted ''and to and from National Oceanic and Atmospheric Administration'' in section catchline, divided existing unlettered provisions into subsecs. (a) and (b)(1), inserted references to National Oceanic and Atmospheric Administration and to Secretary of Commerce in subsec. (a) as so redesignated, and added subsec. (b)(2).

1970—Pub. L. 91–392 substituted ''armed forces'' for ''Army, Navy, Air Force, and Marine Corps'' in section catchline and ''his armed force'', ''another armed force'', ''An officer transferred under this section may not be assigned'', and ''before his transfer'' for ''the Army, Navy, Air Force, or Marine Corps'', ''any other of those armed forces'', ''No officer transferred pursuant to this authority shall be assigned'', and ''prior to such transfer'' in text, respectively, and authorized interservice transfers of officers of the Coast Guard.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

DELEGATION OF FUNCTIONS

Functions of President under subsec. (a) of this section delegated to Secretary of Commerce by section 1(m) of Ex. Ord. No. 11023, May 28, 1962, 27 F.R. 5131, as amended, set out as a note under section 301 of Title 3, The President.

§ 717. Members of the armed forces: participation in international sports

(a) The Secretary of Defense, or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, may permit members of the armed forces under his jurisdiction to train for, attend, and participate in any of the following sports competitions:

(1) The Pan-American Games and the Olympic Games, and qualifying events and preparatory competition for those games.

(2) The Paralympic Games, if eligible to participate in those games, and qualifying events and preparatory competition for those games.

(3) Any other international competition in amateur sports, if the Secretary of State determines that the interests of the United States will be served by participation in that competition, and qualifying events and preparatory competition for that competition.

(b) Subject to subsections (c) and (d), the Secretary of Defense or the Secretary of Homeland Security, as the case may be, may spend such funds, and acquire and use such supplies, as he determines to be necessary to provide for—

(1) the training of members of the armed forces for the competitions covered by subsection (a);

(2) their attendance at and participation in those competitions; and

(3) the training of animals of the armed forces for, and their attendance at and participation in, those competitions.

(c)(1) Not more than $3,000,000, to be apportioned among the military departments as the Secretary of Defense prescribes, may be spent during each successive four-year period beginning on October 1, 1980, for the participation of members of the Army, Navy, Air Force, and Marine Corps in the competitions covered by subsection (a).

(2) Not more than $100,000 may be spent during each successive four-year period beginning on October 1, 1980, for the participation of members of the Coast Guard in the competitions covered by subsection (a).

(d) Appropriations available to the Department of Defense or to the Department of Homeland Security, as the case may be, may be used to carry out this section.

(Added Pub. L. 85–861, § 1(17), Sept. 2, 1958, 72 Stat. 1442, § 716; renumbered § 717, Pub. L. 87–651, title I, § 103(a), Sept. 7, 1962, 76 Stat. 508; amended Pub. L. 89–348, § 1(12), Nov. 8, 1965, 79 Stat. 1311; Pub. L. 89–718, § 7, Nov. 2, 1966, 80 Stat. 1117; Pub. L. 96–513, title V, § 511(22), Dec. 12, 1980, 94 Stat. 2921; Pub. L. 98–525, title XV, § 1534, Oct. 19, 1984, 98 Stat. 2632; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 109–163, div. A, title V, § 561, Jan. 6, 2006, 119 Stat. 3266.)

HISTORICAL AND REVISION NOTES

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
716 [now 717].	22:1981. 22:1982. 22:1983.	Mar. 14, 1955, ch. 11 (less last 2 pars.), 69 Stat. 11.

In subsection (a), the first 27 words are substituted for section 1 of the source statute. The reference to the Second Pan-American Games, the Seventh Olympic Winter Games, and the Games of the XVI Olympiad are omitted as covered by clause (1) of the revised subsection. The words ''subject to the limitation contained in subsection (b) herein'' are omitted as covered by revised subsection (b). The words ''any other'' are substituted for the words ''other * * * not specified in (1) above''.

In subsection (b), the word ''entry'' is substituted for the word ''commitment'' for clarity. The words ''or the Secretary of the Treasury, as the case may be'' are inserted since, under subsection (a), the Secretary of the Treasury has the prescribed authority with respect to members of the Coast Guard when it is not operating as a service in the Navy.

In subsection (c), the words ''materiel, and equipment'' are omitted as covered by the word ''supplies'' as defined in section 101(26) of this title.

1962 ACT

This section corrects a duplication in numbering occasioned by the addition of a duplicate section 716 by Pub. L. 85–861. (The first section 716 was added by Pub. L. 85–599.)

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–163 substituted ''participate in any of the following sports competitions:

''(1) The Pan-American Games and the Olympic Games, and qualifying events and preparatory competition for those games.

''(2) The Paralympic Games, if eligible to participate in those games, and qualifying events and preparatory competition for those games.

''(3) Any other''

for ''participate in—

''(1) Pan-American Games and Olympic Games and qualifying events and preparatory competition for those games; and

''(2) any other''.

2002—Subsecs. (a), (b), (d). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1984—Subsec. (a)(1). Pub. L. 98–525, § 1534(1), included qualifying events and preparatory competition.

Subsec. (a)(2). Pub. L. 98–525, § 1534(2), included qualifying events and preparatory competition.

Subsec. (b). Pub. L. 98–525, § 1534(3), struck out reference to subsec. (e).

Subsec. (c). Pub. L. 98–525, § 1534(4), (6), designated existing provisions as par. (1), substituted ''$3,000,000'' for ''$800,000'' and ''October 1, 1980'' for ''March 14, 1955'', redesignated subsec. (d) as par. (2), and substituted ''October 1, 1980'' for ''March 14, 1955''.

Subsecs. (d), (e). Pub. L. 98–525, § 1534(7), redesignated subsec. (e) as (d). Former subsec. (d) redesignated par. (2) of subsec. (c).

1980—Subsec. (a). Pub. L. 96–513, § 511(22)(A), substituted ''Transportation'' for ''the Treasury''.

Subsec. (b). Pub. L. 96–513, § 511(22), redesignated subsec. (c) as (b) and substituted reference to subsec. (c) for reference to subsec. (f), and ''Transportation'' for ''the Treasury''.

Subsecs. (c), (d). Pub. L. 96–513, § 511(22)(C), redesignated subsecs. (d) and (e) as (c) and (d), respectively. Former subsec. (c) redesignated (b).

Subsecs. (e), (f). Pub. L. 96–513, § 511(22) (A), (C), redesignated subsec. (f) as (e) and substituted ''Transportation'' for ''the Treasury''. Former subsection (e) redesignated (d).

1966—Subsec. (b). Pub. L. 89–718 repealed subsec. (b) which required the Secretary of Defense or the Secretary of the Treasury to report to the Committees on Armed Services of the Senate and House of Representatives the details of the proposed participation by members of the Armed Forces under his jurisdiction in international amateur sports competition. See also Pub. L. 89–348, § 1(12), Nov. 8, 1965, 79 Stat. 1311, which earlier repealed the reporting requirement of subsec. (b).

1965—Subsec. (b). Pub. L. 89–348 repealed provision of subsec. (b) which required the Secretary of Defense or the Secretary of the Treasury, as the case may be, to report to the Committees on the Armed Services of the Senate and House of Representatives the details of the proposed participation by members of the Armed Forces under his jurisdiction in international amateur sports competition.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

[§ 718. Repealed. Pub. L. 99–433, title I, § 110(a)(1), Oct. 1, 1986, 100 Stat. 1001]

Section, added Pub. L. 87–651, title II, § 205(a), Sept. 7, 1962, 76 Stat. 519, provided that officers of the armed forces could be detailed for duty as assistants or personal aides to the Secretary of Defense.

§ 719. Department of Commerce: assignment or detail of members of the armed forces to National Oceanic and Atmospheric Administration

Upon the request of the Secretary of Commerce, the Secretary of a military department may assign or detail members of the armed forces under his jurisdiction for duty in the National Oceanic and Atmospheric Administration, Department of Commerce, with reimbursement from the Department of Commerce. Notwithstanding any other provision of law, a member so assigned or detailed may exercise the functions, and assume the title, of any position in that Administration without affecting his status as a member of an armed force, but he is not entitled to the compensation fixed for that position.

(Added Pub. L. 89–683, § 1(1), Oct. 15, 1966, 80 Stat. 960; amended Pub. L. 96–513, title I, § 511(23)(A), (B), Dec. 12, 1980, 94 Stat. 2921.)

AMENDMENTS

1980—Pub. L. 96–513 substituted ''of members of the armed forces to National Oceanic and Atmospheric'' for ''to Environmental Science Services'' in section catchline, and substituted ''National Oceanic and Atmospheric'' for ''Environmental Science Services'' in text.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 720. Chief of Staff to President: appointment

The President, by and with the advice and consent of the Senate, may appoint a general officer of the Army, Air Force, or Marine Corps or a flag officer of the Navy as the Chief of Staff to the President and may designate such position as a position of importance and responsibility under section 601 of this title.

(Added Pub. L. 96–513, title V, § 501(9)(A), Dec. 12, 1980, 94 Stat. 2907.)

EFFECTIVE DATE

Section effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a 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.

[§ 721. Repealed. Pub. L. 111–84, div. A, title V, § 502(i)(1), Oct. 28, 2009, 123 Stat. 2276]

Section, added Pub. L. 105–85, div. A, title V, § 501(a), Nov. 18, 1997, 111 Stat. 1723; amended Pub. L. 107–314, div. A, title X, § 1041(a)(4), Dec. 2, 2002, 116 Stat. 2645, related to limitation on appointments, assignments, details, and duties outside a general or flag officer's own service.

§ 722. Attending Physician to the Congress: grade

A general officer serving as Attending Physician to the Congress, while so serving, holds the grade of major general. A flag officer serving as Attending Physician to the Congress, while so serving, holds the grade of rear admiral.

(Added Pub. L. 109–364, div. A, title V, § 507(a)(1)(A), Oct. 17, 2006, 120 Stat. 2180.)

CHAPTER 43—RANK AND COMMAND

Sec.
741. Rank: commissioned officers of the armed forces.
742. Rank: warrant officers.
743. Rank: Chief of Staff of the Army; Chief of Naval Operations; Chief of Staff of the Air Force; Commandant of the Marine Corps.
744. Physician to White House: assignment; grade.
[745. Repealed.]
747. Command: when different commands of Army, Navy, Air Force, Marine Corps, and Coast Guard join.
749. Command: commissioned officers in same grade or corresponding grades on duty at same place.

Sec.
750. Command: retired officers.

AMENDMENTS

1991—Pub. L. 102–190, div. A, title XI, § 1114(c), Dec. 5, 1991, 105 Stat. 1502, added item 742 and struck out item 745 ''Warrant officers: rank''.

1987—Pub. L. 100–180, div. A, title XIII, § 1314(b)(5)(B), Dec. 4, 1987, 101 Stat. 1175, inserted ''; Commandant of the Marine Corps'' after ''Air Force'' in item 743.

1980—Pub. L. 96–513, title V, § 501(10)(A), Dec. 12, 1980, 94 Stat. 2908, as amended Pub. L. 97–22, § 10(a)(1), July 10, 1981, 95 Stat. 136, substituted ''armed forces'' for ''Army, Navy, Air Force, and Marine Corps'' in item 741.

Pub. L. 96–513, title V, § 501(10)(B), Dec. 12, 1980, 94 Stat. 2908, added item 750.

1968—Pub. L. 90–235, § 5(a)(1)(B), Jan. 2, 1968, 81 Stat. 761, added items 747 and 749.

1958—Pub. L. 85–861, § 1(19), Sept. 2, 1958, 72 Stat. 1442, struck out item 742 ''Rank: officers of regular and reserve components''.

§ 741. Rank: commissioned officers of the armed forces

(a) Among the grades listed below, the grades of general and admiral are equivalent and are senior to other grades and the grades of second lieutenant and ensign are equivalent and are junior to other grades. Intermediate grades rank in the order listed as follows:

Army, Air Force, and Marine Corps	*Navy and Coast Guard*
General	Admiral.
Lieutenant general	Vice admiral.
Major general	Rear admiral.
Brigadier general	Rear admiral (lower half).
Colonel	Captain.
Lieutenant colonel	Commander.
Major	Lieutenant commander.
Captain	Lieutenant.
First lieutenant	Lieutenant (junior grade).
Second lieutenant	Ensign.

(b) Rank among officers of the same grade or of equivalent grades is determined by comparing dates of rank. An officer whose date of rank is earlier than the date of rank of another officer of the same or equivalent grade is senior to that officer.

(c) Rank among officers of the Army, Navy, Air Force, and Marine Corps of the same grade or of equivalent grades who have the same date of rank is determined by regulations prescribed by the Secretary of Defense which shall apply uniformly among the Army, Navy, Air Force, and Marine Corps.

(d)(1) The date of rank of an officer of the Army, Navy, Air Force, or Marine Corps who holds a grade as the result of an original appointment shall be determined by the Secretary of the military department concerned at the time of such appointment. The date of rank of an officer of the Army, Navy, Air Force, or Marine Corps who holds a grade as the result of an original appointment and who at the time of such appointment was awarded service credit for prior commissioned service or constructive credit for advanced education or training, or special experience shall be determined so as to reflect such prior commissioned service or constructive service. Determinations by the Secretary concerned under this paragraph shall be made under regulations prescribed by the Secretary of Defense which shall apply uniformly among the Army, Navy, Air Force, and Marine Corps.

(2) Except as otherwise provided by law, the date of rank of an officer who holds a grade as the result of a promotion is the date of his appointment to that grade.

(3) Under regulations prescribed by the Secretary of Defense, which shall apply uniformly among the Army, Navy, Air Force, and Marine Corps, the date of rank of a reserve commissioned officer (other than a warrant officer) of the Army, Navy, Air Force, or Marine Corps who is to be placed on the active-duty list and who has not been on continuous active duty since his original appointment as a reserve commissioned officer in a grade above chief warrant officer, W–5, or who is transferred from an inactive status to an active status and placed on the active-duty list or the reserve active-status list may, effective on the date on which he is placed on the active-duty list or reserve active-status list, be changed by the Secretary concerned to a later date to reflect such officer's qualifications and experience. The authority to change the date of rank of a reserve officer who is placed on the active-duty list to a later date does not apply in the case of an officer who (A) has served continuously in the Selected Reserve of the Ready Reserve since the officer's last promotion, or (B) is placed on the active-duty list while on a promotion list as described in section 14317(b) of this title.

(4)(A) The Secretary concerned may adjust the date of rank of an officer appointed under section 624(a) of this title to a higher grade that is not a general officer or flag officer grade if the appointment of that officer to that grade is delayed from the date on which (as determined by the Secretary) it would otherwise have been made by reason of unusual circumstances (as determined by the Secretary) that cause an unintended delay in—

(i) the processing or approval of the report of the selection board recommending the appointment of that officer to that grade; or

(ii) the processing or approval of the promotion list established on the basis of that report.

(B) The adjusted date of rank applicable to the grade of an officer under subparagraph (A) shall be consistent—

(i) with the officer's position on the promotion list for that grade and competitive category when additional officers in that grade and competitive category were needed; and

(ii) with compliance with the applicable authorized strengths for officers in that grade and competitive category.

(C) The adjusted date of rank applicable to the grade of an officer under subparagraph (A) shall be the effective date for—

(i) the officer's pay and allowances for that grade; and

(ii) the officer's position on the active-duty list.

(D) When under subparagraph (A) the Secretary concerned adjusts the date of rank of an officer in a grade to which the officer was ap-

pointed by and with the advice and consent of the Senate and the adjustment is to a date before the date of the advice and consent of the Senate to that appointment, the Secretary shall promptly transmit to the Committee on Armed Services of the Senate a notification of that adjustment. Any such notification shall include the name of the officer and a discussion of the reasons for the adjustment of date of rank.

(E) Any adjustment in date of rank under this paragraph shall be made under regulations prescribed by the Secretary of Defense, which shall apply uniformly among the Army, Navy, Air Force, and Marine Corps.

(Aug. 10, 1956, ch. 1041, 70A Stat. 33; Pub. L. 96–513, title I, §107, Dec. 12, 1980, 94 Stat. 2869; Pub. L. 97–22, §4(h), July 10, 1981, 95 Stat. 127; Pub. L. 97–86, title IV, §405(b)(8), Dec. 1, 1981, 95 Stat. 1106; Pub. L. 97–295, §1(11), Oct. 12, 1982, 96 Stat. 1289; Pub. L. 98–557, §25(c), Oct. 30, 1984, 98 Stat. 2873; Pub. L. 99–145, title V, §514(b)(8), Nov. 8, 1985, 99 Stat. 629; Pub. L. 102–190, div. A, title XI, §1131(1)(A), Dec. 5, 1991, 105 Stat. 1505; Pub. L. 103–337, div. A, title XVI, §1626, Oct. 5, 1994, 108 Stat. 2962; Pub. L. 104–106, div. A, title XV, §1501(a)(3), Feb. 10, 1996, 110 Stat. 495; Pub. L. 107–107, div. A, title V, §506(a), Dec. 28, 2001, 115 Stat. 1089.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
741(a)	10:517 (1st and 2d sentences, less applicability to rank within grade). 14:43. 34:651 (less applicability to establishment of commissioned grades, and less applicability to rank within grade). 34:241. 34:241a (1st and 2d sentences, less applicability to rank within grade).	Aug. 7, 1947, ch. 512, §§314(j), 516, 61 Stat. 865, 908. R.S. 1603 (less applicability to establishment of commissioned grades). R.S. 1466. Aug. 4, 1949, ch. 393, §1(43), 63 Stat. 498.
741(b)	10:517 (1st and 2d sentences, as applicable to rank within grade). 34:241a (1st and 2d sentences, as applicable to rank within grade). 34:626–1(j). 34:651 (less applicability to establishment of commissioned grades, and as applicable to rank within grade).	
741(c)	10:517 (less 1st and 2d sentences). 34:241a (less 1st and 2d sentences).	

In subsection (a), the word ''Regular'', pertaining to major generals and brigadier generals, in 10:517 and 34:241a, is omitted, since the last sentence of 10:517 and 34:241a establish the rank of nonregular officers of the Army and the Air Force, with respect to officers of the Regular Army and the Regular Air Force. The effect of establishing their rank with respect to regular officers, when read in connection with the provisions prescribing the rank of officers of the regular components with officers of the other services, under 10:517 (less last sentence), 34:241a (less last sentence), and 34:241, is therefore to establish the rank of nonregular officers with respect to officers of the other listed services. This allows a consolidation of 10:517 (less last sentence, as applicable to rank), 34:241, and 34:241a (less last sentence, as applicable to rank), together with 34:651, into a table of rank among officers of the Army, Navy, Air Force, and Marine Corps. The words ''lineal rank only being considered'', in 34:241, are covered by setting forth the grades in tabular form. The words ''whether on the active or retired list'', in 34:241, are omitted, since retired officers of the Navy continue to be officers of the Navy. The words ''Lieutenant (junior grade)'' are substituted for the word ''masters'', in R.S. 1466, to reflect the change made in the name of that grade by the Act of March 3, 1883, ch. 97 (2d par.), 22 Stat. 472.

In subsections (a) and (b), the words ''entitled to pay'' and ''entitled to the pay'', respectively, are inserted, since rear admiral is one grade with two ranks depending on the amount of pay to which the incumbent is entitled.

In subsection (b), the words ''in such grades'', in 10:517 and 34:241a, are omitted as surplusage.

In subsection (c), the words ''A commissioned officer of the Army or the Air Force'' are substituted for the words ''All officers of the Army of the United States, including all components thereof'', since rank among officers of the Regular Army and Regular Air Force is determined under sections 3573, 3574, 8573, and 8574 of this title.

AMENDMENTS

2001—Subsec. (d)(4). Pub. L. 107–107 added par. (4).

1996—Subsec. (d)(3). Pub. L. 104–106 made technical correction to directory language of Pub. L. 103–337, §1626(1). See 1994 Amendment note below.

1994—Subsec. (d)(3). Pub. L. 103–337, §1626(3), inserted at end ''The authority to change the date of rank of a reserve officer who is placed on the active-duty list to a later date does not apply in the case of an officer who (A) has served continuously in the Selected Reserve of the Ready Reserve since the officer's last promotion, or (B) is placed on the active-duty list while on a promotion list as described in section 14317(b) of this title.''

Pub. L. 103–337, §1626(2), inserted ''or reserve active-status list'' after ''he is placed on the active-duty list''.

Pub. L. 103–337, §1626(1), as amended by Pub. L. 104–106, inserted ''or who is transferred from an inactive status to an active status and placed on the active-duty list or the reserve active-status list may, effective on the date on which he is placed on the active-duty list'' after ''warrant officer, W–5,''.

1991—Subsec. (d)(3). Pub. L. 102–190 substituted ''chief warrant officer, W–5,'' for ''warrant officer (W–4)''.

1985—Subsec. (a). Pub. L. 99–145 substituted ''Rear admiral (lower half)'' for ''Commodore'' in table.

1984—Subsec. (a). Pub. L. 98–557 struck out ''(Navy) and Rear admiral (upper half) (Coast Guard)'' after ''Rear admiral'' and ''(Navy) and Rear admiral (lower half) (Coast Guard)'' after ''Commodore'' in table.

1982—Subsec. (c). Pub. L. 97–295 substituted ''the'' for ''the the'' after ''uniformly among''.

1981—Pub. L. 97–22, §4(h)(4), substituted ''armed forces'' for ''Army, Navy, Air Force, and Marine Corps'' in section catchline.

Subsec. (a). Pub. L. 97–86 substituted ''Commodore'' for ''Commodore admiral'' in right column of table opposite Brigadier general.

Pub. L. 97–22, §4(h)(1), inserted reference to the Coast Guard in column heading and inserted references to Rear admiral (upper half) (Coast Guard) and Rear admiral (lower half) (Coast Guard).

Subsec. (c). Pub. L. 97–22, §4(h)(2), inserted ''of the Army, Navy, Air Force, and Marine Corps'' after ''Rank among officers''.

Subsec. (d)(1). Pub. L. 97–22, §4(h)(3)(A), inserted ''of the Army, Navy, Air Force, or Marine Corps'' after ''officer'' in two places.

Subsec. (d)(3). Pub. L. 97–22, §4(h)(3)(B), inserted ''of the Army, Navy, Air Force, or Marine Corps'' after ''(other than a warrant officer)''.

1980—Pub. L. 96–513 completely revised section to restructure and redefine various ranks of commissioned officers of the Army, Air Force, Marine Corps, and Navy and relationships of officers in those ranks among themselves.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title V, §506(c), Dec. 28, 2001, 115 Stat. 1090, provided that:

''(1) Paragraph (4) of section 741(d) of title 10, United States Code, as added by subsection (a), and paragraph (2) of section 14308(c) of such title, as added by subsection (b), shall apply with respect to any report of a selection board recommending officers for promotion to the next higher grade that is submitted to the Secretary of the military department concerned on or after the date of the enactment of this Act [Dec. 28, 2001].

''(2) The Secretary of the military department concerned may apply the applicable paragraph referred to in paragraph (1) in the case of an appointment of an officer to a higher grade resulting from a report of a selection board submitted to the Secretary before the date of the enactment of this Act if the Secretary determines that such appointment would have been made on an earlier date that is on or after October 1, 2001, and was delayed under the circumstances specified in paragraph (4) of section 741(d) of title 10, United States Code, as added by subsection (a).''

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 an Effective Date note under section 10001 of this title.

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.

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 OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 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.

§ 742. Rank: warrant officers

(a) Among warrant officer grades, warrant officer grades of a higher numerical designation are senior to warrant officer grades of a lower numerical designation.

(b) Rank among warrant officers of the same grade, and date of rank of warrant officers, is determined in the same manner as prescribed in section 741 of this title for officers in grades above warrant officer grades.

(Added Pub. L. 102–190, div. A, title XI, § 1114(a), Dec. 5, 1991, 105 Stat. 1502.)

PRIOR PROVISIONS

A prior section 742, act Aug. 10, 1956, ch. 1041, 70A Stat. 34, related to rank of regular officers and reserve officers, prior to repeal by Pub. L. 85–861, § 36B(4), Sept. 2, 1958, 72 Stat. 1570.

EFFECTIVE DATE

Section effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as an Effective Date of 1991 Amendment note under section 521 of this title.

§ 743. Rank: Chief of Staff of the Army; Chief of Naval Operations; Chief of Staff of the Air Force; Commandant of the Marine Corps

The Chief of Staff of the Army, the Chief of Naval Operations, the Chief of Staff of the Air Force, and the Commandant of the Marine Corps rank among themselves according to dates of appointment to those offices, and rank above all other officers on the active-duty list of the Army, Navy, Air Force, and Marine Corps, except the Chairman and the Vice Chairman of the Joint Chiefs of Staff.

(Aug. 10, 1956, ch. 1041, 70A Stat. 34; Pub. L. 96–513, title I, § 501(11), Dec. 12, 1980, 94 Stat. 2908; Pub. L. 99–433, title II, § 202(b), Oct. 1, 1986, 100 Stat. 1010; Pub. L. 100–180, div. A, title XIII, § 1314(a)(2), (b)(5)(A), Dec. 4, 1987, 101 Stat. 1175.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
743	5:626c(b).	July 26, 1947, ch. 343, § 208(b), 61 Stat. 503; Sept. 19, 1951, ch. 407, § 402, 65 Stat. 333.

5:626c(b) (1st sentence) is omitted as superseded by sections 8031(a)(1) and 8034(a) of this title. 5:626c(b) (2d sentence) is omitted as covered by section 8034(d) of this title. 5:626c(b) (3d and 4th sentences) is omitted as executed. 5:626c(b) (5th sentence) is omitted as covered by section 8034(b) of this title. 5:626c(b) (proviso of last sentence) is omitted as executed, since the incumbents to whom it is applied no longer hold the offices mentioned. The exception as to the Chairman of the Joint Chiefs of Staff is included because of section 142(c) of this title. The words ''and the Marine Corps'' are inserted, since under section 5081 of this title the Chief of Naval Operations takes precedence over all other officers of the naval service.

AMENDMENTS

1987—Pub. L. 100–180, § 1314(b)(5)(A), inserted ''; Commandant of the Marine Corps'' after ''Air Force'' in section catchline.

Pub. L. 100–180, § 1314(a)(2), made technical correction in directory language of Pub. L. 99–433. See 1986 Amendment note below.

1986—Pub. L. 99–433, as amended by Pub. L. 100–180, § 1314(a)(2), inserted reference to the Commandant of the Marine Corp and the Vice Chairman of the Joint Chiefs of Staff.

1980—Pub. L. 96–513 substituted ''active-duty list'' for ''active list''.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 1314(e)(1) of Pub. L. 100–180 provided that: ''The amendments made by subsection (a) [amending this section, sections 2431 to 2434 of this title, and provisions set out as notes under sections 111 and 3033 of this title] shall apply as if included in the enactment of the Goldwater-Nichols Department of Defense Reorganization Act of 1986 (Public Law 99–433).''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 744. Physician to White House: assignment; grade

An officer of the Medical Corps of the Army, or a medical officer of the Air Force, who is below the grade of colonel and who is assigned to duty as physician to the White House has the rank, pay, and allowances of colonel while so serving. An officer of the Medical Corps of the Navy who is below the grade of captain and who is assigned to that duty has the rank, pay, and allowances of captain while so serving.

(Aug. 10, 1956, ch. 1041, 70A Stat. 34.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
744	10:515. 34:251a.	Apr. 4, 1930, ch. 104, 46 Stat. 140.

The word ''temporary'', in 10:515 and 34:251a, is omitted as surplusage.

[§ 745. Repealed. Pub. L. 102–190, div. A, title XI, § 1114(b), Dec. 5, 1991, 105 Stat. 1502]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 34, related to ranking of warrant officers. See section 742 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as an Effective Date of 1991 Amendment note under section 521 of this title.

§ 747. Command: when different commands of Army, Navy, Air Force, Marine Corps, and Coast Guard join

When different commands of the Army, Navy, Air Force, Marine Corps, and Coast Guard join or serve together, the officer highest in rank in the Army, Navy, Air Force, Marine Corps, or Coast Guard on duty there, who is otherwise eligible to command, commands all those forces unless otherwise directed by the President.

(Added Pub. L. 90–235, § 5(a)(1)(A), Jan. 2, 1968, 81 Stat. 760.)

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.

§ 749. Command: commissioned officers in same grade or corresponding grades on duty at same place

(a) When the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be, has on duty in the same area, field command, or organization two or more commissioned officers of the same grade who are otherwise eligible to command, the President may assign the command without regard to rank in that grade.

(b) When officers of the Army, Navy, Air Force, Marine Corps, or Coast Guard are on duty in the same area, field, command, or organization and two or more commissioned officers of different services, who are otherwise eligible to command, have the same grade or corresponding grades, the President may assign the command without regard to rank in that grade.

(Added Pub. L. 90–235, § 5(a)(1)(A), Jan. 2, 1968, 81 Stat. 760.)

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.

DELEGATION OF AUTHORITY

For delegation of authority of President under this section, see section 1 of Ex. Ord. No. 12765, June 11, 1991, 56 F.R. 27401, set out as a note under section 113 of this title.

§ 750. Command: retired officers

A retired officer has no right to command except when on active duty.

(Added Pub. L. 96–513, title I, § 108, Dec. 12, 1980, 94 Stat. 2870.)

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section 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.

CHAPTER 45—THE UNIFORM

Sec.
771. Unauthorized wearing prohibited.
771a. Disposition on discharge.
772. When wearing by persons not on active duty authorized.
773. When distinctive insignia required.
774. Religious apparel: wearing while in uniform.
775. Issue of uniform without charge.
776. Applicability of chapter.
777. Wearing of insignia of higher grade before promotion (frocking): authority; restrictions.
777a. Wearing of insignia of higher grade before appointment to a grade above major general or rear admiral (frocking): authority; restrictions.

AMENDMENTS

2011—Pub. L. 111–383, div. A, title V, § 505(a)(2), Jan. 7, 2011, 124 Stat. 4210, added item 777a.

1996—Pub. L. 104–106, div. A, title V, § 503(a)(2), Feb. 10, 1996, 110 Stat. 294, added item 777.

1992—Pub. L. 102–484, div. A, title III, § 377(b), Oct. 23, 1992, 106 Stat. 2387, added item 775 and redesignated former item 775 as 776.

1987—Pub. L. 100–180, div. A, title V, § 508(b), Dec. 4, 1987, 101 Stat. 1087, added item 774 and redesignated former item 774 as 775.

1968—Pub. L. 90–235, § 8(1)(B), Jan. 2, 1968, 81 Stat. 764, added item 771a.

POLICY ON GROUND COMBAT AND CAMOUFLAGE UTILITY UNIFORMS

Pub. L. 111–84, div. A, title III, § 352, Oct. 28, 2009, 123 Stat. 2262, provided that:

''(a) ESTABLISHMENT OF POLICY.—It is the policy of the United States that the design and fielding of all fu-

ture ground combat and camouflage utility uniforms of the Armed Forces may uniquely reflect the identity of the individual military services, as long as such ground combat and camouflage utility uniforms, to the maximum extent practicable—

''(1) provide members of every military service an equivalent level of performance, functionality, and protection commensurate with their respective assigned combat missions;

''(2) minimize risk to the individual soldier, sailor, airman, or marine operating in the joint battlespace; and

''(3) provide interoperability with other components of individual war fighter systems, including body armor and other individual protective systems.

''(b) COMPTROLLER GENERAL ASSESSMENT.—The Comptroller General shall conduct an assessment of the ground combat uniforms and camouflage utility uniforms currently in use in the Department of Defense. The assessment shall examine, at a minimum, each of the following:

''(1) The overall performance of each uniform in various anticipated combat environments and theaters of operations.

''(2) Whether the uniform design of each uniform conforms adequately and is interoperable with currently issued personal protective gear and body armor.

''(3) Costs associated with the design, development, production, procurement, and fielding of existing service-specific ground combat and camouflage utility uniforms.

''(4) Challenges and risks associated with fielding members of the Armed Forces into combat theaters in unique or service-specific ground combat or camouflage utility uniforms, including the tactical risk to the individuals serving in individual augmentee, in-lieu of force, or joint duty assignments of use of different ground combat uniforms in a combat environment.

''(5) Implications of the use of patents and other proprietary measures that may preclude sharing of technology, advanced uniform design, camouflage techniques, and fire retardence [sic].

''(6) Logistical requirements to field and support forces in varying combat or utility uniforms.

''(c) REPORT REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Oct. 28, 2009], the Comptroller General shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] the results of the assessment conducted under subsection (b).

''(d) REQUIREMENT FOR JOINT CRITERIA.—In support of the policy established in subsection (a), the Secretaries of the military departments, consistent with the authority set out in subtitles B, C, and D of title 10, United States Code, shall establish joint criteria for future ground combat uniforms by not later than 270 days after the Comptroller General submits the report required under subsection (c). The joint criteria shall take into account the findings and recommendations of such report and ensure that new technologies, advanced materials, and other advances in ground combat uniform design may be shared between the military services and are not precluded from being adapted for use by any military service due to military service-unique proprietary arrangements.''

§ 771. Unauthorized wearing prohibited

Except as otherwise provided by law, no person except a member of the Army, Navy, Air Force, or Marine Corps, as the case may be, may wear—

(1) the uniform, or a distinctive part of the uniform, of the Army, Navy, Air Force, or Marine Corps; or

(2) a uniform any part of which is similar to a distinctive part of the uniform of the Army, Navy, Air Force, or Marine Corps.

(Aug. 10, 1956, ch. 1041, 70A Stat. 34.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
771	10:1393 (1st par., less provisos).	June 3, 1916, ch. 134, § 125 (1st par., less provisos), 39 Stat. 216.

The words ''Except as otherwise provided by law'' are inserted to give effect to exceptions in other revised sections of this title and to provisions of other laws giving such organizations as the Coast and Geodetic Survey and the Public Health Service permission to wear military uniforms under certain conditions.

§ 771a. Disposition on discharge

(a) Except as provided in subsections (b) and (c), when an enlisted member of an armed force is discharged, the exterior articles of uniform in his possession that were issued to him, other than those that he may wear from the place of discharge to his home under section 772(d) of this title, shall be retained for military use.

(b) When an enlisted member of an armed force is discharged for bad conduct, undesirability, unsuitability, inaptitude, or otherwise than honorably—

(1) the exterior articles of uniform in his possession shall be retained for military use;

(2) under such regulations as the Secretary concerned prescribes, a suit of civilian clothing and an overcoat when necessary, both to cost not more than $30, may be issued to him; and

(3) if he would be otherwise without funds to meet his immediate needs, he may be paid an amount, fixed by the Secretary concerned, of not more than $25.

(c) When an enlisted member of the Army National Guard or the Air National Guard who has been called into Federal service is released from that service, the exterior articles of uniform in his possession shall be accounted for as property issued to the Army National Guard or the Air National Guard, as the case may be, of the State or territory, Puerto Rico, or the District of Columbia of whose Army National Guard or Air National Guard he is a member, as prescribed in section 708 of title 32.

(Added Pub. L. 90–235, § 8(1)(A), Jan. 2, 1968, 81 Stat. 763; amended Pub. L. 100–456, div. A, title XII, § 1234(a)(1), Sept. 29, 1988, 102 Stat. 2059.)

AMENDMENTS

1988—Subsec. (c). Pub. L. 100–456 struck out ''the Canal Zone,'' after ''Puerto Rico,''.

§ 772. When wearing by persons not on active duty authorized

(a) A member of the Army National Guard or the Air National Guard may wear the uniform prescribed for the Army National Guard or the Air National Guard, as the case may be.

(b) A member of the Naval Militia may wear the uniform prescribed for the Naval Militia.

(c) A retired officer of the Army, Navy, Air Force, or Marine Corps may bear the title and wear the uniform of his retired grade.

(d) A person who is discharged honorably or under honorable conditions from the Army,

Navy, Air Force, or Marine Corps may wear his uniform while going from the place of discharge to his home, within three months after his discharge.

(e) A person not on active duty who served honorably in time of war in the Army, Navy, Air Force, or Marine Corps may bear the title, and, when authorized by regulations prescribed by the President, wear the uniform, of the highest grade held by him during that war.

(f) While portraying a member of the Army, Navy, Air Force, or Marine Corps, an actor in a theatrical or motion-picture production may wear the uniform of that armed force if the portrayal does not tend to discredit that armed force.

(g) An officer or resident of a veterans' home administered by the Department of Veterans Affairs may wear such uniform as the Secretary of the military department concerned may prescribe.

(h) While attending a course of military instruction conducted by the Army, Navy, Air Force, or Marine Corps, a civilian may wear the uniform prescribed by that armed force if the wear of such uniform is specifically authorized under regulations prescribed by the Secretary of the military department concerned.

(i) Under such regulations as the Secretary of the Air Force may prescribe, a citizen of a foreign country who graduates from an Air Force school may wear the appropriate aviation badges of the Air Force.

(j) A person in any of the following categories may wear the uniform prescribed for that category:

(1) Members of the Boy Scouts of America.

(2) Members of any other organization designated by the Secretary of a military department.

(Aug. 10, 1956, ch. 1041, 70A Stat. 35; Pub. L. 99–145, title XIII, §1301(a)(1), Nov. 8, 1985, 99 Stat. 735; Pub. L. 101–189, div. A, title XVI, §1621(a)(1), Nov. 29, 1989, 103 Stat. 1602; Pub. L. 104–201, div. A, title V, §551(b), Sept. 23, 1996, 110 Stat. 2525.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
772(a)	10:1393 (words before 1st semicolon of 1st proviso of 1st par.).	June 3, 1916, ch. 134, §12 (words before 4th semicolon, and words after 7th semicolon, of 1st proviso of 1st par.; and last proviso of last par.), 39 Stat. 216; July 9, 1918, ch. 143, subch. XVII, §10 (last proviso), 40 Stat. 892; June 4, 1920, ch. 228, §8, 41 Stat. 836; June 6, 1942, ch. 382, 56 Stat. 328; May 24, 1949, ch. 139, §15(b) (last proviso), 63 Stat. 91; July 6, 1953, ch. 180, §1, 67 Stat. 140.
772(b)	10:1393 (15th through 18th words after 1st semicolon of 1st proviso of 1st par.).	
772(c)	10:1023 (1st sentence). 34:43g(i). 34:389 (less 1st and 3d sentences).	
772(d)	10:1393 (words between 3d and 4th semicolons of 1st proviso of 1st par.).	
772(e)	10:1028b. 10:1393 (words between 2d and 3d semicolons of 1st proviso of 1st par.). 34:399d.	R.S. 1256 (1st sentence).
772(f)	10:1393 (words between 8th and 9th semicolons of 1st proviso of 1st par.).	R.S. 1457 (less 1st and 3d sentences); May 5, 1950, ch. 169, §14(f), 64 Stat. 147.
772(g)	10:1393 (last proviso of last par.).	Apr. 16, 1947, ch. 38, §207(j), 61 Stat. 50; as redesignated (i); Aug. 7, 1947, ch. 512, §434(d), 61 Stat. 882.
772(h)	10:1393 (words between 7th and 8th semicolons of 1st proviso of 1st par.).	

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
772(i)	10:1393 (words after 9th semicolon of 1st proviso of 1st par.).	June 21, 1930, ch. 563, §2; restated Aug. 4, 1949, ch. 393, §12, 63 Stat. 559; July 6, 1953, ch. 180, §2, 67 Stat. 140.
772(j)	10:1393 (words between 1st and 2d semicolons of 1st proviso of 1st par., less 15th through 18th words).	

In subsections (a), (b), (d), (f), (g), (h), (i), and (j), the rules stated in the corresponding clauses of the first proviso of the first paragraph, and the last proviso of the last paragraph, of 10:1393, are restated to make positive the authority of the persons described in those subsections to wear the uniform prescribed for the appropriate organization or activity.

In subsection (c), the words ''bear the title'', in 34:43g(i), applicable only to retired officers of the Navy Nurse Corps, are made applicable to other retired officers, to make explicit what has heretofore been implicit, that a retired officer may continue to bear the title of his retired grade.

In subsection (e), the words between the second and third semicolons of the first proviso of the first paragraph of 10:1393 are omitted as superseded by 10:1028b and 34:399d, which authorize the wearing of the uniform by members who are discharged honorably or under honorable conditions. The words ''when authorized by regulations prescribed by'' are substituted for the words ''occasions authorized by regulations of''.

In subsection (f), the words ''while portraying a member of the Army, Navy, Air Force, or Marine Corps, an actor in a theatrical or motion-picture production'' are substituted for the words ''any person from wearing the uniform of the United States Army, Navy, or Marine Corps, in any playhouse or theater or in moving-picture films while actually engaged in representing therein a military or naval character''.

In subsection (g), the word ''resident'' is substituted for the word ''members'', since the word ''members'' related to members of the now disbanded National Home for disabled volunteer soldiers to which were admitted ''members'' of an organization called the ''Disabled Volunteer Soldiers''. The words ''veterans' home'' are substituted for the words ''national home for veterans'', since there are now no ''national homes'' administered by the Veterans' Administration.

In subsection (h), the words ''authorized and'' and ''for wear during such course of instruction'' are omitted as surplusage. The word ''naval'' is omitted as covered by the word ''military''. The words ''Army, Navy, Air Force, or Marine Corps'' are substituted for the words ''military or naval authorities''. The words ''that armed force'' are substituted for the words ''such military or naval authorities''.

In subsection (i), the words ''Air Force school'' are substituted for the words ''Air Force advanced flying schools or Air Force service schools''. The words ''in such manner'' are omitted as surplusage.

AMENDMENTS

1996—Subsec. (h). Pub. L. 104–201 inserted before period at end ''if the wear of such uniform is specifically authorized under regulations prescribed by the Secretary of the military department concerned''.

1989—Subsec. (g). Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1985—Subsec. (c). Pub. L. 99–145 struck out provisions relating to a retired officer of the Navy Nurse Corps.

EX. ORD. NO. 10554. DELEGATION OF AUTHORITY TO PRESCRIBE REGULATIONS

Ex. Ord. No. 10554, Aug. 18, 1954, 19 F.R. 5295, as amended by Ex. Ord. No. 13286, §77, Feb. 28, 2003, 68 F.R. 10631, provided:

The authority vested in the President (1) by section 125 of the act of June 3, 1916, 39 Stat. 216, as amended

by the first section of the act of July 6, 1953, 67 Stat. 140, and (2) by section 2 of the act of June 21, 1930, 46 Stat. 793, as amended by section 2 of said act of July 6, 1953, to prescribe regulations authorizing occasions upon which the uniform may be worn by persons who have served honorably in the armed forces of the United States in time of war is hereby delegated to the Secretary of Defense so far as it pertains to the uniforms of the Army, Navy, Air Force, and Marine Corps, and to the Secretary of Homeland Security so far as it pertains to the uniform of the Coast Guard.

§ 773. When distinctive insignia required

(a) A person for whom one of the following uniforms is prescribed may wear it, if it includes distinctive insignia prescribed by the Secretary of the military department concerned to distinguish it from the uniform of the Army, Navy, Air Force, or Marine Corps, as the case may be:

(1) The uniform prescribed by the university, college, or school for an instructor or member of the organized cadet corps of—

(A) a State university or college, or a public high school, having a regular course of military instruction; or

(B) an educational institution having a regular course of military instruction, and having a member of the Army, Navy, Air Force, or Marine Corps as instructor in military science and tactics.

(2) The uniform prescribed by a military society composed of persons discharged honorably or under honorable conditions from the Army, Navy, Air Force, or Marine Corps to be worn by a member of that society when authorized by regulations prescribed by the President.

(b) A uniform prescribed under subsection (a) may not include insignia of grade the same as, or similar to, those prescribed for officers of the Army, Navy, Air Force, or Marine Corps.

(c) Under such regulations as the Secretary of the military department concerned may prescribe, any person who is permitted to attend a course of instruction prescribed for members of a reserve officers' training corps, and who is not a member of that corps, may, while attending that course of instruction, wear the uniform of that corps.

(Aug. 10, 1956, ch. 1041, 70A Stat. 35; Pub. L. 85–355, Mar. 28, 1958, 72 Stat. 66.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
773(a)	10:1393 (words between 4th and 7th semicolons of 1st proviso, and 2d proviso, of 1st par.).	June 3, 1916, ch. 134, § 125 (words between 4th and 7th semicolons of 1st proviso, and 2d and last provisos, of 1st par.), 39 Stat. 216; June 4, 1920, ch. 228, § 8, 41 Stat. 836; Sept. 15, 1951, ch. 402, 65 Stat. 323; July 6, 1953, ch. 180, § 1, 67 Stat. 140.
773(b)	10:1393 (last proviso of 1st par.).	

In subsection (a), the word ''mark'' is omitted as surplusage.

In subsection (a)(2), the words ''persons discharged honorably or under honorable conditions from'' are substituted for the words ''entirely of honorably discharged officers or enlisted men, or both, of''. The words ''Regular or Volunteer'' are omitted as surplusage. The words ''when authorized by regulations prescribed by'' are substituted for the words ''upon occasions authorized by regulations of''.

AMENDMENTS

1958—Subsec. (c). Pub. L. 85–355 added subsec. (c).

§ 774. Religious apparel: wearing while in uniform

(a) GENERAL RULE.—Except as provided under subsection (b), a member of the armed forces may wear an item of religious apparel while wearing the uniform of the member's armed force.

(b) EXCEPTIONS.—The Secretary concerned may prohibit the wearing of an item of religious apparel—

(1) in circumstances with respect to which the Secretary determines that the wearing of the item would interfere with the performance of the member's military duties; or

(2) if the Secretary determines, under regulations under subsection (c), that the item of apparel is not neat and conservative.

(c) REGULATIONS.—The Secretary concerned shall prescribe regulations concerning the wearing of religious apparel by members of the armed forces under the Secretary's jurisdiction while the members are wearing the uniform. Such regulations shall be consistent with subsections (a) and (b).

(d) RELIGIOUS APPAREL DEFINED.—In this section, the term ''religious apparel'' means apparel the wearing of which is part of the observance of the religious faith practiced by the member.

(Added Pub. L. 100–180, div. A, title V, § 508(a)(2), Dec. 4, 1987, 101 Stat. 1086.)

PRIOR PROVISIONS

A prior section 774 was renumbered section 776 of this title.

REGULATIONS

Pub. L. 100–180, div. A, title V, § 508(c), Dec. 4, 1987, 101 Stat. 1087, directed the Secretary concerned to prescribe the regulations required by subsec. (c) of this section not later than the end of the 120-day period beginning on Dec. 4, 1987.

§ 775. Issue of uniform without charge

(a) ISSUE OF UNIFORM.—The Secretary concerned may issue a uniform, without charge, to any of the following members:

(1) A member who is being repatriated after being held as a prisoner of war.

(2) A member who is being treated at or released from a medical treatment facility as a consequence of being wounded or injured during military hostilities.

(3) A member who, as a result of the member's duties, has unique uniform requirements.

(4) Any other member, if the Secretary concerned determines, under exceptional circumstances, that the issue of the uniform to that member would significantly benefit the morale and welfare of the member and be advantageous to the armed force concerned.

(b) RETENTION OF UNIFORM AS A PERSONAL ITEM.—Notwithstanding section 771a of this title, a uniform issued to a member under this

section may be retained by the member as a personal item.

(Added Pub. L. 102–484, div. A, title III, §377(a)(2), Oct. 23, 1992, 106 Stat. 2386.)

PRIOR PROVISIONS

A prior section 775 was renumbered section 776 of this title.

§776. Applicability of chapter

This chapter applies in—

(1) the United States;

(2) the territories, commonwealths, and possessions of the United States; and

(3) all other places under the jurisdiction of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 36, §774; Pub. L. 99–661, div. A, title XIII, §1343(a)(1), Nov. 14, 1986, 100 Stat. 3992; Pub. L. 100–26, §3(6), Apr. 21, 1987, 101 Stat. 273; renumbered §775, Pub. L. 100–180, div. A, title V, §508(a)(1), Dec. 4, 1987, 101 Stat. 1086; renumbered §776, Pub. L. 102–484, div. A, title III, §377(a)(1), Oct. 23, 1992, 106 Stat. 2386.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
774	10:1393 (less 1st and last pars.).	June 3, 1916, ch. 134, §125 (less 1st and last pars.), 39 Stat. 216; Apr. 15, 1948, ch. 188, 62 Stat. 172; June 25, 1948, ch. 645, §21 (as applicable to §125 of the Act of June 3, 1916, ch. 134), 62 Stat. 864; May 24, 1949, ch. 139, §§15(b) (less last par.), 142 (as applicable to the Act of Apr. 15, 1948, ch. 188), 63 Stat. 91, 110.

The words ''the Canal Zone, Guam, American Samoa, and the Virgin Islands as well as to * * * other'' are omitted as covered by the words ''possessions, and all other places under its jurisdiction''.

AMENDMENTS

1992—Pub. L. 102–484 renumbered section 775 of this title as this section.

1987—Pub. L. 100–180 renumbered section 774 of this title as this section.

Pub. L. 100–26 amended directory language of Pub. L. 99–661. See 1986 Amendment note below.

1986—Pub. L. 99–661, as amended by Pub. L. 100–26, amended section generally. Prior to amendment, section read as follows: ''This chapter applies in the United States, the Territories, Commonwealths, and possessions, and all other places under its jurisdiction.''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 12(a) of Pub. L. 100–26 provided that: ''The amendments made by section 3 [amending this section and sections 1032, 1408, 1450, 1588, 2007, 2364, and 5150 of this title, and section 4703 of Title 20, Education, and amending provisions set out as a note under section 1006 of Title 37, Pay and Allowances of the Uniformed Services] shall apply as if included in Public Law 99–661 when enacted on November 14, 1986.''

§777. Wearing of insignia of higher grade before promotion (frocking): authority; restrictions

(a) AUTHORITY.—An officer in a grade below the grade of major general or, in the case of the Navy, rear admiral, who has been selected for promotion to the next higher grade may be authorized, under regulations and policies of the Department of Defense and subject to subsection (b), to wear the insignia for that next higher grade. An officer who is so authorized to wear the insignia of the next higher grade is said to be ''frocked'' to that grade.

(b) RESTRICTIONS.—An officer may not be authorized to wear the insignia for a grade as described in subsection (a) unless—

(1) the Senate has given its advice and consent to the appointment of the officer to that grade;

(2) the officer is serving in, or has received orders to serve in, a position for which that grade is authorized; and

(3) in the case of an officer selected for promotion to a grade above colonel or, in the case of an officer of the Navy, a grade above captain—

(A) authority for that officer to wear the insignia of that grade has been approved by the Secretary of Defense (or a civilian officer within the Office of the Secretary of Defense whose appointment was made with the advice and consent of the Senate and to whom the Secretary delegates such approval authority); and

(B) the Secretary of Defense has submitted to Congress a written notification of the intent to authorize the officer to wear the insignia for that grade.

(c) BENEFITS NOT TO BE CONSTRUED AS ACCRUING.—(1) Authority provided to an officer as described in subsection (a) to wear the insignia of the next higher grade may not be construed as conferring authority for that officer to—

(A) be paid the rate of pay provided for an officer in that grade having the same number of years of service as that officer; or

(B) assume any legal authority associated with that grade.

(2) The period for which an officer wears the insignia of the next higher grade under such authority may not be taken into account for any of the following purposes:

(A) Seniority in that grade.

(B) Time of service in that grade.

(d) LIMITATION ON NUMBER OF OFFICERS FROCKED TO SPECIFIED GRADES.—(1) The total number of colonels, Navy captains, brigadier generals, and rear admirals (lower half) on the active-duty list who are authorized as described in subsection (a) to wear the insignia for the next higher grade may not exceed 85.

(2) The number of officers of an armed force on the active-duty list who are authorized as described in subsection (a) to wear the insignia for a grade to which a limitation on total number applies under section 523(a) of this title for a fiscal year may not exceed 1 percent, or, for the grades of colonel and Navy captain, 2 percent, of the total number provided for the officers in that grade in that armed force in the administration of the limitation under that section for that fiscal year.

(Added Pub. L. 104–106, div. A, title V, §503(a)(1), Feb. 10, 1996, 110 Stat. 294; amended Pub. L. 105–85, div. A, title V, §505, Nov. 18, 1997, 111 Stat. 1726; Pub. L. 106–65, div. A, title V, §502,

Oct. 5, 1999, 113 Stat. 590; Pub. L. 108–136, div. A, title V, § 509(a), Nov. 24, 2003, 117 Stat. 1458; Pub. L. 108–375, div. A, title V, § 503, Oct. 28, 2004, 118 Stat. 1875; Pub. L. 109–163, div. A, title V, §§ 503(c), 504, Jan. 6, 2006, 119 Stat. 3226; Pub. L. 111–383, div. A, title V, § 505(b), Jan. 7, 2011, 124 Stat. 4210.)

AMENDMENTS

2011—Subsec. (b)(3)(B). Pub. L. 111–383 struck out ''and a period of 30 days has elapsed after the date of the notification'' after ''grade''.

2006—Subsec. (a). Pub. L. 109–163, § 503(c), inserted ''in a grade below the grade of major general or, in the case of the Navy, rear admiral,'' after ''An officer'' in first sentence.

Subsec. (d)(1). Pub. L. 109–163, § 504(1), substituted ''colonels, Navy captains, brigadier generals, and rear admirals (lower half)'' for ''brigadier generals and Navy rear admirals (lower half)'' and ''the next higher grade may not exceed 85'' for ''the grade of major general or rear admiral, as the case may be, may not exceed 30''.

Subsec. (d)(2), (3). Pub. L. 109–163, § 504(2), (3), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''The total number of colonels and Navy captains on the active-duty list who are authorized as described in subsection (a) to wear the insignia for the grade of brigadier general or rear admiral (lower half), as the case may be, may not exceed 55.''

2004—Subsec. (d). Pub. L. 108–375 added par. (1) and redesignated former pars. (1) and (2) as (2) and (3), respectively.

2003—Subsec. (b)(3). Pub. L. 108–136 added par. (3).

1999—Subsec. (d)(1). Pub. L. 106–65 substituted ''55.'' for ''the following:'' and struck out subpars. (A) to (C) which read as follows:

''(A) During fiscal years 1996 and 1997, 75.

''(B) During fiscal year 1998, 55.

''(C) After fiscal year 1998, 35.''

1997—Subsec. (d)(2). Pub. L. 105–85 inserted '', or, for the grades of colonel and Navy captain, 2 percent,'' after ''1 percent''.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–136, div. A, title V, § 509(b), Nov. 24, 2003, 117 Stat. 1459, provided that: ''Paragraph (3) of subsection (b) of section 777 of title 10, United States Code, as added by subsection (a), shall not apply with respect to the wearing by an officer of insignia for a grade that was authorized under that section before the date of the enactment of this Act [Nov. 24, 2003].''

TEMPORARY VARIATION OF LIMITATIONS ON NUMBERS OF FROCKED OFFICERS

Pub. L. 104–106, div. A, title V, § 503(b), Feb. 10, 1996, 110 Stat. 294, provided that in the administration of former subsec. (d)(2) of this section, the percent limitation applied under that section for fiscal year 1996 would be 2 percent, rather than 1 percent.

§ 777a. Wearing of insignia of higher grade before appointment to a grade above major general or rear admiral (frocking): authority; restrictions

(a) AUTHORITY.—An officer serving in a grade below the grade of lieutenant general or, in the case of the Navy, vice admiral, who has been selected for appointment to the grade of lieutenant general or general, or, in the case of the Navy, vice admiral or admiral, and an officer serving in the grade of lieutenant general or vice admiral who has been selected for appointment to the grade of general or admiral, may be authorized, under regulations and policies of the Department of Defense and subject to subsection (b), to wear the insignia for that higher grade for a period of up to 14 days before assuming the duties of a position for which the higher grade is authorized. An officer who is so authorized to wear the insignia of a higher grade is said to be ''frocked'' to that grade.

(b) RESTRICTIONS.—An officer may not be authorized to wear the insignia for a grade as described in subsection (a) unless—

(1) the Senate has given its advice and consent to the appointment of the officer to that grade;

(2) the officer has received orders to serve in a position outside the military department of that officer for which that grade is authorized;

(3) the Secretary of Defense (or a civilian officer within the Office of the Secretary of Defense whose appointment was made with the advice and consent of the Senate and to whom the Secretary delegates such approval authority) has given approval for the officer to wear the insignia for that grade before assuming the duties of a position for which that grade is authorized; and

(4) the Secretary of Defense has submitted to Congress a written notification of the intent to authorize the officer to wear the insignia for that grade.

(c) BENEFITS NOT TO BE CONSTRUED AS ACCRUING.—(1) Authority provided to an officer as described in subsection (a) to wear the insignia of a higher grade may not be construed as conferring authority for that officer to—

(A) be paid the rate of pay provided for an officer in that grade having the same number of years of service as that officer; or

(B) assume any legal authority associated with that grade.

(2) The period for which an officer wears the insignia of a higher grade under such authority may not be taken into account for any of the following purposes:

(A) Seniority in that grade.

(B) Time of service in that grade.

(d) LIMITATION ON NUMBER OF OFFICERS FROCKED.—The total number of officers who are authorized to wear the insignia for a higher grade under this section shall count against the limitation in section 777(d) of this title on the total number of officers authorized to wear the insignia of a higher grade.

(Added Pub. L. 111–383, div. A, title V, § 505(a)(1), Jan. 7, 2011, 124 Stat. 4208.)

CHAPTER 47—UNIFORM CODE OF MILITARY JUSTICE

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AMENDMENTS

1994—Pub. L. 103–337, div. A, title IX, §924(c)(3)(B), Oct. 5, 1994, 108 Stat. 2832, substituted ''United States Court of Appeals for the Armed Forces'' for ''Court of Military Appeals'' in item for subchapter XII.

1989—Pub. L. 101–189, div. A, title XIII, §1304(a)(1), Nov. 29, 1989, 103 Stat. 1576, added item for subchapter XII.

1983—Pub. L. 98–209, §5(h)(1), Dec. 6, 1983, 97 Stat. 1400, substituted ''IX. Post-Trial Procedure and Review of Courts-Martial'' for ''IX. Review of Courts-Martial''.

1958—Pub. L. 85–861, §33(a)(6), Sept. 2, 1958, 72 Stat. 1564, substituted 801, 807, 815, 816, 822, 830, 836, 855, 859, 877 and 935 for 1901, 1913, 1929, 1931, 1943, 1959, 1971, 2009, 2017, 2053 and 2169, respectively.

SUBCHAPTER I—GENERAL PROVISIONS

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801.	1.	Definitions.
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803.	3.	Jurisdiction to try certain personnel.
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806.	6.	Judge advocates and legal officers.
806a.	6a.	Investigation and disposition of matters pertaining to the fitness of military judges.

AMENDMENTS

1989—Pub. L. 101–189, div. A, title XIII, §1304(a)(2), Nov. 29, 1989, 103 Stat. 1576, added item 806a.

§801. Article 1. Definitions

In this chapter:

(1) The term ''Judge Advocate General'' means, severally, the Judge Advocates General of the Army, Navy, and Air Force and, except when the Coast Guard is operating as a service in the Navy, an official designated to serve as Judge Advocate General of the Coast Guard by the Secretary of Homeland Security.

(2) The Navy, the Marine Corps, and the Coast Guard when it is operating as a service in the Navy, shall be considered as one armed force.

(3) The term ''commanding officer'' includes only commissioned officers.

(4) The term ''officer in charge'' means a member of the Navy, the Marine Corps, or the Coast Guard designated as such by appropriate authority.

(5) The term ''superior commissioned officer'' means a commissioned officer superior in rank or command.

(6) The term ''cadet'' means a cadet of the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy.

(7) The term ''midshipman'' means a midshipman of the United States Naval Academy and any other midshipman on active duty in the naval service.

(8) The term ''military'' refers to any or all of the armed forces.

(9) The term ''accuser'' means a person who signs and swears to charges, any person who directs that charges nominally be signed and sworn to by another, and any other person who has an interest other than an official interest in the prosecution of the accused.

(10) The term ''military judge'' means an official of a general or special court-martial detailed in accordance with section 826 of this title (article 26).

[(11) Repealed. Pub. L. 109–241, title II, §218(a)(1), July 11, 2006, 120 Stat. 526.]

(12) The term ''legal officer'' means any commissioned officer of the Navy, Marine Corps, or Coast Guard designated to perform legal duties for a command.

(13) The term ''judge advocate'' means—

(A) an officer of the Judge Advocate General's Corps of the Army or the Navy;

(B) an officer of the Air Force or the Marine Corps who is designated as a judge advocate; or

(C) a commissioned officer of the Coast Guard designated for special duty (law).

(14) The term ''record'', when used in connection with the proceedings of a court-martial, means—

(A) an official written transcript, written summary, or other writing relating to the proceedings; or

(B) an official audiotape, videotape, or similar material from which sound, or sound and visual images, depicting the proceedings may be reproduced.

(15) The term ''classified information'' means (A) any information or material that has been determined by an official of the United States pursuant to law, an Executive order, or regulation to require protection against unauthorized disclosure for reasons of national security, and (B) any restricted data, as defined in section 11(y) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)).

(16) The term ''national security'' means the national defense and foreign relations of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 36; Pub. L. 89–670, §10(g), Oct. 15, 1966, 80 Stat. 948; Pub. L. 90–179, §1(1), (2), Dec. 8, 1967, 81 Stat. 545; Pub. L. 90–632, §2(1), Oct. 24, 1968, 82 Stat. 1335; Pub. L. 98–209, §§2(a), 6(a), Dec. 6, 1983, 97 Stat. 1393, 1400; Pub. L. 100–180, div. A, title XII, §1231(17), Dec. 4, 1987, 101 Stat. 1161; Pub. L. 100–456, div. A, title XII, §1233(f)(1), Sept. 29, 1988, 102 Stat. 2057; Pub. L. 104–106, div. A, title XI, §1141(b), Feb. 10, 1996, 110 Stat. 467; Pub. L. 107–296, title XVII, §1704(b)(2), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 109–241, title II, §218(a), July 11, 2006, 120 Stat. 526.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
801	50:551 (less (9)).	May 5, 1950, ch. 169, §1 (Art. 1 (less (9))), 64 Stat. 108.

The words ''In this chapter'' are substituted for the introductory clause.

In the introductory clause and throughout the revised chapter the word ''chapter'' is substituted for the word ''code''.

Clauses (1), (2), and (5) of 50:551 are omitted as respectively covered by the definitions in clauses (4), (6), and (14) of section 101 of this title. The words ''commissioned officer'' are substituted for the word ''officer'' for clarity throughout this chapter, since the latter term was defined in the limited sense of commissioned officer in clause (5) of 50:551, and is now covered by section 101(14) of this title.

In clauses (1), (4)–(7), and (9)–(12) of the revised section, the word ''means'' is substituted for the words ''shall be construed to refer to'' and ''shall be construed to refer * * * to''.

In clause (1), the words ''service in'' are substituted for the words ''part of'' to conform to section 1 of title 14. The words ''Department of the Treasury'' are substituted for the words ''Treasury Department''.

Clauses (3) and (4) are inserted for clarity.

In clause (6), the words ''the United States Air Force Academy'' are inserted to reflect its establishment by the Air Force Academy Act (63 Stat. 47).

In clause (8), the word ''refers'' is substituted for the words ''shall be construed to refer''.

In clause (12), the words ''Marine Corps'' are inserted to make explicit that the clause applies to the Marine Corps. The word ''commissioned'' is inserted for clarity.

AMENDMENTS

2006—Cl. (11). Pub. L. 109–241, § 218(a)(1), struck out cl. (11) which read as follows: ''The term 'law specialist' means a commissioned officer of the Coast Guard designated for special duty (law).''

Cl. (13)(C). Pub. L. 109–241, § 218(a)(2), added subpar. (C) and struck out former subpar. (C) which read as follows: ''an officer of the Coast Guard who is designated as a law specialist.''

2002—Cl. (1). Pub. L. 107–296 substituted ''an official designated to serve as Judge Advocate General of the Coast Guard by the Secretary of Homeland Security'' for ''the General Counsel of the Department of Transportation''.

1996—Cls. (15), (16). Pub. L. 104–106 added cls. (15) and (16).

1988—Cl. (1). Pub. L. 100–456 substituted ''term 'Judge'' for ''term 'judge''.

1987—Cls. (1), (3) to (14). Pub. L. 100–180 inserted ''The term'' after each clause designation and revised first word in quotes in each clause to make initial letter of such word lowercase.

1983—Cl. (13). Pub. L. 98–209, § 2(a), added officers of the Coast Guard who are designated as law specialists to definition of ''Judge Advocate''.

Cl. (14). Pub. L. 98–209, § 6(a), added cl. (14).

1968—Cl. (10). Pub. L. 90–632 substituted ''military judge'' for ''law officer'' as term being defined and inserted reference to special court-martial in the definition thereof.

1967—Cl. (11). Pub. L. 90–179, § 1(1), struck out ''Navy or'' before ''Coast Guard''.

Cl. (13). Pub. L. 90–179, § 1(2), added cl. (13).

1966—Pub. L. 89–670 substituted the General Counsel of the Department of Transportation for the General Counsel of the Department of the Treasury in definition of ''Judge Advocate General'' applicable to the Coast Guard when operating as a service in the Navy.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 12(a) of Pub. L. 98–209 provided that:

''(1) The amendments made by this Act [see Short Title of 1983 Amendment note below] shall take effect on the first day of the eighth calendar month that begins after the date of enactment of this Act [Dec. 6, 1983], except that the amendments made by sections 9, 11 and 13 [amending sections 802, 815, 825, 867, 1552, and 1553 of this title and enacting provisions set out as a note under section 867 of this title] shall be effective on the date of the enactment of this Act. The amendments made by section 11 [amending sections 1552 and 1553 of this title] shall only apply with respect to cases filed after the date of enactment of this Act with the boards established under sections 1552 and 1553 of title 10, United States Code.

''(2) The amendments made by section 3(c) and 3(e) [amending sections 826, 827, and 838 of this title] do not affect the designation or detail of a military judge or military counsel to a court-martial before the effective date of such amendments.

''(3) The amendments made by section 4 [amending section 834 of this title] shall not apply to any case in which charges were referred to trial before the effective date of such amendments, and proceedings in any such case shall be held in the same manner and with the same effect as if such amendments had not been enacted.

''(4) The amendments made by sections 5, 6, and 7 [amending this section and sections 849, 854, 857, 860 to 867, 869, 871, and 876a of this title and enacting provisions set out as a note under section 869 of this title] shall not apply to any case in which the findings and sentence were adjudged by a court-martial before the effective date of such amendments. The proceedings in any such case shall be held in the same manner and with the same effect as if such amendments had not been enacted.

''(5) The amendments made by section 8 [enacting section 912a of this title] shall not apply to any offense committed before the effective date of such amendments. Nothing in this provision shall be construed to invalidate the prosecution of any offense committed before the effective date of such amendments.''

EFFECTIVE DATE OF 1968 AMENDMENT

Section 4 of Pub. L. 90–632 provided that:

''(a) Except for the amendments made by paragraphs (30) and (33) of section 2, this Act [see Short Title of 1968 Amendment note below] shall become effective on the first day of the tenth month following the month in which it is enacted [October 1968].

''(b) The amendment made by paragraph (30) of section 2 [amending section 869 of this title] shall become effective upon the date of enactment of this Act [Oct. 24, 1968].

''(c) The amendment made by paragraph (33) [amending section 873 of this title] shall apply in the case of all court-martial sentences approved by the convening authority on or after, or not more than two years before, the date of its enactment [Oct. 24, 1968].''

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–670 effective Apr. 1, 1967, as prescribed by the President and published in the Federal Register, see section 16(a), formerly § 15(a), of Pub. L. 89–670, and Ex. Ord. No. 11340, Mar. 30, 1967, 32 F.R. 5453.

EFFECTIVE DATE

Section 51 of act Aug. 10, 1956, provided that: ''Chapter 47 of title 10, United States Code, enacted by section 1 of this Act, takes effect January 1, 1957.''

SHORT TITLE OF 1996 AMENDMENT

Section 1101 of title XI of div. A of Pub. L. 104–106 provided that: ''This title [enacting sections 857a, 858b, and 876b of this title, amending this section and sections 802, 832, 847, 857, 860, 862, 866, 895, 920, and 937 of this title, repealing section 804 of Title 37, Pay and Allowances of the Uniformed Services, enacting provisions set out as notes under sections 802, 857, 858b, and 876b of this title, and amending provisions set out as a note under section 942 of this title] may be cited as the 'Military Justice Amendments of 1995'.''

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99–661, div. A, title VIII, § 801(a), Nov. 14, 1986, 100 Stat. 3905, provided that: ''This title [enacting section 850a of this title, amending sections 802, 803, 806, 825, 843, 860, 936, and 937 of this title, and enacting provisions set out as notes under sections 802, 806, 825, 843, 850a, and 860 of this title] may be cited as the 'Military Justice Amendments of 1986'.''

SHORT TITLE OF 1983 AMENDMENT

Section 1(a) of Pub. L. 98–209 provided that: ''This Act [enacting sections 912a of this title and section 1259 of Title 28, Judiciary and Judicial Procedure, amending this section, sections 802, 806, 815, 816, 825, 826, 827, 829, 834, 838, 842, 849, 854, 857, 860 to 867, 869, 870, 871, 876a, 936, 1552, and 1553 of this title, and section 2101 of Title 28, and enacting provisions set out as notes under sections 801, 867, and 869 of this title and amending provisions set out as a note under section 706 of this title] may be cited as the 'Military Justice Act of 1983'.''

SHORT TITLE OF 1981 AMENDMENT

Pub. L. 97–81, §1(a), Nov. 20, 1981, 95 Stat. 1085, provided that: ''This Act [enacting sections 706, 707, and 876a of this title, amending sections 701, 813, 832, 838, 867, and 869 of this title, and enacting provisions set out as a note under section 706 of this title] may be cited as the 'Military Justice Amendments of 1981'.''

SHORT TITLE OF 1968 AMENDMENT

Section 1 of Pub. L. 90–632 provided: ''That this Act [amending this section and sections 806, 816, 818, 819, 820, 825, 826, 827, 829, 835, 837, 838, 839, 840, 841, 842, 845, 849, 851, 852, 854, 857, 865, 866, 867, 868, 869, 870, 871, 873, and 936 of this title and enacting provisions set out as notes under this section and sections 826 and 866 of this title] may be cited as the 'Military Justice Act of 1968'.''

REDESIGNATION OF NAVY LAW SPECIALISTS AS JUDGE ADVOCATES

Navy law specialists redesignated judge advocates, see section 8 of Pub. L. 90–179, set out as a note under section 5148 of this title.

SAVINGS PROVISION

Rights, duties, and proceedings not affected by Pub. L. 90–179 establishing Judge Advocate General's Corps in Navy, see section 10 of Pub. L. 90–179, set out as a note under section 5148 of this title.

LEGISLATIVE CONSTRUCTION

Section 49(e) of act Aug. 10, 1956, provided that: ''In chapter 47 of title 10, United States Code [this chapter], enacted by section 1 of this Act, no inference of a legislative construction is to be drawn from the part in which any article is placed nor from the catchlines of the part or the article as set out in that chapter.''

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.

PROHIBITION ON INTERROGATION OF DETAINEES BY CONTRACTOR PERSONNEL

Pub. L. 111–84, div. A, title X, §1038, Oct. 28, 2009, 123 Stat. 2451, provided that:

''(a) PROHIBITION.—Except as provided in subsection (b), effective one year after the date of the enactment of this Act [Oct. 28, 2009], no enemy prisoner of war, civilian internee, retained personnel, other detainee, or any other individual who is in the custody or under the effective control of the Department of Defense or otherwise under detention in a Department of Defense facility in connection with hostilities may be interrogated by contractor personnel.

''(b) AUTHORIZED FUNCTIONS OF CONTRACTOR PERSONNEL.—Contractor personnel with proper training and security clearances may be used as linguists, interpreters, report writers, information technology technicians, and other employees filling ancillary positions, including as trainers of and advisors to interrogators, in interrogations of persons as described in subsection (a) if—

''(1) such personnel are subject to the same rules, procedures, policies, and laws pertaining to detainee operations and interrogations as apply to government personnel in such positions in such interrogations; and

''(2) appropriately qualified and trained military or civilian personnel of the Department of Defense are available to oversee the contractor's performance and to ensure that contractor personnel do not perform activities that are prohibited under this section.

''(c) DISCHARGE BY GOVERNMENT PERSONNEL.—The Secretary of Defense shall take appropriate actions to ensure that, by not later than one year after the date of the enactment of this Act, the Department of Defense has the resources needed to ensure that interrogations described in subsection (a) are conducted by appropriately qualified government personnel.

''(d) WAIVER.—

''(1) WAIVERS AUTHORIZED.—The Secretary of Defense may waive the prohibition under subsection (a) for a period of 60 days if the Secretary determines such a waiver is vital to the national security interests of the United States. The Secretary may renew a waiver issued pursuant to this paragraph for an additional 30-day period, if the Secretary determines that such a renewal is vital to the national security interests of the United States.

''(2) LIMITATION ON DELEGATION.—

''(A) IN GENERAL.—The waiver authority under paragraph (1) may not be delegated to any official below the level of the Deputy Secretary of Defense, except in the case of a waiver for an individual interrogation that is based on military exigencies, in which case the delegation of the waiver authority shall be done pursuant to regulations that the Secretary of Defense shall prescribe but in no instance may the latter delegation be below the level of combatant commander of the theater in which the individual is in the custody or under the effective control of the Department of Defense or otherwise under detention in a Department of Defense facility within that theater.

''(B) DEADLINE FOR REGULATIONS.—The Secretary of Defense shall prescribe the regulations referred to in subparagraph (A) by not later than 30 days after the date of the enactment of this Act.

''(3) CONGRESSIONAL NOTIFICATION.—Not later than five days after the Secretary issues a waiver pursuant to paragraph (1), the Secretary shall submit to Congress written notification of the waiver.''

NO MIRANDA WARNINGS FOR AL QAEDA TERRORISTS

Pub. L. 111–84, div. A, title X, §1040, Oct. 28, 2009, 123 Stat. 2454, provided that:

''(a) NO MIRANDA WARNINGS.—

''(1) IN GENERAL.—Absent a court order requiring the reading of such statements, no member of the Armed Forces and no official or employee of the Department of Defense or a component of the intelligence community (other than the Department of Justice) may read to a foreign national who is captured or detained outside the United States as an enemy belligerent and is in the custody or under the effective control of the Department of Defense or otherwise under detention in a Department of Defense facility the statement required by *Miranda* v. *Arizona* (384 U.S. 436 (1966)), or otherwise inform such an individual of any rights that the individual may or may not have to counsel or to remain silent consistent with *Miranda* v. *Arizona* (384 U.S. 436 (1966)).

''(2) NONAPPLICABILITY TO DEPARTMENT OF JUSTICE.—This subsection shall not apply to the Department of Justice.

''(3) DEFINITIONS.—In this subsection:

''(A) The term 'foreign national' means an individual who is not a citizen or national of the United States.

''(B) The term 'enemy belligerent' includes a privileged belligerent against the United States and an unprivileged enemy belligerent, as those terms are defined in section 948a of title 10, United States Code, as amended by section 1802 of this Act.

''(b) REPORT REQUIRED ON NOTIFICATION OF DETAINEES OF RIGHTS UNDER *MIRANDA* v. *ARIZONA*.—Not later than 90 days after the date of the enactment of this Act [Oct. 28, 2009], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on how the reading of rights under *Miranda* v. *Arizona* (384 U.S. 436 (1966)) to individuals detained by the United States in Afghanistan may affect—

''(1) the tactical questioning of detainees at the point of capture by United States Armed Forces deployed in support of Operation Enduring Freedom;

''(2) post-capture theater-level interrogations and intelligence-gathering activities conducted as part of Operation Enduring Freedom;

''(3) the overall counterinsurgency strategy and objectives of the United States for Operation Enduring Freedom;

''(4) United States military operations and objectives in Afghanistan; and

''(5) potential risks to members of the Armed Forces operating in Afghanistan.''

REQUIREMENT FOR VIDEOTAPING OR OTHERWISE ELECTRONICALLY RECORDING STRATEGIC INTELLIGENCE INTERROGATIONS OF PERSONS IN THE CUSTODY OF OR UNDER THE EFFECTIVE CONTROL OF THE DEPARTMENT OF DEFENSE

Pub. L. 111–84, div. A, title X, § 1080, Oct. 28, 2009, 123 Stat. 2479, as amended by Pub. L. 111–383, div. A, title X, § 1075(d)(15), Jan. 7, 2011, 124 Stat. 4373, provided that:

''(a) VIDEOTAPING OR OTHER ELECTRONIC RECORDING REQUIRED.—In accordance with the Army Field Manual on Human Intelligence Collector Operations (FM 2–22.3, September 2006), or any successor thereto, and the guidelines developed pursuant to subsection (f), the Secretary of Defense shall ensure that each strategic intelligence interrogation of any person who is in the custody or under the effective control of the Department of Defense or under detention in a Department of Defense facility is videotaped or otherwise electronically recorded.

''(b) CLASSIFICATION OF INFORMATION.—To protect United States national security, the safety of the individuals conducting or assisting in the conduct of a strategic intelligence interrogation, and the privacy of persons described in subsection (a), the Secretary of Defense shall provide for the appropriate classification of videotapes or other electronic recordings made pursuant to subsection (a). The use of such classified videotapes or other electronic recordings in proceedings conducted under the Detainee Treatment Act of 2005 (title XIV of Public Law 109–163 and title X of Public Law 109–148), chapter 47A of title 10, United States Code, as amended by section 1802 of this Act, or at any other judicial or administrative forum under any other provision of law shall be governed by applicable rules, regulations, and laws that protect classified information.

''(c) STRATEGIC INTELLIGENCE INTERROGATION DEFINED.—For purposes of this section, the term 'strategic intelligence interrogation' means an interrogation of a person described in subsection (a) conducted at a theater-level detention facility.

''(d) EXCLUSION.—Nothing in this section shall be construed as requiring—

''(1) any member of the Armed Forces engaged in direct combat operations to videotape or otherwise electronically record an interrogation of a person described in subsection (a); or

''(2) the videotaping of or otherwise electronically recording of tactical questioning, as such term is defined in the Army Field Manual on Human Intelligence Collector Operations (FM 2–22.3, September 2006), or any successor thereto.

''(e) WAIVER.—

''(1) WAIVERS AUTHORIZED.—The Secretary of Defense may, as an exceptional measure, as part of a specific interrogation plan for a specific person described in subsection (a), waive the requirement in that subsection on a case-by-case basis for a period not to exceed 30 days, if the Secretary—

''(A) makes a determination in writing that such a waiver is necessary to the national security interests of the United States; and

''(B) by not later than five days after the date on which such a determination is made, submits to the Committees on Armed Services of the Senate and House of Representatives, the House Permanent Select Committee on Intelligence, and the Senate Select Committee on Intelligence notice of that determination, including a justification for that determination.

''(2) SUSPENSIONS AUTHORIZED.—The Secretary may temporarily suspend the requirement under subsection (a) at a specific theater-level detention facility for a period not to exceed 30 days, if the Secretary—

''(A) makes a determination in writing that such a suspension is vital to the national security interests of the United States; and

''(B) by not later than five days after the date on which such a determination is made, submits to the Committees on Armed Services of the Senate and House of Representatives, the House Permanent Select Committee on Intelligence, and the Senate Select Committee on Intelligence notice of that determination, including a justification for that determination.

''(3) LIMITATION ON DELEGATION OF AUTHORITY.—This authority of the Secretary under this subsection may only be delegated as follows:

''(A) In the case of the authority under paragraph (1), such authority may not be delegated below the level of the combatant commander of the theater in which the detention facility holding the person is located.

''(B) In the case of the authority under paragraph (2), such authority may not be delegated below the level of the Deputy Secretary of Defense.

''(4) EXTENSIONS.—The Secretary may extend a waiver under paragraph (1) for one additional 30-day period, or a suspension under paragraph (2) for one additional 30-day period, if—

''(A) the Secretary—

''(i) in the case of such a waiver, makes a determination in writing that such an extension is necessary to the national security interests of the United State [sic]; or

''(ii) in the case of such a suspension, makes a determination in writing that such an extension is vital to the national security interests of the United States; and

''(B) by not later than five days after the date on which such a determination is made, the Secretary submits to the Committees on Armed Services of the Senate and House of Representatives, the House Permanent Select Committee on Intelligence, and the Senate Select Committee on Intelligence notice of that determination, including a justification for that determination.

''(f) GUIDELINES.—

''(1) DEVELOPMENT OF GUIDELINES.—The Secretary of Defense, acting through the Judge Advocates General (as defined in section 801(1) of title 10, United States Code, (Article 1 of the Uniform Code of Military Justice)), shall develop and adopt uniform guidelines for videotaping or otherwise electronically recording strategic intelligence interrogations as required under subsection (a). Such guidelines shall, at a minimum—

''(A) promote full compliance with the laws of the United States;

''(B) promote the exploitation of intelligence;

''(C) address the retention, maintenance, and disposition of videotapes or other electronic record-

ings, consistent with subparagraphs (A) and (B) and with the interests of justice; and

''(D) ensure the safety of all participants in the interrogations.

''(2) SUBMITTAL TO CONGRESS.—Not later than 30 days after the date of the enactment of this section [Oct. 28, 2009], the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report containing the guidelines developed under paragraph (1). Such report shall be in an unclassified form but may include a classified annex.''

REPORTS ON GUANTANAMO BAY PRISONER POPULATION

Pub. L. 111–32, title III, §319, June 24, 2009, 123 Stat. 1874, provided that:

''(a) REPORTS REQUIRED.—Not later than 60 days after the date of the enactment of this Act [June 24, 2009] and every 90 days thereafter, the President shall submit to the members and committees of Congress specified in subsection (b) a report on the prisoner population at the detention facility at Naval Station Guantanamo Bay, Cuba.

''(b) SPECIFIED MEMBERS AND COMMITTEES OF CONGRESS.—The members and committees of Congress specified in this subsection are the following:

''(1) The majority leader and minority leader of the Senate.

''(2) The Chairman and Ranking Member on the Committee on Armed Services of the Senate.

''(3) The Chairman and Vice Chairman of the Select Committee on Intelligence of the Senate.

''(4) The Chairman and Vice Chairman of the Committee on Appropriations of the Senate.

''(5) The Speaker of the House of Representatives.

''(6) The minority leader of the House of Representatives.

''(7) The Chairman and Ranking Member on the Committee on Armed Services of the House of Representatives.

''(8) The Chairman and Vice Chairman of the Permanent Select Committee on Intelligence of the House of Representatives.

''(9) The Chairman and Ranking Member of the Committee on Appropriations of the House of Representatives.

''(c) MATTERS TO BE INCLUDED.—Each report submitted under subsection (a) shall include the following:

''(1) The name and country of origin of each detainee at the detention facility at Naval Station Guantanamo Bay, Cuba, as of the date of such report.

''(2) A current summary of the evidence, intelligence, and information used to justify the detention of each detainee listed under paragraph (1) at Naval Station Guantanamo Bay.

''(3) A current accounting of all the measures taken to transfer each detainee listed under paragraph (1) to the individual's country of citizenship or another country.

''(4) A current description of the number of individuals released or transferred from detention at Naval Station Guantanamo Bay who are confirmed or suspected of returning to terrorist activities after release or transfer from Naval Station Guantanamo Bay.

''(5) An assessment of any efforts by al Qaeda to recruit detainees released from detention at Naval Station Guantanamo Bay.

''(d) ADDITIONAL MATTERS TO BE INCLUDED IN INITIAL REPORT.—The first report submitted under subsection (a) shall also include the following:

''(1) A description of the process that was previously used for screening the detainees described by subsection (c)(4) prior to their release or transfer from detention at Naval Station Guantanamo Bay, Cuba.

''(2) An assessment of the adequacy of that screening process for reducing the risk that detainees previously released or transferred from Naval Station Guantanamo Bay would return to terrorist activities after release or transfer from Naval Station Guantanamo Bay.

''(3) An assessment of lessons learned from previous releases and transfers of individuals who returned to terrorist activities for reducing the risk that detainees released or transferred from Naval Station Guantanamo Bay will return to terrorist activities after their release or transfer.''

[Memorandum of President of the United States, July 17, 2009, 74 F.R. 35765, provided that the reporting function conferred upon the President by section 319(a), (c)(1) to (3) of Pub. L. 111–32, set out above, is assigned to the Attorney General, and the reporting function specified in section 319(a), (c)(4), (5), (d) of Pub. L. 111–32 is assigned to the Director of National Intelligence, in consultation with the Secretary of Defense.]

POLICY ON ROLE OF MILITARY MEDICAL AND BEHAVIORAL SCIENCE PERSONNEL IN INTERROGATION OF DETAINEES

Pub. L. 109–163, div. A, title VII, §750, Jan. 6, 2006, 119 Stat. 3364, provided that:

''(a) POLICY REQUIRED.—The Secretary of Defense shall establish the policy of the Department of Defense on the role of military medical and behavioral science personnel in the interrogation of persons detained by the Armed Forces. The policy shall apply uniformly throughout the Armed Forces.

''(b) REPORT.—Not later than March 1, 2006, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the policy established under subsection (a). The report shall set forth the policy, and shall include such additional matters on the policy as the Secretary considers appropriate.''

DETAINEE INTERROGATION, STATUS REVIEW, AND TREATMENT

Pub. L. 109–163, div. A, title XIV, §§1402, 1405, 1406, Jan. 6, 2006, 119 Stat. 3475, 3476, 3479, as amended by Pub. L. 111–84, div. A, title XVIII, §1803(b)(2), as added Pub. L. 111–383, div. A, title X, §1075(d)(21), Jan. 7, 2011, 124 Stat. 4374, provided that:

''SEC. 1402. UNIFORM STANDARDS FOR THE INTERROGATION OF PERSONS UNDER THE DETENTION OF THE DEPARTMENT OF DEFENSE.

''(a) IN GENERAL.—No person in the custody or under the effective control of the Department of Defense or under detention in a Department of Defense facility shall be subject to any treatment or technique of interrogation not authorized by and listed in the United States Army Field Manual on Intelligence Interrogation.

''(b) APPLICABILITY.—Subsection (a) shall not apply with respect to any person in the custody or under the effective control of the Department of Defense pursuant to a criminal law or immigration law of the United States.

''(c) CONSTRUCTION.—Nothing in this section shall be construed to affect the rights under the United States Constitution of any person in the custody or under the physical jurisdiction of the United States.

''SEC. 1405. PROCEDURES FOR STATUS REVIEW OF DETAINEES OUTSIDE THE UNITED STATES.

''(a) SUBMITTAL OF PROCEDURES FOR STATUS REVIEW OF DETAINEES AT GUANTANAMO BAY, CUBA, AND IN AFGHANISTAN AND IRAQ.—

''(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Jan. 6, 2006], the Secretary of Defense shall submit to the Committee on Armed Services and the Committee on the Judiciary of the Senate and the Committee on Armed Services and the Committee on the Judiciary of the House of Representatives a report setting forth—

''(A) the procedures of the Combatant Status Review Tribunals and the Administrative Review Boards established by direction of the Secretary of

Defense that are in operation at Guantanamo Bay, Cuba, for determining the status of the detainees held at Guantanamo Bay or to provide an annual review to determine the need to continue to detain an alien who is a detainee; and

''(B) the procedures in operation in Afghanistan and Iraq for a determination of the status of aliens detained in the custody or under the physical control of the Department of Defense in those countries.

''(2) DESIGNATED CIVILIAN OFFICIAL.—The procedures submitted to Congress pursuant to paragraph (1)(A) shall ensure that the official of the Department of Defense who is designated by the President or Secretary of Defense to be the final review authority within the Department of Defense with respect to decisions of any such tribunal or board (referred to as the 'Designated Civilian Official') shall be a civilian officer of the Department of Defense holding an office to which appointments are required by law to be made by the President, by and with the advice and consent of the Senate.

''(3) CONSIDERATION OF NEW EVIDENCE.—The procedures submitted under paragraph (1)(A) shall provide for periodic review of any new evidence that may become available relating to the enemy combatant status of a detainee.

''(b) CONSIDERATION OF STATEMENTS DERIVED WITH COERCION.—

''(1) ASSESSMENT.—The procedures submitted to Congress pursuant to subsection (a)(1)(A) shall ensure that a Combatant Status Review Tribunal or Administrative Review Board, or any similar or successor administrative tribunal or board, in making a determination of status or disposition of any detainee under such procedures, shall, to the extent practicable, assess—

''(A) whether any statement derived from or relating to such detainee was obtained as a result of coercion; and

''(B) the probative value, if any, of any such statement.

''(2) APPLICABILITY.—Paragraph (1) applies with respect to any proceeding beginning on or after the date of the enactment of this Act [Jan. 6, 2006].

''(c) REPORT ON MODIFICATION OF PROCEDURES.—The Secretary of Defense shall submit to the committees specified in subsection (a)(1) a report on any modification of the procedures submitted under subsection (a). Any such report shall be submitted not later than 60 days before the date on which such modification goes into effect.

''(d) ANNUAL REPORT.—

''(1) REPORT REQUIRED.—The Secretary of Defense shall submit to Congress an annual report on the annual review process for aliens in the custody of the Department of Defense outside the United States. Each such report shall be submitted in unclassified form, with a classified annex, if necessary. The report shall be submitted not later than December 31 each year.

''(2) ELEMENTS OF REPORT.—Each such report shall include the following with respect to the year covered by the report:

''(A) The number of detainees whose status was reviewed.

''(B) The procedures used at each location.

''(e) JUDICIAL REVIEW OF DETENTION OF ENEMY COMBATANTS.—

''(1) IN GENERAL.—[Amended section 2241 of Title 28, Judiciary and Judicial Procedure.]

''(2) REVIEW OF DECISIONS OF COMBATANT STATUS REVIEW TRIBUNALS OF PROPRIETY OF DETENTION.—

''(A) IN GENERAL.—Subject to subparagraphs (B), (C), and (D), the United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to determine the validity of any final decision of a Combatant Status Review Tribunal that an alien is properly detained as an enemy combatant.

''(B) LIMITATION ON CLAIMS.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit under this paragraph shall be limited to claims brought by or on behalf of an alien—

''(i) who is, at the time a request for review by such court is filed, detained by the Department of Defense at Guantanamo Bay, Cuba; and

''(ii) for whom a Combatant Status Review Tribunal has been conducted, pursuant to applicable procedures specified by the Secretary of Defense.

''(C) SCOPE OF REVIEW.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit on any claims with respect to an alien under this paragraph shall be limited to the consideration of—

''(i) whether the status determination of the Combatant Status Review Tribunal with regard to such alien was consistent with the standards and procedures specified by the Secretary of Defense for Combatant Status Review Tribunals (including the requirement that the conclusion of the Tribunal be supported by a preponderance of the evidence and allowing a rebuttable presumption in favor the Government's evidence); and

''(ii) to the extent the Constitution and laws of the United States are applicable, whether the use of such standards and procedures to make the determination is consistent with the Constitution and laws of the United States.

''(D) TERMINATION ON RELEASE FROM CUSTODY.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit with respect to the claims of an alien under this paragraph shall cease upon the release of such alien from the custody of the Department of Defense.

''[(3) Repealed. Pub. L. 111–84, div. A, title XVIII, § 1803(b)(2), as added Pub. L. 111–383, div. A, title X, § 1075(d)(21), Jan. 7, 2011, 124 Stat. 4374.]

''(4) RESPONDENT.—The Secretary of Defense shall be the named respondent in any appeal to the United States Court of Appeals for the District of Columbia Circuit under this subsection.

''(f) CONSTRUCTION.—Nothing in this section shall be construed to confer any constitutional right on an alien detained as an enemy combatant outside the United States.

''(g) UNITED STATES DEFINED.—For purposes of this section, the term 'United States', when used in a geographic sense, is as defined in section 101(a)(38) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(38)] and, in particular, does not include the United States Naval Station, Guantanamo Bay, Cuba.

''(h) EFFECTIVE DATE.—

''(1) IN GENERAL.—This section shall take effect on the date of the enactment of this Act [Jan. 6, 2006].

''(2) REVIEW OF COMBATANT STATUS TRIBUNAL AND MILITARY COMMISSION DECISIONS.—Paragraphs (2) and (3) of subsection (e) shall apply with respect to any claim whose review is governed by one of such paragraphs and that is pending on or after the date of the enactment of this Act.

''SEC. 1406. TRAINING OF IRAQI SECURITY FORCES REGARDING TREATMENT OF DETAINEES.

''(a) REQUIRED POLICIES.—

''(1) IN GENERAL.—The Secretary of Defense shall prescribe policies designed to ensure that all military and civilian Department of Defense personnel or contractor personnel of the Department of Defense responsible for the training of any unit of the Iraqi Security Forces provide training to such units regarding the international obligations and laws applicable to the humane treatment of detainees, including protections afforded under the Geneva Conventions and the Convention Against Torture.

''(2) ACKNOWLEDGMENT OF TRAINING.—The Secretary shall ensure that, for all personnel of the Iraqi Security Forces who are provided training referred to in paragraph (1), there is documented acknowledgment that such training has been provided.

''(3) DEADLINE FOR POLICIES TO BE PRESCRIBED.—The policies required by paragraph (1) shall be prescribed not later than 180 days after the date of the enactment of this Act [Jan. 6, 2006].

''(b) ARMY FIELD MANUAL.—

''(1) TRANSLATION.—The Secretary of Defense shall provide for the unclassified portions of the United States Army Field Manual on Intelligence Interrogation to be translated into Arabic and any other language the Secretary determines appropriate for use by members of the Iraqi security forces.

''(2) DISTRIBUTION.—The Secretary of Defense shall provide for such manual, as translated, to be distributed to all appropriate officials of the Iraqi Government, including, but not limited to, the Iraqi Minister of Defense, the Iraqi Minister of Interior, senior Iraqi military personnel, and appropriate members of the Iraqi Security Forces with a recommendation that the principles that underlay the manual be adopted by the Iraqis as the basis for their policies on interrogation of detainees.

''(c) TRANSMITTAL TO CONGRESSIONAL COMMITTEES.—Not less than 30 days after the date on which policies are first prescribed under subsection (a), the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives copies of such regulations, policies, or orders, together with a report on steps taken to the date of the report to implement this section.

''(d) ANNUAL REPORT.—Not less than one year after the date of the enactment of this Act [Jan. 6, 2006], and annually thereafter, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the implementation of this section.''

Pub. L. 109–148, div. A, title X, §§1002, 1005, 1006, Dec. 30, 2005, 119 Stat. 2739, 2740, 2744, as amended by Pub. L. 109–366, §§9, 10, Oct. 17, 2006, 120 Stat. 2636, 2637; Pub. L. 110–181, div. A, title X, §1063(d)(2), Jan. 28, 2008, 122 Stat. 323; Pub. L. 111–84, div. A, title XVIII, §1803(b)(1), formerly §1803(b), Oct. 28, 2009, 123 Stat. 2612, as renumbered §1803(b)(1) by Pub. L. 111–383, div. A, title X, §1075(d)(21), Jan. 7, 2011, 124 Stat. 4374, provided that:

''SEC. 1002. UNIFORM STANDARDS FOR THE INTERROGATION OF PERSONS UNDER THE DETENTION OF THE DEPARTMENT OF DEFENSE.

''(a) IN GENERAL.—No person in the custody or under the effective control of the Department of Defense or under detention in a Department of Defense facility shall be subject to any treatment or technique of interrogation not authorized by and listed in the United States Army Field Manual on Intelligence Interrogation.

''(b) APPLICABILITY.—Subsection (a) shall not apply with respect to any person in the custody or under the effective control of the Department of Defense pursuant to a criminal law or immigration law of the United States.

''(c) CONSTRUCTION.—Nothing in this section shall be construed to affect the rights under the United States Constitution of any person in the custody or under the physical jurisdiction of the United States.

''SEC. 1005. PROCEDURES FOR STATUS REVIEW OF DETAINEES OUTSIDE THE UNITED STATES.

''(a) SUBMITTAL OF PROCEDURES FOR STATUS REVIEW OF DETAINEES AT GUANTANAMO BAY, CUBA, AND IN AFGHANISTAN AND IRAQ.—

''(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Dec. 30, 2005], the Secretary of Defense shall submit to the Committee on Armed Services and the Committee on the Judiciary of the Senate and the Committee on Armed Services and the Committee on the Judiciary of the House of Representatives a report setting forth—

''(A) the procedures of the Combatant Status Review Tribunals and the Administrative Review Boards established by direction of the Secretary of Defense that are in operation at Guantanamo Bay, Cuba, for determining the status of the detainees held at Guantanamo Bay or to provide an annual review to determine the need to continue to detain an alien who is a detainee; and

''(B) the procedures in operation in Afghanistan and Iraq for a determination of the status of aliens detained in the custody or under the physical control of the Department of Defense in those countries.

''(2) DESIGNATED CIVILIAN OFFICIAL.—The procedures submitted to Congress pursuant to paragraph (1)(A) shall ensure that the official of the Department of Defense who is designated by the President or Secretary of Defense to be the final review authority within the Department of Defense with respect to decisions of any such tribunal or board (referred to as the 'Designated Civilian Official') shall be a civilian officer of the Department of Defense holding an office to which appointments are required by law to be made by the President, by and with the advice and consent of the Senate.

''(3) CONSIDERATION OF NEW EVIDENCE.—The procedures submitted under paragraph (1)(A) shall provide for periodic review of any new evidence that may become available relating to the enemy combatant status of a detainee.

''(b) CONSIDERATION OF STATEMENTS DERIVED WITH COERCION.—

''(1) ASSESSMENT.—The procedures submitted to Congress pursuant to subsection (a)(1)(A) shall ensure that a Combatant Status Review Tribunal or Administrative Review Board, or any similar or successor administrative tribunal or board, in making a determination of status or disposition of any detainee under such procedures, shall, to the extent practicable, assess—

''(A) whether any statement derived from or relating to such detainee was obtained as a result of coercion; and

''(B) the probative value (if any) of any such statement.

''(2) APPLICABILITY.—Paragraph (1) applies with respect to any proceeding beginning on or after the date of the enactment of this Act [Dec. 30, 2005].

''(c) REPORT ON MODIFICATION OF PROCEDURES.—The Secretary of Defense shall submit to the committees specified in subsection (a)(1) a report on any modification of the procedures submitted under subsection (a). Any such report shall be submitted not later than 60 days before the date on which such modification goes into effect.

''(d) ANNUAL REPORT.—

''(1) REPORT REQUIRED.—The Secretary of Defense shall submit to Congress an annual report on the annual review process for aliens in the custody of the Department of Defense outside the United States. Each such report shall be submitted in unclassified form, with a classified annex, if necessary. The report shall be submitted not later than December 31 each year.

''(2) ELEMENTS OF REPORT.—Each such report shall include the following with respect to the year covered by the report:

''(A) The number of detainees whose status was reviewed.

''(B) The procedures used at each location.

''(e) JUDICIAL REVIEW OF DETENTION OF ENEMY COMBATANTS.—

''(1) IN GENERAL.—[Amended section 2241 of Title 28, Judiciary and Judicial Procedure.]

''(2) REVIEW OF DECISIONS OF COMBATANT STATUS REVIEW TRIBUNALS OF PROPRIETY OF DETENTION.—

''(A) IN GENERAL.—Subject to subparagraphs (B), (C), and (D), the United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to determine the validity of any final decision of a Combatant Status Review Tribunal that an alien is properly detained as an enemy combatant.

''(B) LIMITATION ON CLAIMS.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit under this paragraph shall be limited to claims brought by or on behalf of an alien—

''(i) who is, at the time a request for review by such court is filed, detained by the United States; and

''(ii) for whom a Combatant Status Review Tribunal has been conducted, pursuant to applicable procedures specified by the Secretary of Defense.

''(C) SCOPE OF REVIEW.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit on any claims with respect to an alien under this paragraph shall be limited to the consideration of—

''(i) whether the status determination of the Combatant Status Review Tribunal with regard to such alien was consistent with the standards and procedures specified by the Secretary of Defense for Combatant Status Review Tribunals (including the requirement that the conclusion of the Tribunal be supported by a preponderance of the evidence and allowing a rebuttable presumption in favor of the Government's evidence); and

''(ii) to the extent the Constitution and laws of the United States are applicable, whether the use of such standards and procedures to make the determination is consistent with the Constitution and laws of the United States.

''(D) TERMINATION ON RELEASE FROM CUSTODY.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit with respect to the claims of an alien under this paragraph shall cease upon the release of such alien from the custody of the Department of Defense.

''[(3) Repealed. Pub. L. 111–84, div. A, title XVIII, § 1803(b)(1), formerly § 1803(b), Oct. 28, 2009, 123 Stat. 2612, as renumbered § 1803(b)(1) by Pub. L. 111–383, div. A, title X, § 1075(d)(21), Jan. 7, 2011, 124 Stat. 4374.]

''(4) RESPONDENT.—The Secretary of Defense shall be the named respondent in any appeal to the United States Court of Appeals for the District of Columbia Circuit under this subsection.

''(f) CONSTRUCTION.—Nothing in this section shall be construed to confer any constitutional right on an alien detained as an enemy combatant outside the United States.

''(g) UNITED STATES DEFINED.—For purposes of this section, the term 'United States', when used in a geographic sense, is as defined in section 101(a)(38) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(38)] and, in particular, does not include the United States Naval Station, Guantanamo Bay, Cuba.

''(h) EFFECTIVE DATE.—

''(1) IN GENERAL.—This section shall take effect on the date of the enactment of this Act [Dec. 30, 2005].

''(2) REVIEW OF COMBATANT STATUS TRIBUNAL AND MILITARY COMMISSION DECISIONS.—Paragraphs (2) and (3) of subsection (e) shall apply with respect to any claim whose review is governed by one of such paragraphs and that is pending on or after the date of the enactment of this Act.

''SEC. 1006. TRAINING OF IRAQI FORCES REGARDING TREATMENT OF DETAINEES.

''(a) REQUIRED POLICIES.—

''(1) IN GENERAL.—The Secretary of Defense shall ensure that policies are prescribed regarding procedures for military and civilian personnel of the Department of Defense and contractor personnel of the Department of Defense in Iraq that are intended to ensure that members of the Armed Forces, and all persons acting on behalf of the Armed Forces or within facilities of the Armed Forces, ensure that all personnel of Iraqi military forces who are trained by Department of Defense personnel and contractor personnel of the Department of Defense receive training regarding the international obligations and laws applicable to the humane detention of detainees, including protections afforded under the Geneva Conventions and the Convention Against Torture.

''(2) ACKNOWLEDGMENT OF TRAINING.—The Secretary shall ensure that, for all personnel of the Iraqi Security Forces who are provided training referred to in paragraph (1), there is documented acknowledgment of such training having been provided.

''(3) DEADLINE FOR POLICIES TO BE PRESCRIBED.—The policies required by paragraph (1) shall be prescribed not later than 180 days after the date of the enactment of this Act [Dec. 30, 2005].

''(b) ARMY FIELD MANUAL.—

''(1) TRANSLATION.—The Secretary of Defense shall provide for the United States Army Field Manual on Intelligence Interrogation to be translated into arabic and any other language the Secretary determines appropriate for use by members of the Iraqi military forces.

''(2) DISTRIBUTION.—The Secretary of Defense shall provide for such manual, as translated, to be provided to each unit of the Iraqi military forces trained by Department of Defense personnel or contractor personnel of the Department of Defense.

''(c) TRANSMITTAL OF REGULATIONS.—Not less than 30 days after the date on which regulations, policies, and orders are first prescribed under subsection (a), the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives copies of such regulations, policies, or orders, together with a report on steps taken to the date of the report to implement this section.

''(d) ANNUAL REPORT.—Not less than one year after the date of the enactment of this Act [Dec. 30, 2005], and annually thereafter, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the implementation of this section.''

SENSE OF CONGRESS CONCERNING DETAINEES; ACTIONS TO PREVENT ABUSE

Pub. L. 108–375, div. A, title X, §§ 1091, 1092, Oct. 28, 2004, 118 Stat. 2068, 2069, provided that:

''SEC. 1091. SENSE OF CONGRESS AND POLICY CONCERNING PERSONS DETAINED BY THE UNITED STATES.

''(a) SENSE OF CONGRESS.—It is the sense of Congress that—

''(1) the abuses inflicted upon detainees at the Abu Ghraib prison in Baghdad, Iraq, are inconsistent with the professionalism, dedication, standards, and training required of individuals who serve in the United States Armed Forces;

''(2) the vast majority of members of the Armed Forces have upheld the highest possible standards of professionalism and morality in the face of illegal tactics and terrorist attacks and attempts on their lives;

''(3) the abuse of persons in United States custody in Iraq is appropriately condemned and deplored by the American people;

''(4) the Armed Forces are moving swiftly and decisively to identify, try, and, if found guilty, punish persons who perpetrated such abuse;

''(5) the Department of Defense and appropriate military authorities must continue to undertake corrective action, as appropriate, to address chain-of-command deficiencies and the systemic deficiencies identified in the incidents in question;

''(6) the Constitution, laws, and treaties of the United States and the applicable guidance and regulations of the United States Government prohibit the torture or cruel, inhuman, or degrading treatment of foreign prisoners held in custody by the United States;

''(7) the alleged crimes of a handful of individuals should not detract from the commendable sacrifices of over 300,000 members of the Armed Forces who

have served, or who are serving, in Operation Iraqi Freedom; and

''(8) no detainee shall be subject to torture or cruel, inhuman, or degrading treatment or punishment that is prohibited by the Constitution, laws, or treaties of United States.

''(b) POLICY.—It is the policy of the United States to—

''(1) ensure that no detainee shall be subject to torture or cruel, inhuman, or degrading treatment or punishment that is prohibited by the Constitution, laws, or treaties of the United States;

''(2) investigate and prosecute, as appropriate, all alleged instances of unlawful treatment of detainees in a manner consistent with the international obligations, laws, or policies of the United States;

''(3) ensure that all personnel of the United States Government understand their obligations in both wartime and peacetime to comply with the legal prohibitions against torture, cruel, inhuman, or degrading treatment of detainees in the custody of the United States;

''(4) ensure that, in a case in which there is doubt as to whether a detainee is entitled to prisoner of war status under the Geneva Conventions, such detainee receives the protections accorded to prisoners of war until the detainee's status is determined by a competent tribunal; and

''(5) expeditiously process and, if appropriate, prosecute detainees in the custody of the United States, including those in the custody of the United States Armed Forces at Guantanamo Bay, Cuba.

''(c) DETAINEES.—For purposes of this section, the term 'detainee' means a person in the custody or under the physical control of the United States as a result of armed conflict.

''SEC. 1092. ACTIONS TO PREVENT THE ABUSE OF DETAINEES.

''(a) POLICIES REQUIRED.—The Secretary of Defense shall ensure that policies are prescribed not later than 150 days after the date of the enactment of this Act [Oct. 28, 2004] regarding procedures for Department of Defense personnel and contractor personnel of the Department of Defense intended to ensure that members of the Armed Forces, and all persons acting on behalf of the Armed Forces or within facilities of the Armed Forces, treat persons detained by the United States Government in a humane manner consistent with the international obligations and laws of the United States and the policies set forth in section 1091(b).

''(b) MATTERS TO BE INCLUDED.—In order to achieve the objective stated in subsection (a), the policies under that subsection shall specify, at a minimum, procedures for the following:

''(1) Ensuring that each commander of a Department of Defense detention facility or interrogation facility—

''(A) provides all assigned personnel with training, and documented acknowledgment of receiving training, regarding the law of war, including the Geneva Conventions; and

''(B) establishes standard operating procedures for the treatment of detainees.

''(2) Ensuring that each Department of Defense contract in which contract personnel in the course of their duties interact with individuals detained by the Department of Defense on behalf of the United States Government include a requirement that such contract personnel have received training, and documented acknowledgment of receiving training, regarding the international obligations and laws of the United States applicable to the detention of personnel.

''(3) Providing all detainees with information, in their own language, of the applicable protections afforded under the Geneva Conventions.

''(4) Conducting periodic unannounced and announced inspections of detention facilities in order to provide continued oversight of interrogation and detention operations.

''(5) Ensuring that, to the maximum extent practicable, detainees and detention facility personnel of a different gender are not alone together.

''(c) SECRETARY OF DEFENSE CERTIFICATION.—The Secretary of Defense shall certify that all Federal employees and civilian contractors engaged in the handling or interrogation of individuals detained by the Department of Defense on behalf of the United States Government have fulfilled an annual training requirement on the law of war, the Geneva Conventions, and the obligations of the United States under international law.''

DETENTION, TREATMENT, AND TRIAL OF CERTAIN NON-CITIZENS IN THE WAR AGAINST TERRORISM

Military Order of President of the United States, dated Nov. 13, 2001, 66 F.R. 57833, provided:

By the authority vested in me as President and as Commander in Chief of the Armed Forces of the United States by the Constitution and the laws of the United States of America, including the Authorization for Use of Military Force Joint Resolution (Public Law 107–40, 115 Stat. 224) [50 U.S.C. 1541 note] and sections 821 and 836 of title 10, United States Code, it is hereby ordered as follows:

SECTION 1. *Findings.*

(a) International terrorists, including members of al Qaida, have carried out attacks on United States diplomatic and military personnel and facilities abroad and on citizens and property within the United States on a scale that has created a state of armed conflict that requires the use of the United States Armed Forces.

(b) In light of grave acts of terrorism and threats of terrorism, including the terrorist attacks on September 11, 2001, on the headquarters of the United States Department of Defense in the national capital region, on the World Trade Center in New York, and on civilian aircraft such as in Pennsylvania, I proclaimed a national emergency on September 14, 2001 (Proc. 7463, Declaration of National Emergency by Reason of Certain Terrorist Attacks [50 U.S.C. 1621 note]).

(c) Individuals acting alone and in concert involved in international terrorism possess both the capability and the intention to undertake further terrorist attacks against the United States that, if not detected and prevented, will cause mass deaths, mass injuries, and massive destruction of property, and may place at risk the continuity of the operations of the United States Government.

(d) The ability of the United States to protect the United States and its citizens, and to help its allies and other cooperating nations protect their nations and their citizens, from such further terrorist attacks depends in significant part upon using the United States Armed Forces to identify terrorists and those who support them, to disrupt their activities, and to eliminate their ability to conduct or support such attacks.

(e) To protect the United States and its citizens, and for the effective conduct of military operations and prevention of terrorist attacks, it is necessary for individuals subject to this order pursuant to section 2 hereof to be detained, and, when tried, to be tried for violations of the laws of war and other applicable laws by military tribunals.

(f) Given the danger to the safety of the United States and the nature of international terrorism, and to the extent provided by and under this order, I find consistent with section 836 of title 10, United States Code, that it is not practicable to apply in military commissions under this order the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the United States district courts.

(g) Having fully considered the magnitude of the potential deaths, injuries, and property destruction that would result from potential acts of terrorism against the United States, and the probability that such acts will occur, I have determined that an extraordinary emergency exists for national defense purposes, that this emergency constitutes an urgent and compelling government interest, and that issuance of this order is necessary to meet the emergency.

SEC. 2. *Definition and Policy*.

(a) The term ''individual subject to this order'' shall mean any individual who is not a United States citizen with respect to whom I determine from time to time in writing that:

(1) there is reason to believe that such individual, at the relevant times,

(i) is or was a member of the organization known as al Qaida;

(ii) has engaged in, aided or abetted, or conspired to commit, acts of international terrorism, or acts in preparation therefor, that have caused, threaten to cause, or have as their aim to cause, injury to or adverse effects on the United States, its citizens, national security, foreign policy, or economy; or

(iii) has knowingly harbored one or more individuals described in subparagraphs (i) or (ii) of subsection 2(a)(1) of this order; and

(2) it is in the interest of the United States that such individual be subject to this order.

(b) It is the policy of the United States that the Secretary of Defense shall take all necessary measures to ensure that any individual subject to this order is detained in accordance with section 3, and, if the individual is to be tried, that such individual is tried only in accordance with section 4.

(c) It is further the policy of the United States that any individual subject to this order who is not already under the control of the Secretary of Defense but who is under the control of any other officer or agent of the United States or any State shall, upon delivery of a copy of such written determination to such officer or agent, forthwith be placed under the control of the Secretary of Defense.

SEC. 3. *Detention Authority of the Secretary of Defense*. Any individual subject to this order shall be—

(a) detained at an appropriate location designated by the Secretary of Defense outside or within the United States;

(b) treated humanely, without any adverse distinction based on race, color, religion, gender, birth, wealth, or any similar criteria;

(c) afforded adequate food, drinking water, shelter, clothing, and medical treatment;

(d) allowed the free exercise of religion consistent with the requirements of such detention; and

(e) detained in accordance with such other conditions as the Secretary of Defense may prescribe.

SEC. 4. *Authority of the Secretary of Defense Regarding Trials of Individuals Subject to this Order*. [Superseded by Ex. Ord. No. 13425, set out as a note under section 948b of this title.]

SEC. 5. *Obligation of Other Agencies to Assist the Secretary of Defense*.

Departments, agencies, entities, and officers of the United States shall, to the maximum extent permitted by law, provide to the Secretary of Defense such assistance as he may request to implement this order.

SEC. 6. *Additional Authorities of the Secretary of Defense*.

(a) As a military function and in light of the findings in section 1, the Secretary of Defense shall issue such orders and regulations as may be necessary to carry out any of the provisions of this order.

(b) The Secretary of Defense may perform any of his functions or duties, and may exercise any of the powers provided to him under this order (other than under section 4(c)(8) hereof) in accordance with section 113(d) of title 10, United States Code.

SEC. 7. *Relationship to Other Law and Forums*.

(a) Nothing in this order shall be construed to—

(1) authorize the disclosure of state secrets to any person not otherwise authorized to have access to them;

(2) limit the authority of the President as Commander in Chief of the Armed Forces or the power of the President to grant reprieves and pardons; or

(3) limit the lawful authority of the Secretary of Defense, any military commander, or any other officer or agent of the United States or of any State to detain or try any person who is not an individual subject to this order.

(b) With respect to any individual subject to this order—

(1) military tribunals shall have exclusive jurisdiction with respect to offenses by the individual; and

(2) the individual shall not be privileged to seek any remedy or maintain any proceeding, directly or indirectly, or to have any such remedy or proceeding sought on the individual's behalf, in (i) any court of the United States, or any State thereof, (ii) any court of any foreign nation, or (iii) any international tribunal.

(c) This order is not intended to and does not create any right, benefit, or privilege, substantive or procedural, enforceable at law or equity by any party, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

(d) For purposes of this order, the term ''State'' includes any State, district, territory, or possession of the United States.

(e) I reserve the authority to direct the Secretary of Defense, at any time hereafter, to transfer to a governmental authority control of any individual subject to this order. Nothing in this order shall be construed to limit the authority of any such governmental authority to prosecute any individual for whom control is transferred.

SEC. 8. *Publication*.

This order shall be published in the Federal Register.

GEORGE W. BUSH.

[For supersedure of provisions of Military Order of President of the United States, dated Nov. 13, 2001, set out above, related to trial by military commission, see Ex. Ord. No. 13425, Feb. 14, 2007, 72 F.R. 7737, set out as a note under section 948b of this title.]

EX. ORD. NO. 13492. REVIEW AND DISPOSITION OF INDIVIDUALS DETAINED AT THE GUANTANAMO BAY NAVAL BASE AND CLOSURE OF DETENTION FACILITIES

Ex. Ord. No. 13492, Jan. 22, 2009, 74 F.R. 4897, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, in order to effect the appropriate disposition of individuals currently detained by the Department of Defense at the Guantanamo Bay Naval Base (Guantanamo) and promptly to close detention facilities at Guantanamo, consistent with the national security and foreign policy interests of the United States and the interests of justice, I hereby order as follows:

SECTION 1. *Definitions*. As used in this order:

(a) ''Common Article 3'' means Article 3 of each of the Geneva Conventions.

(b) ''Geneva Conventions'' means:

(i) the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, August 12, 1949 (6 UST 3114);

(ii) the Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, August 12, 1949 (6 UST 3217);

(iii) the Convention Relative to the Treatment of Prisoners of War, August 12, 1949 (6 UST 3316); and

(iv) the Convention Relative to the Protection of Civilian Persons in Time of War, August 12, 1949 (6 UST 3516).

(c) ''Individuals currently detained at Guantanamo'' and ''individuals covered by this order'' mean individuals currently detained by the Department of Defense in facilities at the Guantanamo Bay Naval Base whom the Department of Defense has ever determined to be, or treated as, enemy combatants.

SEC. 2. *Findings*.

(a) Over the past 7 years, approximately 800 individuals whom the Department of Defense has ever determined to be, or treated as, enemy combatants have been detained at Guantanamo. The Federal Government has moved more than 500 such detainees from Guantanamo, either by returning them to their home

country or by releasing or transferring them to a third country. The Department of Defense has determined that a number of the individuals currently detained at Guantanamo are eligible for such transfer or release.

(b) Some individuals currently detained at Guantanamo have been there for more than 6 years, and most have been detained for at least 4 years. In view of the significant concerns raised by these detentions, both within the United States and internationally, prompt and appropriate disposition of the individuals currently detained at Guantanamo and closure of the facilities in which they are detained would further the national security and foreign policy interests of the United States and the interests of justice. Merely closing the facilities without promptly determining the appropriate disposition of the individuals detained would not adequately serve those interests. To the extent practicable, the prompt and appropriate disposition of the individuals detained at Guantanamo should precede the closure of the detention facilities at Guantanamo.

(c) The individuals currently detained at Guantanamo have the constitutional privilege of the writ of habeas corpus. Most of those individuals have filed petitions for a writ of habeas corpus in Federal court challenging the lawfulness of their detention.

(d) It is in the interests of the United States that the executive branch undertake a prompt and thorough review of the factual and legal bases for the continued detention of all individuals currently held at Guantanamo, and of whether their continued detention is in the national security and foreign policy interests of the United States and in the interests of justice. The unusual circumstances associated with detentions at Guantanamo require a comprehensive interagency review.

(e) New diplomatic efforts may result in an appropriate disposition of a substantial number of individuals currently detained at Guantanamo.

(f) Some individuals currently detained at Guantanamo may have committed offenses for which they should be prosecuted. It is in the interests of the United States to review whether and how any such individuals can and should be prosecuted.

(g) It is in the interests of the United States that the executive branch conduct a prompt and thorough review of the circumstances of the individuals currently detained at Guantanamo who have been charged with offenses before military commissions pursuant to the Military Commissions Act of 2006, Public Law 109–366, as well as of the military commission process more generally.

SEC. 3. *Closure of Detention Facilities at Guantanamo*. The detention facilities at Guantanamo for individuals covered by this order shall be closed as soon as practicable, and no later than 1 year from the date of this order. If any individuals covered by this order remain in detention at Guantanamo at the time of closure of those detention facilities, they shall be returned to their home country, released, transferred to a third country, or transferred to another United States detention facility in a manner consistent with law and the national security and foreign policy interests of the United States.

SEC. 4. *Immediate Review of All Guantanamo Detentions*.

(a) *Scope and Timing of Review*. A review of the status of each individual currently detained at Guantanamo (Review) shall commence immediately.

(b) *Review Participants*. The Review shall be conducted with the full cooperation and participation of the following officials:

(1) the Attorney General, who shall coordinate the Review;

(2) the Secretary of Defense;

(3) the Secretary of State;

(4) the Secretary of Homeland Security;

(5) the Director of National Intelligence;

(6) the Chairman of the Joint Chiefs of Staff; and

(7) other officers or full-time or permanent part-time employees of the United States, including employees with intelligence, counterterrorism, military, and legal expertise, as determined by the Attorney General, with the concurrence of the head of the department or agency concerned.

(c) *Operation of Review*. The duties of the Review participants shall include the following:

(1) *Consolidation of Detainee Information*. The Attorney General shall, to the extent reasonably practicable, and in coordination with the other Review participants, assemble all information in the possession of the Federal Government that pertains to any individual currently detained at Guantanamo and that is relevant to determining the proper disposition of any such individual. All executive branch departments and agencies shall promptly comply with any request of the Attorney General to provide information in their possession or control pertaining to any such individual. The Attorney General may seek further information relevant to the Review from any source.

(2) *Determination of Transfer*. The Review shall determine, on a rolling basis and as promptly as possible with respect to the individuals currently detained at Guantanamo, whether it is possible to transfer or release the individuals consistent with the national security and foreign policy interests of the United States and, if so, whether and how the Secretary of Defense may effect their transfer or release. The Secretary of Defense, the Secretary of State, and, as appropriate, other Review participants shall work to effect promptly the release or transfer of all individuals for whom release or transfer is possible.

(3) *Determination of Prosecution*. In accordance with United States law, the cases of individuals detained at Guantanamo not approved for release or transfer shall be evaluated to determine whether the Federal Government should seek to prosecute the detained individuals for any offenses they may have committed, including whether it is feasible to prosecute such individuals before a court established pursuant to Article III of the United States Constitution, and the Review participants shall in turn take the necessary and appropriate steps based on such determinations.

(4) *Determination of Other Disposition*. With respect to any individuals currently detained at Guantanamo whose disposition is not achieved under paragraphs (2) or (3) of this subsection, the Review shall select lawful means, consistent with the national security and foreign policy interests of the United States and the interests of justice, for the disposition of such individuals. The appropriate authorities shall promptly implement such dispositions.

(5) *Consideration of Issues Relating to Transfer to the United States*. The Review shall identify and consider legal, logistical, and security issues relating to the potential transfer of individuals currently detained at Guantanamo to facilities within the United States, and the Review participants shall work with the Congress on any legislation that may be appropriate.

SEC. 5. *Diplomatic Efforts*. The Secretary of State shall expeditiously pursue and direct such negotiations and diplomatic efforts with foreign governments as are necessary and appropriate to implement this order.

SEC. 6. *Humane Standards of Confinement*. No individual currently detained at Guantanamo shall be held in the custody or under the effective control of any officer, employee, or other agent of the United States Government, or at a facility owned, operated, or controlled by a department or agency of the United States, except in conformity with all applicable laws governing the conditions of such confinement, including Common Article 3 of the Geneva Conventions. The Secretary of Defense shall immediately undertake a review of the conditions of detention at Guantanamo to ensure full compliance with this directive. Such review shall be completed within 30 days and any necessary corrections shall be implemented immediately thereafter.

SEC. 7. *Military Commissions*. The Secretary of Defense shall immediately take steps sufficient to ensure that during the pendency of the Review described in section 4 of this order, no charges are sworn, or referred to a

military commission under the Military Commissions Act of 2006 and the Rules for Military Commissions, and that all proceedings of such military commissions to which charges have been referred but in which no judgment has been rendered, and all proceedings pending in the United States Court of Military Commission Review, are halted.

SEC. 8. *General Provisions*.

(a) Nothing in this order shall prejudice the authority of the Secretary of Defense to determine the disposition of any detainees not covered by this order.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

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

BARACK OBAMA.

§ 802. Art. 2. Persons subject to this chapter

(a) The following persons are subject to this chapter:

(1) Members of a regular component of the armed forces, including those awaiting discharge after expiration of their terms of enlistment; volunteers from the time of their muster or acceptance into the armed forces; inductees from the time of their actual induction into the armed forces; and other persons lawfully called or ordered into, or to duty in or for training in, the armed forces, from the dates when they are required by the terms of the call or order to obey it.

(2) Cadets, aviation cadets, and midshipmen.

(3) Members of a reserve component while on inactive-duty training, but in the case of members of the Army National Guard of the United States or the Air National Guard of the United States only when in Federal service.

(4) Retired members of a regular component of the armed forces who are entitled to pay.

(5) Retired members of a reserve component who are receiving hospitalization from an armed force.

(6) Members of the Fleet Reserve and Fleet Marine Corps Reserve.

(7) Persons in custody of the armed forces serving a sentence imposed by a court-martial.

(8) Members of the National Oceanic and Atmospheric Administration, Public Health Service, and other organizations, when assigned to and serving with the armed forces.

(9) Prisoners of war in custody of the armed forces.

(10) In time of declared war or a contingency operation, persons serving with or accompanying an armed force in the field.

(11) Subject to any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law, persons serving with, employed by, or accompanying the armed forces outside the United States and outside the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(12) Subject to any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law, persons within an area leased by or otherwise reserved or acquired for the use of the United States which is under the control of the Secretary concerned and which is outside the United States and outside the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(13) Individuals belonging to one of the eight categories enumerated in Article 4 of the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316), who violate the law of war.

(b) The voluntary enlistment of any person who has the capacity to understand the significance of enlisting in the armed forces shall be valid for purposes of jurisdiction under subsection (a) and a change of status from civilian to member of the armed forces shall be effective upon the taking of the oath of enlistment.

(c) Notwithstanding any other provision of law, a person serving with an armed force who—

(1) submitted voluntarily to military authority;

(2) met the mental competency and minimum age qualifications of sections 504 and 505 of this title at the time of voluntary submission to military authority;

(3) received military pay or allowances; and

(4) performed military duties;

is subject to this chapter until such person's active service has been terminated in accordance with law or regulations promulgated by the Secretary concerned.

(d)(1) A member of a reserve component who is not on active duty and who is made the subject of proceedings under section 815 (article 15) or section 830 (article 30) with respect to an offense against this chapter may be ordered to active duty involuntarily for the purpose of—

(A) investigation under section 832 of this title (article 32);

(B) trial by court-martial; or

(C) nonjudicial punishment under section 815 of this title (article 15).

(2) A member of a reserve component may not be ordered to active duty under paragraph (1) except with respect to an offense committed while the member was—

(A) on active duty; or

(B) on inactive-duty training, but in the case of members of the Army National Guard of the United States or the Air National Guard of the United States only when in Federal service.

(3) Authority to order a member to active duty under paragraph (1) shall be exercised under regulations prescribed by the President.

(4) A member may be ordered to active duty under paragraph (1) only by a person empowered to convene general courts-martial in a regular component of the armed forces.

(5) A member ordered to active duty under paragraph (1), unless the order to active duty was approved by the Secretary concerned, may not—

(A) be sentenced to confinement; or

(B) be required to serve a punishment consisting of any restriction on liberty during a period other than a period of inactive-duty training or active duty (other than active duty ordered under paragraph (1)).

(e) The provisions of this section are subject to section 876b(d)(2) of this title (article 76b(d)(2)).

(Aug. 10, 1956, ch. 1041, 70A Stat. 37; Pub. L. 86–70, § 6(b), June 25, 1959, 73 Stat. 142; Pub. L.

86–624, §4(b), July 12, 1960, 74 Stat. 411; Pub. L. 87–651, title I, §104, Sept. 7, 1962, 76 Stat. 508; Pub. L. 89–718, §8(a), Nov. 2, 1966, 80 Stat. 1117; Pub. L. 96–107, title VIII, §801(a), Nov. 9, 1979, 93 Stat. 810; Pub. L. 96–513, title V, §511(24), Dec. 12, 1980, 94 Stat. 2922; Pub. L. 98–209, §13(a), Dec. 6, 1983, 97 Stat. 1408; Pub. L. 99–661, div. A, title VIII, §804(a), Nov. 14, 1986, 100 Stat. 3906; Pub. L. 100–456, div. A, title XII, §1234(a)(1), Sept. 29, 1988, 102 Stat. 2059; Pub. L. 104–106, div. A, title XI, §1133(b), Feb. 10, 1996, 110 Stat. 466; Pub. L. 109–364, div. A, title V, §552, Oct. 17, 2006, 120 Stat. 2217; Pub. L. 109–366, §4(a)(1), Oct. 17, 2006, 120 Stat. 2631; Pub. L. 111–84, div. A, title XVIII, §1803(a)(1), Oct. 28, 2009, 123 Stat. 2612.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
802	50:552.	May 5, 1950, ch. 169, §1 (Art. 2), 64 Stat. 109.

In clause (1), the words ''Members of'' are substituted for the words ''All persons belonging to''. The words ''all'' and ''the same'' are omitted as surplusage. The word ''when'' is inserted after the word ''dates''.

In clauses (1) and (8), the words ''of the United States'' are omitted as surplusage.

In clause (3), the words ''Members of a reserve component'' are substituted for the words ''Reserve personnel''. The word ''orders'' in the last clause is omitted as surplusage.

In clause (4), the word ''receive'' is omitted as surplusage.

In clauses (4) and (5), the word ''members'' is substituted for the word ''personnel''.

In clause (8), the word ''members'' is substituted for the word ''personnel''.

In clauses (11) and (12), the word ''outside'' is substituted for the word ''without'' wherever it occurs. The words ''the continental limits of'' are omitted, since section 101(1) of this title defines the United States to include the States and the District of Columbia. The words ''the provision of'', ''all'', and ''territories'' are omitted as surplusage.

In clause (12), the words ''Secretary concerned'' are substituted for the words ''Secretary of a Department''.

1962 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
802(11), (12).	50:552(11) and (12).	Aug. 1, 1956, ch. 852, §23, 70 Stat. 911.

The Act of August 1, 1956, was enacted during the pendency of the codification bill.

AMENDMENTS

2009—Subsec. (a)(13). Pub. L. 111–84 amended par. (13) generally. Prior to amendment, par. (13) read as follows: ''Lawful enemy combatants (as that term is defined in section 948a(2) of this title) who violate the law of war.''

2006—Subsec. (a)(10). Pub. L. 109–364 substituted ''declared war or a contingency operation'' for ''war''.

Subsec. (a)(13). Pub. L. 109–366 added par. (13).

1996—Subsec. (e). Pub. L. 104–106 added subsec. (e).

1988—Subsec. (a)(11), (12). Pub. L. 100–456 struck out ''the Canal Zone,'' before ''the Commonwealth''.

1986—Subsec. (a)(3). Pub. L. 99–661, §804(a)(1), substituted ''on inactive-duty training, but in the case of members of the Army National Guard of the United States or the Air National Guard of the United States only when in Federal service'' for ''they are on inactive duty training authorized by written orders which are voluntarily accepted by them and which specify that they are subject to this chapter''.

Subsec. (d). Pub. L. 99–661, §804(a)(2), added subsec. (d).

1983—Subsec. (a)(11), (12). Pub. L. 98–209, §13(a)(1), substituted ''outside the Canal Zone'' for ''outside the following: the Canal Zone'' and inserted ''the Commonwealth of'' before ''Puerto Rico''.

Subsec. (b). Pub. L. 98–209, §13(a)(2), struck out ''of this section'' after ''subsection (a)''.

1980—Subsec. (a)(8). Pub. L. 96–513 substituted ''National Oceanic and Atmospheric Administration'' for ''Environmental Science Services Administration''.

1979—Pub. L. 96–107 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

1966—Pub. L. 89–718 substituted ''Environmental Science Services Administration'' for ''Coast and Geodetic Survey'' in cl. (8).

1962—Pub. L. 87–651 inserted ''Guam,'' after ''Puerto Rico,'' in cls. (11) and (12).

1960—Pub. L. 86–624 struck out ''the main group of the Hawaiian Islands,'' before ''Puerto Rico'' in cls. (11) and (12).

1959—Pub. L. 86–70 struck out ''that part of Alaska east of longitude 172 degrees west,'' before ''the Canal Zone'' in cls. (11) and (12).

EFFECTIVE DATE OF 1986 AMENDMENT

Section 804(e) of Pub. L. 99–661 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 803 of this title] shall apply only to an offense committed on or after the effective date of this title [see section 808 of Pub. L. 99–661, set out below].''

Section 808 of Pub. L. 99–661 provided that: ''Except as provided in sections 802(b), 805(c), and 807(b) [set out as notes under sections 850a, 843, and 806, respectively, of this title], this title and the amendments made by this title [enacting section 850a of this title, amending this section and sections 803, 806, 825, 843, 860, 936, and 937 of this title, and enacting provisions set out as notes under this section and sections 801, 806, 825, 843, 850a, and 860 of this title] shall take effect on the earlier of—

''(1) the last day of the 120-day period beginning on the date of the enactment of this Act [Nov. 14, 1986]; or

''(2) the date specified in an Executive order for such amendments to take effect.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 89–718, §8(a), Nov. 2, 1966, 80 Stat. 1117, cited as a credit to this section, was repealed by Pub. L. 97–295, §6(b), Oct. 12, 1982, 96 Stat. 1314.

TRANSFER OF FUNCTIONS

All functions of Public Health Service, of the Surgeon General of the Public Health Service, and of all other officers and employees of the Public Health Service, and all functions of all agencies of or in the Public Health Service transferred to Secretary of Health, Education, and Welfare by 1966 Reorg. Plan No. 3, 31 F.R. 8855, 80 Stat. 1610, effective June 25, 1966, set out in the Appendix to Title 5, Government Organization and Employees.

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508(b) of Title 20, Education.

APPLICABILITY OF UNIFORM CODE OF MILITARY JUSTICE TO MEMBERS OF THE ARMED FORCES ORDERED TO DUTY OVERSEAS IN INACTIVE DUTY FOR TRAINING STATUS

Pub. L. 109–364, div. A, title V, § 551, Oct. 17, 2006, 120 Stat. 2217, provided that: ''Not later than March 1, 2007, the Secretaries of the military departments shall prescribe regulations, or amend current regulations, in order to provide that members of the Armed Forces who are ordered to duty at locations overseas in an inactive duty for training status are subject to the jurisdiction of the Uniform Code of Military Justice, pursuant to the provisions of section 802(a)(3) of title 10, United States Code (article 2(a)(3) of the Uniform Code of Military Justice), continuously from the commencement of execution of such orders to the conclusion of such orders.''

ADVISORY COMMITTEE ON CRIMINAL LAW JURISDICTION OVER CIVILIANS ACCOMPANYING ARMED FORCES IN TIME OF ARMED CONFLICT

Pub. L. 104–106, div. A, title XI, § 1151, Feb. 10, 1996, 110 Stat. 467, directed the Secretary of Defense and the Attorney General, not later than 45 days after Feb. 10, 1996, to jointly appoint an advisory committee to review and make recommendations concerning the appropriate forum for criminal jurisdiction over civilians accompanying the Armed Forces outside the United States in time of armed conflict, directed the committee to transmit to the Secretary of Defense and the Attorney General a report setting forth its findings and recommendations not later than Dec. 15, 1996, directed the Secretary of Defense and the Attorney General to jointly transmit the report of the committee to Congress not later than Jan. 15, 1997, and provided that the committee would terminate 30 days after the date on which the report had been submitted to Congress.

EX. ORD. NO. 10631. CODE OF CONDUCT FOR MEMBERS OF THE ARMED FORCES

Ex. Ord. No. 10631, Aug. 17, 1955, 20 F.R. 6057, as amended by Ex. Ord. No. 11382, Nov. 28, 1967, 32 F.R. 16247; Ex. Ord. No. 12017, Nov. 3, 1977, 42 F.R. 57941; Ex. Ord. No. 12633, Mar. 28, 1988, 53 F.R. 10355; Ex. Ord. No. 13286, § 76, Feb. 28, 2003, 68 F.R. 106231, provided:

By virtue of the authority vested in me as President of the United States, and as Commander in Chief of the armed forces of the United States, I hereby prescribe the Code of Conduct for Members of the Armed Forces of the United States which is attached to this order and hereby made a part thereof.

All members of the Armed Forces of the United States are expected to measure up to the standards embodied in this Code of Conduct while in combat or in captivity. To ensure achievement of these standards, members of the armed forces liable to capture shall be provided with specific training and instruction designed to better equip them to counter and withstand all enemy efforts against them, and shall be fully instructed as to the behavior and obligations expected of them during combat or captivity.

The Secretary of Defense (and the Secretary of Homeland Security with respect to the Coast Guard except when it is serving as part of the Navy) shall take such action as is deemed necessary to implement this order and to disseminate and make the said Code known to all members of the armed forces of the United States.

CODE OF CONDUCT FOR MEMBERS OF THE UNITED STATES ARMED FORCES

I

I am an American, fighting in the forces which guard my country and our way of life. I am prepared to give my life in their defense.

II

I will never surrender of my own free will. If in command, I will never surrender the members of my command while they still have the means to resist.

III

If I am captured I will continue to resist by all means available. I will make every effort to escape and aid others to escape. I will accept neither parole nor special favors from the enemy.

IV

If I become a prisoner of war, I will keep faith with my fellow prisoners. I will give no information or take part in any action which might be harmful to my comrades. If I am senior, I will take command. If not, I will obey the lawful orders of those appointed over me and will back them up in every way.

V

When questioned, should I become a prisoner of war, I am required to give name, rank, service number and date of birth. I will evade answering further questions to the utmost of my ability. I will make no oral or written statements disloyal to my country and its allies or harmful to their cause.

VI

I will never forget that I am an American, fighting for freedom, responsible for my actions, and dedicated to the principles which made my country free. I will trust in my God and in the United States of America.

§ 803. Art. 3. Jurisdiction to try certain personnel

(a) Subject to section 843 of this title (article 43), a person who is in a status in which the person is subject to this chapter and who committed an offense against this chapter while formerly in a status in which the person was subject to this chapter is not relieved from amenability to the jurisdiction of this chapter for that offense by reason of a termination of that person's former status.

(b) Each person discharged from the armed forces who is later charged with having fraudulently obtained his discharge is, subject to section 843 of this title (article 43), subject to trial by court-martial on that charge and is after apprehension subject to this chapter while in the custody of the armed forces for that trial. Upon conviction of that charge he is subject to trial by court-martial for all offenses under this chapter committed before the fraudulent discharge.

(c) No person who has deserted from the armed forces may be relieved from amenability to the jurisdiction of this chapter by virtue of a separation from any later period of service.

(d) A member of a reserve component who is subject to this chapter is not, by virtue of the termination of a period of active duty or inactive-duty training, relieved from amenability to the jurisdiction of this chapter for an offense against this chapter committed during such period of active duty or inactive-duty training.

(Aug. 10, 1956, ch. 1041, 70A Stat. 38; Pub. L. 99–661, div. A, title VIII, § 804(b), Nov. 14, 1986, 100 Stat. 3907; Pub. L. 102–484, div. A, title X, § 1063, Oct. 23, 1992, 106 Stat. 2505.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
803(a)	50:553(a).	May 5, 1950, ch. 169, § 1 (Art. 3), 64 Stat. 109.
803(b)	50:553(b).	
803(c)	50:553(c).	

In subsection (a), the words ''the provisions of'' are omitted as surplusage. The words ''no * * * may'' are substituted for the words ''any * * * shall not''. The word ''for'' is substituted for the word ''of'' before the words ''five years''. The words ''of a State, a Territory, or'' are substituted for the words ''any State or Territory thereof or of''. The word ''court-martial'' is substituted for the word ''courts-martial''.

In subsection (b), the words ''Each person'' are substituted for the words ''All persons''. The words ''who is later'' are substituted for the word ''subsequently''. The words ''his discharge is'' are substituted for the words ''said discharge shall * * * be''. The words ''the provisions of'' are omitted as surplusage. The word ''is'' is substituted for the words ''shall * * * be''. The words ''he is'' are substituted for the words ''they shall be''. The word ''before'' is substituted for the words ''prior to''.

In subsection (c), the words ''No * * * may'' are substituted for the words ''Any * * * shall not''. The word ''later'' is substituted for the word ''subsequent''.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–484 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Subject to section 843 of this title (article 43), no person charged with having committed, while in a status in which he was subject to this chapter, an offense against this chapter, punishable by confinement for five years or more and for which the person cannot be tried in the courts of the United States or of a State, a Territory, or the District of Columbia, may be relieved from amenability to trial by court-martial by reason of the termination of that status.''

1986—Subsec. (d). Pub. L. 99–661 added subsec. (d).

EFFECTIVE DATE OF 1992 AMENDMENT

Section 1067 of Pub. L. 102–484 provided that: ''The amendments made by sections 1063, 1064, 1065, and 1066 [amending this section and sections 857, 863, 911, 918, and 920 of this title] shall take effect on the date of the enactment of this Act [Oct. 23, 1992] and shall apply with respect to offenses committed on or after that date.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–661 applicable to offenses committed on or after the earlier of (1) the last day of the 120-day period beginning on Nov. 14, 1986; or (2) the date specified in an Executive order, see sections 804(e) and 808 of Pub. L. 99–661, set out as notes under section 802 of this title.

§ 804. Art. 4. Dismissed officer's right to trial by court-martial

(a) If any commissioned officer, dismissed by order of the President, makes a written application for trial by court-martial, setting forth, under oath, that he has been wrongfully dismissed, the President, as soon as practicable, shall convene a general court-martial to try that officer on the charges on which he was dismissed. A court-martial so convened has jurisdiction to try the dismissed officer on those charges, and he shall be considered to have waived the right to plead any statute of limitations applicable to any offense with which he is charged. The court-martial may, as part of its sentence, adjudge the affirmance of the dismissal, but if the court-martial acquits the accused or if the sentence adjudged, as finally approved or affirmed, does not include dismissal or death, the Secretary concerned shall substitute for the dismissal ordered by the President a form of discharge authorized for administrative issue.

(b) If the President fails to convene a general court-martial within six months from the presentation of an application for trial under this article, the Secretary concerned shall substitute for the dismissal ordered by the President a form of discharge authorized for administrative issue.

(c) If a discharge is substituted for a dismissal under this article, the President alone may reappoint the officer to such commissioned grade and with such rank as, in the opinion of the President, that former officer would have attained had he not been dismissed. The reappointment of such a former officer shall be without regard to the existence of a vacancy and shall affect the promotion status of other officers only insofar as the President may direct. All time between the dismissal and the reappointment shall be considered as actual service for all purposes, including the right to pay and allowances.

(d) If an officer is discharged from any armed force by administrative action or is dropped from the rolls by order of the President, he has no right to trial under this article.

(Aug. 10, 1956, ch. 1041, 70A Stat. 38.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
804(a)	50:554(a).	May 5, 1950, ch. 169, § 1 (Art. 4), 64 Stat. 110.
804(b)	50:554(b).	
804(c)	50:554(c).	
804(d)	50:554(d).	

In subsection (a), the word ''If'' is substituted for the word ''When''. The word ''commissioned'' is inserted before the word ''officer''. The word ''considered'' is substituted for the word ''held''.

In subsections (a) and (b), the words ''Secretary concerned'' are substituted for the words ''Secretary of the Department''.

In subsection (c), the word ''If'' is substituted for the word ''Where''. The words ''the authority of'' are omitted as surplusage. The words ''grade and with such rank'' are substituted for the words ''rank and precedence'', since a person is appointed to a grade, not to a position of precedence, and the word ''rank'' is the accepted military word denoting the general idea of precedence. The words ''the existence of a'' are substituted for the word ''position'' for clarity. The word ''receive'' is omitted as surplusage.

In subsection (d), the word ''If'' is substituted for the word ''When''. The words ''he has no'' are substituted for the words ''there shall not be a''.

DELEGATION OF FUNCTIONS

For delegation to Secretary of Homeland Security of certain authority vested in President by this section, see section 2 of Ex. Ord. No. 10637, Sept. 16, 1955, 20 F.R. 7025, as amended, set out as a note under section 301 of Title 3, The President.

§ 805. Art. 5. Territorial applicability of this chapter

This chapter applies in all places.

(Aug. 10, 1956, ch. 1041, 70A Stat. 39.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
805	50:555.	May 5, 1950, ch. 169, § 1 (Art. 5), 64 Stat. 110.

The word ''applies'' is substituted for the words ''shall be applicable''.

§ 806. Art. 6. Judge advocates and legal officers

(a) The assignment for duty of judge advocates of the Army, Navy, Air Force, and Coast Guard shall be made upon the recommendation of the Judge Advocate General of the armed force of which they are members. The assignment for duty of judge advocates of the Marine Corps shall be made by direction of the Commandant of the Marine Corps. The Judge Advocate General or senior members of his staff shall make frequent inspections in the field in supervision of the administration of military justice.

(b) Convening authorities shall at all times communicate directly with their staff judge advocates or legal officers in matters relating to the administration of military justice; and the staff judge advocate or legal officer of any command is entitled to communicate directly with the staff judge advocate or legal officer of a superior or subordinate command, or with the Judge Advocate General.

(c) No person who has acted as member, military judge, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, or investigating officer in any case may later act as a staff judge advocate or legal officer to any reviewing authority upon the same case.

(d)(1) A judge advocate who is assigned or detailed to perform the functions of a civil office in the Government of the United States under section 973(b)(2)(B) of this title may perform such duties as may be requested by the agency concerned, including representation of the United States in civil and criminal cases.

(2) The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations providing that reimbursement may be a condition of assistance by judge advocates assigned or detailed under section 973(b)(2)(B) of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 39; Pub. L. 90–179, § 1(3), Dec. 8, 1967, 81 Stat. 545; Pub. L. 90–632, § 2(2), Oct. 24, 1968, 82 Stat. 1335; Pub. L. 98–209, § 2(b), Dec. 6, 1983, 97 Stat. 1393; Pub. L. 99–661, div. A, title VIII, § 807(a), Nov. 14, 1986, 100 Stat. 3909; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
806(a)	50:556(a).	May 5, 1950, ch. 169, § 1 (Art. 6), 64 Stat. 110.
806(b)	50:556(b).	
806(c)	50:556(c).	

In subsection (b), the word ''entitled'' is substituted for the word ''authorized''.

In subsection (c), the words ''may later'' are substituted for the words ''shall subsequently''.

AMENDMENTS

2002—Subsec. (d)(2). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1986—Subsec. (d). Pub. L. 99–661 added subsec. (d).

1983—Subsec. (a). Pub. L. 98–209 substituted ''Air Force, and'' for ''and Air Force and law specialists of the''.

1968—Subsec. (c). Pub. L. 90–632 substituted ''military judge'' for ''law officer''.

1967—Subsec. (a). Pub. L. 90–179 substituted reference to judge advocates of the Navy for reference to law specialists of the Navy and provided for the assignment of judge advocates of the Marine Corps.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 807(b) of Pub. L. 99–661 provided that: ''The amendment made by subsection (a) [amending this section]—

''(1) shall take effect on the date of the enactment of this Act [Nov. 14, 1986]; and

''(2) may not be construed to invalidate an action taken by a judge advocate, pursuant to an assignment or detail under section 973(b)(2)(B) of title 10, United States Code, before the date of the enactment of this Act.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§ 806a. Art. 6a. Investigation and disposition of matters pertaining to the fitness of military judges

(a) The President shall prescribe procedures for the investigation and disposition of charges, allegations, or information pertaining to the fitness of a military judge or military appellate judge to perform the duties of the judge's position. To the extent practicable, the procedures shall be uniform for all armed forces.

(b) The President shall transmit a copy of the procedures prescribed pursuant to this section to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

(Added Pub. L. 101–189, div. A, title XIII, § 1303, Nov. 29, 1989, 103 Stat. 1576; 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 X, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

AMENDMENTS

1999—Subsec. (b). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1996—Subsec. (b). 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''.

SUBCHAPTER II—APPREHENSION AND RESTRAINT

Sec. Art.
807. 7. Apprehension.

Sec.	Art.	
808.	8.	Apprehension of deserters.
809.	9.	Imposition of restraint.
810.	10.	Restraint of persons charged with offenses.
811.	11.	Reports and receiving of prisoners.
812.	12.	Confinement with enemy prisoners prohibited.
813.	13.	Punishment prohibited before trial.
814.	14.	Delivery of offenders to civil authorities.

§ 807. Art. 7. Apprehension

(a) Apprehension is the taking of a person into custody.

(b) Any person authorized under regulations governing the armed forces to apprehend persons subject to this chapter or to trial thereunder may do so upon reasonable belief that an offense has been committed and that the person apprehended committed it.

(c) Commissioned officers, warrant officers, petty officers, and noncommissioned officers have authority to quell quarrels, frays, and disorders among persons subject to this chapter and to apprehend persons subject to this chapter who take part therein.

(Aug. 10, 1956, ch. 1041, 70A Stat. 39.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
807(a)	50:561(a).	May 5, 1950, ch. 169, § 1 (Art. 7), 64 Stat. 111.
807(b)	50:561(b).	
807(c)	50:561(c).	

In subsection (a), the words ''into custody'' and ''of a person'' are transposed.

In subsection (c), the words ''All'' and ''shall'' are omitted as surplusage. The word ''Commissioned'' is inserted before the word ''officers'' for clarity. The word ''therein'' is substituted for the words ''in the same''.

§ 808. Art. 8. Apprehension of deserters

Any civil officer having authority to apprehend offenders under the laws of the United States or of a State, Commonwealth, possession, or the District of Columbia may summarily apprehend a deserter from the armed forces and deliver him into the custody of those forces.

(Aug. 10, 1956, ch. 1041, 70A Stat. 40; Pub. L. 109–163, div. A, title X, § 1057(a)(4), Jan. 6, 2006, 119 Stat. 3440.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
808	50:562.	May 5, 1950, ch. 169, § 1 (Art. 8), 64 Stat. 111.

The word ''may'' is substituted for the words ''It shall be lawful for * * * to''. The words ''a State, Territory, Commonwealth, or possession, or the District of Columbia'' are substituted for the words ''any State, District, Territory, or possession of the United States''. The words ''of the United States'', before the words ''and deliver'', are omitted as surplusage. The words ''those forces'' are substituted for the words ''the armed forces of the United States'', after the words ''custody of''.

AMENDMENTS

2006—Pub. L. 109–163 substituted ''Commonwealth, possession,'' for ''Territory, Commonwealth, or possession,''.

§ 809. Art. 9. Imposition of restraint

(a) Arrest is the restraint of a person by an order, not imposed as a punishment for an offense, directing him to remain within certain specified limits. Confinement is the physical restraint of a person.

(b) An enlisted member may be ordered into arrest or confinement by any commissioned officer by an order, oral or written, delivered in person or through other persons subject to this chapter. A commanding officer may authorize warrant officers, petty officers, or noncommissioned officers to order enlisted members of his command or subject to his authority into arrest or confinement.

(c) A commissioned officer, a warrant officer, or a civilian subject to this chapter or to trial thereunder may be ordered into arrest or confinement only by a commanding officer to whose authority he is subject, by an order, oral or written, delivered in person or by another commissioned officer. The authority to order such persons into arrest or confinement may not be delegated.

(d) No person may be ordered into arrest or confinement except for probable cause.

(e) Nothing in this article limits the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority may be notified.

(Aug. 10, 1956, ch. 1041, 70A Stat. 40.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
809(a)	50:563(a).	May 5, 1950, ch. 169, § 1 (Art. 9), 64 Stat. 111.
809(b)	50:563(b).	
809(c)	50:563(c).	
809(d)	50:563(d).	
809(e)	50:563(e).	

In subsection (b), the word ''commissioned'' is inserted before the word ''officer'' for clarity. The words ''member'' and ''members'', respectively, are substituted for the words ''person'' and ''persons''.

In subsection (c), the words ''A commissioned'' are substituted for the word ''An'' for clarity. The word ''commissioned'' is inserted after the word ''another'' for clarity.

In subsection (d), the word ''may'' is substituted for the word ''shall''.

In subsection (e), the word ''limits'' is substituted for the words ''shall be construed to limit''.

§ 810. Art. 10. Restraint of persons charged with offenses

Any person subject to this chapter charged with an offense under this chapter shall be ordered into arrest or confinement, as circumstances may require; but when charged only with an offense normally tried by a summary court-martial, he shall not ordinarily be placed in confinement. When any person subject to this chapter is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform him of the specific wrong of which he is accused and to try him or to dismiss the charges and release him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 40.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
810	50:564.	May 5, 1950, ch. 169, § 1 (Art. 10), 64 Stat. 111.

The word ''he'' is substituted for the words ''such person''.

§ 811. Art. 11. Reports and receiving of prisoners

(a) No provost marshal, commander of a guard, or master at arms may refuse to receive or keep any prisoner committed to his charge by a commissioned officer of the armed forces, when the committing officer furnishes a statement, signed by him, of the offense charged against the prisoner.

(b) Every commander of a guard or master at arms to whose charge a prisoner is committed shall, within twenty-four hours after that commitment or as soon as he is relieved from guard, report to the commanding officer the name of the prisoner, the offense charged against him, and the name of the person who ordered or authorized the commitment.

(Aug. 10, 1956, ch. 1041, 70A Stat. 40.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
811(a)	50:565(a).	May 5, 1950, ch. 169, § 1 (Art. 11), 64 Stat. 112.
811(b)	50:565(b).	

In subsection (a), the word ''may'' is substituted for the word ''shall''. The words ''a commissioned'' are substituted for the word ''an'' for clarity.

§ 812. Art. 12. Confinement with enemy prisoners prohibited

No member of the armed forces may be placed in confinement in immediate association with enemy prisoners or other foreign nationals not members of the armed forces.

(Aug. 10, 1956, ch. 1041, 70A Stat. 41.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
812	50:566.	May 5, 1950, ch. 169, § 1 (Art. 12), 64 Stat. 112.

The words ''of the United States'' are omitted as surplusage. The word ''may'' is substituted for the word ''shall''.

§ 813. Art. 13. Punishment prohibited before trial

No person, while being held for trial, may be subjected to punishment or penalty other than arrest or confinement upon the charges pending against him, nor shall the arrest or confinement imposed upon him be any more rigorous than the circumstances require to insure his presence, but he may be subjected to minor punishment during that period for infractions of discipline.

(Aug. 10, 1956, ch. 1041, 70A Stat. 41; Pub. L. 97–81, § 3, Nov. 20, 1981, 95 Stat. 1087.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
813	50:567.	May 5, 1950, ch. 169, § 1 (Art. 13), 64 Stat. 112.

The words ''the provisions of'' are omitted as surplusage. The word ''results'' is changed to the singular. The word ''may'' is substituted for the word ''shall''.

AMENDMENTS

1981—Pub. L. 97–81 substituted ''No person, while being held for trial, may be subjected'' for ''Subject to section 857 of this title (article 57), no person, while being held for trial or the result of trial, may be subjected''.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–81 to take effect at the end of the 60-day period beginning on Nov. 20, 1981, and to apply to each person held as the result of a court-martial sentence announced on or after that date, see section 7(a) and (b)(2) of Pub. L. 97–81, set out as an Effective Date note under section 706 of this title.

§ 814. Art. 14. Delivery of offenders to civil authorities

(a) Under such regulations as the Secretary concerned may prescribe, a member of the armed forces accused of an offense against civil authority may be delivered, upon request, to the civil authority for trial.

(b) When delivery under this article is made to any civil authority of a person undergoing sentence of a court-martial, the delivery, if followed by conviction in a civil tribunal, interrupts the execution of the sentence of the court-martial, and the offender after having answered to the civil authorities for his offense shall, upon the request of competent military authority, be returned to military custody for the completion of his sentence.

(Aug. 10, 1956, ch. 1041, 70A Stat. 41.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
814(a)	50:568(a).	May 5, 1950, ch. 169, § 1 (Art. 14), 64 Stat. 112.
814(b)	50:568(b).	

In subsection (a), the words ''Secretary concerned'' are substituted for the words ''Secretary of the Department''.

In subsection (b), the word ''interrupts'' is substituted for the words ''shall be held to interrupt''. The word ''his'' is substituted for the words ''the said court-martial''.

REGULATIONS FOR DELIVERY OF MILITARY PERSONNEL TO CIVIL AUTHORITIES WHEN CHARGED WITH CERTAIN OFFENSES

Pub. L. 100–456, div. A, title VII, § 721, Sept. 29, 1988, 102 Stat. 2001, directed the Secretary of Defense to ensure that the Secretaries of the military departments had issued uniform regulations pursuant to this section not later than 90 days after Sept. 29, 1988, and to transmit to committees of Congress a copy of such regulations and any recommendations for additional legislation not later than 120 days after Sept. 29, 1988.

SUBCHAPTER III—NON-JUDICIAL PUNISHMENT

Sec.	Art.	
815.	15.	Commanding officer's non-judicial punishment.

§815. Art. 15. Commanding officer's non-judicial punishment

(a) Under such regulations as the President may prescribe, and under such additional regulations as may be prescribed by the Secretary concerned, limitations may be placed on the powers granted by this article with respect to the kind and amount of punishment authorized, the categories of commanding officers and warrant officers exercising command authorized to exercise those powers, the applicability of this article to an accused who demands trial by court-martial, and the kinds of courts-martial to which the case may be referred upon such a demand. However, except in the case of a member attached to or embarked in a vessel, punishment may not be imposed upon any member of the armed forces under this article if the member has, before the imposition of such punishment, demanded trial by court-martial in lieu of such punishment. Under similar regulations, rules may be prescribed with respect to the suspension of punishments authorized hereunder. If authorized by regulations of the Secretary concerned, a commanding officer exercising general court-martial jurisdiction or an officer of general or flag rank in command may delegate his powers under this article to a principal assistant.

(b) Subject to subsection (a), any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one or more of the following disciplinary punishments for minor offenses without the intervention of a court-martial—

(1) upon officers of his command—

(A) restriction to certain specified limits, with or without suspension from duty, for not more than 30 consecutive days;

(B) if imposed by an officer exercising general court-martial jurisdiction or an officer of general or flag rank in command—

(i) arrest in quarters for not more than 30 consecutive days;

(ii) forfeiture of not more than one-half of one month's pay per month for two months;

(iii) restriction to certain specified limits, with or without suspension from duty, for not more than 60 consecutive days;

(iv) detention of not more than one-half of one month's pay per month for three months;

(2) upon other personnel of his command—

(A) if imposed upon a person attached to or embarked in a vessel, confinement on bread and water or diminished rations for not more than three consecutive days;

(B) correctional custody for not more than seven consecutive days;

(C) forfeiture of not more than seven days' pay;

(D) reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction;

(E) extra duties, including fatigue or other duties, for not more than 14 consecutive days;

(F) restriction to certain specified limits, with or without suspension from duty, for not more than 14 consecutive days;

(G) detention of not more than 14 days' pay;

(H) if imposed by an officer of the grade of major or lieutenant commander, or above—

(i) the punishment authorized under clause (A);

(ii) correctional custody for not more than 30 consecutive days;

(iii) forfeiture of not more than one-half of one month's pay per month for two months;

(iv) reduction to the lowest or any intermediate pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction, but an enlisted member in a pay grade above E–4 may not be reduced more than two pay grades;

(v) extra duties, including fatigue or other duties, for not more than 45 consecutive days;

(vi) restrictions to certain specified limits, with or without suspension from duty, for not more than 60 consecutive days;

(vii) detention of not more than one-half of one month's pay per month for three months.

Detention of pay shall be for a stated period of not more than one year but if the offender's term of service expires earlier, the detention shall terminate upon that expiration. No two or more of the punishments of arrest in quarters, confinement on bread and water or diminished rations, correctional custody, extra duties, and restriction may be combined to run consecutively in the maximum amount imposable for each. Whenever any of those punishments are combined to run consecutively, there must be an apportionment. In addition, forfeiture of pay may not be combined with detention of pay without an apportionment. For the purposes of this subsection, ''correctional custody'' is the physical restraint of a person during duty or nonduty hours and may include extra duties, fatigue duties, or hard labor. If practicable, correctional custody will not be served in immediate association with persons awaiting trial or held in confinement pursuant to trial by court-martial.

(c) An officer in charge may impose upon enlisted members assigned to the unit of which he is in charge such of the punishments authorized under subsection (b)(2)(A)–(G) as the Secretary concerned may specifically prescribe by regulation.

(d) The officer who imposes the punishment authorized in subsection (b), or his successor in command, may, at any time, suspend probationally any part or amount of the unexecuted punishment imposed and may suspend probationally a reduction in grade or a forfeiture imposed under subsection (b), whether or not executed. In addition, he may, at any time, remit or mitigate any part or amount of the unexecuted punishment imposed and may set aside in whole or in part the punishment, whether executed or unexecuted, and restore all rights, privileges, and

property affected. He may also mitigate reduction in grade to forfeiture or detention of pay. When mitigating—

(1) arrest in quarters to restriction;

(2) confinement on bread and water or diminished rations to correctional custody;

(3) correctional custody or confinement on bread and water or diminished rations to extra duties or restriction, or both; or

(4) extra duties to restriction;

the mitigated punishment shall not be for a greater period than the punishment mitigated. When mitigating forfeiture of pay to detention of pay, the amount of the detention shall not be greater than the amount of the forfeiture. When mitigating reduction in grade to forfeiture or detention of pay, the amount of the forfeiture or detention shall not be greater than the amount that could have been imposed initially under this article by the officer who imposed the punishment mitigated.

(e) A person punished under this article who considers his punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The superior authority may exercise the same powers with respect to the punishment imposed as may be exercised under subsection (d) by the officer who imposed the punishment. Before acting on an appeal from a punishment of—

(1) arrest in quarters for more than seven days;

(2) correctional custody for more than seven days;

(3) forfeiture of more than seven days' pay;

(4) reduction of one or more pay grades from the fourth or a higher pay grade;

(5) extra duties for more than 14 days;

(6) restriction for more than 14 days; or

(7) detention of more than 14 days' pay;

the authority who is to act on the appeal shall refer the case to a judge advocate or a lawyer of the Department of Homeland Security for consideration and advice, and may so refer the case upon appeal from any punishment imposed under subsection (b).

(f) The imposition and enforcement of disciplinary punishment under this article for any act or omission is not a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission, and not properly punishable under this article; but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

(g) The Secretary concerned may, by regulation, prescribe the form of records to be kept of proceedings under this article and may also prescribe that certain categories of those proceedings shall be in writing.

(Aug. 10, 1956, ch. 1041, 70A Stat. 41; Pub. L. 87–648, § 1, Sept. 7, 1962, 76 Stat. 447; Pub. L. 90–179, § 1(4), Dec. 8, 1967, 81 Stat. 545; Pub. L. 90–623, § 2(4), Oct. 22, 1968, 82 Stat. 1314; Pub. L. 98–209, §§ 2(c), 13(b), Dec. 6, 1983, 97 Stat. 1393, 1408; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
815(a)	50:571(a).	May 5, 1950, ch. 169, § 1 (Art. 15), 64 Stat. 112.
815(b)	50:571(b).	
815(c)	50:571(c).	
815(d)	50:571(d).	
815(e)	50:571(e).	

In subsection (a), the words ''not more than'' are substituted for the words ''a period not to exceed'', ''not to exceed'', and ''a period not exceeding''.

In subsection (a)(1), the words ''and warrant officers'' are omitted, since the word ''officer'', as defined in section 101(14) of this title, includes warrant officers.

In clause (1)(C), the words ''one month's pay'' are substituted for the words ''his pay per month for a period not exceeding one month''.

In subsection (b), the words ''Secretary concerned'' are substituted for the words ''Secretary of a Department''.

In subsection (c), the word ''subsections'' is substituted for the word ''subdivisions''. The words ''enlisted members'' are substituted for the words ''enlisted persons''.

In subsections (d) and (e), the words ''authority of'' are omitted as surplusage.

In subsection (d), the word ''considers'' is substituted for the word ''deems''. The word ''may'' is substituted for the words ''shall have power to * * * to''.

In subsection (e), the words ''is not'' are substituted for the words ''shall not be''.

AMENDMENTS

2002—Subsec. (e). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation'' in concluding provisions.

1983—Pub. L. 98–209, § 13(b)(1), substituted ''non-judicial'' for ''nonjudicial'' in section catchline.

Subsec. (b). Pub. L. 98–209, § 13(b)(2)(A), struck out ''of this section'' after ''subsection (a)'' in provisions preceding par. (1).

Subsec. (b)(2)(H)(i). Pub. L. 98–209, § 13(b)(2)(B), substituted ''clause (A)'' for ''subsection (b)(2)(A)''.

Subsec. (e). Pub. L. 98–209, § 2(c), substituted ''or a lawyer of the'' for ''of the Army, Navy, Air Force, or Marine Corps, or a law specialist or lawyer of the Coast Guard or''.

1968—Subsec. (e). Pub. L. 90–623 substituted ''or a law specialist or lawyer of the Coast Guard or Department of Transportation'' for ''or a law specialist or lawyer of the Marine Corps, Coast Guard, or Treasury Department''.

1967—Subsec. (e). Pub. L. 90–179 inserted reference to judge advocate of the Marine Corps and substituted reference to judge advocate of the Navy for reference to law specialist of the Navy.

1962—Subsec. (a). Pub. L. 87–648 redesignated former subsec. (b) as (a), inserted references to such regulations as the President may prescribe, permitted limitations to be placed on the categories of warrant officers exercising command authorized to exercise powers under this article, and on the kinds of courts-martial to which a case may be referred upon demand therefor, promulgation of regulations prescribing rules with respect to the suspension of punishment authorized by this article, and the delegation of powers to a principal assistant by a commanding officer exercising general court-martial jurisdiction or an officer of general or flag rank in command, if so authorized by the Secretary's regulations, and prohibited, except for members attached to or embarked in a vessel, imposition of punishment under this article on any member of the armed forces who, before imposition of such punishment, demands trial by court-martial. Former subsec. (a) redesignated (b).

Subsec. (b). Pub. L. 87–648 redesignated former subsec. (a) as (b), enlarged authority of commanding officers to

impose punishment upon officers by increasing the number of days restriction from not more than 14 to not more than 30 days, and the number of months one-half of one month's pay may be ordered forfeited by an officer exercising general court-martial jurisdiction from one to two months, empowering officers exercising general court-martial jurisdiction and officers of general or flag rank in command to impose arrest in quarters for not more than 30 consecutive days, restriction, with or without suspension from duty, for not more than 60 consecutive days, and detention of not more than one-half of one month's pay per month for three months, and officers of general or flag rank in command to order forfeiture of not more than one-half of one month's pay per month for two months, and the authority of commanding officers to impose punishment upon other personnel of his command to permit correctional custody for not more than seven consecutive days, forfeiture of not more than seven days' pay, and detention of not more than 14 days' pay, empowered officers of the grade of major or lieutenant commander, or above, to impose the punishments prescribed in clauses (i) to (vii) of subpar. (2) (H) upon personnel of his command other than officers, changed provisions which permitted reduction to next inferior grade, if the grade from which demoted was established by the command or an equivalent or lower command to permit reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction, and provisions which permitted extra duties for not more than two consecutive weeks, and not more than two hours per day, holidays included, to authorize extra duties, including fatigue or other duties, for not more than 14 consecutive days, inserted provisions limiting detention of pay for a stated period of not more than one year, prohibiting two or more of the punishments of arrest in quarters, confinement on bread and water or diminished rations, correctional custody, extra duties, and restriction to be combined to run consecutively in the maximum amount imposable for each, combining of forfeiture of pay with detention without an apportionment, and service of correctional custody, if practicable, in immediate association with persons awaiting trial or held in confinement pursuant to court-martial, requiring apportionment of punishments combined to run consecutively, and in those cases where forfeiture of pay is combined with detention of pay, defining ''correctional custody'', and struck out provisions which permitted withholding of privileges of officers and other personnel for not more than two consecutive weeks and which authorized confinement for not more than seven consecutive days if imposed upon a person attached to or embarked in a vessel. Former subsec. (b) redesignated (a).

Subsec. (c). Pub. L. 87–648 substituted ''under subsection (b)(2)(A)–(G) as the Secretary concerned may specifically prescribe by regulation'' for ''to be imposed by commanding officers as the Secretary concerned may by regulation specifically prescribe, as provided in subsections (a) and (b),'' and deleted ''for minor offenses'' after ''an officer in charge may''.

Subsecs. (d), (e). Pub. L. 87–648 added subsec. (d), redesignated former subsec. (d) as (e), inserted provisions requiring the authority who is to act on an appeal from any of the seven enumerated punishments to refer the case to a judge advocate of the Army or Air Force, a law specialist of the Navy, or a law specialist or lawyer of the Marine Corps, Coast Guard, or Treasury Department for advice, and authorizing such referral of any case on appeal from punishments under subsec. (b) of this section, and substituted ''The superior authority may exercise the same powers with respect to the punishment imposed as may be exercised under subsection (d) by the officer who imposed the punishment'' for ''The officer who imposes the punishment, his successor in command, and superior authority may suspend, set aside, or remit any part or amount of the punishment, and restore all rights, privileges, and property affected.'' Former subsec. (e) redesignated (f).

Subsecs. (f), (g). Pub. L. 87–648 redesignated former subsec. (e) as (f) and added subsec. (g).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 13(b) of Pub. L. 98–209 effective Dec. 6, 1983, and amendment by section 2(c) of Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90–623, set out as a note under section 5334 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 2 of Pub. L. 87–648 provided that: ''This Act [amending this section] becomes effective on the first day of the fifth month following the month in which it is enacted [September 1962].''

SUBCHAPTER IV—COURT-MARTIAL JURISDICTION

Sec.	Art.	
816.	16.	Courts-martial classified.
817.	17.	Jurisdiction of courts-martial in general.
818.	18.	Jurisdiction of general courts-martial.
819.	19.	Jurisdiction of special courts-martial.
820.	20.	Jurisdiction of summary courts-martial.
821.	21.	Jurisdiction of courts-martial not exclusive.

§816. Art. 16. Courts-martial classified

The three kinds of courts-martial in each of the armed forces are—

(1) general courts-martial, consisting of—

(A) a military judge and not less than five members or, in a case in which the accused may be sentenced to a penalty of death, the number of members determined under section 825a of this title (article 25a); or

(B) only a military judge, if before the court is assembled the accused, knowing the identity of the military judge and after consultation with defense counsel, requests orally on the record or in writing a court composed only of a military judge and the military judge approves;

(2) special courts-martial, consisting of—

(A) not less than three members; or

(B) a military judge and not less than three members; or

(C) only a military judge, if one has been detailed to the court, and the accused under the same conditions as those prescribed in clause (1)(B) so requests; and

(3) summary courts-martial, consisting of one commissioned officer.

(Aug. 10, 1956, ch. 1041, 70A Stat. 42; Pub. L. 90–632, §2(3), Oct. 24, 1968, 82 Stat. 1335; Pub. L. 98–209, §3(a), Dec. 6, 1983, 97 Stat. 1394; Pub. L. 107–107, div. A, title V, §582(a), Dec. 28, 2001, 115 Stat. 1124.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
816	50:576.	May 5, 1950, ch. 169, § 1 (Art. 16), 64 Stat. 113.

The word ''The'' is substituted for the words ''There shall be''. The word ''are'' is substituted for the word ''namely''. The words ''not less than five members'' are substituted for the words ''any number of members not less than five''. The words ''not less than three members'' are substituted for the words ''any number of members not less than three''. The word ''commissioned'' is inserted before the word ''officer'' in clause (3) for clarity.

AMENDMENTS

2001—Par. (1)(A). Pub. L. 107–107 inserted ''or, in a case in which the accused may be sentenced to a penalty of death, the number of members determined under section 825a of this title (article 25a)'' after ''five members''.

1983—Par. (1)(B). Pub. L. 98–209 substituted ''orally on the record or in writing'' for ''in writing''.

1968—Pub. L. 90–632 provided that a general or special court-martial shall consist of only a military judge if the accused, before the court is assembled, so requests in writing and the military judge approves, with the added requirements that the accused know the identity of the military judge and have the advice of counsel, and that the election be available in the case of a special court-martial only if a military judge has been detailed to the court.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title V, § 582(d), Dec. 28, 2001, 115 Stat. 1125, provided that: ''The amendments made by this section [enacting section 825a of this title and amending this section and section 829 of this title] shall apply with respect to offenses committed after December 31, 2002.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§ 817. Art. 17. Jurisdiction of courts-martial in general

(a) Each armed force has court-martial jurisdiction over all persons subject to this chapter. The exercise of jurisdiction by one armed force over personnel of another armed force shall be in accordance with regulations prescribed by the President.

(b) In all cases, departmental review after that by the officer with authority to convene a general court-martial for the command which held the trial, where that review is required under this chapter, shall be carried out by the department that includes the armed force of which the accused is a member.

(Aug. 10, 1956, ch. 1041, 70A Stat. 43.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
817(a)	50:577(a).	May 5, 1950, ch. 169, § 1 (Art. 17), 64 Stat. 114.
817(b)	50:577(b).	

In subsection (a), the word ''has'' is substituted for the words ''shall have''.

In subsection (b), the word ''after'' is substituted for the words ''subsequent to''. The words ''the provisions of'' are omitted as surplusage. The words ''department that includes the'' are inserted before the words ''armed force'', since the review is carried out by the department and not by the armed force.

§ 818. Art. 18. Jurisdiction of general courts-martial

Subject to section 817 of this title (article 17), general courts-martial have jurisdiction to try persons subject to this chapter for any offense made punishable by this chapter and may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this chapter, including the penalty of death when specifically authorized by this chapter. General courts-martial also have jurisdiction to try any person who by the law of war is subject to trial by a military tribunal and may adjudge any punishment permitted by the law of war. However, a general court-martial of the kind specified in section 816(1)(B) of this title (article 16(1)(B)) shall not have jurisdiction to try any person for any offense for which the death penalty may be adjudged unless the case has been previously referred to trial as a noncapital case.

(Aug. 10, 1956, ch. 1041, 70A Stat. 43; Pub. L. 90–632, § 2(4), Oct. 24, 1968, 82 Stat. 1335.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
818	50:578.	May 5, 1950, ch. 169, § 1 (Art. 18), 64 Stat. 114.

The word ''shall'' is omitted as surplusage wherever it occurs.

AMENDMENTS

1968—Pub. L. 90–632 provided that a general court-martial consisting of only a military judge has no jurisdiction in cases in which the death penalty may be adjudged unless the case has been previously referred to trial as a noncapital case.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§ 819. Art. 19. Jurisdiction of special courts-martial

Subject to section 817 of this title (article 17), special courts-martial have jurisdiction to try persons subject to this chapter for any noncapital offense made punishable by this chapter and, under such regulations as the President may prescribe, for capital offenses. Special courts-martial may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this chapter except death, dishonorable discharge, dismissal, confinement for more than one year, hard labor without confinement for more than three months, forfeiture of pay exceeding two-thirds pay per month, or forfeiture of pay for more than one year. A bad-conduct discharge, confinement for more than six months, or forfeiture of

pay for more than six months may not be adjudged unless a complete record of the proceedings and testimony has been made, counsel having the qualifications prescribed under section 827(b) of this title (article 27(b)) was detailed to represent the accused, and a military judge was detailed to the trial, except in any case in which a military judge could not be detailed to the trial because of physical conditions or military exigencies. In any such case in which a military judge was not detailed to the trial, the convening authority shall make a detailed written statement, to be appended to the record, stating the reason or reasons a military judge could not be detailed.

(Aug. 10, 1956, ch. 1041, 70A Stat. 43; Pub. L. 90–632, § 2(5), Oct. 24, 1968, 82 Stat. 1335; Pub. L. 106–65, div. A, title V, § 577(a), Oct. 5, 1999, 113 Stat. 625; Pub. L. 107–107, div. A, title X, § 1048(g)(4), Dec. 28, 2001, 115 Stat. 1228.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
819	50:579.	May 5, 1950, ch. 169, § 1 (Art. 19), 64 Stat. 114.

The word ''shall'' in the first sentence is omitted as surplusage. The words ''for more than'' are substituted for the words ''in excess of''. The words ''more than'' are substituted for the words ''a period exceeding''. The word ''may'' is substituted for the word ''shall'' in the last sentence.

AMENDMENTS

2001—Pub. L. 107–107, § 1048(g)(4), amended directory language of Pub. L. 106–65, § 577(a)(2). See 1999 Amendment note below.

1999—Pub. L. 106–65, § 577(a)(2), as amended by Pub. L. 107–107, § 1048(g)(4), inserted '', confinement for more than six months, or forfeiture of pay for more than six months'' after ''A bad-conduct discharge'' in third sentence.

Pub. L. 106–65, § 577(a)(1), substituted ''one year'' for ''six months'' in two places in second sentence.

1968—Pub. L. 90–632 provided that before a bad-conduct discharge may be adjudged by a special court-martial the accused must be detailed counsel who is legally qualified under the Code and a military judge must be detailed to the trial, with a detailed written statement appended to the record if a military judge was not detailed to the trial, because of physical conditions and military exigencies, stating the reasons that a military judge could not be so detailed.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title X, § 1048(g), Dec. 28, 2001, 115 Stat. 1228, provided that the amendment made by section 1048(g)(4) is effective as of Oct. 5, 1999, and as if included in Pub. L. 106–65 as enacted.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–65, div. A, title V, § 577(b), Oct. 5, 1999, 113 Stat. 625, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on the first day of the sixth month beginning after the date of the enactment of this Act [Oct. 5, 1999] and shall apply with respect to charges referred on or after that effective date to trial by special courts-martial.''

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§ 820. Art. 20. Jurisdiction of summary courts-martial

Subject to section 817 of this title (article 17), summary courts-martial have jurisdiction to try persons subject to this chapter, except officers, cadets, aviation cadets, and midshipmen, for any noncapital offense made punishable by this chapter. No person with respect to whom summary courts-martial have jurisdiction may be brought to trial before a summary court-martial if he objects thereto. If objection to trial by summary court-martial is made by an accused, trial may be ordered by special or general court-martial as may be appropriate. Summary courts-martial may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this chapter except death, dismissal, dishonorable or bad-conduct discharge, confinement for more than one month, hard-labor without confinement for more than 45 days, restriction to specified limits for more than two months, or forfeiture of more than two-thirds of one month's pay.

(Aug. 10, 1956, ch. 1041, 70A Stat. 43; Pub. L. 90–632, § 2(6), Oct. 24, 1968, 82 Stat. 1336.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
820	50:580.	May 5, 1950, ch. 169, § 1 (Art. 20), 64 Stat. 114.

The word ''shall'' in the first sentence is omitted as surplusage. The word ''may'' is substituted for the word ''shall'' in the second sentence. The words ''the provisions of'' are omitted as surplusage. The word ''If'' is substituted for the word ''Where''. The words ''for more than'' are substituted for the words ''in excess of''. The words ''more than'' are substituted for the words ''pay in excess of''.

AMENDMENTS

1968—Pub. L. 90–632 substituted provisions prohibiting trial by summary court-martial in all cases if the person objects thereto for provisions allowing such trial over the person's objection if he has previously been offered and has refused article 15 punishment.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§ 821. Art. 21. Jurisdiction of courts-martial not exclusive

The provisions of this chapter conferring jurisdiction upon courts-martial do not deprive military commissions, provost courts, or other military tribunals of concurrent jurisdiction with respect to offenders or offenses that by statute or by the law of war may be tried by military commissions, provost courts, or other military tribunals. This section does not apply to a military commission established under chapter 47A of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 44; Pub. L. 109–366, § 4(a)(2), Oct. 17, 2006, 120 Stat. 2631.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
821	50:581.	May 5, 1950, ch. 169, § 1 (Art. 21), 64 Stat. 115.

The words ''do not deprive'' are substituted for the words ''shall not be construed as depriving''. The words ''with respect to'' are substituted for the words ''in respect of''.

AMENDMENTS

2006—Pub. L. 109–366 inserted last sentence.

SUBCHAPTER V—COMPOSITION OF COURTS-MARTIAL

Sec.	Art.	
822.	22.	Who may convene general courts-martial.
823.	23.	Who may convene special courts-martial.
824.	24.	Who may convene summary courts-martial.
825.	25.	Who may serve on courts-martial.
825a.	25a.	Number of members in capital cases.
826.	26.	Military judge of a general or special court-martial.
827.	27.	Detail of trial counsel and defense counsel.
828.	28.	Detail or employment of reporters and interpreters.
829.	29.	Absent and additional members.

AMENDMENTS

2001—Pub. L. 107–107, div. A, title V, § 582(b)(2), Dec. 28, 2001, 115 Stat. 1124, added item 825a.

1968—Pub. L. 90–632, § 2(8), Oct. 24, 1968, 82 Stat. 1336, substituted ''Military judge of a general or special court-martial'' for ''Law officer of a general court-martial'' in item 826.

§ 822. Art. 22. Who may convene general courts-martial

(a) General courts-martial may be convened by—

(1) the President of the United States;

(2) the Secretary of Defense;

(3) the commanding officer of a unified or specified combatant command;

(4) the Secretary concerned;

(5) the commanding officer of an Army Group, an Army, an Army Corps, a division, a separate brigade, or a corresponding unit of the Army or Marine Corps;

(6) the commander in chief of a fleet; the commanding officer of a naval station or larger shore activity of the Navy beyond the United States;

(7) the commanding officer of an air command, an air force, an air division, or a separate wing of the Air Force or Marine Corps;

(8) any other commanding officer designated by the Secretary concerned; or

(9) any other commanding officer in any of the armed forces when empowered by the President.

(b) If any such commanding officer is an accuser, the court shall be convened by superior competent authority, and may in any case be convened by such authority if considered desirable by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 44; Pub. L. 99–433, title II, § 211(b), Oct. 1, 1986, 100 Stat. 1017; Pub. L. 109–163, div. A, title X, § 1057(a)(2), Jan. 6, 2006, 119 Stat. 3440.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
822(a)	50:586(a).	May 5, 1950, ch. 169, § 1 (Art. 22), 64 Stat. 115.
822(b)	50:586(b).	

Subsection (a)(2) is substituted for the words ''the Secretary of a Department''.

In subsection (a)(4), the words ''continental limits of the'' are omitted, since section 101(1) of this title defines the United States to include the States and the District of Columbia.

In subsection (a)(6), the words ''any other commanding officer'' are substituted for the words ''such other commanding officers as may be''.

In subsection (b), the word ''If'' is substituted for the word ''When''. The words ''if considered'' are substituted for the words ''when deemed''.

AMENDMENTS

2006—Subsec. (a)(5). Pub. L. 109–163 struck out ''a Territorial Department,'' before ''an Army Group''.

1986—Subsec. (a)(2) to (9). Pub. L. 99–433 added pars. (2) and (3) and redesignated existing pars. (2) to (7) as (4) to (9), respectively.

§ 823. Art. 23. Who may convene special courts-martial

(a) Special courts-martial may be convened by—

(1) any person who may convene a general court-martial;

(2) the commanding officer of a district, garrison, fort, camp, station, Air Force base, auxiliary air field, or other place where members of the Army or the Air Force are on duty;

(3) the commanding officer of a brigade, regiment, detached battalion, or corresponding unit of the Army;

(4) the commanding officer of a wing, group, or separate squadron of the Air Force;

(5) the commanding officer of any naval or Coast Guard vessel, shipyard, base, or station; the commanding officer of any Marine brigade, regiment, detached battalion, or corresponding unit; the commanding officer of any Marine barracks, wing, group, separate squadron, station, base, auxiliary air field, or other place where members of the Marine Corps are on duty;

(6) the commanding officer of any separate or detached command or group of detached units of any of the armed forces placed under a single commander for this purpose; or

(7) the commanding officer or officer in charge of any other command when empowered by the Secretary concerned.

(b) If any such officer is an accuser, the court shall be convened by superior competent authority, and may in any case be convened by such authority if considered advisable by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 44.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
823(a)	50:587(a).	May 5, 1950, ch. 169, § 1 (Art. 23), 64 Stat. 115.
823(b)	50:587(b).	

In subsection (a)(7), the words ''Secretary concerned'' are substituted for the words ''Secretary of a Department''.

In subsection (b), the word ''If'' is substituted for the word ''When''. The words ''if considered'' are substituted for the words ''when deemed''.

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.

§ 824. Art. 24. Who may convene summary courts-martial

(a) Summary courts-martial may be convened by—

(1) any person who may convene a general or special court-martial;

(2) the commanding officer of a detached company, or other detachment of the Army;

(3) the commanding officer of a detached squadron or other detachment of the Air Force; or

(4) the commanding officer or officer in charge of any other command when empowered by the Secretary concerned.

(b) When only one commissioned officer is present with a command or detachment he shall be the summary court-martial of that command or detachment and shall hear and determine all summary court-martial cases brought before him. Summary courts-martial may, however, be convened in any case by superior competent authority when considered desirable by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 45.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
824(a)	50:588(a).	May 5, 1950, ch. 169, § 1 (Art. 24), 64 Stat. 116.
824(b)	50:588(b).	

In subsection (a)(4), the words ''Secretary concerned'' are substituted for the words ''Secretary of a Department''.

In subsection (b), the words ''only one commissioned'' are substituted for the words ''but one'' for clarity. The word ''considered'' is substituted for the word ''deemed''.

§ 825. Art. 25. Who may serve on courts-martial

(a) Any commissioned officer on active duty is eligible to serve on all courts-martial for the trial of any person who may lawfully be brought before such courts for trial.

(b) Any warrant officer on active duty is eligible to serve on general and special courts-martial for the trial of any person, other than a commissioned officer, who may lawfully be brought before such courts for trial.

(c)(1) Any enlisted member of an armed force on active duty who is not a member of the same unit as the accused is eligible to serve on general and special courts-martial for the trial of any enlisted member of an armed force who may lawfully be brought before such courts for trial, but he shall serve as a member of a court only if, before the conclusion of a session called by the military judge under section 839(a) of this title (article 39(a)) prior to trial or, in the absence of such a session, before the court is assembled for the trial of the accused, the accused personally has requested orally on the record or in writing that enlisted members serve on it. After such a request, the accused may not be tried by a general or special court-martial the membership of which does not include enlisted members in a number comprising at least, one-third of the total membership of the court, unless eligible enlisted members cannot be obtained on account of physical conditions or military exigencies. If such members cannot be obtained, the court may be assembled and the trial held without them, but the convening authority shall make a detailed written statement, to be appended to the record, stating why they could not be obtained.

(2) In this article, ''unit'' means any regularly organized body as defined by the Secretary concerned, but in no case may it be a body larger than a company, squadron, ship's crew, or body corresponding to one of them.

(d)(1) When it can be avoided, no member of an armed force may be tried by a court-martial any member of which is junior to him in rank or grade.

(2) When convening a court-martial, the convening authority shall detail as members thereof such members of the armed forces as, in his opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member of an armed force is eligible to serve as a member of a general or special court-martial when he is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case.

(e) Before a court-martial is assembled for the trial of a case, the convening authority may excuse a member of the court from participating in the case. Under such regulations as the Secretary concerned may prescribe, the convening authority may delegate his authority under this subsection to his staff judge advocate or legal officer or to any other principal assistant.

(Aug. 10, 1956, ch. 1041, 70A Stat. 45; Pub. L. 90–632, § 2(7), Oct. 24, 1968, 82 Stat. 1336; Pub. L. 98–209, §§ 3(b), 13(c), Dec. 6, 1983, 97 Stat. 1394, 1408; Pub. L. 99–661, div. A, title VIII, § 803(a), Nov. 14, 1986, 100 Stat. 3906.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
825(a)	50:589(a).	May 5, 1950, ch. 169, § 1 (Art. 25), 64 Stat. 116.
825(b)	50:589(b).	
825(c)	50:589(c).	
825(d)	50:589(d).	

In subsection (a), the word ''commissioned'' is inserted before the word ''officer'' for clarity. The word ''is'' is substituted for the words ''shall be''.

In subsections (a), (b), and (c)(1), the words ''with the armed forces'' are omitted as surplusage.

In subsection (b), the word ''is'' is substituted for the words ''shall be''. The words ''a commissioned'' are substituted for the word ''an'' for clarity.

In subsection (c), the words ''member'' and ''members'', respectively are substituted for the words ''person'' and ''persons''. The words ''of an armed force'' are inserted for clarity.

In subsection (c)(1), the word ''is'' is substituted for the words ''shall be''. The word ''before'' is substituted

for the words ''prior to''. The words ''the accused may not'' are substituted for the words ''no enlisted person shall'', for clarity. The word ''If'' is substituted for the word ''Where''.

In subsection (c)(2), the word ''means'' is substituted for the words ''shall mean''. The words ''Secretary concerned'' are substituted for the words ''Secretary of the Department''. The word ''may'' is substituted for the word ''shall''. The word ''than'', before the words ''a body'', is omitted as surplusage.

In subsection (d)(1), the word ''may'' is substituted for the word ''shall''. The word ''member'' is substituted for the word ''person''.

In subsection (d)(2), the word ''is'' is substituted for the words ''shall be''. The word ''detail'' is substituted for the word ''appoint'', since the filling of the position involved is not appointment to an office in the constitutional sense. The words ''member of an armed force'' and ''members of the armed forces'', respectively, are substituted for the words ''person'' and ''persons''.

AMENDMENTS

1986—Subsec. (c)(1). Pub. L. 99–661 substituted ''has requested orally on the record or in writing'' for ''has requested in writing''.

1983—Subsec. (c)(2). Pub. L. 98–209, § 13(c), struck out ''the word'' before '' 'unit' ''.

Subsec. (e). Pub. L. 98–209, § 3(b), added subsec. (e).

1968—Subsec. (c)(1). Pub. L. 90–632 inserted requirement that an accused's request for inclusion of enlisted members on his court-martial be made before conclusion of a pre-trial session called by the military judge under section 839(a) or before the court is assembled for his trial and substituted ''assembled'' for ''convened'' to describe the calling together of the court for the trial in provision allowing such calling together without requested enlisted members if such members cannot be obtained.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 803(b) of title VIII of Pub. L. 99–661 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only to a case in which arraignment is completed on or after the effective date of this title.''

Title VIII of Pub. L. 99–661 effective the earlier of (1) the last day of the 120-day period beginning on Nov. 14, 1986; or (2) the date specified in an Executive order for such amendment to take effect, see section 808 of Pub. L. 99–661, set out as a note under section 802 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 13(c) of Pub. L. 98–209 effective Dec. 6, 1983, and amendment by section 3(b) of Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§ 825a. Art. 25a. Number of members in capital cases

In a case in which the accused may be sentenced to a penalty of death, the number of members shall be not less than 12, unless 12 members are not reasonably available because of physical conditions or military exigencies, in which case the convening authority shall specify a lesser number of members not less than five, and the court may be assembled and the trial held with not less than the number of members so specified. In such a case, the convening authority shall make a detailed written statement, to be appended to the record, stating why a greater number of members were not reasonably available.

(Added Pub. L. 107–107, div. A, title V, § 582(b)(1), Dec. 28, 2001, 115 Stat. 1124.)

EFFECTIVE DATE

Section applicable with respect to offenses committed after Dec. 31, 2002, see section 582(d) of Pub. L. 107–107, set out as an Effective Date of 2001 Amendment note under section 816 of this title.

§ 826. Art. 26. Military judge of a general or special court-martial

(a) A military judge shall be detailed to each general court-martial. Subject to regulations of the Secretary concerned, a military judge may be detailed to any special court-martial. The Secretary concerned shall prescribe regulations providing for the manner in which military judges are detailed for such courts-martial and for the persons who are authorized to detail military judges for such courts-martial. The military judge shall preside over each open session of the court-martial to which he has been detailed.

(b) A military judge shall be a commissioned officer of the armed forces who is a member of the bar of a Federal court or a member of the bar of the highest court of a State and who is certified to be qualified for duty as a military judge by the Judge Advocate General of the armed force of which such military judge is a member.

(c) The military judge of a general court-martial shall be designated by the Judge Advocate General, or his designee, of the armed force of which the military judge is a member for detail in accordance with regulations prescribed under subsection (a). Unless the court-martial was convened by the President or the Secretary concerned, neither the convening authority nor any member of his staff shall prepare or review any report concerning the effectiveness, fitness, or efficiency of the military judge so detailed, which relates to his performance of duty as a military judge. A commissioned officer who is certified to be qualified for duty as a military judge of a general court-martial may perform such duties only when he is assigned and directly responsible to the Judge Advocate General, or his designee, of the armed force of which the military judge is a member and may perform duties of a judicial or nonjudicial nature other than those relating to his primary duty as a military judge of a general court-martial when such duties are assigned to him by or with the approval of that Judge Advocate General or his designee.

(d) No person is eligible to act as military judge in a case if he is the accuser or a witness for the prosecution or has acted as investigating officer or a counsel in the same case.

(e) The military judge of a court-martial may not consult with the members of the court except in the presence of the accused, trial counsel, and defense counsel, nor may he vote with the members of the court.

(Aug. 10, 1956, ch. 1041, 70A Stat. 46; Pub. L. 90–632, § 2(9), Oct. 24, 1968, 82 Stat. 1336; Pub. L. 98–209, § 3(c)(1), Dec. 6, 1983, 97 Stat. 1394.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
826(a)	50:590(a).	May 5, 1950, ch. 169, § 1 (Art. 26), 64 Stat. 117.
826(b)	50:590(b).	

In subsection (a), the words ''a commissioned'' are substituted for the word ''an'' for clarity. The words ''of the United States'' are omitted as surplusage. The word ''is'' is substituted for the words ''shall be''. The word ''if'' is substituted for the word ''when''. The word ''detail'' is substituted for the word ''appoint'', since the filling of the position involved is not appointment to an office in the constitutional sense.

In subsection (b), the word ''may'' is substituted for the word ''shall''.

AMENDMENTS

1983—Subsec. (a). Pub. L. 98–209, § 3(c)(1)(A), amended subsec. (a) generally, inserting provision requiring the Secretary concerned to prescribe regulations providing for the manner in which military judges are detailed for courts-martial and for the persons who are authorized to detail military judges for such courts-martial.

Subsec. (c). Pub. L. 98–209, § 3(c)(1)(B), substituted ''in accordance with regulations prescribed under subsection (a). Unless'' for ''by the convening authority, and, unless''.

1968—Pub. L. 90–632 substituted ''military judge'' for ''law officer'' and inserted reference to special court-martial.

Subsec. (a). Pub. L. 90–632 substituted reference to military judge for references to law officer and such law officer's requisite qualifications, inserted reference to special court-martial and regulations of the Secretary concerned governing the convening of a special court-martial, inserted provisions directing the military judge to preside over the open sessions of the court-martial to which he was assigned, and struck out provisions making law officers ineligible in a case in which he was the accuser or a witness for the prosecution or acted as investigating officer or as counsel.

Subsecs. (b) to (d). Pub. L. 90–632 added subsecs. (b) to (d). Former subsec. (b) redesignated as subsec. (e) and amended.

Subsec. (e). Pub. L. 90–632 redesignated former subsec. (b) as (e) and substituted ''military judge'' for ''law officer'' and struck out provision allowing consultation with members of the court on the form of the findings as provided in section 839 of this title (article 39).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to affect the designation or detail of a military judge or military counsel to a court-martial before that date, see section 12(a)(1), (2) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

STATUTORY REFERENCES TO LAW OFFICER DEEMED REFERENCES TO MILITARY JUDGE

Section 3(a) of Pub. L. 90–632 provided that: ''Whenever the term law officer is used, with reference to any officer detailed to a court-martial pursuant to section 826(a) (article 26(a)) of title 10, United States Code [subsec. (a) of this section], in any provision of Federal law (other than provisions amended by this Act [see Short Title of 1968 Amendment note set out under section 801 of this title] or in any regulation, document, or record of the United States, such term shall be deemed to mean military judge.''

§ 827. Art. 27. Detail of trial counsel and defense counsel

(a)(1) Trial counsel and defense counsel shall be detailed for each general and special court-martial. Assistant trial counsel and assistant and associate defense counsel may be detailed for each general and special court-martial. The Secretary concerned shall prescribe regulations providing for the manner in which counsel are detailed for such courts-martial and for the persons who are authorized to detail counsel for such courts-martial.

(2) No person who has acted as investigating officer, military judge, or court member in any case may act later as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel or assistant or associate defense counsel in the same case. No person who has acted for the prosecution may act later in the same case for the defense, nor may any person who has acted for the defense act later in the same case for the prosecution.

(b) Trial counsel or defense counsel detailed for a general court-martial—

(1) must be a judge advocate who is a graduate of an accredited law school or is a member of the bar of a Federal court or of the highest court of a State; or must be a member of the bar of a Federal court or of the highest court of a State; and

(2) must be certified as competent to perform such duties by the Judge Advocate General of the armed force of which he is a member.

(c) In the case of a special court-martial—

(1) the accused shall be afforded the opportunity to be represented at the trial by counsel having the qualifications prescribed under section 827(b) of this title (article 27(b)) unless counsel having such qualifications cannot be obtained on account of physical conditions or military exigencies. If counsel having such qualifications cannot be obtained, the court may be convened and the trial held but the convening authority shall make a detailed written statement, to be appended to the record, stating why counsel with such qualifications could not be obtained;

(2) if the trial counsel is qualified to act as counsel before a general court-martial, the defense counsel detailed by the convening authority must be a person similarly qualified; and

(3) if the trial counsel is a judge advocate or a member of the bar of a Federal court or the highest court of a State, the defense counsel detailed by the convening authority must be one of the foregoing.

(Aug. 10, 1956, ch. 1041, 70A Stat. 46; Pub. L. 90–179, § 1(5), Dec. 8, 1967, 81 Stat. 546; Pub. L. 90–632, § 2(10), Oct. 24, 1968, 82 Stat. 1337; Pub. L. 98–209, §§ 2(d), 3(c)(2), Dec. 6, 1983, 97 Stat. 1393, 1394.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
827(a)	50:591(a).	May 5, 1950, ch. 169, § 1 (Art. 27), 64 Stat. 117.
827(b)	50:591(b).	
827(c)	50:591(c).	

The words, ''detail'' and ''detailed'' are substituted for the words ''appoint'' and ''appointed'' throughout the revised section, since the filling of the position involved is not appointment to an office in the constitutional sense.

In subsection (a), the word ''and'' is substituted for the words ''together with''. The word ''considers'' is substituted for the word ''deems''. The words ''necessary or'' are omitted as surplusage, since what is necessary is also appropriate. The word ''may'' is substituted for the word ''shall''. The word ''later'' is substituted for the word ''subsequently''.

In subsections (b) and (c), the word ''must'' is substituted for the word ''shall'', since the clauses prescribe conditions and not commands.

In subsection (b), the word ''for'' is substituted for the words ''in the case of''. The words ''person * * * a person who is'' are omitted as surplusage.

AMENDMENTS

1983—Subsec. (a)(1). Pub. L. 98–209, § 3(c)(2)(A), designated first sentence of existing provisions as par. (1), substituted provisions requiring that trial counsel and defense counsel be detailed for each general and special court-martial, and permitting the detailing of assistant trial counsel and assistant and associate defense counsel for each general and special court-martial for provisions requiring that for each general and special court-martial the authority convening the court had to detail trial counsel and defense counsel and such assistants as he considered appropriate, and inserted provision requiring the Secretary concerned to prescribe regulations providing for the manner in which counsel are detailed for such courts-martial and for the persons who are authorized to detail counsel for such courts-martial.

Subsec. (a)(2). Pub. L. 98–209, § 3(c)(2)(B), designated existing provision, less first sentence, as par. (2) and substituted ''assistant or associate defense counsel'' for ''assistant defense counsel''.

Subsec. (b)(1). Pub. L. 98–209, § 2(d)(1), substituted ''judge advocate'' for ''judge advocate of the Army, Navy, Air Force, or Marine Corps or a law specialist of the Coast Guard,''.

Subsec. (c)(3). Pub. L. 98–209, § 2(d)(2), struck out '', or a law specialist,'' after ''is a judge advocate''.

1968—Subsec. (a). Pub. L. 90–632, § 2(10)(A), substituted ''military judge'' for ''law officer''.

Subsec. (c). Pub. L. 90–632, § 2(10)(B), redesignated former pars. (1) and (2) as pars. (2) and (3), respectively, and added par. (1).

1967—Subsec. (b)(1). Pub. L. 90–179 inserted reference to judge advocate of the Marine Corps and substituted reference to judge advocate of the Navy for reference to law specialist of the Navy.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but amendment by section 3(c)(2) of Pub. L. 98–209 not to affect the designation or detail of a military judge or military counsel to a court-martial before that date, see section 12(a)(1), (2) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§ 828. Art. 28. Detail or employment of reporters and interpreters

Under such regulations as the Secretary concerned may prescribe, the convening authority of a court-martial, military commission, or court of inquiry shall detail or employ qualified court reporters, who shall record the proceedings of and testimony taken before that court or commission. Under like regulations the convening authority of a court-martial, military commission, or court of inquiry may detail or employ interpreters who shall interpret for the court or commission. This section does not apply to a military commission established under chapter 47A of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 47; Pub. L. 109–366, § 4(a)(2), Oct. 17, 2006, 120 Stat. 2631.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
828	50:592.	May 5, 1950, ch. 169, § 1 (Art. 28), 64 Stat. 117.

The words ''Secretary concerned'' are substituted for the words ''Secretary of the Department''. The words, ''detail or employ'' are substituted for the word ''appoint'', since the filling of the position involved is not appointment to an office in the constitutional sense.

AMENDMENTS

2006—Pub. L. 109–366 inserted last sentence.

§ 829. Art. 29. Absent and additional members

(a) No member of a general or special court-martial may be absent or excused after the court has been assembled for the trial of the accused unless excused as a result of a challenge, excused by the military judge for physical disability or other good cause, or excused by order of the convening authority for good cause.

(b)(1) Whenever a general court-martial, other than a general court-martial composed of a military judge only, is reduced below the applicable minimum number of members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than the applicable minimum number of members. The trial may proceed with the new members present after the recorded evidence previously introduced before the members of the court has been read to the court in the presence of the military judge, the accused, and counsel for both sides.

(2) In this section, the term ''applicable minimum number of members'' means five members or, in a case in which the death penalty may be adjudged, the number of members determined under section 825a of this title (article 25a).

(c) Whenever a special court-martial, other than a special court-martial composed of a military judge only, is reduced below three members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than three members. The trial shall proceed with the new members present as if no evidence had previously been introduced at the trial, unless a verbatim record of the evidence previously introduced before the members of the court or a stipulation thereof is read to the court in the presence of

the military judge, if any, the accused and counsel for both sides.

(d) If the military judge of a court-martial composed of a military judge only is unable to proceed with the trial because of physical disability, as a result of a challenge, or for other good cause, the trial shall proceed, subject to any applicable conditions of section 816(1)(B) or (2)(C) of this title (article 16(1)(B) or (2)(C)), after the detail of a new military judge as if no evidence had previously been introduced, unless a verbatim record of the evidence previously introduced or a stipulation thereof is read in court in the presence of the new military judge, the accused, and counsel for both sides.

(Aug. 10, 1956, ch. 1041, 70A Stat. 47; Pub. L. 90–632, § 2(11), Oct. 24, 1968, 82 Stat. 1337; Pub. L. 98–209, § 3(d), Dec. 6, 1983, 97 Stat. 1394; Pub. L. 107–107, div. A, title V, § 582(c), Dec. 28, 2001, 115 Stat. 1124.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
829(a)	50:593(a).	May 5, 1950, ch. 169, § 1 (Art. 29), 64 Stat. 117.
829(b)	50:593(b).	
829(c)	50:593(c).	

In subsections (a), (b), and (c), the word ''may'' is substituted for the word ''shall''.

In subsections (b) and (c), the word ''details'' is substituted for the word ''appoints'', since the filling of the position involved is not appointment to an office in the constitutional sense.

AMENDMENTS

2001—Subsec. (b). Pub. L. 107–107 designated existing provisions as par. (1), substituted ''the applicable minimum number of members'' for ''five members'' in two places, and added par. (2).

1983—Subsec. (a). Pub. L. 98–209 substituted ''unless excused as a result of a challenge, excused by the military judge for physical disability or other good cause, or excused by order of the convening authority for good cause'' for ''except for physical disability or as a result of a challenge or by order of the convening authority for good cause''.

1968—Subsec. (a). Pub. L. 90–632, § 2(11)(A), substituted ''court has been assembled for the trial of the accused'' for ''accused has been arraigned''.

Subsec. (b). Pub. L. 90–632, § 2(11)(B), inserted reference to court-martial composed of a military judge alone, struck out reference to oath of members, and inserted provisions requiring that only the evidence which has been introduced before members of the court be read to the court and that all evidence, not merely testimony, be included.

Subsec. (c). Pub. L. 90–632, § 2(11)(C), inserted reference to court-martial composed of a military judge alone, struck out reference to oath of members, and substituted evidence previously introduced for testimony of previously examined witnesses as the body of evidence which the verbatim record must cover.

Subsec. (d) Pub. L. 90–632, § 2(11)(D), added subsec. (d).

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–107 applicable with respect to offenses committed after Dec. 31, 2002, see section 582(d) of Pub. L. 107–107, set out as a note under section 816 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

SUBCHAPTER VI—PRE-TRIAL PROCEDURE

Sec.	Art.	
830.	30.	Charges and specifications.
831.	31.	Compulsory self-incrimination prohibited.
832.	32.	Investigation.
833.	33.	Forwarding of charges.
834.	34.	Advice of staff judge advocate and reference for trial.
835.	35.	Service of charges.

§ 830. Art. 30. Charges and specifications

(a) Charges and specifications shall be signed by a person subject to this chapter under oath before a commissioned officer of the armed forces authorized to administer oaths and shall state—

(1) that the signer has personal knowledge of or has investigated, the matters set forth therein; and

(2) that they are true in fact to the best of his knowledge and belief.

(b) Upon the preferring of charges, the proper authority shall take immediate steps to determine what disposition should be made thereof in the interest of justice and discipline, and the person accused shall be informed of the charges against him as soon as practicable.

(Aug. 10, 1956, ch. 1041, 70A Stat. 47.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
830(a)	50:601(a).	May 5, 1950, ch. 169, § 1 (Art. 30), 64 Stat. 118.
830(b)	50:601(b).	

In subsection (a), the word ''they'' is substituted for the words ''the same''. The word ''commissioned'' is inserted for clarity.

§ 831. Art. 31. Compulsory self-incrimination prohibited

(a) No person subject to this chapter may compel any person to incriminate himself or to answer any question the answer to which may tend to incriminate him.

(b) No person subject to this chapter may interrogate, or request any statement from, an accused or a person suspected of an offense without first informing him of the nature of the accusation and advising him that he does not have to make any statement regarding the offense of which he is accused or suspected and that any statement made by him may be used as evidence against him in a trial by court-martial.

(c) No person subject to this chapter may compel any person to make a statement or produce evidence before any military tribunal if the statement or evidence is not material to the issue and may tend to degrade him.

(d) No statement obtained from any person in violation of this article, or through the use of coercion, unlawful influence, or unlawful inducement may be received in evidence against him in a trial by court-martial.

(Aug. 10, 1956, ch. 1041, 70A Stat. 48.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
831(a)	50:602(a).	May 5, 1950, ch. 169, § 1 (Art 31), 64 Stat. 118.
831(b)	50:602(b).	
831(c)	50:602(c).	
831(d)	50:602(d).	

The word ''may'' is substituted for the word ''shall'' throughout the revised section.

§ 832. Art. 32. Investigation

(a) No charge or specification may be referred to a general court-martial for trial until a thorough and impartial investigation of all the matters set forth therein has been made. This investigation shall include inquiry as to the truth of the matter set forth in the charges, consideration of the form of charges, and a recommendation as to the disposition which should be made of the case in the interest of justice and discipline.

(b) The accused shall be advised of the charges against him and of his right to be represented at that investigation by counsel. The accused has the right to be represented at that investigation as provided in section 838 of this title (article 38) and in regulations prescribed under that section. At that investigation full opportunity shall be given to the accused to cross-examine witnesses against him if they are available and to present anything he may desire in his own behalf, either in defense or mitigation, and the investigating officer shall examine available witnesses requested by the accused. If the charges are forwarded after the investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides and a copy thereof shall be given to the accused.

(c) If an investigation of the subject matter of an offense has been conducted before the accused is charged with the offense, and if the accused was present at the investigation and afforded the opportunities for representation, cross-examination, and presentation prescribed in subsection (b), no further investigation of that charge is necessary under this article unless it is demanded by the accused after he is informed of the charge. A demand for further investigation entitles the accused to recall witnesses for further cross-examination and to offer any new evidence in his own behalf.

(d) If evidence adduced in an investigation under this article indicates that the accused committed an uncharged offense, the investigating officer may investigate the subject matter of that offense without the accused having first been charged with the offense if the accused—

(1) is present at the investigation;

(2) is informed of the nature of each uncharged offense investigated; and

(3) is afforded the opportunities for representation, cross-examination, and presentation prescribed in subsection (b).

(e) The requirements of this article are binding on all persons administering this chapter but failure to follow them does not constitute jurisdictional error.

(Aug. 10, 1956, ch. 1041, 70A Stat. 48; Pub. L. 97–81, § 4(a), Nov. 20, 1981, 95 Stat. 1088; Pub. L. 104–106, div. A, title XI, § 1131, Feb. 10, 1996, 110 Stat. 464.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
832(a)	50:603(a).	May 5, 1950, ch. 169, § 1 (Art. 32), 64 Stat. 118.
832(b)	50:603(b).	
832(c)	50:603(c).	
832(d)	50:603(d).	

In subsection (a), the word ''may'' is substituted for the word ''shall''. The words ''consideration of the'' and ''a recommendation as to'' are inserted in the interest of accuracy and precision of statement.

In subsection (b), the word ''detailed'' is substituted for the word ''appointed'', since the filling of the position involved is not appointment to an office in the constitutional sense.

In subsection (c), the word ''before'' is substituted for the words ''prior to the time''. The words ''of this section'' are omitted as surplusage.

In subsection (d), the word ''are'' is substituted for the words ''shall be.'' The word ''does'' is substituted for the words ''in any case shall''.

AMENDMENTS

1996—Subsecs. (d), (e). Pub. L. 104–106 added subsec. (d) and redesignated former subsec. (d) as (e).

1981—Subsec. (b). Pub. L. 97–81 substituted ''The accused has the right to be represented at that investigation as provided in section 838 of this title (article 38) and in regulations prescribed under that section'' for ''Upon his own request he shall be represented by civilian counsel if provided by him, or military counsel of his own selection if such counsel is reasonably available, or by counsel detailed by the officer exercising general court-martial jurisdiction over the command''.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–81 to take effect at end of 60-day period beginning on Nov. 20, 1981, and to apply with respect to investigations under this section that begin on or after that date, see section 7(a) and (b)(3) of Pub. L. 97–81, set out as an Effective Date note under section 706 of this title.

§ 833. Art. 33. Forwarding of charges

When a person is held for trial by general court-martial the commanding officer shall, within eight days after the accused is ordered into arrest or confinement, if practicable, forward the charges, together with the investigation and allied papers, to the officer exercising general court-martial jurisdiction. If that is not practicable, he shall report in writing to that officer the reasons for delay.

(Aug. 10, 1956, ch. 1041, 70A Stat. 49.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
833	50:604.	May 5, 1950, ch. 169, § 1 (Art. 33), 64 Stat. 119.

§ 834. Art. 34. Advice of staff judge advocate and reference for trial

(a) Before directing the trial of any charge by general court-martial, the convening authority shall refer it to his staff judge advocate for consideration and advice. The convening authority may not refer a specification under a charge to a general court-martial for trial unless he has been advised in writing by the staff judge advocate that—

(1) the specification alleges an offense under this chapter;

(2) the specification is warranted by the evidence indicated in the report of investigation under section 832 of this title (article 32) (if there is such a report); and

(3) a court-martial would have jurisdiction over the accused and the offense.

(b) The advice of the staff judge advocate under subsection (a) with respect to a specification under a charge shall include a written and signed statement by the staff judge advocate—

(1) expressing his conclusions with respect to each matter set forth in subsection (a); and

(2) recommending action that the convening authority take regarding the specification.

If the specification is referred for trial, the recommendation of the staff judge advocate shall accompany the specification.

(c) If the charges or specifications are not formally correct or do not conform to the substance of the evidence contained in the report of the investigating officer, formal corrections, and such changes in the charges and specifications as are needed to make them conform to the evidence, may be made.

(Aug. 10, 1956, ch. 1041, 70A Stat. 49; Pub. L. 98–209, § 4, Dec. 6, 1983, 97 Stat. 1395.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
834(a)	50:605(a).	May 5, 1950, ch. 169, § 1 (Art. 34), 64 Stat. 119.
834(b)	50:605(b).	

In subsection (a), the word ''may'' is substituted for the word ''shall''.

AMENDMENTS

1983—Subsec. (a). Pub. L. 98–209, § 4(a), substituted ''judge advocate'' for ''judge advocate or legal officer'', and provisions that the convening authority may not refer a specification under a charge to a general court-martial for trial unless he has been advised in writing by the staff judge advocate that the specification alleges an offense under this chapter, the specification is warranted by the evidence indicated in the report of investigation under section 832 of this title (article 32) (if there is such a report), and a court-martial would have jurisdiction over the accused and the offense, for provision that the convening authority could not refer a charge to a general court-martial for trial unless he found that the charge alleged an offense under this chapter and was warranted by evidence indicated in the report of investigation.

Subsecs. (b), (c). Pub. L. 98–209, § 4(b), added subsec. (b) and redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which charges were referred to trial before that date, and proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (3) of Pub. L. 98–209, set out as a note under section 801 of this title.

§ 835. Art. 35. Service of charges

The trial counsel to whom court-martial charges are referred for trial shall cause to be served upon the accused a copy of the charges upon which trial is to be had. In time of peace no person may, against his objection, be brought to trial, or be required to participate by himself or counsel in a session called by the military judge under section 839(a) of this title (article 39(a)), in a general court-martial case within a period of five days after the service of charges upon him, or in a special court-martial case within a period of three days after the service of charges upon him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 49; Pub. L. 90–632, § 2(12), Oct. 24, 1968, 82 Stat. 1337.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
835	50:606.	May 5, 1950, ch. 169, § 1 (Art. 35), 64 Stat. 119.

The word ''may'' is substituted for the word ''shall''. The word ''after'' is substituted for the words ''subsequent to''.

AMENDMENTS

1968—Pub. L. 90–632 inserted reference to a session called by the military judge under section 839(a) of this title (article 39(a)).

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

SUBCHAPTER VII—TRIAL PROCEDURE

Sec.	Art.	
836.	36.	President may prescribe rules.
837.	37.	Unlawfully influencing action of court.
838.	38.	Duties of trial counsel and defense counsel.
839.	39.	Sessions.
840.	40.	Continuances.
841.	41.	Challenges.
842.	42.	Oaths.
843.	43.	Statute of limitations.
844.	44.	Former jeopardy.
845.	45.	Pleas of the accused.
846.	46.	Opportunity to obtain witnesses and other evidence.
847.	47.	Refusal to appear or testify.
848.	48.	Contempts.
849.	49.	Depositions.
850.	50.	Admissibility of records of courts of inquiry.
850a.	50a.	Defense of lack of mental responsibility.
851.	51.	Voting and rulings.
852.	52.	Number of votes required.
853.	53.	Court to announce action.
854.	54.	Record of trial.

AMENDMENTS

1986—Pub. L. 99–661, div. A, title VIII, § 802(a)(2), Nov. 14, 1986, 100 Stat. 3906, added item 850a.

§ 836. Art. 36. President may prescribe rules

(a) Pretrial, trial, and post-trial procedures, including modes of proof, for cases arising under this chapter triable in courts-martial, military commissions and other military tribunals, and procedures for courts of inquiry, may be prescribed by the President by regulations which shall, so far as he considers practicable, apply the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the United States district courts, but

which may not, except as provided in chapter 47A of this title, be contrary to or inconsistent with this chapter.

(b) All rules and regulations made under this article shall be uniform insofar as practicable, except insofar as applicable to military commissions established under chapter 47A of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 50; Pub. L. 96–107, title VIII, § 801(b), Nov. 9, 1979, 93 Stat. 811; Pub. L. 101–510, div. A, title XIII, § 1301(4), Nov. 5, 1990, 104 Stat. 1668; Pub. L. 109–366, § 4(a)(3), Oct. 17, 2006, 120 Stat. 2631.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
836(a)	50:611(a).	May 5, 1950, ch. 169, § 1 (Art. 36), 64 Stat. 120.
836(b)	50:611(b).	

In subsection (a), the word ''considers'' is substituted for the word ''deems''. The word ''may'' is substituted for the word ''shall''.

In subsection (b), the word ''under'' is substituted for the words ''in pursuance of''.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–366, § 4(a)(3)(A), inserted '', except as provided in chapter 47A of this title,'' after ''but which may not''.

Subsec. (b). Pub. L. 109–366, § 4(a)(3)(B), inserted before period at end '', except insofar as applicable to military commissions established under chapter 47A of this title''.

1990—Subsec. (b). Pub. L. 101–510 struck out ''and shall be reported to Congress'' after ''as practicable''.

1979—Subsec. (a). Pub. L. 96–107 substituted provisions authorizing pretrial, trial, and post-trial procedures for cases under this chapter triable in courts-martial, military commissions and other military tribunals, for provisions authorizing procedure in cases before courts-martial, military commissions, and other military tribunals.

§ 837. Art. 37. Unlawfully influencing action of court

(a) No authority convening a general, special, or summary court-martial, nor any other commanding officer, may censure, reprimand, or admonish the court or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of its or his functions in the conduct of the proceeding. No person subject to this chapter may attempt to coerce or, by any unauthorized means, influence the action of a court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing authority with respect to his judicial acts. The foregoing provisions of the subsection shall not apply with respect to (1) general instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of courts-martial, or (2) to statements and instructions given in open court by the military judge, president of a special court-martial, or counsel.

(b) In the preparation of an effectiveness, fitness, or efficiency report, or any other report or document used in whole or in part for the purpose of determining whether a member of the armed forces is qualified to be advanced, in grade, or in determining the assignment or transfer of a member of the armed forces or in determining whether a member of the armed forces should be retained on active duty, no person subject to this chapter may, in preparing any such report (1) consider or evaluate the performance of duty of any such member as a member of a court-martial, or (2) give a less favorable rating or evaluation of any member of the armed forces because of the zeal with which such member, as counsel, represented any accused before a court-martial.

(Aug. 10, 1956, ch. 1041, 70A Stat. 50; Pub. L. 90–632, § 2(13), Oct. 24, 1968, 82 Stat. 1338.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
837	50:612.	May 5, 1950, ch. 169, § 1 (Art. 37), 64 Stat. 120.

The word ''may'' is substituted for the word ''shall''.

AMENDMENTS

1968—Pub. L. 90–632 designated existing provisions as subsec. (a), substituted ''military judge'' for ''law officer'', inserted provisions specifically exempting instructional or general informational lectures on military justice and statements and instructions given in open court by the military judge, president of a special court-martial, or counsel from prohibitions of subsec. (a), and added subsec. (b).

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§ 838. Art. 38. Duties of trial counsel and defense counsel

(a) The trial counsel of a general or special court-martial shall prosecute in the name of the United States, and shall, under the direction of the court, prepare the record of the proceedings.

(b)(1) The accused has the right to be represented in his defense before a general or special court-martial or at an investigation under section 832 of this title (article 32) as provided in this subsection.

(2) The accused may be represented by civilian counsel if provided by him.

(3) The accused may be represented—

(A) by military counsel detailed under section 827 of this title (article 27); or

(B) by military counsel of his own selection if that counsel is reasonably available (as determined under regulations prescribed under paragraph (7)).

(4) If the accused is represented by civilian counsel, military counsel detailed or selected under paragraph (3) shall act as associate counsel unless excused at the request of the accused.

(5) Except as provided under paragraph (6), if the accused is represented by military counsel of his own selection under paragraph (3)(B), any military counsel detailed under paragraph (3)(A) shall be excused.

(6) The accused is not entitled to be represented by more than one military counsel. However, the person authorized under regula-

tions prescribed under section 827 of this title (article 27) to detail counsel, in his sole discretion—

(A) may detail additional military counsel as assistant defense counsel; and

(B) if the accused is represented by military counsel of his own selection under paragraph (3)(B), may approve a request from the accused that military counsel detailed under paragraph (3)(A) act as associate defense counsel.

(7) The Secretary concerned shall, by regulation, define ''reasonably available'' for the purpose of paragraph (3)(B) and establish procedures for determining whether the military counsel selected by an accused under that paragraph is reasonably available. Such regulations may not prescribe any limitation based on the reasonable availability of counsel solely on the grounds that the counsel selected by the accused is from an armed force other than the armed force of which the accused is a member. To the maximum extent practicable, such regulations shall establish uniform policies among the armed forces while recognizing the differences in the circumstances and needs of the various armed forces. The Secretary concerned shall submit copies of regulations prescribed under this paragraph to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

(c) In any court-martial proceeding resulting in a conviction, the defense counsel—

(1) may forward for attachment to the record of proceedings a brief of such matters as he determines should be considered in behalf of the accused on review (including any objection to the contents of the record which he considers appropriate);

(2) may assist the accused in the submission of any matter under section 860 of this title (article 60); and

(3) may take other action authorized by this chapter.

(d) An assistant trial counsel of a general court-martial may, under the direction of the trial counsel or when he is qualified to be a trial counsel as required by section 827 of this title (article 27), perform any duty imposed by law, regulation, or the custom of the service upon the trial counsel of the court. An assistant trial counsel of a special court-martial may perform any duty of the trial counsel.

(e) An assistant defense counsel of a general or special court-martial may, under the direction of the defense counsel or when he is qualified to be the defense counsel as required by section 827 of this title (article 27), perform any duty imposed by law, regulation, or the custom of the service upon counsel for the accused.

(Aug. 10, 1956, ch. 1041, 70A Stat. 50; Pub. L. 90–632, § 2(14), Oct. 24, 1968, 82 Stat. 1338; Pub. L. 97–81, § 4(b), Nov. 20, 1981, 95 Stat. 1088; Pub. L. 98–209, § 3(e), Dec. 6, 1983, 97 Stat. 1394; Pub. L. 104–106, div. A, title XV, § 1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
838(a)	50:613(a).	May 5, 1950, ch. 169, § 1 (Art. 38), 64 Stat. 120.
838(b)	50:613(b).	
838(c)	50:613(c).	
838(d)	50:613(d).	
838(e)	50:613(e).	

In subsection (b), the word ''has'' is substituted for the words ''shall have''. The word ''under'' is substituted for the words ''pursuant to''. The word ''duly'' is omitted as surplusage. The words ''detailed'' and ''who were detailed'' are substituted for the word ''appointed'', since the filling of the position involved is not appointment to an office in the constitutional sense.

In subsection (c), the word ''considers'' is substituted for the words ''may deem''.

AMENDMENTS

1999—Subsec. (b)(7). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1996—Subsec. (b)(7). 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''.

1983—Subsec. (b)(6). Pub. L. 98–209, § 3(e)(1), substituted ''the person authorized under regulations prescribed under section 827 of this title (article 27) to detail counsel'' for ''a convening authority''.

Subsec. (b)(7). Pub. L. 98–209, § 3(e)(2), inserted provision that such regulations may not prescribe any limitation based on the reasonable availability of counsel solely on the grounds that the counsel selected by the accused is from an armed force other than the armed force of which the accused is a member.

Subsec. (c). Pub. L. 98–209, § 3(e)(3), designated existing provisions as par. (1), made minor changes in phraseology and punctuation, and added pars. (2) and (3).

1981—Subsec. (b). Pub. L. 97–81 revised subsec. (b) by dividing its provisions into seven numbered paragraphs and inserted provisions relating to the right to counsel at an investigation under section 832 of this title (article 32), authorizing the promulgation of regulations relating to the ''reasonable availability'' of military counsel, and authorizing the detailing of additional military counsel for the accused under specified circumstances.

1968—Subsec. (b). Pub. L. 90–632 substituted ''military judge or by the president of a court-martial without a military judge'' for ''president of the court''.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month after Dec. 6, 1983, but not to affect the designation or detail of a military judge or military counsel to a court-martial before that date, see section 12(a)(1), (2) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–81 to take effect at end of 60-day period beginning on Nov. 20, 1981, and to apply to trials by courts-martial in which all charges are referred to trial on or after that date, see section 7(a) and (b)(4) of Pub. L. 97–81, set out as an Effective Date note under section 706 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective on first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§ 839. Art. 39. Sessions

(a) At any time after the service of charges which have been referred for trial to a court-

martial composed of a military judge and members, the military judge may, subject to section 835 of this title (article 35), call the court into session without the presence of the members for the purpose of—

(1) hearing and determining motions raising defenses or objections which are capable of determination without trial of the issues raised by a plea of not guilty;

(2) hearing and ruling upon any matter which may be ruled upon by the military judge under this chapter, whether or not the matter is appropriate for later consideration or decision by the members of the court;

(3) if permitted by regulations of the Secretary concerned, holding the arraignment and receiving the pleas of the accused; and

(4) performing any other procedural function which may be performed by the military judge under this chapter or under rules prescribed pursuant to section 836 of this title (article 36) and which does not require the presence of the members of the court.

(b) Proceedings under subsection (a) shall be conducted in the presence of the accused, the defense counsel, and the trial counsel and shall be made a part of the record. These proceedings may be conducted notwithstanding the number of members of the court and without regard to section 829 of this title (article 29). If authorized by regulations of the Secretary concerned, and if at least one defense counsel is physically in the presence of the accused, the presence required by this subsection may otherwise be established by audiovisual technology (such as videoteleconferencing technology).

(c) When the members of a court-martial deliberate or vote, only the members may be present. All other proceedings, including any other consultation of the members of the court with counsel or the military judge, shall be made a part of the record and shall be in the presence of the accused, the defense counsel, the trial counsel, and, in cases in which a military judge has been detailed to the court, the military judge.

(d) The findings, holdings, interpretations, and other precedents of military commissions under chapter 47A of this title—

(1) may not be introduced or considered in any hearing, trial, or other proceeding of a court-martial under this chapter; and

(2) may not form the basis of any holding, decision, or other determination of a court-martial.

(Aug. 10, 1956, ch. 1041, 70A Stat. 51; Pub. L. 90–632, § 2(15), Oct. 24, 1968, 82 Stat. 1338; Pub. L. 101–510, div. A, title V, § 541(a), Nov. 5, 1990, 104 Stat. 1565; Pub. L. 109–163, div. A, title V, § 556, Jan. 6, 2006, 119 Stat. 3266; Pub. L. 111–84, div. A, title XVIII, § 1803(a)(2), Oct. 28, 2009, 123 Stat. 2612.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
839	50:614.	May 5, 1950, ch. 169, § 1 (Art. 39), 64 Stat. 121.

The word ''When'' is substituted for the word ''Whenever''. The words ''deliberates or votes'' are substituted for the words ''is to deliberate or vote''. The word ''may'' is substituted for the word ''shall''. The word ''shall'' is inserted before the words ''be in the presence'' for clarity.

AMENDMENTS

2009—Subsec. (d). Pub. L. 111–84 added subsec. (d).

2006—Pub. L. 109–163 redesignated concluding provisions of subsec. (a) as subsec. (b), substituted ''Proceedings under subsection (a) shall be conducted'' for ''These proceedings shall be conducted'', inserted at end ''If authorized by regulations of the Secretary concerned, and if at least one defense counsel is physically in the presence of the accused, the presence required by this subsection may otherwise be established by audiovisual technology (such as videoteleconferencing technology).'', and redesignated former subsec. (b) as (c).

1990—Subsec. (a). Pub. L. 101–510 inserted at end ''These proceedings may be conducted notwithstanding the number of members of the court and without regard to section 829 of this title (article 29).''

1968—Pub. L. 90–632 added subsec. (a), designated existing provisions as subsec. (b), substituted ''military judge'' for ''law officer'', and struck out provisions authorizing the court after voting on the findings in a general court-martial to request the law officer and the reporter to appear before the court to put the findings in proper form.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 541(e) of Pub. L. 101–510 provided that: ''The amendments made by subsections (a) through (d) [amending this section and section 841 of this title] shall apply only to a court-martial convened on or after the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§ 840. Art. 40. Continuances

The military judge or a court-martial without a military judge may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just.

(Aug. 10, 1956, ch. 1041, 70A Stat. 51; Pub. L. 90–632, § 2(16), Oct. 24, 1968, 82 Stat. 1339.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
840	50:615.	May 5, 1950, ch. 169, § 1 (Art. 40), 64 Stat. 121.

AMENDMENTS

1968—Pub. L. 90–632 inserted reference to military judge.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§ 841. Art. 41. Challenges

(a)(1) The military judge and members of a general or special court-martial may be challenged by the accused or the trial counsel for cause stated to the court. The military judge, or, if none, the court, shall determine the relevancy and validity of challenges for cause, and

may not receive a challenge to more than one person at a time. Challenges by the trial counsel shall ordinarily be presented and decided before those by the accused are offered.

(2) If exercise of a challenge for cause reduces the court below the minimum number of members required by section 816 of this title (article 16), all parties shall (notwithstanding section 829 of this title (article 29)) either exercise or waive any challenge for cause then apparent against the remaining members of the court before additional members are detailed to the court. However, peremptory challenges shall not be exercised at that time.

(b)(1) Each accused and the trial counsel are entitled initially to one peremptory challenge of members of the court. The military judge may not be challenged except for cause.

(2) If exercise of a peremptory challenge reduces the court below the minimum number of members required by section 816 of this title (article 16), the parties shall (notwithstanding section 829 of this title (article 29)) either exercise or waive any remaining peremptory challenge (not previously waived) against the remaining members of the court before additional members are detailed to the court.

(c) Whenever additional members are detailed to the court, and after any challenges for cause against such additional members are presented and decided, each accused and the trial counsel are entitled to one peremptory challenge against members not previously subject to peremptory challenge.

(Aug. 10, 1956, ch. 1041, 70A Stat. 51; Pub. L. 90–632, § 2(17), Oct. 24, 1968, 82 Stat. 1339; Pub. L. 101–510, div. A, title V, § 541(b)–(d), Nov. 5, 1990, 104 Stat. 1565; Pub. L. 111–383, div. A, title X, § 1075(b)(13), Jan. 7, 2011, 124 Stat. 4369.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
841(a)	50:616(a).	May 5, 1950, ch. 169, § 1 (Art. 41), 64 Stat. 121.
841(b)	50:616(b).	

In subsection (a), the word ''may'' is substituted for the word ''shall'' before the words ''not receive''.

In subsection (b), the word ''the'' is inserted before the word ''trial''. The word ''is'' is substituted for the words ''shall be''. The word ''may'' is substituted for the word ''shall''.

AMENDMENTS

2011—Subsec. (c). Pub. L. 111–383 substituted ''trial counsel'' for ''trail counsel''.

1990—Subsec. (a). Pub. L. 101–510, § 541(b), designated existing provision as par. (1) and added par. (2).

Subsec. (b). Pub. L. 101–510, § 541(c), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''Each accused and the trial counsel is entitled to one peremptory challenge, but the military judge may not be challenged except for cause.''

Subsec. (c). Pub. L. 101–510, § 541(d), added subsec. (c).

1968—Subsec. (a). Pub. L. 90–632, § 2(17)(A), (B), inserted reference to the military judge and struck out references to the law officer of a general court-martial.

Subsec. (b). Pub. L. 90–632, § 2(17)(C), substituted ''military judge'' for ''law officer''.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–510 applicable only to court-martial convened on or after Nov. 5, 1990, see section 541(e) of Pub. L. 101–510, set out as a note under section 839 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§ 842. Art. 42. Oaths

(a) Before performing their respective duties, military judges, members of general and special courts-martial, trial counsel, assistant trial counsel, defense counsel, assistant or associate defense counsel, reporters, and interpreters shall take an oath to perform their duties faithfully. The form of the oath, the time and place of the taking thereof, the manner of recording the same, and whether the oath shall be taken for all cases in which these duties are to be performed or for a particular case, shall be as prescribed in regulations of the Secretary concerned. These regulations may provide that an oath to perform faithfully duties as a military judge, trial counsel, assistant trial counsel, defense counsel, or assistant or associate defense counsel may be taken at any time by any judge advocate or other person certified to be qualified or competent for the duty, and if such an oath is taken it need not again be taken at the time the judge advocate or other person is detailed to that duty.

(b) Each witness before a court-martial shall be examined on oath.

(Aug. 10, 1956, ch. 1041, 70A Stat. 51; Pub. L. 90–632, § 2(18), Oct. 24, 1968, 82 Stat. 1339; Pub. L. 98–209, §§ 2(e), 3(f), Dec. 6, 1983, 97 Stat. 1393, 1395.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
842(a)	50:617(a).	May 5, 1950, ch. 169, § 1 (Art. 42), 64 Stat. 121.
842(b)	50:617(b).	

In subsection (a), the word ''all'' and the word ''the'' before the words ''members'', ''trial'', ''defense'', and ''reporter'' are omitted as surplusage.

In subsections (a) and (b), the words ''or affirmation'' are omitted as covered by the definition of the word ''oath'' in section 1 of Title 1.

In subsection (b), the words ''Each witness'' are substituted for the words ''All witnesses''.

AMENDMENTS

1983—Subsec. (a). Pub. L. 98–209 struck out '', law specialist,'' after ''judge advocate'' in two places, substituted ''assistant or associate defense counsel'' for ''assistant defense counsel''.

1968—Subsec. (a). Pub. L. 90–632 struck out requirement that the oath given to court-martial personnel be taken in the presence of the accused and provided that the form of the oath, the time and place of its taking, the manner of recording thereof, and whether the oath shall be taken for all cases or for a particular case shall be as prescribed by regulations of the Secretary concerned and contemplated secretarial regulations allowing the administration of an oath to certified legal personnel on a one-time basis.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§ 843. Art. 43. Statute of limitations

(a) A person charged with absence without leave or missing movement in time of war, with murder, rape, or rape of a child, or with any other offense punishable by death, may be tried and punished at any time without limitation.

(b)(1) Except as otherwise provided in this section (article), a person charged with an offense is not liable to be tried by court-martial if the offense was committed more than five years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command.

(2)(A) A person charged with having committed a child abuse offense against a child is liable to be tried by court-martial if the sworn charges and specifications are received during the life of the child or within five years after the date on which the offense was committed, whichever provides a longer period, by an officer exercising summary court-martial jurisdiction with respect to that person.

(B) In subparagraph (A), the term ''child abuse offense'' means an act that involves abuse of a person who has not attained the age of 16 years and constitutes any of the following offenses:

(i) Any offense in violation of section 920 of this title (article 120).

(ii) Maiming in violation of section 924 of this title (article 124).

(iii) Sodomy in violation of section 925 of this title (article 125).

(iv) Aggravated assault or assault consummated by a battery in violation of section 928 of this title (article 128).

(v) Kidnaping, indecent assault, assault with intent to commit murder, voluntary manslaughter, rape, or sodomy, or indecent acts or liberties with a child in violation of section 934 of this title (article 134).

(C) In subparagraph (A), the term ''child abuse offense'' includes an act that involves abuse of a person who has not attained the age of 18 years and would constitute an offense under chapter 110 or 117 of title 18 or under section 1591 of that title.

(3) A person charged with an offense is not liable to be punished under section 815 of this title (article 15) if the offense was committed more than two years before the imposition of punishment.

(c) Periods in which the accused is absent without authority or fleeing from justice shall be excluded in computing the period of limitation prescribed in this section (article).

(d) Periods in which the accused was absent from territory in which the United States has the authority to apprehend him, or in the custody of civil authorities, or in the hands of the enemy, shall be excluded in computing the period of limitation prescribed in this article.

(e) For an offense the trial of which in time of war is certified to the President by the Secretary concerned to be detrimental to the prosecution of the war or inimical to the national security, the period of limitation prescribed in this article is extended to six months after the termination of hostilities as proclaimed by the President or by a joint resolution of Congress.

(f) When the United States is at war, the running of any statute of limitations applicable to any offense under this chapter—

(1) involving fraud or attempted fraud against the United States or any agency thereof in any manner, whether by conspiracy or not;

(2) committed in connection with the acquisition, care, handling, custody, control, or disposition of any real or personal property of the United States; or

(3) committed in connection with the negotiation, procurement, award, performance, payment, interim financing, cancellation, or other termination or settlement, of any contract, subcontract, or purchase order which is connected with or related to the prosecution of the war, or with any disposition of termination inventory by any war contractor or Government agency;

is suspended until three years after the termination of hostilities as proclaimed by the President or by a joint resolution of Congress.

(g)(1) If charges or specifications are dismissed as defective or insufficient for any cause and the period prescribed by the applicable statute of limitations—

(A) has expired; or

(B) will expire within 180 days after the date of dismissal of the charges and specifications,

trial and punishment under new charges and specifications are not barred by the statute of limitations if the conditions specified in paragraph (2) are met.

(2) The conditions referred to in paragraph (1) are that the new charges and specifications must—

(A) be received by an officer exercising summary court-martial jurisdiction over the command within 180 days after the dismissal of the charges or specifications; and

(B) allege the same acts or omissions that were alleged in the dismissed charges or specifications (or allege acts or omissions that were included in the dismissed charges or specifications).

(Aug. 10, 1956, ch. 1041, 70A Stat. 51; Pub. L. 99–661, div. A, title VIII, § 805(a), (b), Nov. 14, 1986, 100 Stat. 3908; Pub. L. 108–136, div. A, title V, § 551, Nov. 24, 2003, 117 Stat. 1481; Pub. L. 109–163, div. A, title V, §§ 552(e), 553, Jan. 6, 2006, 119 Stat. 3263, 3264; Pub. L. 109–364, div. A, title X, § 1071(a)(4), Oct. 17, 2006, 120 Stat. 2398; Pub. L. 111–383, div. A, title X, § 1075(b)(14), Jan. 7, 2011, 124 Stat. 4369.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
843(a)	50:618(a).	May 5, 1950, ch. 169, § 1 (Art. 43), 64 Stat. 121.
843(b)	50:618(b).	
843(c)	50:618(c).	
843(d)	50:618(d).	
843(e)	50:618(e).	
843(f)	50:618(f).	

In subsection (b), the word ''inclusive'' is omitted as surplusage.

In subsections (b) and (c), the words ''is not'' are substituted for the words ''shall not be''.

In subsection (e), the words ''For an'' are substituted for the words ''In the case of any''. The word ''is'' is substituted for the words ''shall be''. The words ''Secretary concerned'' are substituted for the words ''Secretary of the Department''.

In subsection (f), the word ''is'' is substituted for the words ''shall be''.

AMENDMENTS

2011—Subsec. (b)(2)(B)(v). Pub. L. 111–383 substituted ''Kidnaping, indecent assault,'' for ''Kidnaping; indecent assault;''.

2006—Subsec. (a). Pub. L. 109–163, § 553(a), substituted ''with murder or rape, or with any other offense punishable by death'' for ''or with any offense punishable by death''.

Pub. L. 109–163, § 552(e), substituted '', rape, or rape of a child,'' for ''or rape,''.

Subsec. (b)(2)(A). Pub. L. 109–163, § 553(b)(1), substituted ''during the life of the child or within five years after the date on which the offense was committed, whichever provides a longer period,'' for ''before the child attains the age of 25 years''.

Subsec. (b)(2)(B). Pub. L. 109–163, § 553(b)(2)(A), struck out ''sexual or physical'' before ''abuse of a person'' in introductory provisions.

Subsec. (b)(2)(B)(i). Pub. L. 109–163, § 553(b)(2)(B), substituted ''Any offense'' for ''Rape or carnal knowledge''.

Subsec. (b)(2)(B)(iii). Pub. L. 109–364, § 1071(a)(4)(A), substituted ''125'' for ''126''.

Subsec. (b)(2)(B)(v). Pub. L. 109–163, § 553(b)(2)(C), substituted ''Kidnaping; indecent assault;'' for ''Indecent assault,''.

Subsec. (b)(2)(C). Pub. L. 109–364, § 1071(a)(4)(B), substituted ''under chapter 110 or 117 of title 18 or under section 1591 of that title'' for ''under chapter 110 or 117, or under section 1591, of title 18''.

Pub. L. 109–163, § 553(b)(3), added subpar. (C).

2003—Subsec. (b)(2), (3). Pub. L. 108–136 added par. (2) and redesignated former par. (2) as (3).

1986—Subsecs. (a) to (c). Pub. L. 99–661, § 805(a), amended subsecs. (a) to (c) generally. Prior to amendment, subsecs. (a) to (c) read as follows:

''(a) A person charged with desertion or absence without leave in time of war, or with aiding the enemy, mutiny, or murder, may be tried and punished at any time without limitation.

''(b) Except as otherwise provided in this article, a person charged with desertion in time of peace or any of the offenses punishable under sections 919–932 of this title (articles 119–132) is not liable to be tried by court-martial if the offense was committed more than three years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command.

''(c) Except as otherwise provided in this article, a person charged with any offense is not liable to be tried by court-martial or punished under section 815 of this title (article 15) if the offense was committed more than two years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command or before the imposition of punishment under section 815 of this title (article 15).''

Subsec. (g). Pub. L. 99–661, § 805(b), added subsec. (g).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–163, div. A, title V, § 552(f), Jan. 6, 2006, 119 Stat. 3263, provided that: ''The amendments made by this section [amending this section and sections 918 and 920 of this title and enacting provisions set out as notes under section 920 of this title] shall take effect on October 1, 2007.''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 805(c) of Pub. L. 99–661 provided that: ''The amendments made by this section [amending this section] shall apply to an offense committed on or after the date of the enactment of this Act [Nov. 14, 1986].''

§ 844. Art. 44. Former jeopardy

(a) No person may, without his consent, be tried a second time for the same offense.

(b) No proceeding in which an accused has been found guilty by a court-martial upon any charge or specification is a trial in the sense of this article until the finding of guilty has become final after review of the case has been fully completed.

(c) A proceeding which, after the introduction of evidence but before a finding, is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses without any fault of the accused is a trial in the sense of this article.

(Aug. 10, 1956, ch. 1041, 70A Stat. 52.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
844(a)	50:619(a).	May 5, 1950, ch. 169, § 1 (Art. 44), 64 Stat. 122.
844(b)	50:619(b).	
844(c)	50:619(c).	

In subsection (a), the word ''may'' is substituted for the word ''shall''.

In subsection (b), the word ''is'' is substituted for the words ''shall be held to be''.

In subsection (c), the word ''after'' is substituted for the words ''subsequent to''. The word ''before'' is substituted for the words ''prior to''. The word ''is'' is substituted for the words ''shall be''.

§ 845. Art. 45. Pleas of the accused

(a) If an accused after arraignment makes an irregular pleading, or after a plea of guilty sets up matter inconsistent with the plea, or if it appears that he has entered the plea of guilty improvidently or through lack of understanding of its meaning and effect, or if he fails or refuses to plead, a plea of not guilty shall be entered in the record, and the court shall proceed as though he had pleaded not guilty.

(b) A plea of guilty by the accused may not be received to any charge or specification alleging an offense for which the death penalty may be adjudged. With respect to any other charge or specification to which a plea of guilty has been made by the accused and accepted by the military judge or by a court-martial without a military judge, a finding of guilty of the charge or specification may, if permitted by regulations of the Secretary concerned, be entered immediately without vote. This finding shall constitute the finding of the court unless the plea of guilty is withdrawn prior to announcement of the sentence, in which event the proceedings shall continue as though the accused had pleaded not guilty.

(Aug. 10, 1956, ch. 1041, 70A Stat. 52; Pub. L. 90–632, § 2(19), Oct. 24, 1968, 82 Stat. 1339.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
845(a)	50:620(a).	May 5, 1950, ch. 169, § 1 (Art. 45), 64 Stat. 122.
845(b)	50:620(b).	

In subsection (b), the word ''may'' is substituted for the word ''shall''.

AMENDMENTS

1968—Subsec. (a). Pub. L. 90–632, § 2(19)(A), substituted ''after arraignment'' for ''arraigned before a court-martial''.

Subsec. (b). Pub. L. 90–632, § 2(19)(B), inserted provisions covering the making and accepting of a guilty plea to charges or specifications other than charges and specifications alleging an offense for which the death penalty may be adjudged.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§ 846. Art. 46. Opportunity to obtain witnesses and other evidence

The trial counsel, the defense counsel, and the court-martial shall have equal opportunity to obtain witnesses and other evidence in accordance with such regulations as the President may prescribe. Process issued in court-martial cases to compel witnesses to appear and testify and to compel the production of other evidence shall be similar to that which courts of the United States having criminal jurisdiction may lawfully issue and shall run to any part of the United States, or the Commonwealths and possessions.

(Aug. 10, 1956, ch. 1041, 70A Stat. 53; Pub. L. 109–163, div. A, title X, § 1057(a)(6), Jan. 6, 2006, 119 Stat. 3441.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
846	50:621.	May 5, 1950, ch. 169, § 1 (Art. 46), 64 Stat. 122.

The word ''Commonwealths'' is inserted to reflect the present status of Puerto Rico.

AMENDMENTS

2006—Pub. L. 109–163 substituted ''Commonwealths and possessions'' for ''Territories, Commonwealths, and possessions''.

§ 847. Art. 47. Refusal to appear or testify

(a) Any person not subject to this chapter who—

(1) has been duly subpenaed to appear as a witness before a court-martial, military commission, court of inquiry, or any other military court or board, or before any military or civil officer designated to take a deposition to be read in evidence before such a court, commission, or board;

(2) has been duly paid or tendered the fees and mileage of a witness at the rates allowed to witnesses attending the courts of the United States; and

(3) willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce any evidence which that person may have been legally subpenaed to produce;

is guilty of an offense against the United States.

(b) Any person who commits an offense named in subsection (a) shall be tried on indictment or information in a United States district court or in a court of original criminal jurisdiction in any of the Commonwealths or possessions of the United States, and jurisdiction is conferred upon those courts for that purpose. Upon conviction, such a person shall be fined or imprisoned, or both, at the court's discretion.

(c) The United States attorney or the officer prosecuting for the United States in any such court of original criminal jurisdiction shall, upon the certification of the facts to him by the military court, commission, court of inquiry, or board, file an information against and prosecute any person violating this article.

(d) The fees and mileage of witnesses shall be advanced or paid out of the appropriations for the compensation of witnesses.

(Aug. 10, 1956, ch. 1041. 70A Stat. 53; Pub. L. 104–106, div. A, title XI, § 1111, Feb. 10, 1996, 110 Stat. 461; Pub. L. 109–163, div. A, title X, § 1057(a)(5), Jan. 6, 2006, 119 Stat. 3440.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
847(a)	50:622(a).	May 5, 1950, ch. 169, § 1 (Art. 47), 64 Stat. 123.
847(b)	50:622(b).	
847(c)	50:622(c).	
847(d)	50:622(d).	

In subsection (a), the word ''Any'' is substituted for the word ''Every''. The word ''is'' is substituted for the words ''shall be deemed''.

In subsection (b), the words ''named in subsection (a)'' are substituted for the words ''denounced by this article''. The words ''Territories, Commonwealths, or'' are substituted for the word ''Territorial''. The words ''not more than'' are substituted for the words ''a period not exceeding''.

In subsection (c), the words ''It shall be the duty of * * * to'' are omitted as surplusage. The words ''United States Attorney'' are substituted for the words ''United States district attorney'', to conform to the terminology of section 501 of title 28. The word ''shall'' is inserted after the word ''jurisdiction''.

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–163 substituted ''Commonwealths or possessions'' for ''Territories, Commonwealths, or possessions''.

1996—Subsec. (b). Pub. L. 104–106 inserted ''indictment or'' after ''shall be tried on'' and substituted ''shall be fined or imprisoned, or both, at the court's discretion'' for ''shall be punished by a fine of not more than $500, or imprisonment for not more than six months, or both''.

§ 848. Art. 48. Contempts

(a) AUTHORITY TO PUNISH CONTEMPT.—A judge detailed to a court-martial, a court of inquiry, the United States Court of Appeals for the Armed Forces, a military Court of Criminal Appeals, a provost court, or a military commission may punish for contempt any person who—

(1) uses any menacing word, sign, or gesture in the presence of the judge during the proceedings of the court-martial, court, or military commission;

(2) disturbs the proceedings of the court-martial, court, or military commission by any riot or disorder; or

(3) willfully disobeys the lawful writ, process, order, rule, decree, or command of the court-martial, court, or military commission.

(b) PUNISHMENT.—The punishment for contempt under subsection (a) may not exceed confinement for 30 days, a fine of $1,000, or both.

(c) INAPPLICABILITY TO MILITARY COMMISSIONS UNDER CHAPTER 47A.—This section does not apply to a military commission established under chapter 47A of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 53; Pub. L. 109–366, § 4(a)(2), Oct. 17, 2006, 120 Stat. 2631; Pub. L. 111–383, div. A, title V, § 542(a), Jan. 7, 2011, 124 Stat. 4218.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
848	50:623.	May 5, 1950, ch. 169, § 1 (Art. 48), 64 Stat. 123.

The word ''may'' is substituted for the word ''shall''.

AMENDMENTS

2011—Pub. L. 111–383 amended section generally. Prior to amendment, text read as follows: ''A court-martial, provost court, or military commission may punish for contempt any person who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by any riot or disorder. The punishment may not exceed confinement for 30 days or a fine of $100, or both. This section does not apply to a military commission established under chapter 47A of this title.''

2006—Pub. L. 109–366 inserted last sentence.

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 111–383, div. A, title V, § 542(b), Jan. 7, 2011, 124 Stat. 4218, provided that: ''Section 848 of title 10, United States Code (article 48 of the Uniform Code of Military Justice), as amended by subsection (a), shall apply with respect to acts of contempt committed after the date of the enactment of this Act [Jan. 7, 2011].''

§ 849. Art. 49. Depositions

(a) At any time after charges have been signed as provided in section 830 of this title (article 30), any party may take oral or written depositions unless the military judge or court-martial without a military judge hearing the case or, if the case is not being heard, an authority competent to convene a court-martial for the trial of those charges forbids it for good cause. If a deposition is to be taken before charges are referred for trial, such an authority may designate commissioned officers to represent the prosecution and the defense and may authorize those officers to take the deposition of any witness.

(b) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition.

(c) Depositions may be taken before and authenticated by any military or civil officer authorized by the laws of the United States or by the laws of the place where the deposition is taken to administer oaths.

(d) A duly authenticated deposition taken upon reasonable notice to the other parties, so far as otherwise admissible under the rules of evidence, may be read in evidence or, in the case of audiotape, videotape, or similar material, may be played in evidence before any military court or commission in any case not capital, or in any proceeding before a court of inquiry or military board, if it appears—

(1) that the witness resides or is beyond the State, Commonwealth, or District of Columbia in which the court, commission, or board is ordered to sit, or beyond 100 miles from the place of trial or hearing;

(2) that the witness by reason of death, age, sickness, bodily infirmity, imprisonment, military necessity, nonamenability to process, or other reasonable cause, is unable or refuses to appear and testify in person at the place of trial or hearing; or

(3) that the present whereabouts of the witness is unknown.

(e) Subject to subsection (d), testimony by deposition may be presented by the defense in capital cases.

(f) Subject to subsection (d), a deposition may be read in evidence or, in the case of audiotape, videotape, or similar material, may be played in evidence in any case in which the death penalty is authorized but is not mandatory, whenever the convening authority directs that the case be treated as not capital, and in such a case a sentence of death may not be adjudged by the court-martial.

(Aug. 10, 1956, ch. 1041, 70A Stat. 53; Pub. L. 90–632, § 2(20), Oct. 24, 1968, 82 Stat. 1340; Pub. L. 98–209, § 6(b), Dec. 6, 1983, 97 Stat. 1400; Pub. L. 109–163, div. A, title X, § 1057(a)(3), Jan. 6, 2006, 119 Stat. 3440.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
849(a)	50:624(a).	May 5, 1950, ch. 169, § 1 (Art. 49), 64 Stat. 123.
849(b)	50:624(b).	
849(c)	50:624(c).	
849(d)	50:624(d).	
849(e)	50:624(e).	
849(f)	50:624(f).	

In subsection (a), the word ''commissioned'' is inserted for clarity.

In subsection (d), the word ''Commonwealth'' is inserted to reflect the present status of Puerto Rico. The words ''of Columbia'' are inserted after the word ''District'' for clarity. The words ''the distance of'' are omitted as surplusage.

In subsections (e) and (f), the words ''the requirements of'' and the words ''of this article'' are omitted as surplusage. The word ''presented'' is substituted for the word ''adduced'' in subsection (e).

In subsection (f), the word ''directs'' is substituted for the words ''shall have directed''. The words ''by law'' are omitted as surplusage.

AMENDMENTS

2006—Subsec. (d)(1). Pub. L. 109–163 struck out ''Territory,'' after ''State,''.

1983—Subsecs. (d), (f). Pub. L. 98–209 inserted ''or, in the case of audiotape, videotape, or similar material, may be played in evidence'' after ''read in evidence''.

1968—Subsec. (a). Pub. L. 90–632 inserted reference to the taking of depositions being forbidden by the military judge or the court-martial without a military judge if the case is being heard.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective on first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§ 850. Art. 50. Admissibility of records of courts of inquiry

(a) In any case not capital and not extending to the dismissal of a commissioned officer, the sworn testimony, contained in the duly authenticated record of proceedings of a court of inquiry, of a person whose oral testimony cannot be obtained, may, if otherwise admissible under the rules of evidence, be read in evidence by any party before a court-martial or military commission if the accused was a party before the court of inquiry and if the same issue was involved or if the accused consents to the introduction of such evidence. This section does not apply to a military commission established under chapter 47A of this title.

(b) Such testimony may be read in evidence only by the defense in capital cases or cases extending to the dismissal of a commissioned officer.

(c) Such testimony may also be read in evidence before a court of inquiry or a military board.

(Aug. 10, 1956, ch. 1041, 70A Stat. 54; Pub. L. 109–366, § 4(a)(2), Oct. 17, 2006, 120 Stat. 2631.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
850(a)	50:625(a).	May 5, 1950, ch. 169, § 1 (Art. 50), 64 Stat. 124.
850(b)	50:625(b).	
850(c)	50:625(c).	

In subsections (a) and (b), the word ''commissioned'' is inserted for clarity.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–366 inserted last sentence.

§ 850a. Art. 50a. Defense of lack of mental responsibility

(a) It is an affirmative defense in a trial by court-martial that, at the time of the commission of the acts constituting the offense, the accused, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of the acts. Mental disease or defect does not otherwise constitute a defense.

(b) The accused has the burden of proving the defense of lack of mental responsibility by clear and convincing evidence.

(c) Whenever lack of mental responsibility of the accused with respect to an offense is properly at issue, the military judge, or the president of a court-martial without a military judge, shall instruct the members of the court as to the defense of lack of mental responsibility under this section and charge them to find the accused—

(1) guilty;

(2) not guilty; or

(3) not guilty only by reason of lack of mental responsibility.

(d) Subsection (c) does not apply to a court-martial composed of a military judge only. In the case of a court-martial composed of a military judge only, whenever lack of mental responsibility of the accused with respect to an offense is properly at issue, the military judge shall find the accused—

(1) guilty;

(2) not guilty; or

(3) not guilty only by reason of lack of mental responsibility.

(e) Notwithstanding the provisions of section 852 of this title (article 52), the accused shall be found not guilty only by reason of lack of mental responsibility if—

(1) a majority of the members of the court-martial present at the time the vote is taken determines that the defense of lack of mental responsibility has been established; or

(2) in the case of a court-martial composed of a military judge only, the military judge determines that the defense of lack of mental responsibility has been established.

(Added Pub. L. 99–661, div. A, title VIII, § 802(a)(1), Nov. 14, 1986, 100 Stat. 3905.)

EFFECTIVE DATE

Section 802(b) of Pub. L. 99–661 provided that: ''Section 850a of title 10, United States Code, as added by subsection (a)(1), shall apply only to offenses committed on or after the date of the enactment of this Act [Nov. 14, 1986].''

§ 851. Art. 51. Voting and rulings

(a) Voting by members of a general or special court-martial on the findings and on the sentence, and by members of a court-martial without a military judge upon questions of challenge, shall be by secret written ballot. The junior member of the court shall count the votes. The count shall be checked by the president, who shall forthwith announce the result of the ballot to the members of the court.

(b) The military judge and, except for questions of challenge, the president of a court-martial without a military judge shall rule upon all questions of law and all interlocutory questions arising during the proceedings. Any such ruling made by the military judge upon any question of law or any interlocutory question other than the factual issue of mental responsibility of the accused, or by the president of a court-martial without a military judge upon any question of law other than a motion for a finding of not guilty, is final and constitutes the ruling of the court. However, the military judge or the president of a court-martial without a military judge may change his ruling at any time during trial. Unless the ruling is final, if any member objects thereto, the court shall be cleared and closed and the question decided by a voice vote as provided in section 852 of this title (article 52), beginning with the junior in rank.

(c) Before a vote is taken on the findings, the military judge or the president of a court-martial without a military judge shall, in the presence of the accused and counsel, instruct the members of the court as to the elements of the offense and charge them—

(1) that the accused must be presumed to be innocent until his guilt is established by legal

and competent evidence beyond reasonable doubt;

(2) that in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and he must be acquitted;

(3) that, if there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no reasonable doubt; and

(4) that the burden of proof to establish the guilt of the accused beyond reasonable doubt is upon the United States.

(d) Subsections (a), (b), and (c) do not apply to a court-martial composed of a military judge only. The military judge of such a court-martial shall determine all questions of law and fact arising during the proceedings and, if the accused is convicted, adjudge an appropriate sentence. The military judge of such a court-martial shall make a general finding and shall in addition on request find the facts specially. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear therein.

(Aug. 10, 1956, ch. 1041, 70A Stat. 54; Pub. L. 90–632, § 2(21), Oct. 24, 1968, 82 Stat. 1340.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
851(a)	50:626(a).	May 5, 1950, ch. 169, § 1 (Art. 51), 64 Stat. 124.
851(b)	50:626(b).	
851(c)	50:626(c).	

In subsection (a), the words ''in each case'' are omitted as surplusage.

In subsection (b), the word ''is'' is substituted for the words ''shall be'' in the second sentence. The word ''constitutes'' is substituted for the words ''shall constitute''. The word ''However,'' is substituted for the word ''but''. The word ''his'' is substituted for the words ''any such''. The words ''the ruling is'' are substituted for the words ''such ruling be''. The words ''voice vote'' are substituted for the words ''vote * * * viva voce''.

In subsection (c), the word ''must'' is substituted for the word ''shall'' in clause (2), since a condition is prescribed, not a command. The words ''United States'' are substituted for the word ''Government''.

AMENDMENTS

1968—Subsec. (a). Pub. L. 90–632, § 2(21)(A), limited the balloting on the question of challenges to courts-martial without military judges.

Subsec. (b). Pub. L. 90–632, § 2(21)(B), substituted ''military judge'' for ''law officer'' and inserted reference to the military judge's ruling upon challenges for cause when a military judge is part of a court-martial and reference to questions of law.

Subsec. (c). Pub. L. 90–632, § 2(21)(C), substituted ''military judge'' for ''law officer'' and made minor changes in phraseology eliminating the division between general and special court-martials.

Subsec. (d). Pub. L. 90–632, § 2(21)(D), added subsec. (d).

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§ 852. Art. 52. Number of votes required

(a)(1) No person may be convicted of an offense for which the death penalty is made mandatory by law, except by the concurrence of all the members of the court-martial present at the time the vote is taken.

(2) No person may be convicted of any other offense, except as provided in section 845(b) of this title (article 45(b)) or by the concurrence of two-thirds of the members present at the time the vote is taken.

(b)(1) No person may be sentenced to suffer death, except by the concurrence of all the members of the court-martial present at the time the vote is taken and for an offense in this chapter expressly made punishable by death.

(2) No person may be sentenced to life imprisonment or to confinement for more than ten years, except by the concurrence of three-fourths of the members present at the time the vote is taken.

(3) All other sentences shall be determined by the concurrence of two-thirds of the members present at the time the vote is taken.

(c) All other questions to be decided by the members of a general or special court-martial shall be determined by a majority vote, but a determination to reconsider a finding of guilty or to reconsider a sentence, with a view toward decreasing it, may be made by any lesser vote which indicates that the reconsideration is not opposed by the number of votes required for that finding or sentence. A tie vote on a challenge disqualifies the member challenged. A tie vote on a motion for a finding of not guilty or on a motion relating to the question of the accused's sanity is a determination against the accused. A tie vote on any other question is a determination in favor of the accused.

(Aug. 10, 1956, ch. 1041, 70A Stat. 55; Pub. L. 90–632, § 2(22), Oct. 24, 1968, 82 Stat. 1340.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
852(a)	50:627(a).	May 5, 1950, ch. 169, § 1 (Art. 52), 64 Stat. 125.
852(b)	50:627(b)	
852(c)	50:627(c).	

In subsections (a) and (b), the word ''may'' is substituted for the word ''shall''.

In subsection (b)(2), the words ''for more than'' are substituted for the words ''in excess of''.

In subsection (c), the word ''disqualifies'' is substituted for the words ''shall disqualify''. The word ''is'' is substituted for the words ''shall be'' in the last two sentences.

AMENDMENTS

1968—Subsec. (a)(2). Pub. L. 90–632, § 2(22)(A), inserted reference to the exception provided in section 845(b) of this title (article 45(b)).

Subsec. (c). Pub. L. 90–632, § 2(22)(B), provided that a determination to reconsider a finding of guilty or to reconsider a sentence, with a view toward decreasing it, may be made by a vote of less than a majority vote which indicates that the reconsideration is not opposed by the number of votes required for that finding or sentence.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§ 853. Art. 53. Court to announce action

A court-martial shall announce its findings and sentence to the parties as soon as determined.

(Aug. 10, 1956, ch. 1041, 70A Stat. 56.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
853	50:628.	May 5, 1950, ch. 169, § 1 (Art. 53), 64 Stat. 125.

The word ''A'' is substituted for the word ''Every''.

§ 854. Art. 54. Record of trial

(a) Each general court-martial shall keep a separate record of the proceedings in each case brought before it, and the record shall be authenticated by the signature of the military judge. If the record cannot be authenticated by the military judge by reason of his death, disability, or absence, it shall be authenticated by the signature of the trial counsel or by that of a member if the trial counsel is unable to authenticate it by reason of his death, disability, or absence. In a court-martial consisting of only a military judge the record shall be authenticated by the court reporter under the same conditions which would impose such a duty on a member under this subsection.

(b) Each special and summary court-martial shall keep a separate record of the proceedings in each case, and the record shall be authenticated in the manner required by such regulations as the President may prescribe.

(c)(1) A complete record of the proceedings and testimony shall be prepared—

(A) in each general court-martial case in which the sentence adjudged includes death, a dismissal, a discharge, or (if the sentence adjudged does not include a discharge) any other punishment which exceeds that which may otherwise be adjudged by a special court-martial; and

(B) in each special court-martial case in which the sentence adjudged includes a bad-conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months.

(2) In all other court-martial cases, the record shall contain such matters as may be prescribed by regulations of the President.

(d) A copy of the record of the proceedings of each general and special court-martial shall be given to the accused as soon as it is authenticated.

(Aug. 10, 1956, ch. 1041, 70A Stat. 56; Pub. L. 90–632, § 2(23), Oct. 24, 1968, 82 Stat. 1340; Pub. L. 98–209, § 6(c), Dec. 6, 1983, 97 Stat. 1400; Pub. L. 106–398, § 1 [[div. A], title V, § 555(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–127.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
854(a)	50:629(a).	May 5, 1950, ch. 169, § 1 (Art. 54), 64 Stat. 125.
854(b)	50:629(b).	
854(c)	50:629(c).	

In subsection (a), the word ''If'' is substituted for the words ''In case''. The words ''any of those'' are substituted for the word ''such'' in the last sentence.

In subsection (b), the words ''and the'' are substituted for the word ''which'' before the word ''record''. The words ''the matter and shall be authenticated in the manner required by such regulations as'' are substituted for the words ''such matter and be authenticated in such manner as may be required by regulations which''.

In subsection (c), the words ''it is'' are inserted before the word ''authenticated''.

AMENDMENTS

2000—Subsec. (c)(1)(B). Pub. L. 106–398 inserted '', confinement for more than six months, or forfeiture of pay for more than six months'' after ''bad-conduct discharge''.

1983—Subsec. (a). Pub. L. 98–209, § 6(c)(1), struck out provision that if the proceedings had resulted in an acquittal of all charges and specifications or, if not affecting a general or flag officer, in a sentence not including discharge and not in excess of that which could otherwise be adjudged by a special court-martial, the record had to contain such matters as might be prescribed by regulations of the President.

Subsec. (b). Pub. L. 98–209, § 6(c)(2), substituted ''the record'' for ''the record shall contain the matter and''.

Subsecs. (c), (d). Pub. L. 98–209, § 6(c)(3), (4), added subsec. (c) and redesignated former subsec. (c) as (d).

1968—Subsec. (a). Pub. L. 90–632 provided for authentication of a record of trial by general court-martial by the signature of the military judge, for alternate methods of authentication if the military judge for specified reasons is unable to authenticate it, for authentication when a court-martial consists only of a military judge, and for summarized records of trial in specified cases.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, § 1 [[div. A], title V, § 555(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–127, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect as of April 1, 2000, and shall apply with respect to charges referred on or after that date to trial by special court-martial.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

SUBCHAPTER VIII—SENTENCES

Sec.	Art.	
855.	55.	Cruel and unusual punishments prohibited.
856.	56.	Maximum limits.
856a.	56a.	Sentence of confinement for life without eligibility for parole.
857.	57.	Effective date of sentences.
857a.	57a.	Deferment of sentences.
858.	58.	Execution of confinement.
858a.	58a.	Sentences: reduction in enlisted grade upon approval.
858b.	58b.	Sentences: forfeiture of pay and allowances during confinement.

AMENDMENTS

1997—Pub. L. 105–85, div. A, title V, § 581(a)(2), Nov. 18, 1997, 111 Stat. 1760, added item 856a.

1996—Pub. L. 104–106, div. A, title XI, §§ 1122(a)(2), 1123(b), Feb. 10, 1996, 110 Stat. 463, 464, added items 857a and 858b.

1960—Pub. L. 86–633, § 1(2), July 12, 1960, 74 Stat. 468, added item 858a.

§ 855. Art. 55. Cruel and unusual punishments prohibited

Punishment by flogging, or by branding, marking, or tattooing on the body, or any other cruel or unusual punishment, may not be adjudged by any court-martial or inflicted upon any person subject to this chapter. The use of irons, single or double, except for the purpose of safe custody, is prohibited.

(Aug. 10, 1956, ch. 1041, 70A Stat. 56.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
855	50:636.	May 5, 1950, ch. 169, § 1 (Art. 55), 64 Stat. 126.

The word ''may'' is substituted for the word ''shall''.

§ 856. Art. 56. Maximum limits

The punishment which a court-martial may direct for an offense may not exceed such limits as the President may prescribe for that offense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 56.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
856	50:637.	May 5, 1950, ch. 169, § 1 (Art. 56), 64 Stat. 126.

The word ''may'' is substituted for the word ''shall''.

§ 856a. Art. 56a. Sentence of confinement for life without eligibility for parole

(a) For any offense for which a sentence of confinement for life may be adjudged, a court-martial may adjudge a sentence of confinement for life without eligibility for parole.

(b) An accused who is sentenced to confinement for life without eligibility for parole shall be confined for the remainder of the accused's life unless—

(1) the sentence is set aside or otherwise modified as a result of—

(A) action taken by the convening authority, the Secretary concerned, or another person authorized to act under section 860 of this title (article 60); or

(B) any other action taken during post-trial procedure and review under any other provision of subchapter IX;

(2) the sentence is set aside or otherwise modified as a result of action taken by a Court of Criminal Appeals, the Court of Appeals for the Armed Forces, or the Supreme Court; or

(3) the accused is pardoned.

(Added Pub. L. 105–85, div. A, title V, § 581(a)(1), Nov. 18, 1997, 111 Stat. 1759.)

EFFECTIVE DATE

Section 581(b) of Pub. L. 105–85 provided that: ''Section 856a of title 10, United States Code (article 56a of the Uniform Code of Military Justice), as added by subsection (a), shall be applicable only with respect to an offense committed after the date of the enactment of this Act [Nov. 18, 1997].''

§ 857. Art. 57. Effective date of sentences

(a)(1) Any forfeiture of pay or allowances or reduction in grade that is included in a sentence of a court-martial takes effect on the earlier of—

(A) the date that is 14 days after the date on which the sentence is adjudged; or

(B) the date on which the sentence is approved by the convening authority.

(2) On application by an accused, the convening authority may defer a forfeiture of pay or allowances or reduction in grade that would otherwise become effective under paragraph (1)(A) until the date on which the sentence is approved by the convening authority. Such a deferment may be rescinded at any time by the convening authority.

(3) A forfeiture of pay or allowances shall be applicable to pay and allowances accruing on and after the date on which the sentence takes effect.

(4) In this subsection, the term ''convening authority'', with respect to a sentence of a court-martial, means any person authorized to act on the sentence under section 860 of this title (article 60).

(b) Any period of confinement included in a sentence of a court-martial begins to run from the date the sentence is adjudged by the court-martial, but periods during which the sentence to confinement is suspended or deferred shall be excluded in computing the service of the term of confinement.

(c) All other sentences of courts-martial are effective on the date ordered executed.

(Aug. 10, 1956, ch. 1041, 70A Stat. 56; Pub. L. 90–632, § 2(24), Oct. 24, 1968, 82 Stat. 1341; Pub. L. 98–209, § 5(f), Dec. 6, 1983, 97 Stat. 1400; Pub. L. 102–484, div. A, title X, § 1064, Oct. 23, 1992, 106 Stat. 2505; Pub. L. 104–106, div. A, title XI, §§ 1121(a), 1123(a)(1), (2), Feb. 10, 1996, 110 Stat. 462–464.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
857(a)	50:638(a).	May 5, 1950, ch. 169, § 1 (Art. 57), 64 Stat. 126.
857(b)	50:638(b).	
857(c)	50:638(c).	

In subsection (a), the word ''may'' is substituted for the word ''shall''.

In subsection (b), the word ''begins'' is substituted for the words ''shall begin''.

In subsection (c), the word ''are'' is substituted for the words ''shall become''.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–106, § 1121(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''No forfeiture may extend to any pay or allowances accrued before the date on which the sentence is approved by the person acting under section 860(c) of this title (article 60(c)).''

Subsecs. (d), (e). Pub. L. 104–106, § 1123(a)(1), (2), redesignated subsecs. (d) and (e) as section 857a(a) and (b), respectively, of this title.

1992—Subsec. (e). Pub. L. 102–484 added subsec. (e).

1983—Subsec. (a). Pub. L. 98–209 substituted provision that no forfeiture may extend to any pay or allowances accrued before the date on which the sentence is approved by the person acting under section 860(c) of this title, for provision that whenever a sentence of a court-martial as lawfully adjudged and approved included a forfeiture of pay or allowances in addition to confinement not suspended or deferred, the forfeiture could apply to pay or allowances becoming due on or after the date the sentence was approved by the convening authority, and that no forfeiture could extend to any pay or allowances accrued before that date.

1968—Subsec. (a). Pub. L. 90–632 inserted reference to deferral of sentence of confinement.

Subsec. (b). Pub. L. 90–632 inserted reference to deferral of sentence of confinement.

Subsec. (d). Pub. L. 90–632 added subsec. (d).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1121(b) of Pub. L. 104–106 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to a case in which a sentence is adjudged by a court-martial on or after the first day of the first month that begins at least 30 days after the date of the enactment of this Act [Feb. 10, 1996].''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–484 effective Oct. 23, 1992, and applicable with respect to offenses committed on or after that date, see section 1067 of Pub. L. 102–484, set out as a note under section 803 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§ 857a. Art. 57a. Deferment of sentences

(a) On application by an accused who is under sentence to confinement that has not been ordered executed, the convening authority or, if the accused is no longer under his jurisdiction, the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned, may in his sole discretion defer service of the sentence to confinement. The deferment shall terminate when the sentence is ordered executed. The deferment may be rescinded at any time by the officer who granted it or, if the accused is no longer under his jurisdiction, by the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned.

(b)(1) In any case in which a court-martial sentences a person referred to in paragraph (2) to confinement, the convening authority may defer the service of the sentence to confinement, without the consent of that person, until after the person has been permanently released to the armed forces by a State or foreign country referred to in that paragraph.

(2) Paragraph (1) applies to a person subject to this chapter who—

(A) while in the custody of a State or foreign country is temporarily returned by that State or foreign country to the armed forces for trial by court-martial; and

(B) after the court-martial, is returned to that State or foreign country under the authority of a mutual agreement or treaty, as the case may be.

(3) In this subsection, the term ''State'' includes the District of Columbia and any commonwealth, territory, or possession of the United States.

(c) In any case in which a court-martial sentences a person to confinement and the sentence to confinement has been ordered executed, but in which review of the case under section 867(a)(2) of this title (article 67(a)(2)) is pending, the Secretary concerned may defer further service of the sentence to confinement while that review is pending.

(Added Pub. L. 90–632, § 2(24), Oct. 24, 1968, 82 Stat. 1341, § 857(d); amended Pub. L. 102–484, div. A, title X, § 1064, Oct. 23, 1992, 106 Stat. 2505; renumbered § 857a and amended Pub. L. 104–106, div. A, title XI, § 1123(a), Feb. 10, 1996, 110 Stat. 463.)

AMENDMENTS

1996—Pub. L. 104–106 redesignated subsecs. (d) and (e) of section 857 of this title as subsecs. (a) and (b), respectively, of this section, added section catchline, in subsec. (b)(1), substituted ''defer'' for ''postpone'', and added subsec. (c).

1992—Subsec. (b), formerly § 857(e). Pub. L. 102–484 added subsec. (e). See 1996 Amendment note above.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–484 effective Oct. 23, 1992, and applicable with respect to offenses committed on or after that date, see section 1067 of Pub. L. 102–484, set out as a note under section 803 of this title.

§ 858. Art. 58. Execution of confinement

(a) Under such instructions as the Secretary concerned may prescribe, a sentence of confinement adjudged by a court-martial or other military tribunal, whether or not the sentence includes discharge or dismissal, and whether or not the discharge or dismissal has been executed, may be carried into execution by confinement in any place of confinement under the control of any of the armed forces or in any penal or correctional institution under the control of the United States, or which the United States may be allowed to use. Persons so confined in a penal or correctional institution not under the control of one of the armed forces are subject to the same discipline and treatment as persons confined or committed by the courts of the United States or of the State, District of Columbia, or place in which the institution is situated.

(b) The omission of the words ''hard labor'' from any sentence of a court-martial adjudging confinement does not deprive the authority executing that sentence of the power to require hard labor as a part of the punishment.

(Aug. 10, 1956, ch. 1041, 70A Stat. 57; Pub. L. 109–163, div. A, title X, § 1057(a)(3), Jan. 6, 2006, 119 Stat. 3440.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
858(a)	50:639(a).	May 5, 1950, ch. 169, § 1 (Art. 58), 64 Stat. 126.
858(b)	50:639(b).	

In subsection (a), the words ''Secretary concerned'' are substituted for the words ''Department concerned'', since the ''Department'' as an entity, cannot issue instructions. The word ''are'' is substituted for the words ''shall be''. The words ''of Columbia'' are inserted after ''District'' for clarity.

In subsection (b), the word ''from'' is substituted for the word ''in''. The words ''does not deprive'' are substituted for the words ''shall not be construed as depriving''.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–163 struck out ''Territory,'' after ''State,''.

§ 858a. Art. 58a. Sentences: reduction in enlisted grade upon approval

(a) Unless otherwise provided in regulations to be prescribed by the Secretary concerned, a court-martial sentence of an enlisted member in a pay grade above E–1, as approved by the convening authority, that includes—

(1) a dishonorable or bad-conduct discharge;

(2) confinement; or

(3) hard labor without confinement;

reduces that member to pay grade E–1, effective on the date of that approval.

(b) If the sentence of a member who is reduced in pay grade under subsection (a) is set aside or disapproved, or, as finally approved, does not include any punishment named in subsection (a)(1), (2), or (3), the rights and privileges of which he was deprived because of that reduction shall be restored to him and he is entitled to the pay and allowances to which he would have been entitled, for the period the reduction was in effect, had he not been so reduced.

(Added Pub. L. 86–633, § 1(1), July 12, 1960, 74 Stat. 468.)

§ 858b. Art. 58b. Sentences: forfeiture of pay and allowances during confinement

(a)(1) A court-martial sentence described in paragraph (2) shall result in the forfeiture of pay, or of pay and allowances, due that member during any period of confinement or parole. The forfeiture pursuant to this section shall take effect on the date determined under section 857(a) of this title (article 57(a)) and may be deferred as provided in that section. The pay and allowances forfeited, in the case of a general court-martial, shall be all pay and allowances due that member during such period and, in the case of a special court-martial, shall be two-thirds of all pay due that member during such period.

(2) A sentence covered by this section is any sentence that includes—

(A) confinement for more than six months or death; or

(B) confinement for six months or less and a dishonorable or bad-conduct discharge or dismissal.

(b) In a case involving an accused who has dependents, the convening authority or other person acting under section 860 of this title (article 60) may waive any or all of the forfeitures of pay and allowances required by subsection (a) for a period not to exceed six months. Any amount of pay or allowances that, except for a waiver under this subsection, would be forfeited shall be paid, as the convening authority or other person taking action directs, to the dependents of the accused.

(c) If the sentence of a member who forfeits pay and allowances under subsection (a) is set aside or disapproved or, as finally approved, does not provide for a punishment referred to in subsection (a)(2), the member shall be paid the pay and allowances which the member would have been paid, except for the forfeiture, for the period during which the forfeiture was in effect.

(Added Pub. L. 104–106, div. A, title XI, § 1122(a)(1), Feb. 10, 1996, 110 Stat. 463; amended Pub. L. 104–201, div. A, title X, § 1068(a)(1), Sept. 23, 1996, 110 Stat. 2655; Pub. L. 105–85, div. A, title X, § 1073(a)(9), Nov. 18, 1997, 111 Stat. 1900.)

AMENDMENTS

1997—Subsec. (a)(1). Pub. L. 105–85 substituted ''forfeiture of pay, or of pay and allowances, due that member'' for ''forfeiture of pay and (if adjudged by a general court-martial) allowances due that member'' in first sentence.

1996—Subsec. (a)(1). Pub. L. 104–201, § 1068(a)(1)(B), substituted ''two-thirds of all pay'' for ''two-thirds of all pay and allowances'' in third sentence.

Pub. L. 104–201, § 1068(a)(1)(A), which directed amendment of first sentence by inserting ''(if adjudged by a general court-martial)'' after ''all pay and'', was executed by making the insertion after ''of pay and'' in first sentence to reflect the probable intent of Congress.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1068(a)(2) of Pub. L. 104–201 provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect as of April 1, 1996, and shall apply to any case in which a sentence is adjudged by a court-martial on or after that date.''

EFFECTIVE DATE

Section 1122(b) of Pub. L. 104–106 provided that: ''The section (article) added by the amendment made by subsection (a)(1) [this section] shall apply to a case in which a sentence is adjudged by a court-martial on or after the first day of the first month that begins at least 30 days after the date of the enactment of this Act [Feb. 10, 1996].''

SUBCHAPTER IX—POST-TRIAL PROCEDURE AND REVIEW OF COURTS-MARTIAL

Sec.	Art.	
859.	59.	Error of law; lesser included offense.
860.	60.	Action by the convening authority.
861.	61.	Waiver or withdrawal of appeal.
862.	62.	Appeal by the United States.
863.	63.	Rehearings.
864.	64.	Review by a judge advocate.
865.	65.	Disposition of records.
866.	66.	Review by Court of Criminal Appeals.
867.	67.	Review by the Court of Appeals for the Armed Forces.
867a.	67a.	Review by the Supreme Court.
868.	68.	Branch offices.
869.	69.	Review in the office of the Judge Advocate General.
870.	70.	Appellate counsel.
871.	71.	Execution of sentence; suspension of sentence.

Sec.	Art.	
872.	72.	Vacation of suspension.
873.	73.	Petition for a new trial.
874.	74.	Remission and suspension.
875.	75.	Restoration.
876.	76.	Finality of proceedings, findings, and sentences.
876a.	76a.	Leave required to be taken pending review of certain court-martial convictions.
876b.	76b.	Lack of mental capacity or mental responsibility: commitment of accused for examination and treatment.

AMENDMENTS

1996—Pub. L. 104–106, div. A, title XI, § 1133(a)(2), Feb. 10, 1996, 110 Stat. 466, added item 876b.

1994—Pub. L. 103–337, div. A, title IX, § 924(c)(4)(C), Oct. 5, 1994, 108 Stat. 2832, substituted ''Court of Criminal Appeals'' for ''Court of Military Review'' in item 866 and ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals'' in item 867.

1990—Pub. L. 101–510, div. A, title XIV, § 1484(i)(1), Nov. 5, 1990, 104 Stat. 1718, added item 867a.

1983—Pub. L. 98–209, §§ 5(a)(2), (b)(2), (c)(2), (h)(2), 6(d)(2), 7(a)(2), Dec. 6, 1983, 97 Stat. 1397, 1398, 1400–1402, substituted ''Post-trial Procedure and Review of Courts-Martial'' for ''Review of Courts-Martial'' as subchapter heading, ''Action by the convening authority'' for ''Initial action on the record'' in item 860, ''Waiver or withdrawal of appeal'' for ''Same—General court-martial records'' in item 861, ''Appeal by the United States'' for ''Reconsideration and revision'' in item 862, ''Review by a judge advocate'' for ''Approval by the convening authority'' in item 864, and ''Disposition of records'' for ''Disposition of records after review by the convening authority'' in item 865.

1981—Pub. L. 97–81, § 2(c)(2), Nov. 20, 1981, 95 Stat. 1087, added item 876a.

1968—Pub. L. 90–632, § 2(25), Oct. 24, 1968, 82 Stat. 1341, substituted ''Court of Military Review'' for ''board of review'' in item 866 (article 66).

§ 859. Art. 59. Error of law; lesser included offense

(a) A finding or sentence of a court-martial may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

(b) Any reviewing authority with the power to approve or affirm a finding of guilty may approve or affirm, instead, so much of the finding as includes a lesser included offense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 57.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
859(a)	50:646(a).	May 5, 1950, ch. 169, § 1 (Art. 59), 64 Stat. 127.
859(b)	50:646(b).	

The word ''may'' is substituted for the word ''shall''.

§ 860. Art. 60. Action by the convening authority

(a) The findings and sentence of a court-martial shall be reported promptly to the convening authority after the announcement of the sentence.

(b)(1) The accused may submit to the convening authority matters for consideration by the convening authority with respect to the findings and the sentence. Any such submission shall be in writing. Except in a summary court-martial case, such a submission shall be made within 10 days after the accused has been given an authenticated record of trial and, if applicable, the recommendation of the staff judge advocate or legal officer under subsection (d). In a summary court-martial case, such a submission shall be made within seven days after the sentence is announced.

(2) If the accused shows that additional time is required for the accused to submit such matters, the convening authority or other person taking action under this section, for good cause, may extend the applicable period under paragraph (1) for not more than an additional 20 days.

(3) In a summary court-martial case, the accused shall be promptly provided a copy of the record of trial for use in preparing a submission authorized by paragraph (1).

(4) The accused may waive his right to make a submission to the convening authority under paragraph (1). Such a waiver must be made in writing and may not be revoked. For the purposes of subsection (c)(2), the time within which the accused may make a submission under this subsection shall be deemed to have expired upon the submission of such a waiver to the convening authority.

(c)(1) The authority under this section to modify the findings and sentence of a court-martial is a matter of command prerogative involving the sole discretion of the convening authority. Under regulations of the Secretary concerned, a commissioned officer commanding for the time being, a successor in command, or any person exercising general court-martial jurisdiction may act under this section in place of the convening authority.

(2) Action on the sentence of a court-martial shall be taken by the convening authority or by another person authorized to act under this section. Subject to regulations of the Secretary concerned, such action may be taken only after consideration of any matters submitted by the accused under subsection (b) or after the time for submitting such matters expires, whichever is earlier. The convening authority or other person taking such action, in his sole discretion, may approve, disapprove, commute, or suspend the sentence in whole or in part.

(3) Action on the findings of a court-martial by the convening authority or other person acting on the sentence is not required. However, such person, in his sole discretion, may—

(A) dismiss any charge or specification by setting aside a finding of guilty thereto; or

(B) change a finding of guilty to a charge or specification to a finding of guilty to an offense that is a lesser included offense of the offense stated in the charge or specification.

(d) Before acting under this section on any general court-martial case or any special court-martial case that includes a bad-conduct discharge, the convening authority or other person taking action under this section shall obtain and consider the written recommendation of his staff judge advocate or legal officer. The convening authority or other person taking action under this section shall refer the record of trial to his staff judge advocate or legal officer, and the staff judge advocate or legal officer shall use such record in the preparation of his recommendation. The recommendation of the staff judge advocate or legal officer shall include such

matters as the President may prescribe by regulation and shall be served on the accused, who may submit any matter in response under subsection (b). Failure to object in the response to the recommendation or to any matter attached to the recommendation waives the right to object thereto.

(e)(1) The convening authority or other person taking action under this section, in his sole discretion, may order a proceeding in revision or a rehearing.

(2) A proceeding in revision may be ordered if there is an apparent error or omission in the record or if the record shows improper or inconsistent action by a court-martial with respect to the findings or sentence that can be rectified without material prejudice to the substantial rights of the accused. In no case, however, may a proceeding in revision—

(A) reconsider a finding of not guilty of any specification or a ruling which amounts to a finding of not guilty;

(B) reconsider a finding of not guilty of any charge, unless there has been a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some article of this chapter; or

(C) increase the severity of the sentence unless the sentence prescribed for the offense is mandatory.

(3) A rehearing may be ordered by the convening authority or other person taking action under this section if he disapproves the findings and sentence and states the reasons for disapproval of the findings. If such person disapproves the findings and sentence and does not order a rehearing, he shall dismiss the charges. A rehearing as to the findings may not be ordered where there is a lack of sufficient evidence in the record to support the findings. A rehearing as to the sentence may be ordered if the convening authority or other person taking action under this subsection disapproves the sentence.

(Aug. 10, 1956, ch. 1041, 70A Stat. 57; Pub. L. 98–209, §5(a)(1), Dec. 6, 1983, 97 Stat. 1395; Pub. L. 99–661, div. A, title VIII, §806(a)–(c), Nov. 14, 1986, 100 Stat. 3908, 3909; Pub. L. 104–106, div. A, title XI, §1132, Feb. 10, 1996, 110 Stat. 464.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
860	50:647.	May 5, 1950, ch. 169, §1 (Art. 60), 64 Stat. 127.

The word ''a'' is substituted for the word ''every''. The word ''by'' before the words ''any officer'' is omitted as surplusage. The word ''person'' is substituted for the word ''officer'' before the words ''who convened'', since, under sections 823 and 824 of this title (articles 23 and 24), noncommissioned officers who are ''officers in charge'' may convene special and summary courts-martial.

AMENDMENTS

1996—Subsec. (b)(1). Pub. L. 104–106 inserted after first sentence ''Any such submission shall be in writing.''

1986—Subsec. (b)(1). Pub. L. 99–661, §806(a)(3), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Within 30 days after the sentence of a general court-martial or of a special court-martial which has adjudged a bad-conduct discharge has been announced, the accused may submit to the convening authority matters for consideration by the convening authority with respect to the findings and the sentence. In the case of all other special courts-martial, the accused may make such a submission to the convening authority within 20 days after the sentence is announced. In the case of all summary courts-martial the accused may make such a submission to the convening authority within seven days after the sentence is announced. If the accused shows that additional time is required for the accused to submit such matters, the convening authority or other person taking action under this section, for good cause, may extend the period—

''(A) in the case of a general court-martial or a special court-martial which has adjudged a bad-conduct discharge, for not more than an additional 20 days; and

''(B) in the case of all other courts-martial, for not more than an additional 10 days.''

Subsec. (b)(2). Pub. L. 99–661, §806(a)(2), (3), added par. (2). Former par. (2) redesignated (3).

Subsec. (b)(3). Pub. L. 99–661, §806(a)(1), (2), redesignated par. (2) as (3), inserted a comma after ''case'', and struck out former par. (3) which read as follows: ''In no event shall the accused in any general or special court-martial case have less than a seven-day period after the day on which a copy of the authenticated record of trial has been given to him within which to make a submission under paragraph (1). The convening authority or other person taking action on the case, for good cause, may extend this period for up to an additional 10 days.''

Subsec. (c)(2). Pub. L. 99–661, §806(b), struck out ''and, if applicable, under subsection (d),'' after ''under subsection (b)''.

Subsec. (d). Pub. L. 99–661, §806(c), substituted ''who may submit any matter in response under subsection (b)'' for ''who shall have five days from the date of receipt in which to submit any matter in response. The convening authority or other person taking action under this section, for good cause, may extend that period for up to an additional 20 days.''

1983—Pub. L. 98–209 amended section generally, substituting ''Action by the convening authority'' for ''Initial action on the record'' as section catchline, and, in text, substituting new provision for provision that after a trial by court-martial the record had to be forwarded to the convening authority, and action thereon could be taken by the person who convened the court, a commissioned officer commanding for the time being, a successor in command, or any officer exercising general court-martial jurisdiction.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 806(c) [(d)] of title VIII of Pub. L. 99–661 provided that: ''The amendments made by this section [amending this section] shall apply in cases in which the sentence is adjudged on or after the effective date of this title.''

Title VIII of Pub. L. 99–661 effective the earlier of (1) the last day of the 120-day period beginning on Nov. 14, 1986; or (2) the date specified in an Executive order for such amendment to take effect, see section 808 of Pub. L. 99–661, set out as a note under section 802 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

§861. Art. 61. Waiver or withdrawal of appeal

(a) In each case subject to appellate review under section 866 or 869(a) of this title (article 66

or 69(a)), except a case in which the sentence as approved under section 860(c) of this title (article 60(c)) includes death, the accused may file with the convening authority a statement expressly waiving the right of the accused to such review. Such a waiver shall be signed by both the accused and by defense counsel and must be filed within 10 days after the action under section 860(c) of this title (article 60(c)) is served on the accused or on defense counsel. The convening authority or other person taking such action, for good cause, may extend the period for such filing by not more than 30 days.

(b) Except in a case in which the sentence as approved under section 860(c) of this title (article 60(c)) includes death, the accused may withdraw an appeal at any time.

(c) A waiver of the right to appellate review or the withdrawal of an appeal under this section bars review under section 866 or 869(a) of this title (article 66 or 69(a)).

(Aug. 10, 1956, ch. 1041, 70A Stat. 58; Pub. L. 98–209, § 5(b)(1), Dec. 6, 1983, 97 Stat. 1397.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
861	50:648.	May 5, 1950, ch. 169, § 1 (Art. 61), 64 Stat. 127.

The word ''each'' is substituted for the word ''every''.

AMENDMENTS

1983—Pub. L. 98–209 amended section generally, substituting ''Waiver or withdrawal of appeal'' for ''Same—General court-martial records'' as section catchline, and, in text, substituting provisions relating to waiver or withdrawal of appeal for provisions relating to initial action by the convening authority on general court-martial records.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

§ 862. Art. 62. Appeal by the United States

(a)(1) In a trial by court-martial in which a military judge presides and in which a punitive discharge may be adjudged, the United States may appeal the following (other than an order or ruling that is, or that amounts to, a finding of not guilty with respect to the charge or specification):

(A) An order or ruling of the military judge which terminates the proceedings with respect to a charge or specification.

(B) An order or ruling which excludes evidence that is substantial proof of a fact material in the proceeding.

(C) An order or ruling which directs the disclosure of classified information.

(D) An order or ruling which imposes sanctions for nondisclosure of classified information.

(E) A refusal of the military judge to issue a protective order sought by the United States to prevent the disclosure of classified information.

(F) A refusal by the military judge to enforce an order described in subparagraph (E) that has previously been issued by appropriate authority.

(2) An appeal of an order or ruling may not be taken unless the trial counsel provides the military judge with written notice of appeal from the order or ruling within 72 hours of the order or ruling. Such notice shall include a certification by the trial counsel that the appeal is not taken for the purpose of delay and (if the order or ruling appealed is one which excludes evidence) that the evidence excluded is substantial proof of a fact material in the proceeding.

(3) An appeal under this section shall be diligently prosecuted by appellate Government counsel.

(b) An appeal under this section shall be forwarded by a means prescribed under regulations of the President directly to the Court of Criminal Appeals and shall, whenever practicable, have priority over all other proceedings before that court. In ruling on an appeal under this section, the Court of Criminal Appeals may act only with respect to matters of law, notwithstanding section 866(c) of this title (article 66(c)).

(c) Any period of delay resulting from an appeal under this section shall be excluded in deciding any issue regarding denial of a speedy trial unless an appropriate authority determines that the appeal was filed solely for the purpose of delay with the knowledge that it was totally frivolous and without merit.

(Aug. 10, 1956, ch. 1041, 70A Stat. 58; Pub. L. 98–209, § 5(c)(1), Dec. 6, 1983, 97 Stat. 1398; Pub. L. 103–337, div. A, title IX, § 924(c)(2), Oct. 5, 1994, 108 Stat. 2831; Pub. L. 104–106, div. A, title XI, § 1141(a), Feb. 10, 1996, 110 Stat. 466.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
862(a)	50:649(a).	May 5, 1950, ch. 169, § 1 (Art. 62), 64 Stat. 127.
862(b)	50:649(b).	

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–106 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''In a trial by court-martial in which a military judge presides and in which a punitive discharge may be adjudged, the United States may appeal an order or ruling of the military judge which terminates the proceedings with respect to a charge or specification or which excludes evidence that is substantial proof of a fact material in the proceeding. However, the United States may not appeal an order or ruling that is, or that amounts to, a finding of not guilty with respect to the charge or specification.''

1994—Subsec. (b). Pub. L. 103–337 substituted ''Court of Criminal Appeals'' for ''Court of Military Review'' in two places.

1983—Pub. L. 98–209 amended section generally, substituting ''Appeal by the United States'' for ''Reconsideration and revision'' as section catchline, and, in text, substituting provisions relating to appeals by the United States for provisions relating to the convening authority returning the record to the court for reconsideration and appropriate action.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

§ 863. Art. 63. Rehearings

Each rehearing under this chapter shall take place before a court-martial composed of members not members of the court-martial which first heard the case. Upon a rehearing the accused may not be tried for any offense of which he was found not guilty by the first court-martial, and no sentence in excess of or more severe than the original sentence may be approved, unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings, or unless the sentence prescribed for the offense is mandatory. If the sentence approved after the first court-martial was in accordance with a pretrial agreement and the accused at the rehearing changes his plea with respect to the charges or specifications upon which the pretrial agreement was based, or otherwise does not comply with the pretrial agreement, the approved sentence as to those charges or specifications may include any punishment not in excess of that lawfully adjudged at the first court-martial.

(Aug. 10, 1956, ch. 1041, 70A Stat. 58; Pub. L. 98–209, § 5(d), Dec. 6, 1983, 97 Stat. 1398; Pub. L. 102–484, div. A, title X, § 1065, Oct. 23, 1992, 106 Stat. 2506.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
863(a)	50:650(a).	May 5, 1950, ch. 169, § 1 (Art. 63), 64 Stat. 127.
863(b)	50:650(b).	

In subsection (a), the words ''In such a'' are substituted for the words ''in which''.

In subsection (b), the word ''Each'' is substituted for the word ''Every''. The word ''may'' is substituted for the word ''shall'' in the second sentence.

AMENDMENTS

1992—Pub. L. 102–484 substituted ''approved'' for ''imposed'' in second sentence and inserted ''approved'' before last reference to ''sentence'' in third sentence.

1983—Pub. L. 98–209 struck out subsec. (a) which provided that if the convening authority disapproved the findings and sentence of a court-martial he could, except where there was lack of sufficient evidence in the record to support the findings, order a rehearing, stating the reasons for disapproval, and that if he disapproved the findings without reordering a rehearing, he had to dismiss the charges, and redesignated former subsec. (b) as entire section, and, as so redesignated, inserted ''under this chapter'' after ''Each rehearing'', and inserted provision that if the sentence approved after the first court-martial was in accordance with a pretrial agreement and the accused at the rehearing changes his plea with respect to the charges or specifications upon which the pretrial agreement was based, or otherwise does not comply with the pretrial agreement, the sentence as to those charges or specifications may include any punishment not in excess of that lawfully adjudged at the first court-martial.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–484 effective Oct. 23, 1992, and applicable with respect to offenses committed on or after that date, see section 1067 of Pub. L. 102–484, set out as a note under section 803 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

§ 864. Art. 64. Review by a judge advocate

(a) Each case in which there has been a finding of guilty that is not reviewed under section 866 or 869(a) of this title (article 66 or 69(a)) shall be reviewed by a judge advocate under regulations of the Secretary concerned. A judge advocate may not review a case under this subsection if he has acted in the same case as an accuser, investigating officer, member of the court, military judge, or counsel or has otherwise acted on behalf of the prosecution or defense. The judge advocate's review shall be in writing and shall contain the following:

(1) Conclusions as to whether—

(A) the court had jurisdiction over the accused and the offense;

(B) the charge and specification stated an offense; and

(C) the sentence was within the limits prescribed as a matter of law.

(2) A response to each allegation of error made in writing by the accused.

(3) If the case is sent for action under subsection (b), a recommendation as to the appropriate action to be taken and an opinion as to whether corrective action is required as a matter of law.

(b) The record of trial and related documents in each case reviewed under subsection (a) shall be sent for action to the person exercising general court-martial jurisdiction over the accused at the time the court was convened (or to that person's successor in command) if—

(1) the judge advocate who reviewed the case recommends corrective action;

(2) the sentence approved under section 860(c) of this title (article 60(c)) extends to dismissal, a bad-conduct or dishonorable discharge, or confinement for more than six months; or

(3) such action is otherwise required by regulations of the Secretary concerned.

(c)(1) The person to whom the record of trial and related documents are sent under subsection (b) may—

(A) disapprove or approve the findings or sentence, in whole or in part;

(B) remit, commute, or suspend the sentence in whole or in part;

(C) except where the evidence was insufficient at the trial to support the findings, order a rehearing on the findings, on the sentence, or on both; or

(D) dismiss the charges.

(2) If a rehearing is ordered but the convening authority finds a rehearing impracticable, he shall dismiss the charges.

(3) If the opinion of the judge advocate in the judge advocate's review under subsection (a) is that corrective action is required as a matter of law and if the person required to take action under subsection (b) does not take action that is at least as favorable to the accused as that recommended by the judge advocate, the record of trial and action thereon shall be sent to the Judge Advocate General for review under section 869(b) of this title (article 69(b)).

(Aug. 10, 1956, ch. 1041, 70A Stat. 58; Pub. L. 98–209, § 7(a)(1), Dec. 6, 1983, 97 Stat. 1401.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
864	50:651.	May 5, 1950, ch. 169, § 1 (Art. 64), 64 Stat. 128.

The word ''may'' is substituted for the word ''shall''. The word ''is'' is substituted for the words ''shall constitute''.

AMENDMENTS

1983—Pub. L. 98–209 amended section generally, substituting ''Review by a judge advocate'' for ''Approval by the convening authority'' in section catchline, and, in text, substituting provisions relating to review by a judge advocate for provision that in acting on the findings and sentence of a court-martial, the convening authority could approve only such findings of guilty, and the sentence or such part or amount of the sentence, as he found correct in law and fact and as he in his discretion determined should be approved, and that unless he indicated otherwise, approval of the sentence was approval of the findings and sentence.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

§ 865. Art. 65. Disposition of records

(a) In a case subject to appellate review under section 866 or 869(a) of this title (article 66 or 69(a)) in which the right to such review is not waived, or an appeal is not withdrawn, under section 861 of this title (article 61), the record of trial and action thereon shall be transmitted to the Judge Advocate General for appropriate action.

(b) Except as otherwise required by this chapter, all other records of trial and related documents shall be transmitted and disposed of as the Secretary concerned may prescribe by regulation.

(Aug. 10, 1956, ch. 1041, 70A Stat. 59; Pub. L. 90–179, § 1(6), Dec. 8, 1967, 81 Stat. 546; Pub. L. 90–632, § 2(26), Oct. 24, 1968, 82 Stat. 1341; Pub. L. 96–513, title V, § 511(25), Dec. 12, 1980, 94 Stat. 2922; Pub. L. 98–209, § 6(d)(1), Dec. 6, 1983, 97 Stat. 1401.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
865(a)	50:652(a).	May 5, 1950, ch. 169, § 1 (Art. 65), 64 Stat. 128.
865(b)	50:652(b).	
865(c)	50:652(c).	

In subsection (b), the word ''If'' is substituted for the word ''Where''.

In subsections (a) and (b), the words ''send'' and ''sent'' are substituted for the words ''forward'' and ''forwarded'', respectively.

In subsection (c), the words ''Secretary concerned'' are substituted for the words ''Secretary of the Department''.

AMENDMENTS

1983—Pub. L. 98–209 amended section generally, substituting ''Disposition of records'' for ''Disposition of records after review by the convening authority'' in section catchline, and, in text, substituting provisions relating to disposition of records for prior provisions relating to disposition of records that required when the convening authority had taken final action in a general court-martial case, he had to send the entire record, including his action thereon and the opinion or opinions of the staff judge advocate or legal officer, to the appropriate Judge Advocate General, required that where sentences of special courts-martial included a bad-conduct discharge, the record had to be sent for review either to the officer exercising general court-martial jurisdiction over the command to be reviewed or directly to the appropriate Judge Advocate General to be reviewed by a Court of Military Review, and required that all other special and summary court-martial records had to be reviewed by a judge advocate of the Army, Navy, Air Force, or Marine Corps, or a law specialist or lawyer of the Coast Guard or Department of Transportation, and had to be transmitted and disposed of as the Secretary concerned might prescribe by regulation.

1980—Subsec. (c). Pub. L. 96–513 substituted ''Department of Transportation'' for ''Department of the Treasury''.

1968—Subsec. (b). Pub. L. 90–632 substituted ''Court of Military Review'' for ''board of review'' wherever appearing.

1967—Subsec. (c). Pub. L. 90–179 inserted reference to judge advocate of the Marine Corps and substituted reference to judge advocate of the Navy for reference to law specialist of the Navy.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§ 866. Art. 66. Review by Court of Criminal Appeals

(a) Each Judge Advocate General shall establish a Court of Criminal Appeals which shall be

composed of one or more panels, and each such panel shall be composed of not less than three appellate military judges. For the purpose of reviewing court-martial cases, the court may sit in panels or as a whole in accordance with rules prescribed under subsection (f). Any decision of a panel may be reconsidered by the court sitting as a whole in accordance with such rules. Appellate military judges who are assigned to a Court of Criminal Appeals may be commissioned officers or civilians, each of whom must be a member of a bar of a Federal court or of the highest court of a State. The Judge Advocate General shall designate as chief judge one of the appellate military judges of the Court of Criminal Appeals established by him. The chief judge shall determine on which panels of the court the appellate judges assigned to the court will serve and which military judge assigned to the court will act as the senior judge on each panel.

(b) The Judge Advocate General shall refer to a Court of Criminal Appeals the record in each case of trial by court-martial—

(1) in which the sentence, as approved, extends to death, dismissal of a commissioned officer, cadet, or midshipman, dishonorable or bad-conduct discharge, or confinement for one year or more; and

(2) except in the case of a sentence extending to death, the right to appellate review has not been waived or an appeal has not been withdrawn under section 861 of this title (article 61).

(c) In a case referred to it, the Court of Criminal Appeals may act only with respect to the findings and sentence as approved by the convening authority. It may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as it finds correct in law and fact and determines, on the basis of the entire record, should be approved. In considering the record, it may weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses.

(d) If the Court of Criminal Appeals sets aside the findings and sentence, it may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If it sets aside the findings and sentence and does not order a rehearing, it shall order that the charges be dismissed.

(e) The Judge Advocate General shall, unless there is to be further action by the President, the Secretary concerned, the Court of Appeals for the Armed Forces, or the Supreme Court, instruct the convening authority to take action in accordance with the decision of the Court of Criminal Appeals. If the Court of Criminal Appeals has ordered a rehearing but the convening authority finds a rehearing impracticable, he may dismiss the charges.

(f) The Judge Advocates General shall prescribe uniform rules of procedure for Courts of Criminal Appeals and shall meet periodically to formulate policies and procedure in regard to review of court-martial cases in the offices of the Judge Advocates General and by Courts of Criminal Appeals.

(g) No member of a Court of Criminal Appeals shall be required, or on his own initiative be permitted, to prepare, approve, disapprove, review, or submit, with respect to any other member of the same or another Court of Criminal Appeals, an effectiveness, fitness, or efficiency report, or any other report or document used in whole or in part for the purpose of determining whether a member of the armed forces is qualified to be advanced in grade, or in determining the assignment or transfer of a member of the armed forces, or in determining whether a member of the armed forces should be retained on active duty.

(h) No member of a Court of Criminal Appeals shall be eligible to review the record of any trial if such member served as investigating officer in the case or served as a member of the court-martial before which such trial was conducted, or served as military judge, trial or defense counsel, or reviewing officer of such trial.

(Aug. 10, 1956, ch. 1041, 70A Stat. 59; Pub. L. 90–632, §2(27), Oct. 24, 1968, 82 Stat. 1341; Pub. L. 98–209, §§7(b), (c), 10(c)(1), Dec. 6, 1983, 97 Stat. 1402, 1406; Pub. L. 103–337, div. A, title IX, §924(b)(2), (c)(1), (4)(A), Oct. 5, 1994, 108 Stat. 2831, 2832; Pub. L. 104–106, div. A, title XI, §1153, Feb. 10, 1996, 110 Stat. 468.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
866(a)	50:653(a).	May 5, 1950, ch. 169, §1 (Art. 66), 64 Stat. 128.
866(b)	50:653(b).	
866(c)	50:653(c).	
866(d)	50:653(d).	
866(e)	50:653(e).	
866(f)	50:653(f).	

In subsection (a), the word ''Each'' is substituted for the words ''The * * * of each of the armed forces''. The word ''must'' is substituted for the word ''shall'' after the word ''whom'', since a condition is prescribed, not a command. The words ''of the United States'' are omitted as surplusage.

In subsections (a) and (b), the word ''commissioned'' is inserted before the word ''officer''.

In subsection (c), the word ''may'' is substituted for the word ''shall'' and for the words ''shall have authority to''.

In subsection (e), the words ''Secretary concerned'' are substituted for the words ''Secretary of the Department''.

In subsection (f), the words ''of the armed forces'' and ''proceedings in and before'' are omitted as surplusage.

AMENDMENTS

1996—Subsec. (f). Pub. L. 104–106 substituted ''Courts of Criminal Appeals'' for ''Courts of Military Review'' in two places.

1994—Pub. L. 103–337, §924(c)(4)(A), substituted ''Court of Criminal Appeals'' for ''Court of Military Review'' in section catchline.

Pub. L. 103–337, §924(b)(2), substituted ''Court of Criminal Appeals'' for ''Court of Military Review'' wherever appearing.

Pub. L. 103–337, §924(c)(1), substituted ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals'' in subsec. (e).

1983—Subsec. (a). Pub. L. 98–209, §7(b), inserted provision that any decision of a panel may be reconsidered by the court sitting as a whole in accordance with the rules.

Subsec. (b). Pub. L. 98–209, §7(c), amended subsec. (b) generally, designating existing provisions as par. (1), struck out provision extending applicability of provisions to sentences affecting a general or flag officer, and added par. (2).

Subsec. (e). Pub. L. 98–209, § 10(c)(1), substituted ''the Court of Military Appeals, or the Supreme Court'' for ''or the Court of Military Appeals''.

1968—Subsec. (a). Pub. L. 90–632, § 2(27)(A), (B), substituted ''Court of Military Review'' for ''board of review'' in section catchline and, in subsec. (a), substituted ''Court of Military Review'' for ''board of review'' as name of reviewing body established by each Judge Advocate General, and inserted provisions setting out procedures for such Courts of Military Review, their composition and functions.

Subsecs. (b) to (e). Pub. L. 90–632, § 2(27)(C), substituted ''Court of Military Review'' for ''board of review'' wherever appearing.

Subsec. (f). Pub. L. 90–632, § 2(27)(D), substituted ''Courts of Military Review'' for ''boards of review'' in two places.

Subsecs. (g), (h). Pub. L. 90–632, § 2(27)(E), added subsecs. (g) and (h).

CHANGE OF NAME

Section 924(b)(1) of Pub. L. 103–337 provided that: ''Each Court of Military Review shall hereafter be known and designated as a Court of Criminal Appeals.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but amendments by section 7(b), (c) of Pub. L. 98–209 not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

STATUTORY REFERENCES TO BOARD OF REVIEW DEEMED REFERENCES TO COURT OF MILITARY REVIEW

Section 3(b) of Pub. L. 90–632 provided that: ''Whenever the term board of review is used, with reference to or in connection with the appellate review of courts-martial cases, in any provision of Federal law (other than provisions amended by this Act) [see Short Title of 1968 Amendment note under section 801 of this title] or in any regulation, document, or record of the United States, such term shall be deemed to mean Court of Military Review [now Court of Criminal Appeals].''

§ 867. Art. 67. Review by the Court of Appeals for the Armed Forces

(a) The Court of Appeals for the Armed Forces shall review the record in—

(1) all cases in which the sentence, as affirmed by a Court of Criminal Appeals, extends to death;

(2) all cases reviewed by a Court of Criminal Appeals which the Judge Advocate General orders sent to the Court of Appeals for the Armed Forces for review; and

(3) all cases reviewed by a Court of Criminal Appeals in which, upon petition of the accused and on good cause shown, the Court of Appeals for the Armed Forces has granted a review.

(b) The accused may petition the Court of Appeals for the Armed Forces for review of a decision of a Court of Criminal Appeals within 60 days from the earlier of—

(1) the date on which the accused is notified of the decision of the Court of Criminal Appeals; or

(2) the date on which a copy of the decision of the Court of Criminal Appeals, after being served on appellate counsel of record for the accused (if any), is deposited in the United States mails for delivery by first-class certified mail to the accused at an address provided by the accused or, if no such address has been provided by the accused, at the latest address listed for the accused in his official service record.

The Court of Appeals for the Armed Forces shall act upon such a petition promptly in accordance with the rules of the court.

(c) In any case reviewed by it, the Court of Appeals for the Armed Forces may act only with respect to the findings and sentence as approved by the convening authority and as affirmed or set aside as incorrect in law by the Court of Criminal Appeals. In a case which the Judge Advocate General orders sent to the Court of Appeals for the Armed Forces, that action need be taken only with respect to the issues raised by him. In a case reviewed upon petition of the accused, that action need be taken only with respect to issues specified in the grant of review. The Court of Appeals for the Armed Forces shall take action only with respect to matters of law.

(d) If the Court of Appeals for the Armed Forces sets aside the findings and sentence, it may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If it sets aside the findings and sentence and does not order a rehearing, it shall order that the charges be dismissed.

(e) After it has acted on a case, the Court of Appeals for the Armed Forces may direct the Judge Advocate General to return the record to the Court of Criminal Appeals for further review in accordance with the decision of the court. Otherwise, unless there is to be further action by the President or the Secretary concerned, the Judge Advocate General shall instruct the convening authority to take action in accordance with that decision. If the court has ordered a rehearing, but the convening authority finds a rehearing impracticable, he may dismiss the charges.

(Aug. 10, 1956, ch. 1041, 70A Stat. 60; Pub. L. 88–426, title IV, § 403(j), Aug. 14, 1964, 78 Stat. 434; Pub. L. 90–340, § 1, June 15, 1968, 82 Stat. 178; Pub. L. 90–632, § 2(28), Oct. 24, 1968, 82 Stat. 1342; Pub. L. 96–579, § 12(a), Dec. 23, 1980, 94 Stat. 3369; Pub. L. 97–81, § 5, Nov. 20, 1981, 95 Stat. 1088; Pub. L. 97–295, § 1(12), Oct. 12, 1982, 96 Stat. 1289; Pub. L. 98–209, §§ 7(d), 9(a), 10(c)(2), 13(d), Dec. 6, 1983, 97 Stat. 1402, 1404, 1406, 1408; Pub. L. 100–26, § 7(a)(2), Apr. 21, 1987, 101 Stat. 275; Pub. L. 100–456, div. A, title VII, § 722(a), (c), Sept. 29, 1988, 102 Stat. 2002, 2003; Pub. L. 101–189, div. A, title XIII, § 1301(a), Nov. 29, 1989, 103 Stat. 1569; Pub. L. 103–337, div. A, title IX, § 924(c)(1), (2), (4)(B), Oct. 5, 1994, 108 Stat. 2831, 2832.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
867(a)	50:654(a).	May 5, 1950, ch. 169, § 1
867(b)	50:654(b).	(Art. 67), 64 Stat. 129;
867(c)	50:654(c).	Mar. 2, 1955, ch. 9, § 1(i),
867(d)	50:654(d).	69 Stat. 10.

HISTORICAL AND REVISION NOTES—CONTINUED

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
867(e)	50:654(e).	
867(f)	50:654(f).	
867(g)	50:654(g).	

In subsection (a)(1), the word ''is'' is substituted for the words ''is hereby established''. The words ''all'' and ''which shall be'' are omitted as surplusage. The word ''consists'' is substituted for the words ''shall consist''. The word ''civil'' is substituted for the word ''civilian''. The word ''may'' is substituted for the word ''shall'' before the words ''be appointed''. The word ''is'' is substituted for the word ''shall'' before the words ''any person''. The words ''is entitled to'' are substituted for the words ''shall receive''. The word ''is'' is substituted for the words ''shall be'' in the fourth sentence. The word ''may'' is substituted for the words ''shall have power to * * * to''. The word ''does'' is substituted for the word ''shall'' in the next to the last sentence. In the last sentence, the words ''is entitled * * * to'' are substituted for the word ''shall''. The word ''outside'' is substituted for the words ''at a place other than his official station. The official station of such judges for such purpose shall be''. The words ''also'' and ''actually'' are omitted as surplusage.

In subsection (a)(2), the words ''February 28, 1951,'' are substituted for the words ''the effective date of this subdivision''. The word ''shall'' in the first sentence, and the word ''shall'' before the word ''expire'' in the second sentence, are omitted as surplusage. The word ''before'' is substituted for the words ''prior to''. The word ''may'' is substituted for the word ''shall'' before the words ''be appointed''.

In subsection (a)(3), the word ''for'' is substituted for the words ''upon the ground of''.

In subsection (b), the words ''the following cases'' are omitted as surplusage.

In subsections (b) and (d), the word ''sent'' is substituted for the word ''forwarded''.

In subsection (c), the word ''when'' is inserted after the word ''time''. The words ''a grant of'' are omitted as surplusage.

In subsection (d), the word ''may'' is substituted for the word ''shall'' in the first sentence.

In subsection (f), the words ''Secretary concerned'' are substituted for the words ''Secretary of the Department''.

In subsection (g), the words ''of the armed forces'' are omitted as surplusage. The words ''policies as to sentences'' are substituted for the words ''sentence policies''. The word ''considered'' is substituted for the word ''deemed''. The words ''Secretaries of the military departments, and the Secretary of the Treasury'' are substituted for the words ''Secretaries of the Departments''.

1982 ACT

In subsection (d), the words ''Court of Military Review'' are substituted for ''board of review'' because of section 3(b) of the Military Justice Act of 1968 (Pub. L. 90–632, Oct. 24, 1968, 82 Stat. 1343).

The change in subsection (g) reflects the transfer of functions from the Secretary of the Treasury to the Secretary of Transportation under 49:1655(b).

AMENDMENTS

1994—Pub. L. 103–337, §924(c)(4)(B), substituted ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals'' in section catchline.

Pub. L. 103–337, §924(c)(2), substituted ''Court of Criminal Appeals'' for ''Court of Military Review'' wherever appearing in subsecs. (a) to (c) and (e).

Pub. L. 103–337, §924(c)(1), substituted ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals'' wherever appearing.

1989—Pub. L. 101–189 redesignated subsecs. (b) to (f) as (a) to (e), respectively, struck out former subsec. (a) which related to establishment of the United States Court of Military Appeals, and appointment, removal, allowances and compensation, etc., of judges of such court, struck out subsec. (g) which related to a committee required to make annual comprehensive surveys of the operation of this chapter, struck out subsec. (h) which related to review of decisions of the Court of Military Appeals by the Supreme Court, and struck out subsec. (i) which related to annuities for judges and former or retired judges, and survivors and former spouses of judges and former judges.

1988—Subsec. (a)(4). Pub. L. 100–456, §722(c), inserted ''or an annuity under subsection (i) or subchapter III of chapter 83 or chapter 84 of title 5'' after ''retired pay'' in two places.

Subsec. (i). Pub. L. 100–456, §722(a), added subsec. (i).

1987—Subsec. (g)(1). Pub. L. 100–26 substituted ''the Staff Judge Advocate to the Commandant of the Marine Corps'' for ''the Director, Judge Advocate Division, Headquarters, United States Marine Corps''.

1983—Subsec. (a)(3). Pub. L. 98–209, §13(d), inserted ''Circuit'' after ''District of Columbia''.

Subsec. (b)(1). Pub. L. 98–209, §7(d), struck out ''affects a general or flag officer or'' before ''extends to death''.

Subsec. (g). Pub. L. 98–209, §9(a), designated existing provisions as par. (1), substituted ''A committee consisting of the judges of the Court of Military Appeals, the Judge Advocates General of the Army, Navy, and Air Force, the Chief Counsel of the Coast Guard, the Director, Judge Advocate Division, Headquarters, United States Marine Corps, and two members of the public appointed by the Secretary of Defense shall meet at least annually. The committee shall make an annual comprehensive survey of the operation of this chapter. After each such survey, the committee shall report'' for ''The Court of Military Appeals and the Judge Advocates General shall meet annually to make a comprehensive survey of the operation of this chapter and report'', and added pars. (2) and (3).

Subsec. (h). Pub. L. 98–209, §10(c)(2), added subsec. (h).

1982—Subsec. (d). Pub. L. 97–295, §1(12)(A), substituted ''Court of Military Review'' for ''board of review'' after ''incorrect in law by the''.

Subsec. (g). Pub. L. 97–295, §1(12)(B), substituted ''Secretary of Transportation'' for ''Secretary of the Treasury'' after ''military departments, and the''.

1981—Subsec. (c). Pub. L. 97–81 substituted provisions authorizing the accused to petition the Court of Military Appeals for review of a decision of a Court of Military Review within 60 days from the earlier of (1) the date on which the accused is notified of the decision of the Court of Military Review, or (2) the date on which a copy of the decision of the Court of Military Review, after being served on appellate counsel of record for the accused (if any), is deposited in the United States mails for delivery by first-class certified mail to the accused at an address provided by the accused or, if no such address has been provided by the accused, at the latest address listed for the accused in his official service record, and directing the Court of Military Appeals to act upon such a petition promptly in accordance with the rules of the court for provision which had given the accused 30 days from the time when he was notified of the decision of a board of review to petition the Court of Military Appeals for review and which had directed the court to act upon such a petition within 30 days of the receipt thereof.

1980—Subsec. (a)(1). Pub. L. 96–579 struck out third sentence prescribing expiration of terms of office of all successors of judges of the Court of Military Appeals serving on June 15, 1968, fifteen years after expiration of term of their predecessors subject to requirement that any judge appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed should be appointed only for the unexpired term of the predecessor.

1968—Subsec. (a)(1). Pub. L. 90–340 changed the name of the Court of Military Appeals to the United States Court of Military Appeals, and established it under Ar-

ticle I of the United States Constitution, provided that the terms of office of all successors of the judges serving on June 15, 1968, shall expire 15 years after the expiration of the terms for which their predecessors were appointed but that any judge appointed to fill a vacancy occurring prior to the expiration of the term of his predecessor shall be appointed only for the unexpired term of his predecessor, substituted provisions that each judge is entitled to the same salary and travel allowances as are judges of the United States Court of Appeals for provisions that entitled each judge to a salary of $33,000 a year and a travel and maintenance allowance, for expenses incurred while attending court or transacting official business outside the District of Columbia, not to exceed $15 a day, and provided for the precedence of the chief judge, and of the other judges based on their seniority.

Subsec. (a)(2). Pub. L. 90–340 redesignated former par. (3) as (2) and changed the name of the Court of Military Appeals to the United States Court of Military Appeals. Provisions of former par. (2) pertaining to the terms of office of judges were placed in par. (1). Provisions of former par. (2) pertaining to the terms of office of the three judges first taking office after February 28, 1951, and expiring, as designated by the President at the time of nomination, one on May 1, 1956, one on May 1, 1961, and one on May 1, 1966, were struck out.

Subsec. (a)(3). Pub. L. 90–340 redesignated former par. (4) as (3) and changed the name of the Court of Military Appeals to the United States Court of Military Appeals, and provided that a judge appointed to fill a temporary vacancy due to illness or disability may only be a judge of the Court of Appeals for the District of Columbia. Former par. (3) redesignated (2).

Subsec. (a)(4). Pub. L. 90–340 added par. (4). Former par. (4) redesignated (3).

Subsecs. (b), (f). Pub. L. 90–632 substituted ''Court of Military Review'' for ''board of review'' wherever appearing.

1964—Subsec. (a)(1). Pub. L. 88–426 increased salary of judges from $25,500 to $33,000.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 722(d) of Pub. L. 100–456 provided that: ''Subsection (i) of section 867 of title 10, United States Code, as added by subsection (a), shall apply with respect to judges of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] whose term of service on such court ends on or after the date of the enactment of this Act [Sept. 29, 1988] and to the survivors of such judges.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by sections 9(a) and 13(d) Pub. L. 98–209 effective Dec. 6, 1983, and amendment by sections 7(d) and 10(c)(2) of Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but amendment by section 7(d) of Pub. L. 98–209 not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–81 to take effect at end of 60-day period beginning on Nov. 20, 1981, and to apply to any accused with respect to a Court of Military Review [now Court of Criminal Appeals] decision that is dated on or after that date, see section 7(a), (b)(5) of Pub. L. 97–81, set out as an Effective Date note under section 706 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

For effective date of amendment by Pub. L. 88–426, see section 501 of Pub. L. 88–426.

COMMISSION TO STUDY AND MAKE RECOMMENDATIONS CONCERNING SENTENCING AUTHORITY, JURISDICTION, TENURE, AND RETIREMENT OF MILITARY JUDGES; ESTABLISHMENT; COMPOSITION; REPORT TO CONGRESSIONAL COMMITTEES

Section 9(b) of Pub. L. 98–209, as amended by Pub. L. 98–525, title XV, § 1521, Oct. 19, 1984, 98 Stat. 2628, directed Secretary of Defense to establish a commission to study the sentencing authority, jurisdiction, tenure, and retirement system of military judges, and to report, not later than Dec. 15, 1984, its findings and recommendations to committees of Congress and to the committee established under former section 867(g) of this title.

TERMS OF OFFICE OF JUDGES OF UNITED STATES COURT OF MILITARY APPEALS

Section 12(b) of Pub. L. 96–579 provided that the term of office of a judge of United States Court of Military Appeals serving on such court on Dec. 23, 1980, expire (1) on the date the term of such judge would have expired under the law in effect on the day before Dec. 23, 1980, or (2) ten years after the date on which such judge took office as a judge of the United States Court of Military Appeals, whichever is later.

CONTINUATION OF POWERS AND JURISDICTION OF COURT OF MILITARY APPEALS; STATUS OF JUDGES

Section 2 of Pub. L. 90–340 provided that: ''The United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] established under this Act [which amended subsec. (a) of this section] is a continuation of the Court of Military Appeals as it existed prior to the effective date of this Act [June 15, 1968], and no loss of rights or powers, interruption of jurisdiction, or prejudice to matters pending in the Court of Military Appeals before the effective date of this Act shall result. A judge of the Court of Military Appeals so serving on the day before the effective date of this Act shall, for all purposes, be a judge of the United States Court of Military Appeals under this Act.''

SALARY INCREASES

1987—Salaries of judges increased to $95,000 per annum, on recommendation of President, see note set out under section 358 of Title 2, The Congress.

1977—Salaries of judges increased to $57,500 per annum, on recommendation of President, see note set out under section 358 of Title 2.

1969—Salaries of judges increased from $33,000 to $42,500 per annum, commencing first day of pay period which begins after Feb. 14, 1969, on recommendation of President, see note set out under section 358 of Title 2.

EXECUTIVE ORDER NO. 12063

Ex. Ord. No. 12063, June 5, 1978, 43 F.R. 24659, which related to the United States Court of Military Appeals Nominating Commission, was revoked by Ex. Ord. No. 12258, Dec. 31, 1980, 46 F.R. 1251, set out as a note under section 14 of the Appendix to Title 5, Government Organization and Employees.

§ 867a. Art. 67a. Review by the Supreme Court

(a) Decisions of the United States Court of Appeals for the Armed Forces are subject to review by the Supreme Court by writ of certiorari as provided in section 1259 of title 28. The Supreme Court may not review by a writ of certiorari under this section any action of the Court of Appeals for the Armed Forces in refusing to grant a petition for review.

(b) The accused may petition the Supreme Court for a writ of certiorari without prepayment of fees and costs or security therefor and without filing the affidavit required by section 1915(a) of title 28.

(Added Pub. L. 101–189, div. A, title XIII, § 1301(b), Nov. 29, 1989, 103 Stat. 1569; amended Pub. L. 103–337, div. A, title IX, § 924(c)(1), Oct. 5, 1994, 108 Stat. 2831.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–337 substituted ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals'' in two places.

§ 868. Art. 68. Branch offices

The Secretary concerned may direct the Judge Advocate General to establish a branch office with any command. The branch office shall be under an Assistant Judge Advocate General who, with the consent of the Judge Advocate General, may establish a Court of Criminal Appeals with one or more panels. That Assistant Judge Advocate General and any Court of Criminal Appeals established by him may perform for that command under the general supervision of the Judge Advocate General, the respective duties which the Judge Advocate General and a Court of Criminal Appeals established by the Judge Advocate General would otherwise be required to perform as to all cases involving sentences not requiring approval by the President.

(Aug. 10, 1956, ch. 1041, 70A Stat. 61; Pub. L. 90–632, § 2(29), Oct. 24, 1968, 82 Stat. 1342; Pub. L. 103–337, div. A, title IX, § 924(c)(2), Oct. 5, 1994, 108 Stat. 2831.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
868	50:655.	May 5, 1950, ch. 169, § 1 (Art. 68), 64 Stat. 130.

The word ''considers'' is substituted for the word ''deems''. The word ''may'' is substituted for the words ''shall be empowered to''. The word ''respective'' is inserted for clarity.

AMENDMENTS

1994—Pub. L. 103–337 substituted ''Court of Criminal Appeals'' for ''Court of Military Review'' wherever appearing.

1968—Pub. L. 90–632 substituted the Secretary concerned for the President as the individual authorized to direct the Judge Advocate General to establish a branch office under an Assistant Judge Advocate General with any command and substituted ''Court of Military Review'' for ''board of review'' as the name of the body established by the Assistant Judge Advocate General in charge of the branch office.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§ 869. Art. 69. Review in the office of the Judge Advocate General

(a) The record of trial in each general court-martial that is not otherwise reviewed under section 866 of this title (article 66) shall be examined in the office of the Judge Advocate General if there is a finding of guilty and the accused does not waive or withdraw his right to appellate review under section 861 of this title (article 61). If any part of the findings or sentence is found to be unsupported in law or if reassessment of the sentence is appropriate, the Judge Advocate General may modify or set aside the findings or sentence or both.

(b) The findings or sentence, or both, in a court-martial case not reviewed under subsection (a) or under section 866 of this title (article 66) may be modified or set aside, in whole or in part, by the Judge Advocate General on the ground of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, error prejudicial to the substantial rights of the accused, or the appropriateness of the sentence. If such a case is considered upon application of the accused, the application must be filed in the office of the Judge Advocate General by the accused on or before the last day of the two-year period beginning on the date the sentence is approved under section 860(c) of this title (article 60(c)), unless the accused establishes good cause for failure to file within that time.

(c) If the Judge Advocate General sets aside the findings or sentence, he may, except when the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If he sets aside the findings and sentence and does not order a rehearing, he shall order that the charges be dismissed. If the Judge Advocate General orders a rehearing but the convening authority finds a rehearing impractical, the convening authority shall dismiss the charges.

(d) A Court of Criminal Appeals may review, under section 866 of this title (article 66)—

(1) any court-martial case which (A) is subject to action by the Judge Advocate General under this section, and (B) is sent to the Court of Criminal Appeals by order of the Judge Advocate General; and

(2) any action taken by the Judge Advocate General under this section in such case.

(e) Notwithstanding section 866 of this title (article 66), in any case reviewed by a Court of Criminal Appeals under this section, the Court may take action only with respect to matters of law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 61; Pub. L. 90–632, § 2(30), Oct. 24, 1968, 82 Stat. 1342; Pub. L. 97–81, § 6, Nov. 20, 1981, 95 Stat. 1089; Pub. L. 98–209, § 7(e)(1), Dec. 6, 1983, 97 Stat. 1402; Pub. L. 101–189, div. A, title XIII, §§ 1302(a), 1304(b)(1), Nov. 29, 1989, 103 Stat. 1576, 1577; Pub. L. 103–337, div. A, title IX, § 924(c)(2), Oct. 5, 1994, 108 Stat. 2831.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
869	50:656.	May 5, 1950, ch. 169, § 1 (Art. 69), 64 Stat. 130.

The word ''may'' is substituted for the word ''will''. The word ''under'' is substituted for the words ''pursuant to the provisions of''.

AMENDMENTS

1994—Subsecs. (d), (e). Pub. L. 103–337 substituted ''Court of Criminal Appeals'' for ''Court of Military Review'' wherever appearing.

1989—Subsec. (a). Pub. L. 101–189, § 1304(b)(1), which directed amendment of subsec. (a) by striking ''section 867(b)(2) of this title (article 67(b)(2))'' in the third sentence and inserting in lieu thereof ''section 867(a)(2) of this title (article 67(a)(2))'', could not be executed because of the intervening amendment by Pub. L. 101–189, § 1302(a)(1), which struck out the third sentence, see below.

Pub. L. 101–189, § 1302(a)(1), struck out the third sentence, which read as follows: ''If the Judge Advocate General so directs, the record shall be reviewed by a Court of Military Review under section 866 of this title (article 66), but in that event there may be no further review by the Court of Military Appeals except under section 867(b)(2) of this title (article 67(b)(2)).''

Subsecs. (d), (e). Pub. L. 101–189, § 1302(a)(2), added subsecs. (d) and (e).

1983—Pub. L. 98–209 amended section generally. Prior to amendment section provided that every record of trial by general court-martial, in which there had been a finding of guilty and a sentence, the appellate review of which was not otherwise provided for by section 866 of this title, was to be examined in the office of the Judge Advocate General; that if any part of the findings or sentence was found unsupported in law, or if the Judge Advocate General so directed, the record was to be reviewed by a board of review in accordance with section 866 of this title, but in that event there could be no further review by the Court of Military Appeals except under section 867(b)(2) of this title, that notwithstanding section 876 of this title, the findings or sentence, or both, in a court-martial case which had been finally reviewed, but had not been reviewed by a Court of Military Review could be vacated or modified, in whole or in part, by the Judge Advocate General on the ground of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, or error prejudicial to the substantial rights of the accused; and that when such a case was considered upon application of the accused, the application had to be filed in the Office of the Judge Advocate General by the accused before: (1) October 1, 1983, or (2) the last day of the two-year period beginning on the date the sentence was approved by the convening authority or, in a special court-martial case which required action under section 865(b) of this title, the officer exercising general court-martial jurisdiction, whichever was later, unless the accused established good cause for failure to file within that time.

1981—Pub. L. 97–81 inserted provision that, when a case is considered upon application of the accused, the application must be filed in the Office of the Judge Advocate General by the accused before (1) October 1, 1983, or (2) the last day of the two-year period beginning on the date the sentence is approved by the convening authority or, in a special court-martial case which requires action under section 865(b) of this title (article 65(b)), the officer exercising general court-martial jurisdiction, whichever is later, unless the accused establishes good cause for failure to file within that time.

1968—Pub. L. 90–632 authorized the Judge Advocate General to either vacate or modify the findings or sentence, or both, in whole or in part, in any court-martial case which has been finally reviewed, but which has not been reviewed by a Court of Military Review, because of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, or error prejudicial to the substantial rights of the accused.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 1302(b) of Pub. L. 101–189 provided that: ''Subsection (e) of section 869 of title 10, United States Code, as added by subsection (a), shall apply with respect to cases in which a finding of guilty is adjudged by a general court-martial after the date of the enactment of this Act [Nov. 29, 1989].''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–81 effective at end of 60-day period beginning on Nov. 20, 1981, see section 7(a) of Pub. L. 97–81, set out as an Effective Date note under section 706 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective Oct. 24, 1968, see section 4(b) of Pub. L. 90–632, set out as a note under section 801 of this title.

TWO-YEAR PERIOD FOR APPLICATIONS FOR MODIFICATION OR SET-ASIDE INAPPLICABLE TO APPLICATIONS FILED ON OR BEFORE OCTOBER 1, 1983

Pub. L. 98–209, § 7(e)(2), Dec. 6, 1983, 97 Stat. 1403, provided that the two-year period specified under the second sentence of subsec. (b) of this section did not apply to any application filed in the office of the appropriate Judge Advocate General on or before Oct. 1, 1983, and that the application in such a case would be considered in the same manner and with the same effect as if such two-year period had not been enacted.

§ 870. Art. 70. Appellate counsel

(a) The Judge Advocate General shall detail in his office one or more commissioned officers as appellate Government counsel, and one or more commissioned officers as appellate defense counsel, who are qualified under section 827(b)(1) of this title (article 27(b)(1)).

(b) Appellate Government counsel shall represent the United States before the Court of Criminal Appeals or the Court of Appeals for the Armed Forces when directed to do so by the Judge Advocate General. Appellate Government counsel may represent the United States before the Supreme Court in cases arising under this chapter when requested to do so by the Attorney General.

(c) Appellate defense counsel shall represent the accused before the Court of Criminal Appeals, the Court of Appeals for the Armed Forces, or the Supreme Court—

(1) when requested by the accused;

(2) when the United States is represented by counsel; or

(3) when the Judge Advocate General has sent the case to the Court of Appeals for the Armed Forces.

(d) The accused has the right to be represented before the Court of Criminal Appeals, the Court of Appeals for the Armed Forces, or the Supreme Court by civilian counsel if provided by him.

(e) Military appellate counsel shall also perform such other functions in connection with the review of court martial cases as the Judge Advocate General directs.

(Aug. 10, 1956, ch. 1041, 70A Stat. 62; Pub. L. 90–632, § 2(31), Oct. 24, 1968, 82 Stat. 1342; Pub. L. 98–209, § 10(c)(3), Dec. 6, 1983, 97 Stat. 1406; Pub. L.

103–337, div. A, title IX, §924(c)(1), (2), Oct. 5, 1994, 108 Stat. 2831.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
870(a)	50:657(a).	May 5, 1950, ch. 169, §1 (Art. 70), 64 Stat. 130.
870(b)	50:657(b).	
870(c)	50:657(c).	
870(d)	50:657(d).	
870(e)	50:657(e).	

In subsection (a), the word ''detail'' is substituted for the word ''appoint'', since the filling of the position involved is not appointment to an office in the constitutional sense. The word ''commissioned'' is inserted for clarity. The word ''are'' is substituted for the words ''shall be''. The words ''the provisions of'' are omitted as surplusage.

In subsections (b) and (c), the word ''shall'' is substituted for the words ''It shall be the duty of * * * to''.

In subsection (c)(3), the word ''sent'' is substituted for the word ''transmitted''.

In subsection (d), the word ''has'' is substituted for the words ''shall have''.

In subsection (e), the word ''directs'' is substituted for the words ''shall direct''.

AMENDMENTS

1994—Subsecs. (b) to (d). Pub. L. 103–337 substituted ''Court of Criminal Appeals'' for ''Court of Military Review'' and ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals'' wherever appearing.

1983—Subsec. (b). Pub. L. 98–209, §10(c)(3)(A), inserted provision that Appellate Government counsel may represent the United States before the Supreme Court in cases arising under this chapter when requested to do so by the Attorney General.

Subsecs. (c), (d). Pub. L. 98–209, §10(c)(3)(B), amended subsecs. (c) and (d) generally, inserting references to the Supreme Court.

1968—Subsecs. (b) to (d). Pub. L. 90–632 substituted ''Court of Military Review'' for ''board of review'' wherever appearing.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§871. Art. 71. Execution of sentence; suspension of sentence

(a) If the sentence of the court-martial extends to death, that part of the sentence providing for death may not be executed until approved by the President. In such a case, the President may commute, remit, or suspend the sentence, or any part thereof, as he sees fit. That part of the sentence providing for death may not be suspended.

(b) If in the case of a commissioned officer, cadet, or midshipman, the sentence of a court-martial extends to dismissal, that part of the sentence providing for dismissal may not be executed until approved by the Secretary concerned or such Under Secretary or Assistant Secretary as may be designated by the Secretary concerned. In such a case, the Secretary, Under Secretary, or Assistant Secretary, as the case may be, may commute, remit, or suspend the sentence, or any part of the sentence, as he sees fit. In time of war or national emergency he may commute a sentence of dismissal to reduction to any enlisted grade. A person so reduced may be required to serve for the duration of the war or emergency and six months thereafter.

(c)(1) If a sentence extends to death, dismissal, or a dishonorable or bad conduct discharge and if the right of the accused to appellate review is not waived, and an appeal is not withdrawn, under section 861 of this title (article 61), that part of the sentence extending to death, dismissal, or a dishonorable or bad-conduct discharge may not be executed until there is a final judgment as to the legality of the proceedings (and with respect to death or dismissal, approval under subsection (a) or (b), as appropriate). A judgment as to legality of the proceedings is final in such cases when review is completed by a Court of Criminal Appeals and—

(A) the time for the accused to file a petition for review by the Court of Appeals for the Armed Forces has expired and the accused has not filed a timely petition for such review and the case is not otherwise under review by that Court;

(B) such a petition is rejected by the Court of Appeals for the Armed Forces; or

(C) review is completed in accordance with the judgment of the Court of Appeals for the Armed Forces and—

(i) a petition for a writ of certiorari is not filed within the time limits prescribed by the Supreme Court;

(ii) such a petition is rejected by the Supreme Court; or

(iii) review is otherwise completed in accordance with the judgment of the Supreme Court.

(2) If a sentence extends to dismissal or a dishonorable or bad conduct discharge and if the right of the accused to appellate review is waived, or an appeal is withdrawn, under section 861 of this title (article 61), that part of the sentence extending to dismissal or a bad-conduct or dishonorable discharge may not be executed until review of the case by a judge advocate (and any action on that review) under section 864 of this title (article 64) is completed. Any other part of a court-martial sentence may be ordered executed by the convening authority or other person acting on the case under section 860 of this title (article 60) when approved by him under that section.

(d) The convening authority or other person acting on the case under section 860 of this title (article 60) may suspend the execution of any sentence or part thereof, except a death sentence.

(Aug. 10, 1956, ch. 1041, 70A Stat. 62; Pub. L. 90–632, §2(32), Oct. 24, 1968, 82 Stat. 1342; Pub. L. 98–209, §5(e), Dec. 6, 1983, 97 Stat. 1399; Pub. L. 103–337, div. A, title IX, §924(c)(1), (2), Oct. 5, 1994, 108 Stat. 2831.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
871(a)	50:658(a).	May 5, 1950, ch. 169, §1 (Art. 71), 64 Stat. 131.
871(b)	50:658(b).	

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
871(c)	50:658(c).	
871(d)	50:658(d).	

In subsection (a), the word ''may'' is substituted for the word ''shall''.

In subsection (b), the word ''commissioned'' is inserted for clarity. The word ''may'' is substituted for the word ''shall'' in the first sentence. The words ''Secretary concerned'' are substituted for the words ''Secretary of the Department''. The words ''who is'' are omitted as surplusage.

In subsection (c), the word ''may'' is substituted for the word ''shall''.

AMENDMENTS

1994—Subsec. (c)(1). Pub. L. 103–337 substituted ''Court of Criminal Appeals'' for ''Court of Military Review'' and ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals'' wherever appearing.

1983—Subsec. (a). Pub. L. 98–209, § 5(e)(1), amended subsec. (a) generally, substituting provision that part of the court-martial sentence extending to death may not be executed without Presidential approval, and granting the President authority to commute, remit, or suspend the sentence, except that a death sentence may not be suspended, for provision that no sentence extending to death or involving a general or flag officer could be executed without Presidential approval, and authorizing the President to approve the sentence or any part, amount, or commuted form thereof, and suspend the execution of the sentence or any part thereof, except a death sentence.

Subsec. (b). Pub. L. 98–209, § 5(e)(2), substituted provision that where a court-martial sentence extends to dismissal of a commissioned officer, cadet, or midshipman, the dismissal may not be executed without approval by the Secretary concerned, or Under Secretary or Assistant Secretary designated by him, and authorizing such official to commute, remit, or suspend the sentence, or any part thereof, for provision that no dismissal of a commissioned officer (other than a general or flag officer), cadet or midshipman may be executed without such approval, and that such official could approve the sentence or such part, amount, or commuted form the sentence as he saw fit, and could suspend the execution of any part of the sentence.

Subsec. (c). Pub. L. 98–209, § 5(e)(3), amended subsec. (c) generally. Prior to amendment subsec. (c) read as follows: ''No sentence which includes, unsuspended, a dishonorable or bad-conduct discharge, or confinement for one year or more, may be executed until affirmed by a Court of Military Review and, in cases reviewed by it, the Court of Military Appeals.''

Subsec. (d). Pub. L. 98–209, § 5(e)(3), amended subsec. (d) generally. Prior to amendment subsec. (d) read as follows: ''All other court-martial sentences, unless suspended or deferred, may be ordered executed by the convening authority when approved by him. The convening authority may suspend the execution of any sentence, except a death sentence.''

1968—Subsec. (c). Pub. L. 90–632, § 2(32)(A), substituted ''Court of Military Review'' for ''board of review''.

Subsec. (d). Pub. L. 90–632, § 2(32)(B), inserted reference to deferred court-martial sentences.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendments by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§ 872. Art. 72. Vacation of suspension

(a) Before the vacation of the suspension of a special court-martial sentence which as approved includes a bad-conduct discharge, or of any general court-martial sentence, the officer having special court-martial jurisdiction over the probationer shall hold a hearing on the alleged violation of probation. The probationer shall be represented at the hearing by counsel if he so desires.

(b) The record of the hearing and the recommendation of the officer having special court-martial jurisdiction shall be sent for action to the officer exercising general court-martial jurisdiction over the probationer. If he vacates the suspension, any unexecuted part of the sentence, except a dismissal, shall be executed, subject to applicable restrictions in section 871 (c) of this title (article 71(c)). The vacation of the suspension of a dismissal is not effective until approved by the Secretary concerned.

(c) The suspension of any other sentence may be vacated by any authority competent to convene, for the command in which the accused is serving or assigned, a court of the kind that imposed the sentence.

(Aug. 10, 1956, ch. 1041, 70A Stat. 63.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
872(a)	50:659(a).	May 5, 1950, ch. 169, § 1 (Art. 72), 64 Stat. 131.
872(b)	50:659(b).	
872(c)	50:659(c).	

In subsection (a), the word ''Before'' is substituted for the words ''Prior to''.

In subsection (b), the words ''be effective * * * to'' are omitted as surplusage.

The second sentence is restated to make it clear that the execution of the rest of the court-martial sentence is not automatic. The word ''is'' is substituted for the words ''shall * * * be'' in the last sentence. The word ''sent'' is substituted for the word ''forwarded''. The words ''Secretary concerned'' are substituted for the words ''Secretary of the Department''.

§ 873. Art. 73. Petition for a new trial

At any time within two years after approval by the convening authority of a court-martial sentence, the accused may petition the Judge Advocate General for a new trial on the grounds of newly discovered evidence or fraud on the court. If the accused's case is pending before a Court of Criminal Appeals or before the Court of Appeals for the Armed Forces, the Judge Advocate General shall refer the petition to the appropriate court for action. Otherwise the Judge Advocate General shall act upon the petition.

(Aug. 10, 1956, ch. 1041, 70A Stat. 63; Pub. L. 90–632, § 2(33), Oct. 24, 1968, 82 Stat. 1342; Pub. L. 103–337, div. A, title IX, § 924(c)(1), (2), Oct. 5, 1994, 108 Stat. 2831.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
873	50:660.	May 5, 1950, ch. 169, § 1 (Art. 73), 64 Stat. 132.

The words ''the ground'' are substituted for the word ''grounds''. The words ''as the case may be'' are substituted for the word ''respectively'', since the prescribed action is alternative, not distributive.

AMENDMENTS

1994—Pub. L. 103–337 substituted ''Court of Criminal Appeals'' for ''Court of Military Review'' and ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals''.

1968—Pub. L. 90–632 extended time during which accused may petition Judge Advocate General for a new trial from 1 to 2 years and struck out provisions which limited right to petition for a new trial to cases of death, dismissal, a punitive discharge, or a year or more in confinement.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 to apply in the case of all court-martial sentences approved by the convening authority on or after, or not more than two years before Oct. 24, 1968, see section 4(c) of Pub. L. 90–632, set out as a note under section 801 of this title.

§ 874. Art. 74. Remission and suspension

(a) The Secretary concerned and, when designated by him, any Under Secretary, Assistant Secretary, Judge Advocate General, or commanding officer may remit or suspend any part or amount of the unexecuted part of any sentence, including all uncollected forfeitures other than a sentence approved by the President. However, in the case of a sentence of confinement for life without eligibility for parole that is adjudged for an offense committed after October 29, 2000, after the sentence is ordered executed, the authority of the Secretary concerned under the preceding sentence (1) may not be delegated, and (2) may be exercised only after the service of a period of confinement of not less than 20 years.

(b) The Secretary concerned may, for good cause, substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial.

(Aug. 10, 1956, ch. 1041, 70A Stat. 63; Pub. L. 106–398, § 1 [[div. A], title V, § 553(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–125; Pub. L. 107–107, div. A, title X, § 1048(a)(8), Dec. 28, 2001, 115 Stat. 1223.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
874(a)	50:661(a).	May 5, 1950, ch. 169, § 1 (Art. 74), 64 Stat. 132.
874(b)	50:661(b).	

In subsections (a) and (b), the words ''Secretary concerned'' are substituted for the words ''Secretary of the Department''.

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–107 inserted ''that is adjudged for an offense committed after October 29, 2000'' after ''a sentence of confinement for life without eligibility for parole''.

2000—Subsec. (a). Pub. L. 106–398 inserted at end ''However, in the case of a sentence of confinement for life without eligibility for parole, after the sentence is ordered executed, the authority of the Secretary concerned under the preceding sentence (1) may not be delegated, and (2) may be exercised only after the service of a period of confinement of not less than 20 years.''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, § 1 [[div. A], title V, § 553(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–125, provided that: ''The amendment made by subsection (a) [amending this section] shall not apply with respect to a sentence of confinement for life without eligibility for parole that is adjudged for an offense committed before the date of the enactment of this Act [Oct. 30, 2000].''

§ 875. Art. 75. Restoration

(a) Under such regulations as the President may prescribe, all rights, privileges, and property affected by an executed part of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and such executed part is included in a sentence imposed upon the new trial or rehearing.

(b) If a previously executed sentence of dishonorable or bad-conduct discharge is not imposed on a new trial, the Secretary concerned shall substitute therefor a form of discharge authorized for administrative issuance unless the accused is to serve out the remainder of his enlistment.

(c) If a previously executed sentence of dismissal is not imposed on a new trial, the Secretary concerned shall substitute therefor a form of discharge authorized for administrative issue, and the commissioned officer dismissed by that sentence may be reappointed by the President alone to such commissioned grade and with such rank as in the opinion of the President that former officer would have attained had he not been dismissed. The reappointment of such a former officer shall be without regard to the existence of a vacancy and shall affect the promotion status of other officers only insofar as the President may direct. All time between the dismissal and the reappointment shall be considered as actual service for all purposes, including the right to pay and allowances.

(Aug. 10, 1956, ch. 1041, 70A Stat. 63.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
875(a)	50:662(a).	May 5, 1950, ch. 169, § 1 (Art. 75), 64 Stat. 132.
875(b)	50:662(b).	
875(c)	50:662(c).	

In subsections (b) and (c), the word ''If'' is substituted for the word ''Where''. The word ''imposed'' is substituted for the word ''sustained''. The words ''Secretary concerned'' are substituted for the words ''Secretary of the Department''.

In subsection (c), the word ''issue'' is substituted for the word ''issuance''. The word ''commissioned'' is inserted for clarity. The words ''grade and with such rank'' are substituted for the words ''rank and precedence'', since a person is appointed to a grade, not a position of precedence, and the word ''rank'' is the accepted military word denoting the general idea of precedence. The words ''the existence of a'' are substituted for the word ''position''. The word ''receive'' is omitted as surplusage.

DELEGATION OF FUNCTIONS

For delegation to Secretary of Homeland Security of certain authority vested in President by this section,

see section 2(b) of Ex. Ord. No. 10637, Sept. 16, 1955, 20 F.R. 7025, as amended, set out as a note under section 301 of Title 3, The President.

§ 876. Art. 76. Finality of proceedings, findings, and sentences

The appellate review of records of trial provided by this chapter, the proceedings, findings, and sentences of courts-martial as approved, reviewed, or affirmed as required by this chapter, and all dismissals and discharges carried into execution under sentences by courts-martial following approval, review, or affirmation as required by this chapter, are final and conclusive. Orders publishing the proceedings of courts-martial and all action taken pursuant to those proceedings are binding upon all departments, courts, agencies, and officers of the United States, subject only to action upon a petition for a new trial as provided in section 873 of this title (article 73) and to action by the Secretary concerned as provided in section 874 of this title (article 74) and the authority of the President.

(Aug. 10, 1956, ch. 1041, 70A Stat. 64.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
876	50:663.	May 5, 1950, ch. 169, §1 (Art. 76), 64 Stat. 132.

The word ''under'' is substituted for the words ''pursuant to''. The word ''are'' is substituted for the words ''shall be''. The words ''Secretary concerned'' are substituted for the words ''Secretary of a Department''.

§ 876a. Art. 76a. Leave required to be taken pending review of certain court-martial convictions

Under regulations prescribed by the Secretary concerned, an accused who has been sentenced by a court-martial may be required to take leave pending completion of action under this subchapter if the sentence, as approved under section 860 of this title (article 60), includes an unsuspended dismissal or an unsuspended dishonorable or bad-conduct discharge. The accused may be required to begin such leave on the date on which the sentence is approved under section 860 of this title (article 60) or at any time after such date, and such leave may be continued until the date on which action under this subchapter is completed or may be terminated at any earlier time.

(Added Pub. L. 97–81, §2(c)(1), Nov. 20, 1981, 95 Stat. 1087; amended Pub. L. 98–209, §5(g), Dec. 6, 1983, 97 Stat. 1400.)

AMENDMENTS

1983—Pub. L. 98–209 substituted ''under section 860 of this title (article 60)'' for ''under section 864 or 865 of this title (article 64 or 65) by the officer exercising general court-martial jurisdiction'' and ''by the officer exercising general court-martial jurisdiction'', respectively.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE

Section to take effect at end of 60-day period beginning on Nov. 20, 1981, to apply to each member whose sentence by court-martial is approved on or after Jan. 20, 1982, under section 864 or 865 of this title by the officer exercising general court-martial jurisdiction under the provisions of such section as it existed on the day before the effective date of the Military Justice Act of 1983 (Pub. L. 98–209), or under section 860 of this title by the officer empowered to act on the sentence on or after that effective date, see section 7(a), (b)(1) of Pub. L. 97–81, set out as a note under section 706 of this title.

§ 876b. Art. 76b. Lack of mental capacity or mental responsibility: commitment of accused for examination and treatment

(a) PERSONS INCOMPETENT TO STAND TRIAL.—(1) In the case of a person determined under this chapter to be presently suffering from a mental disease or defect rendering the person mentally incompetent to the extent that the person is unable to understand the nature of the proceedings against that person or to conduct or cooperate intelligently in the defense of the case, the general court-martial convening authority for that person shall commit the person to the custody of the Attorney General.

(2) The Attorney General shall take action in accordance with section 4241(d) of title 18.

(3) If at the end of the period for hospitalization provided for in section 4241(d) of title 18, it is determined that the committed person's mental condition has not so improved as to permit the trial to proceed, action shall be taken in accordance with section 4246 of such title.

(4)(A) When the director of a facility in which a person is hospitalized pursuant to paragraph (2) determines that the person has recovered to such an extent that the person is able to understand the nature of the proceedings against the person and to conduct or cooperate intelligently in the defense of the case, the director shall promptly transmit a notification of that determination to the Attorney General and to the general court-martial convening authority for the person. The director shall send a copy of the notification to the person's counsel.

(B) Upon receipt of a notification, the general court-martial convening authority shall promptly take custody of the person unless the person covered by the notification is no longer subject to this chapter. If the person is no longer subject to this chapter, the Attorney General shall take any action within the authority of the Attorney General that the Attorney General considers appropriate regarding the person.

(C) The director of the facility may retain custody of the person for not more than 30 days after transmitting the notifications required by subparagraph (A).

(5) In the application of section 4246 of title 18 to a case under this subsection, references to the court that ordered the commitment of a person, and to the clerk of such court, shall be deemed to refer to the general court-martial convening authority for that person. However, if the person is no longer subject to this chapter at a time

relevant to the application of such section to the person, the United States district court for the district where the person is hospitalized or otherwise may be found shall be considered as the court that ordered the commitment of the person.

(b) PERSONS FOUND NOT GUILTY BY REASON OF LACK OF MENTAL RESPONSIBILITY.—(1) If a person is found by a court-martial not guilty only by reason of lack of mental responsibility, the person shall be committed to a suitable facility until the person is eligible for release in accordance with this section.

(2) The court-martial shall conduct a hearing on the mental condition in accordance with subsection (c) of section 4243 of title 18. Subsections (b) and (d) of that section shall apply with respect to the hearing.

(3) A report of the results of the hearing shall be made to the general court-martial convening authority for the person.

(4) If the court-martial fails to find by the standard specified in subsection (d) of section 4243 of title 18 that the person's release would not create a substantial risk of bodily injury to another person or serious damage of property of another due to a present mental disease or defect—

(A) the general court-martial convening authority may commit the person to the custody of the Attorney General; and

(B) the Attorney General shall take action in accordance with subsection (e) of section 4243 of title 18.

(5) Subsections (f), (g), and (h) of section 4243 of title 18 shall apply in the case of a person hospitalized pursuant to paragraph (4)(B), except that the United States district court for the district where the person is hospitalized shall be considered as the court that ordered the person's commitment.

(c) GENERAL PROVISIONS.—(1) Except as otherwise provided in this subsection and subsection (d)(1), the provisions of section 4247 of title 18 apply in the administration of this section.

(2) In the application of section 4247(d) of title 18 to hearings conducted by a court-martial under this section or by (or by order of) a general court-martial convening authority under this section, the reference in that section to section 3006A of such title does not apply.

(d) APPLICABILITY.—(1) The provisions of chapter 313 of title 18 referred to in this section apply according to the provisions of this section notwithstanding section 4247(j) of title 18.

(2) If the status of a person as described in section 802 of this title (article 2) terminates while the person is, pursuant to this section, in the custody of the Attorney General, hospitalized, or on conditional release under a prescribed regimen of medical, psychiatric, or psychological care or treatment, the provisions of this section establishing requirements and procedures regarding a person no longer subject to this chapter shall continue to apply to that person notwithstanding the change of status.

(Added Pub. L. 104–106, div. A, title XI, § 1133(a)(1), Feb. 10, 1996, 110 Stat. 464.)

EFFECTIVE DATE

Section 1133(c) of Pub. L. 104–106 provided that: ''Section 876b of title 10, United States Code (article 76b of the Uniform Code of Military Justice), as added by subsection (a), shall take effect at the end of the six-month period beginning on the date of the enactment of this Act [Feb. 10, 1996] and shall apply with respect to charges referred to courts-martial after the end of that period.''

SUBCHAPTER X—PUNITIVE ARTICLES

Sec.	Art.	
877.	77.	Principals.
878.	78.	Accessory after the fact.
879.	79.	Conviction of lesser included offense.
880.	80.	Attempts.
881.	81.	Conspiracy.
882.	82.	Solicitation.
883.	83.	Fraudulent enlistment, appointment, or separation.
884.	84.	Unlawful enlistment, appointment, or separation.
885.	85.	Desertion.
886.	86.	Absence without leave.
887.	87.	Missing movement.
888.	88.	Contempt toward officials.
889.	89.	Disrespect toward superior commissioned officer.
890.	90.	Assaulting or willfully disobeying superior commissioned officer.
891.	91.	Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer.
892.	92.	Failure to obey order or regulation.
893.	93.	Cruelty and maltreatment.
894.	94.	Mutiny or sedition.
895.	95.	Resistance, flight, breach of arrest, and escape.
896.	96.	Releasing prisoner without proper authority.
897.	97.	Unlawful detention.
898.	98.	Noncompliance with procedural rules.
899.	99.	Misbehavior before the enemy.
900.	100.	Subordinate compelling surrender.
901.	101.	Improper use of countersign.
902.	102.	Forcing a safeguard.
903.	103.	Captured or abandoned property.
904.	104.	Aiding the enemy.
905.	105.	Misconduct as prisoner.
906.	106.	Spies.
906a.	106a.	Espionage.
907.	107.	False official statements.
908.	108.	Military property of United States—Loss, damage, destruction, or wrongful disposition.
909.	109.	Property other than military property of United States—Waste, spoilage, or destruction.
910.	110.	Improper hazarding of vessel.
911.	111.	Drunken or reckless operation of a vehicle, aircraft, or vessel.
912.	112.	Drunk on duty.
912a.	112a.	Wrongful use, possession, etc., of controlled substances.
913.	113.	Misbehavior of sentinel.
914.	114.	Dueling.
915.	115.	Malingering.
916.	116.	Riot or breach of peace.
917.	117.	Provoking speeches or gestures.
918.	118.	Murder.
919.	119.	Manslaughter.
919a.	119a.	Death or injury of an unborn child.
920.	120.	Rape, sexual assault, and other sexual misconduct.
920a.	120a.	Stalking.
921.	121.	Larceny and wrongful appropriation.
922.	122.	Robbery.
923.	123.	Forgery.
923a.	123a.	Making, drawing, or uttering check, draft, or order without sufficient funds.
924.	124.	Maiming.
925.	125.	Sodomy.

Sec.	Art.	
926.	126.	Arson.
927.	127.	Extortion.
928.	128.	Assault.
929.	129.	Burglary.
930.	130.	Housebreaking.
931.	131.	Perjury.
932.	132.	Frauds against the United States.
933.	133.	Conduct unbecoming an officer and a gentleman.
934.	134.	General article.

AMENDMENTS

2006—Pub. L. 109–163, div. A, title V, § 552(a)(2), Jan. 6, 2006, 119 Stat. 3262, substituted ''Rape, sexual assault, and other sexual misconduct'' for ''Rape and carnal knowledge'' in item 920.

Pub. L. 109–163, div. A, title V, § 551(a)(2), Jan. 6, 2006, 119 Stat. 3256, added item 920a.

2004—Pub. L. 108–212, § 3(b), Apr. 1, 2004, 118 Stat. 570, added item 919a.

1997—Pub. L. 105–85, div. A, title X, § 1073(a)(10), Nov. 18, 1997, 111 Stat. 1900, struck out ''Art.'' before ''95'' in item 895.

1996—Pub. L. 104–106, div. A, title XI, § 1112(b), Feb. 10, 1996, 110 Stat. 461, inserted ''flight,'' after ''Resistance,'' in item 895.

1992—Pub. L. 102–484, div. A, title X, § 1066(a)(2), Oct. 23, 1992, 106 Stat. 2506, substituted ''operation of a vehicle, aircraft, or vessel'' for ''driving'' in item 911.

1985—Pub. L. 99–145, title V, § 534(b), Nov. 8, 1985, 99 Stat. 635, added item 906a.

1983—Pub. L. 98–209, § 8(b), Dec. 6, 1983, 97 Stat. 1404, added item 912a.

1961—Pub. L. 87–385, § 1(2), Oct. 4, 1961, 75 Stat. 814, added item 923a.

§ 877. Art. 77. Principals

Any person punishable under this chapter who—

(1) commits an offense punishable by this chapter, or aids, abets, counsels, commands, or procures its commission; or

(2) causes an act to be done which if directly performed by him would be punishable by this chapter;

is a principal.

(Aug. 10, 1956, ch. 1041, 70A Stat. 65.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
877	50:671.	May 5, 1950, ch. 169, § 1 (Art. 77), 64 Stat. 134.

§ 878. Art. 78. Accessory after the fact

Any person subject to this chapter who, knowing that an offense punishable by this chapter has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 65.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
878	50:672.	May 5, 1950, ch. 169, § 1 (Art. 78), 64 Stat. 134.

§ 879. Art. 79. Conviction of lesser included offense

An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein.

(Aug. 10, 1956, ch. 1041, 70A Stat. 65.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
879	50:673.	May 5, 1950, ch. 169, § 1 (Art. 79), 64 Stat. 134.

§ 880. Art. 80. Attempts

(a) An act, done with specific intent to commit an offense under this chapter, amounting to more than mere preparation and tending, even though failing, to effect its commission, is an attempt to commit that offense.

(b) Any person subject to this chapter who attempts to commit any offense punishable by this chapter shall be punished as a court-martial may direct, unless otherwise specifically prescribed.

(c) Any person subject to this chapter may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.

(Aug. 10, 1956, ch. 1041, 70A Stat. 65.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
880(a)	50:674(a).	May 5, 1950, ch. 169, § 1 (Art. 80), 64 Stat. 134.
880(b)	50:674(b).	
880(c)	50:674(c).	

In subsection (a), the words ''even though'' are substituted for the word ''but'' for clarity.

§ 881. Art. 81. Conspiracy

(a) Any person subject to this chapter who conspires with any other person to commit an offense under this chapter shall, if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial may direct.

(b) Any person subject to this chapter who conspires with any other person to commit an offense under the law of war, and who knowingly does an overt act to effect the object of the conspiracy, shall be punished, if death results to one or more of the victims, by death or such other punishment as a court-martial or military commission may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a court-martial or military commission may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 66; Pub. L. 109–366, § 4(b), Oct. 17, 2006, 120 Stat. 2631.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
881	50:675.	May 5, 1950, ch. 169, § 1 (Art. 81), 64 Stat. 134.

The words ''or persons'' are omitted as surplusage, since under section 1 of title 1 words importing the singular may apply to several persons.

AMENDMENTS

2006—Pub. L. 109–366 designated existing provisions as subsec. (a) and added subsec. (b).

§ 882. Art. 82. Solicitation

(a) Any person subject to this chapter who solicits or advises another or others to desert in violation of section 885 of this title (article 85) or mutiny in violation of section 894 of this title (article 94) shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed or attempted, he shall be punished as a court-martial may direct.

(b) Any person subject to this chapter who solicits or advises another or others to commit an act of misbehavior before the enemy in violation of section 899 of this title (article 99) or sedition in violation of section 894 of this title (article 94) shall, if the offense solicited or advised is committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed, he shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 66.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
882(a)	50:676(a).	May 5, 1950, ch. 169, § 1, (Art. 82), 64 Stat. 134.
882(b)	50:676(b).	

§ 883. Art. 83. Fraudulent enlistment, appointment, or separation

Any person who—

(1) procures his own enlistment or appointment in the armed forces by knowingly false representation or deliberate concealment as to his qualifications for that enlistment or appointment and receives pay or allowances thereunder; or

(2) procures his own separation from the armed forces by knowingly false representation or deliberate concealment as to his eligibility for that separation;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 66.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
883	50:677.	May 5, 1950, ch. 169, § 1 (Art. 83), 64 Stat. 134.

In clauses (1) and (2), the words ''means of'' are omitted as surplusage.

§ 884. Art. 84. Unlawful enlistment, appointment, or separation

Any person subject to this chapter who effects an enlistment or appointment in or a separation from the armed forces of any person who is known to him to be ineligible for that enlistment, appointment, or separation because it is prohibited by law, regulation, or order shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 66.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
884	50:678.	May 5, 1950, ch. 169, § 1 (Art. 84), 64 Stat. 135.

§ 885. Art. 85. Desertion

(a) Any member of the armed forces who—

(1) without authority goes or remains absent from his unit, organization, or place of duty with intent to remain away therefrom permanently;

(2) quits his unit, organization, or place of duty with intent to avoid hazardous duty or to shirk important service; or

(3) without being regularly separated from one of the armed forces enlists or accepts an appointment in the same or another one of the armed forces without fully disclosing the fact that he has not been regularly separated, or enters any foreign armed service except when authorized by the United States;

is guilty of desertion.

(b) Any commissioned officer of the armed forces who, after tender of his resignation and before notice of its acceptance, quits his post or proper duties without leave and with intent to remain away therefrom permanently is guilty of desertion.

(c) Any person found guilty of desertion or attempt to desert shall be punished, if the offense is committed in time of war, by death or such other punishment as a court-martial may direct, but if the desertion or attempt to desert occurs at any other time, by such punishment, other than death, as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 67.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
885(a)	50:679(a).	May 5, 1950, ch. 169, § 1 (Art. 85), 64 Stat. 135.
885(b)	50:679(b).	
885(c)	50:679(c).	

In subsection (a), the word ''unit'' is substituted for the words ''place of service'' to conform to clause (2) of this section and section 886(3) of this title. The word ''proper'' is omitted as surplusage.

In subsection (b), the word ''commissioned'' is inserted for clarity. The word ''before'' is substituted for the words ''prior to''. The words ''its acceptance'' are substituted for the words ''the acceptance of the same''. The words ''after tender of'' are substituted for the words ''having tendered'' for clarity. The word ''due'' is omitted as surplusage.

In subsection (c), the words ''attempt to desert'' are substituted for the words ''attempted desertion''.

§ 886. Art. 86. Absence without leave

Any member of the armed forces who, without authority—

(1) fails to go to his appointed place of duty at the time prescribed;

(2) goes from that place; or

(3) absents himself or remains absent from his unit, organization, or place of duty at which he is required to be at the time prescribed;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 67.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
886	50:680.	May 5, 1950, ch. 169, § 1 (Art. 86), 64 Stat. 135.

The words ''proper'' and ''other'' are omitted as surplusage.

§ 887. Art. 87. Missing movement

Any person subject to this chapter who through neglect or design misses the movement of a ship, aircraft, or unit with which he is required in the course of duty to move shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 67.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
887	50:681.	May 5, 1950, ch. 169, § 1 (Art. 87), 64 Stat. 135.

§ 888. Art. 88. Contempt toward officials

Any commissioned officer who uses contemptuous words against the President, the Vice President, Congress, the Secretary of Defense, the Secretary of a military department, the Secretary of Homeland Security, or the Governor or legislature of any State, Commonwealth, or possession in which he is on duty or present shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 67; Pub. L. 96–513, title V, § 511(25), Dec. 12, 1980, 94 Stat. 2922; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 109–163, div. A, title X, § 1057(a)(3), Jan. 6, 2006, 119 Stat. 3440.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
888	50:682.	May 5, 1950, ch. 169, § 1 (Art. 88), 64 Stat. 135.

The word ''commissioned'' is inserted for clarity. The words ''the Vice President, Congress, the Secretary of Defense, the Secretary of a military department, the Secretary of the Treasury, or the Governor or legislature of any State, Territory, Commonwealth, or possession'' are substituted for the words ''Vice President, Congress, Secretary of Defense, or a Secretary of a Department, a Governor or a legislature of any State, Territory, or other possession of the United States''.

AMENDMENTS

2006—Pub. L. 109–163 struck out ''Territory,'' after ''State,''.

2002—Pub. L. 107–296 substituted ''Secretary of Homeland Security'' for ''Secretary of Transportation''.

1980—Pub. L. 96–513 substituted ''Secretary of Transportation'' for ''Secretary of the Treasury''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 889. Art. 89. Disrespect toward superior commissioned officer

Any person subject to this chapter who behaves with disrespect toward his superior commissioned officer shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 67.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
889	50:683.	May 5, 1950, ch. 169, § 1 (Art. 89), 64 Stat. 135.

The word ''commissioned'' is inserted for clarity.

§ 890. Art. 90. Assaulting or willfully disobeying superior commissioned officer

Any person subject to this chapter who—

(1) strikes his superior commissioned officer or draws or lifts up any weapon or offers any violence against him while he is in the execution of his office; or

(2) willfully disobeys a lawful command of his superior commissioned officer;

shall be punished, if the offense is committed in time of war, by death or such other punishment as a court-martial may direct, and if the offense is committed at any other time, by such punishment, other than death, as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 68.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
890	50:684.	May 5, 1950, ch. 169, § 1 (Art. 90), 64 Stat. 135.

The word ''commissioned'' is inserted for clarity.

§ 891. Art. 91. Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer

Any warrant officer or enlisted member who—

(1) strikes or assaults a warrant officer, noncommissioned officer, or petty officer, while that officer is in the execution of his office;

(2) willfully disobeys the lawful order of a warrant officer, noncommissioned officer, or petty officer; or

(3) treats with contempt or is disrespectful in language or deportment toward a warrant officer, noncommissioned officer, or petty officer, while that officer is in the execution of his office;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 68.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
891	50:685.	May 5, 1950, ch. 169, § 1 (Art. 91), 64 Stat. 136.

The word ''member'' is substituted for the word ''person''.

§ 892. Art. 92. Failure to obey order or regulation

Any person subject to this chapter who—

(1) violates or fails to obey any lawful general order or regulation;

(2) having knowledge of any other lawful order issued by a member of the armed forces, which it is his duty to obey, fails to obey the order; or

(3) is derelict in the performance of his duties;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 68.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
892	50:686.	May 5, 1950, ch. 169, § 1 (Art. 92), 64 Stat. 136.

The word ''order'' is substituted for the word ''same''.

§ 893. Art. 93. Cruelty and maltreatment

Any person subject to this chapter who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his orders shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 68.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
893	50:687.	May 5, 1950, ch. 169, § 1 (Art. 93), 64 Stat. 136.

§ 894. Art. 94. Mutiny or sedition

(a) Any person subject to this chapter who—

(1) with intent to usurp or override lawful military authority, refuses, in concert with any other person, to obey orders or otherwise do his duty or creates any violence or disturbance is guilty of mutiny;

(2) with intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence, or other disturbance against that authority is guilty of sedition;

(3) fails to do his utmost to prevent and suppress a mutiny or sedition being committed in his presence, or fails to take all reasonable means to inform his superior commissioned officer or commanding officer of a mutiny or sedition which he knows or has reason to believe is taking place, is guilty of a failure to suppress or report a mutiny or sedition.

(b) A person who is found guilty of attempted mutiny, mutiny, sedition, or failure to suppress or report a mutiny or sedition shall be punished by death or such other punishment as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 68.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
894(a)	50:688(a).	May 5, 1950, ch. 169, § 1 (Art. 94), 64 Stat. 136.
894(b)	50:688(b).	

In subsection (a)(1) and (2), the words ''or persons'' are omitted, since, under section 1 of title 1, words importing the singular may apply to several persons.

In subsection (a)(3), the word ''a'' is substituted for the words ''an offense of''. The words ''commissioned officer'' are inserted after the word ''superior'', for clarity.

§ 895. Art. 95. Resistance, flight, breach of arrest, and escape

Any person subject to this chapter who—

(1) resists apprehension;

(2) flees from apprehension;

(3) breaks arrest; or

(4) escapes from custody or confinement;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 69; Pub. L. 104–106, div. A, title XI, § 1112(a), Feb. 10, 1996, 110 Stat. 461.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
895	50:689.	May 5, 1950, ch. 169, § 1 (Art. 95), 64 Stat. 136.

AMENDMENTS

1996—Pub. L. 104–106 inserted ''flight,'' after ''Resistance,'' in section catchline and amended text generally. Prior to amendment, text read as follows: ''Any person subject to this chapter who resists apprehension or breaks arrest or who escapes from custody or confinement shall be punished as a court-martial may direct.''

§ 896. Art. 96. Releasing prisoner without proper authority

Any person subject to this chapter who, without proper authority, releases any prisoner committed to his charge, or who through neglect or design suffers any such prisoner to escape, shall be punished as a court-martial may direct, whether or not the prisoner was committed in strict compliance with law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 69.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
896	50:690.	May 5, 1950, ch. 169, § 1 (Art. 96), 64 Stat. 136.

The words ''whether or not the prisoner was committed in strict compliance with law'' are substituted for the word ''duly'', to reflect the long standing construction expressed in the Manual for Courts-Martial, United States, 1951, par. 175a.

§ 897. Art. 97. Unlawful detention

Any person subject to this chapter who, except as provided by law, apprehends, arrests, or confines any person shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 69.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
897	50:691.	May 5, 1950, ch. 169, § 1 (Art. 97), 64 Stat. 137.

§ 898. Art. 98. Noncompliance with procedural rules

Any person subject to this chapter who—

(1) is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under this chapter; or

(2) knowingly and intentionally fails to enforce or comply with any provision of this chapter regulating the proceedings before, during, or after trial of an accused;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 69.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
898	50:692.	May 5, 1950, ch. 169, § 1 (Art. 98), 64 Stat. 137.

§ 899. Art. 99. Misbehavior before the enemy

Any member of the armed forces who before or in the presence of the enemy—

(1) runs away;

(2) shamefully abandons, surrenders, or delivers up any command, unit, place, or military property which it is his duty to defend;

(3) through disobedience, neglect, or intentional misconduct endangers the safety of any such command, unit, place, or military property;

(4) casts away his arms or ammunition;

(5) is guilty of cowardly conduct;

(6) quits his place of duty to plunder or pillage;

(7) causes false alarms in any command, unit, or place under control of the armed forces;

(8) willfully fails to do his utmost to encounter, engage, capture, or destroy any enemy troops, combatants, vessels, aircraft, or any other thing, which it is his duty so to encounter, engage, capture, or destroy; or

(9) does not afford all practicable relief and assistance to any troops, combatants, vessels, or aircraft of the armed forces belonging to the United States or their allies when engaged in battle;

shall be punished by death or such other punishment as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 69.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
899	50:693.	May 5, 1950, ch. 169, § 1 (Art. 99), 64 Stat. 137.

§ 900. Art. 100. Subordinate compelling surrender

Any person subject to this chapter who compels or attempts to compel the commander of any place, vessel, aircraft, or other military property, or of any body of members of the armed forces, to give it up to an enemy or to abandon it, or who strikes the colors or flag to an enemy without proper authority, shall be punished by death or such other punishment as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 70.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
900	50:694.	May 5, 1950, ch. 169, § 1 (Art. 100), 64 Stat. 137.

§ 901. Art. 101. Improper use of countersign

Any person subject to this chapter who in time of war discloses the parole or countersign to any person not entitled to receive it or who gives to another who is entitled to receive and use the parole or countersign a different parole or countersign from that which, to his knowledge, he was authorized and required to give, shall be punished by death or such other punishment as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 70.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
901	50:695.	May 5, 1950, ch. 169, § 1 (Art. 101), 64 Stat. 137.

§ 902. Art. 102. Forcing a safeguard

Any person subject to this chapter who forces a safeguard shall suffer death or such other punishment as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 70.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
902	50:696.	May 5, 1950, ch. 169, § 1 (Art. 102), 64 Stat. 137.

§ 903. Art. 103. Captured or abandoned property

(a) All persons subject to this chapter shall secure all public property taken from the enemy for the service of the United States, and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody, or control.

(b) Any person subject to this chapter who—

(1) fails to carry out the duties prescribed in subsection (a);

(2) buys, sells, trades, or in any way deals in or disposes of captured or abandoned property, whereby he receives or expects any profit, benefit, or advantage to himself or another directly or indirectly connected with himself; or

(3) engages in looting or pillaging;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 70.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
903(a)	50:697(a).	May 5, 1950, ch. 169, § 1 (Art. 103), 64 Stat. 138.
903(b)	50:697(b).	

In subsection (b)(1), the words ''of this section'' are omitted as surplusage.

§ 904. Art. 104. Aiding the enemy

Any person who—

(1) aids, or attempts to aid, the enemy with arms, ammunition, supplies, money, or other things; or

(2) without proper authority, knowingly harbors or protects or gives intelligence to, or communicates or corresponds with or holds any intercourse with the enemy, either directly or indirectly;

shall suffer death or such other punishment as a court-martial or military commission may direct. This section does not apply to a military commission established under chapter 47A of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 70; Pub. L. 109–366, § 4(a)(2), Oct. 17, 2006, 120 Stat. 2631.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
904	50:698.	May 5, 1950, ch. 169, § 1 (Art. 104), 64 Stat. 138.

AMENDMENTS

2006—Pub. L. 109–366 inserted last sentence in concluding provisions.

§ 905. Art. 105. Misconduct as prisoner

Any person subject to this chapter who, while in the hands of the enemy in time of war—

(1) for the purpose of securing favorable treatment by his captors acts without proper authority in a manner contrary to law, custom, or regulation, to the detriment of others of whatever nationality held by the enemy as civilian or military prisoners; or

(2) while in a position of authority over such persons maltreats them without justifiable cause;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 71.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
905	50:699.	May 5, 1950, ch. 169, § 1 (Art. 105), 64 Stat. 138.

§ 906. Art. 106. Spies

Any person who in time of war is found lurking as a spy or acting as a spy in or about any place, vessel, or aircraft, within the control or jurisdiction of any of the armed forces, or in or about any shipyard, any manufacturing or industrial plant, or any other place or institution engaged in work in aid of the prosecution of the war by the United States, or elsewhere, shall be tried by a general court-martial or by a military commission and on conviction shall be punished by death. This section does not apply to a military commission established under chapter 47A of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 71; Pub. L. 109–366, § 4(a)(2), Oct. 17, 2006, 120 Stat. 2631.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
906	50:700.	May 5, 1950, ch. 169, § 1 (Art. 106), 64 Stat. 138.

The words ''of the United States'' are omitted as surplusage.

AMENDMENTS

2006—Pub. L. 109–366 inserted last sentence.

PROCLAMATION NO. 2561. ENEMIES DENIED ACCESS TO UNITED STATES COURTS

Proc. No. 2561, July 2, 1942, 7 F.R. 5101, 56 Stat. 1964, provided:

Whereas the safety of the United States demands that all enemies who have entered upon the territory of the United States as part of an invasion or predatory incursion, or who have entered in order to commit sabotage, espionage or other hostile or warlike acts, should be promptly tried in accordance with the law of war;

Now, therefore, I, Franklin D. Roosevelt, President of the United States of America and Commander in Chief of the Army and Navy of the United States, by virtue of the authority vested in me by the Constitution and the statutes of the United States, do hereby proclaim that all persons who are subjects, citizens or residents of any nation at war with the United States or who give obedience to or act under the direction of any such nation, and who during time of war enter or attempt to enter the United States or any territory or possession thereof, through coastal or boundary defenses, and are charged with committing or attempting or preparing to commit sabotage, espionage, hostile or warlike acts, or violations of the law of war, shall be subject to the law of war and to the jurisdiction of military tribunals; and that such persons shall not be privileged to seek any remedy or maintain any proceeding directly or indirectly, or to have any such remedy or proceeding sought on their behalf, in the courts of the United States, or of its States, territories, and possessions, except under such regulations as the Attorney General, with the approval of the Secretary of War, may from time to time prescribe.

§ 906a. Art. 106a. Espionage

(a)(1) Any person subject to this chapter who, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to communicate, deliver, or transmit, to any entity described in paragraph (2), either directly or indirectly, anything described in paragraph (3) shall be punished as a court-martial may direct, except that if the accused is found guilty of an offense that directly concerns (A) nuclear weaponry, military spacecraft or satellites, early warning systems, or other means of defense or retaliation against large scale attack, (B) war plans, (C) communications intelligence or cryptographic information, or (D) any other major weapons system or major element of defense strategy, the accused shall be punished by death or such other punishment as a court-martial may direct.

(2) An entity referred to in paragraph (1) is—

(A) a foreign government;

(B) a faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States; or

(C) a representative, officer, agent, employee, subject, or citizen of such a government, faction, party, or force.

(3) A thing referred to in paragraph (1) is a document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, note, instrument, appliance, or information relating to the national defense.

(b)(1) No person may be sentenced by court-martial to suffer death for an offense under this section (article) unless—

(A) the members of the court-martial unanimously find at least one of the aggravating factors set out in subsection (c); and

(B) the members unanimously determine that any extenuating or mitigating circumstances are substantially outweighed by any aggravating circumstances, including the aggravating factors set out in subsection (c).

(2) Findings under this subsection may be based on—

(A) evidence introduced on the issue of guilt or innocence;

(B) evidence introduced during the sentencing proceeding; or

(C) all such evidence.

(3) The accused shall be given broad latitude to present matters in extenuation and mitigation.

(c) A sentence of death may be adjudged by a court-martial for an offense under this section (article) only if the members unanimously find, beyond a reasonable doubt, one or more of the following aggravating factors:

(1) The accused has been convicted of another offense involving espionage or treason for which either a sentence of death or imprisonment for life was authorized by statute.

(2) In the commission of the offense, the accused knowingly created a grave risk of substantial damage to the national security.

(3) In the commission of the offense, the accused knowingly created a grave risk of death to another person.

(4) Any other factor that may be prescribed by the President by regulations under section 836 of this title (article 36).

(Added Pub. L. 99–145, title V, § 534(a), Nov. 8, 1985, 99 Stat. 634.)

§ 907. Art. 107. False official statements

Any person subject to this chapter who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing it to be false, or makes any other false official statement knowing it to be false, shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 71.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
907	50:701.	May 5, 1950, ch. 169, § 1 (Art. 107), 64 Stat. 138.

The word ''it'' is substituted for the words ''the same''.

§ 908. Art. 108. Military property of United States—Loss, damage, destruction, or wrongful disposition

Any person subject to this chapter who, without proper authority—

(1) sells or otherwise disposes of;

(2) willfully or through neglect damages, destroys, or loses; or

(3) willfully or through neglect suffers to be lost, damaged, destroyed, sold, or wrongfully disposed of;

any military property of the United States, shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 71.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
908	50:702.	May 5, 1950, ch. 169, § 1 (Art. 108), 64 Stat. 138.

§ 909. Art. 109. Property other than military property of United States—Waste, spoilage, or destruction

Any person subject to this chapter who willfully or recklessly wastes, spoils, or otherwise willfully and wrongfully destroys or damages any property other than military property of the United States shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 71.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
909	50:703.	May 5, 1950, ch. 169, § 1 (Art. 109), 64 Stat. 139.

§ 910. Art. 110. Improper hazarding of vessel

(a) Any person subject to this chapter who willfully and wrongfully hazards or suffers to be hazarded any vessel of the armed forces shall suffer death or such other punishment as a court-martial may direct.

(b) Any person subject to this chapter who negligently hazards or suffers to be hazarded any vessel of the armed forces shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 71.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
910(a)	50:704(a).	May 5, 1950, ch. 169, § 1 (Art. 110), 64 Stat. 139.
910(b)	50:704(b).	

§ 911. Art. 111. Drunken or reckless operation of a vehicle, aircraft, or vessel

(a) Any person subject to this chapter who—

(1) operates or physically controls any vehicle, aircraft, or vessel in a reckless or wanton manner or while impaired by a substance described in section 912a(b) of this title (article 112a(b)), or

(2) operates or is in actual physical control of any vehicle, aircraft, or vessel while drunk or when the alcohol concentration in the person's blood or breath is equal to or exceeds the applicable limit under subsection (b),

shall be punished as a court-martial may direct.

(b)(1) For purposes of subsection (a), the applicable limit on the alcohol concentration in a person's blood or breath is as follows:

(A) In the case of the operation or control of a vehicle, aircraft, or vessel in the United States, such limit is the lesser of—

(i) the blood alcohol content limit under the law of the State in which the conduct occurred, except as may be provided under paragraph (2) for conduct on a military installation that is in more than one State; or

(ii) the blood alcohol content limit specified in paragraph (3).

(B) In the case of the operation or control of a vehicle, aircraft, or vessel outside the United States, the applicable blood alcohol content limit is the blood alcohol content limit specified in paragraph (3) or such lower limit as the Secretary of Defense may by regulation prescribe.

(2) In the case of a military installation that is in more than one State, if those States have different blood alcohol content limits under their respective State laws, the Secretary may select one such blood alcohol content limit to apply uniformly on that installation.

(3) For purposes of paragraph (1), the blood alcohol content limit with respect to alcohol concentration in a person's blood is 0.10 grams of alcohol per 100 milliliters of blood and with respect to alcohol concentration in a person's breath is 0.10 grams of alcohol per 210 liters of breath, as shown by chemical analysis.

(4) In this subsection:

(A) The term ''blood alcohol content limit'' means the amount of alcohol concentration in a person's blood or breath at which operation or control of a vehicle, aircraft, or vessel is prohibited.

(B) The term ''United States'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa and the term ''State'' includes each of those jurisdictions.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72; Pub. L. 99–570, title III, § 3055, Oct. 27, 1986, 100 Stat. 3207–76; Pub. L. 102–484, div. A, title X, § 1066(a)(1), Oct. 23, 1992, 106 Stat. 2506; Pub. L. 103–160, div. A, title V, § 576(a), Nov. 30, 1993, 107 Stat. 1677; Pub. L. 107–107, div. A, title V, § 581, Dec. 28, 2001, 115 Stat. 1123; Pub. L. 108–136, div. A, title V, § 552, Nov. 24, 2003, 117 Stat. 1481.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
911	50:705.	May 5, 1950, ch. 169, § 1 (Art. 111), 64 Stat. 139.

AMENDMENTS

2003—Subsec. (a)(2). Pub. L. 108–136, § 552(1), substituted ''is equal to or exceeds'' for ''is in excess of''.

Subsec. (b)(1)(A). Pub. L. 108–136, § 552(2)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''In the case of the operation or control of a vehicle, aircraft, or vessel in the United States, such limit is the blood alcohol content limit under the law of the State in which the conduct occurred, except as may be provided under paragraph (2) for conduct on a military installation that is in more than one State and subject to the maximum blood alcohol content limit specified in paragraph (3).''

Subsec. (b)(1)(B), (3). Pub. L. 108–136, § 552(2)(B), struck out ''maximum'' before ''blood alcohol content specified'' in par. (1)(B) and before ''blood alcohol content'' in par. (3).

Subsec. (b)(4)(A). Pub. L. 108–136, § 552(2)(C), substituted ''amount of alcohol concentration in a person's blood or breath at which operation or control of a vehicle, aircraft, or vessel is prohibited.'' for ''maximum permissible alcohol concentration in a person's blood or breath for purposes of operation or control of a vehicle, aircraft, or vessel.''

2001—Pub. L. 107–107 designated existing provisions as subsec. (a), substituted ''in excess of the applicable limit under subsection (b)'' for ''0.10 grams or more of alcohol per 100 milliliters of blood or 0.10 grams or more of alcohol per 210 liters of breath, as shown by chemical analysis'' in par. (2), and added subsec. (b).

1993—Par. (2). Pub. L. 103–160 inserted ''or more'' after ''0.10 grams'' in two places.

1992—Pub. L. 102–484 substituted ''operation of a vehicle, aircraft, or vessel'' for ''driving'' in section catchline and amended text generally. Prior to amendment, text read as follows: ''Any person subject to this chapter who operates any vehicle while drunk, or in a reckless or wanton manner, or while impaired by a substance described in section 912a(b) of this title (article 112a(b)), shall be punished as a court-martial may direct.''

1986—Pub. L. 99–570 inserted ''or while impaired by a substance described in section 912a(b) of this title (article 112a(b)),''.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 576(b) of Pub. L. 103–160 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect as if included in the amendment to section 911 of title 10, United States Code, made by section 1066(a)(1) of Public Law 102–484 on October 23, 1992.''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–484 effective Oct. 23, 1992, and applicable with respect to offenses committed on or after that date, see section 1067 of Pub. L. 102–484, set out as a note under section 803 of this title.

§ 912. Art. 112. Drunk on duty

Any person subject to this chapter other than a sentinel or look-out, who is found drunk on duty, shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
912	50:706.	May 5, 1950, ch. 169, § 1 (Art. 112), 64 Stat. 139.

§ 912a. Art. 112a. Wrongful use, possession, etc., of controlled substances

(a) Any person subject to this chapter who wrongfully uses, possesses, manufactures, distributes, imports into the customs territory of the United States, exports from the United States, or introduces into an installation, vessel, vehicle, or aircraft used by or under the control of the armed forces a substance described in subsection (b) shall be punished as a court-martial may direct.

(b) The substances referred to in subsection (a) are the following:

(1) Opium, heroin, cocaine, amphetamine, lysergic acid diethylamide, methamphetamine, phencyclidine, barbituric acid, and marijuana and any compound or derivative of any such substance.

(2) Any substance not specified in clause (1) that is listed on a schedule of controlled substances prescribed by the President for the purposes of this article.

(3) Any other substance not specified in clause (1) or contained on a list prescribed by the President under clause (2) that is listed in

schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

(Added Pub. L. 98–209, § 8(a), Dec. 6, 1983, 97 Stat. 1403.)

EFFECTIVE DATE

Section effective first day of eighth calendar month beginning after Dec. 6, 1983, but not applicable to any offense committed before that date and not to be construed to invalidate the prosecution of any offense committed before that date, see section 12(a)(1), (5) of Pub. L. 98–209, set out as an Effective Date of 1983 Amendment note under section 801 of this title.

PROCEDURES FOR FORENSIC EXAMINATION OF CERTAIN PHYSIOLOGICAL EVIDENCE

Pub. L. 100–180, div. A, title XII, § 1248, Dec. 4, 1987, 101 Stat. 1166, provided that:

''(a) ESTABLISHMENT OF PROCEDURES.—The Secretary of Defense shall establish procedures to ensure that whenever, in connection with a criminal investigation conducted by or for a military department, a physiological specimen is obtained from a person for the purpose of determining whether that person has used a controlled substance—

''(1) the specimen is in a condition that is suitable for forensic examination when delivered to a forensic laboratory; and

''(2) the investigative agency that submits the specimen to the laboratory receives a written statement of the results of the forensic examination from the laboratory within such period as is necessary to use such results in a court-martial or other criminal proceeding resulting from the investigation.

''(b) TRANSPORTATION OF SPECIMENS.—The procedures prescribed under subsection (a)—

''(1) shall ensure that physiological specimens are preserved and transported in accordance with valid medical and forensic practices; and

''(2) insofar as practicable, shall require transportation of the specimen to an appropriate laboratory by the most expeditious means necessary to carry out the requirement in subsection (a)(1).

''(c) TESTS FOR USE OF LSD.—Procedures established under subsection (a) shall ensure that whenever the controlled substance with respect to which a physiological specimen is to be examined is lysergic acid diethylamide (LSD), the specimen is submitted to a forensic laboratory that is capable of determining with a reasonable degree of scientific certainty, on the basis of the examination of that specimen, whether the person providing the specimen has used lysergic acid diethylamide (LSD).

''(d) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as providing a basis, that is not otherwise available in law, for a defense to a charge or a motion for exclusion of evidence or other appropriate relief in any criminal or administrative proceeding.

''(e) CONTROLLED SUBSTANCES COVERED.—For purposes of this section, a controlled substance is a substance described in section 912a(b) of title 10, United States Code.

''(f) REPORT.—Not later than March 1, 1988, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives, a report describing the procedures established under this section.''

§ 913. Art. 113. Misbehavior of sentinel

Any sentinel or look-out who is found drunk or sleeping upon his post, or leaves it before he is regularly relieved, shall be punished, if the offense is committed in time of war, by death or such other punishment as a court-martial may direct, but if the offense is committed at any other time, by such punishment other than death as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
913	50:707.	May 5, 1950, ch. 169, § 1 (Art. 113), 64 Stat. 139.

§ 914. Art. 114. Dueling

Any person subject to this chapter who fights or promotes, or is concerned in or connives at fighting a duel, or who, having knowledge of a challenge sent or about to be sent, fails to report the facts promptly to the proper authority, shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
914	50:708.	May 5, 1950, ch. 169, § 1 (Art. 114), 64 Stat. 139.

§ 915. Art. 115. Malingering

Any person subject to this chapter who for the purpose of avoiding work, duty, or service—

(1) feigns illness, physical disablement, mental lapse or derangement; or

(2) intentionally inflicts self-injury;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
915	50:709.	May 5, 1950, ch. 169, § 1 (Art. 115), 64 Stat. 139.

§ 916. Art. 116. Riot or breach of peace

Any person subject to this chapter who causes or participates in any riot or breach of the peace shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
916	50:710.	May 5, 1950, ch. 169, § 1 (Art. 116), 64 Stat. 139.

§ 917. Art. 117. Provoking speeches or gestures

Any person subject to this chapter who uses provoking or reproachful words or gestures towards any other person subject to this chapter shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
917	50:711.	May 5, 1950, ch. 169, § 1 (Art. 117), 64 Stat. 139.

§ 918. Art. 118. Murder

Any person subject to this chapter who, without justification or excuse, unlawfully kills a human being, when he—

(1) has a premeditated design to kill;

(2) intends to kill or inflict great bodily harm;

(3) is engaged in an act which is inherently dangerous to another and evinces a wanton disregard of human life; or

(4) is engaged in the perpetration or attempted perpetration of burglary, sodomy, rape, rape of a child, aggravated sexual assault, aggravated sexual assault of a child, aggravated sexual contact, aggravated sexual abuse of a child, aggravated sexual contact with a child, robbery, or aggravated arson;

is guilty of murder, and shall suffer such punishment as a court-martial may direct, except that if found guilty under clause (1) or (4), he shall suffer death or imprisonment for life as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72; Pub. L. 102–484, div. A, title X, § 1066(b), Oct. 23, 1992, 106 Stat. 2506; Pub. L. 109–163, div. A, title V, § 552(d), Jan. 6, 2006, 119 Stat. 3263.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
918	50:712.	May 5, 1950, ch. 169, § 1 (Art. 118), 64 Stat. 140.

The words ''of this section'' are omitted as surplusage.

AMENDMENTS

2006—Par. (4). Pub. L. 109–163 substituted ''rape, rape of a child, aggravated sexual assault, aggravated sexual assault of a child, aggravated sexual contact, aggravated sexual abuse of a child, aggravated sexual contact with a child,'' for ''rape,''.

1992—Par. (3). Pub. L. 102–484 substituted ''another'' for ''others''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–163 effective on Oct. 1, 2007, see section 552(f) of Pub. L. 109–163, set out as a note under section 843 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–484 effective Oct. 23, 1992, and applicable with respect to offenses committed on or after that date, see section 1067 of Pub. L. 102–484, set out as a note under section 803 of this title.

§ 919. Art. 119. Manslaughter

(a) Any person subject to this chapter who, with an intent to kill or inflict great bodily harm, unlawfully kills a human being in the heat of sudden passion caused by adequate provocation is guilty of voluntary manslaughter and shall be punished as a court-martial may direct.

(b) Any person subject to this chapter who, without an intent to kill or inflict great bodily harm, unlawfully kills a human being—

(1) by culpable negligence; or

(2) while perpetrating or attempting to perpetrate an offense, other than those named in clause (4) of section 918 of this title (article 118), directly affecting the person;

is guilty of involuntary manslaughter and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 73.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
919(a)	50:713(a).	May 5, 1950, ch. 169, § 1 (Art. 119), 64 Stat. 140.
919(b)	50:713(b).	

The word ''named'' is substituted for the word ''specified''.

§ 919a. Art. 119a. Death or injury of an unborn child

(a)(1) Any person subject to this chapter who engages in conduct that violates any of the provisions of law listed in subsection (b) and thereby causes the death of, or bodily injury (as defined in section 1365 of title 18) to, a child, who is in utero at the time the conduct takes place, is guilty of a separate offense under this section and shall, upon conviction, be punished by such punishment, other than death, as a court-martial may direct, which shall be consistent with the punishments prescribed by the President for that conduct had that injury or death occurred to the unborn child's mother.

(2) An offense under this section does not require proof that—

(i) the person engaging in the conduct had knowledge or should have had knowledge that the victim of the underlying offense was pregnant; or

(ii) the accused intended to cause the death of, or bodily injury to, the unborn child.

(3) If the person engaging in the conduct thereby intentionally kills or attempts to kill the unborn child, that person shall, instead of being punished under paragraph (1), be punished as provided under sections 880, 918, and 919(a) of this title (articles 80, 118, and 119(a)) for intentionally killing or attempting to kill a human being.

(4) Notwithstanding any other provision of law, the death penalty shall not be imposed for an offense under this section.

(b) The provisions referred to in subsection (a) are sections 918, 919(a), 919(b)(2), 920(a), 922, 924, 926, and 928 of this title (articles 118, 119(a), 119(b)(2), 120(a), 122, 124, 126, and 128).

(c) Nothing in this section shall be construed to permit the prosecution—

(1) of any person for conduct relating to an abortion for which the consent of the pregnant woman, or a person authorized by law to act on her behalf, has been obtained or for which such consent is implied by law;

(2) of any person for any medical treatment of the pregnant woman or her unborn child; or

(3) of any woman with respect to her unborn child.

(d) In this section, the term ''unborn child'' means a child in utero, and the term ''child in utero'' or ''child, who is in utero'' means a member of the species homo sapiens, at any stage of development, who is carried in the womb.

(Added Pub. L. 108–212, § 3(a), Apr. 1, 2004, 118 Stat. 569.)

§ 920. Art. 120. Rape, sexual assault, and other sexual misconduct

(a) RAPE.—Any person subject to this chapter who causes another person of any age to engage in a sexual act by—

(1) using force against that other person;

(2) causing grievous bodily harm to any person;

(3) threatening or placing that other person in fear that any person will be subjected to death, grievous bodily harm, or kidnaping;

(4) rendering another person unconscious; or

(5) administering to another person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance and thereby substantially impairs the ability of that other person to appraise or control conduct;

is guilty of rape and shall be punished as a court-martial may direct.

(b) RAPE OF A CHILD.—Any person subject to this chapter who—

(1) engages in a sexual act with a child who has not attained the age of 12 years; or

(2) engages in a sexual act under the circumstances described in subsection (a) with a child who has attained the age of 12 years;

is guilty of rape of a child and shall be punished as a court-martial may direct.

(c) AGGRAVATED SEXUAL ASSAULT.—Any person subject to this chapter who—

(1) causes another person of any age to engage in a sexual act by—

(A) threatening or placing that other person in fear (other than by threatening or placing that other person in fear that any person will be subjected to death, grievous bodily harm, or kidnapping); or

(B) causing bodily harm; or

(2) engages in a sexual act with another person of any age if that other person is substantially incapacitated or substantially incapable of—

(A) appraising the nature of the sexual act;

(B) declining participation in the sexual act; or

(C) communicating unwillingness to engage in the sexual act;

is guilty of aggravated sexual assault and shall be punished as a court-martial may direct.

(d) AGGRAVATED SEXUAL ASSAULT OF A CHILD.—Any person subject to this chapter who engages in a sexual act with a child who has attained the age of 12 years is guilty of aggravated sexual assault of a child and shall be punished as a court-martial may direct.

(e) AGGRAVATED SEXUAL CONTACT.—Any person subject to this chapter who engages in or causes sexual contact with or by another person, if to do so would violate subsection (a) (rape) had the sexual contact been a sexual act, is guilty of aggravated sexual contact and shall be punished as a court-martial may direct.

(f) AGGRAVATED SEXUAL ABUSE OF A CHILD.—Any person subject to this chapter who engages in a lewd act with a child is guilty of aggravated sexual abuse of a child and shall be punished as a court-martial may direct.

(g) AGGRAVATED SEXUAL CONTACT WITH A CHILD.—Any person subject to this chapter who engages in or causes sexual contact with or by another person, if to do so would violate subsection (b) (rape of a child) had the sexual contact been a sexual act, is guilty of aggravated sexual contact with a child and shall be punished as a court-martial may direct.

(h) ABUSIVE SEXUAL CONTACT.—Any person subject to this chapter who engages in or causes sexual contact with or by another person, if to do so would violate subsection (c) (aggravated sexual assault) had the sexual contact been a sexual act, is guilty of abusive sexual contact and shall be punished as a court-martial may direct.

(i) ABUSIVE SEXUAL CONTACT WITH A CHILD.—Any person subject to this chapter who engages in or causes sexual contact with or by another person, if to do so would violate subsection (d) (aggravated sexual assault of a child) had the sexual contact been a sexual act, is guilty of abusive sexual contact with a child and shall be punished as a court-martial may direct.

(j) INDECENT LIBERTY WITH A CHILD.—Any person subject to this chapter who engages in indecent liberty in the physical presence of a child—

(1) with the intent to arouse, appeal to, or gratify the sexual desire of any person; or

(2) with the intent to abuse, humiliate, or degrade any person;

is guilty of indecent liberty with a child and shall be punished as a court-martial may direct.

(k) INDECENT ACT.—Any person subject to this chapter who engages in indecent conduct is guilty of an indecent act and shall be punished as a court-martial may direct.

(*l*) FORCIBLE PANDERING.—Any person subject to this chapter who compels another person to engage in an act of prostitution with another person to be directed to said person is guilty of forcible pandering and shall be punished as a court-martial may direct.

(m) WRONGFUL SEXUAL CONTACT.—Any person subject to this chapter who, without legal justification or lawful authorization, engages in sexual contact with another person without that other person's permission is guilty of wrongful sexual contact and shall be punished as a court-martial may direct.

(n) INDECENT EXPOSURE.—Any person subject to this chapter who intentionally exposes, in an indecent manner, in any place where the conduct involved may reasonably be expected to be viewed by people other than members of the actor's family or household, the genitalia, anus, buttocks, or female areola or nipple is guilty of indecent exposure and shall by punished as a court-martial may direct.

(*o*) AGE OF CHILD.—

(1) TWELVE YEARS.—In a prosecution under subsection (b) (rape of a child), subsection (g) (aggravated sexual contact with a child), or subsection (j) (indecent liberty with a child), it need not be proven that the accused knew that the other person engaging in the sexual act, contact, or liberty had not attained the age of 12 years. It is not an affirmative defense that the accused reasonably believed that the child had attained the age of 12 years.

(2) SIXTEEN YEARS.—In a prosecution under subsection (d) (aggravated sexual assault of a child), subsection (f) (aggravated sexual abuse of a child), subsection (i) (abusive sexual contact with a child), or subsection (j) (indecent liberty with a child), it need not be proven that the accused knew that the other person

engaging in the sexual act, contact, or liberty had not attained the age of 16 years. Unlike in paragraph (1), however, it is an affirmative defense that the accused reasonably believed that the child had attained the age of 16 years.

(p) PROOF OF THREAT.—In a prosecution under this section, in proving that the accused made a threat, it need not be proven that the accused actually intended to carry out the threat.

(q) MARRIAGE.—

(1) IN GENERAL.—In a prosecution under paragraph (2) of subsection (c) (aggravated sexual assault), or under subsection (d) (aggravated sexual assault of a child), subsection (f) (aggravated sexual abuse of a child), subsection (i) (abusive sexual contact with a child), subsection (j) (indecent liberty with a child), subsection (m) (wrongful sexual contact), or subsection (n) (indecent exposure), it is an affirmative defense that the accused and the other person when they engaged in the sexual act, sexual contact, or sexual conduct are married to each other.

(2) DEFINITION.—For purposes of this subsection, a marriage is a relationship, recognized by the laws of a competent State or foreign jurisdiction, between the accused and the other person as spouses. A marriage exists until it is dissolved in accordance with the laws of a competent State or foreign jurisdiction.

(3) EXCEPTION.—Paragraph (1) shall not apply if the accused's intent at the time of the sexual conduct is to abuse, humiliate, or degrade any person.

(r) CONSENT AND MISTAKE OF FACT AS TO CONSENT.—Lack of permission is an element of the offense in subsection (m) (wrongful sexual contact). Consent and mistake of fact as to consent are not an issue, or an affirmative defense, in a prosecution under any other subsection, except they are an affirmative defense for the sexual conduct in issue in a prosecution under subsection (a) (rape), subsection (c) (aggravated sexual assault), subsection (e) (aggravated sexual contact), and subsection (h) (abusive sexual contact).

(s) OTHER AFFIRMATIVE DEFENSES NOT PRECLUDED.—The enumeration in this section of some affirmative defenses shall not be construed as excluding the existence of others.

(t) DEFINITIONS.—In this section:

(1) SEXUAL ACT.—The term ''sexual act'' means—

(A) contact between the penis and the vulva, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however slight; or

(B) the penetration, however slight, of the genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(2) SEXUAL CONTACT.—The term ''sexual contact'' means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of another person, or intentionally causing another person to touch, either directly or through the clothing, the genitalia, anus, groin, breast, inner thigh, or buttocks of any person, with an intent to abuse, humiliate, or degrade any person or to arouse or gratify the sexual desire of any person.

(3) GRIEVOUS BODILY HARM.—The term ''grievous bodily harm'' means serious bodily injury. It includes fractured or dislocated bones, deep cuts, torn members of the body, serious damage to internal organs, and other severe bodily injuries. It does not include minor injuries such as a black eye or a bloody nose. It is the same level of injury as in section 928 (article 128) of this chapter, and a lesser degree of injury than in section 2246(4) of title 18.

(4) DANGEROUS WEAPON OR OBJECT.—The term ''dangerous weapon or object'' means—

(A) any firearm, loaded or not, and whether operable or not;

(B) any other weapon, device, instrument, material, or substance, whether animate or inanimate, that in the manner it is used, or is intended to be used, is known to be capable of producing death or grievous bodily harm; or

(C) any object fashioned or utilized in such a manner as to lead the victim under the circumstances to reasonably believe it to be capable of producing death or grievous bodily harm.

(5) FORCE.—The term ''force'' means action to compel submission of another or to overcome or prevent another's resistance by—

(A) the use or display of a dangerous weapon or object;

(B) the suggestion of possession of a dangerous weapon or object that is used in a manner to cause another to believe it is a dangerous weapon or object; or

(C) physical violence, strength, power, or restraint applied to another person, sufficient that the other person could not avoid or escape the sexual conduct.

(6) THREATENING OR PLACING THAT OTHER PERSON IN FEAR.—The term ''threatening or placing that other person in fear'' under paragraph (3) of subsection (a) (rape), or under subsection (e) (aggravated sexual contact), means a communication or action that is of sufficient consequence to cause a reasonable fear that noncompliance will result in the victim or another person being subjected to death, grievous bodily harm, or kidnapping.

(7) THREATENING OR PLACING THAT OTHER PERSON IN FEAR.—

(A) IN GENERAL.—The term ''threatening or placing that other person in fear'' under paragraph (1)(A) of subsection (c) (aggravated sexual assault), or under subsection (h) (abusive sexual contact), means a communication or action that is of sufficient consequence to cause a reasonable fear that non-compliance will result in the victim or another being subjected to a lesser degree of harm than death, grievous bodily harm, or kidnapping.

(B) INCLUSIONS.—Such lesser degree of harm includes—

(i) physical injury to another person or to another person's property; or

(ii) a threat—

(I) to accuse any person of a crime;

(II) to expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or

(III) through the use or abuse of military position, rank, or authority, to affect or threaten to affect, either positively or negatively, the military career of some person.

(8) BODILY HARM.—The term ''bodily harm'' means any offensive touching of another, however slight.

(9) CHILD.—The term ''child'' means any person who has not attained the age of 16 years.

(10) LEWD ACT.—The term ''lewd act'' means—

(A) the intentional touching, not through the clothing, of the genitalia of another person, with an intent to abuse, humiliate, or degrade any person, or to arouse or gratify the sexual desire of any person; or

(B) intentionally causing another person to touch, not through the clothing, the genitalia of any person with an intent to abuse, humiliate or degrade any person, or to arouse or gratify the sexual desire of any person.

(11) INDECENT LIBERTY.—The term ''indecent liberty'' means indecent conduct, but physical contact is not required. It includes one who with the requisite intent exposes one's genitalia, anus, buttocks, or female areola or nipple to a child. An indecent liberty may consist of communication of indecent language as long as the communication is made in the physical presence of the child. If words designed to excite sexual desire are spoken to a child, or a child is exposed to or involved in sexual conduct, it is an indecent liberty; the child's consent is not relevant.

(12) INDECENT CONDUCT.—The term ''indecent conduct'' means that form of immorality relating to sexual impurity which is grossly vulgar, obscene, and repugnant to common propriety, and tends to excite sexual desire or deprave morals with respect to sexual relations. Indecent conduct includes observing, or making a videotape, photograph, motion picture, print, negative, slide, or other mechanically, electronically, or chemically reproduced visual material, without another person's consent, and contrary to that other person's reasonable expectation of privacy, of—

(A) that other person's genitalia, anus, or buttocks, or (if that other person is female) that person's areola or nipple; or

(B) that other person while that other person is engaged in a sexual act, sodomy (under section 925 (article 125)), or sexual contact.

(13) ACT OF PROSTITUTION.—The term ''act of prostitution'' means a sexual act, sexual contact, or lewd act for the purpose of receiving money or other compensation.

(14) CONSENT.—The term ''consent'' means words or overt acts indicating a freely given agreement to the sexual conduct at issue by a competent person. An expression of lack of consent through words or conduct means there is no consent. Lack of verbal or physical resistance or submission resulting from the accused's use of force, threat of force, or placing another person in fear does not constitute consent. A current or previous dating relationship by itself or the manner of dress of the person involved with the accused in the sexual conduct at issue shall not constitute consent. A person cannot consent to sexual activity if—

(A) under 16 years of age; or

(B) substantially incapable of—

(i) appraising the nature of the sexual conduct at issue due to—

(I) mental impairment or unconsciousness resulting from consumption of alcohol, drugs, a similar substance, or otherwise; or

(II) mental disease or defect which renders the person unable to understand the nature of the sexual conduct at issue;

(ii) physically declining participation in the sexual conduct at issue; or

(iii) physically communicating unwillingness to engage in the sexual conduct at issue.

(15) MISTAKE OF FACT AS TO CONSENT.—The term ''mistake of fact as to consent'' means the accused held, as a result of ignorance or mistake, an incorrect belief that the other person engaging in the sexual conduct consented. The ignorance or mistake must have existed in the mind of the accused and must have been reasonable under all the circumstances. To be reasonable the ignorance or mistake must have been based on information, or lack of it, which would indicate to a reasonable person that the other person consented. Additionally, the ignorance or mistake cannot be based on the negligent failure to discover the true facts. Negligence is the absence of due care. Due care is what a reasonably careful person would do under the same or similar circumstances. The accused's state of intoxication, if any, at the time of the offense is not relevant to mistake of fact. A mistaken belief that the other person consented must be that which a reasonably careful, ordinary, prudent, sober adult would have had under the circumstances at the time of the offense.

(16) AFFIRMATIVE DEFENSE.—The term ''affirmative defense'' means any special defense which, although not denying that the accused committed the objective acts constituting the offense charged, denies, wholly, or partially, criminal responsibility for those acts. The accused has the burden of proving the affirmative defense by a preponderance of evidence. After the defense meets this burden, the prosecution shall have the burden of proving beyond a reasonable doubt that the affirmative defense did not exist.

(Aug. 10, 1956, ch. 1041, 70A Stat. 73; Pub. L. 102–484, div. A, title X, § 1066(c), Oct. 23, 1992, 106 Stat. 2506; Pub. L. 104–106, div. A, title XI, § 1113, Feb. 10, 1996, 110 Stat. 462; Pub. L. 109–163, div. A, title V, § 552(a)(1), Jan. 6, 2006, 119 Stat. 3256.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
920(a)	50:714(a).	May 5, 1950, ch. 169, §1 (Art. 120), 64 Stat. 140.
920(b)	50:714(b).	
920(c)	50:714(c).	

In subsection (c), the words ''either of'' are inserted for clarity.

AMENDMENTS

2006—Pub. L. 109–163 amended section generally, substituting subsecs. (a) to (t) relating to rape, sexual assault, and other sexual misconduct for subsecs. (a) to (d) relating to rape and carnal knowledge.

1996—Subsec. (b). Pub. L. 104–106, §1113(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''Any person subject to this chapter who, under circumstances not amounting to rape, commits an act of sexual intercourse with a female not his wife who has not attained the age of sixteen years, is guilty of carnal knowledge and shall be punished as a court-martial may direct.''

Subsec. (d). Pub. L. 104–106, §1113(b), added subsec. (d).

1992—Subsec. (a). Pub. L. 102–484 struck out ''with a female not his wife'' after ''intercourse'' and ''her'' after ''without''.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–163, div. A, title V, §552(c), Jan. 6, 2006, 119 Stat. 3263, provided that: ''Section 920 of title 10, United States Code (article 120 of the Uniform Code of Military Justice), as amended by subsection (a), shall apply with respect to offenses committed on or after the effective date specified in subsection (f) [see note below].''

Amendment by Pub. L. 109–163 effective on Oct. 1, 2007, see section 552(f) of Pub. L. 109–163, set out as a note under section 843 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–484 effective Oct. 23, 1992, and applicable with respect to offenses committed on or after that date, see section 1067 of Pub. L. 102–484, set out as a note under section 803 of this title.

INTERIM MAXIMUM PUNISHMENTS

Pub. L. 109–163, div. A, title V, §552(b), Jan. 6, 2006, 119 Stat. 3263, provided that: ''Until the President otherwise provides pursuant to section 856 of title 10, United States Code (article 56 of the Uniform Code of Military Justice), the punishment which a court-martial may direct for an offense under section 920 of such title (article 120 of the Uniform Code of Military Justice), as amended by subsection (a), may not exceed the following limits:

''(1) SUBSECTIONS (a) AND (b).—For an offense under subsection (a) (rape) or subsection (b) (rape of a child), death or such other punishment as a court-martial may direct.

''(2) SUBSECTION (c).—For an offense under subsection (c) (aggravated sexual assault), dishonorable discharge, forfeiture of all pay and allowances, and confinement for 30 years.

''(3) SUBSECTIONS (d) AND (e).—For an offense under subsection (d) (aggravated sexual assault of a child) or subsection (e) (aggravated sexual contact), dishonorable discharge, forfeiture of all pay and allowances, and confinement for 20 years.

''(4) SUBSECTIONS (f) AND (g).—For an offense under subsection (f) (aggravated sexual abuse of a child) or subsection (g) (aggravated sexual contact with a child), dishonorable discharge, forfeiture of all pay and allowances, and confinement for 15 years.

''(5) SUBSECTIONS (h) THROUGH (j).—For an offense under subsection (h) (abusive sexual contact), subsection (i) (abusive sexual contact with a child), or subsection (j) (indecent liberty with a child), dishonorable discharge, forfeiture of all pay and allowances, and confinement for 7 years.

''(6) SUBSECTIONS (k) AND (*l*).—For an offense under subsection (k) (indecent act) or subsection (*l*) (forcible pandering), dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

''(7) SUBSECTIONS (m) AND (n).—For an offense under subsection (m) (wrongful sexual contact) or subsection (n) (indecent exposure), dishonorable discharge, forfeiture of all pay and allowances, and confinement for one year.''

§920a. Art. 120a. Stalking

(a) Any person subject to this section—

(1) who wrongfully engages in a course of conduct directed at a specific person that would cause a reasonable person to fear death or bodily harm, including sexual assault, to himself or herself or a member of his or her immediate family;

(2) who has knowledge, or should have knowledge, that the specific person will be placed in reasonable fear of death or bodily harm, including sexual assault, to himself or herself or a member of his or her immediate family; and

(3) whose acts induce reasonable fear in the specific person of death or bodily harm, including sexual assault, to himself or herself or to a member of his or her immediate family;

is guilty of stalking and shall be punished as a court-martial may direct.

(b) In this section:

(1) The term ''course of conduct'' means—

(A) a repeated maintenance of visual or physical proximity to a specific person; or

(B) a repeated conveyance of verbal threat, written threats, or threats implied by conduct, or a combination of such threats, directed at or toward a specific person.

(2) The term ''repeated'', with respect to conduct, means two or more occasions of such conduct.

(3) The term ''immediate family'', in the case of a specific person, means a spouse, parent, child, or sibling of the person, or any other family member, relative, or intimate partner of the person who regularly resides in the household of the person or who within the six months preceding the commencement of the course of conduct regularly resided in the household of the person.

(Added Pub. L. 109–163, div. A, title V, §551(a)(1), Jan. 6, 2006, 119 Stat. 3256.)

EFFECTIVE DATE

Pub. L. 109–163, div. A, title V, §551(b), Jan. 6, 2006, 119 Stat. 3256, provided that: ''Section 920a of title 10, United States Code (article 120a of the Uniform Code of Military Justice), as added by subsection (a), applies to offenses committed after the date that is 180 days after the date of the enactment of this Act [Jan. 6, 2006].''

§921. Art. 121. Larceny and wrongful appropriation

(a) Any person subject to this chapter who wrongfully takes, obtains, or withholds, by any means, from the possession of the owner or of any other person any money, personal property, or article of value of any kind—

(1) with intent permanently to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or

the use of any person other than the owner, steals that property and is guilty of larceny; or

(2) with intent temporarily to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any person other than the owner, is guilty of wrongful appropriation.

(b) Any person found guilty of larceny or wrongful appropriation shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 73.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
921(a)	50:715(a).	May 5, 1950, ch. 169, § 1 (Art. 121), 64 Stat. 140.
921(b)	50:715(b).	

In subsection (a), the words ''whatever'' and ''true'' are omitted as surplusage. The word ''it'' is substituted for the words ''the same'' in clauses (1) and (2).

§ 922. Art. 122. Robbery

Any person subject to this chapter who with intent to steal takes anything of value from the person or in the presence of another, against his will, by means of force or violence or fear of immediate or future injury to his person or property or to the person or property of a relative or member of his family or of anyone in his company at the time of the robbery, is guilty of robbery and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 73.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
922	50:716.	May 5, 1950, ch. 169, § 1 (Art. 122), 64 Stat. 140.

§ 923. Art. 123. Forgery

Any person subject to this chapter who, with intent to defraud—

(1) falsely makes or alters any signature to, or any part of, any writing which would, if genuine, apparently impose a legal liability on another or change his legal right or liability to his prejudice; or

(2) utters, offers, issues, or transfers such a writing, known by him to be so made or altered;

is guilty of forgery and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 74.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
923	50:717.	May 5, 1950, ch. 169, § 1 (Art. 123), 64 Stat. 141.

§ 923a. Art. 123a. Making, drawing, or uttering check, draft, or order without sufficient funds

Any person subject to this chapter who—

(1) for the procurement of any article or thing of value, with intent to defraud; or

(2) for the payment of any past due obligation, or for any other purpose, with intent to deceive;

makes, draws, utters, or delivers any check, draft, or order for the payment of money upon any bank or other depository, knowing at the time that the maker or drawer has not or will not have sufficient funds in, or credit with, the bank or other depository for the payment of that check, draft, or order in full upon its presentment, shall be punished as a court-martial may direct. The making, drawing, uttering, or delivering by a maker or drawer of a check, draft, or order, payment of which is refused by the drawee because of insufficient funds of the maker or drawer in the drawee's possession or control, is prima facie evidence of his intent to defraud or deceive and of his knowledge of insufficient funds in, or credit with, that bank or other depository, unless the maker or drawer pays the holder the amount due within five days after receiving notice, orally or in writing, that the check, draft, or order was not paid on presentment. In this section, the word ''credit'' means an arrangement or understanding, express or implied, with the bank or other depository for the payment of that check, draft, or order.

(Added Pub. L. 87–385, § 1(1), Oct. 4, 1961, 75 Stat. 814.)

EFFECTIVE DATE

Section 2 of Pub. L. 87–385 provided that: ''This Act [enacting this section] becomes effective on the first day of the fifth month following the month in which it is enacted [October 1961].''

§ 924. Art. 124. Maiming

Any person subject to this chapter who, with intent to injure, disfigure, or disable, inflicts upon the person of another an injury which—

(1) seriously disfigures his person by any mutilation thereof;

(2) destroys or disables any member or organ of his body; or

(3) seriously diminishes his physical vigor by the injury of any member or organ;

is guilty of maiming and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 74.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
924	50:718.	May 5, 1950, ch. 169, § 1 (Art. 124), 64 Stat. 141.

§ 925. Art. 125. Sodomy

(a) Any person subject to this chapter who engages in unnatural carnal copulation with another person of the same or opposite sex or with an animal is guilty of sodomy. Penetration, however slight, is sufficient to complete the offense.

(b) Any person found guilty of sodomy shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 74.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
925(a)	50:719(a).	May 5, 1950, ch. 169, § 1 (Art. 125), 64 Stat. 141.
925(b)	50:719(b).	

§ 926. Art. 126. Arson

(a) Any person subject to this chapter who willfully and maliciously burns or sets on fire an inhabited dwelling, or any other structure, movable or immovable, wherein to the knowledge of the offender there is at the time a human being, is guilty of aggravated arson and shall be punished as a court-martial may direct.

(b) Any person subject to this chapter who willfully and maliciously burns or sets fire to the property of another, except as provided in subsection (a), is guilty of simple arson and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 74.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
926(a)	50:720(a).	May 5, 1950, ch. 169, § 1 (Art. 126), 64 Stat. 141.
926(b)	50:720(b).	

In subsection (b), the words ''of this section'' are omitted as surplusage.

§ 927. Art. 127. Extortion

Any person subject to this chapter who communicates threats to another person with the intention thereby to obtain anything of value or any acquittance, advantage, or immunity is guilty of extortion and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 74.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
927	50:721.	May 5, 1950, ch. 169, § 1 (Art. 127), 64 Stat. 141.

The words ''of any description'' are omitted as surplusage.

§ 928. Art. 128. Assault

(a) Any person subject to this chapter who attempts or offers with unlawful force or violence to do bodily harm to another person, whether or not the attempt or offer is consummated, is guilty of assault and shall be punished as a court-martial may direct.

(b) Any person subject to this chapter who—

(1) commits an assault with a dangerous weapon or other means or force likely to produce death or grievous bodily harm; or

(2) commits an assault and intentionally inflicts grievous bodily harm with or without a weapon;

is guilty of aggravated assault and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 75.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
928(a)	50:722(a).	May 5, 1950, ch. 169, § 1 (Art. 128), 64 Stat. 141.
928(b)	50:722(b).	

§ 929. Art. 129. Burglary

Any person subject to this chapter who, with intent to commit an offense punishable under sections 918–928 of this title (articles 118–128), breaks and enters, in the nighttime, the dwelling house of another, is guilty of burglary and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 75.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
929	50:723.	May 5, 1950, ch. 169, § 1 (Art. 129), 64 Stat. 142.

§ 930. Art. 130. Housebreaking

Any person subject to this chapter who unlawfully enters the building or structure of another with intent to commit a criminal offense therein is guilty of housebreaking and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 75.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
930	50:724.	May 5, 1950, ch. 169, § 1 (Art. 130), 64 Stat. 142.

§ 931. Art. 131. Perjury

Any person subject to this chapter who in a judicial proceeding or in a course of justice willfully and corruptly—

(1) upon a lawful oath or in any form allowed by law to be substituted for an oath, gives any false testimony material to the issue or matter of inquiry; or

(2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, subscribes any false statement material to the issue or matter of inquiry;

is guilty of perjury and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 75; Pub. L. 94–550, § 3, Oct. 18, 1976, 90 Stat. 2535; Pub. L. 97–295, § 1(13), Oct. 12, 1982, 96 Stat. 1289.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
931	50:725.	May 5, 1950, ch. 169, § 1 (Art. 131), 64 Stat. 142.

The words ''in a'' are inserted before the words ''course of justice''.

AMENDMENTS

1982—Par. (2). Pub. L. 97–295 struck out ''United States Code,'' after ''title 28,''.

1976—Pub. L. 94–550 divided existing provisions into an introductory phrase, par. (1), and a closing phrase, and added par. (2).

§ 932. Art. 132. Frauds against the United States

Any person subject to this chapter—

(1) who, knowing it to be false or fraudulent—

(A) makes any claim against the United States or any officer thereof; or

(B) presents to any person in the civil or military service thereof, for approval or payment, any claim against the United States or any officer thereof;

(2) who, for the purpose of obtaining the approval, allowance, or payment of any claim against the United States or any officer thereof—

(A) makes or uses any writing or other paper knowing it to contain any false or fraudulent statements;

(B) makes any oath to any fact or to any writing or other paper knowing the oath to be false; or

(C) forges or counterfeits any signature upon any writing or other paper, or uses any such signature knowing it to be forged or counterfeited;

(3) who, having charge, possession, custody or control of any money, or other property of the United States, furnished or intended for the armed forces thereof, knowingly delivers to any person having authority to receive it, any amount thereof less than that for which he receives a certificate or receipt; or

(4) who, being authorized to make or deliver any paper certifying the receipt of any property of the United States furnished or intended for the armed forces thereof, makes or delivers to any person such writing without having full knowledge of the truth of the statements therein contained and with intent to defraud the United States;

shall, upon conviction, be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 75.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
932	50:726.	May 5, 1950, ch. 169, § 1 (Art. 132), 64 Stat. 142.

The word ''it'' is substituted for the words ''the same'' throughout the revised section.

§ 933. Art. 133. Conduct unbecoming an officer and a gentleman

Any commissioned officer, cadet, or midshipman who is convicted of conduct unbecoming an officer and a gentleman shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 76.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
933	50:727.	May 5, 1950, ch. 169, § 1 (Art. 133), 64 Stat. 142.

The word ''commissioned'' is inserted for clarity.

§ 934. Art. 134. General article

Though not specifically mentioned in this chapter, all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces, and crimes and offenses not capital, of which persons subject to this chapter may be guilty, shall be taken cognizance of by a general, special, or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court.

(Aug. 10, 1956, ch. 1041, 70A Stat. 76.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
934	50:728.	May 5, 1950, ch. 169, § 1 (Art. 134), 64 Stat. 142.

The words ''shall be'' are inserted before the word ''punished''.

SUBCHAPTER XI—MISCELLANEOUS PROVISIONS

Sec.	Art.	
935.	135.	Courts of inquiry.
936.	136.	Authority to administer oaths and to act as notary.
937.	137.	Articles to be explained.
938.	138.	Complaints of wrongs.
939.	139.	Redress of injuries to property.
940.	140.	Delegation by the President.

§ 935. Art. 135. Courts of inquiry

(a) Courts of inquiry to investigate any matter may be convened by any person authorized to convene a general court-martial or by any other person designated by the Secretary concerned for that purpose, whether or not the persons involved have requested such an inquiry.

(b) A court of inquiry consists of three or more commissioned officers. For each court of inquiry the convening authority shall also appoint counsel for the court.

(c) Any person subject to this chapter whose conduct is subject to inquiry shall be designated as a party. Any person subject to this chapter or employed by the Department of Defense who has a direct interest in the subject of inquiry has the right to be designated as a party upon request to the court. Any person designated as a party shall be given due notice and has the right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.

(d) Members of a court of inquiry may be challenged by a party, but only for cause stated to the court.

(e) The members, counsel, the reporter, and interpreters of courts of inquiry shall take an oath to faithfully perform their duties.

(f) Witnesses may be summoned to appear and testify and be examined before courts of inquiry, as provided for courts-martial.

(g) Courts of inquiry shall make findings of fact but may not express opinions or make recommendations unless required to do so by the convening authority.

(h) Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by

the signatures of the president and counsel for the court and forwarded to the convening authority. If the record cannot be authenticated by the president, it shall be signed by a member in lieu of the president. If the record cannot be authenticated by the counsel for the court, it shall be signed by a member in lieu of the counsel.

(Aug. 10, 1956, ch. 1041, 70A Stat. 76.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
935(a)	50:731(a).	May 5, 1950, ch. 169, §1 (Art. 135), 64 Stat. 143.
935(b)	50:731(b).	
935(c)	50:731(c).	
935(d)	50:731(d).	
935(e)	50:731(e).	
935(f)	50:731(f).	
935(g)	50:731(g).	
935(h)	50:731(h).	

In subsection (a), the words ''Secretary concerned'' are substituted for the words ''Secretary of a Department''.

In subsection (b), the word ''commissioned'' is inserted for clarity. The word ''consists'' is substituted for the words ''shall consist''.

In subsection (c), the word ''has'' is substituted for the words ''shall have''.

In subsection (e), the words ''or affirmation'' are omitted as covered by the definition of the word ''oath'' in section 1 of title 1.

In subsection (g), the word ''may'' is substituted for the word ''shall''.

In subsection (h), the word ''If'' is substituted for the words ''In case''.

§936. Art. 136. Authority to administer oaths and to act as notary

(a) The following persons on active duty or performing inactive-duty training may administer oaths for the purposes of military administration, including military justice:

(1) All judge advocates.

(2) All summary courts-martial.

(3) All adjutants, assistant adjutants, acting adjutants, and personnel adjutants.

(4) All commanding officers of the Navy, Marine Corps, and Coast Guard.

(5) All staff judge advocates and legal officers, and acting or assistant staff judge advocates and legal officers.

(6) All other persons designated by regulations of the armed forces or by statute.

(b) The following persons on active duty or performing inactive-duty training may administer oaths necessary in the performance of their duties:

(1) The president, military judge, trial counsel, and assistant trial counsel for all general and special courts-martial.

(2) The president and the counsel for the court of any court of inquiry.

(3) All officers designated to take a deposition.

(4) All persons detailed to conduct an investigation.

(5) All recruiting officers.

(6) All other persons designated by regulations of the armed forces or by statute.

(c) The judges of the United States Court of Appeals for the Armed Forces may administer the oaths authorized by subsections (a) and (b).

(Aug. 10, 1956, ch. 1041, 70A Stat. 77; Pub. L. 86–589, July 5, 1960, 74 Stat. 329; Pub. L. 90–179, §1(7), Dec. 8, 1967, 81 Stat. 546; Pub. L. 90–632, §2(34), Oct. 24, 1968, 82 Stat. 1343; Pub. L. 98–209, §2(f), Dec. 6, 1983, 97 Stat. 1393; Pub. L. 99–661, div. A, title VIII, §804(c), Nov. 14, 1986, 100 Stat. 3907; Pub. L. 100–456, div. A, title XII, §1234(a)(1), Sept. 29, 1988, 102 Stat. 2059; Pub. L. 101–510, div. A, title V, §551(b), Nov. 5, 1990, 104 Stat. 1566; Pub. L. 110–181, div. A, title V, §542, Jan. 28, 2008, 122 Stat. 114.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
936(a)	50:732(a).	May 5, 1950, ch. 169, §1 (Art. 136), 64 Stat. 143.
936(b)	50:732(b).	
936(c)	50:732(c).	
936(d)	50:732(d).	

In subsection (a), the word ''may'' is substituted for the words ''shall have authority to''. The word ''shall'' before the words ''have the general powers'' is omitted as surplusage. The words ''the continental limits'' are omitted, since section 101(1) of this title defines the United States to include the States and the District of Columbia.

In subsections (a) and (b), the words ''in the armed forces'' are omitted as surplusage.

In subsection (b), the word ''may'' is substituted for the words ''shall have authority to''.

In subsection (c), the words ''of any character'' are omitted as surplusage. The word ''may'' is substituted for the word ''shall''.

In subsection (d), the word ''is'' is substituted for the words ''shall be''.

AMENDMENTS

2008—Subsec. (c). Pub. L. 110–181 added subsec. (c).

1990—Subsec. (a). Pub. L. 101–510, §551(b)(1), struck out '', and have the general powers of a notary public and of a consul of the United States, in the performance of all notarial acts to be executed by members of any of the armed forces, wherever they may be, by persons serving with, employed by, or accompanying the armed forces outside the United States and outside Puerto Rico, Guam, and the Virgin Islands, and by other persons subject to this chapter outside of the United States'' after ''including military justice'' in introductory provisions.

Subsecs. (c), (d). Pub. L. 101–510, §551(b)(2), struck out subsecs. (c) and (d) which read as follows:

''(c) No fee may be paid to or received by any person for the performance of any notarial act herein authorized.

''(d) The signature without seal of any such person acting as notary, together with the title of his office, is prima facie evidence of his authority.''

1988—Subsec. (a). Pub. L. 100–456 struck out ''the Canal Zone,'' before ''Puerto Rico,''.

1986—Subsecs. (a), (b). Pub. L. 99–661 inserted ''or performing inactive-duty training'' after ''active duty''.

1983—Subsec. (a)(1). Pub. L. 98–209, §2(f)(1), struck out ''of the Army, Navy, Air Force, and Marine Corps'' after ''All judge advocates''.

Subsec. (a)(2) to (7). Pub. L. 98–209, §2(f)(2), struck out par. (2) which included law specialists among those persons authorized to administer oaths and to act as notaries under this section, and redesignated pars. (3) to (7) as (2) to (6), respectively.

1968—Subsec. (b). Pub. L. 90–632 substituted ''military judge'' for ''law officer'' in par. (1).

1967—Subsec. (a)(1). Pub. L. 90–179 inserted references to judge advocates of the Navy and the Marine Corps.

1960—Subsec. (a). Pub. L. 86–589 permitted the administration of oaths and the performance of notarial acts for persons serving, employed by, or accompanying the armed forces outside the United States and outside the Canal Zone, Puerto Rico, Guam, and the Virgin Islands.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–661 effective the earlier of (1) the last day of the 120-day period beginning on Nov. 14, 1986; or (2) the date specified in an Executive order for such amendment to take effect, see section 808 of Pub. L. 99–661, set out as a note under section 802 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 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.

§ 937. Art. 137. Articles to be explained

(a)(1) The sections of this title (articles of the Uniform Code of Military Justice) specified in paragraph (3) shall be carefully explained to each enlisted member at the time of (or within fourteen days after)—

(A) the member's initial entrance on active duty; or

(B) the member's initial entrance into a duty status with a reserve component.

(2) Such sections (articles) shall be explained again—

(A) after the member has completed six months of active duty or, in the case of a member of a reserve component, after the member has completed basic or recruit training; and

(B) at the time when the member reenlists.

(3) This subsection applies with respect to sections 802, 803, 807–815, 825, 827, 831, 837, 838, 855, 877–934, and 937–939 of this title (articles 2, 3, 7–15, 25, 27, 31, 37, 38, 55, 77–134, and 137–139).

(b) The text of the Uniform Code of Military Justice and of the regulations prescribed by the President under such Code shall be made available to a member on active duty or to a member of a reserve component, upon request by the member, for the member's personal examination.

(Aug. 10, 1956, ch. 1041, 70A Stat. 78; Pub. L. 99–661, div. A, title VIII, § 804(d), Nov. 14, 1986, 100 Stat. 3907; Pub. L. 104–106, div. A, title XI, § 1152, Feb. 10, 1996, 110 Stat. 468.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
937	50:733.	May 5, 1950, ch. 169, § 1 (Art. 137), 64 Stat. 144.

The word ''each'' is substituted for the word ''every''. The word ''member'' is substituted for the word ''person''. The words ''in [any of] the armed forces of the United States'' are omitted as surplusage.

REFERENCES IN TEXT

The Uniform Code of Military Justice, referred to in subsecs. (a)(1) and (b), is classified to this chapter.

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–106 substituted ''within fourteen days'' for ''within six days''.

1986—Pub. L. 99–661 amended section generally, inserting provisions relating to reserve components.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–661 effective the earlier of (1) the last day of the 120-day period beginning on Nov. 14, 1986; or (2) the date specified in an Executive order for such amendment to take effect, see section 808 of Pub. L. 99–661, set out as a note under section 802 of this title.

§ 938. Art. 138. Complaints of wrongs

Any member of the armed forces who believes himself wronged by his commanding officer, and who, upon due application to that commanding officer, is refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the officer exercising general court-martial jurisdiction over the officer against whom it is made. The officer exercising general court-martial jurisdiction shall examine into the complaint and take proper measures for redressing the wrong complained of; and he shall, as soon as possible, send to the Secretary concerned a true statement of that complaint, with the proceedings had thereon.

(Aug. 10, 1956, ch. 1041, 70A Stat. 78.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
938	50:734.	May 5, 1950, ch. 169, § 1 (Art. 138), 64 Stat. 144.

The words ''commanding officer'' are substituted for the word ''commander''. The word ''who'' is inserted after the word ''and''. The word ''commissioned'' is inserted after the word ''superior'' for clarity. The words ''The officer exercising general court-martial jurisdiction'' are substituted for the words ''That officer'' for clarity. The word ''send'' is substituted for the word ''transmit''. The word ''Secretary'' is substituted for the word ''Department'' for accuracy, since the ''Department'', as an entity, could not act upon the complaint.

§ 939. Art. 139. Redress of injuries to property

(a) Whenever complaint is made to any commanding officer that willful damage has been done to the property of any person or that his property has been wrongfully taken by members of the armed forces, he may, under such regulations as the Secretary concerned may prescribe, convene a board to investigate the complaint. The board shall consist of from one to three commissioned officers and, for the purpose of that investigation, it has power to summon witnesses and examine them upon oath, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by the board is subject to the approval of the commanding officer, and in the amount ap-

proved by him shall be charged against the pay of the offenders. The order of the commanding officer directing charges herein authorized is conclusive on any disbursing officer for the payment by him to the injured parties of the damages so assessed and approved.

(b) If the offenders cannot be ascertained, but the organization or detachment to which they belong is known, charges totaling the amount of damages assessed and approved may be made in such proportion as may be considered just upon the individual members thereof who are shown to have been present at the scene at the time the damages complained of were inflicted, as determined by the approved findings of the board.

(Aug. 10, 1956, ch. 1041, 70A Stat. 78.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
939(a)	50:735(a).	May 5, 1950, ch. 169, §1 (Art. 139), 64 Stat. 144.
939(b)	50:735(b).	

In subsection (a), the words ''Secretary concerned'' are substituted for the words ''Secretary of the Department''. The word ''under'' is substituted for the words ''subject to''. The words ''or affirmation'' are omitted as covered by the definition of the word ''oath'' in section 1 of title 1. The words ''it has'' are substituted for the words ''shall have'' in the second sentence. The word ''is'' is substituted for the words ''shall be'' before the words ''subject'' and ''conclusive''. The word ''commissioned'' is inserted for clarity.

In subsection (b), the word ''If'' is substituted for the word ''Where''. The word ''considered'' is substituted for the word ''deemed''.

§940. Art. 140. Delegation by the President

The President may delegate any authority vested in him under this chapter, and provide for the subdelegation of any such authority.

(Aug. 10, 1956, ch. 1041, 70A Stat. 78.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
940	50:736.	May 5, 1950, ch. 169, §1 (Art. 140), 64 Stat. 145.

The word ''may'' is substituted for the words ''is authorized to * * * to''.

SUBCHAPTER XII—UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES

Sec.	Art.	
941.	141.	Status.
942.	142.	Judges.
943.	143.	Organization and employees.
944.	144.	Procedure.
945.	145.	Annuities for judges and survivors.
946.	146.	Code committee.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title IX, §924(c)(3)(A), Oct. 5, 1994, 108 Stat. 2831, substituted ''UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES'' for ''COURT OF MILITARY APPEALS'' as subchapter heading.

1990—Pub. L. 101–510, div. A, title XIV, §1484(i)(2), Nov. 5, 1990, 104 Stat. 1718, redesignated subchapter XI as XII.

§941. Art. 141. Status

There is a court of record known as the United States Court of Appeals for the Armed Forces. The court is established under article I of the Constitution. The court is located for administrative purposes only in the Department of Defense.

(Added Pub. L. 101–189, div. A, title XIII, §1301(c), Nov. 29, 1989, 103 Stat. 1570; amended Pub. L. 103–337, div. A, title IX, §924(a)(2), Oct. 5, 1994, 108 Stat. 2831.)

AMENDMENTS

1994—Pub. L. 103–337 substituted ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals''.

CHANGE OF NAME

Section 924(a)(1) of Pub. L. 103–337 provided that: ''The United States Court of Military Appeals shall hereafter be known and designated as the United States Court of Appeals for the Armed Forces.''

§942. Art. 142. Judges

(a) NUMBER.—The United States Court of Appeals for the Armed Forces consists of five judges.

(b) APPOINTMENT; QUALIFICATION.—(1) Each judge of the court shall be appointed from civilian life by the President, by and with the advice and consent of the Senate, for a specified term determined under paragraph (2). A judge may serve as a senior judge as provided in subsection (e).

(2) The term of a judge shall expire as follows:

(A) In the case of a judge who is appointed after March 31 and before October 1 of any year, the term shall expire on September 30 of the year in which the fifteenth anniversary of the appointment occurs.

(B) In the case of a judge who is appointed after September 30 of any year and before April 1 of the following year, the term shall expire fifteen years after such September 30.

(3) Not more than three of the judges of the court may be appointed from the same political party, and no person may be appointed to be a judge of the court unless the person is a member of the bar of a Federal court or the highest court of a State.

(4) For purposes of appointment of judges to the court, a person retired from the armed forces after 20 or more years of active service (whether or not such person is on the retired list) shall not be considered to be in civilian life.

(c) REMOVAL.—Judges of the court may be removed from office by the President, upon notice and hearing, for—

(1) neglect of duty;

(2) misconduct; or

(3) mental or physical disability.

A judge may not be removed by the President for any other cause.

(d) PAY AND ALLOWANCES.—Each judge of the court is entitled to the same salary and travel allowances as are, and from time to time may be, provided for judges of the United States Courts of Appeals.

(e) SENIOR JUDGES.—(1)(A) A former judge of the court who is receiving retired pay or an an-

nuity under section 945 of this title (article 145) or under subchapter III of chapter 83 or chapter 84 of title 5 shall be a senior judge. The chief judge of the court may call upon an individual who is a senior judge of the court under this subparagraph, with the consent of the senior judge, to perform judicial duties with the court—

(i) during a period a judge of the court is unable to perform his duties because of illness or other disability;

(ii) during a period in which a position of judge of the court is vacant; or

(iii) in any case in which a judge of the court recuses himself.

(B) If, at the time the term of a judge expires, no successor to that judge has been appointed, the chief judge of the court may call upon that judge (with that judge's consent) to continue to perform judicial duties with the court until the vacancy is filled. A judge who, upon the expiration of the judge's term, continues to perform judicial duties with the court without a break in service under this subparagraph shall be a senior judge while such service continues.

(2) A senior judge shall be paid for each day on which he performs judicial duties with the court an amount equal to the daily equivalent of the annual rate of pay provided for a judge of the court. Such pay shall be in lieu of retired pay and in lieu of an annuity under section 945 of this title (article 145), subchapter III of chapter 83 or subchapter II of chapter 84 of title 5, or any other retirement system for employees of the Federal Government.

(3) A senior judge, while performing duties referred to in paragraph (1), shall be provided with such office space and staff assistance as the chief judge considers appropriate and shall be entitled to the per diem, travel allowances, and other allowances provided for judges of the court.

(4) A senior judge shall be considered to be an officer or employee of the United States with respect to his status as a senior judge, but only during periods the senior judge is performing duties referred to in paragraph (1). For the purposes of section 205 of title 18, a senior judge shall be considered to be a special government employee during such periods. Any provision of law that prohibits or limits the political or business activities of an employee of the United States shall apply to a senior judge only during such periods.

(5) The court shall prescribe rules for the use and conduct of senior judges of the court. The chief judge of the court shall transmit such rules, and any amendments to such rules, to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives not later than 15 days after the issuance of such rules or amendments, as the case may be.

(6) For purposes of subchapter III of chapter 83 of title 5 (relating to the Civil Service Retirement and Disability System) and chapter 84 of such title (relating to the Federal Employees' Retirement System) and for purposes of any other Federal Government retirement system for employees of the Federal Government—

(A) a period during which a senior judge performs duties referred to in paragraph (1) shall not be considered creditable service;

(B) no amount shall be withheld from the pay of a senior judge as a retirement contribution under section 8334, 8343, 8422, or 8432 of title 5 or under any other such retirement system for any period during which the senior judge performs duties referred to in paragraph (1);

(C) no contribution shall be made by the Federal Government to any retirement system with respect to a senior judge for any period during which the senior judge performs duties referred to in paragraph (1); and

(D) a senior judge shall not be considered to be a reemployed annuitant for any period during which the senior judge performs duties referred to in paragraph (1).

(f) SERVICE OF ARTICLE III JUDGES.—(1) The Chief Justice of the United States, upon the request of the chief judge of the court, may designate a judge of a United States court of appeals or of a United States district court to perform the duties of judge of the United States Court of Appeals for the Armed Forces—

(A) during a period a judge of the court is unable to perform his duties because of illness or other disability;

(B) in any case in which a judge of the court recuses himself; or

(C) during a period when there is a vacancy on the court and in the opinion of the chief judge of the court such a designation is necessary for the proper dispatch of the business of the court.

(2) The chief judge of the court may not request that a designation be made under paragraph (1) unless the chief judge has determined that no person is available to perform judicial duties with the court as a senior judge under subsection (e).

(3) A designation under paragraph (1) may be made only with the consent of the designated judge and the concurrence of the chief judge of the court of appeals or district court concerned.

(4) Per diem, travel allowances, and other allowances paid to the designated judge in connection with the performance of duties for the court shall be paid from funds available for the payment of per diem and such allowances for judges of the court.

(g) EFFECT OF VACANCY ON COURT.—A vacancy on the court does not impair the right of the remaining judges to exercise the powers of the court.

(Added Pub. L. 101–189, div. A, title XIII, § 1301(c), Nov. 29, 1989, 103 Stat. 1570; amended Pub. L. 101–510, div. A, title V, § 541(f), Nov. 5, 1990, 104 Stat. 1565; Pub. L. 102–190, div. A, title X, § 1061(b)(1)(A), (B), (2), Dec. 5, 1991, 105 Stat. 1474; Pub. L. 103–337, div. A, title IX, § 924(c)(1), Oct. 5, 1994, 108 Stat. 2831; Pub. L. 104–106, div. A, title XV, § 1502(a)(2), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

AMENDMENTS

1999—Subsec. (e)(5). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1996—Subsec. (e)(5). Pub. L. 104–106 substituted ''Committee on Armed Services of the Senate and the Com-

mittee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and the House of Representatives''.

1994—Subsecs. (a), (f)(1). Pub. L. 103–337 substituted ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals''.

1991—Subsec. (e)(1). Pub. L. 102–190, §1061(b)(1)(A)(i)–(iv), designated existing provisions as subpar. (A), struck out ''(2)(A)'' before ''The chief judge'', moved sentence beginning ''The chief judge of the court'' to end of par. (1)(A), substituted ''an individual who is a senior judge of the court under this subparagraph'' for ''a senior judge of the court'', and added subpar. (B).

Subsec. (e)(2). Pub. L. 102–190, §1061(b)(1)(A)(ii), (v), redesignated par. (2)(B) as (2) and incorporated former par. (2)(A) into par. (1)(A).

Subsec. (e)(3), (4), (6). Pub. L. 102–190, §1061(b)(1)(B), substituted ''paragraph (1)'' for ''paragraph (2)'' wherever appearing.

Subsec. (f)(1)(C). Pub. L. 102–190, §1061(b)(2)(A), added subpar. (C).

Subsec. (f)(2) to (4). Pub. L. 102–190, §1061(b)(2)(B), (C), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

1990—Subsec. (b)(1). Pub. L. 101–510, §541(f)(1), substituted ''civilian life'' for ''civil life''.

Subsec. (b)(4). Pub. L. 101–510, §541(f)(2), added par. (4).

EFFECTIVE DATE OF 1991 AMENDMENT

Section 1061(b)(1)(D) of Pub. L. 102–190 provided that: ''The amendments made by this paragraph [amending this section and section 945 of this title] shall take effect as of November 29, 1989.''

EFFECTIVE DATE FOR REPEAL OF TERMINATION OF AUTHORITY FOR CHIEF JUSTICE OF UNITED STATES TO DESIGNATE ARTICLE III JUDGES FOR TEMPORARY SERVICE ON COURT OF APPEALS FOR THE ARMED FORCES

Pub. L. 104–201, div. A, title X, §1074(c)(2), Sept. 23, 1996, 110 Stat. 2660, provided that: ''The authority provided under section 942(f) of title 10, United States Code, shall be effective as if section 1142 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106; 110 Stat. 467) [repealing section 1301(i) of Pub. L. 101–189, set out below] had been enacted on September 29, 1995.''

TRANSITIONAL PROVISIONS

Section 1301(d)–(i) of Pub. L. 101–189, as amended by Pub. L. 104–106, div. A, title XI, §1142, Feb. 10, 1996, 110 Stat. 467; Pub. L. 104–201, div. A, title X, §1068(c), Sept. 23, 1996, 110 Stat. 2655, provided that:

''(d) TRANSITION FROM THREE-JUDGE COURT TO FIVE-JUDGE COURT.—(1) Effective during the period before October 1, 1990—

''(A) the number of members of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] shall (notwithstanding subsection (a) of section 942 of title 10, United States Code, as enacted by subsection (c)) be three; and

''(B) the maximum number of members of the court who may be appointed from the same political party shall (notwithstanding subsection (b)(3) of section 942) be two.

''(2) In the application of paragraph (2) of section 942(b) of title 10, United States Code (as enacted by subsection (c)) to the judge who is first appointed to one of the two new positions of the court created as of October 1, 1990, as designated by the President at the time of appointment, the anniversary referred to in subparagraph (A) of that paragraph shall be treated as being the seventh anniversary and the number of years referred to in subparagraph (B) of that paragraph shall be treated as being seven.

''(e) TRANSITION RULES RELATING TO RETIREMENT OF NEW JUDGES.—(1) Except as otherwise provided in paragraphs (2) and (3), a judge to whom subsection (d)(2) applies shall be eligible for an annuity as provided in section 945 of title 10, United States Code, as enacted by subsection (c).

''(2) The annuity of a judge referred to in paragraph (1) is computed under subsection (b) of such section 945 only if the judge—

''(A) completes the term of service for which he is first appointed;

''(B) is reappointed as a judge of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] at any time after the completion of such term of service;

''(C) is separated from civilian service in the Federal Government after completing a total of 15 years as a judge of such court; and

''(D) elects to receive an annuity under such section in accordance with subsection (a)(2) of such section.

''(3) In the case of a judge referred to in paragraph (1) who is separated from civilian service after completing the term of service for which he is first appointed as a judge of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] and before completing a total of 15 years as a judge of such court, the annuity of such judge (if elected in accordance with section 945(a)(2) of title 10, United States Code) shall be 1/15 of the amount computed under subsection (b) of such section times the number of years (including any fraction thereof) of such judge's service as a judge of the court.

''(f) APPLICABILITY OF AMENDED RETIREMENT PROVISIONS.—Except as otherwise provided in subsections (c) and (d), section 945 of title 10, United States Code, as enacted by subsection (c), applies with respect to judges of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] whose terms of service on such court end after September 28, 1988, and to the survivors of such judges.

''(g) TERMS OF CURRENT JUDGES.—Section 942(b) of title 10, United States Code, as enacted by subsection (c), shall not apply to the term of office of a judge of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] serving on such court on the date of the enactment of this Act [Nov. 29, 1989]. The term of office of such a judge shall expire on the later of (A) the date the term of such judge would have expired under section 867(a)(1) of title 10, United States Code, as in effect on the day before such date of enactment, or (B) September 30 of the year in which the term of such judge would have expired under such section 867(a)(1).

''(h) CIVIL SERVICE STATUS OF CURRENT EMPLOYEES.—Section 943(c) of title 10, United States Code, as enacted by subsection (c), shall not be applied to change the civil service status of any attorney who is an employee of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] on the day before the date of the enactment of this Act [Nov. 29, 1989].''

§943. Art. 143. Organization and employees

(a) CHIEF JUDGE.—(1) The chief judge of the United States Court of Appeals for the Armed Forces shall be the judge of the court in regular active service who is senior in commission among the judges of the court who—

(A) have served for one or more years as judges of the court; and

(B) have not previously served as chief judge.

(2) In any case in which there is no judge of the court in regular active service who has served as a judge of the court for at least one year, the judge of the court in regular active service who is senior in commission and has not served previously as chief judge shall act as the chief judge.

(3) Except as provided in paragraph (4), a judge of the court shall serve as the chief judge under paragraph (1) for a term of five years. If no other judge is eligible under paragraph (1) to serve as chief judge upon the expiration of that term, the chief judge shall continue to serve as chief judge until another judge becomes eligible under that paragraph to serve as chief judge.

(4)(A) The term of a chief judge shall be terminated before the end of five years if—

(i) the chief judge leaves regular active service as a judge of the court; or

(ii) the chief judge notifies the other judges of the court in writing that such judge desires to be relieved of his duties as chief judge.

(B) The effective date of a termination of the term under subparagraph (A) shall be the date on which the chief judge leaves regular active service or the date of the notification under subparagraph (A)(ii), as the case may be.

(5) If a chief judge is temporarily unable to perform his duties as a chief judge, the duties shall be performed by the judge of the court in active service who is present, able and qualified to act, and is next in precedence.

(b) PRECEDENCE OF JUDGES.—The chief judge of the court shall have precedence and preside at any session that he attends. The other judges shall have precedence and preside according to the seniority of their original commissions. Judges whose commissions bear the same date shall have precedence according to seniority in age.

(c) STATUS OF CERTAIN POSITIONS.—(1) Attorney positions of employment under the Court of Appeals for the Armed Forces are excepted from the competitive service. A position of employment under the court that is provided primarily for the service of one judge of the court, reports directly to the judge, and is a position of a confidential character is excepted from the competitive service. Appointments to positions referred to in the preceding sentences shall be made by the court, without the concurrence of any other officer or employee of the executive branch, in the same manner as appointments are made to other executive branch positions of a confidential or policy-determining character for which it is not practicable to examine or to hold a competitive examination. Such positions shall not be counted as positions of that character for purposes of any limitation on the number of positions of that character provided in law.

(2) In making appointments to the positions described in paragraph (1), preference shall be given, among equally qualified persons, to persons who are preference eligibles (as defined in section 2108(3) of title 5).

(Added Pub. L. 101–189, div. A, title XIII, § 1301(c), Nov. 29, 1989, 103 Stat. 1572; amended Pub. L. 102–484, div. A, title X, § 1061(a)(1), Oct. 23, 1992, 106 Stat. 2503; Pub. L. 103–337, div. A, title IX, § 924(c)(1), Oct. 5, 1994, 108 Stat. 2831; Pub. L. 104–201, div. A, title X, § 1068(b), Sept. 23, 1996, 110 Stat. 2655; Pub. L. 105–85, div. A, title X, § 1073(a)(11), Nov. 18, 1997, 111 Stat. 1900.)

AMENDMENTS

1997—Subsec. (c). Pub. L. 105–85 made technical amendment to heading and substituted ''under the court'' for ''under the Court'' in second sentence and ''positions referred to in the preceding sentences'' for ''such positions'' in third sentence.

1996—Subsec. (c). Pub. L. 104–201 substituted ''Certain'' for ''Attorney'' in heading and inserted ''A position of employment under the Court that is provided primarily for the service of one judge of the court, reports directly to the judge, and is a position of a confidential character is excepted from the competitive service.'' after first sentence in par. (1).

1994—Subsecs. (a)(1), (c). Pub. L. 103–337 substituted ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals''.

1992—Subsec. (a). Pub. L. 102–484 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''CHIEF JUDGE.—The President shall designate from time to time one of the judges of the United States Court of Military Appeals to be chief judge of the court.''

TRANSITION PROVISION

Section 1061(b) of Pub. L. 102–484 provided that: ''For purposes of section 943(a) (article 943(a)) of title 10, United States Code, as amended by subsection (a)—

''(1) the person serving as the chief judge of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] on the date of the enactment of this Act [Oct. 23, 1992] shall be deemed to have been designated as the chief judge under such section; and

''(2) the five-year term provided in paragraph (3) of such section shall be deemed to have begun on the date on which such judge was originally designated as the chief judge under section 867(a) or 943 of title 10, United States Code, as the case may be, as that provision of law was in effect on the date of the designation.''

INAPPLICABILITY OF SUBSECTION (c)

Subsec. (c) of this section not to be applied to change civil service status of any attorney who is an employee of United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] on Nov. 28, 1989, see section 1301(h) of Pub. L. 101–189, set out as a Transitional Provisions note under section 942 of this title.

§ 944. Art. 144. Procedure

The United States Court of Appeals for the Armed Forces may prescribe its rules of procedure and may determine the number of judges required to constitute a quorum.

(Added Pub. L. 101–189, div. A, title XIII, § 1301(c), Nov. 29, 1989, 103 Stat. 1572; amended Pub. L. 103–337, div. A, title IX, § 924(c)(1), Oct. 5, 1994, 108 Stat. 2831.)

AMENDMENTS

1994—Pub. L. 103–337 substituted ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals''.

§ 945. Art. 145. Annuities for judges and survivors

(a) RETIREMENT ANNUITIES FOR JUDGES.—(1) A person who has completed a term of service for which he was appointed as a judge of the United States Court of Appeals for the Armed Forces is eligible for an annuity under this section upon separation from civilian service in the Federal Government. A person who continues service with the court as a senior judge under section 942(e)(1)(B) of this title (article 142(e)(1)(B)) upon the expiration of the judge's term shall be considered to have been separated from civilian service in the Federal Government only upon the termination of that continuous service.

(2) A person who is eligible for an annuity under this section shall be paid that annuity if, at the time he becomes eligible to receive that annuity, he elects to receive that annuity in lieu of any other annuity for which he may be eligible at the time of such election (whether an immediate or a deferred annuity) under subchapter III of chapter 83 or subchapter II of chapter 84 of title 5 or any other retirement system for civilian employees of the Federal Government. Such an election may not be revoked.

(3)(A) The Secretary of Defense shall notify the Director of the Office of Personnel Management whenever an election under paragraph (2) is made affecting any right or interest under subchapter III of chapter 83 or subchapter II of chapter 84 of title 5 based on service as a judge of the United States Court of Appeals for the Armed Forces.

(B) Upon receiving any notification under subparagraph (A) in the case of a person making an election under paragraph (2), the Director shall determine the amount of the person's lump-sum credit under subchapter III of chapter 83 or subchapter II of chapter 84 of title 5, as applicable, and shall request the Secretary of the Treasury to transfer such amount from the Civil Service Retirement and Disability Fund to the Department of Defense Military Retirement Fund. The Secretary of the Treasury shall make any transfer so requested.

(C) In determining the amount of a lump-sum credit under section 8331(8) of title 5 for purposes of this paragraph—

(i) interest shall be computed using the rates under section 8334(e)(3) of such title; and

(ii) the completion of 5 years of civilian service (or longer) shall not be a basis for excluding interest.

(b) AMOUNT OF ANNUITY.—The annuity payable under this section to a person who makes an election under subsection (a)(2) is 80 percent of the rate of pay for a judge in active service on the United States Court of Appeals for the Armed Forces as of the date on which the person is separated from civilian service.

(c) RELATION TO THRIFT SAVINGS PLAN.—Nothing in this section affects any right of any person to participate in the thrift savings plan under section 8351 of title 5 or subchapter III of chapter 84 of such title.

(d) SURVIVOR ANNUITIES.—The Secretary of Defense shall prescribe by regulation a program to provide annuities for survivors and former spouses of persons receiving annuities under this section by reason of elections made by such persons under subsection (a)(2). That program shall, to the maximum extent practicable, provide benefits and establish terms and conditions that are similar to those provided under survivor and former spouse annuity programs under other retirement systems for civilian employees of the Federal Government. The program may include provisions for the reduction in the annuity paid the person as a condition for the survivor annuity. An election by a judge (including a senior judge) or former judge to receive an annuity under this section terminates any right or interest which any other individual may have to a survivor annuity under any other retirement system for civilian employees of the Federal Government based on the service of that judge or former judge as a civilian officer or employee of the Federal Government (except with respect to an election under subsection (g)(1)(B)).

(e) COST-OF-LIVING INCREASES.—The Secretary of Defense shall periodically increase annuities and survivor annuities paid under this section in order to take account of changes in the cost of living. The Secretary shall prescribe by regulation procedures for increases in annuities under this section. Such system shall, to the maximum extent appropriate, provide cost-of-living adjustments that are similar to those that are provided under other retirement systems for civilian employees of the Federal Government.

(f) DUAL COMPENSATION.—A person who is receiving an annuity under this section by reason of service as a judge of the court and who is appointed to a position in the Federal Government shall, during the period of such person's service in such position, be entitled to receive only the annuity under this section or the pay for that position, whichever is higher.

(g) ELECTION OF JUDICIAL RETIREMENT BENEFITS.—(1) A person who is receiving an annuity under this section by reason of service as a judge of the court and who later is appointed as a justice or judge of the United States to hold office during good behavior and who retires from that office, or from regular active service in that office, shall be paid either (A) the annuity under this section, or (B) the annuity or salary to which he is entitled by reason of his service as such a justice or judge of the United States, as determined by an election by that person at the time of his retirement from the office, or from regular active service in the office, of justice or judge of the United States. Such an election may not be revoked.

(2) An election by a person to be paid an annuity or salary pursuant to paragraph (1)(B) terminates (A) any election previously made by such person to provide a survivor annuity pursuant to subsection (d), and (B) any right of any other individual to receive a survivor annuity pursuant to subsection (d) on the basis of the service of that person.

(h) SOURCE OF PAYMENT OF ANNUITIES.—Annuities and survivor annuities paid under this section shall be paid out of the Department of Defense Military Retirement Fund.

(i) ELIGIBILITY TO ELECT BETWEEN RETIREMENT SYSTEMS.—(1) This subsection applies with respect to any person who—

(A) prior to being appointed as a judge of the United States Court of Appeals for the Armed Forces, performed civilian service of a type making such person subject to the Civil Service Retirement System; and

(B) would be eligible to make an election under section 301(a)(2) of the Federal Employees' Retirement System Act of 1986, by virtue of being appointed as such a judge, but for the fact that such person has not had a break in service of sufficient duration to be considered someone who is being reemployed by the Federal Government.

(2) Any person with respect to whom this subsection applies shall be eligible to make an election under section 301(a)(2) of the Federal Employees' Retirement System Act of 1986 to the

same extent and in the same manner (including subject to the condition set forth in section 301(d) of such Act) as if such person's appointment constituted reemployment with the Federal Government.

(Added Pub. L. 101–189, div. A, title XIII, § 1301(c), Nov. 29, 1989, 103 Stat. 1572; amended Pub. L. 102–190, div. A, title X, § 1061(b)(1)(C), Dec. 5, 1991, 105 Stat. 1474; Pub. L. 102–484, div. A, title X, §§ 1052(11), 1062(a)(1), Oct. 23, 1992, 106 Stat. 2499, 2504; Pub. L. 103–337, div. A, title IX, § 924(c)(1), Oct. 5, 1994, 108 Stat. 2831.)

REFERENCES IN TEXT

Section 301(a)(2) and (d) of the Federal Employees' Retirement System Act of 1986, referred to in subsec. (i), is section 301(a)(2) and (d) of Pub. L. 99–335, which is set out in a note under section 8331 of Title 5, Government Organization and Employees.

AMENDMENTS

1994—Subsecs. (a)(1), (3)(A), (b), (i)(1)(A). Pub. L. 103–337 substituted ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals''.

1992—Subsec. (a)(1). Pub. L. 102–484, § 1052(11), substituted ''section 942(e)(1)(B) of this title (article 142(e)(1)(B))'' for ''section 943(e)(1)(B) of this title (art. 143(e)(1)(B))''.

Subsec. (i). Pub. L. 102–484, § 1062(a)(1), added subsec. (i).

1991—Subsec. (a)(1). Pub. L. 102–190 inserted at end ''A person who continues service with the court as a senior judge under section 943(e)(1)(B) of this title (art. 143(e)(1)(B)) upon the expiration of the judge's term shall be considered to have been separated from civilian service in the Federal Government only upon the termination of that continuous service.''

EFFECTIVE DATE OF 1992 AMENDMENT

Section 1062(a)(2) of Pub. L. 102–484 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to any appointment which takes effect on or after the date of the enactment of this Act [Oct. 23, 1992].''

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–190 effective Nov. 29, 1989, see section 1061(b)(1)(D) of Pub. L. 102–190, set out as a note under section 942 of this title.

EFFECTIVE DATE

Except as otherwise provided, section applicable with respect to judges of United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] whose terms of service on such court end after Sept. 28, 1988, and to survivors of such judges, see section 1301(f) of Pub. L. 101–189, set out as a Transitional Provisions note under section 942 of this title.

ADDITIONAL ELECTIONS

Section 1062(b) of Pub. L. 102–484 provided that:

''(1) Any individual who is a judge in active service on the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] shall be eligible to make an election under section 301(a)(2) of the Federal Employees' Retirement System Act of 1986 [Pub. L. 99–335, 5 U.S.C. 8331 note] if—

''(A) such individual is such a judge on the date of the enactment of this Act [Oct. 23, 1992]; and

''(B) as of the date of the election, such individual is—

''(i) subject to the Civil Service Retirement System; or

''(ii) covered by Social Security but not subject to the Federal Employees' Retirement System.

''(2) An election under this subsection—

''(A) shall not be effective unless it is—

''(i) made within 30 days after the date of the enactment of this Act; and

''(ii) in compliance with the condition set forth in section 301(d) of the Federal Employees' Retirement System Act of 1986 [Pub. L. 99–335, 5 U.S.C. 8331 note]; and

''(B) may not be revoked.

''(3) For the purpose of this subsection, a judge of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] shall be considered to be 'covered by Social Security' if such judge's service is employment for the purposes of title II of the Social Security Act [42 U.S.C. 401 et seq.] and chapter 21 of the Internal Revenue Code of 1986 [26 U.S.C. 3101 et seq.].''

§ 946. Art. 146. Code committee

(a) ANNUAL SURVEY.—A committee shall meet at least annually and shall make an annual comprehensive survey of the operation of this chapter.

(b) COMPOSITION OF COMMITTEE.—The committee shall consist of—

(1) the judges of the United States Court of Appeals for the Armed Forces;

(2) the Judge Advocates General of the Army, Navy, and Air Force, the Chief Counsel of the Coast Guard, and the Staff Judge Advocate to the Commandant of the Marine Corps; and

(3) two members of the public appointed by the Secretary of Defense.

(c) REPORTS.—(1) After each such survey, the committee shall submit a report—

(A) to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives; and

(B) to the Secretary of Defense, the Secretaries of the military departments, and the Secretary of Homeland Security.

(2) Each report under paragraph (1) shall include the following:

(A) Information on the number and status of pending cases.

(B) Any recommendation of the committee relating to—

(i) uniformity of policies as to sentences;

(ii) amendments to this chapter; and

(iii) any other matter the committee considers appropriate.

(d) QUALIFICATIONS AND TERMS OF APPOINTED MEMBERS.—Each member of the committee appointed by the Secretary of Defense under subsection (b)(3) shall be a recognized authority in military justice or criminal law. Each such member shall be appointed for a term of three years.

(e) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App. I) shall not apply to the committee.

(Added Pub. L. 101–189, div. A, title XIII, § 1301(c), Nov. 29, 1989, 103 Stat. 1574; amended Pub. L. 103–337, div. A, title IX, § 924(c)(1), Oct. 5, 1994, 108 Stat. 2831; Pub. L. 104–106, div. A, title XV, § 1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (e), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

2002—Subsec. (c)(1)(B). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1999—Subsec. (c)(1)(A). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1996—Subsec. (c)(1)(A). 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''.

1994—Subsec. (b)(1). Pub. L. 103–337 substituted ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

CHAPTER 47A—MILITARY COMMISSIONS

Subchapter		Sec.
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CODIFICATION

This chapter was originally added by Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2600, and amended by Pub. L. 110–181, Jan. 28, 2008, 122 Stat. 3. This chapter is shown here, however, as having been added by Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2574, without reference to those intervening amendments because of the general amendment of this chapter by Pub. L. 111–84.

SUBCHAPTER I—GENERAL PROVISIONS

Sec.	
948a.	Definitions.
948b.	Military commissions generally.
948c.	Persons subject to military commissions.
948d.	Jurisdiction of military commissions.

§ 948a. Definitions

In this chapter:

(1) ALIEN.—The term ''alien'' means an individual who is not a citizen of the United States.

(2) CLASSIFIED INFORMATION.—The term ''classified information'' means the following:

(A) Any information or material that has been determined by the United States Government pursuant to statute, Executive order, or regulation to require protection against unauthorized disclosure for reasons of national security.

(B) Any restricted data, as that term is defined in section 11 y. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)).

(3) COALITION PARTNER.—The term ''coalition partner'', with respect to hostilities engaged in by the United States, means any State or armed force directly engaged along with the United States in such hostilities or providing direct operational support to the United States in connection with such hostilities.

(4) GENEVA CONVENTION RELATIVE TO THE TREATMENT OF PRISONERS OF WAR.—The term ''Geneva Convention Relative to the Treatment of Prisoners of War'' means the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316).

(5) GENEVA CONVENTIONS.—The term ''Geneva Conventions'' means the international conventions signed at Geneva on August 12, 1949.

(6) PRIVILEGED BELLIGERENT.—The term ''privileged belligerent'' means an individual belonging to one of the eight categories enumerated in Article 4 of the Geneva Convention Relative to the Treatment of Prisoners of War.

(7) UNPRIVILEGED ENEMY BELLIGERENT.—The term ''unprivileged enemy belligerent'' means an individual (other than a privileged belligerent) who—

(A) has engaged in hostilities against the United States or its coalition partners;

(B) has purposefully and materially supported hostilities against the United States or its coalition partners; or

(C) was a part of al Qaeda at the time of the alleged offense under this chapter.

(8) NATIONAL SECURITY.—The term ''national security'' means the national defense and foreign relations of the United States.

(9) HOSTILITIES.—The term ''hostilities'' means any conflict subject to the laws of war.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2574.)

PRIOR PROVISIONS

A prior section 948a, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2601, related to definitions, prior to the general amendment of this chapter by Pub. L. 111–84.

SHORT TITLE OF 2009 AMENDMENT

Pub. L. 111–84, div. A, title XVIII, § 1801, Oct. 28, 2009, 123 Stat. 2574, provided that: ''This title [enacting this chapter, amending sections 802 and 839 of this title, enacting provisions set out as notes under this section, and amending provisions set out as a note under section 801 of this title] may be cited as the 'Military Commissions Act of 2009'.''

SHORT TITLE OF 2006 AMENDMENT

Pub. L. 109–366, § 1(a), Oct. 17, 2006, 120 Stat. 2600, provided that: ''This Act [see Tables for classification] may be cited as the 'Military Commissions Act of 2006'.''

PROCEEDINGS UNDER PRIOR STATUTE

Pub. L. 111–84, div. A, title XVIII, § 1804, Oct. 28, 2009, 123 Stat. 2612, provided that:

''(a) PRIOR CONVICTIONS.—The amendment made by section 1802 [generally amending this chapter] shall have no effect on the validity of any conviction pursuant to chapter 47A of title 10, United States Code (as such chapter was in effect on the day before the date of the enactment of this Act [Oct. 28, 2009]).

''(b) COMPOSITION OF MILITARY COMMISSIONS.—Notwithstanding the amendment made by section 1802—

[1] So in original. Does not conform to subchapter heading.

''(1) any commission convened pursuant to chapter 47A of title 10, United States Code (as such chapter was in effect on the day before the date of the enactment of this Act), shall be deemed to have been convened pursuant to chapter 47A of title 10, United States Code (as amended by section 1802);

''(2) any member of the Armed Forces detailed to serve on a commission pursuant to chapter 47A of title 10, United States Code (as in effect on the day before the date of the enactment of this Act), shall be deemed to have been detailed pursuant to chapter 47A of title 10, United States Code (as so amended);

''(3) any military judge detailed to a commission pursuant to chapter 47A of title 10, United States Code (as in effect on the day before the date of the enactment of this Act), shall be deemed to have been detailed pursuant to chapter 47A of title 10, United States Code (as so amended);

''(4) any trial counsel or defense counsel detailed for a commission pursuant to chapter 47A of title 10, United States Code (as in effect on the day before the date of the enactment of this Act), shall be deemed to have been detailed pursuant to chapter 47A of title 10, United States Code (as so amended);

''(5) any court reporters detailed to or employed by a commission pursuant to chapter 47A of title 10, United States Code (as in effect on the day before the date of the enactment of this Act), shall be deemed to have been detailed or employed pursuant to chapter 47A of title 10, United States Code (as so amended); and

''(6) any appellate military judge or other duly appointed appellate judge on the Court of Military Commission Review pursuant to chapter 47A of title 10, United States Code (as in effect on the day before the date of the enactment of this Act), shall be deemed to have been detailed or appointed to the United States Court of Military Commission Review pursuant to chapter 47A of title 10, United States Code (as so amended).

''(c) CHARGES AND SPECIFICATIONS.—Notwithstanding the amendment made by section 1802—

''(1) any charges or specifications sworn or referred pursuant to chapter 47A of title 10, United States Code (as such chapter was in effect on the day before the date of the enactment of this Act), shall be deemed to have been sworn or referred pursuant to chapter 47A of title 10, United States Code (as amended by section 1802); and

''(2) any charges or specifications described in paragraph (1) may be amended, without prejudice, as needed to properly allege jurisdiction under chapter 47A of title 10, United States Code (as so amended), and crimes triable under such chapter.

''(d) PROCEDURES AND REQUIREMENTS.—

''(1) IN GENERAL.—Except as provided in subsections (a) through (c) and subject to paragraph (2), any commission convened pursuant to chapter 47A of title 10, United States Code (as such chapter was in effect on the day before the date of the enactment of this Act), shall be conducted after the date of the enactment of this Act in accordance with the procedures and requirements of chapter 47A of title 10, United States Code (as amended by section 1802).

''(2) TEMPORARY CONTINUATION OF PRIOR PROCEDURES AND REQUIREMENTS.—Any military commission described in paragraph (1) may be conducted in accordance with any procedures and requirements of chapter 47A of title 10, United States Code (as in effect on the day before the date of the enactment of this Act), that are not inconsistent with the provisions of chapter 47A of title 10, United States Code, (as so amended), until the earlier of—

''(A) the date of the submittal to Congress under section 1805 of the revised rules for military commissions under chapter 47A of title 10, United States Code (as so amended); or

''(B) the date that is 90 days after the date of the enactment of this Act.''

SUBMITTAL TO CONGRESS OF REVISED RULES FOR MILITARY COMMISSIONS

Pub. L. 111–84, div. A, title XVIII, §1805, Oct. 28, 2009, 123 Stat. 2614, provided that:

''(a) DEADLINE FOR SUBMITTAL.—Not later than 90 days after the date of the enactment of this Act [Oct. 28, 2009], the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives the revised rules for military commissions prescribed by the Secretary for purposes of chapter 47A of title 10, United States Code (as amended by section 1802).

''(b) TREATMENT OF REVISED RULES UNDER REQUIREMENT FOR NOTICE AND WAIT REGARDING MODIFICATION OF RULES.—The revised rules submitted to Congress under subsection (a) shall not be treated as a modification of the rules in effect for military commissions for purposes of section 949a(d) of title 10, United States Code (as so amended).''

ANNUAL REPORTS TO CONGRESS ON TRIALS BY MILITARY COMMISSION

Pub. L. 111–84, div. A, title XVIII, §1806, Oct. 28, 2009, 123 Stat. 2614, provided that:

''(a) ANNUAL REPORTS REQUIRED.—Not later than January 31 of each year, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on any trials conducted by military commissions under chapter 47A of title 10, United States Code (as amended by section 1802), during the preceding year.

''(b) FORM.—Each report under this section shall be submitted in unclassified form, but may include a classified annex.''

CONSTRUCTION OF PRESIDENTIAL AUTHORITY TO ESTABLISH MILITARY COMMISSIONS

Pub. L. 109–366, §2, Oct. 17, 2006, 120 Stat. 2600, provided that: ''The authority to establish military commissions under chapter 47A of title 10, United States Code, as added by section 3(a), may not be construed to alter or limit the authority of the President under the Constitution of the United States and laws of the United States to establish military commissions for areas declared to be under martial law or in occupied territories should circumstances so require.''

§ 948b. Military commissions generally

(a) PURPOSE.—This chapter establishes procedures governing the use of military commissions to try alien unprivileged enemy belligerents for violations of the law of war and other offenses triable by military commission.

(b) AUTHORITY FOR MILITARY COMMISSIONS UNDER THIS CHAPTER.—The President is authorized to establish military commissions under this chapter for offenses triable by military commission as provided in this chapter.

(c) CONSTRUCTION OF PROVISIONS.—The procedures for military commissions set forth in this chapter are based upon the procedures for trial by general courts-martial under chapter 47 of this title (the Uniform Code of Military Justice). Chapter 47 of this title does not, by its terms, apply to trial by military commission except as specifically provided therein or in this chapter, and many of the provisions of chapter 47 of this title are by their terms inapplicable to military commissions. The judicial construction and application of chapter 47 of this title, while instructive, is therefore not of its own force binding on military commissions established under this chapter.

(d) INAPPLICABILITY OF CERTAIN PROVISIONS.—(1) The following provisions of this title shall

not apply to trial by military commission under this chapter:

(A) Section 810 (article 10 of the Uniform Code of Military Justice), relating to speedy trial, including any rule of courts-martial relating to speedy trial.

(B) Sections 831(a), (b), and (d) (articles 31(a), (b), and (d) of the Uniform Code of Military Justice), relating to compulsory self-incrimination.

(C) Section 832 (article 32 of the Uniform Code of Military Justice), relating to pretrial investigation.

(2) Other provisions of chapter 47 of this title shall apply to trial by military commission under this chapter only to the extent provided by the terms of such provisions or by this chapter.

(e) GENEVA CONVENTIONS NOT ESTABLISHING PRIVATE RIGHT OF ACTION.—No alien unprivileged enemy belligerent subject to trial by military commission under this chapter may invoke the Geneva Conventions as a basis for a private right of action.

(Added Pub. L. 111–84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2575.)

PRIOR PROVISIONS

A prior section 948b, added Pub. L. 109–366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2602, related to military commissions generally, prior to the general amendment of this chapter by Pub. L. 111–84.

EX. ORD. NO. 13425. TRIAL OF ALIEN UNLAWFUL ENEMY COMBATANTS BY MILITARY COMMISSION

Ex. Ord. No. 13425, Feb. 14, 2007, 72 F.R. 7737, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Military Commissions Act of 2006 (Public Law 109–366), the Authorization for Use of Military Force (Public Law 107–40), and section 948b(b) of title 10, United States Code, it is hereby ordered as follows:

SECTION 1. *Establishment of Military Commissions*. There are hereby established military commissions to try alien unlawful enemy combatants for offenses triable by military commission as provided in chapter 47A of title 10.

SEC. 2. *Definitions*. As used in this order:

(a) ''unlawful enemy combatant'' has the meaning provided for that term in section 948a(1) of title 10; and

(b) ''alien'' means a person who is not a citizen of the United States.

SEC. 3. *Supersedure*. This order supersedes any provision of the President's Military Order of November 13, 2001 (66 *Fed. Reg.* 57,833), that relates to trial by military commission, specifically including:

(a) section 4 of the Military Order; and

(b) any requirement in section 2 of the Military Order, as it relates to trial by military commission, for a determination of:

(i) reason to believe specified matters; or

(ii) the interest of the United States.

SEC. 4. *General Provisions*. (a) This order shall be implemented in accordance with applicable law and subject to the availability of appropriations.

(b) The heads of executive departments and agencies shall provide such information and assistance to the Secretary of Defense as may be necessary to implement this order and chapter 47A of title 10.

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

GEORGE W. BUSH.

§948c. Persons subject to military commissions

Any alien unprivileged enemy belligerent is subject to trial by military commission as set forth in this chapter.

(Added Pub. L. 111–84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2576.)

PRIOR PROVISIONS

A prior section 948c, added Pub. L. 109–366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2602, related to persons subject to military commissions, prior to the general amendment of this chapter by Pub. L. 111–84.

§948d. Jurisdiction of military commissions

A military commission under this chapter shall have jurisdiction to try persons subject to this chapter for any offense made punishable by this chapter, sections 904 and 906 of this title (articles 104 and 106 of the Uniform Code of Military Justice), or the law of war, whether such offense was committed before, on, or after September 11, 2001, and may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this chapter, including the penalty of death when specifically authorized under this chapter. A military commission is a competent tribunal to make a finding sufficient for jurisdiction.

(Added Pub. L. 111–84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2576.)

PRIOR PROVISIONS

A prior section 948d, added Pub. L. 109–366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2603, related to jurisdiction of military commissions, prior to the general amendment of this chapter by Pub. L. 111–84.

A prior section 948e, added Pub. L. 109–366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2603, which required the Secretary of Defense to submit an annual report to congressional committees, was omitted in the general amendment of this chapter by Pub. L. 111–84. See section 1806 of Pub. L. 111–84, set out as a note under section 948a of this title.

SUBCHAPTER II—COMPOSITION OF MILITARY COMMISSIONS

Sec.
948h. Who may convene military commissions.
948i. Who may serve on military commissions.
948j. Military judge of a military commission.
948k. Detail of trial counsel and defense counsel.
948*l*. Detail or employment of reporters and interpreters.
948m. Number of members; excuse of members; absent and additional members.

§948h. Who may convene military commissions

Military commissions under this chapter may be convened by the Secretary of Defense or by any officer or official of the United States designated by the Secretary for that purpose.

(Added Pub. L. 111–84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2576.)

PRIOR PROVISIONS

A prior section 948h, added Pub. L. 109–366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2603, related to who may convene military commissions, prior to the general amendment of this chapter by Pub. L. 111–84.

§948i. Who may serve on military commissions

(a) IN GENERAL.—Any commissioned officer of the armed forces on active duty is eligible to

serve on a military commission under this chapter, including commissioned officers of the reserve components of the armed forces on active duty, commissioned officers of the National Guard on active duty in Federal service, or retired commissioned officers recalled to active duty.

(b) DETAIL OF MEMBERS.—When convening a military commission under this chapter, the convening authority shall detail as members thereof such members of the armed forces eligible under subsection (a) who, in the opinion of the convening authority, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member of an armed force is eligible to serve as a member of a military commission when such member is the accuser or a witness for the prosecution or has acted as an investigator or counsel in the same case.

(c) EXCUSE OF MEMBERS.—Before a military commission under this chapter is assembled for the trial of a case, the convening authority may excuse a member from participating in the case.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2576.)

PRIOR PROVISIONS

A prior section 948i, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2603, related to who may serve on military commissions, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 948j. Military judge of a military commission

(a) DETAIL OF MILITARY JUDGE.—A military judge shall be detailed to each military commission under this chapter. The Secretary of Defense shall prescribe regulations providing for the manner in which military judges are so detailed to military commissions. The military judge shall preside over each military commission to which such military judge has been detailed.

(b) ELIGIBILITY.—A military judge shall be a commissioned officer of the armed forces who is a member of the bar of a Federal court, or a member of the bar of the highest court of a State, and who is certified to be qualified for duty under section 826 of this title (article 26 of the Uniform Code of Military Justice) as a military judge of general courts-martial by the Judge Advocate General of the armed force of which such military judge is a member.

(c) INELIGIBILITY OF CERTAIN INDIVIDUALS.—No person is eligible to act as military judge in a case of a military commission under this chapter if such person is the accuser or a witness or has acted as investigator or a counsel in the same case.

(d) CONSULTATION WITH MEMBERS; INELIGIBILITY TO VOTE.—A military judge detailed to a military commission under this chapter may not consult with the members except in the presence of the accused (except as otherwise provided in section 949d of this title), trial counsel, and defense counsel, nor may such military judge vote with the members.

(e) OTHER DUTIES.—A commissioned officer who is certified to be qualified for duty as a military judge of a military commission under this chapter may perform such other duties as are assigned to such officer by or with the approval of the Judge Advocate General of the armed force of which such officer is a member or the designee of such Judge Advocate General.

(f) PROHIBITION ON EVALUATION OF FITNESS BY CONVENING AUTHORITY.—The convening authority of a military commission under this chapter may not prepare or review any report concerning the effectiveness, fitness, or efficiency of a military judge detailed to the military commission which relates to such judge's performance of duty as a military judge on the military commission.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2577.)

PRIOR PROVISIONS

A prior section 948j, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2604, related to military judges of military commissions, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 948k. Detail of trial counsel and defense counsel

(a) DETAIL OF COUNSEL GENERALLY.—(1) Trial counsel and military defense counsel shall be detailed for each military commission under this chapter.

(2) Assistant trial counsel and assistant and associate defense counsel may be detailed for a military commission under this chapter.

(3) Military defense counsel for a military commission under this chapter shall be detailed as soon as practicable.

(4) The Secretary of Defense shall prescribe regulations providing for the manner in which trial counsel and military defense counsel are detailed for military commissions under this chapter and for the persons who are authorized to detail such counsel for such military commissions.

(b) TRIAL COUNSEL.—Subject to subsection (e), a trial counsel detailed for a military commission under this chapter shall be—

(1) a judge advocate (as that term is defined in section 801 of this title (article 1 of the Uniform Code of Military Justice)) who is—

(A) a graduate of an accredited law school or a member of the bar of a Federal court or of the highest court of a State; and

(B) certified as competent to perform duties as trial counsel before general courts-martial by the Judge Advocate General of the armed force of which such judge advocate is a member; or

(2) a civilian who is—

(A) a member of the bar of a Federal court or of the highest court of a State; and

(B) otherwise qualified to practice before the military commission pursuant to regulations prescribed by the Secretary of Defense.

(c) DEFENSE COUNSEL.—(1) Subject to subsection (e), a military defense counsel detailed for a military commission under this chapter shall be a judge advocate (as so defined) who is—

(A) a graduate of an accredited law school or a member of the bar of a Federal court or of the highest court of a State; and

(B) certified as competent to perform duties as defense counsel before general courts-mar-

tial by the Judge Advocate General of the armed force of which such judge advocate is a member.

(2) The Secretary of Defense shall prescribe regulations for the appointment and performance of defense counsel in capital cases under this chapter.

(d) CHIEF PROSECUTOR; CHIEF DEFENSE COUNSEL.—(1) The Chief Prosecutor in a military commission under this chapter shall meet the requirements set forth in subsection (b)(1).

(2) The Chief Defense Counsel in a military commission under this chapter shall meet the requirements set forth in subsection (c)(1).

(e) INELIGIBILITY OF CERTAIN INDIVIDUALS.—No person who has acted as an investigator, military judge, or member of a military commission under this chapter in any case may act later as trial counsel or military defense counsel in the same case. No person who has acted for the prosecution before a military commission under this chapter may act later in the same case for the defense, nor may any person who has acted for the defense before a military commission under this chapter act later in the same case for the prosecution.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2577.)

PRIOR PROVISIONS

A prior section 948k, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2604, related to detail of trial counsel and defense counsel, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 948*l*. Detail or employment of reporters and interpreters

(a) COURT REPORTERS.—Under such regulations as the Secretary of Defense may prescribe, the convening authority of a military commission under this chapter shall detail to or employ for the military commission qualified court reporters, who shall prepare a verbatim record of the proceedings of and testimony taken before the military commission.

(b) INTERPRETERS.—Under such regulations as the Secretary of Defense may prescribe, the convening authority of a military commission under this chapter may detail to or employ for the military commission interpreters who shall interpret for the military commission, and, as necessary, for trial counsel and defense counsel for the military commission, and for the accused.

(c) TRANSCRIPT; RECORD.—The transcript of a military commission under this chapter shall be under the control of the convening authority of the military commission, who shall also be responsible for preparing the record of the proceedings of the military commission.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2578.)

PRIOR PROVISIONS

A prior section 948*l*, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2605, related to detail or employment of reporters and interpreters, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 948m. Number of members; excuse of members; absent and additional members

(a) NUMBER OF MEMBERS.—(1) Except as provided in paragraph (2), a military commission under this chapter shall have at least five members.

(2) In a case in which the accused before a military commission under this chapter may be sentenced to a penalty of death, the military commission shall have the number of members prescribed by section 949m(c) of this title.

(b) EXCUSE OF MEMBERS.—No member of a military commission under this chapter may be absent or excused after the military commission has been assembled for the trial of a case unless excused—

(1) as a result of challenge;

(2) by the military judge for physical disability or other good cause; or

(3) by order of the convening authority for good cause.

(c) ABSENT AND ADDITIONAL MEMBERS.—Whenever a military commission under this chapter is reduced below the number of members required by subsection (a), the trial may not proceed unless the convening authority details new members sufficient to provide not less than such number. The trial may proceed with the new members present after the recorded evidence previously introduced before the members has been read to the military commission in the presence of the military judge, the accused (except as provided in section 949d of this title), and counsel for both sides.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2579.)

PRIOR PROVISIONS

A prior section 948m, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2606, related to number of members, excuse of members, and absent and additional members of a military commission, prior to the general amendment of this chapter by Pub. L. 111–84.

SUBCHAPTER III—PRE-TRIAL PROCEDURE

Sec.
948q. Charges and specifications.
948r. Exclusion of statements obtained by torture or cruel, inhuman, or degrading treatment; prohibition of self-incrimination; admission of other statements of the accused.
948s. Service of charges.

§ 948q. Charges and specifications

(a) CHARGES AND SPECIFICATIONS.—Charges and specifications against an accused in a military commission under this chapter shall be signed by a person subject to chapter 47 of this title under oath before a commissioned officer of the armed forces authorized to administer oaths and shall state—

(1) that the signer has personal knowledge of, or reason to believe, the matters set forth therein; and

(2) that such matters are true in fact to the best of the signer's knowledge and belief.

(b) NOTICE TO ACCUSED.—Upon the swearing of the charges and specifications in accordance with subsection (a), the accused shall be informed of the charges and specifications against the accused as soon as practicable.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2579.)

PRIOR PROVISIONS

A prior section 948q, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2606, related to charges and specifications, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 948r. Exclusion of statements obtained by torture or cruel, inhuman, or degrading treatment; prohibition of self-incrimination; admission of other statements of the accused

(a) EXCLUSION OF STATEMENTS OBTAIN BY TORTURE OR CRUEL, INHUMAN, OR DEGRADING TREATMENT.—No statement obtained by the use of torture or by cruel, inhuman, or degrading treatment (as defined by section 1003 of the Detainee Treatment Act of 2005 (42 U.S.C. 2000dd)), whether or not under color of law, shall be admissible in a military commission under this chapter, except against a person accused of torture or such treatment as evidence that the statement was made.

(b) SELF-INCRIMINATION PROHIBITED.—No person shall be required to testify against himself or herself at a proceeding of a military commission under this chapter.

(c) OTHER STATEMENTS OF THE ACCUSED.—A statement of the accused may be admitted in evidence in a military commission under this chapter only if the military judge finds—

(1) that the totality of the circumstances renders the statement reliable and possessing sufficient probative value; and

(2) that—

(A) the statement was made incident to lawful conduct during military operations at the point of capture or during closely related active combat engagement, and the interests of justice would best be served by admission of the statement into evidence; or

(B) the statement was voluntarily given.

(d) DETERMINATION OF VOLUNTARINESS.—In determining for purposes of subsection (c)(2)(B) whether a statement was voluntarily given, the military judge shall consider the totality of the circumstances, including, as appropriate, the following:

(1) The details of the taking of the statement, accounting for the circumstances of the conduct of military and intelligence operations during hostilities.

(2) The characteristics of the accused, such as military training, age, and education level.

(3) The lapse of time, change of place, or change in identity of the questioners between the statement sought to be admitted and any prior questioning of the accused.

(Added by Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2580.)

PRIOR PROVISIONS

A prior section 948r, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2607; amended Pub. L. 110–181, div. A, title X, § 1063(a)(4), Jan. 28, 2008, 122 Stat. 321, related to prohibition of compulsory self-incrimination and treatment of statements obtained by torture and other statements, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 948s. Service of charges

The trial counsel assigned to a case before a military commission under this chapter shall cause to be served upon the accused and military defense counsel a copy of the charges upon which trial is to be had in English and, if appropriate, in another language that the accused understands, sufficiently in advance of trial to prepare a defense.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2580.)

PRIOR PROVISIONS

A prior section 948s, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2607, related to service of charges, prior to the general amendment of this chapter by Pub. L. 111–84.

SUBCHAPTER IV—TRIAL PROCEDURE

Sec.	
949a.	Rules.
949b.	Unlawfully influencing action of military commission and United States Court of Military Commission Review.
949c.	Duties of trial counsel and defense counsel.
949d.	Sessions.
949e.	Continuances.
949f.	Challenges.
949g.	Oaths.
949h.	Former jeopardy.
949i.	Pleas of the accused.
949j.	Opportunity to obtain witnesses and other evidence.
949k.	Defense of lack of mental responsibility.
949*l*.	Voting and rulings.
949m.	Number of votes required.
949n.	Military commission to announce action.
949*o*.	Record of trial.

§ 949a. Rules

(a) PROCEDURES AND RULES OF EVIDENCE.—Pretrial, trial, and post-trial procedures, including elements and modes of proof, for cases triable by military commission under this chapter may be prescribed by the Secretary of Defense. Such procedures may not be contrary to or inconsistent with this chapter. Except as otherwise provided in this chapter or chapter 47 of this title, the procedures and rules of evidence applicable in trials by general courts-martial of the United States shall apply in trials by military commission under this chapter.

(b) EXCEPTIONS.—(1) In trials by military commission under this chapter, the Secretary of Defense, in consultation with the Attorney General, may make such exceptions in the applicability of the procedures and rules of evidence otherwise applicable in general courts-martial as may be required by the unique circumstances of the conduct of military and intelligence operations during hostilities or by other practical need consistent with this chapter.

(2) Notwithstanding any exceptions authorized by paragraph (1), the procedures and rules of evidence in trials by military commission under this chapter shall include, at a minimum, the following rights of the accused:

(A) To present evidence in the accused's defense, to cross-examine the witnesses who testify against the accused, and to examine and respond to all evidence admitted against the accused on the issue of guilt or innocence and for sentencing, as provided for by this chapter.

(B) To be present at all sessions of the military commission (other than those for deliberations or voting), except when excluded under section 949d of this title.

(C)(i) When none of the charges preferred against the accused are capital, to be represented before a military commission by civilian counsel if provided at no expense to the Government, and by either the defense counsel detailed or the military counsel of the accused's own selection, if reasonably available.

(ii) When any of the charges preferred against the accused are capital, to be represented before a military commission in accordance with clause (i) and, to the greatest extent practicable, by at least one additional counsel who is learned in applicable law relating to capital cases and who, if necessary, may be a civilian and compensated in accordance with regulations prescribed by the Secretary of Defense.

(D) To self-representation, if the accused knowingly and competently waives the assistance of counsel, subject to the provisions of paragraph (4).

(E) To the suppression of evidence that is not reliable or probative.

(F) To the suppression of evidence the probative value of which is substantially outweighed by—

(i) the danger of unfair prejudice, confusion of the issues, or misleading the members; or

(ii) considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

(3) In making exceptions in the applicability in trials by military commission under this chapter from the procedures and rules otherwise applicable in general courts-martial, the Secretary of Defense may provide the following:

(A) Evidence seized outside the United States shall not be excluded from trial by military commission on the grounds that the evidence was not seized pursuant to a search warrant or authorization.

(B) A statement of the accused that is otherwise admissible shall not be excluded from trial by military commission on grounds of alleged coercion or compulsory self-incrimination so long as the evidence complies with the provisions of section 948r of this title.

(C) Evidence shall be admitted as authentic so long as—

(i) the military judge of the military commission determines that there is sufficient evidence that the evidence is what it is claimed to be; and

(ii) the military judge instructs the members that they may consider any issue as to authentication or identification of evidence in determining the weight, if any, to be given to the evidence.

(D) Hearsay evidence not otherwise admissible under the rules of evidence applicable in trial by general courts-martial may be admitted in a trial by military commission only if—

(i) the proponent of the evidence makes known to the adverse party, sufficiently in advance to provide the adverse party with a fair opportunity to meet the evidence, the proponent's intention to offer the evidence, and the particulars of the evidence (including information on the circumstances under which the evidence was obtained); and

(ii) the military judge, after taking into account all of the circumstances surrounding the taking of the statement, including the degree to which the statement is corroborated, the indicia of reliability within the statement itself, and whether the will of the declarant was overborne, determines that—

(I) the statement is offered as evidence of a material fact;

(II) the statement is probative on the point for which it is offered;

(III) direct testimony from the witness is not available as a practical matter, taking into consideration the physical location of the witness, the unique circumstances of military and intelligence operations during hostilities, and the adverse impacts on military or intelligence operations that would likely result from the production of the witness; and

(IV) the general purposes of the rules of evidence and the interests of justice will best be served by admission of the statement into evidence.

(4)(A) The accused in a military commission under this chapter who exercises the right to self-representation under paragraph (2)(D) shall conform the accused's deportment and the conduct of the defense to the rules of evidence, procedure, and decorum applicable to trials by military commission.

(B) Failure of the accused to conform to the rules described in subparagraph (A) may result in a partial or total revocation by the military judge of the right of self-representation under paragraph (2)(D). In such case, the military counsel of the accused or an appropriately authorized civilian counsel shall perform the functions necessary for the defense.

(c) DELEGATION OF AUTHORITY TO PRESCRIBE REGULATIONS.—The Secretary of Defense may delegate the authority of the Secretary to prescribe regulations under this chapter.

(d) NOTICE TO CONGRESS OF MODIFICATION OF RULES.—Not later than 60 days before the date on which any proposed modification of the rules in effect for military commissions under this chapter goes into effect, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report describing the proposed modification.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2581.)

PRIOR PROVISIONS

A prior section 949a, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2608, related to rules, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 949b. Unlawfully influencing action of military commission and United States Court of Military Commission Review

(a) MILITARY COMMISSIONS.—(1) No authority convening a military commission under this

chapter may censure, reprimand, or admonish the military commission, or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the military commission, or with respect to any other exercises of its or their functions in the conduct of the proceedings.

(2) No person may attempt to coerce or, by any unauthorized means, influence—

(A) the action of a military commission under this chapter, or any member thereof, in reaching the findings or sentence in any case;

(B) the action of any convening, approving, or reviewing authority with respect to their judicial acts; or

(C) the exercise of professional judgment by trial counsel or defense counsel.

(3) The provisions of this subsection shall not apply with respect to—

(A) general instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of military commissions; or

(B) statements and instructions given in open proceedings by a military judge or counsel.

(b) UNITED STATES COURT OF MILITARY COMMISSION REVIEW.—(1) No person may attempt to coerce or, by any unauthorized means, influence—

(A) the action of a military appellate judge or other duly appointed judge under this chapter on the United States Court of Military Commissions Review in reaching a decision on the findings or sentence on appeal in any case; or

(B) the exercise of professional judgment by trial counsel or defense counsel appearing before the United States Court of Military Commission Review.

(2) No person may censure, reprimand, or admonish a military appellate judge on the United States Court of Military Commission Review, or counsel thereof, with respect to any exercise of their functions in the conduct of proceedings under this chapter.

(3) The provisions of this subsection shall not apply with respect to—

(A) general instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of military commissions; or

(B) statements and instructions given in open proceedings by an appellate military judge or a duly appointed appellate judge on the United States Court of Military Commission Review, or counsel.

(4) No appellate military judge on the United States Court of Military Commission Review may be reassigned to other duties, except under circumstances as follows:

(A) The appellate military judge voluntarily requests to be reassigned to other duties and the Secretary of Defense, or the designee of the Secretary, in consultation with the Judge Advocate General of the armed force of which the appellate military judge is a member, approves such reassignment.

(B) The appellate military judge retires or otherwise separates from the armed forces.

(C) The appellate military judge is reassigned to other duties by the Secretary of Defense, or the designee of the Secretary, in consultation with the Judge Advocate General of the armed force of which the appellate military judge is a member, based on military necessity and such reassignment is consistent with service rotation regulations (to the extent such regulations are applicable).

(D) The appellate military judge is withdrawn by the Secretary of Defense, or the designee of the Secretary, in consultation with the Judge Advocate General of the armed force of which the appellate military judge is a member, for good cause consistent with applicable procedures under chapter 47 of this title (the Uniform Code of Military Justice).

(c) PROHIBITION ON CONSIDERATION OF ACTIONS ON COMMISSION IN EVALUATION OF FITNESS.—In the preparation of an effectiveness, fitness, or efficiency report or any other report or document used in whole or in part for the purpose of determining whether a commissioned officer of the armed forces is qualified to be advanced in grade, or in determining the assignment or transfer of any such officer or whether any such officer should be retained on active duty, no person may—

(1) consider or evaluate the performance of duty of any member of a military commission under this chapter; or

(2) give a less favorable rating or evaluation to any commissioned officer because of the zeal with which such officer, in acting as counsel, represented any accused before a military commission under this chapter.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2583.)

PRIOR PROVISIONS

A prior section 949b, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2609, related to unlawfully influencing action of military commission, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 949c. Duties of trial counsel and defense counsel

(a) TRIAL COUNSEL.—The trial counsel of a military commission under this chapter shall prosecute in the name of the United States.

(b) DEFENSE COUNSEL.—(1) The accused shall be represented in the accused's defense before a military commission under this chapter as provided in this subsection.

(2) The accused may be represented by military counsel detailed under section 948k of this title or by military counsel of the accused's own selection, if reasonably available.

(3) The accused may be represented by civilian counsel if retained by the accused, provided that such civilian counsel—

(A) is a United States citizen;

(B) is admitted to the practice of law in a State, district, or possession of the United States, or before a Federal court;

(C) has not been the subject of any sanction of disciplinary action by any court, bar, or other competent governmental authority for relevant misconduct;

(D) has been determined to be eligible for access to information classified at the level Secret or higher; and

(E) has signed a written agreement to comply with all applicable regulations or instructions for counsel, including any rules of court for conduct during the proceedings.

(4) If the accused is represented by civilian counsel, military counsel shall act as associate counsel.

(5) The accused is not entitled to be represented by more than one military counsel. However, the person authorized under regulations prescribed under section 948k of this title to detail counsel, in such person's sole discretion, may detail additional military counsel to represent the accused.

(6) Defense counsel may cross-examine each witness for the prosecution who testifies before a military commission under this chapter.

(7) Civilian defense counsel shall protect any classified information received during the course of representation of the accused in accordance with all applicable law governing the protection of classified information, and may not divulge such information to any person not authorized to receive it.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2585.)

PRIOR PROVISIONS

A prior section 949c, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2610, related to duties of trial counsel and defense counsel, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 949d. Sessions

(a) SESSIONS WITHOUT PRESENCE OF MEMBERS.—(1) At any time after the service of charges which have been referred for trial by military commission under this chapter, the military judge may call the military commission into session without the presence of the members for the purpose of—

(A) hearing and determining motions raising defenses or objections which are capable of determination without trial of the issues raised by a plea of not guilty;

(B) hearing and ruling upon any matter which may be ruled upon by the military judge under this chapter, whether or not the matter is appropriate for later consideration or decision by the members;

(C) if permitted by regulations prescribed by the Secretary of Defense, receiving the pleas of the accused; and

(D) performing any other procedural function which may be performed by the military judge under this chapter or under rules prescribed pursuant to section 949a of this title and which does not require the presence of the members.

(2) Except as provided in subsections (b), (c), and (d), any proceedings under paragraph (1) shall be conducted in the presence of the accused, defense counsel, and trial counsel, and shall be made part of the record.

(b) DELIBERATION OR VOTE OF MEMBERS.—When the members of a military commission under this chapter deliberate or vote, only the members may be present.

(c) CLOSURE OF PROCEEDINGS.—(1) The military judge may close to the public all or part of the proceedings of a military commission under this chapter.

(2) The military judge may close to the public all or a portion of the proceedings under paragraph (1) only upon making a specific finding that such closure is necessary to—

(A) protect information the disclosure of which could reasonably be expected to cause damage to the national security, including intelligence or law enforcement sources, methods, or activities; or

(B) ensure the physical safety of individuals.

(3) A finding under paragraph (2) may be based upon a presentation, including a presentation ex parte or in camera, by either trial counsel or defense counsel.

(d) EXCLUSION OF ACCUSED FROM CERTAIN PROCEEDINGS.—The military judge may exclude the accused from any portion of a proceeding upon a determination that, after being warned by the military judge, the accused persists in conduct that justifies exclusion from the courtroom—

(1) to ensure the physical safety of individuals; or

(2) to prevent disruption of the proceedings by the accused.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2585.)

PRIOR PROVISIONS

A prior section 949d, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2611, related to sessions of military commissions, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 949e. Continuances

The military judge in a military commission under this chapter may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2586.)

PRIOR PROVISIONS

A prior section 949e, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2613, related to continuances, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 949f. Challenges

(a) CHALLENGES AUTHORIZED.—The military judge and members of a military commission under this chapter may be challenged by the accused or trial counsel for cause stated to the military commission. The military judge shall determine the relevance and validity of challenges for cause, and may not receive a challenge to more than one person at a time. Challenges by trial counsel shall ordinarily be presented and decided before those by the accused are offered.

(b) PEREMPTORY CHALLENGES.—The accused and trial counsel are each entitled to one peremptory challenge, but the military judge may not be challenged except for cause.

(c) CHALLENGES AGAINST ADDITIONAL MEMBERS.—Whenever additional members are detailed to a military commission under this chap-

ter, and after any challenges for cause against such additional members are presented and decided, the accused and trial counsel are each entitled to one peremptory challenge against members not previously subject to peremptory challenge.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2586.)

PRIOR PROVISIONS

A prior section 949f, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2613, related to challenges, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 949g. Oaths

(a) IN GENERAL.—(1) Before performing their respective duties in a military commission under this chapter, military judges, members, trial counsel, defense counsel, reporters, and interpreters shall take an oath to perform their duties faithfully.

(2) The form of the oath required by paragraph (1), the time and place of the taking thereof, the manner of recording thereof, and whether the oath shall be taken for all cases in which duties are to be performed or for a particular case, shall be as provided in regulations prescribed by the Secretary of Defense. The regulations may provide that—

(A) an oath to perform faithfully duties as a military judge, trial counsel, or defense counsel may be taken at any time by any judge advocate or other person certified to be qualified or competent for the duty; and

(B) if such an oath is taken, such oath need not again be taken at the time the judge advocate or other person is detailed to that duty.

(b) WITNESSES.—Each witness before a military commission under this chapter shall be examined on oath.

(c) OATH DEFINED.—In this section, the term ''oath'' includes an affirmation.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2587.)

PRIOR PROVISIONS

A prior section 949g, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2613, related to oaths, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 949h. Former jeopardy

(a) IN GENERAL.—No person may, without the person's consent, be tried by a military commission under this chapter a second time for the same offense.

(b) SCOPE OF TRIAL.—No proceeding in which the accused has been found guilty by military commission under this chapter upon any charge or specification is a trial in the sense of this section until the finding of guilty has become final after review of the case has been fully completed.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2587.)

PRIOR PROVISIONS

A prior section 949h, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2614, related to former jeopardy, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 949i. Pleas of the accused

(a) PLEA OF NOT GUILTY.—If an accused in a military commission under this chapter after a plea of guilty sets up matter inconsistent with the plea, or if it appears that the accused has entered the plea of guilty through lack of understanding of its meaning and effect, or if the accused fails or refuses to plead, a plea of not guilty shall be entered in the record, and the military commission shall proceed as though the accused had pleaded not guilty.

(b) FINDING OF GUILT AFTER GUILTY PLEA.—With respect to any charge or specification to which a plea of guilty has been made by the accused in a military commission under this chapter and accepted by the military judge, a finding of guilty of the charge or specification may be entered immediately without a vote. The finding shall constitute the finding of the military commission unless the plea of guilty is withdrawn prior to announcement of the sentence, in which event the proceedings shall continue as though the accused had pleaded not guilty.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2587.)

PRIOR PROVISIONS

A prior section 949i, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2614, related to pleas of the accused, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 949j. Opportunity to obtain witnesses and other evidence

(a) IN GENERAL.—(1) Defense counsel in a military commission under this chapter shall have a reasonable opportunity to obtain witnesses and other evidence as provided in regulations prescribed by the Secretary of Defense. The opportunity to obtain witnesses and evidence shall be comparable to the opportunity available to a criminal defendant in a court of the United States under article III of the Constitution.

(2) Process issued in military commissions under this chapter to compel witnesses to appear and testify and to compel the production of other evidence—

(A) shall be similar to that which courts of the United States having criminal jurisdiction may lawfully issue; and

(B) shall run to any place where the United States shall have jurisdiction thereof.

(b) DISCLOSURE OF EXCULPATORY EVIDENCE.—(1) As soon as practicable, trial counsel in a military commission under this chapter shall disclose to the defense the existence of any evidence that reasonably tends to—

(A) negate the guilt of the accused of an offense charged; or

(B) reduce the degree of guilt of the accused with respect to an offense charged.

(2) The trial counsel shall, as soon as practicable, disclose to the defense the existence of evidence that reasonably tends to impeach the credibility of a witness whom the government intends to call at trial.

(3) The trial counsel shall, as soon as practicable upon a finding of guilt, disclose to the defense the existence of evidence that is not sub-

ject to paragraph (1) or paragraph (2) but that reasonably may be viewed as mitigation evidence at sentencing.

(4) The disclosure obligations under this subsection encompass evidence that is known or reasonably should be known to any government officials who participated in the investigation and prosecution of the case against the defendant.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2587.)

PRIOR PROVISIONS

A prior section 949j, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2614, related to the opportunity to obtain witnesses and other evidence, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 949k. Defense of lack of mental responsibility

(a) AFFIRMATIVE DEFENSE.—It is an affirmative defense in a trial by military commission under this chapter that, at the time of the commission of the acts constituting the offense, the accused, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of the acts. Mental disease or defect does not otherwise constitute a defense.

(b) BURDEN OF PROOF.—The accused in a military commission under this chapter has the burden of proving the defense of lack of mental responsibility by clear and convincing evidence.

(c) FINDINGS FOLLOWING ASSERTION OF DEFENSE.—Whenever lack of mental responsibility of the accused with respect to an offense is properly at issue in a military commission under this chapter, the military judge shall instruct the members as to the defense of lack of mental responsibility under this section and shall charge the members to find the accused—

(1) guilty;

(2) not guilty; or

(3) subject to subsection (d), not guilty by reason of lack of mental responsibility.

(d) MAJORITY VOTE REQUIRED FOR FINDING.—The accused shall be found not guilty by reason of lack of mental responsibility under subsection (c)(3) only if a majority of the members present at the time the vote is taken determines that the defense of lack of mental responsibility has been established.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2588.)

PRIOR PROVISIONS

A prior section 949k, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2615, related to the defense of lack of mental responsibility, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 949*l*. Voting and rulings

(a) VOTE BY SECRET WRITTEN BALLOT.—Voting by members of a military commission under this chapter on the findings and on the sentence shall be by secret written ballot.

(b) RULINGS.—(1) The military judge in a military commission under this chapter shall rule upon all questions of law, including the admissibility of evidence and all interlocutory questions arising during the proceedings.

(2) Any ruling made by the military judge upon a question of law or an interlocutory question (other than the factual issue of mental responsibility of the accused) is conclusive and constitutes the ruling of the military commission. However, a military judge may change such a ruling at any time during the trial.

(c) INSTRUCTIONS PRIOR TO VOTE.—Before a vote is taken of the findings of a military commission under this chapter, the military judge shall, in the presence of the accused and counsel, instruct the members as to the elements of the offense and charge the members—

(1) that the accused must be presumed to be innocent until the accused's guilt is established by legal and competent evidence beyond a reasonable doubt;

(2) that in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and the accused must be acquitted;

(3) that, if there is reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no reasonable doubt; and

(4) that the burden of proof to establish the guilt of the accused beyond a reasonable doubt is upon the United States.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2589.)

PRIOR PROVISIONS

A prior section 949*l*, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2615, related to voting and rulings, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 949m. Number of votes required

(a) CONVICTION.—No person may be convicted by a military commission under this chapter of any offense, except as provided in section 949i(b) of this title or by concurrence of two-thirds of the members present at the time the vote is taken.

(b) SENTENCES.—(1) Except as provided in paragraphs (2) and (3), sentences shall be determined by a military commission by the concurrence of two-thirds of the members present at the time the vote is taken.

(2) No person may be sentenced to death by a military commission, except insofar as—

(A) the penalty of death has been expressly authorized under this chapter, chapter 47 of this title, or the law of war for an offense of which the accused has been found guilty;

(B) trial counsel expressly sought the penalty of death by filing an appropriate notice in advance of trial;

(C) the accused was convicted of the offense by the concurrence of all the members present at the time the vote is taken; and

(D) all members present at the time the vote was taken concurred in the sentence of death.

(3) No person may be sentenced to life imprisonment, or to confinement for more than 10 years, by a military commission under this chapter except by the concurrence of three-fourths of the members present at the time the vote is taken.

(c) NUMBER OF MEMBERS REQUIRED FOR PENALTY OF DEATH.—(1) Except as provided in paragraph (2), in a case in which the penalty of death is sought, the number of members of the military commission under this chapter shall be not less than 12 members.

(2) In any case described in paragraph (1) in which 12 members are not reasonably available for a military commission because of physical conditions or military exigencies, the convening authority shall specify a lesser number of members for the military commission (but not fewer than 9 members), and the military commission may be assembled, and the trial held, with not less than the number of members so specified. In any such case, the convening authority shall make a detailed written statement, to be appended to the record, stating why a greater number of members were not reasonably available.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2589.)

PRIOR PROVISIONS

A prior section 949m, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2616, related to number of votes required for conviction and sentences and number of members required on military commission for penalty of death, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 949n. Military commission to announce action

A military commission under this chapter shall announce its findings and sentence to the parties as soon as determined.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2590.)

PRIOR PROVISIONS

A prior section 949n, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2617, required a military commission to announce its findings and sentence as soon as determined, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 949*o*. Record of trial

(a) RECORD; AUTHENTICATION.—Each military commission under this chapter shall keep a separate, verbatim, record of the proceedings in each case brought before it, and the record shall be authenticated by the signature of the military judge. If the record cannot be authenticated by the military judge by reason of death, disability, or absence, it shall be authenticated by the signature of the trial counsel or by a member of the commission if the trial counsel is unable to authenticate it by reason of death, disability, or absence. Where appropriate, and as provided in regulations prescribed by the Secretary of Defense, the record of a military commission under this chapter may contain a classified annex.

(b) COMPLETE RECORD REQUIRED.—A complete record of the proceedings and testimony shall be prepared in every military commission under this chapter.

(c) PROVISION OF COPY TO ACCUSED.—A copy of the record of the proceedings of the military commission under this chapter shall be given the accused as soon as it is authenticated. If the record contains classified information, or a classified annex, the accused shall receive a redacted version of the record consistent with the requirements of subchapter V of this chapter. Defense counsel shall have access to the unredacted record, as provided in regulations prescribed by the Secretary of Defense.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2590.)

PRIOR PROVISIONS

A prior section 949*o*, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2617, related to record of trial, prior to the general amendment of this chapter by Pub. L. 111–84.

SUBCHAPTER V—CLASSIFIED INFORMATION PROCEDURES

Sec.
949p–1. Protection of classified information: applicability of subchapter.
949p–2. Pretrial conference.
949p–3. Protective orders.
949p–4. Discovery of, and access to, classified information by the accused.
949p–5. Notice by accused of intention to disclose classified information.
949p–6. Procedure for cases involving classified information.
949p–7. Introduction of classified information into evidence.

§ 949p–1. Protection of classified information: applicability of subchapter

(a) PROTECTION OF CLASSIFIED INFORMATION.—Classified information shall be protected and is privileged from disclosure if disclosure would be detrimental to the national security. Under no circumstances may a military judge order the release of classified information to any person not authorized to receive such information.

(b) ACCESS TO EVIDENCE.—Any information admitted into evidence pursuant to any rule, procedure, or order by the military judge shall be provided to the accused.

(c) DECLASSIFICATION.—Trial counsel shall work with the original classification authorities for evidence that may be used at trial to ensure that such evidence is declassified to the maximum extent possible, consistent with the requirements of national security. A decision not to declassify evidence under this section shall not be subject to review by a military commission or upon appeal.

(d) CONSTRUCTION OF PROVISIONS.—The judicial construction of the Classified Information Procedures Act (18 U.S.C. App.) shall be authoritative in the interpretation of this subchapter, except to the extent that such construction is inconsistent with the specific requirements of this chapter.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2590.)

REFERENCES IN TEXT

The Classified Information Procedures Act, referred to in subsec. (d), is Pub. L. 96–456, Oct. 15, 1980, 94 Stat. 2025, which is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

§ 949p–2. Pretrial conference

(a) MOTION.—At any time after service of charges, any party may move for a pretrial con-

ference to consider matters relating to classified information that may arise in connection with the prosecution.

(b) CONFERENCE.—Following a motion under subsection (a), or sua sponte, the military judge shall promptly hold a pretrial conference. Upon request by either party, the court shall hold such conference ex parte to the extent necessary to protect classified information from disclosure, in accordance with the practice of the Federal courts under the Classified Information Procedures Act (18 U.S.C. App.).

(c) MATTERS TO BE ESTABLISHED AT PRETRIAL CONFERENCE.—

(1) TIMING OF SUBSEQUENT ACTIONS.—At the pretrial conference, the military judge shall establish the timing of—

(A) requests for discovery;

(B) the provision of notice required by section 949p–5 of this title; and

(C) the initiation of the procedure established by section 949p–6 of this title.

(2) OTHER MATTERS.—At the pretrial conference, the military judge may also consider any matter—

(A) which relates to classified information; or

(B) which may promote a fair and expeditious trial.

(d) EFFECT OF ADMISSIONS BY ACCUSED AT PRETRIAL CONFERENCE.—No admission made by the accused or by any counsel for the accused at a pretrial conference under this section may be used against the accused unless the admission is in writing and is signed by the accused and by the counsel for the accused.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2591.)

REFERENCES IN TEXT

The Classified Information Procedures Act, referred to in subsec. (b), is Pub. L. 96–456, Oct. 15, 1980, 94 Stat. 2025, which is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

§ 949p–3. Protective orders

Upon motion of the trial counsel, the military judge shall issue an order to protect against the disclosure of any classified information that has been disclosed by the United States to any accused in any military commission under this chapter or that has otherwise been provided to, or obtained by, any such accused in any such military commission.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2591.)

§ 949p–4. Discovery of, and access to, classified information by the accused

(a) LIMITATIONS ON DISCOVERY OR ACCESS BY THE ACCUSED.—

(1) DECLARATIONS BY THE UNITED STATES OF DAMAGE TO NATIONAL SECURITY.—In any case before a military commission in which the United States seeks to delete, withhold, or otherwise obtain other relief with respect to the discovery of or access to any classified information, the trial counsel shall submit a declaration invoking the United States' classified information privilege and setting forth the damage to the national security that the discovery of or access to such information reasonably could be expected to cause. The declaration shall be signed by a knowledgeable United States official possessing authority to classify information.

(2) STANDARD FOR AUTHORIZATION OF DISCOVERY OR ACCESS.—Upon the submission of a declaration under paragraph (1), the military judge may not authorize the discovery of or access to such classified information unless the military judge determines that such classified information would be noncumulative, relevant, and helpful to a legally cognizable defense, rebuttal of the prosecution's case, or to sentencing, in accordance with standards generally applicable to discovery of or access to classified information in Federal criminal cases. If the discovery of or access to such classified information is authorized, it shall be addressed in accordance with the requirements of subsection (b).

(b) DISCOVERY OF CLASSIFIED INFORMATION.—

(1) SUBSTITUTIONS AND OTHER RELIEF.—The military judge, in assessing the accused's discovery of or access to classified information under this section, may authorize the United States—

(A) to delete or withhold specified items of classified information;

(B) to substitute a summary for classified information; or

(C) to substitute a statement admitting relevant facts that the classified information or material would tend to prove.

(2) EX PARTE PRESENTATIONS.—The military judge shall permit the trial counsel to make a request for an authorization under paragraph (1) in the form of an ex parte presentation to the extent necessary to protect classified information, in accordance with the practice of the Federal courts under the Classified Information Procedures Act (18 U.S.C. App.). If the military judge enters an order granting relief following such an ex parte showing, the entire presentation (including the text of any written submission, verbatim transcript of the ex parte oral conference or hearing, and any exhibits received by the court as part of the ex parte presentation) shall be sealed and preserved in the records of the military commission to be made available to the appellate court in the event of an appeal.

(3) ACTION BY MILITARY JUDGE.—The military judge shall grant the request of the trial counsel to substitute a summary or to substitute a statement admitting relevant facts, or to provide other relief in accordance with paragraph (1), if the military judge finds that the summary, statement, or other relief would provide the accused with substantially the same ability to make a defense as would discovery of or access to the specific classified information.

(c) RECONSIDERATION.—An order of a military judge authorizing a request of the trial counsel to substitute, summarize, withhold, or prevent access to classified information under this section is not subject to a motion for reconsideration by the accused, if such order was entered

pursuant to an ex parte showing under this section.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2592.)

REFERENCES IN TEXT

The Classified Information Procedures Act, referred to in subsec. (b)(2), is Pub. L. 96–456, Oct. 15, 1980, 94 Stat. 2025, which is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

§ 949p–5. Notice by accused of intention to disclose classified information

(a) NOTICE BY ACCUSED.—

(1) NOTIFICATION OF TRIAL COUNSEL AND MILITARY JUDGE.—If an accused reasonably expects to disclose, or to cause the disclosure of, classified information in any manner in connection with any trial or pretrial proceeding involving the prosecution of such accused, the accused shall, within the time specified by the military judge or, where no time is specified, within 30 days before trial, notify the trial counsel and the military judge in writing. Such notice shall include a brief description of the classified information. Whenever the accused learns of additional classified information the accused reasonably expects to disclose, or to cause the disclosure of, at any such proceeding, the accused shall notify trial counsel and the military judge in writing as soon as possible thereafter and shall include a brief description of the classified information.

(2) LIMITATION ON DISCLOSURE BY ACCUSED.—No accused shall disclose, or cause the disclosure of, any information known or believed to be classified in connection with a trial or pretrial proceeding until—

(A) notice has been given under paragraph (1); and

(B) the United States has been afforded a reasonable opportunity to seek a determination pursuant to the procedure set forth in section 949p–6 of this title and the time for the United States to appeal such determination under section 950d of this title has expired or any appeal under that section by the United States is decided.

(b) FAILURE TO COMPLY.—If the accused fails to comply with the requirements of subsection (a), the military judge—

(1) may preclude disclosure of any classified information not made the subject of notification; and

(2) may prohibit the examination by the accused of any witness with respect to any such information.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2593.)

§ 949p–6. Procedure for cases involving classified information

(a) MOTION FOR HEARING.—

(1) REQUEST FOR HEARING.—Within the time specified by the military judge for the filing of a motion under this section, either party may request the military judge to conduct a hearing to make all determinations concerning the use, relevance, or admissibility of classified information that would otherwise be made during the trial or pretrial proceeding.

(2) CONDUCT OF HEARING.—Upon a request by either party under paragraph (1), the military judge shall conduct such a hearing and shall rule prior to conducting any further proceedings.

(3) IN CAMERA HEARING UPON DECLARATION TO COURT BY APPROPRIATE OFFICIAL OF RISK OF DISCLOSURE OF CLASSIFIED INFORMATION.—Any hearing held pursuant to this subsection (or any portion of such hearing specified in the request of a knowledgeable United States official) shall be held in camera if a knowledgeable United States official possessing authority to classify information submits to the military judge a declaration that a public proceeding may result in the disclosure of classified information. Classified information is not subject to disclosure under this section unless the information is relevant and necessary to an element of the offense or a legally cognizable defense and is otherwise admissible in evidence.

(4) MILITARY JUDGE TO MAKE DETERMINATIONS IN WRITING.—As to each item of classified information, the military judge shall set forth in writing the basis for the determination.

(b) NOTICE AND USE OF CLASSIFIED INFORMATION BY THE GOVERNMENT.—

(1) NOTICE TO ACCUSED.—Before any hearing is conducted pursuant to a request by the trial counsel under subsection (a), trial counsel shall provide the accused with notice of the classified information that is at issue. Such notice shall identify the specific classified information at issue whenever that information previously has been made available to the accused by the United States. When the United States has not previously made the information available to the accused in connection with the case the information may be described by generic category, in such forms as the military judge may approve, rather than by identification of the specific information of concern to the United States.

(2) ORDER BY MILITARY JUDGE UPON REQUEST OF ACCUSED.—Whenever the trial counsel requests a hearing under subsection (a), the military judge, upon request of the accused, may order the trial counsel to provide the accused, prior to trial, such details as to the portion of the charge or specification at issue in the hearing as are needed to give the accused fair notice to prepare for the hearing.

(c) SUBSTITUTIONS.—

(1) IN CAMERA PRETRIAL HEARING.—Upon request of the trial counsel pursuant to the Military Commission Rules of Evidence, and in accordance with the security procedures established by the military judge, the military judge shall conduct a classified in camera pretrial hearing concerning the admissibility of classified information.

(2) PROTECTION OF SOURCES, METHODS, AND ACTIVITIES BY WHICH EVIDENCE ACQUIRED.—When trial counsel seeks to introduce evidence before a military commission under this chapter and the Executive branch has classified the sources, methods, or activities by which the

United States acquired the evidence, the military judge shall permit trial counsel to introduce the evidence, including a substituted evidentiary foundation pursuant to the procedures described in subsection (d), while protecting from disclosure information identifying those sources, methods, or activities, if—

(A) the evidence is otherwise admissible; and

(B) the military judge finds that—

(i) the evidence is reliable; and

(ii) the redaction is consistent with affording the accused a fair trial.

(d) ALTERNATIVE PROCEDURE FOR DISCLOSURE OF CLASSIFIED INFORMATION.—

(1) MOTION BY THE UNITED STATES.—Upon any determination by the military judge authorizing the disclosure of specific classified information under the procedures established by this section, the trial counsel may move that, in lieu of the disclosure of such specific classified information, the military judge order—

(A) the substitution for such classified information of a statement admitting relevant facts that the specific classified information would tend to prove;

(B) the substitution for such classified information of a summary of the specific classified information; or

(C) any other procedure or redaction limiting the disclosure of specific classified information.

(2) ACTION ON MOTION.—The military judge shall grant such a motion of the trial counsel if the military judge finds that the statement, summary, or other procedure or redaction will provide the defendant with substantially the same ability to make his defense as would disclosure of the specific classified information.

(3) HEARING ON MOTION.—The military judge shall hold a hearing on any motion under this subsection. Any such hearing shall be held in camera at the request of a knowledgeable United States official possessing authority to classify information.

(4) SUBMISSION OF STATEMENT OF DAMAGE TO NATIONAL SECURITY IF DISCLOSURE ORDERED.—The trial counsel may, in connection with a motion under paragraph (1), submit to the military judge a declaration signed by a knowledgeable United States official possessing authority to classify information certifying that disclosure of classified information would cause identifiable damage to the national security of the United States and explaining the basis for the classification of such information. If so requested by the trial counsel, the military judge shall examine such declaration during an ex parte presentation.

(e) SEALING OF RECORDS OF IN CAMERA HEARINGS.—If at the close of an in camera hearing under this section (or any portion of a hearing under this section that is held in camera), the military judge determines that the classified information at issue may not be disclosed or elicited at the trial or pretrial proceeding, the record of such in camera hearing shall be sealed and preserved for use in the event of an appeal. The accused may seek reconsideration of the military judge's determination prior to or during trial.

(f) PROHIBITION ON DISCLOSURE OF CLASSIFIED INFORMATION BY THE ACCUSED; RELIEF FOR ACCUSED WHEN THE UNITED STATES OPPOSES DISCLOSURE.—

(1) ORDER TO PREVENT DISCLOSURE BY ACCUSED.—Whenever the military judge denies a motion by the trial counsel that the judge issue an order under subsection (a), (c), or (d) and the trial counsel files with the military judge a declaration signed by a knowledgeable United States official possessing authority to classify information objecting to disclosure of the classified information at issue, the military judge shall order that the accused not disclose or cause the disclosure of such information.

(2) RESULT OF ORDER UNDER PARAGRAPH (1).—Whenever an accused is prevented by an order under paragraph (1) from disclosing or causing the disclosure of classified information, the military judge shall dismiss the case, except that, when the military judge determines that the interests of justice would not be served by dismissal of the case, the military judge shall order such other action, in lieu of dismissing the charge or specification, as the military judge determines is appropriate. Such action may include, but need not be limited to, the following:

(A) Dismissing specified charges or specifications.

(B) Finding against the United States on any issue as to which the excluded classified information relates.

(C) Striking or precluding all or part of the testimony of a witness.

(3) TIME FOR THE UNITED STATES TO SEEK INTERLOCUTORY APPEAL.—An order under paragraph (2) shall not take effect until the military judge has afforded the United States—

(A) an opportunity to appeal such order under section 950d of this title; and

(B) an opportunity thereafter to withdraw its objection to the disclosure of the classified information at issue.

(g) RECIPROCITY.—

(1) DISCLOSURE OF REBUTTAL INFORMATION.—Whenever the military judge determines that classified information may be disclosed in connection with a trial or pretrial proceeding, the military judge shall, unless the interests of fairness do not so require, order the United States to provide the accused with the information it expects to use to rebut the classified information. The military judge may place the United States under a continuing duty to disclose such rebuttal information.

(2) SANCTION FOR FAILURE TO COMPLY.—If the United States fails to comply with its obligation under this subsection, the military judge—

(A) may exclude any evidence not made the subject of a required disclosure; and

(B) may prohibit the examination by the United States of any witness with respect to such information.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2593.)

§ 949p–7. Introduction of classified information into evidence

(a) PRESERVATION OF CLASSIFICATION STATUS.—Writings, recordings, and photographs containing classified information may be admitted into evidence in proceedings of military commissions under this chapter without change in their classification status.

(b) PRECAUTIONS BY MILITARY JUDGES.—

(1) PRECAUTIONS IN ADMITTING CLASSIFIED INFORMATION INTO EVIDENCE.—The military judge in a trial by military commission, in order to prevent unnecessary disclosure of classified information, may order admission into evidence of only part of a writing, recording, or photograph, or may order admission into evidence of the whole writing, recording, or photograph with excision of some or all of the classified information contained therein, unless the whole ought in fairness be considered.

(2) CLASSIFIED INFORMATION KEPT UNDER SEAL.—The military judge shall allow classified information offered or accepted into evidence to remain under seal during the trial, even if such evidence is disclosed in the military commission, and may, upon motion by the United States, seal exhibits containing classified information for any period after trial as necessary to prevent a disclosure of classified information when a knowledgeable United States official possessing authority to classify information submits to the military judge a declaration setting forth the damage to the national security that the disclosure of such information reasonably could be expected to cause.

(c) TAKING OF TESTIMONY.—

(1) OBJECTION BY TRIAL COUNSEL.—During the examination of a witness, trial counsel may object to any question or line of inquiry that may require the witness to disclose classified information not previously found to be admissible.

(2) ACTION BY MILITARY JUDGE.—Following an objection under paragraph (1), the military judge shall take such suitable action to determine whether the response is admissible as will safeguard against the compromise of any classified information. Such action may include requiring trial counsel to provide the military judge with a proffer of the witness' response to the question or line of inquiry and requiring the accused to provide the military judge with a proffer of the nature of the information sought to be elicited by the accused. Upon request, the military judge may accept an ex parte proffer by trial counsel to the extent necessary to protect classified information from disclosure, in accordance with the practice of the Federal courts under the Classified Information Procedures Act (18 U.S.C. App.).

(d) DISCLOSURE AT TRIAL OF CERTAIN STATEMENTS PREVIOUSLY MADE BY A WITNESS.—

(1) MOTION FOR PRODUCTION OF STATEMENTS IN POSSESSION OF THE UNITED STATES.—After a witness called by the trial counsel has testified on direct examination, the military judge, on motion of the accused, may order production of statements of the witness in the possession of the United States which relate to the subject matter as to which the witness has testified. This paragraph does not preclude discovery or assertion of a privilege otherwise authorized.

(2) INVOCATION OF PRIVILEGE BY THE UNITED STATES.—If the United States invokes a privilege, the trial counsel may provide the prior statements of the witness to the military judge during an ex parte presentation to the extent necessary to protect classified information from disclosure, in accordance with the practice of the Federal courts under the Classified Information Procedures Act (18 U.S.C. App.).

(3) ACTION BY MILITARY JUDGE ON MOTION.—If the military judge finds that disclosure of any portion of the statement identified by the United States as classified would be detrimental to the national security in the degree to warrant classification under the applicable Executive Order, statute, or regulation, that such portion of the statement is consistent with the testimony of the witness, and that the disclosure of such portion is not necessary to afford the accused a fair trial, the military judge shall excise that portion from the statement. If the military judge finds that such portion of the statement is inconsistent with the testimony of the witness or that its disclosure is necessary to afford the accused a fair trial, the military judge, shall, upon the request of the trial counsel, review alternatives to disclosure in accordance with section 949p–6(d) of this title.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2596.)

REFERENCES IN TEXT

The Classified Information Procedures Act, referred to in subsecs. (c)(2) and (d)(2), is Pub. L. 96–456, Oct. 15, 1980, 94 Stat. 2025, which is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

SUBCHAPTER VI—SENTENCES

Sec.
949s. Cruel or unusual punishments prohibited.
949t. Maximum limits.
949u. Execution of confinement.

§ 949s. Cruel or unusual punishments prohibited

Punishment by flogging, or by branding, marking, or tattooing on the body, or any other cruel or unusual punishment, may not be adjudged by a military commission under this chapter or inflicted under this chapter upon any person subject to this chapter. The use of irons, single or double, except for the purpose of safe custody, is prohibited under this chapter.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2598.)

PRIOR PROVISIONS

A prior section 949s, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2617, prohibited cruel or unusual punishments, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 949t. Maximum limits

The punishment which a military commission under this chapter may direct for an offense

may not exceed such limits as the President or Secretary of Defense may prescribe for that offense.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2598.)

PRIOR PROVISIONS

A prior section 949t, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2617, related to maximum limits of punishment, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 949u. Execution of confinement

(a) IN GENERAL.—Under such regulations as the Secretary of Defense may prescribe, a sentence of confinement adjudged by a military commission under this chapter may be carried into execution by confinement—

(1) in any place of confinement under the control of any of the armed forces; or

(2) in any penal or correctional institution under the control of the United States or its allies, or which the United States may be allowed to use.

(b) TREATMENT DURING CONFINEMENT BY OTHER THAN THE ARMED FORCES.—Persons confined under subsection (a)(2) in a penal or correctional institution not under the control of an armed force are subject to the same discipline and treatment as persons confined or committed by the courts of the United States or of the State, District of Columbia, or place in which the institution is situated.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2598.)

PRIOR PROVISIONS

A prior section 949u, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2617, related to execution of a sentence of confinement, prior to the general amendment of this chapter by Pub. L. 111–84.

SUBCHAPTER VII—POST-TRIAL PROCEDURE AND REVIEW OF MILITARY COMMISSIONS

Sec.
950a. Error of law; lesser included offense.
950b. Review by the convening authority.
950c. Appellate referral; waiver or withdrawal of appeal.
950d. Interlocutory appeals by the United States.
950e. Rehearings.
950f. Review by United States Court of Military Commission Review.
950g. Review by United States Court of Court of Appeals for the District of Columbia Circuit; writ of certiorari to Supreme Court.[1]
950h. Appellate counsel.
950i. Execution of sentence; suspension of sentence.
950j. Finality of proceedings, findings, and sentences.

§ 950a. Error of law; lesser included offense

(a) ERROR OF LAW.—A finding or sentence of a military commission under this chapter may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

(b) LESSER INCLUDED OFFENSE.—Any reviewing authority with the power to approve or affirm a finding of guilty by a military commission under this chapter may approve or affirm, instead, so much of the finding as includes a lesser included offense.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2599.)

PRIOR PROVISIONS

A prior section 950a, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2618, related to error of law and lesser included offense, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 950b. Review by the convening authority

(a) NOTICE TO CONVENING AUTHORITY OF FINDINGS AND SENTENCE.—The findings and sentence of a military commission under this chapter shall be reported in writing promptly to the convening authority after the announcement of the sentence.

(b) SUBMITTAL OF MATTERS BY ACCUSED TO CONVENING AUTHORITY.—(1) The accused may submit to the convening authority matters for consideration by the convening authority with respect to the findings and the sentence of the military commission under this chapter.

(2)(A) Except as provided in subparagraph (B), a submittal under paragraph (1) shall be made in writing within 20 days after the accused has been give[1] an authenticated record of trial under section 949*o*(c) of this title.

(B) If the accused shows that additional time is required for the accused to make a submittal under paragraph (1), the convening authority may, for good cause, extend the applicable period under subparagraph (A) for not more than an additional 20 days.

(3) The accused may waive the accused's right to make a submittal to the convening authority under paragraph (1). Such a waiver shall be made in writing, and may not be revoked. For the purposes of subsection (c)(2), the time within which the accused may make a submittal under this subsection shall be deemed to have expired upon the submittal of a waiver under this paragraph to the convening authority.

(c) ACTION BY CONVENING AUTHORITY.—(1) The authority under this subsection to modify the findings and sentence of a military commission under this chapter is a matter of the sole discretion and prerogative of the convening authority.

(2) The convening authority is not required to take action on the findings of a military commission under this chapter. If the convening authority takes action on the findings, the convening authority may, in the sole discretion of the convening authority, only—

(A) dismiss any charge or specification by setting aside a finding of guilty thereto; or

(B) change a finding of guilty to a charge to a finding of guilty to an offense that is a lesser included offense of the offense stated in the charge.

(3)(A) The convening authority shall take action on the sentence of a military commission under this chapter.

[1] So in original. Does not conform to section catchline.

[1] So in original. Probably should read ''given''.

(B) Subject to regulations prescribed by the Secretary of Defense, action under this paragraph may be taken only after consideration of any matters submitted by the accused under subsection (b) or after the time for submitting such matters expires, whichever is earlier.

(C) In taking action under this paragraph, the convening authority may, in the sole discretion of the convening authority, approve, disapprove, commute, or suspend the sentence in whole or in part. The convening authority may not increase a sentence beyond that which is found by the military commission.

(4) The convening authority shall serve on the accused or on defense counsel notice of any action taken by the convening authority under this subsection.

(d) ORDER OF REVISION OR REHEARING.—(1) Subject to paragraphs (2) and (3), the convening authority of a military commission under this chapter may, in the sole discretion of the convening authority, order a proceeding in revision or a rehearing.

(2)(A) Except as provided in subparagraph (B), a proceeding in revision may be ordered by the convening authority if—

(i) there is an apparent error or omission in the record; or

(ii) the record shows improper or inconsistent action by the military commission with respect to the findings or sentence that can be rectified without material prejudice to the substantial rights of the accused.

(B) In no case may a proceeding in revision—

(i) reconsider a finding of not guilty of a specification or a ruling which amounts to a finding of not guilty;

(ii) reconsider a finding of not guilty of any charge, unless there has been a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation; or

(iii) increase the severity of the sentence unless the sentence prescribed for the offense is mandatory.

(3) A rehearing may be ordered by the convening authority if the convening authority disapproves the findings and sentence and states the reasons for disapproval of the findings. If the convening authority disapproves the finding and sentence and does not order a rehearing, the convening authority shall dismiss the charges. A rehearing as to the findings may not be ordered by the convening authority when there is a lack of sufficient evidence in the record to support the findings. A rehearing as to the sentence may be ordered by the convening authority if the convening authority disapproves the sentence.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2599.)

PRIOR PROVISIONS

A prior section 950b, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2618, related to review by the convening authority, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 950c. Appellate referral; waiver or withdrawal of appeal

(a) AUTOMATIC REFERRAL FOR APPELLATE REVIEW.—Except as provided in subsection (b), in each case in which the final decision of a military commission under this chapter (as approved by the convening authority) includes a finding of guilty, the convening authority shall refer the case to the United States Court of Military Commission Review. Any such referral shall be made in accordance with procedures prescribed under regulations of the Secretary.

(b) WAIVER OF RIGHT OF REVIEW.—(1) Except in a case in which the sentence as approved under section 950b of this title extends to death, an accused may file with the convening authority a statement expressly waiving the right of the accused to appellate review by the United States Court of Military Commission Review under section 950f of this title of the final decision of the military commission under this chapter.

(2) A waiver under paragraph (1) shall be signed by both the accused and a defense counsel.

(3) A waiver under paragraph (1) must be filed, if at all, within 10 days after notice of the action is served on the accused or on defense counsel under section 950b(c)(4) of this title. The convening authority, for good cause, may extend the period for such filing by not more than 30 days.

(c) WITHDRAWAL OF APPEAL.—Except in a case in which the sentence as approved under section 950b of this title extends to death, the accused may withdraw an appeal at any time.

(d) EFFECT OF WAIVER OR WITHDRAWAL.—A waiver of the right to appellate review or the withdrawal of an appeal under this section bars review under section 950f of this title.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2600.)

PRIOR PROVISIONS

A prior section 950c, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2620, related to appellate referral and waiver or withdrawal of appeal, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 950d. Interlocutory appeals by the United States

(a) INTERLOCUTORY APPEAL.—Except as provided in subsection (b), in a trial by military commission under this chapter, the United States may take an interlocutory appeal to the United States Court of Military Commission Review of any order or ruling of the military judge—

(1) that terminates proceedings of the military commission with respect to a charge or specification;

(2) that excludes evidence that is substantial proof of a fact material in the proceeding;

(3) that relates to a matter under subsection (c) or (d) of section 949d of this title; or

(4) that, with respect to classified information—

(A) authorizes the disclosure of such information;

(B) imposes sanctions for nondisclosure of such information; or

(C) refuses a protective order sought by the United States to prevent the disclosure of such information.

(b) LIMITATION.—The United States may not appeal under subsection (a) an order or ruling

that is, or amounts to, a finding of not guilty by the military commission with respect to a charge or specification.

(c) SCOPE OF APPEAL RIGHT WITH RESPECT TO CLASSIFIED INFORMATION.—The United States has the right to appeal under paragraph (4) of subsection (a) whenever the military judge enters an order or ruling that would require the disclosure of classified information, without regard to whether the order or ruling appealed from was entered under this chapter, another provision of law, a rule, or otherwise. Any such appeal may embrace any preceding order, ruling, or reasoning constituting the basis of the order or ruling that would authorize such disclosure.

(d) TIMING AND ACTION ON INTERLOCUTORY APPEALS RELATING TO CLASSIFIED INFORMATION.—

(1) APPEAL TO BE EXPEDITED.—An appeal taken pursuant to paragraph (4) of subsection (a) shall be expedited by the United States Court of Military Commission Review.

(2) APPEALS BEFORE TRIAL.—If such an appeal is taken before trial, the appeal shall be taken within 10 days after the order or ruling from which the appeal is made and the trial shall not commence until the appeal is decided.

(3) APPEALS DURING TRIAL.—If such an appeal is taken during trial, the military judge shall adjourn the trial until the appeal is decided, and the court of appeals—

(A) shall hear argument on such appeal within 4 days of the adjournment of the trial (excluding weekends and holidays);

(B) may dispense with written briefs other than the supporting materials previously submitted to the military judge;

(C) shall render its decision within four days of argument on appeal (excluding weekends and holidays); and

(D) may dispense with the issuance of a written opinion in rendering its decision.

(e) NOTICE AND TIMING OF OTHER APPEALS.—The United States shall take an appeal of an order or ruling under subsection (a), other than an appeal under paragraph (4) of that subsection, by filing a notice of appeal with the military judge within 5 days after the date of the order or ruling.

(f) METHOD OF APPEAL.—An appeal under this section shall be forwarded, by means specified in regulations prescribed by the Secretary of Defense, directly to the United States Court of Military Commission Review.

(g) APPEALS COURT TO ACT ONLY WITH RESPECT TO MATTER OF LAW.—In ruling on an appeal under paragraph (1), (2), or (3) of subsection (a), the appeals court may act only with respect to matters of law.

(h) SUBSEQUENT APPEAL RIGHTS OF ACCUSED NOT AFFECTED.—An appeal under paragraph (4) of subsection (a), and a decision on such appeal, shall not affect the right of the accused, in a subsequent appeal from a judgment of conviction, to claim as error reversal by the military judge on remand of a ruling appealed from during trial.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2601.)

PRIOR PROVISIONS

A prior section 950d, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2620, related to appeal by the United States, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 950e. Rehearings

(a) COMPOSITION OF MILITARY COMMISSION FOR REHEARING.—Each rehearing under this chapter shall take place before a military commission under this chapter composed of members who were not members of the military commission which first heard the case.

(b) SCOPE OF REHEARING.—(1) Upon a rehearing—

(A) the accused may not be tried for any offense of which the accused was found not guilty by the first military commission; and

(B) no sentence in excess of or more than the original sentence may be imposed unless—

(i) the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings; or

(ii) the sentence prescribed for the offense is mandatory.

(2) Upon a rehearing, if the sentence approved after the first military commission was in accordance with a pretrial agreement and the accused at the rehearing changes his plea with respect to the charges or specifications upon which the pretrial agreement was based, or otherwise does not comply with pretrial agreement, the sentence as to those charges or specifications may include any punishment not in excess of that lawfully adjudged at the first military commission.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2602.)

PRIOR PROVISIONS

A prior section 950e, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2621, related to rehearings, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 950f. Review by United States Court of Military Commission Review

(a) ESTABLISHMENT.—There is a court of record to be known as the ''United States Court of Military Commission Review'' (in this section referred to as the ''Court''). The Court shall consist of one or more panels, each composed of not less than three appellate military judges. For the purpose of reviewing decisions of military commissions under this chapter, the Court may sit in panels or as a whole, in accordance with rules prescribed by the Secretary of Defense.

(b) JUDGES.—(1) Judges on the Court shall be assigned or appointed in a manner consistent with the provisions of this subsection.

(2) The Secretary of Defense may assign persons who are appellate military judges to be judges on the Court. Any judge so assigned shall be a commissioned officer of the armed forces, and shall meet the qualifications for military judges prescribed by section 948j(b) of this title.

(3) The President may appoint, by and with the advice and consent of the Senate, additional judges to the United States Court of Military Commission Review.

(4) No person may serve as a judge on the Court in any case in which that person acted as a military judge, counsel, or reviewing official.

(c) CASES TO BE REVIEWED.—The Court shall, in accordance with procedures prescribed under regulations of the Secretary, review the record in each case that is referred to the Court by the convening authority under section 950c of this title with respect to any matter properly raised by the accused.

(d) STANDARD AND SCOPE OF REVIEW.—In a case reviewed by the Court under this section, the Court may act only with respect to the findings and sentence as approved by the convening authority. The Court may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as the Court finds correct in law and fact and determines, on the basis of the entire record, should be approved. In considering the record, the Court may weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the military commission saw and heard the witnesses.

(e) REHEARINGS.—If the Court sets aside the findings or sentence, the Court may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If the Court sets aside the findings or sentence and does not order a rehearing, the Court shall order that the charges be dismissed.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2603.)

PRIOR PROVISIONS

A prior section 950f, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2621; amended Pub. L. 110–181, div. A, title X, § 1063(a)(6), Jan. 28, 2008, 122 Stat. 322, related to review by Court of Military Commission Review, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 950g. Review by United States Court of Appeals for the District of Columbia Circuit; writ of certiorari to Supreme Court

(a) EXCLUSIVE APPELLATE JURISDICTION.—Except as provided in subsection (b), the United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to determine the validity of a final judgment rendered by a military commission (as approved by the convening authority and, where applicable, the United States Court of Military Commission Review) under this chapter.

(b) EXHAUSTION OF OTHER APPEALS.—The United States Court of Appeals for the District of Columbia Circuit may not review a final judgment described in subsection (a) until all other appeals under this chapter have been waived or exhausted.

(c) TIME FOR SEEKING REVIEW.—A petition for review by the United States Court of Appeals for the District of Columbia Circuit must be filed by the accused in the Court of Appeals not later than 20 days after the date on which—

(1) written notice of the final decision of the United States Court of Military Commission Review is served on the accused or on defense counsel; or

(2) the accused submits, in the form prescribed by section 950c of this title, a written notice waiving the right of the accused to review by the United States Court of Military Commission Review.

(d) SCOPE AND NATURE OF REVIEW.—The United States Court of Appeals for the District of Columbia Circuit may act under this section only with respect to the findings and sentence as approved by the convening authority and as affirmed or set aside as incorrect in law by the United States Court of Military Commission Review, and shall take action only with respect to matters of law, including the sufficiency of the evidence to support the verdict.

(e) REVIEW BY SUPREME COURT.—The Supreme Court may review by writ of certiorari pursuant to section 1254 of title 28 the final judgment of the United States Court of Appeals for the District of Columbia Circuit under this section.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2603.)

PRIOR PROVISIONS

A prior section 950g, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2622, related to review by the United States Court of Appeals for the District of Columbia Circuit and the Supreme Court, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 950h. Appellate counsel

(a) APPOINTMENT.—The Secretary of Defense shall, by regulation, establish procedures for the appointment of appellate counsel for the United States and for the accused in military commissions under this chapter. Appellate counsel shall meet the qualifications of counsel for appearing before military commissions under this chapter.

(b) REPRESENTATION OF UNITED STATES.—Appellate counsel appointed under subsection (a)—

(1) shall represent the United States in any appeal or review proceeding under this chapter before the United States Court of Military Commission Review; and

(2) may, when requested to do so by the Attorney General in a case arising under this chapter, represent the United States before the United States Court of Appeals for the District of Columbia Circuit or the Supreme Court.

(c) REPRESENTATION OF ACCUSED.—The accused shall be represented by appellate counsel appointed under subsection (a) before the United States Court of Military Commission Review, the United States Court of Appeals for the District of Columbia Circuit, and the Supreme Court, and by civilian counsel if retained by the accused. Any such civilian counsel shall meet the qualifications under paragraph (3) of section 949c(b) of this title for civilian counsel appearing before military commissions under this chapter and shall be subject to the requirements of paragraph (7) of that section.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2604.)

PRIOR PROVISIONS

A prior section 950h, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2622, related to appellate counsel, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 950i. Execution of sentence; suspension of sentence

(a) IN GENERAL.—The Secretary of Defense is authorized to carry out a sentence imposed by a

military commission under this chapter in accordance with such procedures as the Secretary may prescribe.

(b) EXECUTION OF SENTENCE OF DEATH ONLY UPON APPROVAL BY THE PRESIDENT.—If the sentence of a military commission under this chapter extends to death, that part of the sentence providing for death may not be executed until approved by the President. In such a case, the President may commute, remit, or suspend the sentence, or any part thereof, as he sees fit.

(c) EXECUTION OF SENTENCE OF DEATH ONLY UPON FINAL JUDGMENT OF LEGALITY OF PROCEEDINGS.—(1) If the sentence of a military commission under this chapter extends to death, the sentence may not be executed until there is a final judgment as to the legality of the proceedings (and with respect to death, approval under subsection (b)).

(2) A judgment as to legality of proceedings is final for purposes of paragraph (1) when review is completed in accordance with the judgment of the United States Court of Military Commission Review and—

(A) the time for the accused to file a petition for review by the United States Court of Appeals for the District of Columbia Circuit has expired, the accused has not filed a timely petition for such review, and the case is not otherwise under review by the Court of Appeals; or

(B) review is completed in accordance with the judgment of the United States Court of Appeals for the District of Columbia Circuit and—

(i) a petition for a writ of certiorari is not timely filed;

(ii) such a petition is denied by the Supreme Court; or

(iii) review is otherwise completed in accordance with the judgment of the Supreme Court.

(d) SUSPENSION OF SENTENCE.—The Secretary of the Defense, or the convening authority acting on the case (if other than the Secretary), may suspend the execution of any sentence or part thereof in the case, except a sentence of death.

(Added Pub. L. 111–84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2605.)

PRIOR PROVISIONS

A prior section 950i, added Pub. L. 109–366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2623, related to execution of sentence, procedures for execution of sentence of death, and suspension of sentence prior to the general amendment of this chapter by Pub. L. 111–84.

§950j. Finality of proceedings, findings, and sentences

The appellate review of records of trial provided by this chapter, and the proceedings, findings, and sentences of military commissions as approved, reviewed, or affirmed as required by this chapter, are final and conclusive. Orders publishing the proceedings of military commissions under this chapter are binding upon all departments, courts, agencies, and officers of the United States, subject only to action by the Secretary or the convening authority as provided in section 950i(c) of this title and the authority of the President.

(Added Pub. L. 111–84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2605.)

PRIOR PROVISIONS

A prior section 950j, added Pub. L. 109–366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2623; amended Pub. L. 110–181, div. A, title X, §1063(a)(7), Jan. 28, 2008, 122 Stat. 322, related to finality of proceedings, findings, and sentences, prior to the general amendment of this chapter by Pub. L. 111–84.

SUBCHAPTER VIII—PUNITIVE MATTERS

Sec.
950p. Definitions; construction of certain offenses; common circumstances.
950q. Principals.
950r. Accessory after the fact.
950s. Conviction of lesser offenses.
950t. Crimes triable by military commission.

§950p. Definitions; construction of certain offenses; common circumstances

(a) DEFINITIONS.—In this subchapter:

(1) The term ''military objective'' means combatants and those objects during hostilities which, by their nature, location, purpose, or use, effectively contribute to the warfighting or war-sustaining capability of an opposing force and whose total or partial destruction, capture, or neutralization would constitute a definite military advantage to the attacker under the circumstances at the time of an attack.

(2) The term ''protected person'' means any person entitled to protection under one or more of the Geneva Conventions, including civilians not taking an active part in hostilities, military personnel placed out of combat by sickness, wounds, or detention, and military medical or religious personnel.

(3) The term ''protected property'' means any property specifically protected by the law of war, including buildings dedicated to religion, education, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, but only if and to the extent such property is not being used for military purposes or is not otherwise a military objective. The term includes objects properly identified by one of the distinctive emblems of the Geneva Conventions, but does not include civilian property that is a military objective.

(b) CONSTRUCTION OF CERTAIN OFFENSES.—The intent required for offenses under paragraphs (1), (2), (3), (4), and (12) of section 950t of this title precludes the applicability of such offenses with regard to collateral damage or to death, damage, or injury incident to a lawful attack.

(c) COMMON CIRCUMSTANCES.—An offense specified in this subchapter is triable by military commission under this chapter only if the offense is committed in the context of and associated with hostilities.

(d) EFFECT.—The provisions of this subchapter codify offenses that have traditionally been triable by military commission. This chapter does not establish new crimes that did not exist before the date of the enactment of this sub-

chapter, as amended by the National Defense Authorization Act for Fiscal Year 2010, but rather codifies those crimes for trial by military commission. Because the provisions of this subchapter codify offenses that have traditionally been triable under the law of war or otherwise triable by military commission, this subchapter does not preclude trial for offenses that occurred before the date of the enactment of this subchapter, as so amended.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2606.)

REFERENCES IN TEXT

The date of the enactment of this subchapter, as amended by the National Defense Authorization Act for Fiscal Year 2010, referred to in subsec. (d), is the date of enactment of Pub. L. 111–84, which was approved Oct. 28, 2009.

PRIOR PROVISIONS

A prior section 950p, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2624, related to statement of substantive offenses, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 950q. Principals

Any person punishable under this chapter who—

(1) commits an offense punishable by this chapter, or aids, abets, counsels, commands, or procures its commission;

(2) causes an act to be done which if directly performed by him would be punishable by this chapter; or

(3) is a superior commander who, with regard to acts punishable by this chapter, knew, had reason to know, or should have known, that a subordinate was about to commit such acts or had done so and who failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof,

is a principal.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2606.)

PRIOR PROVISIONS

A prior section, 950q, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2624, related to principals, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 950r. Accessory after the fact

Any person subject to this chapter who, knowing that an offense punishable by this chapter has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment shall be punished as a military commission under this chapter may direct.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2607.)

PRIOR PROVISIONS

A prior section 950r, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2624, related to accessory after the fact, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 950s. Conviction of lesser offenses

An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an attempt to commit either the offense charged or an offense necessarily included therein.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2607.)

PRIOR PROVISIONS

A prior section 950s, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2624, related to conviction of lesser included offense, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 950t. Crimes triable by military commission

The following offenses shall be triable by military commission under this chapter at any time without limitation:

(1) MURDER OF PROTECTED PERSONS.—Any person subject to this chapter who intentionally kills one or more protected persons shall be punished by death or such other punishment as a military commission under this chapter may direct.

(2) ATTACKING CIVILIANS.—Any person subject to this chapter who intentionally engages in an attack upon a civilian population as such, or individual civilians not taking active part in hostilities, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

(3) ATTACKING CIVILIAN OBJECTS.—Any person subject to this chapter who intentionally engages in an attack upon a civilian object that is not a military objective shall be punished as a military commission under this chapter may direct.

(4) ATTACKING PROTECTED PROPERTY.—Any person subject to this chapter who intentionally engages in an attack upon protected property shall be punished as a military commission under this chapter may direct.

(5) PILLAGING.—Any person subject to this chapter who intentionally and in the absence of military necessity appropriates or seizes property for private or personal use, without the consent of a person with authority to permit such appropriation or seizure, shall be punished as a military commission under this chapter may direct.

(6) DENYING QUARTER.—Any person subject to this chapter who, with effective command or control over subordinate groups, declares, orders, or otherwise indicates to those groups that there shall be no survivors or surrender accepted, with the intent to threaten an adversary or to conduct hostilities such that there would be no survivors or surrender accepted, shall be punished as a military commission under this chapter may direct.

(7) TAKING HOSTAGES.—Any person subject to this chapter who, having knowingly seized or detained one or more persons, threatens to kill, injure, or continue to detain such person or persons with the intent of compelling any nation, person other than the hostage, or group of persons to act or refrain from acting

as an explicit or implicit condition for the safety or release of such person or persons, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

(8) EMPLOYING POISON OR SIMILAR WEAPONS.—Any person subject to this chapter who intentionally, as a method of warfare, employs a substance or weapon that releases a substance that causes death or serious and lasting damage to health in the ordinary course of events, through its asphyxiating, bacteriological, or toxic properties, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

(9) USING PROTECTED PERSONS AS A SHIELD.—Any person subject to this chapter who positions, or otherwise takes advantage of, a protected person with the intent to shield a military objective from attack.[1] or to shield, favor, or impede military operations, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

(10) USING PROTECTED PROPERTY AS A SHIELD.—Any person subject to this chapter who positions, or otherwise takes advantage of the location of, protected property with the intent to shield a military objective from attack, or to shield, favor, or impede military operations, shall be punished as a military commission under this chapter may direct.

(11) TORTURE.—

(A) OFFENSE.—Any person subject to this chapter who commits an act specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control for the purpose of obtaining information or a confession, punishment, intimidation, coercion, or any reason based on discrimination of any kind, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

(B) SEVERE MENTAL PAIN OR SUFFERING DEFINED.—In this paragraph, the term ''severe mental pain or suffering'' has the meaning given that term in section 2340(2) of title 18.

(12) CRUEL OR INHUMAN TREATMENT.—Any person subject to this chapter who subjects another person in their custody or under their physical control, regardless of nationality or physical location, to cruel or inhuman treatment that constitutes a grave breach of common Article 3 of the Geneva Conventions shall be punished, if death results to the victim, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to the victim, by such punishment, other than death, as a military commission under this chapter may direct.

(13) INTENTIONALLY CAUSING SERIOUS BODILY INJURY.—

(A) OFFENSE.—Any person subject to this chapter who intentionally causes serious bodily injury to one or more persons, including privileged belligerents, in violation of the law of war shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

(B) SERIOUS BODILY INJURY DEFINED.—In this paragraph, the term ''serious bodily injury'' means bodily injury which involves—

(i) a substantial risk of death;

(ii) extreme physical pain;

(iii) protracted and obvious disfigurement; or

(iv) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(14) MUTILATING OR MAIMING.—Any person subject to this chapter who intentionally injures one or more protected persons by disfiguring the person or persons by any mutilation of the person or persons, or by permanently disabling any member, limb, or organ of the body of the person or persons, without any legitimate medical or dental purpose, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

(15) MURDER IN VIOLATION OF THE LAW OF WAR.—Any person subject to this chapter who intentionally kills one or more persons, including privileged belligerents, in violation of the law of war shall be punished by death or such other punishment as a military commission under this chapter may direct.

(16) DESTRUCTION OF PROPERTY IN VIOLATION OF THE LAW OF WAR.—Any person subject to this chapter who intentionally destroys property belonging to another person in violation of the law of war shall[2] punished as a military commission under this chapter may direct.

(17) USING TREACHERY OR PERFIDY.—Any person subject to this chapter who, after inviting the confidence or belief of one or more persons that they were entitled to, or obliged to ac-

[1] So in original. The period probably should be a comma.

[2] So in original. Probably should be followed by ''be''.

cord, protection under the law of war, intentionally makes use of that confidence or belief in killing, injuring, or capturing such person or persons shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

(18) IMPROPERLY USING A FLAG OF TRUCE.—Any person subject to this chapter who uses a flag of truce to feign an intention to negotiate, surrender, or otherwise suspend hostilities when there is no such intention shall be punished as a military commission under this chapter may direct.

(19) IMPROPERLY USING A DISTINCTIVE EMBLEM.—Any person subject to this chapter who intentionally uses a distinctive emblem recognized by the law of war for combatant purposes in a manner prohibited by the law of war shall be punished as a military commission under this chapter may direct.

(20) INTENTIONALLY MISTREATING A DEAD BODY.—Any person subject to this chapter who intentionally mistreats the body of a dead person, without justification by legitimate military necessary, shall be punished as a military commission under this chapter may direct.

(21) RAPE.—Any person subject to this chapter who forcibly or with coercion or threat of force wrongfully invades the body of a person by penetrating, however slightly, the anal or genital opening of the victim with any part of the body of the accused, or with any foreign object, shall be punished as a military commission under this chapter may direct.

(22) SEXUAL ASSAULT OR ABUSE.—Any person subject to this chapter who forcibly or with coercion or threat of force engages in sexual contact with one or more persons, or causes one or more persons to engage in sexual contact, shall be punished as a military commission under this chapter may direct[3]

(23) HIJACKING OR HAZARDING A VESSEL OR AIRCRAFT.—Any person subject to this chapter who intentionally seizes, exercises unauthorized control over, or endangers the safe navigation of a vessel or aircraft that is not a legitimate military objective shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

(24) TERRORISM.—Any person subject to this chapter who intentionally kills or inflicts great bodily harm on one or more protected persons, or intentionally engages in an act that evinces a wanton disregard for human life, in a manner calculated to influence or affect the conduct of government or civilian population by intimidation or coercion, or to retaliate against government conduct, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

(25) PROVIDING MATERIAL SUPPORT FOR TERRORISM.—

(A) OFFENSE.—Any person subject to this chapter who provides material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, an act of terrorism (as set forth in paragraph (24) of this section), or who intentionally provides material support or resources to an international terrorist organization engaged in hostilities against the United States, knowing that such organization has engaged or engages in terrorism (as so set forth), shall be punished as a military commission under this chapter may direct.

(B) MATERIAL SUPPORT OR RESOURCES DEFINED.—In this paragraph, the term ''material support or resources'' has the meaning given that term in section 2339A(b) of title 18.

(26) WRONGFULLY AIDING THE ENEMY.—Any person subject to this chapter who, in breach of an allegiance or duty to the United States, knowingly and intentionally aids an enemy of the United States, or one of the co-belligerents of the enemy, shall be punished as a military commission under this chapter may direct.

(27) SPYING.—Any person subject to this chapter who, in violation of the law of war and with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign power, collects or attempts to collect information by clandestine means or while acting under false pretenses, for the purpose of conveying such information to an enemy of the United States, or one of the co-belligerents of the enemy, shall be punished by death or such other punishment as a military commission under this chapter may direct.

(28) ATTEMPTS.—

(A) IN GENERAL.—Any person subject to this chapter who attempts to commit any offense punishable by this chapter shall be punished as a military commission under this chapter may direct.

(B) SCOPE OF OFFENSE.—An act, done with specific intent to commit an offense under this chapter, amounting to more than mere preparation and tending, even though failing, to effect its commission, is an attempt to commit that offense.

(C) EFFECT OF CONSUMMATION.—Any person subject to this chapter may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.

(29) CONSPIRACY.—Any person subject to this chapter who conspires to commit one or more substantive offenses triable by military commission under this subchapter, and who knowingly does any overt act to effect the object of the conspiracy, shall be punished, if death results to one or more of the victims, by death

[3] So in original. Probably should be followed by a period.

or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

(30) SOLICITATION.—Any person subject to this chapter who solicits or advises another or others to commit one or more substantive offenses triable by military commission under this chapter shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed or attempted, shall be punished as a military commission under this chapter may direct.

(31) CONTEMPT.—A military commission under this chapter may punish for contempt any person who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by any riot or disorder.

(32) PERJURY AND OBSTRUCTION OF JUSTICE.—A military commission under this chapter may try offenses and impose such punishment as the military commission may direct for perjury, false testimony, or obstruction of justice related to the military commission.

(Added Pub. L. 111–84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2607.)

PRIOR PROVISIONS

Prior sections 950t to 950w were omitted in the general amendment of this chapter by Pub. L. 111–84.

Section 950t, added Pub. L. 109–366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2625, related to attempts to commit any offense punishable by this chapter.

Section 950u, added Pub. L. 109–366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2625, related to solicitation.

Section 950v, added Pub. L. 109–366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2625, related to definitions, construction, and crimes triable by military commissions.

Section 950w, added Pub. L. 109–366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2630, related to perjury, obstruction of justice, and contempt.

CHAPTER 48—MILITARY CORRECTIONAL FACILITIES

Sec.
951. Establishment; organization; administration.
952. Parole.
953. Remission or suspension of sentence; restoration to duty; reenlistment.
954. Voluntary extension; probation.
955. Prisoners transferred to or from foreign countries.
956. Deserters, prisoners, members absent without leave: expenses and rewards.

AMENDMENTS

1984—Pub. L. 98–525, title XIV, §1401(b)(2), Oct. 19, 1984, 98 Stat. 2615, added item 956.

1980—Pub. L. 96–513, title V, §511(26), Dec. 13, 1980, 94 Stat. 2922, added item 955.

§951. Establishment; organization; administration

(a) The Secretaries concerned may provide for the establishment of such military correctional facilities as are necessary for the confinement of offenders against chapter 47 of this title.

(b) The Secretary concerned shall—

(1) designate an officer for each armed force under his jurisdiction to administer military correctional facilities established under this chapter;

(2) provide for the education, training, rehabilitation, and welfare of offenders confined in a military correctional facility of his department; and

(3) provide for the organization and equipping of offenders selected for training with a view to their honorable restoration to duty or possible reenlistment.

(c) There shall be an officer in command of each major military correctional facility. Under regulations to be prescribed by the Secretary concerned, the officer in command shall have custody and control of offenders confined within the facility which he commands, and shall usefully employ those offenders as he considers best for their health and reformation, with a view to their restoration to duty, enlistment for future service, or return to civilian life as useful citizens.

(d) There may be made or repaired at each military correctional facility such supplies for the armed forces or other agencies of the United States as can properly and economically be made or repaired at such facilities.

(Added Pub. L. 90–377, §1, July 5, 1968, 82 Stat. 287; amended Pub. L. 96–513, title V, §511(27), Dec. 12, 1980, 94 Stat. 2922.)

AMENDMENTS

1980—Subsec. (d). Pub. L. 96–513 substituted ''at such facilities'' for ''as such facilities''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

OFFENSES AGAINST MINORS

Pub. L. 105–119, title I, §115(a)(8)(C), Nov. 26, 1997, 111 Stat. 2466, as amended by Pub. L. 109–248, title I, §141(i), July 27, 2006, 120 Stat. 604, provided that:

''(i) The Secretary of Defense shall specify categories of conduct punishable under the Uniform Code of Military Justice which are sex offenses as that term is defined in the Sex Offender Registration and Notification Act [42 U.S.C. 16901 et seq.], and such other conduct as the Secretary deems appropriate for inclusion for purposes of this subparagraph.

''(ii) In relation to persons sentenced by a court martial for conduct in the categories specified under clause (i), the Secretary shall prescribe procedures and implement a system to—

''(I) provide notice concerning the release from confinement or sentencing of such persons;

''(II) inform such persons concerning registration obligations; and

''(III) track and ensure compliance with registration requirements by such persons during any period of parole, probation, or other conditional release or supervision related to the offense.

''(iii) The procedures and requirements established by the Secretary under this subparagraph shall, to the maximum extent practicable, be consistent with those specified for Federal offenders under the Sex Offender Registration and Notification Act.

''(iv) If a person within the scope of this subparagraph is confined in a facility under the control of the Bureau of Prisons at the time of release, the Bureau of Prisons shall provide notice of release and inform the person concerning registration obligations under the procedures specified in section 4042(c) of title 18, United States Code.''

NOTIFICATION OF VICTIMS AND WITNESSES OF STATUS OF PRISONERS IN MILITARY CORRECTIONAL FACILITIES

Pub. L. 103–160, div. A, title V, § 552, Nov. 30, 1993, 107 Stat. 1662, directed the Secretary of Defense to prescribe procedures, not later than six months after Nov. 30, 1993, for notice of the status of offenders confined in military correctional facilities to be provided to victims and witnesses, to implement a centralized system for the provision of such notice not later than six months after such procedures had been prescribed, to notify Congress upon implementation of the centralized system of notice, and to submit to Congress a report after such system had been in operation for one year, and directed that the requirement to establish procedures and implement a centralized system of notice would expire 90 days after receipt of the report.

§ 952. Parole

(a) The Secretary concerned may provide a system of parole for offenders who are confined in military correctional facilities and who were at the time of commission of their offenses subject to the authority of that Secretary.

(b) In a case in which parole for an offender serving a sentence of confinement for life is denied, only the President or the Secretary concerned may grant the offender parole on appeal of that denial. The authority to grant parole on appeal in such a case may not be delegated.

(Added Pub. L. 90–377, § 1, July 5, 1968, 82 Stat. 287; amended Pub. L. 105–85, div. A, title V, § 582(a), Nov. 18, 1997, 111 Stat. 1760.)

AMENDMENTS

1997—Pub. L. 105–85 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1997 AMENDMENT

Section 582(b) of Pub. L. 105–85 provided that: ''Subsection (b) of section 952 of title 10, United States Code (as added by subsection (a)), shall apply only with respect to any decision to deny parole made after the date of the enactment of this Act [Nov. 18, 1997].''

§ 953. Remission or suspension of sentence; restoration to duty; reenlistment

For offenders who were at the time of commission of their offenses subject to his authority and who merit such action, the Secretary concerned shall establish—

(1) a system for the remission or suspension of the unexecuted part of the sentences of selected offenders;

(2) a system for the restoration to duty of such offenders who have had the unexecuted part of their sentences remitted or suspended and who have not been discharged; and

(3) a system for the enlistment of such offenders who have had the unexecuted part of their sentences remitted and who have been discharged.

(Added Pub. L. 90–377, § 1, July 5, 1968, 82 Stat. 287.)

§ 954. Voluntary extension; probation

The Secretary concerned may provide for persons who were subject to his authority at the time of commission of their offenses a system for retention of selected offenders beyond expiration of normal service obligation in order to voluntarily serve a period of probation with a view to honorable restoration to duty.

(Added Pub. L. 90–377, § 1, July 5, 1968, 82 Stat. 288; amended Pub. L. 105–85, div. A, title X, § 1073(a)(12), Nov. 18, 1997, 111 Stat. 1900.)

AMENDMENTS

1997—Pub. L. 105–85 substituted ''his authority'' for ''this authority''.

§ 955. Prisoners transferred to or from foreign countries

(a) When a treaty is in effect between the United States and a foreign country providing for the transfer of convicted offenders, the Secretary concerned may, with the concurrence of the Attorney General, transfer to such foreign country any offender against chapter 47 of this title. Such transfer shall be effected subject to the terms of such treaty and chapter 306 of title 18.

(b) Whenever the United States is party to an agreement on the status of forces under which the United States may request that it take custody of a prisoner belonging to its armed forces who is confined by order of a foreign court, the Secretary concerned may provide for the carrying out of the terms of such confinement in a military correctional facility of his department or in any penal or correctional institution under the control of the United States or which the United States may be allowed to use. Except as otherwise specified in such agreement, such person shall be treated as if he were an offender against chapter 47 of this title.

(Added Pub. L. 95–144, § 4, Oct. 28, 1977, 91 Stat. 1221; amended Pub. L. 96–513, title V, § 511(28), Dec. 12, 1980, 94 Stat. 2922.)

AMENDMENTS

1980—Subsec. (a). Pub. L. 96–513 substituted ''such'' for ''said'' in two places, ''Such'' for ''Said'', and struck out '', United States Code'' after ''18''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 956. Deserters, prisoners, members absent without leave: expenses and rewards

Funds appropriated to the Department of Defense may be used for the following purposes:

(1) Expenses for the apprehension and delivery of deserters, prisoners, and members absent without leave, including the payment of rewards, in an amount not to exceed $75, for the apprehension of any such person.

(2) Expenses of prisoners confined in nonmilitary facilities.

(3) Payment of a gratuity of not to exceed $25 to each prisoner upon release from confinement in a military or contract prison facility.

(4) The issue of authorized articles to prisoners and other persons in military custody.

(5) Under such regulations as the Secretary concerned may prescribe, expenses incident to the maintenance, pay, and allowances of prisoners of war, other persons in the custody of the Army, Navy, or Air Force whose status is determined by the Secretary concerned to be similar to prisoners of war, and persons detained in the custody of the Army, Navy, or

Air Force pursuant to Presidential proclamation.

(Added Pub. L. 98–525, title XIV, §1401(b)(1), Oct. 19, 1984, 98 Stat. 2614.)

PRIOR PROVISIONS

Provisions similar to those in pars. (1) to (5) of this section were contained in the following appropriation acts, with the exception of the provisions similar to par. (2) which first appeared in the act of July 1, 1943:

Oct. 12, 1984, Pub. L. 98–473, title I, §101(h)[title VIII, §8006], 98 Stat. 1904, 1923.

Dec. 8, 1983, Pub. L. 98–212, title VII, §§706, 709, 97 Stat. 1437, 1439.

Dec. 21, 1982, Pub. L. 97–377, title I, §101(c)[title VII, §§706, 709], 96 Stat. 1833, 1850, 1851.

Dec. 29, 1981, Pub. L. 97–114, title VII, §§706, 709, 95 Stat. 1578, 1579.

Dec. 15, 1980, Pub. L. 96–527, title VII, §§706, 709, 94 Stat. 3081.

Dec. 21, 1979, Pub. L. 96–154, title VII, §§706, 709, 93 Stat. 1152, 1153.

Oct. 13, 1978, Pub. L. 95–457, title VIII, §§806, 809, 92 Stat. 1243, 1244.

Sept. 21, 1977, Pub. L. 95–111, title VIII, §§805, 808, 91 Stat. 899, 900.

Sept. 22, 1976, Pub. L. 94–419, title VII, §§705, 708, 90 Stat. 1291, 1292.

Feb. 9, 1976, Pub. L. 94–212, title VII, §§705, 708, 90 Stat. 168, 169.

Oct. 8, 1974, Pub. L. 93–437, title VIII, §§805, 808, 88 Stat. 1224, 1225.

Jan. 2, 1974, Pub. L. 93–238, title VII, §§705, 708, 87 Stat. 1038, 1039.

Oct. 26, 1972, Pub. L. 92–570, title VII, §§705, 708, 86 Stat. 1196, 1197.

Dec. 18, 1971, Pub. L. 92–204, title VII, §§705, 708, 85 Stat. 727, 728.

Jan. 11, 1971, Pub. L. 91–668, title VIII, §§805, 808, 84 Stat. 2030, 2031.

Dec. 29, 1969, Pub. L. 91–171, title VI, §§605, 608, 83 Stat. 480.

Oct. 17, 1968, Pub. L. 90–580, title V, §§504, 507, 82 Stat. 1129, 1130.

Sept. 29, 1967, Pub. L. 90–96, title VI, §§604, 607, 81 Stat. 242.

Oct. 15, 1966, Pub. L. 89–687, title VI, §§604, 607, 80 Stat. 991.

Sept. 29, 1965, Pub. L. 89–213, title VI, §§604, 607, 79 Stat. 873, 874.

Aug. 19, 1964, Pub. L. 88–446, title V, §§504, 507, 78 Stat. 474, 475.

Oct. 17, 1963, Pub. L. 88–149, title V, §§504, 507, 77 Stat. 264.

Aug. 9, 1962, Pub. L. 87–577, title I, §101, title V, §§504, 507, 76 Stat. 318, 328.

Aug. 17, 1961, Pub. L. 87–144, title I, §101, title II, §201, title VI, §§604, 607, 75 Stat. 365–369, 375, 376.

July 7, 1960, Pub. L. 86–601, title I, §101, title II, §201, title V, §§504, 507, 74 Stat. 338–340, 342, 350.

Aug. 18, 1959, Pub. L. 86–166, title I, §101, title II, §201, title V, §§604, 607, 73 Stat. 366–368, 370, 378, 379.

Aug. 22, 1958, Pub. L. 85–724, title III, §301, title V, §501, title VI, §604, 72 Stat. 713, 714, 721, 722, 723.

Aug. 2, 1957, Pub. L. 85–117, title III, §301, title V, §501, title VI, §604, 71 Stat. 313, 314, 321, 323.

July 2, 1956, ch. 488, title III, §301, title V, §501, title VI, §604, 70 Stat. 456, 457, 464, 465, 467.

July 13, 1955, ch. 358, title III, §301, title V, §501, title VI, §606, 69 Stat. 303, 304, 312, 313, 315.

June 30, 1954, ch. 432, title IV, §401, title VI, §601, title VII, §706, 68 Stat. 338, 339, 347, 348, 350.

Aug. 1, 1953, ch. 305, title III, §301, title V, §501, title VI, §610, 67 Stat. 338, 339, 348, 350.

July 10, 1952, ch. 630, title III, §301, title V, §501, title VI, §612, 66 Stat. 519, 520, 530, 532.

Oct. 18, 1951, ch. 512, title III, §301, title V, §501, title VI, §612, 65 Stat. 426, 429, 443, 446.

Sept. 6, 1950, ch. 896, Ch. X, title III, §301, title V, §501, title VI, §614, 64 Stat. 732, 735, 750, 753.

Oct. 29, 1949, ch. 787, title III, §301, title V, §501, title VI, §616, 63 Stat. 990–992, 1015, 1020.

June 24, 1948, ch. 632, §§1, 11, 62 Stat. 653, 655, 669.

July 30, 1947, ch. 357, title I, §§1, 12, 61 Stat. 555, 557, 572.

July 16, 1946, ch. 583, §§1, 13, 60 Stat. 546–548, 565.

July 3, 1945, ch. 265, §§1, 15, 59 Stat. 388–390, 406.

June 28, 1944, ch. 303, §§1, 15, 58 Stat. 578, 580, 595.

July 1, 1943, ch. 185, §§1, 15, 57 Stat. 352, 354, 369.

July 2, 1942, ch. 477, §§1, 14, 56 Stat. 615, 617, 633.

Dec. 17, 1941, ch. 591, title I, §103, 55 Stat. 813.

June 30, 1941, ch. 262, §1, 55 Stat. 371, 373.

June 13, 1940, ch. 343, §1, 54 Stat. 357–359.

Apr. 26, 1939, ch. 88, §1, 53 Stat. 598, 600.

June 11, 1938, ch. 37, §1, 52 Stat. 648, 649.

July 1, 1937, ch. 423, §1, 50 Stat. 448, 450.

May 15, 1936, ch. 404, §1, title I, 49 Stat. 1284, 1286.

Apr. 9, 1935, ch. 54, §1, title I, 49 Stat. 127, 128.

Apr. 26, 1934, ch. 165, title I, 48 Stat. 619, 621.

Mar. 4, 1933, ch. 281, title I, 47 Stat. 1575, 1577.

July 14, 1932, ch. 482, title I, 47 Stat. 668, 670, 671.

Feb. 23, 1931, ch. 279, title I, 46 Stat. 1281–1284.

May 28, 1930, ch. 348, title I, 46 Stat. 436, 438.

Feb. 28, 1929, ch. 366, title I, 45 Stat. 1354, 1356.

Mar. 23, 1928, ch. 232, title I, 45 Stat. 330, 332.

Feb. 23, 1927, ch. 167, title I, 44 Stat. 1110, 1113.

Apr. 15, 1926, ch. 146, title I, 44 Stat. 259, 262.

Feb. 12, 1925, ch. 225, title I, 43 Stat. 900.

Provisions similar to those in par. (5) of this section were contained in Pub. L. 98–212, title VII, §706, Dec. 8, 1983, 97 Stat. 1437, which was set out as a note under section 138 of this title, prior to repeal by Pub. L. 98–525, §§1403(a)(1), eff. Oct. 1, 1985.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

CHAPTER 49—MISCELLANEOUS PROHIBITIONS AND PENALTIES

Sec.
971. Service credit: officers may not count service performed while serving as cadet or midshipman.
972. Members: effect of time lost.
973. Duties: officers on active duty; performance of civil functions restricted.
974. Military musical units and musicians: performance policies; restriction on performance in competition with local civilian musicians.
[975. Renumbered.]
976. Membership in military unions, organizing of military unions, and recognition of military unions prohibited.
[977. Repealed.]
978. Drug and alcohol abuse and dependency: testing of new entrants.
979. Prohibition on loan and grant assistance to persons convicted of certain crimes.
980. Limitation on use of humans as experimental subjects.
981. Limitation on number of enlisted aides.
982. Members: service on State and local juries.
983. Institutions of higher education that prevent ROTC access or military recruiting on campus: denial of grants and contracts from Department of Defense, Department of Education, and certain other departments and agencies.
985. Persons convicted of capital crimes; certain other persons: denial of specified burial-related benefits.
[986. Repealed.]
987. Terms of consumer credit extended to members and dependents: limitations.

AMENDMENTS

2009—Pub. L. 111–84, div. A, title V, §591(b), Oct. 28, 2009, 123 Stat. 2337, substituted ‘‘Military musical units

and musicians: performance policies; restriction on performance in competition with local civilian musicians'' for ''Uniform performance policies for military bands and other musical units'' in item 974.

2008—Pub. L. 110–181, div. A, title V, § 590(a)(2), title X, § 1072(b)(2), Jan. 28, 2008, 122 Stat. 138, 330, added item 974 and struck out item 986 ''Security clearances: limitations''.

Pub. L. 110–181, div. A, title X, § 1063(c)(6), Jan. 28, 2008, 122 Stat. 323, amended directory language of Pub. L. 109–364, § 670(b). See 2006 Amendment note below.

2006—Pub. L. 109–364, div. A, title VI, § 670(b), Oct. 17, 2006, 120 Stat. 2269, as amended by Pub. L. 110–181, div. A, title X, § 1063(c)(6), Jan. 28, 2008, 122 Stat. 323, added item 987.

Pub. L. 109–163, div. A, title VI, § 662(c)(2), Jan. 6, 2006, 119 Stat. 3315, substituted ''Persons convicted of capital crimes; certain other persons: denial of specified burial-related benefits'' for ''Persons convicted of capital crimes: denial of certain burial-related benefits'' in item 985.

2004—Pub. L. 108–375, div. A, title VI, § 651(f)(1), Oct. 28, 2004, 118 Stat. 1972, struck out item 977 ''Operation of commissary stores: assignment of active duty members generally prohibited''.

2001—Pub. L. 107–107, div. A, title X, § 1048(g)(2), Dec. 28, 2001, 115 Stat. 1228, amended directory language of Pub. L. 106–65. See 1999 Amendment note below.

2000—Pub. L. 106–398, § 1 [[div. A], title X, § 1071(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–276, added item 986.

1999—Pub. L. 106–65, div. A, title V, § 549(a)(2), Oct. 5, 1999, 113 Stat. 611, as amended by Pub. L. 107–107, div. A, title X, § 1048(g)(2), Dec. 28, 2001, 115 Stat. 1228, substituted ''Institutions of higher education that prevent ROTC access or military recruiting on campus: denial of grants and contracts from Department of Defense, Department of Education, and certain other departments and agencies'' for ''Institutions of higher education that prohibit Senior ROTC units: denial of Department of Defense grants and contracts'' in item 983.

1998—Pub. L. 105–261, div. A, title V, § 569(b), Oct. 17, 1998, 112 Stat. 2032, struck out item 974 ''Civilian employment: enlisted members''.

1997—Pub. L. 105–85, div. A, title X, § 1077(a)(2), Nov. 18, 1997, 111 Stat. 1915, added item 985.

1996—Pub. L. 104–201, div. A, title V, § 581(c)(3), Sept. 23, 1996, 110 Stat. 2538, struck out ''enlisted'' after ''count'' in item 971.

Pub. L. 104–106, div. A, title V, §§ 541(b), 561(c)(2), Feb. 10, 1996, 110 Stat. 316, 322, substituted ''Members: effect of time lost'' for ''Enlisted members: required to make up time lost'' in item 972 and added item 983.

1993—Pub. L. 103–160, div. A, title III, § 351(b), Nov. 30, 1993, 107 Stat. 1627, added item 977.

1989—Pub. L. 101–189, div. A, title XVI, § 1622(b)(3), Nov. 29, 1989, 103 Stat. 1604, struck out item 975 ''Prohibition on the sale of certain defense articles from the stocks of the Department of Defense''.

1988—Pub. L. 100–456, div. A, title V, § 521(a)(2), Sept. 29, 1988, 102 Stat. 1973, substituted ''Drug and alcohol abuse and dependency: testing of new entrants'' for ''Mandatory testing for drug, chemical, and alcohol abuse'' in item 978.

1987—Pub. L. 100–180, div. A, title V, § 513(a)(2), Dec. 4, 1987, 101 Stat. 1091, substituted ''Mandatory testing for drug, chemical, and alcohol abuse'' for ''Denial of entrance into the armed forces of persons dependent on drugs or alcohol'' in item 978.

1986—Pub. L. 99–661, div. A, title V, § 502(b), Nov. 14, 1986, 100 Stat. 3864, added item 982.

1984—Pub. L. 98–525, title XIV, § 1401(c)(2), Oct. 19, 1984, 98 Stat. 2615, added items 979 to 981.

1982—Pub. L. 97–306, title IV, § 408(c)(2), Oct. 14, 1982, 96 Stat. 1446, struck out item 977 ''Denial of certain benefits to persons who fail to complete at least two years of an original enlistment''.

Pub. L. 97–295, § 1(14)(B), Oct. 12, 1982, 96 Stat. 1290, added item 978.

1980—Pub. L. 96–513, title V, § 501(12), Dec. 12, 1980, 94 Stat. 2908, substituted ''officers on active duty'' for ''Regular officers'' in item 973.

Pub. L. 96–342, title X, § 1002(b), Sept. 8, 1980, 94 Stat. 1119, added item 977.

1979—Pub. L. 96–107, title VIII, § 821(b), Nov. 9, 1979, 93 Stat. 820, redesignated item 975 relating to membership in military unions as 976.

1978—Pub. L. 95–610, § 2(b), Nov. 8, 1978, 92 Stat. 3088, added item 975 relating to military unions.

Pub. L. 95–485, title VIII, § 815(b), Oct. 20, 1978, 92 Stat. 1626, added item 975 relating to sale of certain defense articles.

1968—Pub. L. 90–235, §§ 4(a)(5)(B), 6(a)(6)(B), Jan. 2, 1968, 81 Stat. 759, 762, added items 973 and 974.

1958—Pub. L. 85–861, § 1(20), Sept. 2, 1958, 72 Stat. 1442, added items 971 and 972.

§ 971. Service credit: officers may not count service performed while serving as cadet or midshipman

(a) PROHIBITION ON COUNTING ENLISTED SERVICE PERFORMED WHILE AT SERVICE ACADEMY OR IN NAVY RESERVE.—The period of service under an enlistment or period of obligated service while also performing service as a cadet or midshipman or serving as a midshipman in the Navy Reserve may not be counted in computing, for any purpose, the length of service of an officer of an armed force or an officer in the Commissioned Corps of the Public Health Service.

(b) PROHIBITION ON COUNTING SERVICE AS A CADET OR MIDSHIPMAN.—In computing length of service for any purpose, service as a cadet or midshipman may not be credited to any of the following officers:

(1) An officer of the Navy or Marine Corps.

(2) A commissioned officer of the Army or Air Force.

(3) An officer of the Coast Guard.

(4) An officer in the Commissioned Corps of the Public Health Service.

(c) SERVICE AS A CADET OR MIDSHIPMAN DEFINED.—In this section, the term ''service as a cadet or midshipman'' means—

(1) service as a cadet at the United States Military Academy, United States Air Force Academy, or United States Coast Guard Academy; or

(2) service as a midshipman at the United States Naval Academy.

(Added Pub. L. 85–861, § 1(20), Sept. 2, 1958, 72 Stat. 1442; amended Pub. L. 90–235, § 6(a) (1), Jan. 2, 1968, 81 Stat. 761; Pub. L. 98–557, § 17(a), Oct. 30, 1984, 98 Stat. 2867; Pub. L. 101–189, div. A, title VI, § 652(a)(1)(A), (2), Nov. 29, 1989, 103 Stat. 1461; Pub. L. 104–201, div. A, title V, § 581, Sept. 23, 1996, 110 Stat. 2537; Pub. L. 105–85, div. A, title X, § 1073(a)(13), Nov. 18, 1997, 111 Stat. 1900; Pub. L. 109–163, div. A, title V, § 515(b)(1)(D), (2), Jan. 6, 2006, 119 Stat. 3233, 3234.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
971	50:1414.	June 25, 1956, ch. 439, § 4, 70 Stat. 333.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–163 substituted ''NAVY RESERVE'' for ''NAVAL RESERVE'' in heading and ''Navy Reserve'' for ''Naval Reserve'' in text.

1997—Subsec. (b)(4). Pub. L. 105–85 substituted ''Commissioned Corps'' for ''commissioned corps''.

1996—Pub. L. 104–201, § 581(c)(3), struck out ''enlisted'' after ''count'' in section catchline.

Subsec. (a). Pub. L. 104–201, §581(a), (c)(2), inserted heading, substituted ''while also performing service as a cadet or midshipman or serving as a midshipman'' for ''while also serving as a cadet at the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy, or as a midshipman at the United States Naval Academy or'', and inserted before period at end ''or an officer in the Commissioned Corps of the Public Health Service''.

Subsec. (b). Pub. L. 104–201, §581(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''In computing length of service for any purpose—

''(1) no officer of the Navy or Marine Corps may be credited with service as a midshipman at the United States Naval Academy or as a cadet at the United States Military Academy, United States Air Force Academy, or United States Coast Guard Academy;

''(2) no commissioned officer of the Army or Air Force may be credited with service as a midshipman at the United States Naval Academy or as a cadet at the United States Military Academy, United States Air Force Academy, or United States Coast Guard Academy; and

''(3) no officer of the Coast Guard may be credited with service as a midshipman at the United States Naval Academy or as a cadet at the United States Military Academy, United States Air Force Academy, or United States Coast Guard Academy.''

Subsec. (c). Pub. L. 104–201, §581(c)(1), added subsec. (c).

1989—Subsec. (a). Pub. L. 101–189, §652(a)(1)(A), struck out '', under an appointment accepted after June 25, 1956,'' after ''Naval Reserve''.

Subsec. (b)(1). Pub. L. 101–189, §652(a)(2)(A), struck out '', if he was appointed as a midshipman or cadet after March 4, 1913'' after ''United States Coast Guard Academy''.

Subsec. (b)(2). Pub. L. 101–189, §652(a)(2)(B), struck out '', if he was appointed as a midshipman or cadet after August 24, 1912'' after ''United States Coast Guard Academy''.

1984—Subsec. (b)(3). Pub. L. 98–557 added par. (3).

1968—Pub. L. 90–235 designated existing provisions as subsec. (a) and added subsec. (b).

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.

APPLICATION OF SUBSECTION (a) TO SERVICE UNDER APPOINTMENT ACCEPTED BEFORE JUNE 26, 1956

Section 652(a)(1)(B) of Pub. L. 101–189 provided that: ''The limitation in section 971(a) of title 10, United States Code, shall not apply with respect to a period of service referred to in that section while also serving under an appointment as a cadet or midshipman accepted before June 26, 1956.''

§972. Members: effect of time lost

(a) ENLISTED MEMBERS REQUIRED TO MAKE UP TIME LOST.—An enlisted member of an armed force who—

(1) deserts;

(2) is absent from his organization, station, or duty for more than one day without proper authority, as determined by competent authority;

(3) is confined by military or civilian authorities for more than one day in connection with a trial, whether before, during, or after the trial; or

(4) is unable for more than one day, as determined by competent authority, to perform his duties because of intemperate use of drugs or alcoholic liquor, or because of disease or injury resulting from his misconduct;

is liable, after his return to full duty, to serve for a period that, when added to the period that he served before his absence from duty, amounts to the term for which he was enlisted or inducted.

(b) OFFICERS NOT ALLOWED SERVICE CREDIT FOR TIME LOST.—In the case of an officer of an armed force who after February 10, 1996—

(1) deserts;

(2) is absent from his organization, station, or duty for more than one day without proper authority, as determined by competent authority;

(3) is confined by military or civilian authorities for more than one day in connection with a trial, whether before, during, or after the trial; or

(4) is unable for more than one day, as determined by competent authority, to perform his duties because of intemperate use of drugs or alcoholic liquor, or because of disease or injury resulting from his misconduct;

the period of such desertion, absence, confinement, or inability to perform duties may not be counted in computing, for any purpose other than basic pay under section 205 of title 37, the officer's length of service.

(c) WAIVER OF RECOUPMENT OF TIME LOST FOR CONFINEMENT.—The Secretary concerned shall waive liability for a period of confinement in connection with a trial under subsection (a)(3), or exclusion of a period of confinement in connection with a trial under subsection (b)(3), in a case upon the occurrence of any of the following events:

(1) For each charge—

(A) the charge is dismissed before or during trial in a final disposition of the charge; or

(B) the trial results in an acquittal of the charge.

(2) For each charge resulting in a conviction in such trial—

(A) the conviction is set aside in a final disposition of such charge, other than in a grant of clemency; or

(B) a judgment of acquittal or a dismissal is entered upon a reversal of the conviction on appeal.

(Added Pub. L. 85–861, §1(20), Sept. 2, 1958, 72 Stat. 1443; amended Pub. L. 104–106, div. A, title V, §561(a)–(c)(1), Feb. 10, 1996, 110 Stat. 321, 322; Pub. L. 105–85, div. A, title X, §1073(a)(14), Nov. 18, 1997, 111 Stat. 1900; Pub. L. 108–375, div. A, title V, §572, Oct. 28, 2004, 118 Stat. 1921.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
972	10 App.:629a. 34 App.:183b.	July 24, 1956, ch. 692, §1, 70 Stat. 631.

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–375 added subsec. (c).

1997—Subsec. (b). Pub. L. 105–85 substituted ''February 10, 1996'' for ''the date of the enactment of the National Defense Authorization Act for Fiscal Year 1996'' in introductory provisions.

1996—Pub. L. 104–106, § 561(c)(1), substituted ''Members: effect of time lost'' for ''Enlisted members: required to make up time lost'' as section catchline.

Pub. L. 104–106, § 561(a), designated existing provisions as subsec. (a), inserted heading, added par. (3), redesignated par. (5) as (4), struck out former pars. (3) and (4), and added subsec. (b). Prior to amendment, subsec. (a)(3) and (4) read as follows:

''(3) is confined for more than one day while awaiting trial and disposition of his case, and whose conviction has become final;

''(4) is confined for more than one day under a sentence that has become final; or''.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 561(e) of Pub. L. 104–106 provided that: ''The amendments made by this section [enacting section 6328 of this title and amending this section and sections 1405, 3925, 3926, 8925, and 8926 of this title] shall take effect on the date of the enactment of this Act [Feb. 10, 1996] and shall apply to any period of time covered by section 972 of title 10, United States Code, that occurs after that date.''

§ 973. Duties: officers on active duty; performance of civil functions restricted

(a) No officer of an armed force on active duty may accept employment if that employment requires him to be separated from his organization, branch, or unit, or interferes with the performance of his military duties.

(b)(1) This subsection applies—

(A) to a regular officer of an armed force on the active-duty list (and a regular officer of the Coast Guard on the active duty promotion list);

(B) to a retired regular officer of an armed force serving on active duty under a call or order to active duty for a period in excess of 270 days; and

(C) to a reserve officer of an armed force serving on active duty under a call or order to active duty for a period in excess of 270 days.

(2)(A) Except as otherwise authorized by law, an officer to whom this subsection applies may not hold, or exercise the functions of, a civil office in the Government of the United States—

(i) that is an elective office;

(ii) that requires an appointment by the President by and with the advice and consent of the Senate; or

(iii) that is a position in the Executive Schedule under sections 5312 through 5317 of title 5.

(B) An officer to whom this subsection applies may hold or exercise the functions of a civil office in the Government of the United States that is not described in subparagraph (A) when assigned or detailed to that office or to perform those functions.

(3) Except as otherwise authorized by law, an officer to whom this subsection applies by reason of subparagraph (A) of paragraph (1) may not hold or exercise, by election or appointment, the functions of a civil office in the government of a State (or of any political subdivision of a State).

(4)(A) An officer to whom this subsection applies by reason of subparagraph (B) or (C) of paragraph (1) may not hold, by election or appointment, a civil office in the government of a State (or of any political subdivision of a State) if the holding of such office while this subsection so applies to the officer—

(i) is prohibited under the laws of that State; or

(ii) as determined by the Secretary of Defense or by the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, interferes with the performance of the officer's duties as an officer of the armed forces.

(B) Except as otherwise authorized by law, while an officer referred to in subparagraph (A) is serving on active duty, the officer may not exercise the functions of a civil office held by the officer as described in that subparagraph.

(5) Nothing in this subsection shall be construed to invalidate any action undertaken by an officer in furtherance of assigned official duties.

(6) In this subsection, the term ''State'' includes the District of Columbia and a territory, possession, or commonwealth of the United States.

(c) An officer to whom subsection (b) applies may seek and hold nonpartisan civil office on an independent school board that is located exclusively on a military reservation.

(d) The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating in the Navy, shall prescribe regulations to implement this section.

(Added Pub. L. 90–235, § 4(a)(5)(A), Jan. 2, 1968, 81 Stat. 759; amended Pub. L. 96–513, title I, § 116, Dec. 12, 1980, 94 Stat. 2878; Pub. L. 98–94, title X, § 1002(a), Sept. 24, 1983, 97 Stat. 655; Pub. L. 101–510, div. A, title V, § 556, Nov. 5, 1990, 104 Stat. 1570; Pub. L. 106–65, div. A, title V, § 506, Oct. 5, 1999, 113 Stat. 591; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 108–136, div. A, title V, § 545, Nov. 24, 2003, 117 Stat. 1479.)

AMENDMENTS

2003—Subsec. (b)(3). Pub. L. 108–136, § 545(2), inserted ''by reason of subparagraph (A) of paragraph (1)'' after ''applies'' and substituted ''(or of any political subdivision of a State)'' for '', the District of Columbia, or a territory, possession, or commonwealth of the United States (or of any political subdivision of any such government)''.

Subsec. (b)(4), (5). Pub. L. 108–136, § 545(1), (3), added par. (4) and redesignated former par. (4) as (5).

Subsec. (b)(6). Pub. L. 108–136, § 545(4), added par. (6).

2002—Subsec. (d). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1999—Subsec. (b)(1)(B), (C). Pub. L. 106–65 substituted ''270 days'' for ''180 days''.

1990—Subsecs. (c), (d). Pub. L. 101–510 added subsec. (c) and redesignated former subsec. (c) as (d).

1983—Subsec. (b). Pub. L. 98–94 amended subsec. (b) generally. Prior to amendment subsec. (b) provided that, except as otherwise provided by law, no regular officer of an armed force on active duty could hold a civil office by election or appointment, whether under the United States, a Territory or possession, or a State, and that acceptance of such a civil office or the exercise of its functions by such an officer terminated his military appointment.

Subsec. (c). Pub. L. 98–94 added subsec. (c).

1980—Pub. L. 96–513, §116(c), substituted ''officers on active duty'' for ''regular officers'' in section catchline.

Subsec. (a). Pub. L. 96–513, §116(a), substituted ''of an armed force on active duty'' for ''on the active list of the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard''.

Subsec. (b). Pub. L. 96–513, §116(b), substituted ''regular officer of an armed force on active duty'' for ''on the active list of the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

CONSTRUCTION AND APPLICABILITY OF SECTION 973(b)

Section 1002(b), (c) of Pub. L. 98–94 provided that:

''(b) Nothing in section 973(b) of title 10, United States Code, as in effect before the date of the enactment of this Act [Sept. 24, 1983], shall be construed—

''(1) to invalidate any action undertaken by an officer of an Armed Force in furtherance of assigned official duties; or

''(2) to have terminated the military appointment of an officer of an Armed Force by reason of the acceptance of a civil office, or the exercise of its functions, by that officer in furtherance of assigned official duties.

''(c) Nothing in section 973(b)(3) of title 10, United States Code, as added by subsection (a), shall preclude a Reserve office to whom such section applies from holding or exercising the functions of an office described in such section for the term to which the Reserve officer was elected or appointed if, before the date of the enactment of this Act [Sept. 24, 1983], the Reserve officer accepted appointment or election to that office in accordance with the laws and regulations in effect at the time of such appointment or election.''

§974. Military musical units and musicians: performance policies; restriction on performance in competition with local civilian musicians

(a) MILITARY MUSICIANS PERFORMING IN AN OFFICIAL CAPACITY.—(1) A military musical unit, and a member of the armed forces who is a member of such a unit performing in an official capacity, may not engage in the performance of music in competition with local civilian musicians.

(2) For purposes of paragraph (1), the following shall, except as provided in paragraph (3), be included among the performances that are considered to be a performance of music in competition with local civilian musicians:

(A) A performance that is more than incidental to an event that—

(i) is not supported, in whole or in part, by United States Government funds; and

(ii) is not free to the public.

(B) A performance of background, dinner, dance, or other social music at an event that—

(i) is not supported, in whole or in part, by United States Government funds; and

(ii) is held at a location not on a military installation.

(3) For purposes of paragraph (1), the following shall not be considered to be a performance of music in competition with local civilian musicians:

(A) A performance (including background, dinner, dance, or other social music) at an official United States Government event that is supported, in whole or in part, by United States Government funds.

(B) A performance at a concert, parade, or other event, that—

(i) is a patriotic event or a celebration of a national holiday; and

(ii) is free to the public.

(C) A performance that is incidental to an event that—

(i) is not supported, in whole or in part, by United States Government funds; or

(ii) is not free to the public.

(D) A performance (including background, dinner, dance, or other social music) at—

(i) an event that is sponsored by a military welfare society, as defined in section 2566 of this title;

(ii) an event that is a traditional military event intended to foster the morale and welfare of members of the armed forces and their families; or

(iii) an event that is specifically for the benefit or recognition of members of the armed forces, their family members, veterans, civilian employees of the Department of Defense, or former civilian employees of the Department of Defense, to the extent provided in regulations prescribed by the Secretary of Defense.

(E) A performance (including background, dinner, dance, or other social music)—

(i) to uphold the standing and prestige of the United States with dignitaries and distinguished or prominent persons or groups of the United States or another nation; or

(ii) in support of fostering and sustaining a cooperative relationship with another nation.

(b) PROHIBITION OF MILITARY MUSICIANS ACCEPTING ADDITIONAL REMUNERATION FOR OFFICIAL PERFORMANCES.—A military musical unit, and a member of the armed forces who is a member of such a unit performing in an official capacity, may not receive remuneration for an official performance, other than applicable military pay and allowances.

(c) RECORDINGS.—(1) When authorized under regulations prescribed by the Secretary of Defense for purposes of this section, a military musical unit may produce recordings for distribution to the public, at a cost not to exceed expenses of production and distribution.

(2) Amounts received in payment for a recording distributed to the public under this subsection shall be credited to the appropriation or account providing the funds for the production of the recording. Any amount so credited shall be merged with amounts in the appropriation or account to which credited, and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such appropriation or account.

(d) PERFORMANCES AT FOREIGN LOCATIONS.—Subsection (a) does not apply to a performance outside the United States, its commonwealths, or its possessions.

(e) MILITARY MUSICAL UNIT DEFINED.—In this section, the term ''military musical unit'' means a band, ensemble, chorus, or similar musical unit of the armed forces.

(Added Pub. L. 110–181, div. A, title V, § 590(a)(1), Jan. 28, 2008, 122 Stat. 136; amended Pub. L. 111–84, div. A, title V, § 591(a), Oct. 28, 2009, 123 Stat. 2335.)

PRIOR PROVISIONS

A prior section 974, added Pub. L. 90–235, § 6(a)(6)(A), Jan. 2, 1968, 81 Stat. 762; amended Pub. L. 101–510, div. A, title III, § 327(e), Nov. 5, 1990, 104 Stat. 1532, related to civilian employment by enlisted members, prior to repeal by Pub. L. 105–261, div. A, title V, § 569(a), Oct. 17, 1998, 112 Stat. 2032.

AMENDMENTS

2009—Pub. L. 111–84 amended section generally. Prior to amendment, section related to uniform performance policies for military bands and other musical units.

[§ 975. Renumbered § 2390]

§ 976. Membership in military unions, organizing of military unions, and recognition of military unions prohibited

(a) In this section:

(1) The term ''member of the armed forces'' means (A) a member of the armed forces who is serving on active duty, (B) a member of the National Guard who is serving on full-time National Guard duty, or (C) a member of a Reserve component while performing inactive-duty training.

(2) The term ''military labor organization'' means any organization that engages in or attempts to engage in—

(A) negotiating or bargaining with any civilian officer or employee, or with any member of the armed forces, on behalf of members of the armed forces, concerning the terms or conditions of military service of such members in the armed forces;

(B) representing individual members of the armed forces before any civilian officer or employee, or any member of the armed forces, in connection with any grievance or complaint of any such member arising out of the terms or conditions of military service of such member in the armed forces; or

(C) striking, picketing, marching, demonstrating, or any other similar form of concerted action which is directed against the Government of the United States and which is intended to induce any civilian officer or employee, or any member of the armed forces, to—

(i) negotiate or bargain with any person concerning the terms or conditions of military service of any member of the armed forces,

(ii) recognize any organization as a representative of individual members of the armed forces in connection with complaints and grievances of such members arising out of the terms or conditions of military service of such members in the armed forces, or

(iii) make any change with respect to the terms or conditions of military service of individual members of the armed forces.

(3) The term ''civilian officer or employee'' means an employee, as such term is defined in section 2105 of title 5.

(b) It shall be unlawful for a member of the armed forces, knowing of the activities or objectives of a particular military labor organization—

(1) to join or maintain membership in such organization; or

(2) to attempt to enroll any other member of the armed forces as a member of such organization.

(c) It shall be unlawful for any person—

(1) to enroll in a military labor organization any member of the armed forces or to solicit or accept dues or fees for such an organization from any member of the armed forces; or

(2) to negotiate or bargain, or attempt through any coercive act to negotiate or bargain, with any civilian officer or employee, or any member of the armed forces, on behalf of members of the armed forces, concerning the terms or conditions of service of such members;

(3) to organize or attempt to organize, or participate in, any strike, picketing, march, demonstration, or other similar form of concerted action involving members of the armed forces that is directed against the Government of the United States and that is intended to induce any civilian officer or employee, or any member of the armed forces, to—

(A) negotiate or bargain with any person concerning the terms or conditions of service of any member of the armed forces,

(B) recognize any military labor organization as a representative of individual members of the armed forces in connection with any complaint or grievance of any such member arising out of the terms or conditions of service of such member in the armed forces, or

(C) make any change with respect to the terms or conditions of service in the armed forces of individual members of the armed forces; or

(4) to use any military installation, facility, reservation, vessel, or other property of the United States for any meeting, march, picketing, demonstration, or other similar activity for the purpose of engaging in any activity prohibited by this subsection or by subsection (b) or (d).

(d) It shall be unlawful for any military labor organization to represent, or attempt to represent, any member of the armed forces before any civilian officer or employee, or any member of the armed forces, in connection with any grievance or complaint of any such member arising out of the terms or conditions of service of such member in the armed forces.

(e) No member of the armed forces, and no civilian officer or employee, may—

(1) negotiate or bargain on behalf of the United States concerning the terms or condi-

tions of military service of members of the armed forces with any person who represents or purports to represent members of the armed forces, or

(2) permit or authorize the use of any military installation, facility, reservation, vessel, or other property of the United States for any meeting, march, picketing, demonstration, or other similar activity which is for the purpose of engaging in any activity prohibited by subsection (b), (c), or (d).

Nothing in this subsection shall prevent commanders or supervisors from giving consideration to the views of any member of the armed forces presented individually or as a result of participation on command-sponsored or authorized advisory councils, committees, or organizations.

(f) Whoever violates subsection (b), (c), or (d) shall be fined under title 18 or imprisoned not more than 5 years, or both, except that, in the case of an organization (as defined in section 18 of such title), the fine shall not be less than $25,000.

(g) Nothing in this section shall limit the right of any member of the armed forces—

(1) to join or maintain membership in any organization or association not constituting a ''military labor organization'' as defined in subsection (a)(2) of this section;

(2) to present complaints or grievances concerning the terms or conditions of the service of such member in the armed forces in accordance with established military procedures;

(3) to seek or receive information or counseling from any source;

(4) to be represented by counsel in any legal or quasi-legal proceeding, in accordance with applicable laws and regulations;

(5) to petition the Congress for redress of grievances; or

(6) to take such other administrative action to seek such administrative or judicial relief, as is authorized by applicable laws and regulations.

(Added Pub. L. 95–610, §2(a), Nov. 8, 1978, 92 Stat. 3085, §975; renumbered §976, Pub. L. 96–107, title VIII, §821(a), Nov. 9, 1979, 93 Stat. 820; amended Pub. L. 98–525, title IV, §414(a)(6), Oct. 19, 1984, 98 Stat. 2519; Pub. L. 99–661, div. A, title XIII, §1343(a)(2), Nov. 14, 1986, 100 Stat. 3992; Pub. L. 100–26, §7(k)(2), Apr. 21, 1987, 101 Stat. 284; Pub. L. 105–85, div. A, title X, §1073(a)(15), Nov. 18, 1997, 111 Stat. 1900.)

AMENDMENTS

1997—Subsec. (f). Pub. L. 105–85 substituted ''shall be fined under title 18 or imprisoned not more than 5 years, or both, except that, in the case of an organization (as defined in section 18 of such title), the fine shall not be less than $25,000.'' for ''shall, in the case of an individual, be fined not more than $10,000 or imprisoned not more than five years, or both, and in the case of an organization or association, be fined not less than $25,000 and not more than $250,000.''

1987—Subsec. (a)(1) to (3). Pub. L. 100–26 inserted ''The term'' after each par. designation and struck out uppercase letter of first word after first quotation marks in each paragraph and substituted lowercase letter.

1986—Subsec. (a)(1). Pub. L. 99–661 struck out the second of two commas before ''(B)''.

1984—Subsec. (a)(1). Pub. L. 98–525 added cl. (B) and redesignated existing cl. (B) as (C).

CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE

Section 1 of Pub. L. 95–610 provided that:

''(a) The Congress makes the following findings:

''(1) Members of the armed forces of the United States must be prepared to fight and, if necessary, to die to protect the welfare, security, and liberty of the United States and of their fellow citizens.

''(2) Discipline and prompt obedience to lawful orders of superior officers are essential and time-honored elements of the American military tradition and have been reinforced from the earliest articles of war by laws and regulations prohibiting conduct detrimental to the military chain of command and lawful military authority.

''(3) The processes of conventional collective bargaining and labor-management negotiation cannot and should not be applied to the relationships between members of the armed forces and their military and civilian superiors.

''(4) Strikes, slowdowns, picketing, and other traditional forms of job action have no place in the armed forces.

''(5) Unionization of the armed forces would be incompatible with the military chain of command, would undermine the role, authority, and position of the commander, and would impair the morale and readiness of the armed forces.

''(6) The circumstances which could constitute a threat to the ability of the armed forces to perform their mission are not comparable to the circumstances which could constitute a threat to the ability of Federal civilian agencies to perform their functions and should be viewed in light of the need for effective performance of duty by each member of the armed forces.

''(b) The purpose of this Act [enacting this section] is to promote the readiness of the armed forces to defend the United States.''

[§977. Repealed. Pub. L. 108–375, div. A, title VI, §651(e)(1), Oct. 28, 2004, 118 Stat. 1972]

Section, added Pub. L. 103–160, div. A, title III, §351(a), Nov. 30, 1993, 107 Stat. 1626; amended Pub. L. 105–85, div. A, title X, §1073(a)(16), Nov. 18, 1997, 111 Stat. 1901; Pub. L. 106–65, div. A, title X, §1066(a)(6), Oct. 5, 1999, 113 Stat. 770, related to prohibition of assignment of active duty members to operation of commissary stores.

A prior section, added Pub. L. 96–342, title X, §1002(a), Sept. 8, 1980, 94 Stat. 1119; amended Pub. L. 97–22, §11(a)(1), July 10, 1981, 95 Stat. 137, provided that no one who originally enlisted after Sept. 7, 1980, in a regular armed services component and failed to serve at least 24 months of such enlistment would be eligible for Federal benefits otherwise receivable because of active service under such enlistment, except that such exclusion was not applicable to one discharged under section 1173 of chapter 61 of this title or to one later proved to be suffering from a disability resulting from an injury or disease incurred during enlistment, prior to repeal by Pub. L. 97–306, title IV, §408(c)(1), Oct. 14, 1982, 96 Stat. 1446. See section 5303A of Title 38, Veterans' Benefits, and provisions set out as notes under that section.

§978. Drug and alcohol abuse and dependency: testing of new entrants

(a)(1) The Secretary concerned shall require that, except as provided under paragraph (2), each person applying for an original enlistment or appointment in the armed forces shall be required, before becoming a member of the armed forces, to—

(A) undergo testing (by practicable, scientifically supported means) for drug and alcohol use; and

(B) be evaluated for drug and alcohol dependency.

(2) The Secretary concerned may provide that, in lieu of undergoing the testing and evaluation described in paragraph (1) before becoming a member of the armed forces, a member of the armed forces under the Secretary's jurisdiction may be administered that testing and evaluation after the member's initial entry on active duty. In any such case, the testing and evaluation shall be carried out within 72 hours of the member's initial entry on active duty.

(3) The Secretary concerned shall require an applicant for appointment as a cadet or midshipman to undergo the testing and evaluation described in paragraph (1) within 72 hours of such appointment. The Secretary concerned shall require a person to whom a commission is offered under section 2106 of this title following completion of the program of advanced training under the Reserve Officers' Training Corps program to undergo such testing and evaluation before such an appointment is executed.

(b) A person who refuses to consent to testing and evaluation required by subsection (a) may not (unless that person subsequently consents to such testing and evaluation)—

(1) be accepted for an original enlistment in the armed forces or given an original appointment as an officer in the armed forces; or

(2) if such person is already a member of the armed forces, be retained in the armed forces.

An original appointment of any such person as an officer shall be terminated.

(c)(1) A person determined, as the result of testing conducted under subsection (a)(1), to be dependent on drugs or alcohol shall be denied entrance into the armed forces.

(2) The enlistment or appointment of a person who is determined, as a result of an evaluation conducted under subsection (a)(2), to be dependent on drugs or alcohol at the time of such enlistment or appointment shall be void.

(3) A person who is denied entrance into the armed forces under paragraph (1), or whose enlistment or appointment is voided under paragraph (2), shall be referred to a civilian treatment facility.

(4) The Secretary concerned may place on excess leave any member of the armed forces whose test results under subsection (a)(2) are positive for drug or alcohol use. The Secretary may continue such member's status on excess leave pending disposition of the member's case and processing for administrative separation.

(d) The testing and evaluation required by subsection (a) shall be carried out under regulations prescribed by the Secretary of Defense in consultation with the Secretary of Homeland Security. Those regulations shall apply uniformly throughout the armed forces.

(e) In time of war, or time of emergency declared by Congress or the President, the President may suspend the provisions of subsection (a).

(Added Pub. L. 97–295, § 1(14)(A), Oct. 12, 1982, 96 Stat. 1289; amended Pub. L. 100–180, div. A, title V, § 513(a)(1), Dec. 4, 1987, 101 Stat. 1091; Pub. L. 100–456, div. A, title V, § 521(a)(1), Sept. 29, 1988, 102 Stat. 1972; Pub. L. 101–189, div. A, title V, § 513(a)–(c), Nov. 29, 1989, 103 Stat. 1440; Pub. L. 101–510, div. A, title XIV, § 1484(k)(4), Nov. 5, 1990, 104 Stat. 1719; Pub. L. 103–160, div. A, title V, § 572, Nov. 30, 1993, 107 Stat. 1673; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
978	10:1071 (note).	Sept. 28, 1971, Pub. L. 92–129, § 501(a)(2), (b), 85 Stat. 361.

The word ''regulations'' is added for consistency. The word ''persons'' is omitted as surplus. The word ''person'' is substituted for ''individuals'' for consistency. The text of subsection (b) is omitted as executed.

AMENDMENTS

2002—Subsec. (d). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1993—Subsec. (a)(3). Pub. L. 103–160 substituted ''within 72 hours of such appointment'' for ''during the physical examination given the applicant before such appointment'' and ''before such an appointment is executed'' for ''during the precommissioning physical examination given such person''.

1990—Subsec. (c)(3). Pub. L. 101–510 struck out ''a'' before ''whose enlistment''.

1989—Subsec. (a)(1). Pub. L. 101–189, § 513(a)(2), added par. (1) and struck out former par. (1) which read as follows: ''Except as provided in paragraph (2), the Secretary concerned shall require each member of the armed forces under the Secretary's jurisdiction, within 72 hours after the member's initial entry on active duty after enlistment or appointment, to—

''(A) undergo testing (by practicable, scientifically supported means) for drug and alcohol use; and

''(B) be evaluated for drug and alcohol dependency.''

Subsec. (a)(2), (3). Pub. L. 101–189, § 513(a), added par. (2) and redesignated former par. (2) as (3).

Subsec. (b). Pub. L. 101–189, § 513(b)(1), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''A person who refuses to consent to testing and evaluation required by subsection (a) may not be retained in the armed forces, and any original appointment of such person as an officer shall be terminated, unless that person consents to such testing and evaluation.''

Subsec. (c)(1). Pub. L. 101–189, § 513(b)(2)(B), added par. (1). Former par. (1) redesignated (2).

Subsec. (c)(2). Pub. L. 101–189, § 513(b)(2)(A), (C), redesignated par. (1) as (2) and substituted ''subsection (a)(2)'' for ''subsection (a)(1)(B)''. Former par. (2) redesignated (3).

Subsec. (c)(3). Pub. L. 101–189, § 513(b)(2)(A), (D), redesignated par. (2) as (3), inserted ''who is denied entrance into the armed forces under paragraph (1), or a'' after ''A person'', and substituted ''paragraph (2),'' for ''paragraph (1)''.

Subsec. (c)(4). Pub. L. 101–189, § 513(c), added par. (4).

1988—Pub. L. 100–456 substituted ''Drug and alcohol abuse and dependency: testing of new entrants'' for ''Mandatory testing for drug, chemical, and alcohol abuse'' in section catchline, and amended text generally. Prior to amendment, text read as follows:

''(a) Before a person becomes a member of the armed forces, such person shall be required to undergo testing for drug, chemical, and alcohol use and dependency.

''(b) A person who refuses to consent to testing required by subsection (a) may not be accepted for an original enlistment in the armed forces or given an original appointment as an officer in the armed forces unless that person consents to such testing.

''(c) A person determined, as the result of testing conducted under subsection (a), to be dependent on drugs, chemicals, or alcohol shall be—

''(1) denied entrance into the armed forces; and

''(2) referred to a civilian treatment facility.

''(d) The testing required by subsection (a) shall be carried out under regulations prescribed by the Secretary of Defense in consultation with the Secretary of Transportation. Those regulations shall apply uniformly throughout the armed forces.''

1987—Pub. L. 100–180 substituted ''Mandatory testing for drug, chemical, and alcohol abuse'' for ''Denial of entrance into the armed forces of persons dependent on drugs or alcohol'' in section catchline, and amended text generally, revising and restating as subsecs. (a) to (d) provisions formerly contained in subsecs. (a) and (b).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 513(d) of Pub. L. 101–189 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall take effect as of October 1, 1989.''

REGULATIONS; IMPLEMENTATION OF PROGRAM

Section 521(b), (c) of Pub. L. 100–456 provided that:

''(b) REGULATIONS.—The Secretary of Defense shall prescribe regulations for the implementation of section 978 of title 10, United States Code, as amended by subsection (a), not later than 60 days after the date of the enactment of this Act [Sept. 29, 1988].

''(c) EFFECTIVE DATE.—The testing and evaluation program prescribed by that section shall be implemented not later than October 1, 1989.''

IMPLEMENTATION

Section 513(b) of Pub. L. 100–180, as amended by Pub. L. 100–456, div. A, title V, §521(d), Sept. 29, 1988, 102 Stat. 1973, provided that:

''(1) The Secretary of Defense shall prescribe regulations for the implementation of section 978 of title 10, United States Code, as amended by subsection (a), not later than 45 days after the date of the enactment of this Act [Dec. 4, 1987].

''(2) [Repealed. Pub. L. 100–456, div. A, title V, §521(d), Sept. 29, 1988, 102 Stat. 1973].''

§979. Prohibition on loan and grant assistance to persons convicted of certain crimes

Funds appropriated to the Department of Defense may not be used to provide a loan, a guarantee of a loan, or a grant to any person who has been convicted by a court of general jurisdiction of any crime which involves the use of (or assisting others in the use of) force, trespass, or the seizure of property under the control of an institution of higher education to prevent officials or students of the institution from engaging in their duties or pursuing their studies.

(Added Pub. L. 98–525, title XIV, §1401(c)(1), Oct. 19, 1984, 98 Stat. 2615.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following appropriation acts:

Pub. L. 98–473, title I, §101(h)[title VIII, §8027], Oct. 12, 1984, 98 Stat. 1904, 1928.

Pub. L. 98–212, title VII, §732, Dec. 8, 1983, 97 Stat. 1444.

Pub. L. 97–377, title I, §101(c)[title VII, §735], Dec. 21, 1982, 96 Stat. 1833, 1856.

Pub. L. 97–114, title VII, §736, Dec. 29, 1981, 95 Stat. 1585.

Pub. L. 96–527, title VII, §737, Dec. 15, 1980, 94 Stat. 3087.

Pub. L. 96–154, title VII, §739, Dec. 21, 1979, 93 Stat. 1159.

Pub. L. 95–457, title VIII, §839, Oct. 13, 1978, 92 Stat. 1250.

Pub. L. 95–111, title VIII, §838, Sept. 21, 1977, 91 Stat. 906.

Pub. L. 94–419, title VII, §737, Sept. 22, 1976, 90 Stat. 1297.

Pub. L. 94–212, title VII, §737, Feb. 9, 1976, 90 Stat. 175.

Pub. L. 93–437, title VIII, §838, Oct. 8, 1974, 88 Stat. 1231.

Pub. L. 93–238, title VII, §740, Jan. 2, 1974, 87 Stat. 1045.

Pub. L. 92–570, title VII, §740, Oct. 26, 1972, 86 Stat. 1203.

Pub. L. 92–204, title VII, §741, Dec. 18, 1971, 85 Stat. 734.

Pub. L. 91–668, title VIII, §841, Jan. 11, 1971, 84 Stat. 2037.

Pub. L. 91–171, title VI, §641, Dec. 29, 1969, 83 Stat. 486.

Pub. L. 90–580, title V, §540, Oct. 17, 1968, 82 Stat. 1136.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

§980. Limitation on use of humans as experimental subjects

(a) Funds appropriated to the Department of Defense may not be used for research involving a human being as an experimental subject unless—

(1) the informed consent of the subject is obtained in advance; or

(2) in the case of research intended to be beneficial to the subject, the informed consent of the subject or a legal representative of the subject is obtained in advance.

(b) The Secretary of Defense may waive the prohibition in this section with respect to a specific research project to advance the development of a medical product necessary to the armed forces if the research project may directly benefit the subject and is carried out in accordance with all other applicable laws.

(Added Pub. L. 98–525, title XIV, §1401(c)(1), Oct. 19, 1984, 98 Stat. 2615; amended Pub. L. 107–107, div. A, title VII, §733, Dec. 28, 2001, 115 Stat. 1170.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following appropriation acts:

Pub. L. 98–473, title I, §101(h)[title VIII, §8029], Oct. 12, 1984, 98 Stat. 1904, 1929.

Pub. L. 98–212, title VII, §734, Dec. 8, 1983, 97 Stat. 1444.

Pub. L. 97–377, title I, §101(c)[title VII, §737], Dec. 21, 1982, 96 Stat. 1833, 1857.

Pub. L. 97–114, title VII, §738, Dec. 29, 1981, 95 Stat. 1585.

Pub. L. 96–527, title VII, §739, Dec. 15, 1980, 94 Stat. 3088.

Pub. L. 96–154, title VII, §741, Dec. 21, 1979, 93 Stat. 1159.

Pub. L. 95–457, title VIII, §841, Oct. 13, 1978, 92 Stat. 1251.

Pub. L. 95–111, title VIII, §840, Sept. 21, 1977, 91 Stat. 906.

Pub. L. 94–419, title VII, §739, Sept. 22, 1976, 90 Stat. 1297.

Pub. L. 94–212, title VII, §740, Feb. 9, 1976, 90 Stat. 175.

Pub. L. 93–437, title VIII, §841, Oct. 8, 1974, 88 Stat. 1231.

Pub. L. 93–238, title VII, §743, Jan. 2, 1974, 87 Stat. 1045.

Pub. L. 92–570, title VII, § 745, Oct. 26, 1972, 86 Stat. 1203.

AMENDMENTS

2001—Pub. L. 107–107 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

§ 981. Limitation on number of enlisted aides

(a) Subject to subsection (b), the total number of enlisted members that may be assigned or otherwise detailed to duty as enlisted aides on the personal staffs of officers of the Army, Navy, Marine Corps, Air Force, and Coast Guard (when operating as a service of the Navy) during a fiscal year is the number equal to the sum of (1) four times the number of officers serving on active duty at the end of the preceding fiscal year in the grade of general or admiral, and (2) two times the number of officers serving on active duty at the end of the preceding fiscal year in the grade of lieutenant general or vice admiral.

(b) Not more than 300 enlisted members may be assigned to duty at any time as enlisted aides for officers of the Army, Navy, Air Force, and Marine Corps.

(Added Pub. L. 98–525, title XIV, § 1401(c)(1), Oct. 19, 1984, 98 Stat. 2615.)

PRIOR PROVISIONS

Provisions similar to those in subsec. (a) of this section were contained in Pub. L. 94–106, title VIII, § 820(a), Oct. 7, 1975, 89 Stat. 544, prior to repeal by Pub. L. 98–525, §§ 1403(c), 1404, eff. Oct. 1, 1985.

Provisions similar to those in subsec. (b) of this section were contained in the following appropriation acts:

Pub. L. 98–473, title I, § 101(h) [title VIII, § 8034], Oct. 12, 1984, 98 Stat. 1904, 1930.

Pub. L. 98–212, title VII, § 742, Dec. 8, 1983, 97 Stat. 1446.

Pub. L. 97–377, title I, § 101(c) [title VII, § 745], Dec. 21, 1982, 96 Stat. 1833, 1858.

Pub. L. 97–114, title VII, § 746, Dec. 29, 1981, 95 Stat. 1586.

Pub. L. 96–527, title VII, § 747, Dec. 15, 1980, 94 Stat. 3089.

Pub. L. 96–154, title VII, § 748, Dec. 21, 1979, 93 Stat. 1160.

Pub. L. 95–457, title VIII, § 848, Oct. 13, 1978, 92 Stat. 1252.

Pub. L. 95–111, title VIII, § 849, Sept. 21, 1977, 91 Stat. 908.

Pub. L. 94–419, title VII, § 748, Sept. 22, 1976, 90 Stat. 1299.

Pub. L. 94–212, title VII, § 745, Feb. 9, 1976, 90 Stat. 175.

Pub. L. 93–437, title VIII, § 848, Oct. 8, 1974, 88 Stat. 1232.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b 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.

§ 982. Members: service on State and local juries

(a) A member of the armed forces on active duty may not be required to serve on a State or local jury if the Secretary concerned determines that such service—

(1) would unreasonably interfere with the performance of the member's military duties; or

(2) would adversely affect the readiness of the unit, command, or activity to which the member is assigned.

(b) A determination by the Secretary concerned under this section is conclusive.

(c) The Secretary concerned shall prescribe regulations for the administration of this section.

(d) In this section, the term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, and each territory of the United States.

(Added Pub. L. 99–661, div. A, title V, § 502(a), Nov. 14, 1986, 100 Stat. 3863.)

§ 983. Institutions of higher education that prevent ROTC access or military recruiting on campus: denial of grants and contracts from Department of Defense, Department of Education, and certain other departments and agencies

(a) DENIAL OF FUNDS FOR PREVENTING ROTC ACCESS TO CAMPUS.—No funds described in subsection (d)(1) may be provided by contract or by grant to an institution of higher education (including any subelement of such institution) if the Secretary of Defense determines that that institution (or any subelement of that institution) has a policy or practice (regardless of when implemented) that either prohibits, or in effect prevents—

(1) the Secretary of a military department from maintaining, establishing, or operating a unit of the Senior Reserve Officer Training Corps (in accordance with section 654 of this title and other applicable Federal laws) at that institution (or any subelement of that institution); or

(2) a student at that institution (or any subelement of that institution) from enrolling in a unit of the Senior Reserve Officer Training Corps at another institution of higher education.

(b) DENIAL OF FUNDS FOR PREVENTING MILITARY RECRUITING ON CAMPUS.—No funds described in subsection (d)(1) may be provided by contract or by grant to an institution of higher education (including any subelement of such institution) if the Secretary of Defense determines that that institution (or any subelement of that institution) has a policy or practice (regardless of when implemented) that either prohibits, or in effect prevents—

(1) the Secretary of a military department or Secretary of Homeland Security from gaining access to campuses, or access to students (who are 17 years of age or older) on campuses,

for purposes of military recruiting in a manner that is at least equal in quality and scope to the access to campuses and to students that is provided to any other employer; or

(2) access by military recruiters for purposes of military recruiting to the following information pertaining to students (who are 17 years of age or older) enrolled at that institution (or any subelement of that institution):

(A) Names, addresses, and telephone listings.

(B) Date and place of birth, levels of education, academic majors, degrees received, and the most recent educational institution enrolled in by the student.

(c) EXCEPTIONS.—The limitation established in subsection (a) or (b) shall not apply to an institution of higher education (or any subelement of that institution) if the Secretary of Defense determines that—

(1) the institution (and each subelement of that institution) has ceased the policy or practice described in that subsection; or

(2) the institution of higher education involved has a longstanding policy of pacifism based on historical religious affiliation.

(d) COVERED FUNDS.—(1) Except as provided in paragraph (2), the limitations established in subsections (a) and (b) apply to the following:

(A) Any funds made available for the Department of Defense.

(B) Any funds made available for any department or agency for which regular appropriations are made in a Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act.

(C) Any funds made available for the Department of Homeland Security.

(D) Any funds made available for the National Nuclear Security Administration of the Department of Energy.

(E) Any funds made available for the Department of Transportation.

(F) Any funds made available for the Central Intelligence Agency.

(2) Any Federal funding specified in paragraph (1) that is provided to an institution of higher education, or to an individual, to be available solely for student financial assistance, related administrative costs, or costs associated with attendance, may be used for the purpose for which the funding is provided.

(e) NOTICE OF DETERMINATIONS.—Whenever the Secretary of Defense makes a determination under subsection (a), (b), or (c), the Secretary—

(1) shall transmit a notice of the determination to the Secretary of Education, to the head of each other department and agency the funds of which are subject to the determination, and to Congress; and

(2) shall publish in the Federal Register a notice of the determination and the effect of the determination on the eligibility of the institution of higher education (and any subelement of that institution) for contracts and grants.

(f) SEMIANNUAL NOTICE IN FEDERAL REGISTER.—The Secretary of Defense shall publish in the Federal Register once every six months a list of each institution of higher education that is currently ineligible for contracts and grants by reason of a determination of the Secretary under subsection (a) or (b).

(Added Pub. L. 104–106, div. A, title V, §541(a), Feb. 10, 1996, 110 Stat. 315; amended Pub. L. 106–65, div. A, title V, §549(a)(1), Oct. 5, 1999, 113 Stat. 609; Pub. L. 107–296, title XVII, §1704(b)(1), (3), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 108–375, div. A, title V, §552(a)–(d), Oct. 28, 2004, 118 Stat. 1911, 1912.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 103–337, div. A, title V, §558, Oct. 5, 1994, 108 Stat. 2776, as amended, and Pub. L. 104–208, div. A, title I, §101(e) [title V, §514], Sept. 30, 1996, 110 Stat. 3009–233, 3009–270, which were set out as notes under section 503 of this title, prior to repeal by Pub. L. 106–65, §549(b).

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–375, §552(d), struck out ''(including a grant of funds to be available for student aid)'' after ''by grant'' in introductory provisions.

Subsec. (b). Pub. L. 108–375, §552(b)(2)(A), (d), in introductory provisions, substituted ''subsection (d)(1)'' for ''subsection (d)(2)'' and struck out ''(including a grant of funds to be available for student aid)'' after ''by grant''.

Subsec. (b)(1). Pub. L. 108–375, §552(a), substituted ''access to campuses'' for ''entry to campuses'' and inserted before semicolon ''in a manner that is at least equal in quality and scope to the access to campuses and to students that is provided to any other employer''.

Subsec. (d)(1). Pub. L. 108–375, §552(b)(1)(A)(i), (c)(1), in introductory provisions, substituted ''Except as provided in paragraph (2), the'' for ''The'' and ''limitations established in subsections (a) and (b) apply'' for ''limitation established in subsection (a) applies''.

Subsec. (d)(1)(B). Pub. L. 108–375, §552(b)(1)(A)(ii), inserted ''for any department or agency for which regular appropriations are made'' after ''made available''.

Subsec. (d)(1)(C) to (F). Pub. L. 108–375, §552(b)(1)(A)(iii), added subpars. (C) to (F).

Subsec. (d)(2). Pub. L. 108–375, §552(b)(1)(B), (c)(2), added par. (2) and struck out former par. (2) which read as follows: ''The limitation established in subsection (b) applies to the following:

''(A) Funds described in paragraph (1).

''(B) Any funds made available for the Department of Homeland Security.''

Subsec. (e)(1). Pub. L. 108–375, §552(b)(2)(B), inserted '', to the head of each other department and agency the funds of which are subject to the determination,'' after ''Secretary of Education''.

2002—Subsec. (b)(1). Pub. L. 107–296, §1704(b)(1), substituted ''Secretary of Homeland Security'' for ''Secretary of Transportation''.

Subsec. (d)(2)(B). Pub. L. 107–296, §1704(b)(3), substituted ''Department of Homeland Security'' for ''Department of Transportation''.

1999—Pub. L. 106–65 amended section catchline and text generally. Prior to amendment, section consisted of subsecs. (a) to (d) relating to denial of Department of Defense grants and contracts to institutions of higher education that have anti-ROTC policies.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–375, div. A, title V, §552(f), Oct. 28, 2004, 118 Stat. 1912, provided that: ''The amendments made by this section [amending this section and repealing provisions set out as a note under this section] shall apply with respect to funds appropriated for fiscal year 2005 and thereafter.''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of

Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

FUNDS AVAILABLE SOLELY FOR STUDENT FINANCIAL ASSISTANCE

Pub. L. 106–79, title VIII, § 8120, Oct. 25, 1999, 113 Stat. 1260, provided that during fiscal year 2000 and thereafter, any Federal grant of funds to an institution of higher education to be available solely for student financial assistance or related administrative costs could be used for the purpose for which the grant was made without regard to any provision to the contrary in section 101(e) [title V, § 514] of Pub. L. 104–208 (formerly 10 U.S.C. 503 note), or section 983 of this title, prior to repeal by Pub. L. 108–375, div. A, title V, § 552(e), Oct. 28, 2004, 118 Stat. 1912.

§ 985. Persons convicted of capital crimes; certain other persons: denial of specified burial-related benefits

(a) PROHIBITION OF PERFORMANCE OF MILITARY HONORS.—The Secretary of a military department and the Secretary of Homeland Security, with respect to the Coast Guard when it is not operating as a service in the Navy, may not provide military honors (under section 1491 of this title or any other authority) at the funeral or burial of any of the following persons:

(1) A person described in section 2411(b) of title 38.

(2) A person who is a veteran (as defined in section 1491(h) of this title) or who died while on active duty or a member of a reserve component, when the circumstances surrounding the person's death or other circumstances as specified by the Secretary of Defense are such that to provide military honors at the funeral or burial of the person would bring discredit upon the person's service (or former service).

(b) DISQUALIFICATION FROM BURIAL IN MILITARY CEMETERIES.—A person who is ineligible for interment in a national cemetery under the control of the National Cemetery Administration by reason of section 2411(b) of title 38 is not entitled to or eligible for, and may not be provided, burial in—

(1) Arlington National Cemetery;

(2) the Soldiers' and Airmen's National Cemetery; or

(3) any other cemetery administered by the Secretary of a military department or the Secretary of Defense.

(c) DEFINITION.—In this section, the term ''burial'' includes inurnment.

(Added Pub. L. 105–85, div. A, title X, § 1077(a)(1), Nov. 18, 1997, 111 Stat. 1914; amended Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 109–163, div. A, title VI, § 662(b)(1)–(3), (c)(1), Jan. 6, 2006, 119 Stat. 3315.)

AMENDMENTS

2006—Pub. L. 109–163, § 662(c)(1), substituted ''Persons convicted of capital crimes; certain other persons: denial of specified burial-related benefits'' for ''Persons convicted of capital crimes: denial of certain burial-related benefits'' in section catchline.

Subsec. (a). Pub. L. 109–163, § 662(b)(1)(B), substituted ''any of the following persons:'' for ''a person who has been convicted of a capital offense under Federal or State law for which the person was sentenced to death or life imprisonment without parole.'' and added pars. (1) and (2).

Pub. L. 109–163, § 662(b)(1)(A), inserted ''(under section 1491 of this title or any other authority)'' after ''military honors''.

Subsec. (b). Pub. L. 109–163, § 662(b)(2), in introductory provisions, substituted ''who is ineligible for interment in a national cemetery under the control of the National Cemetery Administration by reason of section 2411(b) of title 38'' for ''convicted of a capital offense under Federal law''.

Subsec. (c). Pub. L. 109–163, § 662(b)(3), amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: ''In this section:

''(1) The term 'capital offense' means an offense for which the death penalty may be imposed.

''(2) The term 'burial' includes inurnment.

''(3) The term 'State' includes the District of Columbia and any commonwealth or territory of the United States.''

2002—Subsec. (a). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–163, div. A, title VI, § 662(e), Jan. 6, 2006, 119 Stat. 3316, provided that: ''The amendments made by this section [amending this section, section 1491 of this title, and section 2411 of Title 38, Veterans' Benefits and enacting provisions set out as notes under this section and section 2411 of Title 38] shall apply with respect to funerals and burials that occur on or after the date of the enactment of this Act [Jan. 6, 2006].''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE

Section 1077(b) of Pub. L. 105–85 provided that: ''Section 985 of title 10, United States Code, as added by subsection (a), applies with respect to persons dying after January 1, 1997.''

REGULATIONS

Pub. L. 109–163, div. A, title VI, § 662(d)(2), Jan. 6, 2006, 119 Stat. 3316, provided that: ''The Secretary of Defense shall prescribe regulations to ensure that a person is not interred in any military cemetery under the authority of the Secretary of a military department or provided funeral honors under section 1491 of title 10, United States Code, unless a good faith effort has been made to determine whether such person is ineligible for such interment or honors by reason of being a person described in section 2411(b) of title 38, United States Code, or is otherwise ineligible for such interment or honors under Federal law.''

[§ 986. Repealed. Pub. L. 110–181, div. A, title X, § 1072(b)(1), Jan. 28, 2008, 122 Stat. 329]

Section, added Pub. L. 106–398, § 1 [[div. A], title X, § 1071(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–275; amended Pub. L. 107–107, div. A, title X, § 1048(c)(3), Dec. 28, 2001, 115 Stat. 1226; Pub. L. 108–375, div. A, title X, § 1062, Oct. 28, 2004, 118 Stat. 2056, prohibited the Department of Defense from granting or renewing security clearances for certain persons.

EFFECTIVE DATE OF REPEAL

Pub. L. 110–181, div. A, title X, § 1072(b)(3), Jan. 28, 2008, 122 Stat. 330, provided that: ''The amendments made by this subsection [repealing this section] shall take effect on January 1, 2008.''

§ 987. Terms of consumer credit extended to members and dependents: limitations

(a) INTEREST.—A creditor who extends consumer credit to a covered member of the armed

forces or a dependent of such a member shall not require the member or dependent to pay interest with respect to the extension of such credit, except as—

(1) agreed to under the terms of the credit agreement or promissory note;

(2) authorized by applicable State or Federal law; and

(3) not specifically prohibited by this section.

(b) ANNUAL PERCENTAGE RATE.—A creditor described in subsection (a) may not impose an annual percentage rate of interest greater than 36 percent with respect to the consumer credit extended to a covered member or a dependent of a covered member.

(c) MANDATORY LOAN DISCLOSURES.—

(1) INFORMATION REQUIRED.—With respect to any extension of consumer credit (including any consumer credit originated or extended through the internet) to a covered member or a dependent of a covered member, a creditor shall provide to the member or dependent the following information orally and in writing before the issuance of the credit:

(A) A statement of the annual percentage rate of interest applicable to the extension of credit.

(B) Any disclosures required under the Truth in Lending Act (15 U.S.C. 1601 et seq.).

(C) A clear description of the payment obligations of the member or dependent, as applicable.

(2) TERMS.—Such disclosures shall be presented in accordance with terms prescribed by the regulations issued by the Board of Governors of the Federal Reserve System to implement the Truth in Lending Act (15 U.S.C. 1601 et seq.).

(d) PREEMPTION.—

(1) INCONSISTENT LAWS.—Except as provided in subsection (f)(2), this section preempts any State or Federal law, rule, or regulation, including any State usury law, to the extent that such law, rule, or regulation is inconsistent with this section, except that this section shall not preempt any such law, rule, or regulation that provides protection to a covered member or a dependent of such a member in addition to the protection provided by this section.

(2) DIFFERENT TREATMENT UNDER STATE LAW OF MEMBERS AND DEPENDENTS PROHIBITED.—States shall not—

(A) authorize creditors to charge covered members and their dependents annual percentage rates of interest for loans higher than the legal limit for residents of the State; or

(B) permit violation or waiver of any State consumer lending protections for the benefit of residents of the State on the basis of nonresident or military status of a covered member or dependent of such a member, regardless of the member's or dependent's domicile or permanent home of record.

(e) LIMITATIONS.—It shall be unlawful for any creditor to extend consumer credit to a covered member or a dependent of such a member with respect to which—

(1) the creditor rolls over, renews, repays, refinances, or consolidates any consumer credit extended to the borrower by the same creditor with the proceeds of other credit extended to the same covered member or a dependent;

(2) the borrower is required to waive the borrower's right to legal recourse under any otherwise applicable provision of State or Federal law, including any provision of the Servicemembers Civil Relief Act;

(3) the creditor requires the borrower to submit to arbitration or imposes onerous legal notice provisions in the case of a dispute;

(4) the creditor demands unreasonable notice from the borrower as a condition for legal action;

(5) the creditor uses a check or other method of access to a deposit, savings, or other financial account maintained by the borrower, or the title of a vehicle as security for the obligation;

(6) the creditor requires as a condition for the extension of credit that the borrower establish an allotment to repay an obligation; or

(7) the borrower is prohibited from prepaying the loan or is charged a penalty or fee for prepaying all or part of the loan.

(f) PENALTIES AND REMEDIES.—

(1) MISDEMEANOR.—A creditor who knowingly violates this section shall be fined as provided in title 18, or imprisoned for not more than one year, or both.

(2) PRESERVATION OF OTHER REMEDIES.—The remedies and rights provided under this section are in addition to and do not preclude any remedy otherwise available under law to the person claiming relief under this section, including any award for consequential and punitive damages.

(3) CONTRACT VOID.—Any credit agreement, promissory note, or other contract prohibited under this section is void from the inception of such contract.

(4) ARBITRATION.—Notwithstanding section 2 of title 9, or any other Federal or State law, rule, or regulation, no agreement to arbitrate any dispute involving the extension of consumer credit shall be enforceable against any covered member or dependent of such a member, or any person who was a covered member or dependent of that member when the agreement was made.

(g) SERVICEMEMBERS CIVIL RELIEF ACT PROTECTIONS UNAFFECTED.—Nothing in this section may be construed to limit or otherwise affect the applicability of section 207 of the Servicemembers Civil Relief Act (50 U.S.C. App. 527).

(h) REGULATIONS.—(1) The Secretary of Defense shall prescribe regulations to carry out this section.

(2) Such regulations shall establish the following:

(A) Disclosures required of any creditor that extends consumer credit to a covered member or dependent of such a member.

(B) The method for calculating the applicable annual percentage rate of interest on such obligations, in accordance with the limit established under this section.

(C) A maximum allowable amount of all fees, and the types of fees, associated with any such

extension of credit, to be expressed and disclosed to the borrower as a total amount and as a percentage of the principal amount of the obligation, at the time at which the transaction is entered into.

(D) Definitions of ''creditor'' under paragraph (5) and ''consumer credit'' under paragraph (6) of subsection (i), consistent with the provisions of this section.

(E) Such other criteria or limitations as the Secretary of Defense determines appropriate, consistent with the provisions of this section.

(3) In prescribing regulations under this subsection, the Secretary of Defense shall consult with the following:

(A) The Federal Trade Commission.

(B) The Board of Governors of the Federal Reserve System.

(C) The Office of the Comptroller of the Currency.

(D) The Federal Deposit Insurance Corporation.

(E) The Office of Thrift Supervision.

(F) The National Credit Union Administration.

(G) The Treasury Department.

(i) DEFINITIONS.—In this section:

(1) COVERED MEMBER.—The term ''covered member'' means a member of the armed forces who is—

(A) on active duty under a call or order that does not specify a period of 30 days or less; or

(B) on active Guard and Reserve Duty.

(2) DEPENDENT.—The term ''dependent'', with respect to a covered member, means—

(A) the member's spouse;

(B) the member's child (as defined in section 101(4) of title 38); or

(C) an individual for whom the member provided more than one-half of the individual's support for 180 days immediately preceding an extension of consumer credit covered by this section.

(3) INTEREST.—The term ''interest'' includes all cost elements associated with the extension of credit, including fees, service charges, renewal charges, credit insurance premiums, any ancillary product sold with any extension of credit to a servicemember or the servicemember's dependent, as applicable, and any other charge or premium with respect to the extension of consumer credit.

(4) ANNUAL PERCENTAGE RATE.—The term ''annual percentage rate'' has the same meaning as in section 107 of the Truth and Lending Act (15 U.S.C. 1606), as implemented by regulations of the Board of Governors of the Federal Reserve System. For purposes of this section, such term includes all fees and charges, including charges and fees for single premium credit insurance and other ancillary products sold in connection with the credit transaction, and such fees and charges shall be included in the calculation of the annual percentage rate.

(5) CREDITOR.—The term ''creditor'' means a person—

(A) who—

(i) is engaged in the business of extending consumer credit; and

(ii) meets such additional criteria as are specified for such purpose in regulations prescribed under this section; or

(B) who is an assignee of a person described in subparagraph (A) with respect to any consumer credit extended.

(6) CONSUMER CREDIT.—The term ''consumer credit'' has the meaning provided for such term in regulations prescribed under this section, except that such term does not include (A) a residential mortgage, or (B) a loan procured in the course of purchasing a car or other personal property, when that loan is offered for the express purpose of financing the purchase and is secured by the car or personal property procured.

(Added Pub. L. 109–364, div. A, title VI, § 670(a), Oct. 17, 2006, 120 Stat. 2266.)

REFERENCES IN TEXT

The Truth in Lending Act, referred to in subsec. (c)(1)(B), (2), is title I of Pub. L. 90–321, May 29, 1968, 82 Stat. 146, as amended, which is classified generally to subchapter I (§ 1601 et seq.) of chapter 41 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 15 and Tables.

The Servicemembers Civil Relief Act, referred to in subsecs. (e)(2) and (g), is act Oct. 17, 1940, ch. 888, 54 Stat. 1178, as amended, which is classified to section 501 et seq. of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see section 501 of Title 50, Appendix, and Tables.

EFFECTIVE DATE

Pub. L. 109–364, div. A, title VI, § 670(c), Oct. 17, 2006, 120 Stat. 2269, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), section 987 of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 2007, or on such earlier date as may be prescribed by the Secretary of Defense, and shall apply with respect to extensions of consumer credit on or after such effective date.

''(2) AUTHORITY TO PRESCRIBE REGULATIONS.—Subsection (h) of such section shall take effect on the date of the enactment of this Act [Oct. 17, 2006].

''(3) PUBLICATION OF EARLIER EFFECTIVE DATE.—If the Secretary of Defense prescribes an effective date for section 987 of title 10, United States Code, as added by subsection (a), earlier than October 1, 2007, the Secretary shall publish that date in the Federal Register. Such publication shall be made not less than 90 days before that earlier effective date.''

INTERIM REGULATIONS

Pub. L. 109–364, div. A, title VI, § 670(d), Oct. 17, 2006, 120 Stat. 2269, provided that: ''The Secretary of Defense may prescribe interim regulations as necessary to carry out such section [this section]. For the purpose of prescribing such interim regulations, the Secretary is excepted from compliance with the notice-and-comment requirements of section 553 of title 5, United States Code. All interim rules prescribed under the authority of this subsection that are not earlier superseded by final rules shall expire no later than 270 days after the effective date of section 987 of title 10, United States Code [see Effective Date note above], as added by this section.''

CHAPTER 50—MISCELLANEOUS COMMAND RESPONSIBILITIES

Sec.
991. Management of deployments of members.
992. Consumer education: financial services.

Sec.

AMENDMENTS

2006—Pub. L. 109–163, div. A, title V, §578(a)(2), Jan. 6, 2006, 119 Stat. 3276, added item 992.

§991. Management of deployments of members

(a) MANAGEMENT RESPONSIBILITIES.—(1) The deployment (or potential deployment) of a member of the armed forces shall be managed to ensure that the member is not deployed, or continued in a deployment, on any day on which the total number of days on which the member has been deployed—

(A) out of the preceding 365 days would exceed the one-year high-deployment threshold; or

(B) out of the preceding 730 days would exceed the two-year high-deployment threshold.

(2) In this subsection:

(A) The term ''one-year high-deployment threshold'' means—

(i) 220 days; or

(ii) a lower number of days prescribed by the Secretary of Defense, acting through the Under Secretary of Defense for Personnel and Readiness.

(B) The term ''two-year high-deployment threshold'' means—

(i) 400 days; or

(ii) a lower number of days prescribed by the Secretary of Defense, acting through the Under Secretary of Defense for Personnel and Readiness.

(3) A member may be deployed, or continued in a deployment, without regard to paragraph (1) if the deployment, or continued deployment, is approved by the Secretary of Defense. The authority of the Secretary under the preceding sentence may only be delegated to—

(A) a civilian officer of the Department of Defense appointed by the President, by and with the advise and consent of the Senate, or a member of the Senior Executive Service; or

(B) a general or flag officer in that member's chain of command (including an officer in the grade of colonel, or in the case of the Navy, captain, serving in a general or flag officer position who has been selected for promotion to the grade of brigadier general or rear admiral (lower half) in a report of a selection board convened under section 611(a) or 14101(a) of this title that has been approved by the President).

(b) DEPLOYMENT DEFINED.—(1) For the purposes of this section, a member of the armed forces shall be considered to be deployed or in a deployment on any day on which, pursuant to orders, the member is performing service in a training exercise or operation at a location or under circumstances that make it impossible or infeasible for the member to spend off-duty time in the housing in which the member resides when on garrison duty at the member's permanent duty station or homeport, as the case may be.

(2) In the case of a member of a reserve component who is performing active service pursuant to orders that do not establish a permanent change of station, the housing referred to in paragraph (1) is any housing (which may include the member's residence) that the member usually occupies for use during off-duty time when on garrison duty at the member's permanent duty station or homeport, as the case may be.

(3) For the purposes of this section, a member is not deployed or in a deployment when the member is—

(A) performing service as a student or trainee at a school (including any Government school);

(B) performing administrative, guard, or detail duties in garrison at the member's permanent duty station; or

(C) unavailable solely because of—

(i) a hospitalization of the member at the member's permanent duty station or homeport or in the immediate vicinity of the member's permanent residence; or

(ii) a disciplinary action taken against the member.

(4) The Secretary of Defense may prescribe a definition of deployment for the purposes of this section other than the definition specified in paragraphs (1) and (2). Any such definition may not take effect until 90 days after the date on which the Secretary notifies the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives of the revised standard definition of deployment.

(c) RECORDKEEPING.—The Secretary of each military department shall establish a system for tracking and recording the number of days that each member of the armed forces under the jurisdiction of the Secretary is deployed.

(d) NATIONAL SECURITY WAIVER AUTHORITY.—The Secretary of the military department concerned may suspend the applicability of this section to a member or any group of members under the Secretary's jurisdiction when the Secretary determines that such a waiver is necessary in the national security interests of the United States.

(e) INAPPLICABILITY TO COAST GUARD.—This section does not apply to a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy.

(Added Pub. L. 106–65, div. A, title V, §586(a), Oct. 5, 1999, 113 Stat. 637; amended Pub. L. 106–398, §1 [[div. A], title V, §574(a), (b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–136, 1654A–137; Pub. L. 107–107, div. A, title V, §515(a), Dec. 28, 2001, 115 Stat. 1093; Pub. L. 108–136, div. A, title V, §541(a), Nov. 24, 2003, 117 Stat. 1475.)

AMENDMENTS

2003—Subsec. (a). Pub. L. 108–136 reenacted heading without change and amended text generally. Prior to amendment, text read as follows:

''(1) The deployment (or potential deployment) of a member of the armed forces shall be managed, during any period when the member is a high-deployment days member, by the officer in the chain of command of that member who is the lowest-ranking general or flag officer in that chain of command. That officer shall ensure that the member is not deployed, or continued in a deployment, on any day on which the total number of days on which the member has been deployed out of the preceding 365 days would exceed 220. However, the member may be deployed, or continued in a deployment, without regard to the preceding sentence if such deployment, or continued deployment, is approved—

''(A) in the case of a member who is assigned to a combatant command in a position under the operational control of the officer in that combatant command who is the service component commander for the members of that member's armed force in that combatant command, by that officer; and

''(B) in the case of a member not assigned as described in subparagraph (A), by the service chief of that member's armed force (or, if so designated by that service chief, by an officer of the same armed force on active duty who is in the grade of general or admiral or who is the personnel chief for that armed force).

''(2) In this section, the term 'high-deployment days member' means a member who has been deployed 182 days or more out of the preceding 365 days.

''(3) In paragraph (1)(B), the term 'service chief' means the Chief of Staff of the Army, the Chief of Naval Operations, the Chief of Staff of the Air Force, or the Commandant of the Marine Corps.''

2001—Subsec. (b)(2). Pub. L. 107–107 amended par. (2) generally. Prior to amendment, par. (2) read as follows:

''(2) In the case of a member of a reserve component performing active service, the member shall be considered deployed or in a deployment for the purposes of paragraph (1) on any day on which, pursuant to orders that do not establish a permanent change of station, the member is performing the active service at a location that—

''(A) is not the member's permanent training site; and

''(B) is—

''(i) at least 100 miles from the member's permanent residence; or

''(ii) a lesser distance from the member's permanent residence that, under the circumstances applicable to the member's travel, is a distance that requires at least three hours of travel to traverse.''

2000—Subsec. (a)(1). Pub. L. 106–398, § 1 [[div. A], title V, § 574(a)(1)], substituted ''. However, the member may be deployed, or continued in a deployment, without regard to the preceding sentence if such deployment, or continued deployment, is approved—'' and subpars. (A) and (B) for ''unless an officer in the grade of general or admiral in the member's chain of command approves the deployment, or continued deployment, of the member.''

Subsec. (a)(3). Pub. L. 106–398, § 1 [[div. A], title V, § 574(a)(2)], added par. (3).

Subsec. (b)(1). Pub. L. 106–398, § 1 [[div. A], title V, § 574(b)(1)], inserted ''or homeport, as the case may be'' before period at end.

Subsec. (b)(2). Pub. L. 106–398, § 1 [[div. A], title V, § 574(b)(3)], added par. (2). Former par. (2) redesignated (3).

Subsec. (b)(3). Pub. L. 106–398, § 1 [[div. A], title V, § 574(b)(2)], redesignated par. (2) as (3). Former par. (3) redesignated (4).

Subsec. (b)(3)(C). Pub. L. 106–398, § 1 [[div. A], title V, § 574(b)(4)], added subpar. (C).

Subsec. (b)(4). Pub. L. 106–398, § 1 [[div. A], title V, § 574(b)(2)], redesignated par. (3) as (4).

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title V, § 515(b), Dec. 28, 2001, 115 Stat. 1094, provided that: ''The amendment made by this section [amending this section] shall apply with respect to duty performed on or after October 1, 2001.''

EFFECTIVE DATE

Pub. L. 106–65, div. A, title V, § 586(d)(1), Oct. 5, 1999, 113 Stat. 639, provided that: ''Section 991 of title 10, United States Code (as added by subsection (a)), shall take effect on October 1, 2000. No day on which a member of the Armed Forces is deployed (as defined in subsection (b) of that section) before that date may be counted in determining the number of days on which a member has been deployed for purposes of that section.''

REGULATIONS

Pub. L. 106–65, div. A, title V, § 586(e), Oct. 5, 1999, 113 Stat. 639, provided that: ''Not later than June 1, 2000, the Secretary of each military department shall prescribe in regulations the policies and procedures for implementing such provisions of law for that military department.''

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.

FAMILY CARE PLANS AND DEFERMENT OF DEPLOYMENT OF SINGLE PARENT OR DUAL MILITARY COUPLES WITH MINOR DEPENDENTS

Pub. L. 110–181, div. A, title V, § 586, Jan. 28, 2008, 122 Stat. 132, provided that: ''The Secretary of Defense shall establish appropriate procedures to ensure that an adequate family care plan is in place for a member of the Armed Forces with minor dependents who is a single parent or whose spouse is also a member of the Armed Forces when the member may be deployed in an area for which imminent danger pay is authorized under section 310 of title 37, United States Code. Such procedures should allow the member to request a deferment of deployment due to unforeseen circumstances, and the request for such a deferment should be considered and responded to promptly.''

POLICY ON CONCURRENT DEPLOYMENT TO COMBAT ZONES OF BOTH MILITARY SPOUSES OF MILITARY FAMILIES WITH MINOR CHILDREN

Pub. L. 108–136, div. A, title V, § 585, Nov. 24, 2003, 117 Stat. 1492, provided that:

''(a) PUBLICATION OF POLICY.—Not later than 180 days after the date of the enactment of this Act [Nov. 24, 2003], the Secretary of Defense shall—

''(1) prescribe the policy of the Department of Defense on concurrent deployment to a combat zone of both spouses of a dual-military family with one or more minor children; and

''(2) transmit the policy to the Committees on Armed Services of the Senate and the House of Representatives.

''(b) DUAL-MILITARY FAMILY DEFINED.—In this section, the term 'dual-military family' means a family in which both spouses are members of the Armed Forces.''

REVIEW OF MANAGEMENT OF DEPLOYMENTS OF INDIVIDUAL MEMBERS

Pub. L. 106–398, § 1 [[div. A], title V, § 574(d)], Oct. 30, 2000, 114 Stat. 1654, 1654A–138, as amended by Pub. L. 107–107, div. A, title V, § 592(b), Dec. 28, 2001, 115 Stat. 1125, directed the Secretary of Defense to submit to committees of Congress a report on the administration of this section during fiscal year 2001 not later than Mar. 31, 2002.

§ 992. Consumer education: financial services

(a) REQUIREMENT FOR CONSUMER EDUCATION PROGRAM FOR MEMBERS.—(1) The Secretary concerned shall carry out a program to provide comprehensive education to members of the armed forces under the jurisdiction of the Secretary on—

(A) financial services that are available under law to members;

(B) financial services that are routinely offered by private sector sources to members;

(C) practices relating to the marketing of private sector financial services to members;

(D) such other matters relating to financial services available to members, and the marketing of financial services to members, as the Secretary considers appropriate; and

(E) such other financial practices as the Secretary considers appropriate.

(2) Training under this subsection shall be provided to members as—

(A) a component of members initial entry orientation training; and

(B) a component of periodically recurring required training that is provided for the members at military installations.

(3) The training provided at a military installation under paragraph (2)(B) shall include information on any financial services marketing practices that are particularly prevalent at that military installation and in the vicinity.

(b) COUNSELING FOR MEMBERS AND SPOUSES.—(1) The Secretary concerned shall, upon request, provide counseling on financial services to each member of the armed forces, and such member's spouse, under the jurisdiction of the Secretary.

(2)(A) In the case of a military installation at which at least 2,000 members of the armed forces on active duty are assigned, the Secretary concerned—

(i) shall provide counseling on financial services under this subsection through a full-time financial services counselor at such installation; and

(ii) may provide such counseling at such installation by any means elected by the Secretary from among the following:

(I) Through members of the armed forces in pay grade E–7 or above, or civilians, who provide such counseling as part of their other duties for the armed forces or the Department of Defense.

(II) By contract, including contract for services by telephone and by the Internet.

(III) Through qualified representatives of nonprofit organizations and agencies under formal agreements with the Department of Defense to provide such counseling.

(B) In the case of any military installation not described in subparagraph (A), the Secretary concerned shall provide counseling on financial services under this subsection at such installation by any of the means set forth in subparagraph (A)(ii), as elected by the Secretary concerned.

(3) Each financial services counselor under paragraph (2)(A)(i), and any other individual providing counseling on financial services under paragraph (2), shall be an individual who, by reason of education, training, or experience, is qualified to provide helpful counseling to members of the armed forces and their spouses on financial services and marketing practices described in subsection (a)(1). Such individual may be a member of the armed forces or an employee of the Federal Government.

(4) The Secretary concerned shall take such action as is necessary to ensure that each financial services counselor under paragraph (2)(A)(i), and any other individual providing counseling on financial services under paragraphs (2), is free from conflicts of interest relevant to the performance of duty under this section and, in the performance of that duty, is dedicated to furnishing members of the armed forces and their spouses with helpful information and counseling on financial services and related marketing practices.

(c) LIFE INSURANCE.—In counseling a member of the armed forces, or spouse of a member of the armed forces, under this section regarding life insurance offered by a private sector source, a financial services counselor under subsection (b)(2)(A)(i), or another individual providing counseling on financial services under subsection (b)(2), shall furnish the member or spouse, as the case may be, with information on the availability of Servicemembers' Group Life Insurance under subchapter III of chapter 19 of title 38, including information on the amounts of coverage available and the procedures for electing coverage and the amount of coverage.

(d) FINANCIAL SERVICES DEFINED.—In this section, the term ''financial services'' includes the following:

(1) Life insurance, casualty insurance, and other insurance.

(2) Investments in securities or financial instruments.

(3) Banking, credit, loans, deferred payment plans, and mortgages.

(Added Pub. L. 109–163, div. A, title V, §578(a)(1), Jan. 6, 2006, 119 Stat. 3274; amended Pub. L. 111–84, div. A, title X, §1073(a)(8), Oct. 28, 2009, 123 Stat. 2472.)

AMENDMENTS

2009—Subsec. (b)(4). Pub. L. 111–84 struck out period after ''under this section''.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–163, div. A, title V, §578(b), Jan. 6, 2006, 119 Stat. 3276, provided that: ''The amendments made by this section [enacting this section] shall take effect on the first day of the first month that begins more than 120 days after the date of the enactment of this Act [Jan. 6, 2006].''

COUNSELING ON MORTGAGE FORECLOSURES FOR MEMBERS OF THE ARMED FORCES RETURNING FROM SERVICE ABROAD

Pub. L. 110–289, div. B, title II, §2202, July 30, 2008, 122 Stat. 2849, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall develop and implement a program to advise members of the Armed Forces (including members of the National Guard and Reserve) who are returning from service on active duty abroad (including service in Operation Iraqi Freedom and Operation Enduring Freedom) on actions to be taken by such members to prevent or forestall mortgage foreclosures.

''(b) ELEMENTS.—The program required by subsection (a) shall include the following:

''(1) Credit counseling.

''(2) Home mortgage counseling.

''(3) Such other counseling and information as the Secretary considers appropriate for purposes of the program.

''(c) TIMING OF PROVISION OF COUNSELING.—Counseling and other information under the program required by subsection (a) shall be provided to a member of the Armed Forces covered by the program as soon as practicable after the return of the member from service as described in subsection (a).''

MILITARY PERSONNEL FINANCIAL SERVICES PROTECTION

Pub. L. 109–290, Sept. 29, 2006, 120 Stat. 1317, provided that:

''SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

''(a) SHORT TITLE.—This Act may be cited as the 'Military Personnel Financial Services Protection Act'.

''(b) TABLE OF CONTENTS.—[Omitted]

''SEC. 2. CONGRESSIONAL FINDINGS.

''Congress finds that—

''(1) members of the Armed Forces perform great sacrifices in protecting our Nation in the War on Terror;

''(2) the brave men and women in uniform deserve to be offered first-rate financial products in order to provide for their families and to save and invest for retirement;

''(3) members of the Armed Forces are being offered high-cost securities and life insurance products by some financial services companies engaging in abusive and misleading sales practices;

''(4) one securities product offered to service members, known as the 'mutual fund contractual plan', largely disappeared from the civilian market in the 1980s, due to excessive sales charges;

''(5) with respect to a mutual fund contractual plan, a 50 percent sales commission is assessed against the first year of contributions, despite an average commission on other securities products of less than 6 percent on each sale;

''(6) excessive sales charges allow abusive and misleading sales practices in connection with mutual fund contractual plan;

''(7) certain life insurance products being offered to members of the Armed Forces are improperly marketed as investment products, providing minimal death benefits in exchange for excessive premiums that are front-loaded in the first few years, making them entirely inappropriate for most military personnel; and

''(8) the need for regulation of the marketing and sale of securities and life insurance products on military bases necessitates Congressional action.

''SEC. 3. DEFINITIONS.

''For purposes of this Act, the following definitions shall apply:

''(1) LIFE INSURANCE PRODUCT.—

''(A) IN GENERAL.—The term 'life insurance product' means any product, including individual and group life insurance, funding agreements, and annuities, that provides insurance for which the probabilities of the duration of human life or the rate of mortality are an element or condition of insurance.

''(B) INCLUDED INSURANCE.—The term 'life insurance product' includes the granting of—

''(i) endowment benefits;

''(ii) additional benefits in the event of death by accident or accidental means;

''(iii) disability income benefits;

''(iv) additional disability benefits that operate to safeguard the contract from lapse or to provide a special surrender value, or special benefit in the event of total and permanent disability;

''(v) benefits that provide payment or reimbursement for long-term home health care, or long-term care in a nursing home or other related facility;

''(vi) burial insurance; and

''(vii) optional modes of settlement or proceeds of life insurance.

''(C) EXCLUSIONS.—Such term does not include workers compensation insurance, medical indemnity health insurance, or property and casualty insurance.

''(2) NAIC.—The term 'NAIC' means the National Association of Insurance Commissioners (or any successor thereto).

''SEC. 4. PROHIBITION ON FUTURE SALES OF PERIODIC PAYMENT PLANS.

''(a) AMENDMENT.—[Amended section 80a–27 of Title 15, Commerce and Trade.]

''(b) TECHNICAL AMENDMENT.—[Amended section 80a–27 of Title 15.]

''(c) REPORT ON REFUNDS, SALES PRACTICES, AND REVENUES FROM PERIODIC PAYMENT PLANS.—Not later than 6 months after the date of enactment of this Act [Sept. 29, 2006], the Securities and Exchange Commission shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, a report describing—

''(1) any measures taken by a broker or dealer registered with the Securities and Exchange Commission pursuant to section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*(b)) to voluntarily refund payments made by military service members on any periodic payment plan certificate, and the amounts of such refunds;

''(2) after such consultation with the Secretary of Defense, as the Commission considers appropriate, the sales practices of such brokers or dealers on military installations over the 5 years preceding the date of submission of the report and any legislative or regulatory recommendations to improve such practices; and

''(3) the revenues generated by such brokers or dealers in the sales of periodic payment plan certificates over the 5 years preceding the date of submission of the report, and the products marketed by such brokers or dealers to replace the revenue generated from the sales of periodic payment plan certificates prohibited under subsection (a).

''SEC. 5. REQUIRED DISCLOSURES REGARDING OFFERS OR SALES OF SECURITIES ON MILITARY INSTALLATIONS.

[Amended section 78*o*–3 of Title 15.]

''SEC. 6. METHOD OF MAINTAINING BROKER AND DEALER REGISTRATION, DISCIPLINARY, AND OTHER DATA.

[Amended section 78*o*–3 of Title 15.]

''SEC. 7. FILING DEPOSITORIES FOR INVESTMENT ADVISERS.

''(a) INVESTMENT ADVISERS.—[Amended section 80b–4 of Title 15.]

''(b) CONFORMING AMENDMENTS.—

''(1) INVESTMENT ADVISERS ACT OF 1940.—[Amended section 80b–3a of Title 15.]

''(2) NATIONAL SECURITIES MARKETS IMPROVEMENT ACT OF 1996.—[Repealed provisions set out as a note under section 80b–10 of Title 15.]

''SEC. 8. STATE INSURANCE AND SECURITIES JURISDICTION ON MILITARY INSTALLATIONS.

''(a) CLARIFICATION OF JURISDICTION.—Any provision of law, regulation, or order of a State with respect to regulating the business of insurance or securities shall apply to insurance or securities activities conducted on Federal land or facilities in the United States and abroad, including military installations, except to the extent that such law, regulation, or order—

''(1) directly conflicts with any applicable Federal law, regulation, or authorized directive; or

''(2) would not apply if such activity were conducted on State land.

''(b) PRIMARY STATE JURISDICTION.—To the extent that multiple State laws would otherwise apply pursuant to subsection (a) to an insurance or securities activity of an individual or entity on Federal land or facilities, the State having the primary duty to regulate such activity and the laws of which shall apply to such activity in the case of a conflict shall be—

''(1) the State within which the Federal land or facility is located; or

''(2) if the Federal land or facility is located outside of the United States, the State in which—

''(A) in the case of an individual engaged in the business of insurance, such individual has been issued a resident license;

''(B) in the case of an entity engaged in the business of insurance, such entity is domiciled;

''(C) in the case of an individual engaged in the offer or sale (or both) of securities, such individual is registered or required to be registered to do business or the person solicited by such individual resides; or

''(D) in the case of an entity engaged in the offer or sale (or both) of securities, such entity is registered or is required to be registered to do business or the person solicited by such entity resides.

''SEC. 9. REQUIRED DEVELOPMENT OF MILITARY PERSONNEL PROTECTION STANDARDS REGARDING INSURANCE SALES; ADMINISTRATIVE COORDINATION.

''(a) STATE STANDARDS.—Congress intends that—

''(1) the States collectively work with the Secretary of Defense to ensure implementation of appropriate standards to protect members of the Armed Forces from dishonest and predatory insurance sales practices while on a military installation of the United States (including installations located outside of the United States); and

''(2) each State identify its role in promoting the standards described in paragraph (1) in a uniform manner, not later than 12 months after the date of enactment of this Act [Sept. 29, 2006].

''(b) STATE REPORT.—It is the sense of Congress that the NAIC should, after consultation with the Secretary of Defense and, not later than 12 months after the date of enactment of this Act, conduct a study to determine the extent to which the States have met the requirement of subsection (a), and report the results of such study to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

''(c) ADMINISTRATIVE COORDINATION; SENSE OF CONGRESS.—It is the sense of the Congress that senior representatives of the Secretary of Defense, the Securities and Exchange Commission, and the NAIC should meet not less frequently than twice a year to coordinate their activities to implement this Act and monitor the enforcement of relevant regulations relating to the sale of financial products on military installations of the United States.

''SEC. 10. REQUIRED DISCLOSURES REGARDING LIFE INSURANCE PRODUCTS.

''(a) REQUIREMENT.—Except as provided in subsection (e), no person may sell, or offer for sale, any life insurance product to any member of the Armed Forces or a dependent thereof on a military installation of the United States, unless a disclosure in accordance with this section is provided to such member or dependent at the time of the sale or offer.

''(b) DISCLOSURE.—A disclosure in accordance with this section is a written disclosure that—

''(1) states that subsidized life insurance is available to the member of the Armed Forces from the Federal Government under the Servicemembers' Group Life Insurance program (also referred to as 'SGLI'), under subchapter III of chapter 19 of title 38, United States Code;

''(2) states the amount of insurance coverage available under the SGLI program, together with the costs to the member of the Armed Forces for such coverage;

''(3) states that the life insurance product that is the subject of the disclosure is not offered or provided by the Federal Government, and that the Federal Government has in no way sanctioned, recommended, or encouraged the sale of the life insurance product being offered;

''(4) fully discloses any terms and circumstances under which amounts accumulated in a savings fund or savings feature under the life insurance product that is the subject of the disclosure may be diverted to pay, or reduced to offset, premiums due for continuation of coverage under such product;

''(5) states that no person has received any referral fee or incentive compensation in connection with the offer or sale of the life insurance product, unless such person is a licensed agent of the person engaged in the business of insurance that is issuing such product;

''(6) is made in plain and readily understandable language and in a type font at least as large as the font used for the majority of the solicitation material used with respect to or relating to the life insurance product; and

''(7) with respect to a sale or solicitation on Federal land or facilities located outside of the United States, lists the address and phone number at which consumer complaints are received by the State insurance commissioner for the State having the primary jurisdiction and duty to regulate the sale of such life insurance products pursuant to section 8.

''(c) VOIDABILITY.—The sale of a life insurance product in violation of this section shall be voidable from its inception, at the sole option of the member of the Armed Forces, or dependent thereof, as applicable, to whom the product was sold.

''(d) ENFORCEMENT.—If it is determined by a Federal or State agency, or in a final court proceeding, that any person has intentionally violated, or willfully disregarded the provisions of, this section, in addition to any other penalty under applicable Federal or State law, such person shall be prohibited from further engaging in the business of insurance with respect to employees of the Federal Government on Federal land, except—

''(1) with respect to existing policies; and

''(2) to the extent required by the Federal Government pursuant to previous commitments.

''(e) EXCEPTIONS.—This section shall not apply to any life insurance product specifically contracted by or through the Federal Government.

''SEC. 11. IMPROVING LIFE INSURANCE PRODUCT STANDARDS.

''(a) IN GENERAL.—It is the sense of Congress that the NAIC should, after consultation with the Secretary of Defense, and not later than 6 months after the date of enactment of this Act [Sept. 29, 2006], conduct a study and submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on—

''(1) ways of improving the quality of and sale of life insurance products sold on military installations of the United States, which may include—

''(A) limiting such sales authority to persons that are certified as meeting appropriate best practices procedures; and

''(B) creating standards for products specifically designed to meet the particular needs of members of the Armed Forces, regardless of the sales location; and

''(2) the extent to which life insurance products marketed to members of the Armed Forces comply with otherwise applicable provisions of State law.

''(b) CONDITIONAL GAO REPORT.—If the NAIC does not submit the report as described in subsection (a), the Comptroller General of the United States shall—

''(1) study any proposals that have been made to improve the quality of and sale of life insurance products sold on military installations of the United States; and

''(2) not later than 6 months after the expiration of the period referred to in subsection (a), submit a report on such proposals to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

''SEC. 12. REQUIRED REPORTING OF DISCIPLINARY ACTIONS.

''(a) REPORTING BY INSURERS.—Beginning 1 year after the date of enactment of this Act [Sept. 29, 2006], no in-

surer may enter into or renew a contractual relationship with any other person that sells or solicits the sale of any life insurance product on any military installation of the United States, unless the insurer has implemented a system to report to the State insurance commissioner of the State of domicile of the insurer and the State of residence of that other person—

''(1) any disciplinary action taken by any Federal or State government entity with respect to sales or solicitations of life insurance products on a military installation that the insurer knows, or in the exercise of due diligence should have known, to have been taken; and

''(2) any significant disciplinary action taken by the insurer with respect to sales or solicitations of life insurance products on a military installation of the United States.

''(b) REPORTING BY STATES.—It is the sense of Congress that, not later than 1 year after the date of enactment of this Act, the States should collectively implement a system to—

''(1) receive reports of disciplinary actions taken against persons that sell or solicit the sale of any life insurance product on any military installation of the United States by insurers or Federal or State government entities with respect to such sales or solicitations; and

''(2) disseminate such information to all other States and to the Secretary of Defense.

''(c) DEFINITION.—As used in this section, the term 'insurer' means a person engaged in the business of insurance.

''SEC. 13. REPORTING BARRED PERSONS SELLING INSURANCE OR SECURITIES.

''(a) ESTABLISHMENT.—The Secretary of Defense shall maintain a list of the name, address, and other appropriate information relating to persons engaged in the business of securities or insurance that have been barred or otherwise limited in any manner that is not generally applicable to all such type of persons, from any or all military installations of the United States, or that have engaged in any transaction that is prohibited by this Act.

''(b) NOTICE AND ACCESS.—The Secretary of Defense shall ensure that—

''(1) the appropriate Federal and State agencies responsible for securities and insurance regulation are promptly notified upon the inclusion in or removal from the list required by subsection (a) of a person under the jurisdiction of one or more of such agencies; and

''(2) the list is kept current and easily accessible—

''(A) for use by such agencies; and

''(B) for purposes of enforcing or considering any such bar or limitation by the appropriate Federal personnel, including commanders of military installations.

''(c) REGULATIONS.—

''(1) IN GENERAL.—The Secretary of Defense shall issue regulations in accordance with this subsection to provide for the establishment and maintenance of the list required by this section, including appropriate due process considerations.

''(2) TIMING.—

''(A) PROPOSED REGULATIONS.—Not later than the expiration of the 60-day period beginning on the date of enactment of this Act [Sept. 29, 2006], the Secretary of Defense shall prepare and submit to the appropriate Committees of Congress a copy of the regulations required by this subsection that are proposed to be published for comment. The Secretary may not publish such regulations for comment in the Federal Register until the expiration of the 15-day period beginning on the date of such submission to the appropriate Committees of Congress.

''(B) FINAL REGULATIONS.—Not later than 90 days after the date of enactment of this Act, the Secretary of Defense shall submit to the appropriate Committees of Congress a copy of the regulations under this section to be published in final form.

''(C) EFFECTIVE DATE.—Final regulations under this paragraph shall become effective 30 days after the date of their submission to the appropriate Committees of Congress under subparagraph (B).

''(d) DEFINITION.—For purposes of this section, the term 'appropriate Committees of Congress' means—

''(1) the Committee on Financial Services and the Committee on Armed Services of the House of Representatives; and

''(2) the Committee on Banking, Housing, and Urban Affairs and the Committee on Armed Services of the Senate.

''SEC. 14. STUDY AND REPORTS BY INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE.

''(a) STUDY.—The Inspector General of the Department of Defense shall conduct a study on the impact of Department of Defense Instruction 1344.07 (as in effect on the date of enactment of this Act [Sept. 29, 2006]) and the reforms included in this Act on the quality and suitability of sales of securities and insurance products marketed or otherwise offered to members of the Armed Forces.

''(b) REPORTS.—Not later than 12 months after the date of enactment of this Act, the Inspector General of the Department of Defense shall submit an initial report on the results of the study conducted under subsection (a) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, and shall submit followup reports to those committees on December 31, 2008 and December 31, 2010.''

REQUIREMENT FOR REGULATIONS ON POLICIES AND PROCEDURES ON PERSONAL COMMERCIAL SOLICITATIONS ON DEPARTMENT OF DEFENSE INSTALLATIONS

Pub. L. 109–163, div. A, title V, § 577(a), Jan. 6, 2006, 119 Stat. 3274, provided that: ''As soon as practicable after the date of the enactment of this Act [Jan. 6, 2006], and not later than March 31, 2006, the Secretary of Defense shall prescribe regulations, or modify existing regulations, on the policies and procedures relating to personal commercial solicitations, including the sale of life insurance and securities, on Department of Defense installations.''

CHAPTER 51—RESERVE COMPONENTS: STANDARDS AND PROCEDURES FOR RETENTION AND PROMOTION

Sec.
1001. Reference to chapter 1219.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title XVI, § 1662(h)(5), Oct. 5, 1994, 108 Stat. 2997, added item 1001 and struck out former items 1001 to 1007.

1960—Pub. L. 86–559, § 1(3)(C), June 30, 1960, 74 Stat. 265, inserted ''or serving as United States property and fiscal officers'' in item 1007.

1958—Pub. L. 85–861, § 1(23), Sept. 2, 1958, 72 Stat. 1445, added items 1002, 1005, 1006, and 1007.

§ 1001. Reference to chapter 1219

Provisions of law relating to standards and procedures for retention and promotion of members of reserve components are set forth in chapter 1219 of this title (beginning with section 12641).

(Added Pub. L. 103–337, div. A, title XVI, § 1662(h)(5), Oct. 5, 1994, 108 Stat. 2997.)

PRIOR PROVISIONS

Prior sections 1001 and 1002 were renumbered sections 12641 and 12642 of this title, respectively.

A prior section 1003, act Aug. 10, 1956, ch. 1041, 70A Stat. 79, related to age limitations for reserve officers,

prior to repeal by Pub. L. 103–337, div. A, title XVI, §§1662(h)(3), 1691, Oct. 5, 1994, 108 Stat. 2996, 3026, eff. Dec. 1, 1994.

Prior sections 1004 to 1007 were renumbered sections 12644 to 12647 of this title, respectively.

EFFECTIVE DATE

Section 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.

CHAPTER 53—MISCELLANEOUS RIGHTS AND BENEFITS

Sec.
1030. Bonus to encourage Department of Defense personnel to refer persons for appointment as officers to serve in health professions.
1031. Administration of oath.
1032. Disability and death compensation: dependents of members held as captives.
1033. Participation in management of specified non-Federal entities: authorized activities.
1034. Protected communications; prohibition of retaliatory personnel actions.
1035. Deposits of savings.
1036. Escorts for dependents of members: transportation and travel allowances.
1037. Counsel before foreign judicial tribunals and administrative agencies; court costs and bail.
1038. Service credit: certain service in Women's Army Auxiliary Corps.
1039. Crediting of minority service.
1040. Transportation of dependent patients.
1041. Replacement of certificate of discharge.
1042. Copy of certificate of service.
1043. Service credit: service in the National Oceanic and Atmospheric Administration or the Public Health Service.
1044. Legal assistance.
1044a. Authority to act as notary.
1044b. Military powers of attorney: requirement for recognition by States.
1044c. Advance medical directives of members and dependents: requirement for recognition by States.
1044d. Military testamentary instruments: requirement for recognition by States.
1045. Voluntary withholding of State income tax from retired or retainer pay.
1046. Overseas temporary foster care program.
1047. Allowance for civilian clothing.
1048. Gratuity payment to persons discharged for fraudulent enlistment.
1049. Subsistence: miscellaneous persons.
1050. Latin American cooperation: payment of personnel expenses.
1050a. African cooperation: payment of personnel expenses.
1051. Multilateral, bilateral, or regional cooperation programs: payment of personnel expenses.
1051a. Liaison officers of certain foreign nations; administrative services and support; travel, subsistence, medical care, and other personal expenses.
1051b. Bilateral or regional cooperation programs: awards and mementos to recognize superior noncombat achievements or performance.
1052. Adoption expenses: reimbursement.
1053. Financial institution charges incurred because of Government error in direct deposit of pay: reimbursement.
1053a. Expenses incurred in connection with leave canceled due to contingency operations: reimbursement.
1054. Defense of certain suits arising out of legal malpractice.
1055. Waiver of security deposits for members renting private housing; authority to indemnify landlord.
1056. Relocation assistance programs.
1057. Use of armed forces insignia on State license plates.
1058. Responsibilities of military law enforcement officials at scenes of domestic violence.
1059. Dependents of members separated for dependent abuse: transitional compensation; commissary and exchange benefits.
1060. Military service of retired members with newly democratic nations: consent of Congress.
1060a. Special supplemental food program.
1060b. Military ID cards: dependents and survivors of retirees.

AMENDMENTS

2011—Pub. L. 111–383, div. A, title XII, §1204(b), Jan. 7, 2011, 124 Stat. 4387, added item 1050a.

2008—Pub. L. 110–417, [div. A], title XII, §1231(c)(2), Oct. 14, 2008, 122 Stat. 4637, added item 1051 and struck out former item 1051 ''Bilateral or regional cooperation programs: payment of personnel expenses''.

Pub. L. 110–181, div. A, title VI, §671(b)(2), title XII, §1203(e)(2), Jan. 28, 2008, 122 Stat. 184, 365, added items 1030 and 1051a and struck out former item 1051a ''Coalition liaison officers: administrative services and support; travel, subsistence, and other personal expenses''.

2006—Pub. L. 109–364, div. A, title V, §598(b)(2), Oct. 17, 2006, 120 Stat. 2237, struck out ''; issuance of permanent ID card after attaining 75 years of age'' after ''retirees'' in item 1060b.

2004—Pub. L. 108–375, div. A, title V, §583(a)(2), Oct. 28, 2004, 118 Stat. 1929, added item 1060b.

2003—Pub. L. 108–136, div. A, title XII, §1222(b), Nov. 24, 2003, 117 Stat. 1652, added item 1051b.

2002—Pub. L. 107–314, div. A, title XII, §1201(a)(2), Dec. 2, 2002, 116 Stat. 2663, added item 1051a.

2000—Pub. L. 106–398, §1 [[div. A], title V, §§551(b), 579(c)(3)], Oct. 30, 2000, 114 Stat. 1654, 1654A–125, 1654A–142, added items 1044d, 1052, 1053, and 1053a, and struck out former items 1052 ''Reimbursement for adoption expenses'' and 1053 ''Reimbursement for financial institution charges incurred because of Government error in direct deposit of pay''.

1997—Pub. L. 105–85, div. A, title V, §593(a)(2), Nov. 18, 1997, 111 Stat. 1763, added item 1033.

1996—Pub. L. 104–106, div. A, title VII, §749(a)(2), Feb. 10, 1996, 110 Stat. 389, added item 1044c.

Pub. L. 104–106, div. A, title XV, §1504(a)(2), Feb. 10, 1996, 110 Stat. 513, made technical correction to Pub. L. 103–337, §531(g)(2). See 1994 Amendment note below.

1994—Pub. L. 103–337, div. A, title V, §531(g)(2), Oct. 5, 1994, 108 Stat. 2758, as amended by Pub. L. 104–106, div. A, title XV, §1504(a)(2), Feb. 10, 1996, 110 Stat. 513, substituted ''Protected communications;'' for ''Communicating with a Member of Congress or Inspector General;'' in item 1034.

Pub. L. 103–337, div. A, title V, §535(c)(2), title VI, §653(b), title X, §1070(a)(5)(B), (6)(B), title XVI, §1671(b)(9), Oct. 5, 1994, 108 Stat. 2763, 2795, 2855, 3013, struck out item 1033 ''Compensation: Reserve on active duty accepting from any person'', redesignated item 1058 ''Dependents of members separated for dependent abuse: transitional compensation'' as item 1059 and amended it generally, redesignated item 1058 ''Military service of retired members with newly democratic nations: consent of Congress'' as item 1060, and added item 1060a.

Pub. L. 103–337, div. A, title X, §1070(b)(4), Oct. 5, 1994, 108 Stat. 2856, made technical correction to Pub. L. 103–160, §554(a)(2). See 1993 Amendment note below.

1993—Pub. L. 103–160, div. A, title V, §§551(a)(2), 574(b), title XIV, §1433(b)(2), Nov. 30, 1993, 107 Stat. 1662, 1675, 1834, added item 1044b and items 1058 ''Responsibilities of military law enforcement officials at scenes of domestic violence'' and 1058 ''Military service of retired members with newly democratic nations: consent of Congress''.

Pub. L. 103–160, div. A, title V, §554(a)(2), Nov. 30, 1993, 107 Stat. 1666, as amended by Pub. L. 103–337, div. A,

title X, § 1070(b)(4), Oct. 5, 1994, 108 Stat. 2856, added item 1058 ''Dependents of members separated for dependent abuse: transitional compensation''.

1992—Pub. L. 102–484, div. A, title VI, § 651(b), title X, § 1080(b), Oct. 23, 1992, 106 Stat. 2426, 2514, added items 1046 and 1057.

1991—Pub. L. 102–190, div. A, title VI, § 651(a)(2), Dec. 5, 1991, 105 Stat. 1386, added item 1052.

Pub. L. 102–25, title VII, § 701(e)(8)(B), Apr. 6, 1991, 105 Stat. 115, struck out ''mandatory'' after ''error in'' in item 1053.

1990—Pub. L. 101–510, div. A, title V, §§ 502(b)(2), 551(a)(2), title XIV, § 1481(c)(2), Nov. 5, 1990, 104 Stat. 1557, 1566, 1705, added items 1044a and 1056 and struck out item 1046 ''Preseparation counseling requirement''.

1989—Pub. L. 101–189, div. A, title VI, § 664(a)(3)(B), Nov. 29, 1989, 103 Stat. 1466, substituted ''Reimbursement for financial institution charges incurred because of Government'' for ''Relief for expenses because of'' in item 1053.

1988—Pub. L. 100–456, div. A, title VI, § 621(a)(2), title VIII, § 846(a)(2), Sept. 29, 1988, 102 Stat. 1983, 2030, substituted ''Communicating with a Member of Congress or Inspector General; prohibition of retaliatory personnel actions'' for ''Communicating with a Member of Congress'' in item 1034 and added item 1055.

Pub. L. 100–370, § 1(c)(2)(B), July 19, 1988, 102 Stat. 841, struck out item 1052 ''Period for use of commissary stores; eligibility attributable to active duty for training''.

1987—Pub. L. 100–26, § 7(e)(1)(B), Apr. 21, 1987, 101 Stat. 281, added item 1032 and struck out second item 1051 ''Disability and death compensation: dependents of members held as captives''.

1986—Pub. L. 99–661, div. A, title VI, §§ 656(a)(2), 662(a)(2), title XIII, §§ 1322(b), 1356(a)(2), Nov. 14, 1986, 100 Stat. 3891, 3894, 3989, 3998, added item 1051 ''Bilateral or regional cooperation programs: payment of personnel expenses'' and items 1052 to 1054.

Pub. L. 99–399, title VIII, § 806(b)(2), Aug. 27, 1986, 100 Stat. 886, added item 1051 ''Disability and death compensation: dependents of members held as captives''.

1985—Pub. L. 99–145, title XIII, § 1303(a)(6), Nov. 8, 1985, 99 Stat. 739, substituted ''Atmospheric'' for ''Atomospheric'' in item 1043.

1984—Pub. L. 98–525, title VI, §§ 651(b), 654(b), title VII, § 708(a)(2), title XIV, §§ 1401(d)(2), 1405(19)(B)(ii), Oct. 19, 1984, 98 Stat. 2549, 2552, 2572, 2616, 2623, added items 1044 to 1050 and substituted ''Member'' for ''member'' in item 1034.

1983—Pub. L. 98–94, title X, § 1007(b)(2), Sept. 24, 1983, 97 Stat. 662, added item 1043.

1982—Pub. L. 97–258, § 2(b)(2)(A), Sept. 13, 1982, 96 Stat. 1052, added item 1042.

1980—Pub. L. 96–513, title V, § 511(33)(B), Dec. 12, 1980, 94 Stat. 2922, redesignated item 1040 as added by Pub. L. 90–285 as item 1041.

1977—Pub. L. 95–105, title V, § 509(d)(2), Aug. 17, 1977, 91 Stat. 860, struck out item 1032 ''Dual capacity: Reserve accepting employment with foreign government or concern''.

1968—Pub. L. 90–235, § 7(a)(2)(B), Jan. 2, 1968, 81 Stat. 763, added item 1040: ''Replacement of certificate of discharge''. Another item 1040: ''Transportation of dependent patients'', was added by Pub. L. 89–140, § 1(2), Aug. 28, 1965, 79 Stat. 579.

1966—Pub. L. 89–538, § 1(2), Aug. 14, 1966, 80 Stat. 347, substituted ''Deposits of savings'' for ''Enlisted members' deposits'' in item 1035.

1965—Pub. L. 89–140, § 1(2), Aug. 28, 1965, 79 Stat. 579, added item 1040 ''Transportation of dependent patients''.

Pub. L. 89–132, § 9(b), Aug. 21, 1965, 79 Stat. 548, added item 1040 ''Free postage from combat zone'' which was repealed by Pub. L. 89–315, § 3(b), Nov. 1, 1965, 79 Stat. 1165.

1961—Pub. L. 87–165, § 1(2), Aug. 25, 1961, 75 Stat. 401, added item 1039.

1959—Pub. L. 86–160, § 1(2), Aug. 14, 1959, 73 Stat. 358, added item 1036.

Pub. L. 86–142, § 1(2), Aug. 7, 1959, 73 Stat. 289, added item 1038.

1958—Pub. L. 85–861, § 1(24)(B), Sept. 2, 1958, 72 Stat. 1445, added item 1037.

PROHIBITION ON INFRINGING ON THE INDIVIDUAL RIGHT TO LAWFULLY ACQUIRE, POSSESS, OWN, CARRY, AND OTHERWISE USE PRIVATELY OWNED FIREARMS, AMMUNITION, AND OTHER WEAPONS

Pub. L. 111–383, div. A, title X, § 1062, Jan. 7, 2011, 124 Stat. 4363, provided that:

''(a) IN GENERAL.—Except as provided in subsection (c), the Secretary of Defense shall not prohibit, issue any requirement relating to, or collect or record any information relating to the otherwise lawful acquisition, possession, ownership, carrying, or other use of a privately owned firearm, privately owned ammunition, or another privately owned weapon by a member of the Armed Forces or civilian employee of the Department of Defense on property that is not—

''(1) a military installation; or

''(2) any other property that is owned or operated by the Department of Defense.

''(b) EXISTING REGULATIONS AND RECORDS.—

''(1) REGULATIONS.—Any regulation promulgated before the date of enactment of this Act [Jan. 7, 2011] shall have no force or effect to the extent that it requires conduct prohibited by this section.

''(2) RECORDS.—Not later than 90 days after the date of enactment of this Act, the Secretary of Defense shall destroy any record containing information described in subsection (a) that was collected before the date of enactment of this Act.

''(c) RULE OF CONSTRUCTION.—Subsection (a) shall not be construed to limit the authority of the Secretary of Defense to—

''(1) create or maintain records relating to, or regulate the possession, carrying, or other use of a firearm, ammunition, or other weapon by a member of the Armed Forces or civilian employee of the Department of Defense while—

''(A) engaged in official duties on behalf of the Department of Defense; or

''(B) wearing the uniform of an Armed Force; or

''(2) create or maintain records relating to an investigation, prosecution, or adjudication of an alleged violation of law (including regulations not prohibited under subsection (a)), including matters related to whether a member of the Armed Forces constitutes a threat to the member or others.

''(d) REVIEW.—Not later than 180 days after the date of enactment of this Act, the Secretary of Defense shall—

''(1) conduct a comprehensive review of the privately owned weapons policy of the Department of Defense, including legal and policy issues regarding the regulation of privately owned firearms off of a military installation, as recommended by the Department of Defense Independent Review Related to Fort Hood; and

''(2) submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report regarding the findings of and recommendations relating to the review conducted under paragraph (1), including any recommendations for adjustments to the requirements under this section.

''(e) MILITARY INSTALLATION DEFINED.—In this section, the term 'military installation' has the meaning given that term under section 2687(e)(1) of title 10, United States Code.''

DEPARTMENT OF DEFENSE TELECOMMUNICATIONS BENEFIT

Pub. L. 108–136, div. A, title III, § 344, Nov. 24, 2003, 117 Stat. 1448, as amended by Pub. L. 108–375, div. A, title III, § 341, Oct. 28, 2004, 118 Stat. 1857; Pub. L. 109–163, div. A, title III, § 375, Jan. 6, 2006, 119 Stat. 3213; Pub. L. 109–364, div. A, title III, § 355(a)–(c), Oct. 17, 2006, 120

Stat. 2162, 2163; Pub. L. 111–383, div. A, title X, § 1075(g)(3), Jan. 7, 2011, 124 Stat. 4376, provided that:

''(a) PROVISION OF BENEFIT.—(1) The Secretary of Defense shall provide, wherever practicable, prepaid phone cards, packet based telephony service, or an equivalent telecommunications benefit which includes access to telephone service, to members of the Armed Forces stationed outside the United States who (as determined by the Secretary) are eligible for combat zone tax exclusion benefits due to their service in direct support of a contingency operation to enable those members to make telephone calls without cost to the member.

''(2) As soon as possible after the date of the enactment of the John Warner National Defense Authorization Act for Fiscal Year 2007 [Oct. 17, 2006], the Secretary shall provide, wherever practicable, prepaid phone cards, packet based telephony service, or an equivalent telecommunications benefit which includes access to telephone service to members of the Armed Forces who, although are no longer directly supporting a contingency operation, are hospitalized as a result of wounds or other injuries incurred while serving in direct support of a contingency operation.

''(b) MONTHLY BENEFIT.—The value of the benefit provided under subsection (a) to any member in any month, to the extent the benefit is provided from amounts available to the Department of Defense, may not exceed—

''(1) $40; or

''(2) 120 calling minutes, if the cost to the Department of Defense of providing such number of calling minutes is less than the amount specified in paragraph (1).

''(c) TERMINATION OF BENEFIT.—The authority to provide a benefit under subsection (a)(1) to a member directly supporting a contingency operation shall terminate on the date that is 60 days after the date on which the Secretary determines that the contingency operation has ended.

''(d) FUNDING.—(1)(A) In carrying out the program under this section, the Secretary shall maximize the use of existing Department of Defense telecommunications programs and capabilities, free or reduced-cost services of private sector entities, and programs to enhance morale and welfare.

''(B) The Secretary may not award a contract to a commercial firm for the purposes of subparagraph (A) other than through the use of competitive procedures.

''(2) The Secretary may accept gifts and donations in order to defray the costs of the program under this section. Such gifts and donations may be accepted from—

''(A) any foreign government;

''(B) any foundation or other charitable organization, including any that is organized or operates under the laws of a foreign country; and

''(C) any source in the private sector of the United States or a foreign country.

''(e) DEPLOYMENT OF ADDITIONAL TELEPHONE EQUIPMENT OR INTERNET ACCESS.—If the Secretary of Defense determines that, in order to implement this section as quickly as practicable, it is necessary to provide additional telephones or Internet service in any area to facilitate telephone or packet based telephony calling for which benefits are provided under this section, the Secretary may, consistent with the availability of resources, award competitively bid contracts to one or more commercial entities for the provision and installation of telephones or Internet access in that area.

''(f) NO COMPROMISE OF MILITARY MISSION.—The Secretary of Defense should not take any action under this section that would compromise the military objectives or mission of the Department of Defense.

''(g) CONTINGENCY OPERATION DEFINED.—In this section, the term 'contingency operation' has the meaning given that term in section 101(a)(13) of title 10, United States Code. The term includes Operation Iraqi Freedom and Operation Enduring Freedom.''

§ 1030. Bonus to encourage Department of Defense personnel to refer persons for appointment as officers to serve in health professions

(a) AUTHORITY TO PAY BONUS.—

(1) AUTHORITY.—The Secretary of Defense may authorize the appropriate Secretary to pay a bonus under this section to an individual referred to in paragraph (2) who refers to a military recruiter a person who has not previously served in an armed force and, after such referral, takes an oath of enlistment that leads to appointment as a commissioned officer, or accepts an appointment as a commissioned officer, in an armed force in a health profession designated by the appropriate Secretary for purposes of this section.

(2) INDIVIDUALS ELIGIBLE FOR BONUS.—Subject to subsection (c), the following individuals are eligible for a referral bonus under this section:

(A) A member of the armed forces in a regular component of the armed forces.

(B) A member of the armed forces in a reserve component of the armed forces.

(C) A member of the armed forces in a retired status, including a member under 60 years of age who, but for age, would be eligible for retired or retainer pay.

(D) A civilian employee of a military department or the Department of Defense.

(b) REFERRAL.—For purposes of this section, a referral for which a bonus may be paid under subsection (a) occurs—

(1) when the individual concerned contacts a military recruiter on behalf of a person interested in taking an oath of enlistment that leads to appointment as a commissioned officer, or accepting an appointment as a commissioned officer, as applicable, in an armed force in a health profession; or

(2) when a person interested in taking an oath of enlistment that leads to appointment as a commissioned officer, or accepting an appointment as a commissioned officer, as applicable, in an armed force in a health profession contacts a military recruiter and informs the recruiter of the role of the individual concerned in initially recruiting the person.

(c) CERTAIN REFERRALS INELIGIBLE.—

(1) REFERRAL OF IMMEDIATE FAMILY.—A member of the armed forces or civilian employee of a military department or the Department of Defense may not be paid a bonus under subsection (a) for the referral of an immediate family member.

(2) MEMBERS IN RECRUITING ROLES.—A member of the armed forces or civilian employee of a military department or the Department of Defense serving in a recruiting or retention assignment, or assigned to other duties regarding which eligibility for a bonus under subsection (a) could (as determined by the appropriate Secretary) be perceived as creating a conflict of interest, may not be paid a bonus under subsection (a).

(3) JUNIOR RESERVE OFFICERS' TRAINING CORPS INSTRUCTORS.—A member of the armed forces detailed under subsection (c)(1) of section 2031 of this title to serve as an administrator or in-

structor in the Junior Reserve Officers' Training Corps program or a retired member of the armed forces employed as an administrator or instructor in the program under subsection (d) of such section may not be paid a bonus under subsection (a).

(d) AMOUNT OF BONUS.—The amount of the bonus payable for a referral under subsection (a) may not exceed $2,000. The amount shall be payable as provided in subsection (e).

(e) PAYMENT.—A bonus payable for a referral of a person under subsection (a) shall be paid as follows:

(1) Not more than $1,000 shall be paid upon the execution by the person of an agreement to serve as an officer in a health profession in an armed force for not less than three years.

(2) Not more than $1,000 shall be paid upon the completion by the person of the initial period of military training as an officer.

(f) RELATION TO PROHIBITION ON BOUNTIES.—The referral bonus authorized by this section is not a bounty for purposes of section 514(a) of this title.

(g) COORDINATION WITH RECEIPT OF RETIRED PAY.—A bonus paid under this section to a member of the armed forces in a retired status is in addition to any compensation to which the member is entitled under this title, title 37 or 38, or any other provision of law.

(h) APPROPRIATE SECRETARY DEFINED.—In this section, the term ''appropriate Secretary'' means—

(1) the Secretary of the Army, with respect to matters concerning the Army;

(2) the Secretary of the Navy, with respect to matters concerning the Navy, the Marine Corps, and the Coast Guard when it is operating as a service in the Navy;

(3) the Secretary of the Air Force, with respect to matters concerning the Air Force; and

(4) the Secretary of Defense, with respect to personnel of the Department of Defense.

(i) DURATION OF AUTHORITY.—A bonus may not be paid under subsection (a) with respect to any referral that occurs after December 31, 2011.

(Added Pub. L. 110–181, div. A, title VI, § 671(b)(1), Jan. 28, 2008, 122 Stat. 182; amended Pub. L. 110–417, [div. A], title VI, § 615(a), Oct. 14, 2008, 122 Stat. 4485; Pub. L. 111–84, div. A, title VI, § 616(1), Oct. 28, 2009, 123 Stat. 2354; Pub. L. 111–383, div. A, title VI, § 616(1), title X, § 1075(b)(15), Jan. 7, 2011, 124 Stat. 4238, 4369.)

AMENDMENTS

2011—Subsec. (e)(1). Pub. L. 111–383, § 1075(b)(15), substituted ''three years.'' for ''3 years,''.

Subsec. (i). Pub. L. 111–383, § 616(1), substituted ''December 31, 2011'' for ''December 31, 2010''.

2009—Subsec. (i). Pub. L. 111–84 substituted ''December 31, 2010'' for ''December 31, 2009''.

2008—Subsec. (i). Pub. L. 110–417 substituted ''December 31, 2009'' for ''December 31, 2008''.

§ 1031. Administration of oath

The President, the Vice-President, the Secretary of Defense, any commissioned officer, and any other person designated under regulations prescribed by the Secretary of Defense may administer any oath—

(1) required for the enlistment or appointment of any person in the armed forces; or

(2) required by law in connection with such an enlistment or appointment.

(Aug. 10, 1956, ch. 1041, 70A Stat. 80; Pub. L. 109–364, div. A, title V, § 595(b), Oct. 17, 2006, 120 Stat. 2235.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1031	10:19. 34:217a–2.	May 22, 1950, ch. 193, § 1, 64 Stat. 187.

The words ''(including the reserve component)'' are omitted, since the words ''any component of an armed force'' include the reserve components. The words ''any oath required for the enlistment or appointment of any person'' are substituted for the words ''the oath required for the enlistment of any person, the oath required for the appointment of any person to commissioned or warrant officer grade, and any other oath required by law in connection with the enlistment or appointment of any person''.

AMENDMENTS

2006—Pub. L. 109–364 substituted ''The President, the Vice-President, the Secretary of Defense, any commissioned officer, and any other person designated under regulations prescribed by the Secretary of Defense may administer any oath'' for ''Any commissioned officer of any component of an armed force, whether or not on active duty, may administer any oath'' in introductory provisions.

§ 1032. Disability and death compensation: dependents of members held as captives

(a) The President shall prescribe regulations under which the Secretary concerned may pay compensation for the disability or death of a dependent of a member of the uniformed services if the President determines that the disability or death—

(1) was caused by hostile action; and

(2) was a result of the relationship of the dependent to the member of the uniformed services.

(b) Any compensation otherwise payable to a person under this section in connection with any disability or death shall be reduced by any amount payable to such person under any other program funded in whole or in part by the United States in connection with such disability or death, except that nothing in this subsection shall result in the reduction of any amount below zero.

(c) A determination by the President under subsection (a) is conclusive and is not subject to judicial review.

(d) In this section:

(1) The term ''dependent'' has the meaning given that term in section 551 of title 37.

(2) The term ''Secretary concerned'' has the meaning given that term in section 101 of that title.

(Added Pub. L. 99–399, title VIII, § 806(b)(1), Aug. 27, 1986, 100 Stat. 885, § 1051; amended Pub. L. 99–661, div. A, title XIII, § 1343(a)(25), Nov. 14, 1986, 100 Stat. 3994; renumbered § 1032 and amended Pub. L. 100–26, §§ 3(8), 7(e)(1)(A), Apr. 21, 1987, 101 Stat. 274, 281; Pub. L. 101–189, div. A, title XVI, § 1622(e)(2), Nov. 29, 1989, 103 Stat. 1605.)

PRIOR PROVISIONS

A prior section 1032, act Aug. 10, 1956, ch. 1041, 70A Stat. 80, provided that a Reserve may accept civil employment with a foreign government or concern, prior to repeal by Pub. L. 95–105, title V, § 509(d)(1), Aug. 17, 1977, 91 Stat. 860.

AMENDMENTS

1989—Subsec. (d)(1). Pub. L. 101–189, § 1622(e)(2)(A), substituted ''The term 'dependent' has'' for '' 'Dependent' has''.

Subsec. (d)(2). Pub. L. 101–189, § 1622(e)(2)(B), inserted ''The term'' after ''(2)''.

1987—Pub. L. 100–26, § 7(e)(1)(A), renumbered the second section 1051 of this title as this section.

Subsec. (d)(1), (2). Pub. L. 100–26, § 3(8), amended directory language of Pub. L. 99–661. See 1986 Amendment note below.

1986—Subsec. (d). Pub. L. 99–661, § 1343(a)(25), as amended by Pub. L. 100–26, § 3(8), substituted ''title 37'' for ''that title'' in par. (1), and ''has the meaning given that term'' for ''and 'uniformed services' have the meanings given those terms'' in par. (2).

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 3(8) of Pub. L. 100–26 applicable as if included in Pub. L. 99–661 when enacted on Nov. 14, 1986, see section 12(a) of Pub. L. 100–26, set out as a note under section 776 of this title.

EFFECTIVE DATE

Section 806(b)(3) of Pub. L. 99–399 provided that: ''Section 1051 [now 1032] of title 10, United States Code, as added by paragraph (1), shall apply with respect to any disability or death resulting from an injury that occurs after January 21, 1981.''

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of Defense, see section 4 of Ex. Ord. No. 12598, June 17, 1987, 52 F.R. 23421, set out as a note under section 5569 of Title 5, Government Organization and Employees.

§ 1033. Participation in management of specified non-Federal entities: authorized activities

(a) AUTHORIZATION.—The Secretary concerned may authorize a member of the armed forces under the Secretary's jurisdiction to serve without compensation as a director, officer, or trustee, or to otherwise participate, in the management of an entity designated under subsection (b). Any such authorization shall be made on a case-by-case basis, for a particular member to participate in a specific capacity with a specific designated entity. Such authorization may be made only for the purpose of providing oversight and advice to, and coordination with, the designated entity, and participation of the member in the activities of the designated entity may not extend to participation in the day-to-day operations of the entity.

(b) DESIGNATED ENTITIES.—(1) The Secretary of Defense, and the Secretary of Homeland Security in the case of the Coast Guard when it is not operating as a service in the Navy, shall designate those entities for which authorization under subsection (a) may be provided. The list of entities so designated may not be revised more frequently than semiannually. In making such designations, the Secretary shall designate each military welfare society and may designate any other entity described in paragraph (3). No other entities may be designated.

(2) In this section, the term ''military welfare society'' means the following:

(A) Army Emergency Relief.

(B) Air Force Aid Society, Inc.

(C) Navy-Marine Corps Relief Society.

(D) Coast Guard Mutual Assistance.

(3) An entity described in this paragraph is an entity that is not operated for profit and is any of the following:

(A) An entity that regulates and supports the athletic programs of the service academies (including athletic conferences).

(B) An entity that regulates international athletic competitions.

(C) An entity that accredits service academies and other schools of the armed forces (including regional accrediting agencies).

(D) An entity that (i) regulates the performance, standards, and policies of military health care (including health care associations and professional societies), and (ii) has designated the position or capacity in that entity in which a member of the armed forces may serve if authorized under subsection (a).

(E) An entity that, operating in a foreign nation where United States military personnel are serving at United States military activities, promotes understanding and tolerance between such personnel (and their families) and the citizens of that host foreign nation through programs that foster social relations between those persons.

(c) PUBLICATION OF DESIGNATED ENTITIES AND OF AUTHORIZED PERSONS.—A designation of an entity under subsection (b), and an authorization under subsection (a) of a member of the armed forces to participate in the management of such an entity, shall be published in the Federal Register.

(d) REGULATIONS.—The Secretary of Defense, and the Secretary of Homeland Security in the case of the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations to carry out this section.

(Added Pub. L. 105–85, div. A, title V, § 593(a)(1), Nov. 18, 1997, 111 Stat. 1762; amended Pub. L. 106–65, div. A, title V, § 583, Oct. 5, 1999, 113 Stat. 634; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

PRIOR PROVISIONS

A prior section 1033, act Aug. 10, 1956, ch. 1041, 70A Stat. 80, related to Reserves continuing to accept compensation while on active duty that they were receiving prior to being ordered to active duty, prior to repeal by Pub. L. 103–337, div. A, title XVI, §§ 1662(g)(2), 1691, Oct. 5, 1994, 108 Stat. 2996, 3026, eff. Dec. 1, 1994.

AMENDMENTS

2002—Subsecs. (b)(1), (d). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1999—Subsec. (b)(3)(E). Pub. L. 106–65 added subpar. (E).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

§ 1034. Protected communications; prohibition of retaliatory personnel actions

(a) RESTRICTING COMMUNICATIONS WITH MEMBERS OF CONGRESS AND INSPECTOR GENERAL PROHIBITED.—(1) No person may restrict a member of the armed forces in communicating with a Member of Congress or an Inspector General.

(2) Paragraph (1) does not apply to a communication that is unlawful.

(b) PROHIBITION OF RETALIATORY PERSONNEL ACTIONS.—(1) No person may take (or threaten to take) an unfavorable personnel action, or withhold (or threaten to withhold) a favorable personnel action, as a reprisal against a member of the armed forces for making or preparing—

(A) a communication to a Member of Congress or an Inspector General that (under subsection (a)) may not be restricted; or

(B) a communication that is described in subsection (c)(2) and that is made (or prepared to be made) to—

(i) a Member of Congress;

(ii) an Inspector General (as defined in subsection (i)) or any other Inspector General appointed under the Inspector General Act of 1978;

(iii) a member of a Department of Defense audit, inspection, investigation, or law enforcement organization;

(iv) any person or organization in the chain of command; or

(v) any other person or organization designated pursuant to regulations or other established administrative procedures for such communications.

(2) Any action prohibited by paragraph (1) (including the threat to take any unfavorable action and the withholding or threat to withhold any favorable action) shall be considered for the purposes of this section to be a personnel action prohibited by this subsection.

(c) INSPECTOR GENERAL INVESTIGATION OF ALLEGATIONS OF PROHIBITED PERSONNEL ACTIONS.—(1) If a member of the armed forces submits to an Inspector General an allegation that a personnel action prohibited by subsection (b) has been taken (or threatened) against the member with respect to a communication described in paragraph (2), the Inspector General shall take the action required under paragraph (3).

(2) A communication described in this paragraph is a communication in which a member of the armed forces complains of, or discloses information that the member reasonably believes constitutes evidence of, any of the following:

(A) A violation of law or regulation, including a law or regulation prohibiting sexual harassment or unlawful discrimination.

(B) Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(3)(A) An Inspector General receiving an allegation as described in paragraph (1) shall expeditiously determine, in accordance with regulations prescribed under subsection (h), whether there is sufficient evidence to warrant an investigation of the allegation.

(B) If the Inspector General receiving such an allegation is an Inspector General within a military department, that Inspector General shall promptly notify the Inspector General of the Department of Defense of the allegation. Such notification shall be made in accordance with regulations prescribed under subsection (h).

(C) If an allegation under paragraph (1) is submitted to an Inspector General within a military department and if the determination of that Inspector General under subparagraph (A) is that there is not sufficient evidence to warrant an investigation of the allegation, that Inspector General shall forward the matter to the Inspector General of the Department of Defense for review.

(D) Upon determining that an investigation of an allegation under paragraph (1) is warranted, the Inspector General making the determination shall expeditiously investigate the allegation. In the case of a determination made by the Inspector General of the Department of Defense, that Inspector General may delegate responsibility for the investigation to an appropriate Inspector General within a military department.

(E) In the case of an investigation under subparagraph (D) within the Department of Defense, the results of the investigation shall be determined by, or approved by, the Inspector General of the Department of Defense (regardless of whether the investigation itself is conducted by the Inspector General of the Department of Defense or by an Inspector General within a military department).

(4) Neither an initial determination under paragraph (3)(A) nor an investigation under paragraph (3)(D) is required in the case of an allegation made more than 60 days after the date on which the member becomes aware of the personnel action that is the subject of the allegation.

(5) The Inspector General of the Department of Defense, or the Inspector General of the Department of Homeland Security (in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy), shall ensure that the Inspector General conducting the investigation of an allegation under this subsection is outside the immediate chain of command of both the member submitting the allegation and the individual or individuals alleged to have taken the retaliatory action.

(d) INSPECTOR GENERAL INVESTIGATION OF UNDERLYING ALLEGATIONS.—Upon receiving an allegation under subsection (c), the Inspector General receiving the allegation shall conduct a separate investigation of the information that the member making the allegation believes constitutes evidence of wrongdoing (as described in subparagraph (A) or (B) of subsection (c)(2)) if there previously has not been such an investigation or if the Inspector General determines that the original investigation was biased or otherwise inadequate. In the case of an allegation received by the Inspector General of the Department of Defense, the Inspector General may delegate that responsibility to the Inspector General of the armed force concerned.

(e) REPORTS ON INVESTIGATIONS.—(1) After completion of an investigation under subsection (c) or (d) or, in the case of an investigation under subsection (c) by an Inspector General within a military department, after approval of the report of that investigation under sub-

section (c)(3)(E), the Inspector General conducting the investigation shall submit a report on the results of the investigation to the Secretary of Defense (or to the Secretary of Homeland Security in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy) and shall transmit a copy of the report on the results of the investigation to the member of the armed forces who made the allegation investigated. The report shall be transmitted to the Secretary, and the copy of the report shall be transmitted to the member, not later than 30 days after the completion of the investigation or, in the case of an investigation under subsection (c) by an Inspector General within a military department, after approval of the report of that investigation under subsection (c)(3)(E).

(2) In the copy of the report transmitted to the member, the Inspector General shall ensure the maximum disclosure of information possible, with the exception of information that is not required to be disclosed under section 552 of title 5. However, the copy need not include summaries of interviews conducted, nor any document acquired, during the course of the investigation. Such items shall be transmitted to the member, if the member requests the items, with the copy of the report or after the transmittal to the member of the copy of the report, regardless of whether the request for those items is made before or after the copy of the report is transmitted to the member.

(3) If, in the course of an investigation of an allegation under this section, the Inspector General determines that it is not possible to submit the report required by paragraph (1) within 180 days after the date of receipt of the allegation being investigated, the Inspector General shall provide to the Secretary of Defense (or to the Secretary of Homeland Security in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy) and to the member making the allegation a notice—

(A) of that determination (including the reasons why the report may not be submitted within that time); and

(B) of the time when the report will be submitted.

(4) The report on the results of the investigation shall contain a thorough review of the facts and circumstances relevant to the allegation and the complaint or disclosure and shall include documents acquired during the course of the investigation, including summaries of interviews conducted. The report may include a recommendation as to the disposition of the complaint.

(f) CORRECTION OF RECORDS WHEN PROHIBITED ACTION TAKEN.—(1) A board for the correction of military records acting under section 1552 of this title, in resolving an application for the correction of records made by a member or former member of the armed forces who has alleged a personnel action prohibited by subsection (b), on the request of the member or former member or otherwise, may review the matter.

(2) In resolving an application described in paragraph (1), a correction board—

(A) shall review the report of the Inspector General submitted under subsection (e)(1);

(B) may request the Inspector General to gather further evidence; and

(C) may receive oral argument, examine and cross-examine witnesses, take depositions, and, if appropriate, conduct an evidentiary hearing.

(3) If the board elects to hold an administrative hearing, the member or former member who filed the application described in paragraph (1)—

(A) may be provided with representation by a judge advocate if—

(i) the Inspector General, in the report under subsection (e)(1), finds that there is probable cause to believe that a personnel action prohibited by subsection (b) has been taken (or threatened) against the member with respect to a communication described in subsection (c)(2);

(ii) the Judge Advocate General concerned determines that the case is unusually complex or otherwise requires judge advocate assistance to ensure proper presentation of the legal issues in the case; and

(iii) the member is not represented by outside counsel chosen by the member; and

(B) may examine witnesses through deposition, serve interrogatories, and request the production of evidence, including evidence contained in the investigatory record of the Inspector General but not included in the report submitted under subsection (e)(1).

(4) The Secretary concerned shall issue a final decision with respect to an application described in paragraph (1) within 180 days after the application is filed. If the Secretary fails to issue such a final decision within that time, the member or former member shall be deemed to have exhausted the member's or former member's administrative remedies under section 1552 of this title.

(5) The Secretary concerned shall order such action, consistent with the limitations contained in sections 1552 and 1553 of this title, as is necessary to correct the record of a personnel action prohibited by subsection (b).

(6) If the Board determines that a personnel action prohibited by subsection (b) has occurred, the Board may recommend to the Secretary concerned that the Secretary take appropriate disciplinary action against the individual who committed such personnel action.

(g) REVIEW BY SECRETARY OF DEFENSE.—Upon the completion of all administrative review under subsection (f), the member or former member of the armed forces (except for a member or former member of the Coast Guard when the Coast Guard is not operating as a service in the Navy) who made the allegation referred to in subsection (c)(1), if not satisfied with the disposition of the matter, may submit the matter to the Secretary of Defense. The Secretary shall make a decision to reverse or uphold the decision of the Secretary of the military department concerned in the matter within 90 days after receipt of such a submittal.

(h) REGULATIONS.—The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not oper-

ating as a service in the Navy, shall prescribe regulations to carry out this section.

(i) DEFINITIONS.—In this section:

(1) The term ''Member of Congress'' includes any Delegate or Resident Commissioner to Congress.

(2) The term ''Inspector General'' means any of the following:

(A) The Inspector General of the Department of Defense.

(B) The Inspector General of the Department of Homeland Security, in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy.

(C) Any officer of the armed forces or employee of the Department of Defense who is assigned or detailed to serve as an Inspector General at any level in the Department of Defense.

(3) The term ''unlawful discrimination'' means discrimination on the basis of race, color, religion, sex, or national origin.

(Aug. 10, 1956, ch. 1041, 70A Stat. 80; Pub. L. 98–525, title XIV, § 1405(19)(A), (B)(i), Oct. 19, 1984, 98 Stat. 2622; Pub. L. 100–456, div. A, title VIII, § 846(a)(1), Sept. 29, 1988, 102 Stat. 2027; Pub. L. 101–225, title II, § 202, Dec. 12, 1989, 103 Stat. 1910; Pub. L. 103–337, div. A, title V, § 531(a)–(g)(1), Oct. 5, 1994, 108 Stat. 2756–2758; Pub. L. 105–261, div. A, title IX, § 933, Oct. 17, 1998, 112 Stat. 2107; Pub. L. 106–398, § 1 [[div. A], title IX, § 903], Oct. 30, 2000, 114 Stat. 1654, 1654A–224; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 108–375, div. A, title V, § 591(a), Oct. 28, 2004, 118 Stat. 1933; Pub. L. 110–181, div. A, title X, § 1063(a)(8), Jan. 28, 2008, 122 Stat. 322.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1034	50 App.:454(a) (last par.)	June 24, 1948, ch. 625, § 4(a) (last par.); restated June 19, 1951, ch. 144, § 1(d) (last par.), 65 Stat. 78.

The words ''prevented'', ''directly or indirectly'', ''concerning any subject'', ''or Members'', and ''and safety'' are omitted as surplusage. The word ''unlawful'' is substituted for the words ''in violation of law''.

REFERENCES IN TEXT

The Inspector General Act of 1978, referred to in subsec. (b)(1)(B)(ii), is Pub. L. 95–452, Oct. 12, 1978, 92 Stat. 1101, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

2008—Subsec. (b)(2). Pub. L. 110–181 inserted ''unfavorable'' before ''action and the withholding''.

2004—Subsec. (b)(1)(B)(iv), (v). Pub. L. 108–375 added cls. (iv) and (v) and struck out former cl. (iv) which read as follows: ''any other person or organization (including any person or organization in the chain of command) designated pursuant to regulations or other established administrative procedures for such communications.''

2002—Subsecs. (c)(5), (e)(1), (3), (h), (i)(2)(B). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

2000—Subsec. (c)(3)(A). Pub. L. 106–398, § 1 [[div. A], title IX, § 903(a)], inserted '', in accordance with regulations prescribed under subsection (h),'' after ''shall expeditiously determine''.

Subsec. (i)(2). Pub. L. 106–398, § 1 [[div. A], title IX, § 903(b)(1)], inserted ''any of'' after ''means'' in introductory provisions.

Subsec. (i)(2)(C) to (G). Pub. L. 106–398, § 1 [[div. A], title IX, § 903(b)(2), (3)], added subpar. (C) and struck out former subpars. (C) to (G) which read as follows:

''(C) The Inspector General of the Army, in the case of a member of the Army.

''(D) The Naval Inspector General, in the case of a member of the Navy.

''(E) The Inspector General of the Air Force, in the case of a member of the Air Force.

''(F) The Deputy Naval Inspector General for Marine Corps Matters, in the case of a member of the Marine Corps.

''(G) An officer of the armed forces assigned or detailed under regulations of the Secretary concerned to serve as an Inspector General at any command level in one of the armed forces.''

1998—Subsec. (b)(1)(B)(ii). Pub. L. 105–261, § 933(f)(2), substituted ''subsection (i)) or any other Inspector General appointed under the Inspector General Act of 1978'' for ''subsection (j))''.

Subsec. (c)(1). Pub. L. 105–261, § 933(a)(1)(A), added par. (1) and struck out former par. (1) which read as follows: ''If a member of the armed forces submits to the Inspector General of the Department of Defense (or the Inspector General of the Department of Transportation, in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy) an allegation that a personnel action prohibited by subsection (b) has been taken (or threatened) against the member with respect to a communication described in paragraph (2), the Inspector General shall expeditiously investigate the allegation. If, in the case of an allegation submitted to the Inspector General of the Department of Defense, the Inspector General delegates the conduct of the investigation of the allegation to the inspector general of one of the armed forces, the Inspector General of the Department of Defense shall ensure that the inspector general conducting the investigation is outside the immediate chain of command of both the member submitting the allegation and the individual or individuals alleged to have taken the retaliatory action.''

Subsec. (c)(2)(B). Pub. L. 105–261, § 933(b), substituted ''Gross mismanagement'' for ''Mismanagement''.

Subsec. (c)(3) to (5). Pub. L. 105–261, § 933(a)(1)(B), added pars. (3) to (5) and struck out former par. (3) which read as follows: ''The Inspector General is not required to make an investigation under paragraph (1) in the case of an allegation made more than 60 days after the date on which the member becomes aware of the personnel action that is the subject of the allegation.''

Subsec. (d). Pub. L. 105–261, § 933(a)(2), inserted ''receiving the allegation'' after '', the Inspector General'' and ''In the case of an allegation received by the Inspector General of the Department of Defense, the Inspector General may delegate that responsibility to the Inspector General of the armed force concerned.'' at end.

Subsec. (e)(1). Pub. L. 105–261, § 933(c)(1), substituted ''After completion of an investigation under subsection (c) or (d) or, in the case of an investigation under subsection (c) by an Inspector General within a military department, after approval of the report of that investigation under subsection (c)(3)(E), the Inspector General conducting the investigation shall submit a report on'' for ''Not later than 30 days after completion of an investigation under subsection (c) or (d), the Inspector General shall submit a report on'' and inserted ''shall transmit a copy of the report on the results of the investigation to'' before ''the member of the armed forces'' and ''The report shall be transmitted to the Secretary, and the copy of the report shall be transmitted to the member, not later than 30 days after the completion of the investigation or, in the case of an investigation under subsection (c) by an Inspector General within a military department, after approval of the report of that investigation under subsection (c)(3)(E).'' at end.

Subsec. (e)(2). Pub. L. 105–261, §933(c)(2), substituted ''transmitted'' for ''submitted'' and inserted at end ''However, the copy need not include summaries of interviews conducted, nor any document acquired, during the course of the investigation. Such items shall be transmitted to the member, if the member requests the items, with the copy of the report or after the transmittal to the member of the copy of the report, regardless of whether the request for those items is made before or after the copy of the report is transmitted to the member.''

Subsec. (e)(3). Pub. L. 105–261, §933(c)(3), substituted ''180 days'' for ''90 days''.

Subsec. (h). Pub. L. 105–261, §933(f)(1), redesignated subsec. (i) as (h).

Pub. L. 105–261, §933(d), struck out heading and text of subsec. (h). Text read as follows: ''After disposition of any case under this section, the Inspector General shall, whenever possible, conduct an interview with the person making the allegation to determine the views of that person on the disposition of the matter.''

Subsec. (i). Pub. L. 105–261, §933(f)(1), redesignated subsec. (j) as (i). Former subsec. (i) redesignated (h).

Subsec. (j). Pub. L. 105–261, §933(f)(1), redesignated subsec. (j) as (i).

Subsec. (j)(2). Pub. L. 105–261, §933(e), substituted ''means the following:'' for ''means—'' in introductory provisions, added subpars. (A) to (F), redesignated former subpar. (B) as (G) and substituted ''An officer'' for ''an officer'' in that subpar., and struck out former subpar. (A) which read as follows: ''an Inspector General appointed under the Inspector General Act of 1978; and''.

1994—Pub. L. 103–337, §531(g)(1), substituted ''Protected communications'' for ''Communicating with a Member of Congress or Inspector General'' in section catchline.

Subsec. (b). Pub. L. 103–337, §531(a), inserted ''(1)'' before ''No person may take'', substituted ''or preparing—'' for ''or preparing a communication to a Member of Congress or an Inspector General that (under subsection (a)) may not be restricted.'', added subpars. (A) and (B), inserted ''(2)'' before ''Any action prohibited'', and substituted ''paragraph (1)'' for ''the preceding sentence''.

Subsec. (c). Pub. L. 103–337, §531(b)(3), substituted ''Allegations of Prohibited Personnel Actions'' for ''Certain Allegations'' in heading.

Subsec. (c)(1). Pub. L. 103–337, §531(b)(1), inserted at end ''If, in the case of an allegation submitted to the Inspector General of the Department of Defense, the Inspector General delegates the conduct of the investigation of the allegation to the inspector general of one of the armed forces, the Inspector General of the Department of Defense shall ensure that the inspector general conducting the investigation is outside the immediate chain of command of both the member submitting the allegation and the individual or individuals alleged to have taken the retaliatory action.''

Subsec. (c)(2). Pub. L. 103–337, §531(b)(2), added par. (2) and struck out former par. (2) which read as follows: ''A communication described in this paragraph is a communication to a Member of Congress or an Inspector General that (under subsection (a)) may not be restricted in which the member of the armed forces makes a complaint or discloses information that the member reasonably believes constitutes evidence of—

''(A) a violation of a law or regulation; or

''(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.''

Subsec. (c)(4). Pub. L. 103–337, §531(c)(2), struck out par. (4) which read as follows: ''If the Inspector General has not already done so, the Inspector General shall commence a separate investigation of the information that the member believes evidences wrongdoing as described in subparagraph (A) or (B) of paragraph (2). The Inspector General is not required to make such an investigation if the information that the member believes evidences wrongdoing relates to actions which took place during combat.''

Subsec. (c)(5). Pub. L. 103–337, §531(d)(1), redesignated subsec. (c)(5) as subsec. (e)(1).

Subsec. (c)(6), (7). Pub. L. 103–337, §531(d)(4), redesignated subsec. (c)(6) and (7) as subsec. (e)(3) and (4), respectively.

Subsec. (d). Pub. L. 103–337, §531(c)(2), added subsec. (d). Former subsec. (d) redesignated (f).

Subsec. (e). Pub. L. 103–337, §531(d)(1), redesignated subsec. (c)(5) as subsec. (e) and inserted subsec. heading and par. (1) designation before ''Not later than 30 days''. Former subsec. (e) redesignated (g).

Subsec. (e)(1). Pub. L. 103–337, §531(d)(2), substituted ''subsection (c) or (d)'' for ''this subsection'' and ''the member of the armed forces who made the allegation investigated'' for ''the member of the armed forces concerned'' and struck out at end ''In the copy of the report submitted to the member, the Inspector General may exclude any information that would not otherwise be available to the member under section 552 of title 5.''

Subsec. (e)(2). Pub. L. 103–337, §531(d)(3), added par. (2).

Subsec. (e)(3). Pub. L. 103–337, §531(d)(4), (5), redesignated subsec. (c)(6) as subsec. (e)(3) and substituted ''paragraph (1)'' for ''paragraph (5)''.

Subsec. (e)(4). Pub. L. 103–337, §531(d)(4), redesignated subsec. (c)(7) as subsec. (e)(4).

Subsec. (f). Pub. L. 103–337, §531(c)(1), (f)(1), redesignated subsec. (d) as (f) and substituted ''subsection (e)(1)'' for ''subsection (c)(5)'' in pars. (2)(A), (3)(A)(i) and (B). Former subsec. (f) redesignated (h).

Subsec. (g). Pub. L. 103–337, §531(c)(1), (f)(2), redesignated subsec. (e) as (g) and substituted ''subsection (f)'' for ''subsection (d)''. Former subsec. (g) redesignated (i).

Subsecs. (h), (i). Pub. L. 103–337, §531(c)(1), redesignated subsecs. (f) and (g) as (h) and (i), respectively. Former subsec. (h) redesignated (j).

Subsec. (j). Pub. L. 103–337, §531(c)(1), (e), redesignated subsec. (h) as (j) and added par. (3).

1989—Subsec. (c)(1). Pub. L. 101–225, §202(1), inserted ''when the Coast Guard is not operating as a service in the Navy'' after ''Coast Guard''.

Subsec. (c)(5). Pub. L. 101–225, §202(2), inserted ''(or to the Secretary of Transportation in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy)'' after ''Secretary of Defense''.

Subsec. (c)(6). Pub. L. 101–225, §202(3), inserted ''(or to the Secretary of Transportation in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy)'' after ''Secretary of Defense''.

Subsec. (e). Pub. L. 101–225, §202(4), inserted ''(except for a member or former member of the Coast Guard when the Coast Guard is not operating as a service in the Navy)'' after ''armed forces''.

1988—Pub. L. 100–456 substituted ''Communicating with a Member of Congress or Inspector General; prohibition of retaliatory personnel actions'' for ''Communicating with a Member of Congress'' in section catchline, and amended text generally. Prior to amendment, text read as follows: ''No person may restrict any member of an armed force in communicating with a Member of Congress, unless the communication is unlawful or violates a regulation necessary to the security of the United States.''

1984—Pub. L. 98–525 substituted ''Member'' for ''member'' in section catchline and text.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–375, div. A, title V, §591(b), Oct. 28, 2004, 118 Stat. 1933, provided that: ''The amendments made by this section [amending this section] apply with respect to any unfavorable personnel action taken or threatened, and any withholding of or threat to withhold a favorable personnel action, on or after the date of the enactment of this Act [Oct. 28, 2004].''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of

Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 846(d) of Pub. L. 100–456 provided that: ''The amendment to section 1034 of title 10, United States Code, made by subsection (a)(1), shall apply with respect to any personnel action taken (or threatened to be taken) on or after the date of the enactment of this Act [Sept. 29, 1988] as a reprisal prohibited by subsection (b) of that section.''

REGULATIONS

Section 531(h), (i) of Pub. L. 103–337 provided that:

''(h) DEADLINE FOR REGULATIONS.—The Secretary of Defense and the Secretary of Transportation shall prescribe regulations to implement the amendments made by this section [amending this section] not later than 120 days after the date of the enactment of this Act [Oct. 5, 1994].

''(i) CONTENT OF REGULATIONS.—In prescribing regulations under section 1034 of title 10, United States Code, as amended by this section, the Secretary of Defense and the Secretary of Transportation shall provide for appropriate procedural protections for the subject of any investigation carried out under the provisions of that section, including a process for appeal and review of investigative findings.''

Section 846(b) of Pub. L. 100–456 provided that: ''The Secretary of Defense and the Secretary of Transportation shall prescribe the regulations required by subsection (g) [now (h)] of section 1034 of title 10, United States Code, as amended by subsection (a), not later than 180 days after the date of the enactment of this Act [Sept. 29, 1988].''

WHISTLEBLOWER PROTECTIONS FOR MEMBERS OF ARMED FORCES

Pub. L. 102–190, div. A, title VIII, § 843, Dec. 5, 1991, 105 Stat. 1449, provided that:

''(a) REGULATIONS REQUIRED.—The Secretary of Defense shall prescribe regulations prohibiting members of the Armed Forces from taking or threatening to take any unfavorable personnel action, or withholding or threatening to withhold a favorable personnel action, as a reprisal against any member of the Armed Forces for making or preparing a lawful communication to any employee of the Department of Defense or any member of the Armed Forces who is assigned to or belongs to an organization which has as its primary responsibility audit, inspection, investigation, or enforcement of any law or regulation.

''(b) VIOLATIONS BY PERSONS SUBJECT TO THE UCMJ.—The Secretary shall provide in the regulations that a violation of the prohibition by a person subject to chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), is punishable as a violation of section 892 of such title (article 92 of the Uniform Code of Military Justice).

''(c) DEADLINE.—The regulations required by this section shall be prescribed not later than 180 days after the date of the enactment of this Act [Dec. 5, 1991].''

REPORT ON ACTIVITIES OF INSPECTOR GENERAL

Section 846(c) of Pub. L. 100–456 directed Inspector General of Department of Defense (and Inspector General of Department of Transportation with respect to Coast Guard) to submit, not later than Feb. 1, 1990, a report to Congress on activities of Inspector General under this section, with that report to include, in the case of each case handled by Inspector General under this section, a description of (A) nature of allegation described in subsec. (c) of this section; (B) evaluation and recommendation of Inspector General with respect to allegation; (C) any action of appropriate board for correction of military records with respect to allegation; (D) if allegation was determined to be meritorious, any corrective action taken; and (E) views of member or former member of armed forces making allegation (determined on basis of interview under subsec. (f) of this section) on disposition of case.

§ 1035. Deposits of savings

(a) Under joint regulations prescribed by the Secretaries concerned, a member of the armed forces who is on a permanent duty assignment outside the United States or its possessions may deposit during that tour of duty not more than his unallotted current pay and allowances in amounts of $5 or more, with any branch, office, or officer of a uniformed service. Amounts so deposited shall be deposited in the Treasury and kept as a separate fund, and shall be accounted for in the same manner as public funds.

(b) Interest at a rate prescribed by the President, not to exceed 10 percent a year, will accrue on amounts deposited under this section. However, the maximum amount upon which interest may be paid under this subsection to any member is $10,000, except that such limitation shall not apply to deposits made on or after September 1, 1966, in the case of those members in a missing status during the Vietnam conflict, the Persian Gulf conflict, or a contingency operation. Interest under this subsection shall terminate 90 days after the member's return to the United States or its possessions.

(c) Except as provided in joint regulations prescribed by the Secretaries concerned, payments of deposits, and interest thereon, may not be made to the member while he is on duty outside the United States or its possessions.

(d) An amount deposited under this section, with interest thereon, is exempt from liability for the member's debts, including any indebtedness to the United States or any instrumentality thereof, and is not subject to forfeiture by sentence of a court-martial.

(e) The Secretary concerned, or his designee, may in the interest of a member who is in a missing status or his dependents, initiate, stop, modify, and change allotments, and authorize a withdrawal of deposits, made under this section, even though the member had an opportunity to deposit amounts under this section and elected not to do so. Interest may be computed from the day the member entered a missing status, or September 1, 1966, whichever is later.

(f) The Secretary of Defense may authorize a member of the armed forces who is on a temporary duty assignment outside of the United States or its possessions in support of a contingency operation to make deposits of unallotted current pay and allowances during that duty as provided in subsection (a). The Secretary shall prescribe regulations establishing standards and procedures for the administration of this subsection.

(g) In this section:

(1) The term ''missing status'' has the meaning given that term in section 551(2) of title 37.

(2) The term ''Vietnam conflict'' means the period beginning on February 28, 1961, and ending on May 7, 1975.

(3) The term ''Persian Gulf conflict'' means the period beginning on January 16, 1991, and ending on the date thereafter prescribed by Presidential proclamation or by law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 80; Pub. L. 89–538, § 1(1), Aug. 14, 1966, 80 Stat. 347; Pub. L.

90–122, § 1, Nov. 3, 1967, 81 Stat. 361; Pub. L. 91–200, Feb. 26, 1970, 84 Stat. 16; Pub. L. 98–525, title XIV, § 1405(20), Oct. 19, 1984, 98 Stat. 2623; Pub. L. 99–661, div. A, title XIII, § 1343(a)(3), Nov. 14, 1986, 100 Stat. 3992; Pub. L. 102–25, title III, § 310, Apr. 6, 1991, 105 Stat. 84; Pub. L. 102–190, div. A, title VI, § 639, Dec. 5, 1991, 105 Stat. 1384.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1035(a)	10:908(a) (less words after last semicolon). 34:937 (less words after last semicolon).	July 15, 1954, ch. 513, §§ 1–3, 68 Stat. 485.
1035(b)	10:908b (1st 20, and last 13, words). 34:938 (1st 20, and last 13, words).	
1035(c)	10:908a (words after last semicolon). 10:908b (less 1st 20, and last 13, words). 34:937 (words after last semicolon). 34:938 (less 1st 20, and last 13, words).	
1035(d)	10:908c. 34:939.	

In subsection (a), the words ''in amounts of $5 or more'' are substituted for the words ''in sums not less than $5''. 10:908a (words before 1st semicolon of last sentence) and 34:937 (words before 1st semicolon of last sentence) are omitted as covered by subsection (c).

In subsection (b), the word ''accrues'' is substituted for the words ''shall be paid''.

In subsection (c), the words ''not less than $5'' are omitted as surplusage.

AMENDMENTS

1991—Subsec. (b). Pub. L. 102–190, § 639(a), substituted '', the Persian Gulf conflict, or a contingency operation'' for ''or during the Persian Gulf conflict'' before period at end of second sentence and struck out at end ''For purposes of this subsection, the Vietnam conflict begins on February 28, 1961, and ends on May 7, 1975, and the Persian Gulf conflict begins on January 16, 1991, and ends on the date thereafter prescribed by Presidential proclamation or by law.''

Pub. L. 102–25, § 310(a), (c)(1), struck out '', as defined in section 551(2) of title 37,'' after ''missing status'', inserted ''or during the Persian Gulf conflict'' before period at end of second sentence, and substituted ''May 7, 1975, and the Persian Gulf conflict begins on January 16, 1991, and ends on the date thereafter prescribed by Presidential proclamation or by law'' for ''the date designated by the President by Executive order as the date of the termination of combatant activities in Vietnam''.

Subsec. (e). Pub. L. 102–25, § 310(c)(2), struck out ''(as defined in section 551(2) of title 37)'' after ''in a missing status''.

Subsec. (f). Pub. L. 102–190, § 639(b), added subsec. (f) and redesignated former subsec. (f) as (g).

Pub. L. 102–25, § 310(b), added subsec. (f).

Subsec. (g). Pub. L. 102–190, § 639(b)(1), (c), redesignated subsec. (f) as (g) and amended it generally. Prior to amendment, subsec. (g) read as follows: ''In this section, the term 'missing status' has the meaning given such term in section 551(2) of title 37.''

1986—Subsec. (a). Pub. L. 99–661 substituted ''armed forces'' for ''armed force''.

1984—Subsec. (b). Pub. L. 98–525 substituted ''percent'' for ''per centum'', ''subsection'' for ''Act'' after ''paid under this'', and ''90'' for ''ninety''.

1970—Subsec. (b). Pub. L. 91–200 permitted accrual of interest on savings above $10,000 ceiling in case of soldiers involved in Vietnam conflicts who have made deposits on or after Sept. 1, 1966, and who are in missing status contemplated by section 551(2) of Title 37, and set out duration of Vietnam conflict as starting Feb. 28, 1961, and ending on the date that the President may designate by Executive order.

1967—Subsec. (e). Pub. L. 90–122 added subsec. (e).

1966—Subsec. (a). Pub. L. 89–538 permitted not only enlisted personnel but any member of the armed forces, provided he is on permanent duty outside the United States, to participate in the savings program organized under this section and changed the fund into which such savings deposits are made.

Subsec. (b). Pub. L. 89–538 changed rate of interest from 4 per centum per annum to a rate prescribed by the President, not to exceed 10 per centum per annum, did away with the necessity that amounts be on deposit for six months or more, set a maximum of $10,000 upon which interest shall be paid, and provided for termination of interest 90 days after the member's return to the United States or its possessions.

Subsec. (c). Pub. L. 89–538 substituted provisions that, unless changed by joint regulations of the Secretaries concerned, payments of deposits and interest may not be made to the individual while stationed outside of the United States, for provisions that payment of deposits and interest could be made only to the member upon discharge, or before discharge as prescribed by the Secretary concerned, or to the member's heirs or legal representatives.

Subsec. (d). Pub. L. 89–538 reenacted subsec. (d) substantially without change.

EFFECTIVE DATE OF 1967 AMENDMENT

Section 2 of Pub. L. 90–122 provided that: ''This Act [amending this section] becomes effective as of September 1, 1966.''

SAVINGS PROGRAM FOR OVERSEAS PERSONNEL

Pub. L. 101–510, div. A, title XI, § 1114, Nov. 5, 1990, 104 Stat. 1636, as amended by Pub. L. 102–25, title III, § 314(1), (3), Apr. 6, 1991, 105 Stat. 86, directed the Secretary of Defense to prescribe regulations establishing standards and procedures for the administration of a program to authorize members of the Armed Forces serving outside the United States during the Persian Gulf conflict to make deposits of unallotted current pay and allowances and to earn interest under this section.

ADJUSTMENT OF DEPOSIT ACCOUNTS OF CERTAIN ENLISTED MEN

Pub. L. 89–738, Nov. 2, 1966, 80 Stat. 1165, provided: ''That the Secretary of a military department or his designee, shall adjust the deposit account of any enlisted member or former enlisted member of the Army, Navy, Air Force, or Marine Corps, as the case may be, who, after July 14, 1954, and before the effective date of this Act [Nov. 2, 1966], upon discharge and immediate reenlistment or retirement and immediate recall to active duty, continued, without withdrawal and redeposit, his account for deposits made under section 1035 of title 10, United States Code, or prior laws authorizing enlisted members' deposits, to show that his deposits and interest accrued thereon were withdrawn and redeposited on the date of such reenlistment or recall to active duty.

''SEC. 2. The Secretary of the military department concerned, or his designee, shall pay to a former enlisted member described in section 1 of this Act any amount found due as a result of the adjustment prescribed by that section if he submits an application within two years following the date of enactment of this Act [Nov. 2, 1966]. If the member is currently serving on active duty and has an active deposit account, the amount due him will automatically be credited to such account. In the case of a deceased member, application under this section shall be made within two years following the date of enactment of this Act [Nov. 2, 1966] by the person determined to be eligible under section 2771 of Title 10, United States Code.

''SEC. 3. All payments heretofore made which would, but for the fact of such payment, be payable under this

Act are validated. However, if such a payment has been repaid to the United States, the fact of payment shall not affect entitlement under this Act.''

RATES OF INTEREST ON DEPOSITS MADE BEFORE AUG. 14, 1966

Section 2 of Pub. L. 89–538 provided that:

''(a) Notwithstanding the first section of this Act [amending this section], an amount on deposit under section 1035 of title 10, United States Code, on the date of enactment of this Act [Aug. 14, 1966], shall accrue interest at the rate and under the conditions in effect on the day before the date of enactment of this Act [Aug. 14, 1966], until the member's current enlistment terminates or earlier, as may be jointly prescribed by the Secretaries concerned. However, a member who is on a permanent duty assignment outside the United States or its possessions on the date of enactment of this Act [Aug. 14, 1966], or who reports for that duty on or after that date but before the termination of his current enlistment, will be entitled to interest on such deposit, on and after that date, at the rate and under the conditions prescribed pursuant to section 1 [amending this section]. Payments of deposits, and interest thereon, may be made to the member's heirs or legal representatives.

''(b) Any amounts deposited between May 4, 1966, and the date of enactment of this Act [Aug. 14, 1966] while a member was assigned to permanent duty within the United States and its possessions, and any amounts deposited between May 4, 1966, and the date of enactment of this Act [Aug. 14, 1966] by a member on permanent duty assignment outside the United States and its possessions which are in excess of his unallotted pay and allowances for that period, shall accrue interest at the rate in effect before enactment of this Act.''

EXTENSION OF COVERAGE TO PUBLIC HEALTH SERVICE AND COAST AND GEODETIC SURVEY PERSONNEL; RULES AND REGULATIONS

Section 3(c) of Pub. L. 89–538 provided that: ''Regulations prescribed by the Secretary of Commerce and the Secretary of Health, Education, and Welfare [now Health and Human Services] under subsections (a) and (b) [extending savings deposits benefits to commissioned officers of the Public Health Service and the Coast and Geodetic Survey (now the National Oceanic and Atmospheric Administration), respectively] shall be prescribed jointly with regulations prescribed by the Secretaries concerned under section 1035 of title 10, United States Code.''

PUBLIC HEALTH SERVICE

Authority vested by this section in ''the Secretary concerned'' to be exercised with respect to commissioned officers of the Public Health Service, by the Secretary of Health and Human Services or his designee, see section 213a of Title 42, The Public Health and Welfare.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Authority vested by this chapter in ''the Secretary concerned'' to be exercised, with respect to commissioned officer corps of the National Oceanic and Atmospheric Administration, by Secretary of Commerce or Secretary's designee, see section 3071 of Title 33, Navigation and Navigable Waters.

EX. ORD. NO. 11298. INTEREST RATE

Ex. Ord. No. 11298, Aug. 14, 1966, 31 F.R. 10915, provided:

By virtue of the authority vested in me by Section 1035 of Title 10 of the United States Code, as amended by the Act of August 14, 1966, I hereby prescribe that amounts deposited by members of the uniformed services under that Section shall accrue interest at the rate of ten percent per annum, compounded quarterly.

This order shall be effective September 1, 1966.

LYNDON B. JOHNSON.

§ 1036. Escorts for dependents of members: transportation and travel allowances

Under regulations to be prescribed by the Secretary concerned, round trip transportation and travel allowances may be paid to any person for travel performed or to be performed under competent orders as an escort for dependents of a member of the armed forces, if the travel is performed not later than one year after the member—

(1) dies;

(2) is missing; or

(3) is otherwise unable to accompany his dependents;

and it has been determined that travel by the dependents is necessary and that they are incapable of traveling alone because of age, mental or physical incapacity, or other extraordinary circumstances. Such allowances may be paid in advance.

(Added Pub. L. 86–160, § 1(1), Aug. 14, 1959, 73 Stat. 358; amended Pub. L. 98–94, title IX, § 913(a), Sept. 24, 1983, 97 Stat. 640.)

AMENDMENTS

1983—Pub. L. 98–94 inserted sentence allowing the payment of allowances in advance.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 913(c) of Pub. L. 98–94 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1040 of this title] shall apply to travel performed by escorts or attendants of dependents on or after the date of the enactment of this Act [Sept. 24, 1983].''

BACK PAYMENTS: VALIDATION; APPLICATION; LIMITATIONS; ACCOUNTABILITY OF DISBURSING OFFICERS; REGULATIONS

Sections 4–7 of Pub. L. 86–160 provided that:

''SEC. 4. Travel and transportation allowances paid before the effective date of this Act [Aug. 14, 1959] to persons ordered by competent authority to escort dependents of members of the uniformed services are hereby validated, if they would have been authorized under section 1 of this Act [enacting this section].

''SEC. 5. Any person who was ordered by competent authority after January 1, 1950, and before the effective date of this Act [Aug. 14, 1959] to escort dependents of members of the uniformed services and who has not been paid travel and transportation allowances, or who has repaid the United States the amount so paid to him, is entitled to be paid the amount otherwise authorized by section 1 of this Act [enacting this section], if application for such payment is made not later than one year after the effective date of this Act [Aug. 14, 1959].

''SEC. 6. The Comptroller General of the United States, or his designee, shall relieve disbursing officers, including special disbursing agents, from accountability or responsibility for any payments described in section 4 of this Act, and shall allow credits in the settlement of the accounts of those disbursing officers or agents for payments which are found to be free from fraud or collusion.

''SEC. 7. No regulations under section 1 of this Act [enacting this section] relating to the military departments shall be prescribed by the Secretary of a military department unless such regulations are first approved under procedures prescribed by the Secretary of Defense. Regulations of the Secretaries of the Treasury, Commerce, and Health, Education, and Welfare [now Health and Human Services] under section 1, 2, or 3 of this Act [enacting this section and amending section 857a of Title 33, Navigation and Navigable Waters,

and section 213a of Title 42, The Public Health and Welfare] shall, to the extent practicable, agree with regulations so approved.''

PUBLIC HEALTH SERVICE

Authority vested by this section in ''the Secretary concerned'' to be exercised, with respect to commissioned officers of Public Health Service, by Secretary of Health and Human Services or his designee, see section 213a of Title 42, The Public Health and Welfare.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Authority vested by this section in ''the Secretary concerned'' to be exercised, with respect to commissioned officer corps of National Oceanic and Atmospheric Administration, by Secretary of Commerce or Secretary's designee, see section 3071 of Title 33, Navigation and Navigable Waters.

§ 1037. Counsel before foreign judicial tribunals and administrative agencies; court costs and bail

(a) Under regulations to be prescribed by him, the Secretary concerned may employ counsel, and pay counsel fees, court costs, bail, and other expenses incident to the representation, before the judicial tribunals and administrative agencies of any foreign nation, of persons subject to the Uniform Code of Military Justice and of persons not subject to the Uniform Code of Military Justice who are employed by or accompanying the armed forces in an area outside the United States and the territories and possessions of the United States, the Northern Mariana Islands, and the Commonwealth of Puerto Rico. So far as practicable, these regulations shall be uniform for all armed forces.

(b) The person on whose behalf a payment is made under this section is not liable to reimburse the United States for that payment, unless he is responsible for forfeiture of bail provided under subsection (a).

(c) Appropriations available to the military department concerned or the Department of Homeland Security, as the case may be, for the pay of persons under its jurisdiction may be used to carry out this section.

(Added Pub. L. 85–861, § 1(24)(A), Sept. 2, 1958, 72 Stat. 1445; amended Pub. L. 96–513, title I, § 511(31), Dec. 12, 1980, 94 Stat. 2922; Pub. L. 99–145, title VI, § 681(a), Nov. 8, 1985, 99 Stat. 665; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1037(a)	50:751.	July 24, 1956, ch. 689 (less § 3), 70 Stat. 630.
	50:752.	
1037(b)	50:754.	
1037(c)	50:755.	

In subsection (a), the words ''Under regulations to be prescribed by him'' and the last sentence are substituted for 50:752.

In subsection (b), the words ''subject to the Uniform Code of Military Justice'' are omitted as surplusage.

In subsection (c), the words ''the terms and provisions of'' are omitted as surplusage.

REFERENCES IN TEXT

The Uniform Code of Military Justice, referred to in subsec. (a), is classified to chapter 47 (§ 801 et seq.) of this title.

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–296 substituted ''Department of Homeland Security'' for ''Department of Transportation''.

1985—Subsec. (a). Pub. L. 99–145 provided for payment of expenses for legal representation of civilians overseas.

1980—Subsec. (c). Pub. L. 96–513 substituted ''Department of Transportation'' for ''Department of the Treasury''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 681(b) of Pub. L. 99–145 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to costs incurred after September 30, 1985.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 1038. Service credit: certain service in Women's Army Auxiliary Corps

In computing years of active service of any female member of the armed forces, there shall be credited for all purposes, except the right to promotion, in addition to any other service that may be credited, all active service performed in the Women's Army Auxiliary Corps after May 13, 1942, and before September 30, 1943, if that member performed active service in the armed forces after September 29, 1943. Service as an officer in the Women's Army Auxiliary Corps shall be credited as active service in the status of a commissioned officer, and service as an enrolled member of the Corps shall be credited as active service in the status of an enlisted member.

(Added Pub. L. 86–142, § 1(1), Aug. 7, 1959, 73 Stat. 289.)

ELECTION OF PENSION OR COMPENSATION

Section 2 of Pub. L. 86–142 provided that a person entitled to a pension or compensation under any law administered by the Veterans' Administration, based on the active service described in section 1 of Pub. L. 86–142, which added section 1038 to Title 10, Armed Forces, could elect within 1 year after Aug. 7, 1959 to receive that pension or compensation in lieu of any compensation under the Federal Employees' Compensation Act; that such an election is irrevocable; and that the election does not entitle that person to the pension or compensation for any period before the date of election.

BACK PAY OR ALLOWANCES

Section 3 of Pub. L. 86–142 provided that: ''No person is entitled to back pay or allowances because of any service credited under section 1 of this Act [enacting this section].''

§ 1039. Crediting of minority service

For the purpose of determining eligibility for retirement or transfer to the Fleet Reserve or Fleet Marine Corps Reserve, entitlement to retired or retainer pay, and years of service in computing retired or retainer pay of a member of the armed forces, any service which would be

creditable but for the fact that it was performed by him under an enlistment or induction entered into before he attained the age prescribed by law for that enlistment or induction, shall be credited.

(Added Pub. L. 87–165, § 1(1), Aug. 25, 1961, 75 Stat. 401.)

EFFECTIVE DATE

Section 2 of Pub. L. 87–165 provided that: ''Section 1 [enacting this section] applies to service performed, and retirements or transfers to the Fleet Reserve or the Fleet Marine Corps Reserve effected, before and after this Act takes effect [Aug. 25, 1961].''

§ 1040. Transportation of dependent patients

(a) Except as provided in subsection (b), if a dependent accompanying a member of the uniformed services who is stationed outside the United States or in Alaska or Hawaii and who is on active duty for a period of more than 30 days requires medical attention which is not available in the locality, transportation of the dependents at the expense of the United States is authorized to the nearest appropriate medical facility in which adequate medical care is available. On his recovery or when it is administratively determined that the patient should be removed from the medical facility involved, the dependent may be transported at the expense of the United States to the duty station of the member or to such other place determined to be appropriate under the circumstances. If a dependent is unable to travel unattended, round-trip transportation and travel expenses may be furnished necessary attendants. In addition to transportation of a dependent at the expense of the United States authorized under this subsection, reasonable travel expenses incurred in connection with the transportation of the dependent may be paid at the expense of the United States. Travel expenses authorized by this section may include reimbursement for necessary local travel in the vicinity of the medical facility involved. The transportation and travel expenses authorized by this section may be paid in advance.

(b) This section does not authorize transportation and travel expenses for a dependent for elective surgery which is determined to be not medically indicated by a medical authority designated under joint regulations to be prescribed under this section.

(c) In this section, the term ''dependent'' has the meaning given that term in section 1072 of this title.

(d) Transportation and travel expenses authorized by this section shall be furnished in accordance with joint regulations to be prescribed by the Secretary of Transportation, the Secretary of Defense, the Secretary of Commerce, and the Secretary of Health and Human Services, which shall require the use of transportation facilities of the United States insofar as practicable.

(Added Pub. L. 89–140, § 1(1), Aug. 28, 1965, 79 Stat. 579; amended Pub. L. 96–513, title V, § 511(32), Dec. 12, 1980, 94 Stat. 2922; Pub. L. 98–94, title IX, § 913(b), Sept. 24, 1983, 97 Stat. 640; Pub. L. 98–525, title VI, § 611, title XIV, § 1405(21), Oct. 19, 1984, 98 Stat. 2538, 2623; Pub. L. 99–348, title III, § 304(a)(2), July 1, 1986, 100 Stat. 703; Pub. L. 99–661, div. A, title VI, § 616(a), Nov. 14, 1986, 100 Stat. 3880.)

CODIFICATION

Another section 1040 was renumbered section 1041 of this title.

Another section 1040, related to free postage from combat zones, was added by Pub. L. 89–132, § 9(a), Aug. 21, 1965, 79 Stat. 548, prior to repeal by Pub. L. 89–315, § 3(a), Nov. 1, 1965, 79 Stat. 1164. See section 3401 et seq. of Title 39, Postal Service.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–661 substituted ''In addition to transportation of a dependent at the expense of the United States authorized under this subsection, reasonable travel expenses incurred in connection with the transportation of the dependent may be paid at the expense of the United States. Travel expenses authorized by this section may include reimbursement for necessary local travel in the vicinity of the medical facility involved. The transportation and travel expenses authorized by this section may be paid in advance'' for '', and such expenses may be paid in advance''.

Subsec. (c). Pub. L. 99–348 substituted ''In this section, the term 'dependent' has the meaning given that term in'' for ''`Dependent' and 'uniformed services' in this section have the meanings of those terms as defined in''.

1984—Subsec. (a). Pub. L. 98–525, § 1405(21), substituted ''30'' for ''thirty''.

Pub. L. 98–525, § 611, made provisions of section applicable to a dependent accompanying a member of the uniformed services stationed in Alaska or Hawaii.

1983—Subsec. (a). Pub. L. 98–94 inserted '', and such expenses may be paid in advance'' after ''attendants''.

1980—Subsec. (d). Pub. L. 96–513 substituted ''Secretary of Transportation'' and ''Secretary of Health and Human Services'' for ''Secretary of the Treasury'' and ''Secretary of Health, Education, and Welfare'', respectively.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 616(b) of Pub. L. 99–661 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only to travel performed on or after the date of the enactment of this Act [Nov. 14, 1986].''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 611 of Pub. L. 98–525 provided that the amendment made by that section is effective Oct. 1, 1984.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–94 applicable to travel performed by escorts or attendants of dependents on or after Sept. 24, 1983, see section 913(c) of Pub. L. 98–94, set out as a note under section 1036 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 1041. Replacement of certificate of discharge

If satisfactory proof is presented that a person who was discharged honorably or under honorable conditions has lost his certificate of discharge from an armed force or that it was destroyed without his procurement or connivance, the Secretary concerned may give that person, or his surviving spouse, a certificate of that discharge, indelibly marked to show that it is a certificate in place of the lost or destroyed certificate. A certificate given under this section may not be accepted as a voucher for the pay-

ment of a claim against the United States for pay, bounty, or other allowance, or as evidence in any other case.

(Added Pub. L. 90–235, § 7(a)(2)(A), Jan. 2, 1968, 81 Stat. 762, § 1040; renumbered § 1041, Pub. L. 96–513, title V, § 511(33)(A), Dec. 12, 1980, 94 Stat. 2922.)

§ 1042. Copy of certificate of service

A fee for a copy of a certificate showing service in the armed forces may not be charged to—

(1) a person discharged or released from the armed forces honorably or under honorable conditions;

(2) the next of kin of the person; or

(3) a legal representative of the person.

(Added Pub. L. 97–258, § 2(b)(2)(B), Sept. 13, 1982, 96 Stat. 1052.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1042	31:483b.	June 19, 1956, ch. 409, 70 Stat. 297.

The words ''armed forces'' are substituted for ''Army, Navy, Air Force, Marine Corps, or Coast Guard'' because of 10:101(4). The words ''honorably or'' are added for consistency with 10:1040.

§ 1043. Service credit: service in the National Oceanic and Atmospheric Administration or the Public Health Service

Active commissioned service in the National Oceanic and Atmospheric Administration or the Public Health Service shall be credited as active commissioned service in the armed forces for purposes of determining the retirement eligibility and computing the retired pay of a member of the armed forces.

(Added Pub. L. 98–94, title X, § 1007(b)(1), Sept. 24, 1983, 97 Stat. 662.)

§ 1044. Legal assistance

(a) Subject to the availability of legal staff resources, the Secretary concerned may provide legal assistance in connection with their personal civil legal affairs to the following persons:

(1) Members of the armed forces who are on active duty.

(2) Members and former members entitled to retired or retainer pay or equivalent pay.

(3) Officers of the commissioned corps of the Public Health Service who are on active duty or entitled to retired or equivalent pay.

(4) Members of reserve components not covered by paragraph (1) or (2) following release from active duty under a call or order to active duty for more than 30 days issued under a mobilization authority (as determined by the Secretary), for a period of time (prescribed by the Secretary) that begins on the date of the release and is not less than twice the length of the period served on active duty under that call or order to active duty.

(5) Dependents of members and former members described in paragraphs (1), (2), (3), and (4).

(6) Survivors of a deceased member or former member described in paragraphs (1), (2), (3), and (4) who were dependents of the member or former member at the time of the death of the member or former member, except that the eligibility of such survivors shall be determined pursuant to regulations prescribed by the Secretary concerned.

(7) Civilian employees of the Federal Government serving in locations where legal assistance from non-military legal assistance providers is not reasonably available, except that the eligibility of civilian employees shall be determined pursuant to regulations prescribed by the Secretary concerned.

(b) Under such regulations as may be prescribed by the Secretary concerned, the Judge Advocate General (as defined in section 801(1) of this title) under the jurisdiction of the Secretary is responsible for the establishment and supervision of legal assistance programs under this section.

(c) This section does not authorize legal counsel to be provided to represent a member or former member of the uniformed services described in subsection (a), or the dependent of such a member or former member, in a legal proceeding if the member or former member can afford legal fees for such representation without undue hardship.

(d)(1) Notwithstanding any law regarding the licensure of attorneys, a judge advocate or civilian attorney who is authorized to provide military legal assistance is authorized to provide that assistance in any jurisdiction, subject to such regulations as may be prescribed by the Secretary concerned.

(2) Military legal assistance may be provided only by a judge advocate or a civilian attorney who is a member of the bar of a Federal court or of the highest court of a State.

(3) In this subsection, the term ''military legal assistance'' includes—

(A) legal assistance provided under this section; and

(B) legal assistance contemplated by sections 1044a, 1044b, 1044c, and 1044d of this title.

(e) The Secretary concerned shall define ''dependent'' for the purposes of this section.

(Added Pub. L. 98–525, title VI, § 651(a), Oct. 19, 1984, 98 Stat. 2549; amended Pub. L. 104–201, div. A, title V, § 583, Sept. 23, 1996, 110 Stat. 2538; Pub. L. 106–398, § 1 [[div. A], title V, § 524(a), (b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–108; Pub. L. 109–163, div. A, title V, § 555, Jan. 6, 2006, 119 Stat. 3265; Pub. L. 110–181, div. A, title V, § 541, Jan. 28, 2008, 122 Stat. 114; Pub. L. 111–84, div. A, title V, § 513, Oct. 28, 2009, 123 Stat. 2282.)

AMENDMENTS

2009—Subsec. (a)(4). Pub. L. 111–84 substituted ''the Secretary), for a period of time (prescribed by the Secretary)'' for ''the Secretary of Defense), for a period of time, prescribed by the Secretary of Defense,''.

2008—Subsec. (a)(6), (7). Pub. L. 110–181 added pars. (6) and (7).

2006—Subsecs. (d), (e). Pub. L. 109–163 added subsec. (d) and redesignated former subsec. (d) as (e).

2000—Subsec. (a)(4). Pub. L. 106–398, § 1 [[div. A], title V, § 524(a)(2)], added par. (4). Former par. (4) redesignated (5).

Subsec. (a)(5). Pub. L. 106–398, § 1 [[div. A], title V, § 524(b)], substituted ''(3), and (4)'' for ''and (3)''.

Pub. L. 106–398, § 1 [[div. A], title V, § 524(a)(1)], redesignated par. (4) as (5).

1996—Subsec. (a). Pub. L. 104–201, § 583(d)(1), substituted ''to the following persons:'' for ''to—'' in introductory provisions.

Subsec. (a)(1). Pub. L. 104–201, § 583(c), (d)(2), (3), substituted ''Members'' for ''members'', struck out ''under his jurisdiction'' after ''armed forces'', and substituted a period for the semicolon at end.

Subsec. (a)(2). Pub. L. 104–201, § 583(c), (d)(2), (4), substituted ''Members and'' for ''members and'', struck out ''under his jurisdiction'' after ''former members'', and substituted a period for ''; and'' at end.

Subsec. (a)(3), (4). Pub. L. 104–201, § 583(a), added pars. (3) and (4) and struck out former par. (3) which read as follows: ''dependents of members and former members described in clauses (1) and (2).''

Subsec. (c). Pub. L. 104–201, § 583(b), substituted ''uniformed services described in subsection (a)'' for ''armed forces'' and inserted ''such'' after ''dependent of''.

REGULATIONS

Pub. L. 106–398, § 1 [[div. A], title V, § 524(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–108, provided that: ''Regulations to implement the amendments made by this section [amending this section] shall be prescribed not later than 180 days after the date of the enactment of this Act [Oct. 30, 2000].''

§ 1044a. Authority to act as notary

(a) The persons named in subsection (b) have the general powers of a notary public and of a consul of the United States in the performance of all notarial acts to be executed by any of the following:

(1) Members of any of the armed forces.

(2) Other persons eligible for legal assistance under the provisions of section 1044 of this title or regulations of the Department of Defense.

(3) Persons serving with, employed by, or accompanying the armed forces outside the United States and outside the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(4) Other persons subject to the Uniform Code of Military Justice (chapter 47 of this title) outside the United States.

(b) Persons with the powers described in subsection (a) are the following:

(1) All judge advocates, including reserve judge advocates when not in a duty status.

(2) All civilian attorneys serving as legal assistance attorneys.

(3) All adjutants, assistant adjutants, and personnel adjutants, including reserve members when not in a duty status.

(4) All other members of the armed forces, including reserve members when not in a duty status, who are designated by regulations of the armed forces or by statute to have those powers.

(5) For the performance of notarial acts at locations outside the United States, all employees of a military department or the Coast Guard who are designated by regulations of the Secretary concerned or by statute to have those powers for exercise outside the United States.

(c) No fee may be paid to or received by any person for the performance of a notarial act authorized in this section.

(d) The signature of any such person acting as notary, together with the title of that person's offices, is prima facie evidence that the signature is genuine, that the person holds the designated title, and that the person is authorized to perform a notarial act.

(Added Pub. L. 101–510, div. A, title V, § 551(a)(1), Nov. 5, 1990, 104 Stat. 1566; amended Pub. L. 104–201, div. A, title V, § 573, Sept. 23, 1996, 110 Stat. 2534; Pub. L. 107–107, div. A, title XI, § 1103, Dec. 28, 2001, 115 Stat. 1236.)

AMENDMENTS

2001—Subsec. (b)(2). Pub. L. 107–107, § 1103(a), substituted ''legal assistance attorneys'' for ''legal assistance officers''.

Subsec. (b)(5). Pub. L. 107–107, § 1103(b), added par. (5).

1996—Subsec. (b)(1). Pub. L. 104–201, § 573(1), substituted '', including reserve judge advocates when not in a duty status'' for ''on active duty or performing inactive-duty training''.

Subsec. (b)(3). Pub. L. 104–201, § 573(2), substituted ''adjutants, including reserve members when not in a duty status'' for ''adjutants on active duty or performing inactive-duty training''.

Subsec. (b)(4). Pub. L. 104–201, § 573(3), substituted ''members of the armed forces, including reserve members when not in a duty status,'' for ''persons on active duty or performing inactive-duty training''.

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.

§ 1044b. Military powers of attorney: requirement for recognition by States

(a) INSTRUMENTS TO BE GIVEN LEGAL EFFECT WITHOUT REGARD TO STATE LAW.—A military power of attorney—

(1) is exempt from any requirement of form, substance, formality, or recording that is provided for powers of attorney under the laws of a State; and

(2) shall be given the same legal effect as a power of attorney prepared and executed in accordance with the laws of the State concerned.

(b) MILITARY POWER OF ATTORNEY.—For purposes of this section, a military power of attorney is any general or special power of attorney that is notarized in accordance with section 1044a of this title or other applicable State or Federal law.

(c) STATEMENT TO BE INCLUDED.—(1) Under regulations prescribed by the Secretary concerned, each military power of attorney shall contain a statement that sets forth the provisions of subsection (a).

(2) Paragraph (1) shall not be construed to make inapplicable the provisions of subsection (a) to a military power of attorney that does not include a statement described in that paragraph.

(d) STATE DEFINED.—In this section, the term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, and a possession of the United States.

(Added Pub. L. 103–160, div. A, title V, § 574(a), Nov. 30, 1993, 107 Stat. 1674.)

§ 1044c. Advance medical directives of members and dependents: requirement for recognition by States

(a) INSTRUMENTS TO BE GIVEN LEGAL EFFECT WITHOUT REGARD TO STATE LAW.—An advance medical directive executed by a person eligible for legal assistance—

(1) is exempt from any requirement of form, substance, formality, or recording that is provided for advance medical directives under the laws of a State; and

(2) shall be given the same legal effect as an advance medical directive prepared and executed in accordance with the laws of the State concerned.

(b) ADVANCE MEDICAL DIRECTIVES.—For purposes of this section, an advance medical directive is any written declaration that—

(1) sets forth directions regarding the provision, withdrawal, or withholding of life-prolonging procedures, including hydration and sustenance, for the declarant whenever the declarant has a terminal physical condition or is in a persistent vegetative state; or

(2) authorizes another person to make health care decisions for the declarant, under circumstances stated in the declaration, whenever the declarant is incapable of making informed health care decisions.

(c) STATEMENT TO BE INCLUDED.—(1) Under regulations prescribed by the Secretary concerned, an advance medical directive prepared by an attorney authorized to provide legal assistance shall contain a statement that sets forth the provisions of subsection (a).

(2) Paragraph (1) shall not be construed to make inapplicable the provisions of subsection (a) to an advance medical directive that does not include a statement described in that paragraph.

(d) STATES NOT RECOGNIZING ADVANCE MEDICAL DIRECTIVES.—Subsection (a) does not make an advance medical directive enforceable in a State that does not otherwise recognize and enforce advance medical directives under the laws of the State.

(e) DEFINITIONS.—In this section:

(1) The term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, and a possession of the United States.

(2) The term ''person eligible for legal assistance'' means a person who is eligible for legal assistance under section 1044 of this title.

(3) The term ''legal assistance'' means legal services authorized under section 1044 of this title.

(Added Pub. L. 104–106, div. A, title VII, § 749(a)(1), Feb. 10, 1996, 110 Stat. 388.)

EFFECTIVE DATE OF 1996 AMENDMENT

Section 749(b) of Pub. L. 104–106 provided that: ''Section 1044c of title 10, United States Code, shall take effect on the date of the enactment of this Act [Feb. 10, 1996] and shall apply to advance medical directives referred to in that section that are executed before, on, or after that date.''

§ 1044d. Military testamentary instruments: requirement for recognition by States

(a) TESTAMENTARY INSTRUMENTS TO BE GIVEN LEGAL EFFECT.—A military testamentary instrument—

(1) is exempt from any requirement of form, formality, or recording before probate that is provided for testamentary instruments under the laws of a State; and

(2) has the same legal effect as a testamentary instrument prepared and executed in accordance with the laws of the State in which it is presented for probate.

(b) MILITARY TESTAMENTARY INSTRUMENTS.—For purposes of this section, a military testamentary instrument is an instrument that is prepared with testamentary intent in accordance with regulations prescribed under this section and that—

(1) is executed in accordance with subsection (c) by (or on behalf of) a person, as a testator, who is eligible for military legal assistance;

(2) makes a disposition of property of the testator; and

(3) takes effect upon the death of the testator.

(c) REQUIREMENTS FOR EXECUTION OF MILITARY TESTAMENTARY INSTRUMENTS.—An instrument is valid as a military testamentary instrument only if—

(1) the instrument is executed by the testator (or, if the testator is unable to execute the instrument personally, the instrument is executed in the presence of, by the direction of, and on behalf of the testator);

(2) the instrument is executed in the presence of a military legal assistance counsel acting as presiding attorney;

(3) the instrument is executed in the presence of at least two disinterested witnesses (in addition to the presiding attorney), each of whom attests to witnessing the testator's execution of the instrument by signing it; and

(4) the instrument is executed in accordance with such additional requirements as may be provided in regulations prescribed under this section.

(d) SELF-PROVING MILITARY TESTAMENTARY INSTRUMENTS.—(1) If the document setting forth a military testamentary instrument meets the requirements of paragraph (2), then the signature of a person on the document as the testator, an attesting witness, a notary, or the presiding attorney, together with a written representation of the person's status as such and the person's military grade (if any) or other title, is prima facie evidence of the following:

(A) That the signature is genuine.

(B) That the signatory had the represented status and title at the time of the execution of the will.

(C) That the signature was executed in compliance with the procedures required under the regulations prescribed under subsection (f).

(2) A document setting forth a military testamentary instrument meets the requirements of this paragraph if it includes (or has attached to it), in a form and content required under the regulations prescribed under subsection (f), each of the following:

(A) A certificate, executed by the testator, that includes the testator's acknowledgment of the testamentary instrument.

(B) An affidavit, executed by each witness signing the testamentary instrument, that attests to the circumstances under which the testamentary instrument was executed.

(C) A notarization, including a certificate of any administration of an oath required under the regulations, that is signed by the notary or other official administering the oath.

(e) STATEMENT TO BE INCLUDED.—(1) Under regulations prescribed under this section, each military testamentary instrument shall contain a statement that sets forth the provisions of subsection (a).

(2) Paragraph (1) shall not be construed to make inapplicable the provisions of subsection (a) to a testamentary instrument that does not include a statement described in that paragraph.

(f) REGULATIONS.—Regulations for the purposes of this section shall be prescribed jointly by the Secretary of Defense and by the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Department of the Navy.

(g) DEFINITIONS.—In this section:

(1) The term ''person eligible for military legal assistance'' means a person who is eligible for legal assistance under section 1044 of this title.

(2) The term ''military legal assistance counsel'' means—

(A) a judge advocate (as defined in section 801(13) of this title); or

(B) a civilian attorney serving as a legal assistance officer under the provisions of section 1044 of this title.

(3) The term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and each possession of the United States.

(Added Pub. L. 106–398, § 1 [[div. A], title V, § 551(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–123; amended Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Subsec. (f). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

§ 1045. Voluntary withholding of State income tax from retired or retainer pay

(a) The Secretary concerned shall enter into an agreement under this section with any State within 120 days of a request for agreement from the proper State official. The agreement shall provide that the Secretary concerned shall withhold State income tax from the monthly retired or retainer pay of any member or former member entitled to such pay who voluntarily requests such withholding in writing. The amounts withheld during any calendar month shall be retained by the Secretary concerned and disbursed to the States during the following calendar month.

(b) A member or former member may request that the State designated for withholding be changed and that the withholdings be remitted in accordance with such change. A member or former member also may revoke any request of such member or former member for withholding. Any request for a change in the State designated and any revocation is effective on the first day of the month after the month in which the request or revocation is processed by the Secretary concerned, but in no event later than on the first day of the second month beginning after the day on which the request or revocation is received by the Secretary concerned.

(c) A member or former member may have in effect at any time only one request for withholding under this section and may not have more than two such requests in effect during any one calendar year.

(d)(1) This section does not give the consent of the United States to the application of a statute that imposes more burdensome requirements on the United States than on employers generally or that subjects the United States or any member or former member entitled to retired or retainer pay to a penalty or liability because of this section.

(2) The Secretary concerned may not accept pay from a State for services performed in withholding State income taxes from retired or retainer pay.

(3) Any amount erroneously withheld from retired or retainer pay and paid to a State by the Secretary concerned shall be repaid by the State in accordance with regulations prescribed by the Secretary concerned.

(e) In this section:

(1) The term ''State'' means any State, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(2) The term ''Secretary concerned'' includes the Secretary of Health and Human Services with respect to the commissioned corps of the Public Health Service and the Secretary of Commerce with respect to the commissioned corps of the National Oceanic and Atmospheric Administration.

(Added Pub. L. 98–525, title VI, § 654(a), Oct. 19, 1984, 98 Stat. 2551; amended Pub. L. 100–26, § 7(k)(2), Apr. 21, 1987, 101 Stat. 284; Pub. L. 109–163, div. A, title VI, § 661, Jan. 6, 2006, 119 Stat. 3314.)

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–163, in third sentence, substituted ''any calendar month'' for ''any calendar quarter'' and ''during the following calendar month'' for ''during the month following that calendar quarter''.

1987—Subsec. (e)(1), (2). Pub. L. 100–26 inserted ''The term'' after each par. designation.

§ 1046. Overseas temporary foster care program

(a) PROGRAM AUTHORIZED.—The Secretary concerned may establish a program to provide temporary foster care services outside the United States for children accompanying members of

the armed forces on duty at stations outside the United States. The foster care services provided under such a program shall be similar to those services provided by State and local governments in the United States.

(b) EXPENSES.—Under regulations prescribed by the Secretary concerned, the expenses related to providing foster care services under subsection (a) may be paid from appropriated funds available to the Secretary.

(Added Pub. L. 102–484, div. A, title VI, § 651(a), Oct. 23, 1992, 106 Stat. 2425.)

PRIOR PROVISIONS

A prior section 1046, added Pub. L. 98–525, title VII, § 708(a)(1), Oct. 19, 1984, 98 Stat. 2572, related to preseparation counseling, prior to repeal by Pub. L. 101–510, div. A, title V, § 502(b)(1), Nov. 5, 1990, 104 Stat. 1557.

§ 1047. Allowance for civilian clothing

(a) MEMBERS TRAVELING IN CONNECTION WITH MEDICAL EVACUATION.—The Secretary of the military department concerned may furnish civilian clothing and luggage to a member at a cost not to exceed $250, or reimburse a member for the purchase of civilian clothing and luggage in an amount not to exceed $250, in the case of a member who—

(1) is medically evacuated for treatment in a medical facility by reason of an illness or injury incurred or aggravated while on active duty; or

(2) after being medically evacuated as described in paragraph (1), is in an authorized travel status from a medical facility to another location approved by the Secretary.

(b) CERTAIN ENLISTED MEMBERS.—The Secretary of the military department concerned may furnish civilian clothing, at a cost of not more than $40, to an enlisted member who is—

(1) discharged for misconduct or unsuitability or under conditions other than honorable;

(2) sentenced by a civil court to confinement in a prison;

(3) interned or discharged as an alien enemy; or

(4) discharged before completion of recruit training under honorable conditions for dependency, hardship, minority, or disability or for the convenience of the Government.

(Added Pub. L. 98–525, title XIV, § 1401(d)(1), Oct. 19, 1984, 98 Stat. 2615; amended Pub. L. 108–375, div. A, title V, § 584(a), Oct. 28, 2004, 118 Stat. 1929; Pub. L. 110–181, div. A, title VI, § 634, Jan. 28, 2008, 122 Stat. 155.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following appropriation acts:

Oct. 12, 1984, Pub. L. 98–473, title I, § 101(h) [title VIII, § 8024], 98 Stat. 1904, 1928.
Dec. 8, 1983, Pub. L. 98–212, title VII, § 727, 97 Stat. 1443.
Dec. 21, 1982, Pub. L. 97–377, title I, § 101(c) [title VII, § 730], 96 Stat. 1833, 1855.
Dec. 29, 1981, Pub. L. 97–114, title VII, § 730, 95 Stat. 1584.
Dec. 15, 1980, Pub. L. 96–527, title VII, § 731, 94 Stat. 3086.
Dec. 21, 1979, Pub. L. 96–154, title VII, § 731, 93 Stat. 1157.
Oct. 13, 1978, Pub. L. 95–457, title VIII, § 831, 92 Stat. 1249.
Sept. 21, 1977, Pub. L. 95–111, title VIII, § 830, 91 Stat. 905.
Sept. 22, 1976, Pub. L. 94–419, title VII, § 730, 90 Stat. 1296.
Feb. 9, 1976, Pub. L. 94–212, title VII, § 730, 90 Stat. 173.
Oct. 8, 1974, Pub. L. 93–437, title VIII, § 831, 88 Stat. 1230.
Jan. 2, 1974, Pub. L. 93–238, title VII, § 732, 87 Stat. 1044.
Oct. 26, 1972, Pub. L. 92–570, title VII, § 732, 86 Stat. 1201.
Dec. 18, 1971, Pub. L. 92–204, title VII, § 733, 85 Stat. 733.
Jan. 11, 1971, Pub. L. 91–668, title VIII, § 833, 84 Stat. 2036.
Dec. 29, 1969, Pub. L. 91–171, title VI, § 633, 83 Stat. 485.
Oct. 17, 1968, Pub. L. 90–580, title V, § 532, 82 Stat. 1135.
Sept. 29, 1967, Pub. L. 90–96, title VI, § 632, 81 Stat. 247.
Oct. 15, 1966, Pub. L. 89–687, title VI, § 633, 80 Stat. 996.
Sept. 29, 1965, Pub. L. 89–213, title VI, § 633, 79 Stat. 879.
Aug. 19, 1964, Pub. L. 88–446, title V, § 533, 78 Stat. 480.
Oct. 17, 1963, Pub. L. 88–149, title V, § 533, 77 Stat. 269.
Aug. 9, 1962, Pub. L. 87–577, title V, § 534, 76 Stat. 333.
Aug. 17, 1961, Pub. L. 87–144, title VI, § 634, 75 Stat. 381.
July 7, 1960, Pub. L. 86–601, title II, § 201, 74 Stat. 340–342.
Aug. 18, 1959, Pub. L. 86–166, title II, § 201, 73 Stat. 368–370.
Aug. 22, 1958, Pub. L. 85–724, title III, § 301, title IV, § 401, title V, § 501, 72 Stat. 714, 717, 721.
Aug. 2, 1957, Pub. L. 85–117, title III, § 301, title IV, § 401, title V, § 501, 71 Stat. 314, 316, 321.
July 2, 1956, ch. 488, title III, § 301, title IV, § 401, title V, § 501, 70 Stat. 457, 459, 464.
July 13, 1955, ch. 358, title III, § 301, title IV, § 401, title V, § 501, 69 Stat. 304, 306, 312.
June 30, 1954, ch. 432, title IV, § 401, title V, § 501, title VI, § 601, 68 Stat. 339, 342, 347.
Aug. 1, 1953, ch. 305, title III, § 301, title IV, § 401, title V, § 501, 67 Stat. 339, 342, 348.
July 10, 1952, ch. 630, title III, § 301, title IV, § 401, title V, § 501, 66 Stat. 520, 524, 529.
Oct. 18, 1951, ch. 512, title III, § 301, title IV, § 401, title V, § 501, 65 Stat. 429, 437, 443.
Sept. 6, 1950, ch. 896, Ch. X, title III, § 301, title IV, § 401, title V, § 501, 64 Stat. 735, 743, 749.
Oct. 29, 1949, ch. 787, title III, § 301, title IV, § 401, title V, § 501, 63 Stat. 993, 1006, 1014.
June 24, 1948, ch. 632, 62 Stat. 655.
July 30, 1947, ch. 357, title I, § 1, 61 Stat. 557.
July 16, 1946, ch. 583, § 1, 60 Stat. 548.
July 3, 1945, ch. 265, § 1, 59 Stat. 391.
June 28, 1944, ch. 303, § 1, 58 Stat. 580.
July 1, 1943, ch. 185, § 1, 57 Stat. 354.
July 2, 1942, ch. 477, § 1, 56 Stat. 617.
June 30, 1941, ch. 262, § 1, 55 Stat. 373.
June 13, 1940, ch. 343, § 1, 54 Stat. 359.
Apr. 26, 1939, ch. 88, § 1, 53 Stat. 600.
June 11, 1938, ch. 37, § 1, 52 Stat. 650.
July 1, 1937, ch. 423, § 1, 50 Stat. 450.
May 15, 1936, ch. 404, § 1, title I, 49 Stat. 1286.
Apr. 9, 1935, ch. 54, § 1, title I, 49 Stat. 129.
Apr. 26, 1934, ch. 165, title I, 48 Stat. 622.
Mar. 4, 1933, ch. 281, title I, 47 Stat. 1577.
July 14, 1932, ch. 482, title I, 47 Stat. 671.
Feb. 23, 1931, ch. 279, title I, 46 Stat. 1284.
May 28, 1930, ch. 348, title I, 46 Stat. 438.
Feb. 28, 1929, ch. 366, title I, 45 Stat. 1356.
Mar. 23, 1928, ch. 232, title I, 45 Stat. 332.
Feb. 23, 1927, ch. 167, title I, 44 Stat. 1113.
Apr. 15, 1926, ch. 146, title I, 44 Stat. 262.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–181 inserted ''and luggage'' after ''civilian clothing'' in two places in introductory provisions.

2004—Pub. L. 108–375 added subsec. (a), designated existing provisions as subsec. (b), and inserted subsec. (b) heading.

EFFECTIVE DATE OF 2004 AMENDMENT; RETROACTIVE APPLICATION

Pub. L. 108–375, div. A, title V, § 584(b), (c), Oct. 28, 2004, 118 Stat. 1930, provided that:

''(b) EFFECTIVE DATE.—Subsection (a) of section 1047 of title 10, United States Code, as added by subsection (a), shall take effect as of October 1, 2004, and (subject to subsection (c)) shall apply with respect to clothing furnished, and reimbursement for clothing purchased, on or after that date.

''(c) RETROACTIVE APPLICATION.—With respect to the period beginning on October 1, 2004, and ending on the date of the enactment of this Act [Oct. 28, 2004], the Secretary of Defense shall provide for subsection (a) of section 1047 of title 10, United States Code, as added by subsection (a), to be applied as a continuation of the authority provided in section 1319 of the Emergency Wartime Supplemental Appropriations Act, 2003 (Public Law 108–11; 117 Stat. 571), as continued in effect during fiscal year 2004 by section 1103 of the Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004 (Public Law 108–106; 117 Stat. 1214).''

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

§ 1048. Gratuity payment to persons discharged for fraudulent enlistment

The Secretary concerned may pay a gratuity of not to exceed $25 to a person discharged for fraudulent enlistment.

(Added Pub. L. 98–525, title XIV, § 1401(d)(1), Oct. 19, 1984, 98 Stat. 2616.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following appropriation acts:

Oct. 12, 1984, Pub. L. 98–473, title I, § 101(h) [title VIII, § 8006], 98 Stat. 1904, 1923.
Dec. 8, 1983, Pub. L. 98–212, title VII, § 709, 97 Stat. 1439.
Dec. 21, 1982, Pub. L. 97–377, title I, § 101(c) [title VII, § 709], 96 Stat. 1833, 1851.
Dec. 29, 1981, Pub. L. 97–114, title VII, § 709, 95 Stat. 1579.
Dec. 15, 1980, Pub. L. 96–527, title VII, § 709, 94 Stat. 3081.
Dec. 21, 1979, Pub. L. 96–154, title VII, § 709, 93 Stat. 1153.
Oct. 13, 1978, Pub. L. 95–457, title VIII, § 809, 92 Stat. 1244.
Sept. 21, 1977, Pub. L. 95–111, title VIII, § 808, 91 Stat. 900.
Sept. 22, 1976, Pub. L. 94–419, title VII, § 708, 90 Stat. 1292.
Feb. 9, 1976, Pub. L. 94–212, title VII, § 708, 90 Stat. 169.
Oct. 8, 1974, Pub. L. 93–437, title VIII, § 808, 88 Stat. 1225.
Jan. 2, 1974, Pub. L. 93–238, title VII, § 708, 87 Stat. 1039.
Oct. 26, 1972, Pub. L. 92–570, title VII, § 708, 86 Stat. 1197.
Dec. 18, 1971, Pub. L. 92–204, title VII, § 708, 85 Stat. 728.
Jan. 11, 1971, Pub. L. 91–668, title VIII, § 808, 84 Stat. 2031.
Dec. 29, 1969, Pub. L. 91–171, title VI, § 608, 83 Stat. 480.
Oct. 17, 1968, Pub. L. 90–580, title V, § 507, 82 Stat. 1130.
Sept. 29, 1967, Pub. L. 90–96, title VI, § 607, 81 Stat. 242.
Oct. 15, 1966, Pub. L. 89–687, title VI, § 607, 80 Stat. 991.
Sept. 29, 1965, Pub. L. 89–213, title VI, § 607, 79 Stat. 874.
Aug. 19, 1964, Pub. L. 88–446, title V, § 507, 78 Stat. 475.
Oct. 17, 1963, Pub. L. 88–149, title V, § 507, 77 Stat. 264.
Aug. 9, 1962, Pub. L. 87–577, title V, § 507, 76 Stat. 328.
Aug. 17, 1961, Pub. L. 87–144, title VI, § 607, 75 Stat. 376.
July 7, 1960, Pub. L. 86–601, title V, § 507, 74 Stat. 350.
Aug. 18, 1959, Pub. L. 86–166, title V, § 607, 73 Stat. 379.
Aug. 22, 1958, Pub. L. 85–724, title III, § 301, title V, § 501, 72 Stat. 713, 722.
Aug. 2, 1957, Pub. L. 85–117, title III, § 301, title V, § 501, 71 Stat. 313, 321.
July 2, 1956, ch. 488, title III, § 301, title V, § 501, 70 Stat. 456, 465.
July 13, 1955, ch. 358, title III, § 301, title V, § 501, 69 Stat. 303, 313.
June 30, 1954, ch. 432, title IV, § 401, title VI, § 601, 68 Stat. 339, 348.
Aug. 1, 1953, ch. 305, title III, § 301, title V, § 501, 67 Stat. 338, 348.
July 10, 1952, ch. 630, title III, § 301, title V, § 501, 66 Stat. 519, 530.
Oct. 18, 1951, ch. 512, title III, § 301, title V, § 501, 65 Stat. 426, 443.
Sept. 6, 1950, ch. 896, Ch. X, title III, § 301, title V, § 501, 64 Stat. 732, 750.
Oct. 29, 1949, ch. 787, title III, § 301, title V, § 501, 63 Stat. 991, 1015.
June 24, 1948, ch. 632, 62 Stat. 653.
July 30, 1947, ch. 357, title I, § 1, 61 Stat. 555.
July 16, 1946, ch. 583, § 1, 60 Stat. 546.
July 3, 1945, ch. 265, § 1, 59 Stat. 389.
June 28, 1944, ch. 303, § 1, 58 Stat. 578.
July 1, 1943, ch. 185, § 1, 57 Stat. 352.
July 2, 1942, ch. 477, § 1, 56 Stat. 615.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

§ 1049. Subsistence: miscellaneous persons

The following persons may be provided subsistence at the expense of the United States:

(1) Enlisted members while sick in hospitals.

(2) Applicants for enlistment and selective service registrants called for induction.

(3) Prisoners.

(4) Civilian employees, as authorized by law.

(5) Supernumeraries, when necessitated by emergent military circumstances.

(Added Pub. L. 98–525, title XIV, § 1401(d)(1), Oct. 19, 1984, 98 Stat. 2616.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following appropriation acts:

Oct. 12, 1984, Pub. L. 98–473, title I, § 101(h) [title VIII, § 8006], 98 Stat. 1904, 1923.
Dec. 8, 1983, Pub. L. 98–212, title VII, § 709, 97 Stat. 1439.
Dec. 21, 1982, Pub. L. 97–377, title I, § 101(c) [title VII, § 709], 96 Stat. 1833, 1851.
Dec. 29, 1981, Pub. L. 97–114, title VII, § 709, 95 Stat. 1579.
Dec. 15, 1980, Pub. L. 96–527, title VII, § 709, 94 Stat. 3081.
Dec. 21, 1979, Pub. L. 96–154, title VII, § 709, 93 Stat. 1153.
Oct. 13, 1978, Pub. L. 95–457, title VIII, § 809, 92 Stat. 1244.
Sept. 21, 1977, Pub. L. 95–111, title VIII, § 808, 91 Stat. 900.
Sept. 22, 1976, Pub. L. 94–419, title VII, § 708, 90 Stat. 1292.
Feb. 9, 1976, Pub. L. 94–212, title VII, § 708, 90 Stat. 169.
Oct. 8, 1974, Pub. L. 93–437, title VIII, § 808, 88 Stat. 1225.

Jan. 2, 1974, Pub. L. 93–238, title VII, §708, 87 Stat. 1039.
Oct. 26, 1972, Pub. L. 92–570, title VII, §708, 86 Stat. 1197.
Dec. 18, 1971, Pub. L. 92–204, title VII, §708, 85 Stat. 728.
Jan. 11, 1971, Pub. L. 91–668, title VIII, §808, 84 Stat. 2031.
Dec. 29, 1969, Pub. L. 91–171, title VI, §608, 83 Stat. 480.
Oct. 17, 1968, Pub. L. 90–580, title V, §507, 82 Stat. 1130.
Sept. 29, 1967, Pub. L. 90–96, title VI, §607, 81 Stat. 242.
Oct. 15, 1966, Pub. L. 89–687, title VI, §607, 80 Stat. 991.
Sept. 29, 1965, Pub. L. 89–213, title VI, §607, 79 Stat. 874.
Aug. 19, 1964, Pub. L. 88–446, title V, §507, 78 Stat. 475.
Oct. 17, 1963, Pub. L. 88–149, title V, §507, 77 Stat. 264.
Aug. 9, 1962, Pub. L. 87–577, title V, §507, 76 Stat. 328.
Aug. 17, 1961, Pub. L. 87–144, title II, §201, title VI, §607, 75 Stat. 367, 376.
July 7, 1960, Pub. L. 86–601, title II, §201, title V, §507, 74 Stat. 340, 350.
Aug. 18, 1959, Pub. L. 86–166, title II, §201, title V, §607, 73 Stat. 368, 379.
Aug. 22, 1958, Pub. L. 85–724, title III, §301, title V, §501, 72 Stat. 713, 714, 721, 722.
Aug. 2, 1957, Pub. L. 85–117, title III, §301, title V, §501, 71 Stat. 313, 314, 321.
July 2, 1956, ch. 488, title III, §301, title V, §501, 70 Stat. 456, 457, 465.
July 13, 1955, ch. 358, title III, §301, title V, §501, 69 Stat. 303, 312.
June 30, 1954, ch. 432, title IV, §401, title VI, §601, 68 Stat. 339, 348.
Aug. 1, 1953, ch. 305, title III, §301, title V, §501, 67 Stat. 338, 339, 348.
July 10, 1952, ch. 630, title III, §301, title V, §501, 66 Stat. 519, 520, 529.
Oct. 18, 1951, ch. 512, title III, §301, title V, §501, 65 Stat. 428, 443.
Sept. 6, 1950, ch. 896, Ch. X, title III, §301, title V, §501, 64 Stat. 734, 749, 750.
Oct. 29, 1949, ch. 787, title III, §301, title V, §501, 63 Stat. 991, 992, 1015.
June 24, 1948, ch. 632, 62 Stat. 654.
July 30, 1947, ch. 357, title I, §1, 61 Stat. 556.
July 16, 1946, ch. 583, §1, 60 Stat. 546, 547.
July 3, 1945, ch. 265, §1, 59 Stat. 389, 390.
June 28, 1944, ch. 303, §1, 58 Stat. 579.
July 1, 1943, ch. 185, §1, 57 Stat. 353.
July 2, 1942, ch. 477, §1, 56 Stat. 616.
June 30, 1941, ch. 262, §1, 55 Stat. 372.
June 13, 1940, ch. 343, §1, 54 Stat. 357.
Apr. 26, 1939, ch. 88, §1, 53 Stat. 599.
June 11, 1938, ch. 37, §1, 52 Stat. 648.
July 1, 1937, ch. 423, §1, 50 Stat. 448.
May 15, 1936, ch. 404, §1, title I, 49 Stat. 1285.
Apr. 9, 1935, ch. 54, §1, title I, 49 Stat. 127.
Apr. 26, 1934, ch. 165, title I, 48 Stat. 620.
Mar. 4, 1933, ch. 281, title I, 47 Stat. 1576.
July 14, 1932, ch. 482, title I, 47 Stat. 669.
Feb. 23, 1931, ch. 279, title I, 46 Stat. 1282.
May 28, 1930, ch. 348, title I, 46 Stat. 437.
Feb. 28, 1929, ch. 366, title I, 45 Stat. 1354.
Mar. 23, 1928, ch. 232, title I, 45 Stat. 331.
Feb. 23, 1927, ch. 167, title I, 44 Stat. 1111.
Apr. 15, 1926, ch. 146, title I, 44 Stat. 260.
Feb. 12, 1925, ch. 225, title I, 43 Stat. 898.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

§1050. Latin American cooperation: payment of personnel expenses

The Secretary of Defense or the Secretary of a military department may pay the travel, subsistence, and special compensation of officers and students of Latin American countries and other expenses that the Secretary considers necessary for Latin American cooperation.

(Added Pub. L. 98–525, title XIV, §1401(d)(1), Oct. 19, 1984, 98 Stat. 2616; amended Pub. L. 105–261, div. A, title IX, §905(b), Oct. 17, 1998, 112 Stat. 2093.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following appropriation acts:
Pub. L. 98–473, title I, §101(h)[title VIII, §8006], Oct. 12, 1984, 98 Stat. 1904, 1923.
Pub. L. 98–212, title VII, §709, Dec. 8, 1983, 97 Stat. 1439.
Pub. L. 97–377, title I, §101(c) [title VII, §709], Dec. 21, 1982, 96 Stat. 1833, 1851.
Pub. L. 97–114, title VII, §709, Dec. 29, 1981, 95 Stat. 1579.
Pub. L. 96–527, title VII, §709, Dec. 15, 1980, 94 Stat. 3081.
Pub. L. 96–154, title VII, §709, Dec. 21, 1979, 93 Stat. 1153.
Pub. L. 95–457, title VIII, §809, Oct. 13, 1978, 92 Stat. 1244.
Pub. L. 95–111, title VIII, §808, Sept. 21, 1977, 91 Stat. 900.
Pub. L. 94–419, title VII, §708, Sept. 22, 1976, 90 Stat. 1292.
Pub. L. 94–212, title VII, §708, Feb. 9, 1976, 90 Stat. 169.
Pub. L. 93–437, title VIII, §808, Oct. 8, 1974, 88 Stat. 1225.
Pub. L. 93–238, title VII, §708, Jan. 2, 1974, 87 Stat. 1039.
Pub. L. 92–570, title VII, §708, Oct. 26, 1972, 86 Stat. 1197.
Pub. L. 92–204, title VII, §708, Dec. 18, 1971, 85 Stat. 728.
Pub. L. 91–668, title VIII, §808, Jan. 11, 1971, 84 Stat. 2031.
Pub. L. 91–171, title VI, §608, Dec. 29, 1969, 83 Stat. 480.
Pub. L. 90–580, title V, §507, Oct. 17, 1968, 82 Stat. 1130.
Pub. L. 90–96, title VI, §607, Sept. 29, 1967, 81 Stat. 242.
Pub. L. 89–687, title VI, §607, Oct. 15, 1966, 80 Stat. 991.
Pub. L. 89–213, title VI, §607, Sept. 29, 1965, 79 Stat. 874.
Pub. L. 88–446, title V, §507, Aug. 19, 1964, 78 Stat. 475.
Pub. L. 88–149, title V, §507, Oct. 17, 1963, 77 Stat. 264.
Pub. L. 87–577, title V, §507, Aug. 9, 1962, 76 Stat. 328.
Pub. L. 87–144, title II, §201, Aug. 17, 1961, 75 Stat. 367, 369.
Pub. L. 86–601, title II, §201, July 7, 1960, 74 Stat. 341, 343.
Pub. L. 86–166, title II, §201, Aug. 18, 1959, 73 Stat. 369, 371.
Pub. L. 85–724, title III, §301, title V, §501, Aug. 22, 1958, 72 Stat. 714, 721.
Pub. L. 85–117, title III, §301, title V, §501, Aug. 2, 1957, 71 Stat. 314, 321.
July 2, 1956, ch. 488, title III, §301, title V, §501, 70 Stat. 457, 465.
July 13, 1955, ch. 358, title III, §301, title V, §501, 69 Stat. 304, 312.
June 30, 1954, ch. 432, title IV, §401, title VI, §601, 68 Stat. 340, 347.
Aug. 1, 1953, ch. 305, title III, §301, title V, §501, 67 Stat. 339, 347.
July 10, 1952, ch. 630, title III, §301, title V, §501, 66 Stat. 521, 529.
Oct. 18, 1951, ch. 512, title III, §301, title V, §501, 65 Stat. 426, 442.
Sept. 6, 1950, ch. 896, Ch. X, title III, §301, title V, §501, 64 Stat. 732, 749.
Oct. 29, 1949, ch. 787, title III, §301, title V, §501, 63 Stat. 989, 1014.
June 24, 1948, ch. 632, 62 Stat. 650.
July 30, 1947, ch. 357, title I, §1, 61 Stat. 568.
July 16, 1946, ch. 583, §1, 60 Stat. 560.

July 3, 1945, ch. 265, § 1, 59 Stat. 401.
June 28, 1944, ch. 303, § 1, 58 Stat. 591.
July 1, 1943, ch. 185, § 1, 57 Stat. 365.
July 2, 1942, ch. 477, § 1, 56 Stat. 628.

AMENDMENTS

1998—Pub. L. 105–261 inserted ''Secretary of Defense or the'' before ''Secretary of a military department''.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

§ 1050a. African cooperation: payment of personnel expenses

The Secretary of Defense or the Secretary of a military department may pay the travel, subsistence, and special compensation of officers and students of African countries and other expenses that the Secretary considers necessary for African cooperation.

(Added Pub. L. 111–383, div. A, title XII, § 1204(a), Jan. 7, 2011, 124 Stat. 4386.)

§ 1051. Multilateral, bilateral, or regional cooperation programs: payment of personnel expenses

(a) The Secretary of Defense may pay the travel, subsistence, and similar personal expenses of defense personnel of developing countries in connection with the attendance of such personnel at a multilateral, bilateral, or regional conference, seminar, or similar meeting if the Secretary determines that the attendance of such personnel at such conference, seminar, or similar meeting is in the national security interests of the United States.

(b)(1) Except as provided in paragraphs (2) and (3), expenses authorized to be paid under subsection (a) may be paid on behalf of personnel from a developing country only in connection with travel to, from, and within the area of responsibility of the unified combatant command (as such term is defined in section 161(c) of this title) in which the multilateral, bilateral, or regional conference, seminar, or similar meeting for which expenses are authorized is located or in connection with travel to Canada or Mexico.

(2) In a case in which the headquarters of a unified combatant command is located within the United States, expenses authorized to be paid under subsection (a) may be paid in connection with travel of personnel to the United States to attend a multilateral, bilateral, or regional conference, seminar, or similar meeting.

(3) In the case of defense personnel of a developing country that is not a member of the North Atlantic Treaty Organization and that is participating in the Partnership for Peace program of the North Atlantic Treaty Organization (NATO), expenses authorized to be paid under subsection (a) may be paid in connection with travel of personnel to the territory of any of the countries participating in the Partnership for Peace program or the territory of any NATO member country.

(4) Expenses authorized to be paid under subsection (a) may not, in the case of any individual, exceed the amount that would be paid under chapter 7 of title 37 to a member of the armed forces of the United States (of a comparable grade) for authorized travel of a similar nature.

(c) In addition to the expenses authorized to be paid under subsection (a), the Secretary of Defense may pay such other expenses in connection with any such conference, seminar, or similar meeting as the Secretary considers in the national security interests of the United States.

(d) The authority to pay expenses under this section is in addition to the authority to pay certain expenses and compensation of officers and students of Latin American countries under section 1050 of this title.

(e) Funds available to carry out this section shall be available, to the extent provided in appropriations Acts, for programs and activities under this section that begin in a fiscal year and end in the following fiscal year.

(Added Pub. L. 99–661, div. A, title XIII, § 1322(a), Nov. 14, 1986, 100 Stat. 3989; amended Pub. L. 101–189, div. A, title IX, § 936, Nov. 29, 1989, 103 Stat. 1538; Pub. L. 101–510, div. A, title XIII, § 1301(5), Nov. 5, 1990, 104 Stat. 1668; Pub. L. 102–484, div. A, title XIII, § 1362, Oct. 23, 1992, 106 Stat. 2560; Pub. L. 107–314, div. A, title XII, § 1202(a), Dec. 2, 2002, 116 Stat. 2663; Pub. L. 109–163, div. A, title XII, § 1203, Jan. 6, 2006, 119 Stat. 3456; Pub. L. 110–417, [div. A], title XII, § 1231(a), (b)(1), (c)(1), Oct. 14, 2008, 122 Stat. 4636, 4637.)

CODIFICATION

Another section 1051 was renumbered section 1032 of this title.

AMENDMENTS

2008—Pub. L. 110–417, in section catchline substituted ''Multilateral, bilateral, or regional'' for ''Bilateral or regional'', in subsec. (a) substituted ''a multilateral, bilateral,'' for ''a bilateral'', in subsec. (b)(1) substituted ''to, from, and'' for ''to and'' and ''multilateral, bilateral,'' for ''bilateral'', in subsec. (b)(2) substituted ''multilateral, bilateral,'' for ''bilateral'', and added subsec. (e).

2006—Subsec. (b)(1). Pub. L. 109–163 inserted ''to and'' after ''in connection with travel'' and substituted ''in which the bilateral or regional conference, seminar, or similar meeting for which expenses are authorized is located'' for ''in which the developing country is located''.

2002—Subsec. (b)(1). Pub. L. 107–314, § 1202(a)(1), substituted ''paragraphs (2) and (3)'' for ''paragraph (2)''.

Subsec. (b)(3), (4). Pub. L. 107–314, § 1202(a)(2), (3), added par. (3) and redesignated former par. (3) as (4).

1992—Subsec. (e). Pub. L. 102–484 struck out subsec. (e) which read as follows: ''The authority of the Secretary of Defense under this section shall expire on September 30, 1992.''

1990—Subsecs. (e) to (g). Pub. L. 101–510 redesignated subsec. (g) as (e) and struck out former subsecs. (e) and (f) which read as follows:

''(e) Not later than March 1 each year, the Secretary of Defense shall submit to Congress a report containing—

''(1) a list of the developing countries for which expenses have been paid under this section during the preceding fiscal year; and

''(2) the amount paid by the United States in the case of each such country.

''(f) During each of fiscal years 1987, 1988, and 1989, not more than $800,000 may be obligated or expended under this section.''

1989—Subsec. (b)(1). Pub. L. 101–189, § 936(a), inserted before period at end ''or in connection with travel to Canada or Mexico''.

Subsec. (g). Pub. L. 101–189, §936(b), substituted ''1992'' for ''1989''.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–417, [div. A], title XII, §1231(b)(2), Oct. 14, 2008, 122 Stat. 4637, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on October 1, 2008, and shall apply with respect to programs and activities under section 1051 of title 10, United States Code, as so amended, that begin on or after that date.''

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–314, div. A, title XII, §1202(b), Dec. 2, 2002, 116 Stat. 2663, provided that: ''The amendments made by subsection (a) [amending this section] shall apply only with respect to travel performed on or after the date of the enactment of this Act [Dec. 2, 2002].''

AIR FORCE SCHOLARSHIPS FOR PARTNERSHIP FOR PEACE NATIONS TO PARTICIPATE IN THE EURO-NATO JOINT JET PILOT TRAINING PROGRAM

Pub. L. 111–383, div. A, title XII, §1206, Jan. 7, 2011, 124 Stat. 4387, provided that:

''(a) ESTABLISHMENT OF SCHOLARSHIP PROGRAM.—The Secretary of the Air Force may establish and maintain a demonstration scholarship program to allow personnel of the air forces of countries that are signatories of the Partnership for Peace Framework Document to receive undergraduate pilot training and necessary related training through the Euro-NATO Joint Jet Pilot Training (ENJJPT) program. The Secretary of the Air Force shall establish the program pursuant to regulations prescribed by the Secretary of Defense in consultation with the Secretary of State.

''(b) TRANSPORTATION, SUPPLIES, AND ALLOWANCE.—Under such conditions as the Secretary of the Air Force may prescribe, the Secretary may provide to a person receiving a scholarship under the scholarship program—

''(1) transportation incident to the training received under the ENJJPT program;

''(2) supplies and equipment to be used during the training;

''(3) flight clothing and other special clothing required for the training;

''(4) billeting, food, and health services; and

''(5) a living allowance at a rate to be prescribed by the Secretary, taking into account the amount of living allowances authorized for a member of the Armed Forces of the United States under similar circumstances.

''(c) RELATION TO EURO-NATO JOINT JET PILOT TRAINING PROGRAM.—

''(1) ENJJPT STEERING COMMITTEE AUTHORITY.—Nothing in this section shall be construed or interpreted to supersede the authority of the ENJJPT Steering Committee under the ENJJPT Memorandum of Understanding. Pursuant to the ENJJPT Memorandum of Understanding, the ENJJPT Steering Committee may resolve to forbid any airman or airmen from a Partnership for Peace nation to participate in the Euro-NATO Joint Jet Pilot Training program under the authority of a scholarship under this section.

''(2) NO REPRESENTATION.—Countries whose air force personnel receive scholarships under the scholarship program shall not have privilege of ENJJPT Steering Committee representation.

''(d) LIMITATION ON ELIGIBLE COUNTRIES.—The Secretary of the Air Force may not use the authority in subsection (a) to provide assistance described in subsection (b) to any foreign country that is otherwise prohibited from receiving such type of assistance under the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.) or any other provision of law.

''(e) COST-SHARING.—For purposes of ENJJPT cost-sharing, personnel of an air force of a foreign country who receive a scholarship under the scholarship program may be counted as United States pilots.

''(f) PROGRESS REPORT.—Not later than February 1, 2012, the Secretary of the Air Force shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], the Committee on Foreign Affairs of the House of Representatives, and the Committee on Foreign Relations of the Senate a report on the status of the demonstration program, including the opinion of the Secretary and NATO allies on the benefits of the program and whether or not to permanently authorize the program or extend the program beyond fiscal year 2012. The report shall specify the following:

''(1) The countries participating in the scholarship program.

''(2) The total number of foreign pilots who received scholarships under the scholarship program.

''(3) The amount expended on scholarships under the scholarship program.

''(4) The source of funding for scholarships under the scholarship program.

''(g) DURATION.—No scholarship may be awarded under the scholarship program after September 30, 2012.

''(h) FUNDING SOURCE.—Amounts to award scholarships under the scholarship program shall be derived from amounts authorized to be appropriated for operation and maintenance for the Air Force.''

§1051a. Liaison officers of certain foreign nations; administrative services and support; travel, subsistence, medical care, and other personal expenses

(a) AUTHORITY.—The Secretary of Defense may provide administrative services and support for the performance of duties by a liaison officer of another nation involved in a military operation with the United States while the liaison officer is assigned temporarily as follows:

(1) To the headquarters of a combatant command, component command, or subordinate operational command of the United States in connection with the planning for, or conduct of, a military operation.

(2) To the headquarters of the combatant command assigned by the Secretary of Defense the mission of joint warfighting experimentation and joint forces training.

(b) TRAVEL, SUBSISTENCE, AND MEDICAL CARE EXPENSES.—(1) The Secretary may pay the expenses specified in paragraph (2) of a liaison officer of a developing country in connection with the assignment of that officer to the headquarters of a combatant command as described in subsection (a), if the assignment is requested by the commander of the combatant command.

(2) Expenses of a liaison officer that may be paid under paragraph (1) in connection with an assignment described in that paragraph are the following:

(A) Travel and subsistence expenses.

(B) Personal expenses directly necessary to carry out the duties of that officer in connection with that assignment.

(C) Expenses for medical care at a civilian medical facility if—

(i) adequate medical care is not available to the liaison officer at a local military medical treatment facility;

(ii) the Secretary determines that payment of such medical expenses is necessary and in the best interests of the United States; and

(iii) medical care is not otherwise available to the liaison officer pursuant to any treaty or other international agreement.

(3) The Secretary may pay the mission-related travel expenses of a liaison officer described in subsection (a) if such travel is in support of the national interests of the United States and the commander of the headquarters to which the liaison officer is temporarily assigned directs round-trip travel from the assigned headquarters to one or more locations.

(c) REIMBURSEMENT.—To the extent that the Secretary determines appropriate, the Secretary may provide the services and support authorized by subsection (a) and the expenses authorized by subsection (b) with or without reimbursement from (or on behalf of) the recipients.

(d) DEFINITION.—In this section, the term ''administrative services and support'' includes base or installation support services, office space, utilities, copying services, fire and police protection, and computer support.

(Added Pub. L. 107–314, div. A, title XII, § 1201(a)(1), Dec. 2, 2002, 116 Stat. 2662; amended Pub. L. 109–13, div. A, title I, § 1010, May 11, 2005, 119 Stat. 244; Pub. L. 109–163, div. A, title XII, § 1205, Jan. 6, 2006, 119 Stat. 3456; Pub. L. 110–181, div. A, title XII, § 1203(a)–(e)(1), Jan. 28, 2008, 122 Stat. 364, 365; Pub. L. 111–84, div. A, title XII, § 1205(a), Oct. 28, 2009, 123 Stat. 2514.)

AMENDMENTS

2009—Subsec. (a). Pub. L. 111–84 substituted ''assigned temporarily as follows:'' for ''assigned temporarily'', designated remainder of existing provisions as par. (1) and realigned margins, substituted ''To the headquarters'' for ''to the headquarters'', and added par. (2).

2008—Pub. L. 110–181, § 1203(e)(1), amended section catchline generally, substituting ''Liaison officers of certain foreign nations; administrative services and support; travel, subsistence, medical care, and other personal expenses'' for ''Coalition liaison officers: administrative services and support; travel, subsistence, and other personal expenses''.

Subsec. (a). Pub. L. 110–181, § 1203(a), substituted ''involved in a military operation'' for ''involved in a coalition'' and ''military operation'' for ''coalition operation''.

Subsec. (b). Pub. L. 110–181, § 1203(b)(1), substituted '', SUBSISTENCE, AND MEDICAL CARE'' for ''AND SUBSISTENCE'' in heading.

Subsec. (b)(2)(C). Pub. L. 110–181, § 1203(b)(2), added subpar. (C).

Subsec. (b)(3). Pub. L. 110–181, § 1203(b)(3), added par. (3).

Subsec. (d). Pub. L. 110–181, § 1203(c), substituted ''DEFINITION'' for ''DEFINITIONS'' in heading, redesignated par. (1) as subsec. (d), and struck out par. (2) which read as follows: ''The term ''coalition'' means an ad hoc arrangement between or among the United States and one or more other nations for common action.''

Subsec. (e). Pub. L. 110–181, § 1203(d), struck out heading and text of subsec. (e). Text read as follows: ''The authority under this section shall expire on September 30, 2007.''

2006—Subsec. (e). Pub. L. 109–163, which directed amendment of subsec. (e) by substituting ''September 30, 2007'' for ''September 30, 2005'', was executed by making the substitution for ''December 31, 2005'', to reflect the probable intent of Congress and the amendment by Pub. L. 109–13. See note below.

2005—Subsec. (e). Pub. L. 109–13 substituted ''December 31, 2005'' for ''September 30, 2005''.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–84, div. A, title XII, § 1205(b), Oct. 28, 2009, 123 Stat. 2514, provided that: ''Paragraph (2) of section 1051a(a) of title 10, United States Code (as added by subsection (a)), shall take effect on October 1, 2009, or the date of the enactment of this Act [Oct. 28, 2009], whichever is later.''

GAO REPORT

Pub. L. 107–314, div. A, title XII, § 1201(b), Dec. 2, 2002, 116 Stat. 2663, directed the Comptroller General to submit to committees of Congress a report providing an assessment of the implementation of this section not later than Mar. 1, 2005.

§ 1051b. Bilateral or regional cooperation programs: awards and mementos to recognize superior noncombat achievements or performance

(a) GENERAL AUTHORITY.—The Secretary of Defense may present awards and mementos purchased with funds appropriated for operation and maintenance of the armed forces to recognize superior noncombat achievements or performance by members of friendly foreign forces and other foreign nationals that significantly enhance or support the National Security Strategy of the United States.

(b) ACTIVITIES THAT MAY BE RECOGNIZED.—Activities that may be recognized under subsection (a) include superior achievement or performance that—

(1) plays a crucial role in shaping the international security environment in ways that protect and promote United States interests;

(2) supports or enhances United States overseas presence and peacetime engagement activities, including defense cooperation initiatives, security assistance training and programs, and training and exercises with the armed forces;

(3) helps to deter aggression and coercion, build coalitions, and promote regional stability; or

(4) serves as a role model for appropriate conduct by military forces in emerging democracies.

(c) LIMITATION.—Expenditures for the purchase or production of mementos for award under this section may not exceed the minimal value in effect under section 7342(a)(5) of title 5.

(Added Pub. L. 108–136, div. A, title XII, § 1222(a), Nov. 24, 2003, 117 Stat. 1652.)

§ 1052. Adoption expenses: reimbursement

(a) AUTHORIZATION TO REIMBURSE.—The Secretary of Defense shall carry out a program under which a member of the armed forces may be reimbursed, as provided in this section, for qualifying adoption expenses incurred by the member in the adoption of a child under 18 years of age.

(b) ADOPTIONS COVERED.—An adoption for which expenses may be reimbursed under this section includes an adoption by a single person, an infant adoption, an intercountry adoption, and an adoption of a child with special needs (as defined in section 473(c) of the Social Security Act (42 U.S.C. 673(c))).

(c) BENEFITS PAID AFTER ADOPTION IS FINAL.—Benefits paid under this section in the case of an adoption may be paid only after the adoption is final.

(d) TREATMENT OF OTHER BENEFITS.—A benefit may not be paid under this section for any expense paid to or for a member of the armed forces under any other adoption benefits program administered by the Federal Government or under any such program administered by a State or local government.

(e) LIMITATIONS.—(1) Not more than $2,000 may be paid under this section to a member of the armed forces, or to two such members who are spouses of each other, for expenses incurred in the adoption of a child.

(2) Not more than $5,000 may be paid under this section to a member of the armed forces, or to two such members who are spouses of each other, for adoptions by such member (or members) in any calendar year.

(f) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

(g) DEFINITIONS.—In this section:

(1) The term ''qualifying adoption expenses'' means reasonable and necessary expenses that are directly related to the legal adoption of a child under 18 years of age, but only if such adoption is arranged by a qualified adoption agency or other source authorized to place children for adoption under State or local law. Such term does not include any expense incurred—

(A) by an adopting parent for travel; or

(B) in connection with an adoption arranged in violation of Federal, State, or local law.

(2) The term ''reasonable and necessary expenses'' includes—

(A) public and private agency fees, including adoption fees charged by an agency in a foreign country;

(B) placement fees, including fees charged adoptive parents for counseling;

(C) legal fees (including court costs) in connection with services that are unavailable to a member of the armed forces under section 1044 or 1044a of this title; and

(D) medical expenses, including hospital expenses of the biological mother of the child to be adopted and of a newborn infant to be adopted.

(3) The term ''qualified adoption agency'' means any of the following:

(A) A State or local government agency which has responsibility under State or local law for child placement through adoption.

(B) A nonprofit, voluntary adoption agency which is authorized by State or local law to place children for adoption.

(C) Any other source authorized by a State to provide adoption placement if the adoption is supervised by a court under State or local law.

(D) A foreign government or an agency authorized by a foreign government to place children for adoption, in any case in which—

(i) the adopted child is entitled to automatic citizenship under section 320 of the Immigration and Nationality Act (8 U.S.C. 1431); or

(ii) a certificate of citizenship has been issued for such child under section 322 of that Act (8 U.S.C. 1433).

(Added Pub. L. 102–190, div. A, title VI, § 651(a)(1), Dec. 5, 1991, 105 Stat. 1385; amended Pub. L. 102–484, div. A, title X, § 1052(12), Oct. 23, 1992, 106 Stat. 2499; Pub. L. 104–201, div. A, title VI, § 652(a), Sept. 23, 1996, 110 Stat. 2582; Pub. L. 106–398, § 1 [[div. A], title V, § 579(c)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–141; Pub. L. 108–375, div. A, title VI, § 661, Oct. 28, 2004, 118 Stat. 1974; Pub. L. 109–163, div. A, title V, § 592(a), Jan. 6, 2006, 119 Stat. 3280.)

PRIOR PROVISIONS

A prior section 1052 was renumbered section 1063 of this title and subsequently repealed.

AMENDMENTS

2006—Subsec. (g)(1). Pub. L. 109–163 inserted ''or other source authorized to place children for adoption under State or local law'' after ''qualified adoption agency'' in introductory provisions.

2004—Subsec. (g)(3)(D). Pub. L. 108–375 added subpar. (D).

2000—Pub. L. 106–398 substituted ''Adoption expenses: reimbursement'' for ''Reimbursement for adoption expenses'' in section catchline.

1996—Subsec. (g)(1). Pub. L. 104–201, § 652(a)(1), substituted ''qualified adoption agency.'' for ''State or local government agency which has responsibility under State or local law for child placement through adoption or by a nonprofit, voluntary adoption agency which is authorized by State or local law to place children for adoption.''

Subsec. (g)(3). Pub. L. 104–201, § 652(a)(2), added par. (3).

1992—Subsec. (b). Pub. L. 102–484 inserted close parenthesis before period at end.

EFFECTIVE DATE

Section 651(c) of Pub. L. 102–190 provided that: ''The amendments made by subsections (a) and (b) [enacting this section and section 514 of Title 14, Coast Guard] shall take effect on the date of the enactment of this Act [Dec. 5, 1991] and shall apply to adoptions completed on or after that date.''

REIMBURSEMENT FOR ADOPTIONS COMPLETED DURING PERIOD BETWEEN TEST AND PERMANENT PROGRAM

Pub. L. 102–484, div. A, title VI, § 652, Oct. 23, 1992, 106 Stat. 2426, provided that this section and section 514 of Title 14, Coast Guard, would apply with respect to the reimbursement of adoption expenses incurred for an adoption proceeding completed during the period beginning on Oct. 1, 1990, and ending on Dec. 4, 1991, to the extent that such expenses would have been covered if the proceeding had been completed after Dec. 4, 1991, but only if an application for such reimbursement had been made within one year after Oct. 23, 1992.

§ 1053. Financial institution charges incurred because of Government error in direct deposit of pay: reimbursement

(a)(1) A member of the armed forces (or a former member of the armed forces entitled to retired pay under chapter 1223 of this title) who, in accordance with law or regulation, participates in a program for the automatic deposit of pay to a financial institution may be reimbursed by the Secretary concerned for a covered late-deposit charge.

(2) A covered late-deposit charge for purposes of paragraph (1) is a charge (including an overdraft charge or a minimum balance or average balance charge) that is levied by a financial institution and that results from an administrative or mechanical error on the part of the Gov-

ernment that causes the pay of the person concerned to be deposited late or in an incorrect manner or amount.

(b) Reimbursements under this section shall be made from appropriations available for the pay and allowances of members of the armed force concerned.

(c) The Secretaries concerned shall prescribe regulations to carry out this section, including regulations for the manner in which reimbursement under this section is to be made.

(d) In this section:

(1) The term ''financial institution'' means a bank, savings and loan association, or similar institution or a credit union chartered by the United States or a State.

(2) The term ''pay'' includes (A) retired pay, and (B) allowances.

(Added Pub. L. 99–661, div. A, title VI, § 662(a)(1), Nov. 14, 1986, 100 Stat. 3893; amended Pub. L. 101–189, div. A, title VI, § 664(a)(1)–(3)(A), Nov. 29, 1989, 103 Stat. 1466; Pub. L. 102–25, title VII, § 701(e)(8)(A), Apr. 6, 1991, 105 Stat. 115; Pub. L. 104–106, div. A, title XV, § 1501(c)(8), Feb. 10, 1996, 110 Stat. 499; Pub. L. 105–261, div. A, title V, § 564(a), Oct. 17, 1998, 112 Stat. 2029; Pub. L. 106–398, § 1 [[div. A], title V, § 579(c)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–141.)

AMENDMENTS

2000—Pub. L. 106–398 substituted ''Financial institution charges incurred because of Government error in direct deposit of pay: reimbursement'' for ''Reimbursement for financial institution charges incurred because of Government error in direct deposit of pay'' in section catchline.

1998—Subsec. (d)(1). Pub. L. 105–261 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The term 'financial institution' has the meaning given the term 'financial organization' in section 3332(a) of title 31.''

1996—Subsec. (a)(1). Pub. L. 104–106 substituted ''chapter 1223'' for ''chapter 67''.

1991—Pub. L. 102–25 struck out ''mandatory'' after ''error in'' in section catchline.

1989—Pub. L. 101–189, § 664(a)(3)(A), amended section catchline generally, substituting ''Reimbursement for financial institution charges incurred because of Government'' for ''Relief for expenses because of''.

Subsec. (a). Pub. L. 101–189, § 664(a)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''A member of the armed forces who, by law or regulation, is required to participate in a program for the automatic deposit of pay to a financial institution may be reimbursed for overdraft charges levied by the financial institution when such charges result from an administrative or mechanical error on the part of the Government that causes such member's pay to be deposited late or in an incorrect amount or manner.''

Subsec. (d). Pub. L. 101–189, § 664(a)(2), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''In this section, the term 'financial institution' has the meaning given that term in section 3332 of title 31.''

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 1989 AMENDMENT

Section 664(c) of Pub. L. 101–189 provided that: ''The amendments made by subsection (a) [amending this section], and section 1594 of title 10, United States Code, as added by subsection (b), shall apply with respect to pay and allowances deposited (or scheduled to be deposited) on or after the first day of the first month beginning after the date of the enactment of this Act [Nov. 29, 1989].''

EFFECTIVE DATE

Section 662(c) of Pub. L. 99–661 provided that: ''Section 1053 of title 10, United States Code, as added by subsection (a), shall apply only with respect to charges levied as a result of errors occurring on or after the date of the enactment of this Act [Nov. 14, 1986].''

§ 1053a. Expenses incurred in connection with leave canceled due to contingency operations: reimbursement

(a) AUTHORIZATION TO REIMBURSE.—The Secretary concerned may reimburse a member of the armed forces under the jurisdiction of the Secretary for travel and related expenses (to the extent not otherwise reimbursable under law) incurred by the member as a result of the cancellation of previously approved leave when the leave is canceled in connection with the member's participation in a contingency operation and the cancellation occurs within 48 hours of the time the leave would have commenced.

(b) REGULATIONS.—The Secretary of Defense shall prescribe regulations to establish the criteria for the applicability of subsection (a).

(c) CONCLUSIVENESS OF SETTLEMENT.—The settlement of an application for reimbursement under subsection (a) is final and conclusive.

(Added Pub. L. 106–398, § 1 [[div. A], title V, § 579(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–141.)

EFFECTIVE DATE

Pub. L. 106–398, § 1 [[div. A], title V, § 579(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–141, provided that: ''Section 1053a of title 10, United States Code, as added by subsection (a), shall apply with respect to any travel and related expenses incurred by a member in connection with leave canceled after the date of the enactment of this Act [Oct. 30, 2000].''

§ 1054. Defense of certain suits arising out of legal malpractice

(a) The remedy against the United States provided by sections 1346(b) and 2672 of title 28 for damages for injury or loss of property caused by the negligent or wrongful act or omission of any person who is an attorney, paralegal, or other member of a legal staff within the Department of Defense (including the National Guard while engaged in training or duty under section 316, 502, 503, 504, or 505 of title 32) or within the Coast Guard, in connection with providing legal services while acting within the scope of the person's duties or employment, is exclusive of any other civil action or proceeding by reason of the same subject matter against the person (or the estate of the person) whose act or omission gave rise to such action or proceeding.

(b) The Attorney General shall defend any civil action or proceeding brought in any court against any person referred to in subsection (a) (or the estate of such person) for any such injury. Any person against whom such a civil action or proceeding is brought shall deliver, within such time after date of service or knowledge of service as determined by the Attorney Gen-

eral, all process served upon such person (or an attested true copy thereof) to such person's immediate superior or to whomever was designated by the head of the agency concerned to receive such papers. Such person shall promptly furnish copies of the pleading and process therein—

(1) to the United States attorney for the district embracing the place wherein the action or proceeding is brought;

(2) to the Attorney General; and

(3) to the head of the agency concerned.

(c) Upon a certification by the Attorney General that a person described in subsection (a) was acting in the scope of such person's duties or employment at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court—

(1) shall be removed without bond at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending; and

(2) shall be deemed a tort action brought against the United States under the provisions of title 28 and all references thereto. Should a United States district court determine on a hearing on a motion to remand held before a trial on the merits that the case so removed is one in which a remedy by suit within the meaning of subsection (a) is not available against the United States, the case shall be remanded to the State court.

(d) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28, and with the same effect.

(e) For purposes of this section, the provisions of section 2680(h) of title 28 shall not apply to a cause of action arising out of a negligent or wrongful act or omission in the provision of legal assistance.

(f) The head of the agency concerned may hold harmless or provide liability insurance for any person described in subsection (a) for damages for injury or loss of property caused by such person's negligent or wrongful act or omission in the provision of authorized legal assistance while acting within the scope of such person's duties if such person is assigned to a foreign country or detailed for service with an entity other than a Federal department, agency, or instrumentality or if the circumstances are such as are likely to preclude the remedies of third persons against the United States described in section 1346(b) of title 28, for such damage or injury.

(g) In this section, the term ''head of the agency concerned'' means the Secretary of Defense, the Secretary of a military department, or the Secretary of the department in which the Coast Guard is operating, as appropriate.

(Added Pub. L. 99–661, div. A, title XIII, § 1356(a)(1), Nov. 14, 1986, 100 Stat. 3996; amended Pub. L. 100–448, § 15(a), Sept. 28, 1988, 102 Stat. 1845.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–448, § 15(a)(1), inserted ''or within the Coast Guard'' after ''of title 32)''.

Subsec. (g). Pub. L. 100–448, § 15(a)(2), inserted reference to the Secretary of the department in which the Coast Guard is operating.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 15(b) of Pub. L. 100–448 provided that: ''The amendments made by subsection (a) [amending this section] shall apply only to claims accruing on or after the date of the enactment of this Act [Sept. 28, 1988], regardless of when the alleged negligent act or omission occurred.''

EFFECTIVE DATE

Section 1356(b) of Pub. L. 99–661 provided that: ''Section 1054 of title 10, United States Code, as added by subsection (a), shall apply only to claims accruing on or after the date of the enactment of this Act [Nov. 14, 1986], regardless of when the alleged negligent or wrongful act or omission occurred.''

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.

§ 1055. Waiver of security deposits for members renting private housing; authority to indemnify landlord

(a) The Secretary of Defense may carry out a program under which the Secretary of a military department agrees to indemnify a landlord who leases a rental unit to a member of the armed forces against a breach of the lease by the member or for damage to the rental unit caused by the member. In exchange for agreement for such indemnification by the Secretary, the landlord shall be required to waive any requirement for payment by the member of a security deposit that the landlord would otherwise require.

(b)(1) For purposes of carrying out a program authorized by subsection (a), the Secretary of a military department, to the extent funds are provided in advance in appropriation Acts, may enter into an agreement with any landlord who agrees to waive the requirement for a security deposit in connection with the lease of a rental unit to a member of the armed forces under the jurisdiction of the Secretary. An agreement under this paragraph shall provide that—

(A) the term of the agreement shall remain in effect during the term of the member's lease and during any lease renewal periods with the lessor;

(B) the member shall not pay a security deposit;

(C) the Secretary (except as provided in subparagraphs (D) and (E)) shall compensate the landlord for breach of the lease by the member and for damage to the rental unit caused by the member or by a guest or dependent of the member;

(D) the total liability of the Secretary for a breach of the lease or for damage described in subparagraph (C) may not exceed an amount equal to the amount that the Secretary determines would have been required by the landlord as a security deposit in the absence of an agreement authorized in this paragraph;

(E) the Secretary may not compensate the landlord for any claim for breach of the lease or for damage described in subparagraph (C)

until the landlord exhausts any remedies available to the landlord (including submission to binding arbitration by a panel composed of military personnel and persons from the private sector) against the member for the breach or damage; and

(F) the Secretary shall be subrogated to the rights of the landlord in any case in which the Secretary compensates the landlord for breach of the lease or for damage described in subparagraph (C).

(2) Any authority of the Secretary of a military department under this section shall be exercised under regulations prescribed by the Secretary of Defense.

(c)(1) The Secretary of a military department who compensates a landlord under subsection (b) for a breach of a lease or for damage described in subsection (b)(1)(C) may issue a special order under section 1007 of title 37 to authorize the withholding from the pay of the member of an amount equal to the amount paid by the Secretary to the landlord as compensation for the breach or damage.

(2) Before the Secretary of a military department issues a special order under section 1007 of title 37 to authorize the withholding of any amount from the pay of a member for a breach or damage referred to in paragraph (1), the Secretary concerned shall provide the member with the same notice and opportunity for hearing and record inspection as provided an individual under section 5514(a)(2) of title 5. The Secretary concerned shall prescribe regulations, subject to the approval of the President, to carry out this paragraph. Such regulations shall be as uniform for the military departments as practicable.

(d) In this section, the term ''landlord'' means a person who leases a rental unit to a member of the armed forces.

(Added Pub. L. 100–456, div. A, title VI, § 621(a)(1), Sept. 29, 1988, 102 Stat. 1982.)

EFFECTIVE DATE

Section 621(b) of Pub. L. 100–456 provided that: ''Section 1055 of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 1988.''

§ 1056. Relocation assistance programs

(a) REQUIREMENT TO PROVIDE ASSISTANCE.—The Secretary of Defense shall carry out a program to provide relocation assistance to members of the armed forces and their families as provided in this section. In addition, the Secretary of Defense shall make every effort, consistent with readiness objectives, to stabilize and lengthen tours of duty to minimize the adverse effects of relocation.

(b) TYPES OF ASSISTANCE.—(1) The Secretary of each military department, under regulations prescribed by the Secretary of Defense, shall provide relocation assistance, through military relocation assistance programs described in subsection (c), to members of the armed forces who are ordered to make a change of permanent station which includes a move to a new location (and for dependents of such members who are authorized to move in connection with the change of permanent station).

(2) The relocation assistance provided shall include the following:

(A) Provision of destination area information and preparation (to be provided before the change of permanent station takes effect), with emphasis on information with regard to moving costs, housing costs and availability, child care, spouse employment opportunities, cultural adaptation, and community orientation.

(B) Provision of counseling about financial management, home buying and selling, renting, stress management aimed at intervention and prevention of abuse, property management, and shipment and storage of household goods (including motor vehicles and pets).

(C) Provision of settling-in services, with emphasis on available government living quarters, private housing, child care, spouse employment assistance information, cultural adaptation, and community orientation.

(D) Provision of home finding services, with emphasis on services for locating adequate, affordable temporary and permanent housing.

(c) MILITARY RELOCATION ASSISTANCE PROGRAMS.—(1) The Secretary shall provide for the establishment of military relocation assistance programs to provide the relocation assistance described in subsection (b). The Secretary shall establish such a program in each geographic area in which at least 500 members of the armed forces are assigned to or serving at a military installation. A member who is not stationed within a geographic area that contains such a program shall be given access to such a program. The Secretary shall ensure that persons on the staff of each program are trained in the techniques and delivery of professional relocation assistance.

(2) The Secretary shall ensure that information available through each military relocation assistance program shall be managed through a computerized information system that can interact with all other military relocation assistance programs of the military departments, including programs located outside the continental United States.

(3) Duties of each military relocation assistance program shall include assisting personnel offices on the military installation in using the computerized information available through the program to help provide members of the armed forces who are deciding whether to reenlist information on locations of possible future duty assignments.

(d) DIRECTOR.—The Secretary of Defense shall establish the position of Director of Military Relocation Assistance Programs in the office of the Assistant Secretary of Defense (Force Management and Personnel). The Director shall oversee development and implementation of the military relocation assistance programs under this section.

(e) REGULATIONS.—This section shall be administered under regulations prescribed by the Secretary of Defense.

(f) INAPPLICABILITY TO COAST GUARD.—This section does not apply to the Coast Guard.

(Added Pub. L. 101–510, div. A, title XIV, § 1481(c)(1), Nov. 5, 1990, 104 Stat. 1705; amended Pub. L. 104–106, div. A, title IX, § 903(d), title X, § 1062(a), Feb. 10, 1996, 110 Stat. 402, 443; Pub. L.

104–201, div. A, title IX, § 901, Sept. 23, 1996, 110 Stat. 2617; Pub. L. 107–107, div. A, title X, § 1048(a)(9), Dec. 28, 2001, 115 Stat. 1223.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 101–189, div. A, title VI, § 661(a)–(g), Nov. 29, 1989, 103 Stat. 1463, which was set out as a note under section 113 of this title, prior to repeal by Pub. L. 101–510, § 1481(c)(3).

AMENDMENTS

2001—Subsec. (c)(2). Pub. L. 107–107 struck out ", not later than September 30, 1991," before "information available".

1996—Subsec. (d). Pub. L. 104–106, § 903(a), (d), which directed repeal of subsec. (d), eff. Jan. 31, 1997, was repealed by Pub. L. 104–201.

Subsecs. (f), (g). Pub. L. 104–106, § 1062(a), redesignated subsec. (g) as (f) and struck out former subsec. (f) which read as follows: "ANNUAL REPORT.—Not later than March 1 each year, the Secretary of Defense, acting through the Director of Military Relocation Assistance Programs, shall submit to Congress a report on the program under this section and on military family relocation matters. The report shall include the following:

"(1) An assessment of available, affordable private-sector housing for members of the armed forces and their families.

"(2) An assessment of the actual nonreimbursed costs incurred by members of the armed forces and their families who are ordered to make a change of permanent station.

"(3) Information (shown by military installation) on the types of locations at which members of the armed forces assigned to duty at military installations live, including the number of members of the armed forces who live on a military installation and the number who do not live on a military installation.

"(4) Information on the effects of the relocation assistance programs established under this section on the quality of life of members of the armed forces and their families and on retention and productivity of members of the armed forces."

IMPLEMENTATION OF RELOCATION ASSISTANCE PROGRAMS

Section 1481(c)(4) of Pub. L. 101–510 provided that: "The program required to be carried out by section 1056 of title 10, United States Code, as added by paragraph (1), shall be established by the Secretary of Defense not later than October 1, 1990. The Secretary shall prescribe regulations to implement that section not later than July 1, 1990."

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.

§ 1057. Use of armed forces insignia on State license plates

(a) The Secretary concerned may approve an application by a State to use or imitate the seal or other insignia of the department (under the jurisdiction of such Secretary) or of armed forces (under the jurisdiction of such Secretary) on motor vehicle license plates issued by the State to an individual who is a member or former member of the armed forces.

(b) The Secretary concerned may prescribe any regulations necessary regarding the display of the seal or other insignia of the department (under the jurisdiction of such Secretary) or of armed forces (under the jurisdiction of such Secretary) on the license plates described in subsection (a).

(c) In this section, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa.

(Added Pub. L. 102–484, div. A, title X, § 1080(a), Oct. 23, 1992, 106 Stat. 2514.)

§ 1058. Responsibilities of military law enforcement officials at scenes of domestic violence

(a) IMMEDIATE ACTIONS REQUIRED.—Under regulations prescribed pursuant to subsection (c), the Secretary concerned shall ensure, in any case of domestic violence in which a military law enforcement official at the scene determines that physical injury has been inflicted or a deadly weapon or dangerous instrument has been used, that military law enforcement officials—

(1) take immediate measures to reduce the potential for further violence at the scene; and

(2) within 24 hours of the incident, provide a report of the domestic violence to the appropriate commander and to a local military family advocacy representative exercising responsibility over the area in which the incident took place.

(b) FAMILY ADVOCACY COMMITTEE.—Under regulations prescribed pursuant to subsection (c), the Secretary concerned shall ensure that, whenever a report is provided to a commander under subsection (a)(2), a multidisciplinary family advocacy committee meets, with all due practicable speed, to review the situation and to make recommendations to the commander for appropriate action.

(c) REGULATIONS.—The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe by regulation the definition of "domestic violence" for purposes of this section and such other regulations as may be necessary for purposes of this section.

(d) MILITARY LAW ENFORCEMENT OFFICIAL.—In this section, the term "military law enforcement official" means a person authorized under regulations governing the armed forces to apprehend persons subject to the Uniform Code of Military Justice (chapter 47 of this title) or to trial thereunder.

(Added Pub. L. 103–160, div. A, title V, § 551(a)(1), Nov. 30, 1993, 107 Stat. 1661; amended Pub. L. 103–337, div. A, title X, § 1070(a)(4), (b)(3), Oct. 5, 1994, 108 Stat. 2855, 2856; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

CODIFICATION

Other sections 1058 were renumbered sections 1059 and 1060 of this title.

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–296 substituted "of Homeland Security" for "of Transportation".

1994—Pub. L. 103–337, § 1070(b)(3), made technical correction to directory language of Pub. L. 103–160, § 551(a)(1), which enacted this section.

Subsec. (d). Pub. L. 103–337, § 1070(a)(4), substituted ''subject to the Uniform Code of Military Justice (chapter 47 of this title)'' for ''subject to this chapter''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

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.

DEADLINE FOR PRESCRIBING PROCEDURES

Section 551(b) of Pub. L. 103–160 provided that: ''The Secretary of Defense shall prescribe procedures to carry out section 1058 of title 10, United States Code, as added by subsection (a), not later than six months after the date of the enactment of this Act [Nov. 30, 1993].''

§ 1059. Dependents of members separated for dependent abuse: transitional compensation; commissary and exchange benefits

(a) AUTHORITY TO PAY COMPENSATION.—The Secretary of Defense, with respect to the armed forces (other than the Coast Guard when it is not operating as a service in the Navy), and the Secretary of Homeland Security, with respect to the Coast Guard when it is not operating as a service in the Navy, may each establish a program to pay monthly transitional compensation in accordance with this section to dependents or former dependents of a member of the armed forces described in subsection (b). Upon establishment of such a program, the program shall apply in the case of each such member described in subsection (b) who is under the jurisdiction of the Secretary establishing the program.

(b) PUNITIVE AND OTHER ADVERSE ACTIONS COVERED.—This section applies in the case of a member of the armed forces on active duty for a period of more than 30 days—

(1) who is convicted of a dependent-abuse offense (as defined in subsection (c)) and whose conviction results in the member—

(A) being separated from active duty pursuant to a sentence of a court-martial; or

(B) forfeiting all pay and allowances pursuant to a sentence of a court-martial; or

(2) who is administratively separated, voluntarily or involuntarily, from active duty in accordance with applicable regulations if the basis for the separation includes a dependent-abuse offense.

(c) DEPENDENT-ABUSE OFFENSES.—For purposes of this section, a dependent-abuse offense is conduct by an individual while a member of the armed forces on active duty for a period of more than 30 days—

(1) that involves abuse of the spouse or a dependent child of the member; and

(2) that is a criminal offense specified in regulations prescribed by the Secretary of Defense under subsection (k).

(d) RECIPIENTS OF PAYMENTS.—In the case of any individual described in subsection (b), the Secretary shall pay such compensation to dependents or former dependents of the individual as follows:

(1) If the individual was married at the time of the commission of the dependent-abuse offense resulting in the separation, such compensation shall be paid to the spouse or former spouse to whom the individual was married at that time, including an amount (determined under subsection (f)(2)) for each, if any, dependent child of the individual described in subsection (b) who resides in the same household as that spouse or former spouse.

(2) If there is a spouse or former spouse who is or, but for subsection (g), would be eligible for compensation under this section and if there is a dependent child of the individual described in subsection (b) who does not reside in the same household as that spouse or former spouse, compensation under this section shall be paid to each such dependent child of the individual described in subsection (b) who does not reside in that household.

(3) If there is no spouse or former spouse who is (or but for subsection (g) would be) eligible under paragraph (1), such compensation shall be paid to the dependent children of the individual described in subsection (b).

(4) For purposes of this subsection, an individual's status as a ''dependent child'' shall be determined as of the date on which the individual described in subsection (b) is convicted of the dependent-abuse offense or, in a case described in subsection (b)(2), as of the date on which the individual described in subsection (b) is separated from active duty.

(e) COMMENCEMENT AND DURATION OF PAYMENT.—(1) Payment of transitional compensation under this section—

(A) in the case of a member convicted by a court-martial for a dependent-abuse offense, shall commence—

(i) as of the date the court-martial sentence is adjudged if the sentence, as adjudged, includes a dismissal, dishonorable discharge, bad conduct discharge, or forfeiture of all pay and allowances; or

(ii) if there is a pretrial agreement that provides for disapproval or suspension of the dismissal, dishonorable discharge, bad conduct discharge, or forfeiture of all pay and allowances, as of the date of the approval of the court-martial sentence by the person acting under section 860(c) of this title (article 60(c) of the Uniform Code of Military Justice) if the sentence, as approved, includes an unsuspended dismissal, dishonorable discharge, bad conduct discharge, or forfeiture of all pay and allowances; and

(B) in the case of a member being considered under applicable regulations for administrative separation from active duty in accordance with such regulations (if the basis for the separation includes a dependent-abuse offense), shall commence as of the date on which the separation action is initiated by a commander of the member pursuant to such regulations, as determined by the Secretary concerned.

(2) Transitional compensation with respect to a member shall be paid for a period of not less

than 12 months and not more than 36 months, as established in policies prescribed by the Secretary concerned.

(3)(A) If a member is sentenced by a court-martial to receive punishment that includes a dismissal, dishonorable discharge, bad conduct discharge, or forfeiture of all pay and allowances as a result of a conviction by a court-martial for a dependent-abuse offense and each such conviction is disapproved by the person acting under section 860(c) of this title (article 60(c) of the Uniform Code of Military Justice) or set aside, or each such punishment applicable to the member under the sentence is disapproved by the person acting under section 860(c) of this title, remitted, set aside, suspended, or mitigated to a lesser punishment that does not include any such punishment, any payment of transitional compensation that has commenced under this section on the basis of such sentence in that case shall cease.

(B) If administrative separation of a member from active duty is proposed on a basis that includes a dependent-abuse offense and the proposed administrative separation is disapproved by competent authority under applicable regulations, payment of transitional compensation in such case shall cease.

(C) Cessation of payments under subparagraph (A) or (B) shall be effective as of the first day of the first month following the month in which the Secretary concerned notifies the recipient of such transitional compensation in writing that payment of the transitional compensation will cease. The recipient may not be required to repay amounts of transitional compensation received before that effective date (except to the extent necessary to recoup any amount that was erroneous when paid).

(f) AMOUNT OF PAYMENT.—(1) Payment to a spouse or former spouse under this section for any month shall be at the rate in effect for that month for the payment of dependency and indemnity compensation under section 1311(a)(1) of title 38.

(2) If a spouse or former spouse to whom compensation is paid under this section has custody of a dependent child of the member who resides in the same household as that spouse or former spouse, the amount of such compensation paid for any month shall be increased for each such dependent child by the amount in effect for that month under section 1311(b) of title 38.

(3) If compensation is paid under this section to a child or children pursuant to subsection (d)(2) or (d)(3), such compensation shall be paid in equal shares, with the amount of such compensation for any month determined in accordance with the rates in effect for that month under section 1313 of title 38.

(g) SPOUSE AND FORMER SPOUSE FORFEITURE PROVISIONS.—(1) If a former spouse receiving compensation under this section remarries, the Secretary shall terminate payment of such compensation, effective as of the date of such marriage. The Secretary may not renew payment of compensation under this section to such former spouse in the event of the termination of such subsequent marriage.

(2) If after a punitive or other adverse action is executed in the case of a former member as described in subsection (b) the former member resides in the same household as the spouse or former spouse, or dependent child, to whom compensation is otherwise payable under this section, the Secretary shall terminate payment of such compensation, effective as of the time the former member begins residing in such household. Compensation paid for a period after the former member's separation, but before the former member resides in the household, shall not be recouped. If the former member subsequently ceases to reside in such household before the end of the period of eligibility for such payments, the Secretary may not resume such payments.

(3) In a case in which the victim of the dependent-abuse offense resulting in a punitive or other adverse action described in subsection (b) was a dependent child, the Secretary concerned may not pay compensation under this section to a spouse or former spouse who would otherwise be eligible to receive such compensation if the Secretary determines (under regulations prescribed under subsection (k)) that the spouse or former spouse was an active participant in the conduct constituting the dependent-abuse offense.

(h) EFFECT OF CONTINUATION OF MILITARY PAY.—In the case of payment of transitional compensation by reason of a total forfeiture of pay and allowances pursuant to a sentence of a court-martial, payment of transitional compensation shall not be made for any period for which an order—

(1) suspends, in whole or in part, that part of a sentence that includes forfeiture of the member's pay and allowance; or

(2) otherwise results in continuation, in whole or in part, of the member's pay and allowances.

(i) COORDINATION OF BENEFITS.—The Secretary concerned may not make payments to a spouse or former spouse under both this section and section 1408(h)(1) of this title. In the case of a spouse or former spouse for whom a court order provides for payments by the Secretary pursuant to section 1408(h)(1) of this title and to whom the Secretary offers payments under this section, the spouse or former spouse shall elect which to receive.

(j) COMMISSARY AND EXCHANGE BENEFITS.—(1) A dependent or former dependent entitled to payment of monthly transitional compensation under this section shall, while receiving payments in accordance with this section, be entitled to use commissary and exchange stores to the same extent and in the same manner as a dependent of a member of the armed forces on active duty for a period of more than 30 days.

(2) If a dependent or former dependent eligible or entitled to use commissary and exchange stores under paragraph (1) is eligible or entitled to use commissary and exchange stores under another provision of law, the eligibility or entitlement of that dependent or former dependent to use commissary and exchange stores shall be determined under such other provision of law rather than under paragraph (1).

(k) REGULATIONS.—(1) The Secretary of Defense shall prescribe regulations to carry out this section with respect to the armed forces

(other than the Coast Guard when it is not operating as a service in the Navy). The Secretary of Homeland Security shall prescribe regulations to carry out this section with respect to the Coast Guard when it is not operating as a service in the Navy.

(2) Regulations prescribed under paragraph (1) shall include the criminal offenses, or categories of offenses, under the Uniform Code of Military Justice (chapter 47 of this title), Federal criminal law, the criminal laws of the States and other jurisdictions of the United States, and the laws of other nations that are to be considered to be dependent-abuse offenses for the purposes of this section.

(*l*) DEPENDENT CHILD DEFINED.—In this section, the term ''dependent child'', with respect to a member or former member of the armed forces referred to in subsection (b), means an unmarried child, including an adopted child or a stepchild, who was residing with the member at the time of the dependent-abuse offense resulting in the separation of the former member and—

(1) who is under 18 years of age;

(2) who is 18 years of age or older and is incapable of self-support because of a mental or physical incapacity that existed before the age of 18 and who is (or, at the time a punitive or other adverse action was executed in the case of the former member as described in subsection (b), was) dependent on the former member for over one-half of the child's support; or

(3) who is 18 years of age or older but less than 23 years of age, is enrolled in a full-time course of study in an institution of higher learning approved by the Secretary of Defense and who is (or, at the time a punitive or other adverse action was executed in the case of the former member as described in subsection (b), was) dependent on the former member for over one-half of the child's support.

(m) EXCEPTIONAL ELIGIBILITY FOR DEPENDENTS OF FORMER MEMBERS.—(1) The Secretary concerned, under regulations prescribed under subsection (k), may authorize eligibility for benefits under this section for dependents and former dependents of a former member of the armed forces in a case in which the dependents or former dependents are not otherwise eligible for such benefits and the Secretary concerned determines that the former member engaged in conduct that is a dependent-abuse offense under this section and the former member was separated from active duty other than as described in subsection (b).

(2) In a case in which the Secretary concerned, under the authority of paragraph (1), authorizes benefits to be provided under this section, such benefits shall be provided in the same manner as if the former member were an individual described in subsection (b), except that, under regulations prescribed under subsection (k), the Secretary shall make such adjustments to the commencement and duration of payment provisions of subsection (e), and may make adjustments to other provisions of this section, as the Secretary considers necessary in light of the circumstances in order to provide benefits substantially equivalent to the benefits provided in the case of an individual described in subsection (b).

(3) The authority of the Secretary concerned under paragraph (1) may not be delegated.

(Added Pub. L. 103–160, div. A, title V, § 554(a)(1), Nov. 30, 1993, 107 Stat. 1663, § 1058; renumbered § 1059 and amended Pub. L. 103–337, div. A, title V, § 535(a)–(c)(1), title X, § 1070(a)(5)(A), Oct. 5, 1994, 108 Stat. 2762, 2763, 2855; Pub. L. 104–106, div. A, title VI, § 636(a), (b), title XV, § 1503(a)(8), Feb. 10, 1996, 110 Stat. 367, 511; Pub. L. 105–261, div. A, title V, § 570(a), (b), Oct. 17, 1998, 112 Stat. 2032; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 108–136, div. A, title V, §§ 572(a), (b)(1), (c), 573(a), 574, Nov. 24, 2003, 117 Stat. 1484–1486.)

AMENDMENTS

2003—Subsec. (b)(2). Pub. L. 108–136, § 574, inserted '', voluntarily or involuntarily,'' after ''administratively separated''.

Subsec. (e)(1)(A). Pub. L. 108–136, § 572(a), substituted ''shall commence—'' and cls. (i) and (ii) for ''shall commence as of the date of the approval of the court-martial sentence by the person acting under section 860(c) of this title (article 60(c) of the Uniform Code of Military Justice) if the sentence, as approved, includes a dismissal, dishonorable discharge, bad conduct discharge, or forfeiture of all pay and allowances; and''.

Subsec. (e)(2). Pub. L. 108–136, § 572(b)(1), substituted ''a period of not less than 12 months and not more than 36 months, as established in policies prescribed by the Secretary concerned'' for ''a period of 36 months, except that, if as of the date on which payment of transitional compensation commences the unserved portion of the member's period of obligated active duty service is less than 36 months, the period for which transitional compensation is paid shall be equal to the greater of—

''(A) the unserved portion of the member's period of obligated active duty service; or

''(B) 12 months''.

Subsec. (e)(3)(A). Pub. L. 108–136, § 572(c), substituted ''conviction is disapproved by the person acting under section 860(c) of this title (article 60(c) of the Uniform Code of Military Justice) or set aside, or each such punishment applicable to the member under the sentence is disapproved by the person acting under section 860(c) of this title, remitted, set aside, suspended, or mitigated'' for ''punishment applicable to the member under the sentence is remitted, set aside, or mitigated''.

Subsec. (m). Pub. L. 108–136, § 573(a), added subsec. (m).

2002—Subsecs. (a), (k)(1). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1998—Subsec. (d)(1). Pub. L. 105–261, § 570(a)(1), struck out ''(except as otherwise provided in this subsection)'' after ''such compensation shall'' and inserted before period at end '', including an amount (determined under subsection (f)(2)) for each, if any, dependent child of the individual described in subsection (b) who resides in the same household as that spouse or former spouse''.

Subsec. (d)(2). Pub. L. 105–261, § 570(a)(2), substituted ''is or, but for subsection (g), would be eligible'' for ''(but for subsection (g)) would be eligible'' and ''compensation under this section shall'' for ''such compensation shall''.

Subsec. (d)(4). Pub. L. 105–261, § 570(a)(3), substituted ''For purposes of this subsection'' for ''For purposes of paragraphs (2) and (3)''.

Subsec. (f)(2). Pub. L. 105–261, § 570(b), substituted ''has custody of a dependent child of the member who resides in the same household as that spouse or former spouse'' for ''has custody of a dependent child or children of the member''.

1996—Subsec. (a). Pub. L. 104–106, § 636(a), inserted at end ''Upon establishment of such a program, the program shall apply in the case of each such member de-

scribed in subsection (b) who is under the jurisdiction of the Secretary establishing the program.''

Subsec. (c)(2). Pub. L. 104–106, § 1503(a)(8), substituted ''subsection (k)'' for ''subsection (j)''.

Subsec. (d). Pub. L. 104–106, § 636(b)(1), in introductory provisions, substituted ''the case of any individual described in subsection (b)'' for ''any case of a separation from active duty as described in subsection (b)'' and ''dependents of the individual'' for ''dependents of the former member''.

Subsec. (d)(1). Pub. L. 104–106, § 636(b)(2), substituted ''If the individual'' for ''If the former member'' and ''to whom the individual'' for ''to whom the member''.

Subsec. (d)(2). Pub. L. 104–106, § 636(b)(3), substituted ''individual described in subsection (b)'' for ''former member'' in two places.

Subsec. (d)(3). Pub. L. 104–106, § 636(b)(4), substituted ''individual described in subsection (b)'' for ''former member''.

Subsec. (d)(4). Pub. L. 104–106, § 636(b)(5), substituted ''individual described in subsection (b)'' for ''member'' in two places.

Subsec. (g)(3). Pub. L. 104–106, § 1503(a)(8), substituted ''subsection (k))'' for ''subsection (j))''.

1994—Pub. L. 103–337, § 1070(a)(5)(A), renumbered section 1058 of this title as this section.

Pub. L. 103–337, § 535(c)(1), inserted ''; commissary and exchange benefits'' at end of section catchline.

Subsec. (e). Pub. L. 103–337, § 535(a), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows:

''(e) COMMENCEMENT AND DURATION OF PAYMENT.—(1) Payment of transitional compensation under this section shall commence as of the date of the discontinuance of the member's pay and allowances pursuant to the separation or sentencing of the member and, except as provided in paragraph (2), shall be paid for a period of 36 months.

''(2) If as of the date on which payment of transitional compensation commences the unserved portion of the member's period of obligated active duty service is less than 36 months, the period for which transitional compensation is paid shall be equal to the greater of—

''(A) the unserved portion of the member's period of obligated active duty service; or

''(B) 12 months.''

Subsecs. (j) to (*l*). Pub. L. 103–337, § 535(b), added subsec. (j) and redesignated former subsecs. (j) and (k) as (k) and (*l*), respectively.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–136, div. A, title V, § 572(d), Nov. 24, 2003, 117 Stat. 1485, provided that: ''The amendments made by this section [amending this section] shall apply only with respect to cases in which a court-martial sentence is adjudged on or after the date of the enactment of this Act [Nov. 24, 2003].''

Pub. L. 108–136, div. A, title V, § 573(b), Nov. 24, 2003, 117 Stat. 1485, provided that: ''The authority under subsection (m) of section 1059 of title 10, United States Code, as added by subsection (a), may be exercised with respect to eligibility for benefits under that section only for dependents and former dependents of individuals who are separated from active duty in the Armed Forces on or after the date of the enactment of this Act [Nov. 24, 2003].''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–261, div. A, title V, § 570(c), Oct. 17, 1998, 112 Stat. 2032, provided that: ''No benefits shall accrue by reason of the amendments made by this section [amending this section] for any month that begins before the date of the enactment of this Act [Oct. 17, 1998].''

EFFECTIVE DATE

Section 554(b) of Pub. L. 103–160, as amended by Pub. L. 103–337, div. A, title X, § 1070(b)(5), Oct. 5, 1994, 108 Stat. 2856; Pub. L. 104–106, div. A, title VI, § 636(c), Feb. 10, 1996, 110 Stat. 367, provided that:

''(1) The section of title 10, United States Code, added by subsection (a)(1) [this section] shall apply with respect to a member of the Armed Forces who, after November 29, 1993—

''(A) is separated from active duty as described in subsection (b) of such section; or

''(B) forfeits all pay and allowances as described in such subsection.

''(2) Payments of transitional compensation under that section in the case of any person eligible to receive payments under that section shall be made for each month after November 1993 for which that person may be paid transitional compensation in accordance with that section.''

DURATION OF TRANSITIONAL COMPENSATION PAYMENTS

Pub. L. 108–136, div. A, title V, § 572(b)(2), Nov. 24, 2003, 117 Stat. 1485, provided that: ''Policies under subsection (e)(2) of section 1059 of title 10, United States Code, as amended by paragraph (1), for the duration of transitional compensation payments under that section shall be prescribed under such subsection not later than six months after the date of the enactment of this Act [Nov. 24, 2003].''

§ 1060. Military service of retired members with newly democratic nations: consent of Congress

(a) CONSENT OF CONGRESS.—Subject to subsection (b), Congress consents to a retired member of the uniformed services—

(1) accepting employment by, or holding an office or position in, the military forces of a newly democratic nation; and

(2) accepting compensation associated with such employment, office, or position.

(b) APPROVAL REQUIRED.—The consent provided in subsection (a) for a retired member of the uniformed services to accept employment or hold an office or position shall apply to a retired member only if the Secretary concerned and the Secretary of State jointly approve the employment or the holding of such office or position.

(c) DETERMINATION OF NEWLY DEMOCRATIC NATIONS.—The Secretary concerned and the Secretary of State shall jointly determine whether a nation is a newly democratic nation for the purposes of this section.

[(d) Repealed. Pub. L. 108–136, div. A, title X, § 1031(a)(9), Nov. 24, 2003, 117 Stat. 1597.]

(e) CONTINUED ENTITLEMENT TO RETIRED PAY AND BENEFITS.—The eligibility of a retired member to receive retired or retainer pay and other benefits arising from the retired member's status as a retired member of the uniformed services, and the eligibility of dependents of such retired member to receive benefits on the basis of such retired member's status as a retired member of the uniformed services, may not be terminated by reason of employment or holding of an office or position consented to in subsection (a).

(f) RETIRED MEMBER DEFINED.—In this section, the term ''retired member'' means a member or former member of the uniformed services who is entitled to receive retired or retainer pay.

(g) CIVIL EMPLOYMENT BY FOREIGN GOVERNMENTS.—For a provision of law providing the consent of Congress to civil employment by foreign governments, see section 908 of title 37.

(Added Pub. L. 103–160, div. A, title XIV, § 1433(b)(1), Nov. 30, 1993, 107 Stat. 1834, § 1058; renumbered § 1060, Pub. L. 103–337, div. A, title X, § 1070(a)(6)(A), Oct. 5, 1994, 108 Stat. 2855; amended Pub. L. 104–106, div. A, title XV, § 1502(a)(13), Feb. 10, 1996, 110 Stat. 503; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 108–136, div. A, title X, § 1031(a)(9), Nov. 24, 2003, 117 Stat. 1597.)

AMENDMENTS

2003—Subsec. (d). Pub. L. 108–136 struck out heading and text of subsec. (d). Text read as follows: ''The Secretary concerned and the Secretary of State shall notify the Committee on Armed Services and the Committee on Foreign Relations of the Senate and the Committee on Armed Services and the Committee on International Relations of the House of Representatives of each approval under subsection (b) and each determination under subsection (c).''

1999—Subsec. (d). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1996—Subsec. (d). Pub. L. 104–106 substituted ''Committee on National Security and the Committee on International Relations'' for ''Committee on Armed Services and the Committee on Foreign Affairs''.

1994—Pub. L. 103–337 renumbered section 1058 of this title as this section.

EFFECTIVE DATE

Section 1433(d) of Pub. L. 103–160 provided that this section was to take effect as of Jan. 1, 1993, prior to repeal by Pub. L. 103–236, title I, § 182(b), Apr. 30, 1994, 108 Stat. 418.

RESTORATION OF WITHHELD BENEFITS

Pub. L. 103–236, title I, § 182(a), Apr. 30, 1994, 108 Stat. 418, as amended by Pub. L. 103–337, div. A, title X, § 1070(d)(7), Oct. 5, 1994, 108 Stat. 2858; Pub. L. 103–415, § 1(j), Oct. 25, 1994, 108 Stat. 4301, provided that: ''With respect to any person for which the Secretary of State and the Secretary concerned within the Department of Defense have approved the employment or the holding of a position pursuant to the provisions of section 1060 of title 10, United States Code, before April 30, 1994, the consents, approvals and determinations under that section shall be deemed to be effective as of January 1, 1993.''

CONGRESSIONAL FINDINGS

Section 1433(a) of Pub. L. 103–160 provided that: ''The Congress makes the following findings:

''(1) It is in the national security interest of the United States to promote democracy throughout the world.

''(2) The armed forces of newly democratic nations often lack the democratic traditions that are a hallmark of the Armed Forces of the United States.

''(3) The understanding of military roles and missions in a democracy is essential for the development and preservation of democratic forms of government.

''(4) The service of retired members of the Armed Forces of the United States in the armed forces of newly democratic nations could lead to a better understanding of military roles and missions in a democracy.''

§ 1060a. Special supplemental food program

(a) PROGRAM REQUIRED.—The Secretary of Defense shall carry out a program to provide supplemental foods and nutrition education to members of the armed forces on duty at stations outside the United States (and its territories and possessions) and to eligible civilians serving with, employed by, or accompanying the armed forces outside the United States (and its territories and possessions).

(b) FUNDING MECHANISM.—The Secretary of Defense shall use funds available for the Department of Defense to carry out the program under subsection (a).

(c) PROGRAM ADMINISTRATION.—(1)(A) The Secretary of Defense shall administer the program referred to in subsection (a) and, except as provided in subparagraph (B), shall determine eligibility for program benefits under the criterion published by the Secretary of Agriculture under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786). In determining eligibility for benefits, a person already certified for participation in the special supplemental nutrition program for women, infants, and children under such section 17 shall be considered eligible for the duration of the certification period under that special supplemental nutrition program.

(B) In determining eligibility for families of individuals participating in the program under this section, the Secretary of Defense shall, to the extent practicable, use the criterion described in subparagraph (A), including nutritional risk standards. In the application of such criterion, the Secretary shall exclude from income any basic allowance for housing as permitted under section 17(d)(2)(B) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(d)(2)(B)).

(2) The program benefits provided under the program shall be similar to benefits provided by State and local agencies in the United States, particularly with respect to nutrition education.

(3) The Secretary of Agriculture shall provide technical assistance to the Secretary of Defense, if so requested by the Secretary of Defense, for the purpose of carrying out the program under subsection (a).

(d) DEPARTURE FROM STANDARDS.—The Secretary of Defense may authorize departures from standards prescribed by the Secretary of Agriculture regarding the supplemental foods to be made available in the program when local conditions preclude strict compliance or when such compliance is highly impracticable.

(e) REBATE AGREEMENTS WITH FOOD PRODUCERS.—(1) In the administration of the program under this section, the Secretary of Defense may enter into a contract with a producer of a particular brand of food that provides for—

(A) the Secretary of Defense to procure that particular brand of food, exclusive of other brands of the same or similar food, for the purpose of providing the food in commissary stores or Navy Exchange Markets of the Department of Defense as a supplemental food under the program; and

(B) the producer to rebate to the Secretary amounts equal to agreed portions of the amounts paid by the Secretary for the procurement of that particular brand of food for the program.

(2) The Secretary of Defense shall use competitive procedures under chapter 137 of this title to enter into contracts under this subsection.

(3) The period covered by a contract entered into under this subsection, including any period

of extension of the contract by modification of the contract, exercise of an option, or other cause, may not exceed three years. No such contract may be extended by a modification of the contract, by exercise of an option, or by any other means. Nothing in this paragraph prohibits a contractor under a contract entered into under this subsection for any year from submitting an offer for, and being awarded, a contract that is to be entered into under this subsection for a successive year.

(4) Amounts rebated under a contract entered into under paragraph (1) shall be credited to the appropriation available for carrying out the program under this section in the fiscal year in which rebated, shall be merged with the other sums in that appropriation, and shall be available for the program for the same period as the other sums in the appropriation.

(f) REGULATIONS.—The Secretary of Defense shall prescribe regulations to administer the program authorized by this section.

(g) DEFINITIONS.—In this section:

(1) The term ''eligible civilian'' means—

(A) a dependent of a member of the armed forces residing with the member outside the United States;

(B) an employee of a military department who is a national of the United States and is residing outside the United States in connection with such individual's employment or a dependent of such individual residing with the employee outside the United States; or

(C) an employee of a Department of Defense contractor who is a national of the United States and is residing outside the United States in connection with such individual's employment or a dependent of such individual residing with the employee outside the United States.

(2) The term ''national of the United States'' means—

(A) a citizen of the United States; or

(B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States, as determined in accordance with the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(3) The term ''dependent'' has the meaning given such term in subparagraphs (A), (D), (E), and (I) of section 1072(2) of this title.

(4) The terms ''nutrition education'' and ''supplemental foods'' have the meanings given the terms in section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)).

(Added Pub. L. 103–337, div. A, title VI, §653(a), Oct. 5, 1994, 108 Stat. 2794; amended Pub. L. 104–106, div. A, title XV, §1503(a)(9), Feb. 10, 1996, 110 Stat. 511; Pub. L. 105–85, div. A, title VI, §655(b)(1), Nov. 18, 1997, 111 Stat. 1805; Pub. L. 106–65, div. A, title VI, §674(a)–(d), Oct. 5, 1999, 113 Stat. 675; Pub. L. 106–398, §1 [[div. A], title VI, §662], Oct. 30, 2000, 114 Stat. 1654, 1654A–167; Pub. L. 107–107, div. A, title III, §334, Dec. 28, 2001, 115 Stat. 1059; Pub. L. 107–314, div. A, title III, §324, Dec. 2, 2002, 116 Stat. 2511.)

REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in subsec. (g)(2)(B), is act June 27, 1952, ch. 477, 66 Stat. 163, as amended, which is classified principally to chapter 12 (§1101 et seq.) of Title 8, Aliens and Nationality. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 8 and Tables.

AMENDMENTS

2002—Subsec. (e)(1)(A). Pub. L. 107–314, §324(a), inserted ''or Navy Exchange Markets'' after ''commissary stores''.

Subsec. (e)(3). Pub. L. 107–314, §324(b), in first sentence, substituted ''subsection, including any period of extension of the contract by modification of the contract, exercise of an option, or other cause, may not exceed three years'' for ''subsection may not exceed one year''.

2001—Subsecs. (e) to (g). Pub. L. 107–107 added subsec. (e) and redesignated former subsecs. (e) and (f) as (f) and (g), respectively.

2000—Subsec. (c)(1)(B). Pub. L. 106–398 added second sentence and struck out former second sentence which read as follows: ''The Secretary shall also consider the value of housing in kind provided to the individual when determining program eligibility.''

1999—Subsec. (a). Pub. L. 106–65, §674(a), substituted ''Program Required'' for ''Authority'' in heading and ''The Secretary of Defense shall carry out a program to provide supplemental foods and nutrition education'' for ''The Secretary of Defense may carry out a program to provide special supplemental food benefits'' in text.

Subsec. (b). Pub. L. 106–65, §674(b), amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: ''For the purpose of obtaining Federal payments and commodities in order to carry out the program referred to in subsection (a), the Secretary of Agriculture shall make available to the Secretary of Defense the same payments and commodities as are made for the special supplemental food program in the United States under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786). The Secretary of Defense may use funds available for the Department of Defense to carry out the program under subsection (a).''

Subsec. (c)(1)(A). Pub. L. 106–65, §674(c)(1), inserted at end ''In determining eligibility for benefits, a person already certified for participation in the special supplemental nutrition program for women, infants, and children under such section 17 shall be considered eligible for the duration of the certification period under that special supplemental nutrition program.''

Subsec. (c)(1)(B). Pub. L. 106–65, §674(c)(2), added subpar. (B) and struck out former subpar. (B) which read as follows: ''The Secretary of Defense shall prescribe regulations governing computation of income eligibility standards for families of individuals participating in the program under this section.''

Subsec. (c)(2). Pub. L. 106–65, §674(c)(3), inserted '', particularly with respect to nutrition education'' before period at end.

Subsec. (c)(3). Pub. L. 106–65, §674(c)(4), added par. (3).

Subsec. (f)(4). Pub. L. 106–65, §674(d), added par. (4).

1997—Subsec. (b). Pub. L. 105–85 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''For the purpose of obtaining Federal payments and commodities in order to carry out the program referred to in subsection (a), the Secretary of Agriculture shall make available to the Secretary of Defense from funds appropriated for such purpose, the same payments and commodities as are made for the special supplemental food program in the United States under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786).''

1996—Subsec. (f)(2)(B). Pub. L. 104–106 substituted '', as determined in accordance with the Immigration and Nationality Act (8 U.S.C. 1101 et seq.)'' for ''(as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)))''.

REPORT ON IMPLEMENTATION OF SPECIAL SUPPLEMENTAL FOOD PROGRAM

Pub. L. 105–85, div. A, title VI, §655(b)(2), Nov. 18, 1997, 111 Stat. 1805, directed the Secretary of Defense to sub-

mit to Congress a report including plans to implement the program authorized under this section not later than 90 days after Nov. 18, 1997.

§ 1060b. Military ID cards: dependents and survivors of retirees

(a) ISSUANCE OF PERMANENT ID CARD.—(1) In issuing military ID cards to retiree dependents, the Secretary concerned shall issue a permanent ID card (not subject to renewal) to any such retiree dependent as follows:

(A) A retiree dependent who has attained 75 years of age.

(B) A retiree dependent who is permanently disabled.

(2) A permanent ID card shall be issued to a retiree dependent under paragraph (1)(A) upon the expiration, after the retiree dependent attains 75 years of age, of any earlier, renewable military card or, if earlier, upon the request of the retiree dependent after attaining age 75.

(b) DEFINITIONS.—In this section:

(1) The term ''military ID card'' means a card or other form of identification used for purposes of demonstrating eligibility for any benefit from the Department of Defense.

(2) The term ''retiree dependent'' means a person who is a dependent of a retired member of the uniformed services, or a survivor of a deceased retired member of the uniformed services, who is eligible for any benefit from the Department of Defense.

(Added Pub. L. 108–375, div. A, title V, § 583(a)(1), Oct. 28, 2004, 118 Stat. 1929; amended Pub. L. 109–364, div. A, title V, § 598(a), (b)(1), Oct. 17, 2006, 120 Stat. 2237.)

AMENDMENTS

2006—Pub. L. 109–364, § 598(b)(1), struck out ''; issuance of permanent ID card after attaining 75 years of age'' after ''retirees'' in section catchline.

Subsec. (a). Pub. L. 109–364, § 598(a), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: ''In issuing military ID cards to retiree dependents, the Secretary concerned shall issue a permanent ID card (not subject to renewal) to any such retiree dependent who has attained 75 years of age. Such a permanent ID card shall be issued upon the expiration, after the retiree dependent attains 75 years of age, of any earlier, renewable military ID card or, if earlier, upon the request of such a retiree dependent after attaining age 75.''

EFFECTIVE DATE

Pub. L. 108–375, div. A, title V, § 583(b), Oct. 28, 2004, 118 Stat. 1929, provided that: ''Section 1060b of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 2004.''

CHAPTER 54—COMMISSARY AND EXCHANGE BENEFITS

Sec.
1061. Survivors of certain Reserve and Guard members.
1062. Certain former spouses.
1063. Use of commissary stores and MWR retail facilities: members of reserve components and reserve retirees under age 60.
1064. Use of commissary stores and MWR retail facilities: members of National Guard serving in federally declared disaster or national emergency.

AMENDMENTS

2003—Pub. L. 108–136, div. A, title VI, § 651(c), Nov. 24, 2003, 117 Stat. 1522, added items 1063 and 1064 and struck out former items 1063 ''Use of commissary stores: members of Ready Reserve'', 1063a ''Use of commissary stores and MWR retail facilities: members of National Guard serving in federally declared disaster or national emergency'', 1064 ''Use of commissary stores: persons qualified for retired pay under chapter 1223 but under age 60'', and 1065 ''Morale, welfare, and recreation retail facilities: use by members of reserve components and dependents''.

2002—Pub. L. 107–314, div. A, title III, § 322(b)(2), Dec. 2, 2002, 116 Stat. 2510, inserted ''or national emergency'' after ''disaster'' in item 1063a.

2001—Pub. L. 107–107, div. A, title III, § 331(d)(3), Dec. 28, 2001, 115 Stat. 1058, struck out ''with at least 50 creditable points'' after ''Ready Reserve'' in item 1063.

1998—Pub. L. 105–261, div. A, title III, § 362(e), Oct. 17, 1998, 112 Stat. 1985, added items 1063, 1063a, and 1064 and struck out former items 1063 ''Period for use of commissary stores: eligibility for members of the Ready Reserve'' and 1064 ''Use of commissary stores by certain members and former members''.

1996—Pub. L. 104–106, div. A, title III, § 342(b), Feb. 10, 1996, 110 Stat. 266, substituted ''Morale, welfare, and recreation retail facilities: use by members of reserve components and dependents'' for ''Use of certain morale, welfare, and recreation facilities by members of reserve components and dependents'' in item 1065.

1992—Pub. L. 102–484, div. A, title III, § 365(c)(2), Oct. 23, 1992, 106 Stat. 2382, substituted ''eligibility for members of the Ready Reserve'' for ''eligibility attributable to active duty for training''.

1990—Pub. L. 101–510, div. A, title III, § 321(d), Nov. 5, 1990, 104 Stat. 1528, added items 1064 and 1065.

§ 1061. Survivors of certain Reserve and Guard members

(a) BENEFITS.—The Secretary of Defense shall prescribe regulations to allow dependents of members of the uniformed services described in subsection (b) to use commissary and exchange stores on the same basis as dependents of members of the uniformed services who die while on active duty for a period of more than 30 days.

(b) COVERED DEPENDENTS.—A dependent referred to in subsection (a) is a dependent of a member of a uniformed service who died—

(1) while on active duty, active duty for training, or inactive-duty training (regardless of the period of such duty); or

(2) while traveling to or from the place at which the member was to perform, or has performed, active duty, active duty for training, or inactive-duty training (regardless of the period of such duty).

(Added Pub. L. 100–370, § 1(c)(1), July 19, 1988, 102 Stat. 841.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 99–145, title III, § 308, Nov. 8, 1985, 99 Stat. 618.

§ 1062. Certain former spouses

The Secretary of Defense shall prescribe such regulations as may be necessary to provide that an unremarried former spouse described in subparagraph (F)(i) of section 1072(2) of this title is entitled to commissary and exchange privileges to the same extent and on the same basis as the surviving spouse of a retired member of the uniformed services.

(Added Pub. L. 100–370, § 1(c)(1), July 19, 1988, 102 Stat. 841.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 97–252, title X, § 1005, Sept. 8, 1982, 96 Stat. 737.

§ 1063. Use of commissary stores and MWR retail facilities: members of reserve components and reserve retirees under age 60

(a) MEMBERS OF THE SELECTED RESERVE.—A member of the Selected Reserve in good standing (as determined by the Secretary concerned) shall be permitted to use commissary stores and MWR retail facilities on the same basis as members on active duty.

(b) MEMBERS OF READY RESERVE NOT IN SELECTED RESERVE.—Subject to such regulations as the Secretary of Defense may prescribe, a member of the Ready Reserve (other than members of the Selected Reserve) may be permitted to use commissary stores and MWR retail facilities on the same basis as members serving on active duty.

(c) RESERVE RETIREES UNDER AGE 60.—A member or former member of a reserve component under 60 years of age who, but for age, would be eligible for retired pay under chapter 1223 of this title shall be permitted to use commissary stores and MWR retail facilities on the same basis as members of the armed forces entitled to retired pay under any other provision of law.

(d) DEPENDENTS.—(1) Dependents of a member who is permitted under subsection (a) or (b) to use commissary stores and MWR retail facilities shall be permitted to use stores and such facilities on the same basis as dependents of members on active duty.

(2) Dependents of a member who is permitted under subsection (c) to use commissary stores and MWR retail facilities shall be permitted to use stores and such facilities on the same basis as dependents of members of the armed forces entitled to retired pay under any other provision of law.

(e) MWR RETAIL FACILITY DEFINED.—In this section, the term ''MWR retail facilities'' means exchange stores and other revenue-generating facilities operated by nonappropriated fund activities of the Department of Defense for the morale, welfare, and recreation of members of the armed forces.

(Added Pub. L. 101–510, div. A, title III, § 321(c), Nov. 5, 1990, 104 Stat. 1528, § 1065; amended Pub. L. 104–106, div. A, title III, § 342(a), Feb. 10, 1996, 110 Stat. 265; renumbered § 1063 and amended Pub. L. 108–136, div. A, title VI, § 651(a), (b)(4), (5), Nov. 24, 2003, 117 Stat. 1521, 1522.)

PRIOR PROVISIONS

A prior section 1063, added Pub. L. 99–661, div. A, title VI, § 656(a)(1), Nov. 14, 1986, 100 Stat. 3891, § 1052; renumbered § 1063, Pub. L. 100–370, § 1(c)(2)(A), July 19, 1988, 102 Stat. 841; amended Pub. L. 101–510, div. A, title III, § 321(a)(1), Nov. 5, 1990, 104 Stat. 1527; Pub. L. 102–484, div. A, title III, § 365(a), (c)(1), Oct. 23, 1992, 106 Stat. 2382; Pub. L. 104–106, div. A, title XV, § 1501(c)(9), Feb. 10, 1996, 110 Stat. 499; Pub. L. 105–261, div. A, title III, § 362(a), (d)(1), Oct. 17, 1998, 112 Stat. 1984, 1985; Pub. L. 107–107, div. A, title III, § 331(a)–(d)(2), Dec. 28, 2001, 115 Stat. 1057, related to use of commissary stores by members of Ready Reserve, prior to repeal by Pub. L. 108–136, div. A, title VI, § 651(b)(1), Nov. 24, 2003, 117 Stat. 1521.

AMENDMENTS

2003—Pub. L. 108–136, § 651(b)(4), (5), renumbered section 1065 of this title as this section and substituted ''Use of commissary stores and MWR retail facilities: members of reserve components and reserve retirees under age 60'' for ''Morale, welfare, and recreation retail facilities: use by members of reserve components and dependents'' in section catchline.

Subsecs. (a) to (c). Pub. L. 108–136, § 651(a)(1), inserted ''commissary stores and'' after ''use''.

Subsec. (d). Pub. L. 108–136, § 651(a)(2), inserted ''commissary stores and'' after ''permitted under subsection (a) or (b) to use'' and ''stores and'' after ''permitted to use'' in par. (1), and inserted ''commissary stores and'' after ''permitted under subsection (c) to use'' and ''stores and'' after ''permitted to use'' in par. (2).

1996—Pub. L. 104–106 substituted ''Morale, welfare, and recreation retail facilities: use by members of reserve components and dependents'' for ''Use of certain morale, welfare, and recreation facilities by members of reserve components and dependents'' in section catchline and amended text generally. Prior to amendment, text read as follows:

''(a) UNRESTRICTED USE REQUIRED.—Members of the Selected Reserve in good standing (as determined by the Secretary concerned) and members who would be eligible for retired pay under chapter 67 of this title but for the fact that the member is under 60 years of age, and the dependents of such members, shall be permitted to use the exchange stores and other revenue generating facilities operated by nonappropriated fund activities of the Department of Defense for the morale, welfare, and recreation of members of the Armed Forces. Such use shall be permitted on the same basis as members on active duty.

''(b) ELIGIBILITY TO USE AUTHORIZED.—Subject to such regulations as the Secretary of Defense may prescribe, members of the Ready Reserve (other than members of the Selected Reserve) may be permitted to use the facilities referred to in subsection (a) on the same basis as members serving on active duty.''

EFFECTIVE DATE

Pub. L. 101–510, div. A, title III, § 321(e)(1), Nov. 5, 1990, 104 Stat. 1528, provided that: ''The amendments made by subsections (b) and (c) [enacting this section and former section 1064 of this title] shall take effect 120 days after the date of the enactment of this Act [Nov. 5, 1990].''

REGULATIONS

Pub. L. 101–510, div. A, title III, § 321(e)(2), Nov. 5, 1990, 104 Stat. 1528, provided that: ''The Secretary of Defense shall prescribe such regulations as may be necessary for the proper administration of sections [former] 1064 and 1065 [now 1063] of title 10, United States Code, as added by this section, not later than 90 days after the date of the enactment of this Act [Nov. 5, 1990].''

[§ 1063a. Renumbered § 1064]

§ 1064. Use of commissary stores and MWR retail facilities: members of National Guard serving in federally declared disaster or national emergency

(a) ELIGIBILITY OF MEMBERS.—A member of the National Guard who, although not in Federal service, is called or ordered to duty in response to a federally declared disaster or national emergency shall be permitted to use commissary stores and MWR retail facilities during the period of such duty on the same basis as members of the armed forces on active duty.

(b) ELIGIBILITY OF DEPENDENTS.—A dependent of a member of the National Guard who is permitted under subsection (a) to use commissary stores and MWR retail facilities shall be permitted to use such stores and facilities, during the same period as the member, on the same basis as dependents of members of the armed forces on active duty.

(c) DEFINITIONS.—In this section:

(1) FEDERALLY DECLARED DISASTER.—The term ''federally declared disaster'' means a disaster or other situation for which a Presidential declaration of major disaster is issued under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170).

(2) MWR RETAIL FACILITIES.—The term ''MWR retail facilities'' has the meaning given that term in section 1063(e) of this title.

(3) NATIONAL EMERGENCY.—The term ''national emergency'' means a national emergency declared by the President or Congress.

(Added Pub. L. 105–261, div. A, title III, § 362(c), Oct. 17, 1998, 112 Stat. 1985, § 1063a; amended Pub. L. 107–314, div. A, title III, § 322(a), (b)(1), Dec. 2, 2002, 116 Stat. 2510; renumbered § 1064 and amended Pub. L. 108–136, div. A, title VI, § 651(b)(2), (3), Nov. 24, 2003, 117 Stat. 1521.)

PRIOR PROVISIONS

A prior section 1064, added Pub. L. 101–510, div. A, title III, § 321(b), Nov. 5, 1990, 104 Stat. 1528; amended Pub. L. 104–106, div. A, title XV, § 1501(c)(8), Feb. 10, 1996, 110 Stat. 499; Pub. L. 105–261, div. A, title III, § 362(b), (d)(2), Oct. 17, 1998, 112 Stat. 1984, 1985, related to use of commissary stores by persons qualified for retired pay but under age 60, prior to repeal by Pub. L. 108–136, div. A, title VI, § 651(b)(1), Nov. 24, 2003, 117 Stat. 1521.

AMENDMENTS

2003—Pub. L. 108–136, § 651(b)(3), renumbered section 1063a of this title as this section.

Subsec. (c)(2). Pub. L. 108–136, § 651(b)(2), substituted ''section 1063(e)'' for ''section 1065(e)''.

2002—Pub. L. 107–314, § 322(b)(1), inserted ''or national emergency'' after ''disaster'' in section catchline.

Subsec. (a). Pub. L. 107–314, § 322(a)(1), inserted ''or national emergency'' after ''disaster''.

Subsec. (c)(3). Pub. L. 107–314, § 322(a)(2), added par. (3).

[§ 1065. Renumbered § 1063]

CHAPTER 55—MEDICAL AND DENTAL CARE

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1095b. TRICARE program: contractor payment of certain claims.
1095c. TRICARE program: facilitation of processing of claims.
1095d. TRICARE program: waiver of certain deductibles.

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1095e. TRICARE program: beneficiary counseling and assistance coordinators.
1095f. TRICARE program: referrals for specialty health care.
1096. Military-civilian health services partnership program.
1097. Contracts for medical care for retirees, dependents, and survivors: alternative delivery of health care.
1097a. TRICARE Prime: automatic enrollments; payment options.
1097b. TRICARE program: financial management.
1097c. TRICARE program: relationship with employer-sponsored group health plans.
1098. Incentives for participation in cost-effective health care plans.
1099. Health care enrollment system.
1100. Defense Health Program Account.
1101. Resource allocation methods: capitation or diagnosis-related groups.
1102. Confidentiality of medical quality assurance records: qualified immunity for participants.
1103. Contracts for medical and dental care: State and local preemption.
1104. Sharing of health-care resources with the Department of Veterans Affairs.
1105. Specialized treatment facility program.
1106. Submittal of claims: standard form; time limits.
1107. Notice of use of an investigational new drug or a drug unapproved for its applied use.
1107a. Emergency use products.
1108. Health care coverage through Federal Employees Health Benefits program: demonstration project.
1109. Organ and tissue donor program.
1110. Anthrax vaccine immunization program; procedures for exemptions and monitoring reactions.
1110a. Notification of certain individuals regarding options for enrollment under Medicare part B.
1110b. TRICARE program: extension of dependent coverage.

AMENDMENTS

2011—Pub. L. 111–383, div. A, title VII, § 702(a)(2), Jan. 7, 2011, 124 Stat. 4245, added item 1110b.

2009—Pub. L. 111–84, div. A, title VII, §§ 705(b), 707(b), Oct. 28, 2009, 123 Stat. 2375, 2376, added items 1076e and 1110a.

2008—Pub. L. 110–181, div. A, title XVI, § 1617(b), Jan. 28, 2008, 122 Stat. 449, as amended by Pub. L. 110–417, [div. A], title X, § 1061(b)(14), Oct. 14, 2008, 122 Stat. 4613, added item 1074*l*.

2006—Pub. L. 109–364, div. A, title VII, § 707(b), Oct. 17, 2006, 120 Stat. 2284, added item 1097c.

Pub. L. 109–364, div. A, title VII, § 706(e), Oct. 17, 2006, 120 Stat. 2282, struck out item 1076b ''TRICARE program: TRICARE Standard coverage for members of the Selected Reserve'' and substituted ''TRICARE program: TRICARE Standard coverage for members of the Selected Reserve'' for ''TRICARE program: coverage for members of reserve components who commit to continued service in the Selected Reserve after release from active duty in support of a contingency operation'' in item 1076d, effective Oct. 1, 2007.

Pub. L. 109–163, div. A, title VII, §§ 701(f)(2), 702(a)(2), Jan. 6, 2006, 119 Stat. 3340, 3342, substituted ''TRICARE program: TRICARE Standard coverage for members of the Selected Reserve'' for ''TRICARE program: coverage for members of the Ready Reserve'' in item 1076b and ''TRICARE program: coverage for members of reserve components who commit to continued service in the Selected Reserve after release from active duty in support of a contingency operation'' for ''TRICARE program: coverage for members of reserve components who commit to continued service in the Selected Reserve after release from active duty'' in item 1076d.

2004—Pub. L. 108–375, div. A, title V, § 555(a)(2), title VI, § 607(a)(2), title VII, §§ 701(a)(2), 733(a)(2), 739(a)(2), title X, § 1084(d)(7), Oct. 28, 2004, 118 Stat. 1914, 1946, 1981, 1998, 2002, 2061, added items 1073b, 1074b, 1076d, and 1092a, reenacted item 1076b without change, and struck out item 1075 ''Officers and certain enlisted members: subsistence charges''.

2003—Pub. L. 108–136, div. A, title XVI, § 1603(b)(2), Nov. 24, 2003, 117 Stat. 1690, added item 1107a.

Pub. L. 108–106, title I, § 1115(b), Nov. 6, 2003, 117 Stat. 1218, added item 1076b.

2001—Pub. L. 107–107, div. A, title VII, §§ 701(a)(2), (f)(2), 731(b), 732(a)(2), 736(c)(2), title X, § 1048(a)(10), Dec. 28, 2001, 115 Stat. 1158, 1161, 1169, 1173, 1223, struck out item 1074b ''Transitional medical and dental care: members on active duty in support of contingency operations'', transferred item 1074i to appear after item 1074h, and added items 1074j, 1074k, 1079b, and 1086b.

2000—Pub. L. 106–398, § 1 [[div. A], title VII, §§ 706(a)(2), 728(a)(2), 751(b)(2), 758(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–175, 1654A–189, 1654A–194, 1654A–200, added items 1074h, 1074i, 1095f, and 1110.

1999—Pub. L. 106–65, div. A, title VII, §§ 701(a)(2), 711(b), 713(a)(2), 714(b), 715(a)(2), 716(a)(2), 722(b), Oct. 5, 1999, 113 Stat. 680, 687, 689–691, 695, added items 1073a, 1074g, 1076a, 1095c, 1095d, 1095e, and 1097b and struck out former items 1076a ''Dependents' dental program'' and 1076b ''Selected Reserve dental insurance''.

1998—Pub. L. 105–261, div. A, title VII, §§ 711(b), 712(a)(2), 721(a)(2), 734(b)(2), 741(b)(2), Oct. 17, 1998, 112 Stat. 2058, 2059, 2065, 2073, 2074, added items 1094a, 1095b, 1097a, 1108, and 1109.

1997—Pub. L. 105–85, div. A, title VII, §§ 738(b), 764(b), 765(a)(2), 766(b), Nov. 18, 1997, 111 Stat. 1815, 1826–1828, added items 1074e, 1074f, 1106, and 1107 and struck out former item 1106 ''Submittal of claims under CHAMPUS''.

1996—Pub. L. 104–201, div. A, title VII, §§ 701(a)(2)(B), 703(a)(2), 733(a)(2), Sept. 23, 1996, 110 Stat. 2587, 2590, 2598, substituted ''Certain primary and preventive health care services'' for ''Primary and preventive health care services for women'' in item 1074d and added items 1076c and 1079a.

Pub. L. 104–106, div. A, title VII, §§ 705(a)(2), 735(d)(2), 738(b)(2), Feb. 10, 1996, 110 Stat. 373, 383, added item 1076b and substituted ''Performance of abortions: restrictions'' for ''Restriction on use of funds for abortions'' in item 1093 and ''Defense Health Program Account'' for ''Military Health Care Account'' in item 1100.

1993—Pub. L. 103–160, div. A, title VII, §§ 701(a)(2), 712(a)(2), 714(b)(2), 716(a)(2), Nov. 30, 1993, 107 Stat. 1686, 1689, 1690, 1692, added item 1074d, substituted ''Personal services contracts'' for ''Contracts for direct health care providers'' in item 1091 and ''Resource allocation methods: capitation or diagnosis-related groups'' for ''Diagnosis-related groups'' in item 1101, added item 1105, and struck out former item 1105 ''Issuance of nonavailability of health care statements''.

1992—Pub. L. 102–484, div. D, title XLIV, § 4408(a)(2), Oct. 23, 1992, 106 Stat. 2712, added item 1078a.

1991—Pub. L. 102–190, div. A, title VI, § 640(b), title VII, §§ 715(b), 716(a)(2), Dec. 5, 1991, 105 Stat. 1385, 1403, 1404, added item 1074b, redesignated former item 1074b as 1074c, and added items 1105 and 1106.

1990—Pub. L. 101–510, div. A, title VII, § 713(d)(2)[(3)], Nov. 5, 1990, 104 Stat. 1584, substituted ''Health care services incurred on behalf of covered beneficiaries: collection from third-party payers'' for ''Collection from third-party payers of reasonable inpatient hospital care costs incurred on behalf of retirees and dependents'' in item 1095.

1989—Pub. L. 101–189, div. A, title VII, §§ 722(b), 731(b)(2), Nov. 29, 1989, 103 Stat. 1478, 1482, added items 1086a and 1104.

1987—Pub. L. 100–180, div. A, title VII, § 725(a)(2), Dec. 4, 1987, 101 Stat. 1116, added item 1103.

Pub. L. 100–26, § 7(e)(2), Apr. 21, 1987, 101 Stat. 281, redesignated item 1095 ''Medical care: members held as captives and their dependents'' as item 1095a.

1986—Pub. L. 99–661, div. A, title VI, § 604(a)(2), title VII, §§ 701(a)(2), 705(a)(2), Nov. 14, 1986, 100 Stat. 3875, 3897, 3904 substituted ''active duty for a period of more than 30 days'' for ''active duty; injuries, diseases, and illnesses incident to duty'' in item 1074a and added items 1096 to 1102.

Pub. L. 99–399, title VIII, § 801(c)(2), Aug. 27, 1986, 100 Stat. 886, added item 1095 ''Medical care: members held as captives and their dependents''.

Pub. L. 99–272, title II, § 2001(a)(2), Apr. 7, 1986, 100 Stat. 101, added item 1095 ''Collection from third-party payers of reasonable inpatient hospital care costs incurred on behalf of retirees and dependents''.

1985—Pub. L. 99–145, title VI, §§ 651(a)(2), 653(a)(2), Nov. 8, 1985, 99 Stat. 656, 658, added items 1076a and 1094.

1984—Pub. L. 98–525, title VI, § 631(a)(2), title XIV, § 1401(e)(2)(B), (5)(B), Oct. 19, 1984, 98 Stat. 2543, 2616, 2618, substituted in item 1074a ''Medical and dental care: members on duty other than active duty; injuries, diseases, and illnesses incident to duty'' for ''Medical and dental care for members of the uniformed services for injuries incurred or aggravated while traveling to and from inactive duty training'' and added items 1074b and 1093.

1983—Pub. L. 98–94, title IX, §§ 932(a)(2), 933(a)(2), title X, § 1012(a)(2), title XII, § 1268(5)(B), Sept. 24, 1983, 97 Stat. 650, 651, 665, 706, added items 1074a, 1091, and 1092, and struck out ''; reports'' at end of item 1081.

1982—Pub. L. 97–295, § 1(15)(B), Oct. 12, 1982, 96 Stat. 1290, added item 1090.

1980—Pub. L. 96–513, title V, § 511(34)(D), Dec. 12, 1980, 94 Stat. 2923, in items 1071 and 1073 substituted ''this chapter'' for ''sections 1071–1087 of this title'', and in item 1086 substituted ''benefits'' for ''care''.

1976—Pub. L. 94–464, § 1(b), Oct. 8, 1976, 90 Stat. 1986, added item 1089.

1970—Pub. L. 91–481, § 2(2), Oct. 21, 1970, 84 Stat. 1082, added item 1088.

1966—Pub. L. 89–614, § 2(9), Sept. 30, 1966, 80 Stat. 866, substituted ''1087'' for ''1085'' in items 1071 and 1073, ''Medical care'' and ''authorized care in facilities of uniformed services'' for ''Medical and dental care'' and ''specific inclusions and exclusions'' in item 1077, ''Contracts for health care'' for ''Contracts for medical care for spouses and children'' in item 1082, and added items 1086 and 1087.

1965—Pub. L. 89–264, § 2, Oct. 19, 1965, 79 Stat. 989, substituted ''executive department'' for ''uniformed service'' in item 1085.

1958—Pub. L. 85–861, § 1(25)(A), (C), Sept. 2, 1958, 72 Stat. 1445, 1450, substituted ''Medical and Dental Care'' for ''Voting by Members of Armed Forces'' in heading of chapter, and substituted items 1071 to 1085 for former items 1071 to 1086.

§ 1071. Purpose of this chapter

The purpose of this chapter is to create and maintain high morale in the uniformed services by providing an improved and uniform program of medical and dental care for members and certain former members of those services, and for their dependents.

(Added Pub. L. 85–861, § 1(25)(B), Sept. 2, 1958, 72 Stat. 1445; amended Pub. L. 89–614, § 2(1), Sept. 30, 1966, 80 Stat. 862; Pub. L. 96–513, title V, § 511(34)(A), (B), Dec. 12, 1980, 94 Stat. 2922.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1071	37:401.	June 7, 1956, ch. 374, § 101, 70 Stat. 250.

The words ''and certain former members'' are inserted to reflect the fact that many of the persons entitled to retired pay are former members only. The words ''and dental'' are inserted to reflect the fact that members and, in certain limited situations, dependents are entitled to dental care under sections 1071–1085 of this title.

PRIOR PROVISIONS

A prior section 1071, act Aug. 10, 1956, ch. 1041, 70A Stat. 81, which stated the purpose of former sections 1071 to 1086 of this title, and provided for their construction, was repealed by Pub. L. 85–861, § 36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§ 1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

1980—Pub. L. 96–513 substituted ''Purpose of this chapter'' for ''Purpose of sections 1071–1087 of this title'' in section catchline, and substituted reference to this chapter for reference to sections 1071–1087 of this title in text.

1966—Pub. L. 89–614 substituted ''1087'' for ''1085'' in section catchline and text.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 3 of Pub. L. 89–614 provided that: ''The amendments made by this Act [see Short Title of 1966 Amendment note below] shall become effective January 1, 1967, except that those amendments relating to outpatient care in civilian facilities for spouses and children of members of the uniformed services who are on active duty for a period of more than 30 days shall become effective on October 1, 1966.''

SHORT TITLE OF 2008 AMENDMENT

Pub. L. 110–181, div. A, title XVI, § 1601, Jan. 28, 2008, 122 Stat. 431, provided that: ''This title [enacting sections 1074*l*, 1216a, and 1554a of this title, amending sections 1074, 1074f, 1074i, 1145, 1201, 1203, 1212, and 1599c of this title and section 6333 of Title 5, Government Organization and Employees, and enacting provisions set out as notes under this section, sections 1074, 1074f, 1074i, 1074*l*, 1212, and 1554a of this title, and section 6333 of Title 5] may be cited as the 'Wounded Warrior Act'.''

SHORT TITLE OF 1987 AMENDMENT

Pub. L. 100–180, div. A, title VII, § 701, Dec. 4, 1987, 101 Stat. 1108, provided that: ''This title [enacting sections 1103, 2128 to 2130 [now 16201 to 16203], and 6392 of this title, amending sections 533, 591, 1079, 1086, 1251, 2120, 2122, 2123, 2124, 2127, 2172 [now 16302], 3353, 3855, 5600, 8353, and 8855 of this title, section 302 of Title 37, Pay and Allowances of the Uniformed Services, and section 460 of Title 50, Appendix, War and National Defense, enacting provisions set out as notes under sections 1073, 1074, 1079, 1092, 1103, 2121, 2124, 12201, and 16201 of this title, amending provisions set out as notes under sections 1073 and 1101 of this title, and repealing provisions set out as notes under sections 2121 and 2124 of this title] may be cited as the 'Military Health Care Amendments of 1987'.''

SHORT TITLE OF 1966 AMENDMENT

Section 1 of Pub. L. 89–614 provided: ''That this Act [enacting sections 1086 and 1087 of this title, amending this section and sections 1072 to 1074, 1076 to 1079, 1082, and 1084 of this title, and enacting provisions set out as a note under this section] may be cited as the 'Military Medical Benefits Amendments of 1966'.''

COMPREHENSIVE PLAN ON PREVENTION, DIAGNOSIS, AND TREATMENT OF SUBSTANCE USE DISORDERS AND DISPOSITION OF SUBSTANCE ABUSE OFFENDERS IN THE ARMED FORCES

Pub. L. 111–84, div. A, title V, § 596, Oct. 28, 2009, 123 Stat. 2339, provided that:

''(a) REVIEW AND ASSESSMENT OF CURRENT CAPABILITIES.—

''(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Oct. 28, 2009], the Secretary of Defense, in consultation with the Secretaries of the military departments, shall conduct a comprehensive review of the following:

''(A) The programs and activities of the Department of Defense for the prevention, diagnosis, and treatment of substance use disorders in members of the Armed Forces.

''(B) The policies of the Department of Defense relating to the disposition of substance abuse offenders in the Armed Forces, including disciplinary action and administrative separation.

''(2) ELEMENTS.—The review conducted under paragraph (1) shall include an assessment of each of the following:

''(A) The current state and effectiveness of the programs of the Department of Defense and the military departments relating to the prevention, diagnosis, and treatment of substance use disorders.

''(B) The adequacy of the availability of care, and access to care, for substance abuse in military medical treatment facilities and under the TRICARE program.

''(C) The adequacy of oversight by the Department of Defense of programs relating to the prevention, diagnosis, and treatment of substance abuse in members of the Armed Forces.

''(D) The adequacy and appropriateness of current credentials and other requirements for healthcare professionals treating members of the Armed Forces with substance use disorders.

''(E) The advisable ratio of physician and nonphysician care providers for substance use disorders to members of the Armed Forces with such disorders.

''(F) The adequacy and appropriateness of protocols and directives for the diagnosis and treatment of substance use disorders in members of the Armed Forces and for the disposition, including disciplinary action and administrative separation, of members of the Armed Forces for substance abuse.

''(G) The adequacy of the availability of and access to care for substance use disorders for members of the reserve components of the Armed Forces, including an identification of any obstacles that are unique to the prevention, diagnosis, and treatment of substance use disorders among members of the reserve components, and the appropriate disposition, including disciplinary action and administrative separation, of members of the reserve components for substance abuse.

''(H) The adequacy of the prevention, diagnosis, and treatment of substance use disorders in dependents of members of the Armed Forces.

''(I) Any gaps in the current capabilities of the Department of Defense for the prevention, diagnosis, and treatment of substance use disorders in members of the Armed Forces.

''(3) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth the findings and recommendations of the Secretary as a result of the review conducted under paragraph (1). The report shall—

''(A) set forth the findings and recommendations of the Secretary regarding each element of the review specified in paragraph (2);

''(B) set forth relevant statistics on the frequency of substance use disorders, disciplinary actions, and administrative separations for substance abuse in members of the regular components of the Armed Forces, members of the reserve component of the Armed Forces, and to the extent applicable, dependents of such members (including spouses and children); and

''(C) include such other findings and recommendations on improvements to the current capabilities of the Department of Defense for the prevention, diagnosis, and treatment of substance use disorders in members of the Armed Forces and the policies relating to the disposition, including disciplinary action and administrative separation, of members of the Armed Forces for substance abuse, as the Secretary considers appropriate.

''(b) PLAN FOR IMPROVEMENT AND ENHANCEMENT OF PROGRAMS AND POLICIES.—

''(1) PLAN REQUIRED.—Not later than 270 days after the date of the enactment of this Act [Oct. 28, 2009], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a comprehensive plan for the improvement and enhancement of the following:

''(A) The programs and activities of the Department of Defense for the prevention, diagnosis, and treatment of substance use disorders in members of the Armed Forces and their dependents.

''(B) The policies of the Department of Defense relating to the disposition of substance abuse offenders in the Armed Forces, including disciplinary action and administrative separation.

''(2) BASIS.—The comprehensive plan required by paragraph (1) shall take into account the following:

''(A) The results of the review and assessment conducted under subsection (a).

''(B) Similar initiatives of the Secretary of Veterans Affairs to expand and improve care for substance use disorders among veterans, including the programs and activities conducted under title I of the Veterans' Mental Health and Other Care Improvements Act of 2008 (Public Law 110–387; 112 Stat. 4112) [see Tables for classification].

''(3) COMPREHENSIVE STATEMENT OF POLICY.—The comprehensive plan required by paragraph (1) shall include a comprehensive statement of the following:

''(A) The policy of the Department of Defense regarding the prevention, diagnosis, and treatment of substance use disorders in members of the Armed Forces and their dependents.

''(B) The policies of the Department of Defense relating to the disposition of substance abuse offenders in the Armed Forces, including disciplinary action and administrative separation.

''(4) AVAILABILITY OF SERVICES AND TREATMENT.—The comprehensive plan required by paragraph (1) shall include mechanisms to ensure the availability to members of the Armed Forces and their dependents of a core of evidence-based practices across the spectrum of medical and non-medial services and treatments for substance use disorders, including the reestablishment of regional long-term inpatient substance abuse treatment programs. The Secretary may use contracted services for not longer than three years after the date of the enactment of this Act to perform such inpatient substance abuse treatment until the Department of Defense reestablishes this capability within the military health care system.

''(5) PREVENTION AND REDUCTION OF DISORDERS.—The comprehensive plan required by paragraph (1) shall include mechanisms to facilitate the prevention and reduction of substance use disorders in members of the Armed Forces through science-based initiatives, including education programs, for members of the Armed Forces and their dependents.

''(6) SPECIFIC INSTRUCTIONS.—The comprehensive plan required by paragraph (1) shall include each of the following:

''(A) SUBSTANCES OF ABUSE.—Instructions on the prevention, diagnosis, and treatment of substance abuse in members of the Armed Forces, including the abuse of alcohol, illicit drugs, and nonmedical use and abuse of prescription drugs.

''(B) HEALTHCARE PROFESSIONALS.—Instructions on—

''(i) appropriate training of healthcare professionals in the prevention, screening, diagnosis,

and treatment of substance use disorders in members of the Armed Forces;

''(ii) appropriate staffing levels for healthcare professionals at military medical treatment facilities for the prevention, screening, diagnosis, and treatment of substance use disorders in members of the Armed Forces; and

''(iii) such uniform training and credentialing requirements for physician and nonphysician healthcare professionals in the prevention, screening, diagnosis, and treatment of substance use disorders in members of the Armed Forces as the Secretary considers appropriate.

''(C) SERVICES FOR DEPENDENTS.—Instructions on the availability of services for substance use disorders for dependents of members of the Armed Forces, including instructions on making such services available to dependents to the maximum extent practicable.

''(D) RELATIONSHIP BETWEEN DISCIPLINARY ACTION AND TREATMENT.—Policy on the relationship between disciplinary actions and administrative separation processing and prevention and treatment of substance use disorders in members of the Armed Forces.

''(E) CONFIDENTIALITY.—Recommendations regarding policies pertaining to confidentiality for members of the Armed Forces in seeking or receiving services or treatment for substance use disorders.

''(F) PARTICIPATION OF CHAIN OF COMMAND.—Policy on appropriate consultation, reference to, and involvement of the chain of command of members of the Armed Forces in matters relating to the diagnosis and treatment of substance abuse and disposition of members of the Armed Forces for substance abuse.

''(G) CONSIDERATION OF GENDER.—Instructions on gender specific requirements, if appropriate, in the prevention, diagnosis, treatment, and management of substance use disorders in members of the Armed Forces, including gender specific care and treatment requirements.

''(H) COORDINATION WITH OTHER HEALTHCARE INITIATIVES.—Instructions on the integration of efforts on the prevention, diagnosis, treatment, and management of substance use disorders in members of the Armed Forces with efforts to address co-occurring health care disorders (such as post-traumatic stress disorder and depression) and suicide prevention.

''(7) OTHER ELEMENTS.—In addition to the matters specified in paragraph (3), the comprehensive plan required by paragraph (1) shall include the following:

''(A) IMPLEMENTATION PLAN.—An implementation plan for the achievement of the goals of the comprehensive plan, including goals relating to the following:

''(i) Enhanced education of members of the Armed Forces and their dependents regarding substance use disorders.

''(ii) Enhanced and improved identification and diagnosis of substance use disorders in members of the Armed Forces and their dependents.

''(iii) Enhanced and improved access of members of the Armed Forces to services and treatment for and management of substance use disorders.

''(iv) Appropriate staffing of military medical treatment facilities and other facilities for the treatment of substance use disorders in members of the Armed Forces.

''(B) BEST PRACTICES.—The incorporation of evidence-based best practices utilized in current military and civilian approaches to the prevention, diagnosis, treatment, and management of substance use disorders.

''(C) AVAILABLE RESEARCH.—The incorporation of applicable results of available studies, research, and academic reviews on the prevention, diagnosis, treatment, and management of substance use disorders.

''(8) UPDATE IN LIGHT OF INDEPENDENT STUDY.—Upon the completion of the study required by subsection (c), the Secretary of Defense shall—

''(A) in consultation with the Secretaries of the military departments, make such modifications and improvements to the comprehensive plan required by paragraph (1) as the Secretary of Defense considers appropriate in light of the findings and recommendations of the study; and

''(B) submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report setting forth the comprehensive plan as modified and improved under subparagraph (A).

''(c) INDEPENDENT REPORT ON SUBSTANCE USE DISORDERS PROGRAMS FOR MEMBERS OF THE ARMED FORCES.—

''(1) STUDY REQUIRED.—Upon completion of the policy review required by subsection (a), the Secretary of Defense shall provide for a study on substance use disorders programs for members of the Armed Forces to be conducted by the Institute of Medicine of the National Academies of Sciences or such other independent entity as the Secretary shall select for purposes of the study.

''(2) ELEMENTS.—The study required by paragraph (1) shall include a review and assessment of the following:

''(A) The adequacy and appropriateness of protocols for the diagnosis, treatment, and management of substance use disorders in members of the Armed Forces.

''(B) The adequacy of the availability of and access to care for substance use disorders in military medical treatment facilities and under the TRICARE program.

''(C) The adequacy and appropriateness of current credentials and other requirements for physician and non-physician healthcare professionals treating members of the Armed Forces with substance use disorders.

''(D) The advisable ratio of physician and non-physician care providers for substance use disorders to members of the Armed Forces with such disorders.

''(E) The adequacy of the availability of and access to care for substance use disorders for members of the reserve components of the Armed Forces when compared with the availability of and access to care for substance use disorders for members of the regular components of the Armed Forces.

''(F) The adequacy of the prevention, diagnosis, treatment, and management of substance use disorders programs for dependents of members of the Armed Forces, whether such dependents suffer from their own substance use disorder or because of the substance use disorder of a member of the Armed Forces.

''(G) Such other matters as the Secretary considers appropriate for purposes of the study.

''(3) REPORT.—Not later than two years after the date of the enactment of this Act [Oct. 28, 2009], the entity conducting the study required by paragraph (1) shall submit to the Secretary of Defense and the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the results of the study. The report shall set forth the findings and recommendations of the entity as a result of the study.''

COMPREHENSIVE POLICY ON PAIN MANAGEMENT BY THE MILITARY HEALTH CARE SYSTEM

Pub. L. 111–84, div. A, title VII, § 711, Oct. 28, 2009, 123 Stat. 2378, provided that:

''(a) COMPREHENSIVE POLICY REQUIRED.—Not later than March 31, 2011, the Secretary of Defense shall de-

velop and implement a comprehensive policy on pain management by the military health care system.

''(b) SCOPE OF POLICY.—The policy required by subsection (a) shall cover each of the following:

''(1) The management of acute and chronic pain.

''(2) The standard of care for pain management to be used throughout the Department of Defense.

''(3) The consistent application of pain assessments throughout the Department of Defense.

''(4) The assurance of prompt and appropriate pain care treatment and management by the Department when medically necessary.

''(5) Programs of research related to acute and chronic pain, including pain attributable to central and peripheral nervous system damage characteristic of injuries incurred in modern warfare, brain injuries, and chronic migraine headache.

''(6) Programs of pain care education and training for health care personnel of the Department.

''(7) Programs of patient education for members suffering from acute or chronic pain and their families.

''(c) UPDATES.—The Secretary shall revise the policy required by subsection (a) on a periodic basis in accordance with experience and evolving best practice guidelines.

''(d) ANNUAL REPORT.—

''(1) IN GENERAL.—Not later than 180 days after the date of the commencement of the implementation of the policy required by subsection (a), and on October 1 each year thereafter through 2018, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the policy.

''(2) ELEMENTS.—Each report required by paragraph (1) shall include the following:

''(A) A description of the policy implemented under subsection (a), and any revisions to such policy under subsection (c).

''(B) A description of the performance measures used to determine the effectiveness of the policy in improving pain care for beneficiaries enrolled in the military health care system.

''(C) An assessment of the adequacy of Department pain management services based on a current survey of patients managed in Department clinics.

''(D) An assessment of the research projects of the Department relevant to the treatment of the types of acute and chronic pain suffered by members of the Armed Forces and their families.

''(E) An assessment of the training provided to Department health care personnel with respect to the diagnosis, treatment, and management of acute and chronic pain.

''(F) An assessment of the pain care education programs of the Department.

''(G) An assessment of the dissemination of information on pain management to beneficiaries enrolled in the military health care system.''

PLAN TO INCREASE THE MENTAL HEALTH CAPABILITIES OF THE DEPARTMENT OF DEFENSE

Pub. L. 111–84, div. A, title VII, §714, Oct. 28, 2009, 123 Stat. 2381, as amended by Pub. L. 111–383, div. A, title X, §1075(d)(8), Jan. 7, 2011, 124 Stat. 4373, provided that:

''(a) INCREASED AUTHORIZATIONS.—Not later than 180 days after the date of the enactment of this Act [Oct. 28, 2009], the Secretary of each military department shall increase the number of active duty mental health personnel authorized for the department under the jurisdiction of the Secretary in an amount equal to the sum of the following amounts:

''(1) The greater of—

''(A) the amount identified on personnel authorization documents as required but not authorized to be filled; or

''(B) the amount that is 25 percent of the amount identified on personnel authorization documents as authorized.

''(2) The amount required to fulfill the requirements of section 708 [10 U.S.C. 1074f note], as determined by the Secretary concerned.

''(b) REPORT AND PLAN ON THE REQUIRED NUMBER OF MENTAL HEALTH PERSONNEL.—

''(1) IN GENERAL.—Not later than one year after the date of the enactment of this Act [Oct. 28, 2009], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the appropriate number of mental health personnel required to meet the mental health care needs of members of the Armed Forces, retired members, and dependents. The report shall include, at a minimum, the following:

''(A) An evaluation of the recommendation titled 'Ensure an Adequate Supply of Uniformed Providers' made by the Department of Defense Task Force on Mental Health established by section 723 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163; 119 Stat. 3348).

''(B) The criteria and models used to determine the appropriate number of mental health personnel.

''(C) The plan under paragraph (2).

''(2) PLAN.—The Secretary shall develop and implement a plan to significantly increase the number of military and civilian mental health personnel of the Department of Defense by September 30, 2013. The plan may include the following:

''(A) The allocation of scholarships and financial assistance under the Health Professions Scholarship and Financial Assistance Program under subchapter I of chapter 105 of title 10, United States Code, to students pursuing advanced degrees in clinical psychology and other mental health professions.

''(B) The offering of accession and retention bonuses for psychologists pursuant to section 620 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417; 122 Stat. 4489) [enacting section 302c–1 of Title 37, Pay and Allowances of the Uniformed Services, and provisions set out as a note under section 335 of Title 37].

''(C) An expansion of the capacity for training doctoral-level clinical psychologists at the Uniformed Services University of the Health Sciences.

''(D) An expansion of the capacity of the Department of Defense for training masters-level clinical psychologists and social workers with expertise in deployment-related mental health disorders, such as post-traumatic stress disorder.

''(E) The detail of commissioned officers of the Armed Forces to accredited schools of psychology for training leading to a doctoral degree in clinical psychology or social work.

''(F) The reassignment of military mental health personnel from administrative positions to clinical positions in support of military units.

''(G) The offering of civilian hiring incentives and bonuses and the use of direct hiring authority to increase the number of mental health personnel of the Department of Defense.

''(H) Such other mechanisms to increase the number of mental health personnel of the Department of Defense as the Secretary considers appropriate.

''(c) REPORT ON ADDITIONAL OFFICER OR ENLISTED MILITARY SPECIALTIES FOR MENTAL HEALTH.—

''(1) REPORT.—Not later than 120 days after the date of the enactment of this Act [Oct. 28, 2009], the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report setting forth the assessment of the Secretary of the feasibility and advisability of establishing one or more military mental health specialties for officers or enlisted members of the Armed Forces in order to better meet the mental health care needs of members of the Armed Forces and their families.

''(2) ELEMENTS.—The report required by paragraph (1) shall set forth the following:

''(A) A recommendation as to the feasibility and advisability of establishing one or more military

mental health specialties for officers or enlisted members of the Armed Forces.

''(B) For each military specialty recommended to be established under subparagraph (A)—

''(i) a description of the qualifications required for such speciality [sic], which shall reflect lessons learned from best practices in academia and the civilian health care industry regarding positions analogous to such specialty; and

''(ii) a description of the incentives or other mechanisms, if any, that would be advisable to facilitate recruitment and retention of individuals to and in such specialty.''

STUDY AND PLAN TO IMPROVE MILITARY HEALTH CARE

Pub. L. 111–84, div. A, title VII, § 721, Oct. 28, 2009, 123 Stat. 2385, provided that:

''(a) STUDY AND REPORT REQUIRED.—Not later than one year after the date of the enactment of this Act [Oct. 28, 2009], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the health care needs of dependents (as defined in section 1072(2) of title 10, United States Code). The report shall include, at a minimum, the following:

''(1) With respect to both the direct care system and the purchased care system, an analysis of the type of health care facility in which dependents seek care.

''(2) The 10 most common medical conditions for which dependents seek care.

''(3) The availability of and access to health care providers to treat the conditions identified under paragraph (2), both in the direct care system and the purchased care system.

''(4) Any shortfalls in the ability of dependents to obtain required health care services.

''(5) Recommendations on how to improve access to care for dependents.

''(6) With respect to dependents accompanying a member stationed at a military installation outside of the United States, the need for and availability of mental health care services.

''(b) ENHANCED MILITARY HEALTH SYSTEM AND IMPROVED TRICARE.—

''(1) IN GENERAL.—The Secretary of Defense, in consultation with the other administering Secretaries, shall undertake actions to enhance the capability of the military health system and improve the TRICARE program.

''(2) ELEMENTS.—In undertaking actions to enhance the capability of the military health system and improve the TRICARE program under paragraph (1), the Secretary shall consider the following actions:

''(A) Actions to guarantee the availability of care within established access standards for eligible beneficiaries, based on the results of the study required by subsection (a).

''(B) Actions to expand and enhance sharing of health care resources among Federal health care programs, including designated providers (as that term is defined in section 721(5) of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 110 Stat. 2593; 10 U.S.C. 1073 note)).

''(C) Actions using medical technology to speed and simplify referrals for specialty care.

''(D) Actions to improve regional or national staffing capabilities in order to enhance support provided to military medical treatment facilities facing staff shortages.

''(E) Actions to improve health care access for members of the reserve components and their families, including such access with respect to mental health care and consideration of access issues for members and their families located in rural areas.

''(F) Actions to ensure consistency throughout the TRICARE program to comply with access standards, which are applicable to both commanders of military treatment facilities and managed care support contractors.

''(G) Actions to create new budgeting and resource allocation methodologies to fully support and incentivize care provided by military treatment facilities.

''(H) Actions regarding additional financing options for health care provided by civilian providers.

''(I) Actions to reduce administrative costs.

''(J) Actions to control the cost of health care and pharmaceuticals.

''(K) Actions to audit the Defense Enrollment Eligibility Reporting System to improve system checks on the eligibility of TRICARE beneficiaries.

''(L) Actions, including a comprehensive plan, for the enhanced availability of prevention and wellness care.

''(M) Actions using technology to improve direct communication with beneficiaries regarding health and preventive care.

''(N) Actions to create performance metrics by which to measure improvement in the TRICARE program.

''(O) Such other actions as the Secretary, in consultation with the other administering Secretaries, considers appropriate.

''(c) QUALITY ASSURANCE.—In undertaking actions under this section, the Secretary of Defense and the other administering Secretaries shall continue or enhance the current level of quality health care provided by the Department of Defense and the military departments with no adverse impact to cost, access, or care.

''(d) CONSULTATION.—In considering actions to be undertaken under this section, and in undertaking such actions, the Secretary shall consult with a broad range of national health care and military advocacy organizations.

''(e) REPORTS REQUIRED.—

''(1) INITIAL REPORT.—Not later than 180 days after the date of the enactment of this Act [Oct. 28, 2009], the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] an initial report on the progress made in undertaking actions under this section and future plans for improvement of the military health system.

''(2) REPORT REQUIRED WITH FISCAL YEAR 2012 BUDGET PROPOSAL.—Together with the budget justification materials submitted to Congress in support of the Department of Defense budget for fiscal year 2012 (as submitted with the budget of the President under section 1105(a) of title 31, United States Code), the Secretary shall submit to the congressional defense committees a report setting forth the following:

''(A) Updates on the progress made in undertaking actions under this section.

''(B) Future plans for improvement of the military health system.

''(C) An explanation of how the budget submission may reflect such progress and plans.

''(3) PERIODIC REPORTS.—The Secretary shall, on a periodic basis, submit to the congressional defense committees a report on the progress being made in the improvement of the TRICARE program under this section.

''(4) ELEMENTS.—Each report under this subsection shall include the following:

''(A) A description and assessment of the progress made as of the date of such report in the improvement of the TRICARE program.

''(B) Such recommendations for administrative or legislative action as the Secretary considers appropriate to expedite and enhance the improvement of the TRICARE program.

''(f) DEFINITIONS.—In this section:

''(1) The term 'administering Secretaries' has the meaning given that term in section 1072(3) of title 10, United States Code.

''(2) The term 'TRICARE program' has the meaning given that term in section 1072(7) of title 10, United States Code.''

PROGRAM FOR HEALTH CARE DELIVERY AT MILITARY INSTALLATIONS WITH PROJECTED GROWTH

Pub. L. 110–417, [div. A], title VII, §705, Oct. 14, 2008, 122 Stat. 4499, provided that:

''(a) PROGRAM.—The Secretary of Defense is authorized to develop a plan to establish a program to build cooperative health care arrangements and agreements between military installations projected to grow and local and regional non-military health care systems.

''(b) REQUIREMENTS OF PLAN.—In developing the plan, the Secretary of Defense shall—

''(1) identify and analyze health care delivery options involving the private sector and health care services in military facilities located on military installations;

''(2) develop methods for determining the cost avoidance or savings resulting from innovative partnerships between the Department of Defense and the private sector;

''(3) develop requirements for Department of Defense health care providers to deliver health care in civilian community hospitals; and

''(4) collaborate with State and local authorities to create an arrangement to share and exchange, between the Department of Defense and nonmilitary health care systems, personal health information, and data of military personnel and their families.

''(c) COORDINATION WITH OTHER ENTITIES.—The plan shall include requirements for coordination with Federal, State, and local entities, TRICARE managed care support contractors, and other contracted assets around installations selected for participation in the program.

''(d) CONSULTATION REQUIREMENTS.—The Secretary of Defense shall develop the plan in consultation with the Secretaries of the military departments.

''(e) SELECTION OF MILITARY INSTALLATIONS.—Each selected military installation shall meet the following criteria:

''(1) The military installation has members of the Armed Forces on active duty and members of reserve components of the Armed Forces that use the installation as a training and operational base, with members routinely deploying in support of the global war on terrorism.

''(2) The military population of an installation will significantly increase by 2013 due to actions related to either Grow the Force initiatives or recommendations of the Defense Base Realignment and Closure Commission.

''(3) There is a military treatment facility on the installation that has—

''(A) no inpatient or trauma center care capabilities; and

''(B) no current or planned capacity that would satisfy the proposed increase in military personnel at the installation.

''(4) There is a civilian community hospital near the military installation, and the military treatment facility has—

''(A) no inpatient services or limited capability to expand inpatient care beds, intensive care, and specialty services; and

''(B) limited or no capability to provide trauma care.

''(f) REPORTS.—Not later than one year after the date of the enactment of this Act [Oct. 14, 2008], and every year thereafter, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives an annual report on any plan developed under subsection (a).''

CENTER OF EXCELLENCE IN PREVENTION, DIAGNOSIS, MITIGATION, TREATMENT, AND REHABILITATION OF HEARING LOSS AND AUDITORY SYSTEM INJURIES

Pub. L. 110–417, [div. A], title VII, §721, Oct. 14, 2008, 122 Stat. 4506, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall establish within the Department of Defense a center of excellence in the prevention, diagnosis, mitigation, treatment, and rehabilitation of hearing loss and auditory system injury to carry out the responsibilities specified in subsection (c).

''(b) PARTNERSHIPS.—The Secretary shall ensure that the center collaborates to the maximum extent practicable with the Secretary of Veterans Affairs, institutions of higher education, and other appropriate public and private entities (including international entities) to carry out the responsibilities specified in subsection (c).

''(c) RESPONSIBILITIES.—

''(1) IN GENERAL.—The center shall—

''(A) implement a comprehensive plan and strategy for the Department of Defense, as developed by the Secretary of Defense, for a registry of information for the tracking of the diagnosis, surgical intervention or other operative procedure, other treatment, and follow up for each case of hearing loss and auditory system injury incurred by a member of the Armed Forces while serving on active duty;

''(B) ensure the electronic exchange with the Secretary of Veterans Affairs of information obtained through tracking under subparagraph (A); and

''(C) enable the Secretary of Veterans Affairs to access the registry and add information pertaining to additional treatments or surgical procedures and eventual hearing outcomes for veterans who were entered into the registry and subsequently received treatment through the Veterans Health Administration.

''(2) DESIGNATION OF REGISTRY.—The registry under this subsection shall be known as the 'Hearing Loss and Auditory System Injury Registry' (hereinafter referred to as the 'Registry').

''(3) CONSULTATION IN DEVELOPMENT.—The center shall develop the Registry in consultation with audiologists, speech and language pathologists, otolaryngologists, and other specialist personnel of the Department of Defense and the audiologists, speech and language pathologists, otolaryngologists, and other specialist personnel of the Department of Veterans Affairs. The mechanisms and procedures of the Registry shall reflect applicable expert research on military and other hearing loss.

''(4) MECHANISMS.—The mechanisms of the Registry for tracking under paragraph (1)(A) shall ensure that each military medical treatment facility or other medical facility shall submit to the center for inclusion in the Registry information on the diagnosis, surgical intervention or other operative procedure, other treatment, and follow up for each case of hearing loss and auditory system injury described in that paragraph as follows (to the extent applicable):

''(A) Not later than 30 days after surgery or other operative intervention, including a surgery or other operative intervention carried out as a result of a follow-up examination.

''(B) Not later than 180 days after the hearing loss and auditory system injury is reported or recorded in the medical record.

''(5) COORDINATION OF CARE AND BENEFITS.—(A) The center shall provide notice to the National Center for Rehabilitative Auditory Research (NCRAR) of the Department of Veterans Affairs and to the auditory system impairment services of the Veterans Health Administration on each member of the Armed Forces described in subparagraph (B) for purposes of ensuring the coordination of the provision of ongoing auditory system rehabilitation benefits and services by the Department of Veterans Affairs after the separation or release of such member from the Armed Forces.

''(B) A member of the Armed Forces described in this subparagraph is a member of the Armed Forces with significant hearing loss or auditory system injury incurred while serving on active duty, including a member with auditory dysfunction related to traumatic brain injury.

''(d) UTILIZATION OF REGISTRY INFORMATION.—The Secretary of Defense and the Secretary of Veterans Affairs shall jointly ensure that information in the Registry is available to appropriate audiologists, speech and language pathologists, otolaryngologists, and other specialist personnel of the Department of Defense and the Department of Veterans Affairs for purposes of encouraging and facilitating the conduct of research, and the development of best practices and clinical education, on hearing loss or auditory system injury incurred by members of the Armed Forces.

''(e) INCLUSION OF RECORDS OF OIF/OEF VETERANS.—The Secretary of Defense shall take appropriate actions to include in the Registry such records of members of the Armed Forces who incurred a hearing loss or auditory system injury while serving on active duty on or after September 11, 2001, but before the establishment of the Registry, as the Secretary considers appropriate for purposes of the Registry.''

WOUNDED WARRIOR HEALTH CARE IMPROVEMENTS

Pub. L. 110–181, div. A, title XVI, §§1602, 1603, 1611–1614, 1616, 1618, 1621–1623, 1631, 1635, 1644, 1648, 1651, 1662, 1671, 1672, 1676, Jan. 28, 2008, 122 Stat. 431–443, 447, 450–455, 458, 460, 467, 473, 476, 479, 481, 484, as amended by Pub. L. 110–417, [div. A], title II, §252, title VII, §§722, 724, title X, §1061(b)(13), Oct. 14, 2008, 122 Stat. 4400, 4508, 4509, 4613; Pub. L. 111–84, div. A, title VI, §632(h), Oct. 28, 2009, 123 Stat. 2362, provided that:

''SEC. 1602. GENERAL DEFINITIONS.

''In this title [see Short Title of 2008 Amendment note above]:

''(1) APPROPRIATE COMMITTEES OF CONGRESS.—The term 'appropriate committees of Congress' means—

''(A) the Committees on Armed Services, Veterans' Affairs, and Appropriations of the Senate; and

''(B) the Committees on Armed Services, Veterans' Affairs, and Appropriations of the House of Representatives.

''(2) BENEFITS DELIVERY AT DISCHARGE PROGRAM.—The term 'Benefits Delivery at Discharge Program' means a program administered jointly by the Secretary of Defense and the Secretary of Veterans Affairs to provide information and assistance on available benefits and other transition assistance to members of the Armed Forces who are separating from the Armed Forces, including assistance to obtain any disability benefits for which such members may be eligible.

''(3) DISABILITY EVALUATION SYSTEM.—The term 'Disability Evaluation System' means the following:

''(A) A system or process of the Department of Defense for evaluating the nature and extent of disabilities affecting members of the Armed Forces that is operated by the Secretaries of the military departments and is comprised of medical evaluation boards, physical evaluation boards, counseling of members, and mechanisms for the final disposition of disability evaluations by appropriate personnel.

''(B) A system or process of the Coast Guard for evaluating the nature and extent of disabilities affecting members of the Coast Guard that is operated by the Secretary of Homeland Security and is similar to the system or process of the Department of Defense described in subparagraph (A).

''(4) ELIGIBLE FAMILY MEMBER.—The term 'eligible family member', with respect to a recovering service member, means a family member (as defined in section 411h(b)(3)(B) of title 37, United States Code) who is on invitational travel orders or serving as a nonmedical attendee while caring for the recovering service member for more than 45 days during a one-year period.

''(5) MEDICAL CARE.—The term 'medical care' includes mental health care.

''(6) OUTPATIENT STATUS.—The term 'outpatient status', with respect to a recovering service member, means the status of a recovering service member assigned to—

''(A) a military medical treatment facility as an outpatient; or

''(B) a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

''(7) RECOVERING SERVICE MEMBER.—The term 'recovering service member' means a member of the Armed Forces, including a member of the National Guard or a Reserve, who is undergoing medical treatment, recuperation, or therapy and is in an outpatient status while recovering from a serious injury or illness related to the member's military service.

''(8) SERIOUS INJURY OR ILLNESS.—The term 'serious injury or illness', in the case of a member of the Armed Forces, means an injury or illness incurred by the member in line of duty on active duty in the Armed Forces that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating.

''(9) TRICARE PROGRAM.—The term 'TRICARE program' has the meaning given that term in section 1072(7) of title 10, United States Code. [As amended Pub. L. 110–417, [div. A], title X, §1061(b)(13), Oct. 14, 2008, 122 Stat. 4613; Pub. L. 111–84, div. A, title VI, §632(h), Oct. 28, 2009, 123 Stat. 2362.]

''SEC. 1603. CONSIDERATION OF GENDER-SPECIFIC NEEDS OF RECOVERING SERVICE MEMBERS AND VETERANS.

''(a) IN GENERAL.—In developing and implementing the policy required by section 1611(a), and in otherwise carrying out any other provision of this title [see Short Title of 2008 Amendment note above] or any amendment made by this title, the Secretary of Defense and the Secretary of Veterans Affairs shall take into account and fully address any unique gender-specific needs of recovering service members and veterans under such policy or other provision.

''(b) REPORTS.—In submitting any report required by this title or an amendment made by this title, the Secretary of Defense and the Secretary of Veterans Affairs shall, to the extent applicable, include a description of the manner in which the matters covered by such report address the unique gender-specific needs of recovering service members and veterans.

''SEC. 1611. COMPREHENSIVE POLICY ON IMPROVEMENTS TO CARE, MANAGEMENT, AND TRANSITION OF RECOVERING SERVICE MEMBERS.

''(a) COMPREHENSIVE POLICY REQUIRED.—

''(1) IN GENERAL.—Not later than July 1, 2008, the Secretary of Defense and the Secretary of Veterans Affairs shall, to the extent feasible, jointly develop and implement a comprehensive policy on improvements to the care, management, and transition of recovering service members.

''(2) SCOPE OF POLICY.—The policy shall cover each of the following:

''(A) The care and management of recovering service members.

''(B) The medical evaluation and disability evaluation of recovering service members.

''(C) The return of service members who have recovered to active duty when appropriate.

''(D) The transition of recovering service members from receipt of care and services through the Department of Defense to receipt of care and services through the Department of Veterans Affairs.

''(3) CONSULTATION.—The Secretary of Defense and the Secretary of Veterans Affairs shall develop the policy in consultation with the heads of other appropriate departments and agencies of the Federal Government and with appropriate non-governmental organizations having an expertise in matters relating to the policy.

''(4) UPDATE.—The Secretary of Defense and the Secretary of Veterans Affairs shall jointly update the policy on a periodic basis, but not less often than annually, in order to incorporate in the policy, as appropriate, the following:

''(A) The results of the reviews required under subsections (b) and (c).

''(B) Best practices identified through pilot programs carried out under this title.

''(C) Improvements to matters under the policy otherwise identified and agreed upon by the Secretary of Defense and the Secretary of Veterans Affairs.

''(b) REVIEW OF CURRENT POLICIES AND PROCEDURES.—

''(1) REVIEW REQUIRED.—In developing the policy required by subsection (a), the Secretary of Defense and the Secretary of Veterans Affairs shall, to the extent necessary, jointly and separately conduct a review of all policies and procedures of the Department of Defense and the Department of Veterans Affairs that apply to, or shall be covered by, the policy.

''(2) PURPOSE.—The purpose of the review shall be to identify the most effective and patient-oriented approaches to care and management of recovering service members for purposes of—

''(A) incorporating such approaches into the policy; and

''(B) extending such approaches, where applicable, to the care and management of other injured or ill members of the Armed Forces and veterans.

''(3) ELEMENTS.—In conducting the review, the Secretary of Defense and the Secretary of Veterans Affairs shall—

''(A) identify among the policies and procedures described in paragraph (1) best practices in approaches to the care and management of recovering service members;

''(B) identify among such policies and procedures existing and potential shortfalls in the care and management of recovering service members (including care and management of recovering service members on the temporary disability retired list), and determine means of addressing any shortfalls so identified;

''(C) determine potential modifications of such policies and procedures in order to ensure consistency and uniformity, where appropriate, in the application of such policies and procedures—

''(i) among the military departments;

''(ii) among the Veterans Integrated Services Networks (VISNs) of the Department of Veterans Affairs; and

''(iii) between the military departments and the Veterans Integrated Services Networks; and

''(D) develop recommendations for legislative and administrative action necessary to implement the results of the review.

''(4) DEADLINE FOR COMPLETION.—The review shall be completed not later than 90 days after the date of the enactment of this Act [Jan. 28, 2008].

''(c) CONSIDERATION OF EXISTING FINDINGS, RECOMMENDATIONS, AND PRACTICES.—In developing the policy required by subsection (a), the Secretary of Defense and the Secretary of Veterans Affairs shall take into account the following:

''(1) The findings and recommendations of applicable studies, reviews, reports, and evaluations that address matters relating to the policy, including, but not limited, to the following:

''(A) The Independent Review Group on Rehabilitative Care and Administrative Processes at Walter Reed Army Medical Center and National Naval Medical Center, appointed by the Secretary of Defense.

''(B) The Secretary of Veterans Affairs Task Force on Returning Global War on Terror Heroes, appointed by the President.

''(C) The President's Commission on Care for America's Returning Wounded Warriors.

''(D) The Veterans' Disability Benefits Commission established by title XV of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1676; 38 U.S.C. 1101 note).

''(E) The President's Task Force to Improve Health Care Delivery for Our Nation's Veterans, of March 2003.

''(F) The Report of the Congressional Commission on Servicemembers and Veterans Transition Assistance, of 1999, chaired by Anthony J. Principi.

''(G) The President's Commission on Veterans' Pensions, of 1956, chaired by General Omar N. Bradley.

''(2) The experience and best practices of the Department of Defense and the military departments on matters relating to the policy.

''(3) The experience and best practices of the Department of Veterans Affairs on matters relating to the policy.

''(4) Such other matters as the Secretary of Defense and the Secretary of Veterans Affairs consider appropriate.

''(d) TRAINING AND SKILLS OF HEALTH CARE PROFESSIONALS, RECOVERY CARE COORDINATORS, MEDICAL CARE CASE MANAGERS, AND NON-MEDICAL CARE MANAGERS FOR RECOVERING SERVICE MEMBERS.—

''(1) IN GENERAL.—The policy required by subsection (a) shall provide for uniform standards among the military departments for the training and skills of health care professionals, recovery care coordinators, medical care case managers, and non-medical care managers for recovering service members under subsection (e) in order to ensure that such personnel are able to—

''(A) detect early warning signs of post-traumatic stress disorder (PTSD), suicidal or homicidal thoughts or behaviors, and other behavioral health concerns among recovering service members; and

''(B) promptly notify appropriate health care professionals following detection of such signs.

''(2) TRACKING OF NOTIFICATIONS.—In providing for uniform standards under paragraph (1), the policy shall include a mechanism or system to track the number of notifications made by recovery care coordinators, medical care case managers, and non-medical care managers to health care professionals under paragraph (1)(A) regarding early warning signs of post-traumatic stress disorder and suicide in recovering service members.

''(e) SERVICES FOR RECOVERING SERVICE MEMBERS.—The policy required by subsection (a) shall provide for improvements as follows with respect to the care, management, and transition of recovering service members:

''(1) COMPREHENSIVE RECOVERY PLAN FOR RECOVERING SERVICE MEMBERS.—The policy shall provide for uniform standards and procedures for the development of a comprehensive recovery plan for each recovering service member that covers the full spectrum of care, management, transition, and rehabilitation of the service member during recovery.

''(2) RECOVERY CARE COORDINATORS FOR RECOVERING SERVICE MEMBERS.—

''(A) IN GENERAL.—The policy shall provide for a uniform program for the assignment to recovering service members of recovery care coordinators having the duties specified in subparagraph (B).

''(B) DUTIES.—The duties under the program of a recovery care coordinator for a recovering service member shall include, but not be limited to, overseeing and assisting the service member in the service member's course through the entire spectrum of care, management, transition, and rehabilitation services available from the Federal Government, including services provided by the Department of Defense, the Department of Veterans Affairs, the Department of Labor, and the Social Security Administration.

''(C) LIMITATION ON NUMBER OF SERVICE MEMBERS MANAGED BY COORDINATORS.—The maximum number of recovering service members whose cases may be assigned to a recovery care coordinator under the program at any one time shall be such number as the policy shall specify, except that the Secretary of the military department concerned may waive such limitation with respect to a given coordinator for not more than 120 days in the event of unforeseen circumstances (as specified in the policy).

''(D) TRAINING.—The policy shall specify standard training requirements and curricula for recovery care coordinators under the program, including a

requirement for successful completion of the training program before a person may assume the duties of such a coordinator.

''(E) RESOURCES.—The policy shall include mechanisms to ensure that recovery care coordinators under the program have the resources necessary to expeditiously carry out the duties of such coordinators under the program.

''(F) SUPERVISION.—The policy shall specify requirements for the appropriate rank or grade, and appropriate occupation, for persons appointed to head and supervise recovery care coordinators.

''(3) MEDICAL CARE CASE MANAGERS FOR RECOVERING SERVICE MEMBERS.—

''(A) IN GENERAL.—The policy shall provide for a uniform program among the military departments for the assignment to recovering service members of medical care case managers having the duties specified in subparagraph (B).

''(B) DUTIES.—The duties under the program of a medical care case manager for a recovering service member (or the service member's immediate family or other designee if the service member is incapable of making judgments about personal medical care) shall include, at a minimum, the following:

''(i) Assisting in understanding the service member's medical status during the care, recovery, and transition of the service member.

''(ii) Assisting in the receipt by the service member of prescribed medical care during the care, recovery, and transition of the service member.

''(iii) Conducting a periodic review of the medical status of the service member, which review shall be conducted, to the extent practicable, in person with the service member, or, whenever the conduct of the review in person is not practicable, with the medical care case manager submitting to the manager's supervisor a written explanation why the review in person was not practicable (if the Secretary of the military department concerned elects to require such written explanations for purposes of the program).

''(C) LIMITATION ON NUMBER OF SERVICE MEMBERS MANAGED BY MANAGERS.—The maximum number of recovering service members whose cases may be assigned to a medical care case manager under the program at any one time shall be such number as the policy shall specify, except that the Secretary of the military department concerned may waive such limitation with respect to a given manager for not more than 120 days in the event of unforeseen circumstances (as specified in the policy).

''(D) TRAINING.—The policy shall specify standard training requirements and curricula for medical care case managers under the program, including a requirement for successful completion of the training program before a person may assume the duties of such a manager.

''(E) RESOURCES.—The policy shall include mechanisms to ensure that medical care case managers under the program have the resources necessary to expeditiously carry out the duties of such managers under the program.

''(F) SUPERVISION AT ARMED FORCES MEDICAL FACILITIES.—The policy shall specify requirements for the appropriate rank or grade, and appropriate occupation, for persons appointed to head and supervise the medical care case managers at each medical facility of the Armed Forces. Persons so appointed may be appointed from the Army Medical Corps, Army Medical Service Corps, Army Nurse Corps, Navy Medical Corps, Navy Medical Service Corps, Navy Nurse Corps, Air Force Medical Service, or other corps or civilian health care professional, as applicable, at the discretion of the Secretary of Defense.

''(4) NON-MEDICAL CARE MANAGERS FOR RECOVERING SERVICE MEMBERS.—

''(A) IN GENERAL.—The policy shall provide for a uniform program among the military departments for the assignment to recovering service members of non-medical care managers having the duties specified in subparagraph (B).

''(B) DUTIES.—The duties under the program of a non-medical care manager for a recovering service member shall include, at a minimum, the following:

''(i) Communicating with the service member and with the service member's family or other individuals designated by the service member regarding non-medical matters that arise during the care, recovery, and transition of the service member.

''(ii) Assisting with oversight of the service member's welfare and quality of life.

''(iii) Assisting the service member in resolving problems involving financial, administrative, personnel, transitional, and other matters that arise during the care, recovery, and transition of the service member.

''(C) DURATION OF DUTIES.—The policy shall provide that a non-medical care manager shall perform duties under the program for a recovering service member until the service member is returned to active duty or retired or separated from the Armed Forces.

''(D) LIMITATION ON NUMBER OF SERVICE MEMBERS MANAGED BY MANAGERS.—The maximum number of recovering service members whose cases may be assigned to a non-medical care manager under the program at any one time shall be such number as the policy shall specify, except that the Secretary of the military department concerned may waive such limitation with respect to a given manager for not more than 120 days in the event of unforeseen circumstances (as specified in the policy).

''(E) TRAINING.—The policy shall specify standard training requirements and curricula among the military departments for non-medical care managers under the program, including a requirement for successful completion of the training program before a person may assume the duties of such a manager.

''(F) RESOURCES.—The policy shall include mechanisms to ensure that non-medical care managers under the program have the resources necessary to expeditiously carry out the duties of such managers under the program.

''(G) SUPERVISION AT ARMED FORCES MEDICAL FACILITIES.—The policy shall specify requirements for the appropriate rank and occupational speciality for persons appointed to head and supervise the non-medical care managers at each medical facility of the Armed Forces.

''(5) ACCESS OF RECOVERING SERVICE MEMBERS TO NON-URGENT HEALTH CARE FROM THE DEPARTMENT OF DEFENSE OR OTHER PROVIDERS UNDER TRICARE.—

''(A) IN GENERAL.—The policy shall provide for appropriate minimum standards for access of recovering service members to non-urgent medical care and other health care services as follows:

''(i) In medical facilities of the Department of Defense.

''(ii) Through the TRICARE program.

''(B) MAXIMUM WAITING TIMES FOR CERTAIN CARE.—The standards for access under subparagraph (A) shall include such standards on maximum waiting times of recovering service members as the policy shall specify for care that includes, but is not limited to, the following:

''(i) Follow-up care.

''(ii) Specialty care.

''(iii) Diagnostic referrals and studies.

''(iv) Surgery based on a physician's determination of medical necessity.

''(C) WAIVER BY RECOVERING SERVICE MEMBERS.—The policy shall permit any recovering service member to waive a standard for access under this paragraph under such circumstances and conditions as the policy shall specify.

''(6) ASSIGNMENT OF RECOVERING SERVICE MEMBERS TO LOCATIONS OF CARE.—

''(A) IN GENERAL.—The policy shall provide for uniform guidelines among the military departments for the assignment of recovering service members to a location of care, including guidelines that provide for the assignment of recovering service members, when medically appropriate, to care and residential facilities closest to their duty station or home of record or the location of their designated care giver at the earliest possible time.

''(B) REASSIGNMENT FROM DEFICIENT FACILITIES.—The policy shall provide for uniform guidelines and procedures among the military departments for the reassignment of recovering service members from a medical or medical-related support facility determined by the Secretary of Defense to violate the standards required by section 1648 to another appropriate medical or medical-related support facility until the correction of violations of such standards at the medical or medical-related support facility from which such service members are reassigned.

''(7) TRANSPORTATION AND SUBSISTENCE FOR RECOVERING SERVICE MEMBERS.—The policy shall provide for uniform standards among the military departments on the availability of appropriate transportation and subsistence for recovering service members to facilitate their obtaining needed medical care and services.

''(8) WORK AND DUTY ASSIGNMENTS FOR RECOVERING SERVICE MEMBERS.—The policy shall provide for uniform criteria among the military departments for the assignment of recovering service members to work and duty assignments that are compatible with their medical conditions.

''(9) ACCESS OF RECOVERING SERVICE MEMBERS TO EDUCATIONAL AND VOCATIONAL TRAINING AND REHABILITATION.—The policy shall provide for uniform standards among the military departments on the provision of educational and vocational training and rehabilitation opportunities for recovering service members at the earliest possible point in their recovery.

''(10) TRACKING OF RECOVERING SERVICE MEMBERS.—The policy shall provide for uniform procedures among the military departments on tracking recovering service members to facilitate—

''(A) locating each recovering service member; and

''(B) tracking medical care appointments of recovering service members to ensure timeliness and compliance of recovering service members with appointments, and other physical and evaluation timelines, and to provide any other information needed to conduct oversight of the care, management, and transition of recovering service members.

''(11) REFERRALS OF RECOVERING SERVICE MEMBERS TO OTHER CARE AND SERVICES PROVIDERS.—The policy shall provide for uniform policies, procedures, and criteria among the military departments on the referral of recovering service members to the Department of Veterans Affairs and other private and public entities (including universities and rehabilitation hospitals, centers, and clinics) in order to secure the most appropriate care for recovering service members, which policies, procedures, and criteria shall take into account, but not be limited to, the medical needs of recovering service members and the geographic location of available necessary recovery care services.

''(f) SERVICES FOR FAMILIES OF RECOVERING SERVICE MEMBERS.—The policy required by subsection (a) shall provide for improvements as follows with respect to services for families of recovering service members:

''(1) SUPPORT FOR FAMILY MEMBERS OF RECOVERING SERVICE MEMBERS.—The policy shall provide for uniform guidelines among the military departments on the provision by the military departments of support for family members of recovering service members who are not otherwise eligible for care under section 1672 in caring for such service members during their recovery.

''(2) ADVICE AND TRAINING FOR FAMILY MEMBERS OF RECOVERING SERVICE MEMBERS.—The policy shall provide for uniform requirements and standards among the military departments on the provision by the military departments of advice and training, as appropriate, to family members of recovering service members with respect to care for such service members during their recovery.

''(3) MEASUREMENT OF SATISFACTION OF FAMILY MEMBERS OF RECOVERING SERVICE MEMBERS WITH QUALITY OF HEALTH CARE SERVICES.—The policy shall provide for uniform procedures among the military departments on the measurement of the satisfaction of family members of recovering service members with the quality of health care services provided to such service members during their recovery.

''(4) JOB PLACEMENT SERVICES FOR FAMILY MEMBERS OF RECOVERING SERVICE MEMBERS.—The policy shall provide for procedures for application by eligible family members during a one-year period for job placement services otherwise offered by the Department of Defense.

''(g) OUTREACH TO RECOVERING SERVICE MEMBERS AND THEIR FAMILIES ON COMPREHENSIVE POLICY.—The policy required by subsection (a) shall include procedures and mechanisms to ensure that recovering service members and their families are fully informed of the policies required by this section, including policies on medical care for recovering service members, on the management and transition of recovering service members, and on the responsibilities of recovering service members and their family members throughout the continuum of care and services for recovering service members under this section.

''(h) APPLICABILITY OF COMPREHENSIVE POLICY TO RECOVERING SERVICE MEMBERS ON TEMPORARY DISABILITY RETIRED LIST.—Appropriate elements of the policy required by this section shall apply to recovering service members whose names are placed on the temporary disability retired list in such manner, and subject to such terms and conditions, as the Secretary of Defense shall prescribe in regulations for purposes of this subsection.

''SEC. 1612. MEDICAL EVALUATIONS AND PHYSICAL DISABILITY EVALUATIONS OF RECOVERING SERVICE MEMBERS.

''(a) MEDICAL EVALUATIONS OF RECOVERING SERVICE MEMBERS.—

''(1) IN GENERAL.—Not later than July 1, 2008, the Secretary of Defense shall develop a policy on improvements to the processes, procedures, and standards for the conduct by the military departments of medical evaluations of recovering service members.

''(2) ELEMENTS.—The policy on improvements to processes, procedures, and standards required under this subsection shall include and address the following:

''(A) Processes for medical evaluations of recovering service members that—

''(i) apply uniformly throughout the military departments; and

''(ii) apply uniformly with respect to recovering service members who are members of the regular components of the Armed Forces and recovering service members who are members of the National Guard and Reserve.

''(B) Standard criteria and definitions for determining the achievement for recovering service members of the maximum medical benefit from treatment and rehabilitation.

''(C) Standard timelines for each of the following:

''(i) Determinations of fitness for duty of recovering service members.

''(ii) Specialty care consultations for recovering service members.

''(iii) Preparation of medical documents for recovering service members.

''(iv) Appeals by recovering service members of medical evaluation determinations, including determinations of fitness for duty.

''(D) Procedures for ensuring that—

''(i) upon request of a recovering service member being considered by a medical evaluation board, a physician or other appropriate health care professional who is independent of the medical evaluation board is assigned to the service member; and

''(ii) the physician or other health care professional assigned to a recovering service member under clause (i)—

''(I) serves as an independent source for review of the findings and recommendations of the medical evaluation board;

''(II) provides the service member with advice and counsel regarding the findings and recommendations of the medical evaluation board; and

''(III) advises the service member on whether the findings of the medical evaluation board adequately reflect the complete spectrum of injuries and illness of the service member.

''(E) Standards for qualifications and training of medical evaluation board personnel, including physicians, case workers, and physical disability evaluation board liaison officers, in conducting medical evaluations of recovering service members.

''(F) Standards for the maximum number of medical evaluation cases of recovering service members that are pending before a medical evaluation board at any one time, and requirements for the establishment of additional medical evaluation boards in the event such number is exceeded.

''(G) Standards for information for recovering service members, and their families, on the medical evaluation board process and the rights and responsibilities of recovering service members under that process, including a standard handbook on such information (which handbook shall also be available electronically).

''(b) PHYSICAL DISABILITY EVALUATIONS OF RECOVERING SERVICE MEMBERS.—

''(1) IN GENERAL.—Not later than July 1, 2008, the Secretary of Defense and the Secretary of Veterans Affairs shall develop a policy on improvements to the processes, procedures, and standards for the conduct of physical disability evaluations of recovering service members by the military departments and by the Department of Veterans Affairs.

''(2) ELEMENTS.—The policy on improvements to processes, procedures, and standards required under this subsection shall include and address the following:

''(A) A clearly-defined process of the Department of Defense and the Department of Veterans Affairs for disability determinations of recovering service members.

''(B) To the extent feasible, procedures to eliminate unacceptable discrepancies and improve consistency among disability ratings assigned by the military departments and the Department of Veterans Affairs, particularly in the disability evaluation of recovering service members, which procedures shall be subject to the following requirements and limitations:

''(i) Such procedures shall apply uniformly with respect to recovering service members who are members of the regular components of the Armed Forces and recovering service members who are members of the National Guard and Reserve.

''(ii) Under such procedures, each Secretary of a military department shall, to the extent feasible, utilize the standard schedule for rating disabilities in use by the Department of Veterans Affairs, including any applicable interpretation of such schedule by the United States Court of Appeals for Veterans Claims, in making any determination of disability of a recovering service member, except as otherwise authorized by section 1216a of title 10, United States Code (as added by section 1642 of this Act).

''(C) Uniform timelines among the military departments for appeals of determinations of disability of recovering service members, including timelines for presentation, consideration, and disposition of appeals.

''(D) Uniform standards among the military departments for qualifications and training of physical disability evaluation board personnel, including physical evaluation board liaison personnel, in conducting physical disability evaluations of recovering service members.

''(E) Uniform standards among the military departments for the maximum number of physical disability evaluation cases of recovering service members that are pending before a physical disability evaluation board at any one time, and requirements for the establishment of additional physical disability evaluation boards in the event such number is exceeded.

''(F) Uniform standards and procedures among the military departments for the provision of legal counsel to recovering service members while undergoing evaluation by a physical disability evaluation board.

''(G) Uniform standards among the military departments on the roles and responsibilities of nonmedical care managers under section 1611(e)(4) and judge advocates assigned to recovering service members undergoing evaluation by a physical disability board, and uniform standards on the maximum number of cases involving such service members that are to be assigned to judge advocates at any one time.

''(c) ASSESSMENT OF CONSOLIDATION OF DEPARTMENT OF DEFENSE AND DEPARTMENT OF VETERANS AFFAIRS DISABILITY EVALUATION SYSTEMS.—

''(1) IN GENERAL.—The Secretary of Defense and the Secretary of Veterans Affairs shall jointly submit to the appropriate committees of Congress a report on the feasability [sic] and advisability of consolidating the disability evaluation systems of the military departments and the disability evaluation system of the Department of Veterans Affairs into a single disability evaluation system. The report shall be submitted together with the report required by section 1611(a).

''(2) ELEMENTS.—The report required by paragraph (1) shall include the following:

''(A) An assessment of the feasability [sic] and advisability of consolidating the disability evaluation systems described in paragraph (1) as specified in that paragraph.

''(B) If the consolidation of the systems is considered feasible and advisable—

''(i) recommendations for various options for consolidating the systems as specified in paragraph (1); and

''(ii) recommendations for mechanisms to evaluate and assess any progress made in consolidating the systems as specified in that paragraph.

''SEC. 1613. RETURN OF RECOVERING SERVICE MEMBERS TO ACTIVE DUTY IN THE ARMED FORCES.

''The Secretary of Defense shall establish standards for determinations by the military departments on the return of recovering service members to active duty in the Armed Forces.

''SEC. 1614. TRANSITION OF RECOVERING SERVICE MEMBERS FROM CARE AND TREATMENT THROUGH THE DEPARTMENT OF DEFENSE TO CARE, TREATMENT, AND REHABILITATION THROUGH THE DEPARTMENT OF VETERANS AFFAIRS.

''(a) IN GENERAL.—Not later than July 1, 2008, the Secretary of Defense and the Secretary of Veterans Affairs shall jointly develop and implement processes, procedures, and standards for the transition of recovering service members from care and treatment through the Department of Defense to care, treatment, and re-

habilitation through the Department of Veterans Affairs.

''(b) ELEMENTS.—The processes, procedures, and standards required under this section shall include the following:

''(1) Uniform, patient-focused procedures to ensure that the transition described in subsection (a) occurs without gaps in medical care and in the quality of medical care, benefits, and services.

''(2) Procedures for the identification and tracking of recovering service members during the transition, and for the coordination of care and treatment of recovering service members during the transition, including a system of cooperative case management of recovering service members by the Department of Defense and the Department of Veterans Affairs during the transition.

''(3) Procedures for the notification of Department of Veterans Affairs liaison personnel of the commencement by recovering service members of the medical evaluation process and the physical disability evaluation process.

''(4) Procedures and timelines for the enrollment of recovering service members in applicable enrollment or application systems of the Department of Veterans Affairs with respect to health care, disability, education, vocational rehabilitation, or other benefits.

''(5) Procedures to ensure the access of recovering service members during the transition to vocational, educational, and rehabilitation benefits available through the Department of Veterans Affairs.

''(6) Standards for the optimal location of Department of Defense and Department of Veterans Affairs liaison and case management personnel at military medical treatment facilities, medical centers, and other medical facilities of the Department of Defense.

''(7) Standards and procedures for integrated medical care and management of recovering service members during the transition, including procedures for the assignment of medical personnel of the Department of Veterans Affairs to Department of Defense facilities to participate in the needs assessments of recovering service members before, during, and after their separation from military service.

''(8) Standards for the preparation of detailed plans for the transition of recovering service members from care and treatment by the Department of Defense to care, treatment, and rehabilitation by the Department of Veterans Affairs, which plans shall—

''(A) be based on standardized elements with respect to care and treatment requirements and other applicable requirements; and

''(B) take into account the comprehensive recovery plan for the recovering service member concerned as developed under section 1611(e)(1).

''(9) Procedures to ensure that each recovering service member who is being retired or separated under chapter 61 of title 10, United States Code, receives a written transition plan, prior to the time of retirement or separation, that—

''(A) specifies the recommended schedule and milestones for the transition of the service member from military service;

''(B) provides for a coordinated transition of the service member from the Department of Defense disability evaluation system to the Department of Veterans Affairs disability system; and

''(C) includes information and guidance designed to assist the service member in understanding and meeting the schedule and milestones specified under subparagraph (A) for the service member's transition.

''(10) Procedures for the transmittal from the Department of Defense to the Department of Veterans Affairs of records and any other required information on each recovering service member described in paragraph (9), which procedures shall provide for the transmission from the Department of Defense to the Department of Veterans Affairs of records and information on the service member as follows:

''(A) The address and contact information of the service member.

''(B) The DD–214 discharge form of the service member, which shall be transmitted under such procedures electronically.

''(C) A copy of the military service record of the service member, including medical records and any results of a physical evaluation board.

''(D) Information on whether the service member is entitled to transitional health care, a conversion health policy, or other health benefits through the Department of Defense under section 1145 of title 10, United States Code.

''(E) A copy of any request of the service member for assistance in enrolling in, or completed applications for enrollment in, the health care system of the Department of Veterans Affairs for health care benefits for which the service member may be eligible under laws administered by the Secretary of Veterans Affairs.

''(F) A copy of any request by the service member for assistance in applying for, or completed applications for, compensation and vocational rehabilitation benefits to which the service member may be entitled under laws administered by the Secretary of Veterans Affairs.

''(11) A process to ensure that, before transmittal of medical records of a recovering service member to the Department of Veterans Affairs, the Secretary of Defense ensures that the service member (or an individual legally recognized to make medical decisions on behalf of the service member) authorizes the transfer of the medical records of the service member from the Department of Defense to the Department of Veterans Affairs pursuant to the Health Insurance Portability and Accountability Act of 1996 [Pub. L. 104–191, see Tables for classification].

''(12) Procedures to ensure that, with the consent of the recovering service member concerned, the address and contact information of the service member is transmitted to the department or agency for veterans affairs of the State in which the service member intends to reside after the retirement or separation of the service member from the Armed Forces.

''(13) Procedures to ensure that, before the transmittal of records and other information with respect to a recovering service member under this section, a meeting regarding the transmittal of such records and other information occurs among the service member, appropriate family members of the service member, representatives of the Secretary of the military department concerned, and representatives of the Secretary of Veterans Affairs, with at least 30 days advance notice of the meeting being given to the service member unless the service member waives the advance notice requirement in order to accelerate transmission of the service member's records and other information to the Department of Veterans Affairs.

''(14) Procedures to ensure that the Secretary of Veterans Affairs gives appropriate consideration to a written statement submitted to the Secretary by a recovering service member regarding the transition.

''(15) Procedures to provide access for the Department of Veterans Affairs to the military health records of recovering service members who are receiving care and treatment, or are anticipating receipt of care and treatment, in Department of Veterans Affairs health care facilities, which procedures shall be consistent with the procedures and requirements in paragraphs (11) and (13).

''(16) A process for the utilization of a joint separation and evaluation physical examination that meets the requirements of both the Department of Defense and the Department of Veterans Affairs in connection with the medical separation or retirement of a recovering service member from military service and for use by the Department of Veterans Affairs in disability evaluations.

''(17) Procedures for surveys and other mechanisms to measure patient and family satisfaction with the

provision by the Department of Defense and the Department of Veterans Affairs of care and services for recovering service members, and to facilitate appropriate oversight by supervisory personnel of the provision of such care and services.

''(18) Procedures to ensure the participation of recovering service members who are members of the National Guard or Reserve in the Benefits Delivery at Discharge Program, including procedures to ensure that, to the maximum extent feasible, services under the Benefits Delivery at Discharge Program are provided to recovering service members at—

''(A) appropriate military installations;

''(B) appropriate armories and military family support centers of the National Guard;

''(C) appropriate military medical care facilities at which members of the Armed Forces are separated or discharged from the Armed Forces; and

''(D) in the case of a member on the temporary disability retired list under section 1202 or 1205 of title 10, United States Code, who is being retired under another provision of such title or is being discharged, at a location reasonably convenient to the member.

''SEC. 1616. ESTABLISHMENT OF A WOUNDED WARRIOR RESOURCE CENTER.

''(a) ESTABLISHMENT.—The Secretary of Defense shall establish a wounded warrior resource center (in this section referred to as the 'center') to provide wounded warriors, their families, and their primary caregivers with a single point of contact for assistance with reporting deficiencies in covered military facilities, obtaining health care services, receiving benefits information, receiving legal assistance referral information (where appropriate), receiving other appropriate referral information, and any other difficulties encountered while supporting wounded warriors. The Secretary shall widely disseminate information regarding the existence and availability of the center, including contact information, to members of the Armed Forces and their dependents. In carrying out this subsection, the Secretary may use existing infrastructure and organizations but shall ensure that the center has the ability to separately keep track of calls from wounded warriors.

''(b) ACCESS.—The center shall provide multiple methods of access, including at a minimum an Internet website and a toll-free telephone number (commonly referred to as a 'hot line') at which personnel are accessible at all times to receive reports of deficiencies or provide information about covered military facilities, health care services, or military benefits.

''(c) CONFIDENTIALITY.—

''(1) NOTIFICATION.—Individuals who seek to provide information through the center under subsection (a) shall be notified, immediately before they provide such information, of their option to elect, at their discretion, to have their identity remain confidential.

''(2) PROHIBITION ON FURTHER DISCLOSURE.—In the case of information provided through use of the toll-free telephone number by an individual who elects to maintain the confidentiality of his or her identity, any individual who, by necessity, has had access to such information for purposes of investigating or responding to the call as required under subsection (d) may not disclose the identity of the individual who provided the information.

''(d) FUNCTIONS.—The center shall perform the following functions:

''(1) CALL TRACKING.—The center shall be responsible for documenting receipt of a call, referring the call to the appropriate office within a military department for answer or investigation, and tracking the formulation and notification of the response to the call.

''(2) INVESTIGATION AND RESPONSE.—The center shall be responsible for ensuring that, not later than 96 hours after a call—

''(A) if a report of deficiencies is received in a call—

''(i) any deficiencies referred to in the call are investigated;

''(ii) if substantiated, a plan of action for remediation of the deficiencies is developed and implemented; and

''(iii) if requested, the individual who made the report is notified of the current status of the report; or

''(B) if a request for information is received in a call—

''(i) the information requested by the caller is provided by the center;

''(ii) all requests for information from the call are referred to the appropriate office or offices of a military department for response; and

''(iii) the individual who made the report is notified, at a minimum, of the current status of the query.

''(3) FINAL NOTIFICATION.—The center shall be responsible for ensuring that, if requested, the caller is notified when the deficiency has been corrected or when the request for information has been fulfilled to the maximum extent practicable, as determined by the Secretary.

''(e) DEFINITIONS.—In this section:

''(1) COVERED MILITARY FACILITY.—The term 'covered military facility' has the meaning provided in section 1648(b) of this Act.

''(2) CALL.—The term 'call' means any query or report that is received by the center by means of the toll-free telephone number or other source.

''(f) EFFECTIVE DATES.—

''(1) TOLL-FREE TELEPHONE NUMBER.—The toll-free telephone number required to be established by subsection (a), shall be fully operational not later than April 1, 2008.

''(2) INTERNET WEBSITE.—The Internet website required to be established by subsection (a), shall be fully operational not later than July 1, 2008. [As amended Pub. L. 110–417, [div. A], title VII, § 724, Oct. 14, 2008, 122 Stat. 4509.]

''SEC. 1618. COMPREHENSIVE PLAN ON PREVENTION, DIAGNOSIS, MITIGATION, TREATMENT, AND REHABILITATION OF, AND RESEARCH ON, TRAUMATIC BRAIN INJURY, POST-TRAUMATIC STRESS DISORDER, AND OTHER MENTAL HEALTH CONDITIONS IN MEMBERS OF THE ARMED FORCES.

''(a) COMPREHENSIVE STATEMENT OF POLICY.—The Secretary of Defense and the Secretary of Veterans Affairs shall direct joint planning among the Department of Defense, the military departments, and the Department of Veterans Affairs for the prevention, diagnosis, mitigation, treatment, and rehabilitation of, and research on, traumatic brain injury, post-traumatic stress disorder, and other mental health conditions in members of the Armed Forces, including planning for the seamless transition of such members from care through the Department of Defense to care through the Department of Veterans Affairs.

''(b) COMPREHENSIVE PLAN REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall, in consultation with the Secretary of Veterans Affairs, submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a comprehensive plan for programs and activities of the Department of Defense to prevent, diagnose, mitigate, treat, research, and otherwise respond to traumatic brain injury, post-traumatic stress disorder, and other mental health conditions in members of the Armed Forces, including—

''(1) an assessment of the current capabilities of the Department for the prevention, diagnosis, mitigation, treatment, and rehabilitation of, and research on, traumatic brain injury, post-traumatic stress disorder, and other mental health conditions in members of the Armed Forces;

''(2) the identification of gaps in current capabilities of the Department for the prevention, diagnosis, mitigation, treatment, and rehabilitation of, and research on, traumatic brain injury, post-traumatic stress disorder, and other mental health conditions in members of the Armed Forces; and

''(3) the identification of the resources required for the Department in fiscal years 2009 through 2013 to address the gaps in capabilities identified under paragraph (2).

''(c) PROGRAM REQUIRED.—One of the programs contained in the comprehensive plan submitted under subsection (b) shall be a Department of Defense program, developed in collaboration with the Department of Veterans Affairs, under which each member of the Armed Forces who incurs a traumatic brain injury or post-traumatic stress disorder during service in the Armed Forces—

''(1) is enrolled in the program; and

''(2) receives treatment and rehabilitation meeting a standard of care such that each individual who qualifies for care under the program shall—

''(A) be provided the highest quality, evidence-based care in facilities that most appropriately meet the specific needs of the individual; and

''(B) be rehabilitated to the fullest extent possible using up-to-date evidence-based medical technology, and physical and medical rehabilitation practices and expertise.

''(d) PROVISION OF INFORMATION REQUIRED.—The comprehensive plan submitted under subsection (b) shall require the provision of information by the Secretary of Defense to members of the Armed Forces with traumatic brain injury, post-traumatic stress disorder, or other mental health conditions and their families about their options with respect to the following:

''(1) The receipt of medical and mental health care from the Department of Defense and the Department of Veterans Affairs.

''(2) Additional options available to such members for treatment and rehabilitation of traumatic brain injury, post-traumatic stress disorder, and other mental health conditions.

''(3) The options available, including obtaining a second opinion, to such members for a referral to an authorized provider under chapter 55 of title 10, United States Code, as determined under regulations prescribed by the Secretary of Defense.

''(e) ADDITIONAL ELEMENTS OF PLAN.—The comprehensive plan submitted under subsection (b) shall include comprehensive proposals of the Department on the following:

''(1) LEAD AGENT.—The designation by the Secretary of Defense of a lead agent or executive agent for the Department to coordinate development and implementation of the plan.

''(2) DETECTION AND TREATMENT.—The improvement of methods and mechanisms for the detection and treatment of traumatic brain injury, post-traumatic stress disorder, and other mental health conditions in members of the Armed Forces in the field.

''(3) REDUCTION OF PTSD.—The development of a plan for reducing post traumatic-stress disorder, incorporating evidence-based preventive and early-intervention measures, practices, or procedures that reduce the likelihood that personnel in combat will develop post-traumatic stress disorder or other stress-related conditions (including substance abuse conditions) into—

''(A) basic and pre-deployment training for enlisted members of the Armed Forces, noncommissioned officers, and officers;

''(B) combat theater operations; and

''(C) post-deployment service.

''(4) RESEARCH.—Requirements for research on traumatic brain injury, post-traumatic stress disorder, and other mental health conditions including (in particular) research on pharmacological and other approaches to treatment for traumatic brain injury, post-traumatic stress disorder, or other mental health conditions, as applicable, and the allocation of priorities among such research.

''(5) DIAGNOSTIC CRITERIA.—The development, adoption, and deployment of joint Department of Defense-Department of Veterans Affairs evidence-based diagnostic criteria for the detection and evaluation of the range of traumatic brain injury, post-traumatic stress disorder, and other mental health conditions in members of the Armed Forces, which criteria shall be employed uniformly across the military departments in all applicable circumstances, including provision of clinical care and assessment of future deployability of members of the Armed Forces.

''(6) ASSESSMENT.—The development and deployment of evidence-based means of assessing traumatic brain injury, post-traumatic stress disorder, and other mental health conditions in members of the Armed Forces, including a system of pre-deployment and post-deployment screenings of cognitive ability in members for the detection of cognitive impairment.

''(7) MANAGING AND MONITORING.—The development and deployment of effective means of managing and monitoring members of the Armed Forces with traumatic brain injury, post-traumatic stress disorder, or other mental health conditions in the receipt of care for traumatic brain injury, post-traumatic stress disorder, or other mental health conditions, as applicable, including the monitoring and assessment of treatment and outcomes.

''(8) EDUCATION AND AWARENESS.—The development and deployment of an education and awareness training initiative designed to reduce the negative stigma associated with traumatic brain injury, post-traumatic stress disorder, and other mental health conditions, and mental health treatment.

''(9) EDUCATION AND OUTREACH.—The provision of education and outreach to families of members of the Armed Forces with traumatic brain injury, post-traumatic stress disorder, or other mental health conditions on a range of matters relating to traumatic brain injury, post-traumatic stress disorder, or other mental health conditions, as applicable, including detection, mitigation, and treatment.

''(10) RECORDING OF BLASTS.—A requirement that exposure to a blast or blasts be recorded in the records of members of the Armed Forces.

''(11) GUIDELINES FOR BLAST INJURIES.—The development of clinical practice guidelines for the diagnosis and treatment of blast injuries in members of the Armed Forces, including, but not limited to, traumatic brain injury.

''(12) GENDER- AND ETHNIC GROUP-SPECIFIC SERVICES AND TREATMENT.—The development of requirements, as appropriate, for gender- and ethnic group-specific medical care services and treatment for members of the Armed Forces who experience mental health problems and conditions, including post-traumatic stress disorder, with specific regard to the availability of, access to, and research and development requirements of such needs.

''(f) COORDINATION IN DEVELOPMENT.—The comprehensive plan submitted under subsection (b) shall be developed in coordination with the Secretary of the Army (who was designated by the Secretary of Defense as executive agent for the prevention, mitigation, and treatment of blast injuries under section 256 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163; 119 Stat. 3181; 10 U.S.C. 1071 note)).

''SEC. 1621. CENTER OF EXCELLENCE IN THE PREVENTION, DIAGNOSIS, MITIGATION, TREATMENT, AND REHABILITATION OF TRAUMATIC BRAIN INJURY.

''(a) IN GENERAL.—The Secretary of Defense shall establish within the Department of Defense a center of excellence in the prevention, diagnosis, mitigation, treatment, and rehabilitation of traumatic brain injury, including mild, moderate, and severe traumatic brain injury, to carry out the responsibilities specified in subsection (c).

''(b) PARTNERSHIPS.—The Secretary shall ensure that the Center collaborates to the maximum extent practicable with the Department of Veterans Affairs, institutions of higher education, and other appropriate public and private entities (including international entities) to carry out the responsibilities specified in subsection (c).

''(c) RESPONSIBILITIES.—The Center shall have responsibilities as follows:

''(1) To implement the comprehensive plan and strategy for the Department of Defense, required by section 1618 of this Act, for the prevention, diagnosis, mitigation, treatment, and rehabilitation of traumatic brain injury, including research on gender and ethnic group-specific health needs related to traumatic brain injury.

''(2) To provide for the development, testing, and dissemination within the Department of best practices for the treatment of traumatic brain injury.

''(3) To provide guidance for the mental health system of the Department in determining the mental health and neurological health personnel required to provide quality mental health care for members of the Armed Forces with traumatic brain injury.

''(4) To establish, implement, and oversee a comprehensive program to train mental health and neurological health professionals of the Department in the treatment of traumatic brain injury.

''(5) To facilitate advancements in the study of the short-term and long-term psychological effects of traumatic brain injury.

''(6) To disseminate within the military medical treatment facilities of the Department best practices for training mental health professionals, including neurological health professionals, with respect to traumatic brain injury.

''(7) To conduct basic science and translational research on traumatic brain injury for the purposes of understanding the etiology of traumatic brain injury and developing preventive interventions and new treatments.

''(8) To develop programs and outreach strategies for families of members of the Armed Forces with traumatic brain injury in order to mitigate the negative impacts of traumatic brain injury on such family members and to support the recovery of such members from traumatic brain injury.

''(9) To conduct research on the mental health needs of families of members of the Armed Forces with traumatic brain injury and develop protocols to address any needs identified through such research.

''(10) To conduct longitudinal studies (using imaging technology and other proven research methods) on members of the Armed Forces with traumatic brain injury to identify early signs of Alzheimer's disease, Parkinson's disease, or other manifestations of neurodegeneration, as well as epilepsy, in such members, in coordination with the studies authorized by section 721 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364; 120 Stat. 2294) [10 U.S.C. 1074 note] and other studies of the Department of Defense and the Department of Veterans Affairs that address the connection between exposure to combat and the development of Alzheimer's disease, Parkinson's disease, and other neurodegenerative disorders, as well as epilepsy.

''(11) To develop and oversee a long-term plan to increase the number of mental health and neurological health professionals within the Department in order to facilitate the meeting by the Department of the needs of members of the Armed Forces with traumatic brain injury until their transition to care and treatment from the Department of Veterans Affairs.

''(12) To develop a program on comprehensive pain management, including management of acute and chronic pain, to utilize current and develop new treatments for pain, and to identify and disseminate best practices on pain management related to traumatic brain injury.

''(13) Such other responsibilities as the Secretary shall specify.

''SEC. 1622. CENTER OF EXCELLENCE IN PREVENTION, DIAGNOSIS, MITIGATION, TREATMENT, AND REHABILITATION OF POST-TRAUMATIC STRESS DISORDER AND OTHER MENTAL HEALTH CONDITIONS.

''(a) IN GENERAL.—The Secretary of Defense shall establish within the Department of Defense a center of excellence in the prevention, diagnosis, mitigation, treatment, and rehabilitation of post-traumatic stress disorder (PTSD) and other mental health conditions, including mild, moderate, and severe post-traumatic stress disorder and other mental health conditions, to carry out the responsibilities specified in subsection (c).

''(b) PARTNERSHIPS.—The Secretary shall ensure that the center collaborates to the maximum extent practicable with the National Center on Post-Traumatic Stress Disorder of the Department of Veterans Affairs, institutions of higher education, and other appropriate public and private entities (including international entities) to carry out the responsibilities specified in subsection (c).

''(c) RESPONSIBILITIES.—The center shall have responsibilities as follows:

''(1) To implement the comprehensive plan and strategy for the Department of Defense, required by section 1618 of this Act, for the prevention, diagnosis, mitigation, treatment, and rehabilitation of post-traumatic stress disorder and other mental health conditions, including research on gender- and ethnic group-specific health needs related to post-traumatic stress disorder and other mental health conditions.

''(2) To provide for the development, testing, and dissemination within the Department of best practices for the treatment of post-traumatic stress disorder.

''(3) To provide guidance for the mental health system of the Department in determining the mental health and neurological health personnel required to provide quality mental health care for members of the Armed Forces with post-traumatic stress disorder and other mental health conditions.

''(4) To establish, implement, and oversee a comprehensive program to train mental health and neurological health professionals of the Department in the treatment of post-traumatic stress disorder and other mental health conditions.

''(5) To facilitate advancements in the study of the short-term and long-term psychological effects of post-traumatic stress disorder and other mental health conditions.

''(6) To disseminate within the military medical treatment facilities of the Department best practices for training mental health professionals, including neurological health professionals, with respect to post-traumatic stress disorder and other mental health conditions.

''(7) To conduct basic science and translational research on post-traumatic stress disorder for the purposes of understanding the etiology of post-traumatic stress disorder and developing preventive interventions and new treatments.

''(8) To develop programs and outreach strategies for families of members of the Armed Forces with post-traumatic stress disorder and other mental health conditions in order to mitigate the negative impacts of post-traumatic stress disorder and other mental health conditions on such family members and to support the recovery of such members from post-traumatic stress disorder and other mental health conditions.

''(9) To conduct research on the mental health needs of families of members of the Armed Forces with post-traumatic stress disorder and other mental health conditions and develop protocols to address any needs identified through such research.

''(10) To develop and oversee a long-term plan to increase the number of mental health and neurological health professionals within the Department in order to facilitate the meeting by the Department of the

needs of members of the Armed Forces with post-traumatic stress disorder and other mental health conditions until their transition to care and treatment from the Department of Veterans Affairs.

''SEC. 1623. CENTER OF EXCELLENCE IN PREVENTION, DIAGNOSIS, MITIGATION, TREATMENT, AND REHABILITATION OF MILITARY EYE INJURIES.

''(a) IN GENERAL.—The Secretary of Defense shall establish within the Department of Defense a center of excellence in the prevention, diagnosis, mitigation, treatment, and rehabilitation of military eye injuries to carry out the responsibilities specified in subsection (c).

''(b) PARTNERSHIPS.—The Secretary shall ensure that the center collaborates to the maximum extent practicable with the Secretary of Veterans Affairs, institutions of higher education, and other appropriate public and private entities (including international entities) to carry out the responsibilities specified in subsection (c).

''(c) RESPONSIBILITIES.—

''(1) IN GENERAL.—The center shall—

''(A) implement a comprehensive plan and strategy for the Department of Defense, as developed by the Secretary of Defense, for a registry of information for the tracking of the diagnosis, surgical intervention or other operative procedure, other treatment, and follow up for each case of significant eye injury incurred by a member of the Armed Forces while serving on active duty;

''(B) ensure the electronic exchange with the Secretary of Veterans Affairs of information obtained through tracking under subparagraph (A); and

''(C) enable the Secretary of Veterans Affairs to access the registry and add information pertaining to additional treatments or surgical procedures and eventual visual outcomes for veterans who were entered into the registry and subsequently received treatment through the Veterans Health Administration.

''(2) DESIGNATION OF REGISTRY.—The registry under this subsection shall be known as the 'Military Eye Injury Registry' (hereinafter referred to as the 'Registry').

''(3) CONSULTATION IN DEVELOPMENT.—The center shall develop the Registry in consultation with the ophthalmological specialist personnel and optometric specialist personnel of the Department of Defense and the ophthalmological specialist personnel and optometric specialist personnel of the Department of Veterans Affairs. The mechanisms and procedures of the Registry shall reflect applicable expert research on military and other eye injuries.

''(4) MECHANISMS.—The mechanisms of the Registry for tracking under paragraph (1)(A) shall ensure that each military medical treatment facility or other medical facility shall submit to the center for inclusion in the Registry information on the diagnosis, surgical intervention or other operative procedure, other treatment, and follow up for each case of eye injury described in that paragraph as follows (to the extent applicable):

''(A) Not later than 30 days after surgery or other operative intervention, including a surgery or other operative intervention carried out as a result of a follow-up examination.

''(B) Not later than 180 days after the significant eye injury is reported or recorded in the medical record.

''(5) COORDINATION OF CARE AND BENEFITS.—(A) The center shall provide notice to the Blind Rehabilitation Service of the Department of Veterans Affairs and to the eye care services of the Veterans Health Administration on each member of the Armed Forces described in subparagraph (B) for purposes of ensuring the coordination of the provision of ongoing eye care and visual rehabilitation benefits and services by the Department of Veterans Affairs after the separation or release of such member from the Armed Forces.

''(B) A member of the Armed Forces described in this subparagraph is a member of the Armed Forces as follows:

''(i) A member with a significant eye injury incurred while serving on active duty, including a member with visual dysfunction related to traumatic brain injury.

''(ii) A member with an eye injury incurred while serving on active duty who has a visual acuity of 20/200 or less in the injured eye.

''(iii) A member with an eye injury incurred while serving on active duty who has a loss of peripheral vision resulting in 20 degrees or less of visual field in the injured eye.

''(d) UTILIZATION OF REGISTRY INFORMATION.—The Secretary of Defense and the Secretary of Veterans Affairs shall jointly ensure that information in the Registry is available to appropriate ophthalmological and optometric personnel of the Department of Defense and the Department of Veterans Affairs for purposes of encouraging and facilitating the conduct of research, and the development of best practices and clinical education, on eye injuries incurred by members of the Armed Forces.

''(e) INCLUSION OF RECORDS OF OIF/OEF VETERANS.—The Secretary of Defense shall take appropriate actions to include in the Registry such records of members of the Armed Forces who incurred an eye injury while serving on active duty on or after September 11, 2001, but before the establishment of the Registry, as the Secretary considers appropriate for purposes of the Registry.

''(f) TRAUMATIC BRAIN INJURY POST TRAUMATIC VISUAL SYNDROME.—In carrying out the program at Walter Reed Army Medical Center, District of Columbia, on traumatic brain injury post traumatic visual syndrome, the Secretary of Defense and the Department of Veterans Affairs shall jointly provide for the conduct of a cooperative program for members of the Armed Forces and veterans with traumatic brain injury by military medical treatment facilities of the Department of Defense and medical centers of the Department of Veterans Affairs selected for purposes of this subsection for purposes of vision screening, diagnosis, rehabilitative management, and vision research, including research on prevention, on visual dysfunction related to traumatic brain injury. [As amended Pub. L. 110–417, [div. A], title VII, §722, Oct. 14, 2008, 122 Stat. 4508.]

''SEC. 1631. MEDICAL CARE AND OTHER BENEFITS FOR MEMBERS AND FORMER MEMBERS OF THE ARMED FORCES WITH SEVERE INJURIES OR ILLNESSES.

''(a) MEDICAL AND DENTAL CARE FOR FORMER MEMBERS.—

''(1) IN GENERAL.—Effective as of the date of the enactment of this Act [Jan. 28, 2008] and subject to regulations prescribed by the Secretary of Defense, the Secretary may authorize that any former member of the Armed Forces with a serious injury or illness may receive the same medical and dental care as a member of the Armed Forces on active duty for medical and dental care not reasonably available to such former member in the Department of Veterans Affairs.

''(2) SUNSET.—The Secretary of Defense may not provide medical or dental care to a former member of the Armed Forces under this subsection after December 31, 2012, if the Secretary has not provided medical or dental care to the former member under this subsection before that date.

''(b) REHABILITATION AND VOCATIONAL BENEFITS.—

''(1) IN GENERAL.—Effective as of the date of the enactment of this Act [Jan. 28, 2008], a member of the Armed Forces with a severe injury or illness is entitled to such benefits (including rehabilitation and vocational benefits, but not including compensation)

from the Secretary of Veterans Affairs to facilitate the recovery and rehabilitation of such member as the Secretary otherwise provides to veterans of the Armed Forces receiving medical care in medical facilities of the Department of Veterans Affairs facilities in order to facilitate the recovery and rehabilitation of such members.

''(2) SUNSET.—The Secretary of Veterans Affairs may not provide benefits to a member of the Armed Forces under this subsection after December 31, 2012, if the Secretary has not provided benefits to the member under this subsection before that date.

''SEC. 1635. FULLY INTEROPERABLE ELECTRONIC PERSONAL HEALTH INFORMATION FOR THE DEPARTMENT OF DEFENSE AND DEPARTMENT OF VETERANS AFFAIRS.

''(a) IN GENERAL.—The Secretary of Defense and the Secretary of Veterans Affairs shall jointly—

''(1) develop and implement electronic health record systems or capabilities that allow for full interoperability of personal health care information between the Department of Defense and the Department of Veterans Affairs; and

''(2) accelerate the exchange of health care information between the Department of Defense and the Department of Veterans Affairs in order to support the delivery of health care by both Departments.

''(b) DEPARTMENT OF DEFENSE-DEPARTMENT OF VETERANS AFFAIRS INTERAGENCY PROGRAM OFFICE.—

''(1) IN GENERAL.—There is hereby established an interagency program office of the Department of Defense and the Department of Veterans Affairs (in this section referred to as the 'Office') for the purposes described in paragraph (2).

''(2) PURPOSES.—The purposes of the Office shall be as follows:

''(A) To act as a single point of accountability for the Department of Defense and the Department of Veterans Affairs in the rapid development and implementation of electronic health record systems or capabilities that allow for full interoperability of personal health care information between the Department of Defense and the Department of Veterans Affairs.

''(B) To accelerate the exchange of health care information between the Department of Defense and the Department of Veterans Affairs in order to support the delivery of health care by both Departments.

''(c) LEADERSHIP.—

''(1) DIRECTOR.—The Director of the Office shall be the head of the Office.

''(2) DEPUTY DIRECTOR.—The Deputy Director of the Office shall be the deputy head of the Office and shall assist the Director in carrying out the duties of the Director.

''(3) APPOINTMENTS.—(A) The Director shall be appointed by the Secretary of Defense, with the concurrence of the Secretary of Veterans Affairs, from among persons who are qualified to direct the development, acquisition, and integration of major information technology capabilities.

''(B) The Deputy Director shall be appointed by the Secretary of Veterans Affairs, with the concurrence of the Secretary of Defense, from among employees of the Department of Defense and the Department of Veterans Affairs in the Senior Executive Service who are qualified to direct the development, acquisition, and integration of major information technology capabilities.

''(4) ADDITIONAL GUIDANCE.—In addition to the direction, supervision, and control provided by the Secretary of Defense and the Secretary of Veterans Affairs, the Office shall also receive guidance from the Department of Veterans Affairs-Department of Defense Joint Executive Committee under section 320 of title 38, United States Code, in the discharge of the functions of the Office under this section.

''(5) TESTIMONY.—Upon request by any of the appropriate committees of Congress, the Director and the Deputy Director shall testify before such committee regarding the discharge of the functions of the Office under this section.

''(d) FUNCTION.—The function of the Office shall be to implement, by not later than September 30, 2009, electronic health record systems or capabilities that allow for full interoperability of personal health care information between the Department of Defense and the Department of Veterans Affairs, which health records shall comply with applicable interoperability standards, implementation specifications, and certification criteria (including for the reporting of quality measures) of the Federal Government.

''(e) SCHEDULES AND BENCHMARKS.—Not later than 30 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense and the Secretary of Veterans Affairs shall jointly establish a schedule and benchmarks for the discharge by the Office of its function under this section, including each of the following:

''(1) A schedule for the establishment of the Office.

''(2) A schedule and deadline for the establishment of the requirements for electronic health record systems or capabilities described in subsection (d), including coordination with the Office of the National Coordinator for Health Information Technology in the development of a nationwide interoperable health information technology infrastructure.

''(3) A schedule and associated deadlines for any acquisition and testing required in the implementation of electronic health record systems or capabilities that allow for full interoperability of personal health care information between the Department of Defense and the Department of Veterans Affairs.

''(4) A schedule and associated deadlines and requirements for the implementation of electronic health record systems or capabilities that allow for full interoperability of personal health care information between the Department of Defense and the Department of Veterans Affairs.

''(f) PILOT PROJECTS.—

''(1) AUTHORITY.—In order to assist the Office in the discharge of its function under this section, the Secretary of Defense and the Secretary of Veterans Affairs may, acting jointly, carry out one or more pilot projects to assess the feasibility and advisability of various technological approaches to the achievement of the electronic health record systems or capabilities described in subsection (d).

''(2) SHARING OF PROTECTED HEALTH INFORMATION.—For purposes of each pilot project carried out under this subsection, the Secretary of Defense and the Secretary of Veterans Affairs shall, for purposes of the regulations promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996 [Pub. L. 104–191] (42 U.S.C. 1320d–2 note), ensure the effective sharing of protected health information between the health care system of the Department of Defense and the health care system of the Department of Veterans Affairs as needed to provide all health care services and other benefits allowed by law.

''(g) STAFF AND OTHER RESOURCES.—

''(1) IN GENERAL.—The Secretary of Defense and the Secretary of Veterans Affairs shall assign to the Office such personnel and other resources of the Department of Defense and the Department of Veterans Affairs as are required for the discharge of its function under this section.

''(2) ADDITIONAL SERVICES.—Subject to the approval of the Secretary of Defense and the Secretary of Veterans Affairs, the Director may utilize the services of private individuals and entities as consultants to the Office in the discharge of its function under this section. Amounts available to the Office shall be available for payment for such services.

''(h) ANNUAL REPORTS.—

''(1) IN GENERAL.—Not later than January 1, 2009, and each year thereafter through 2014, the Director shall submit to the Secretary of Defense and the Secretary of Veterans Affairs, and to the appropriate

committees of Congress, a report on the activities of the Office during the preceding calendar year. Each report shall include, for the year covered by such report, the following:

''(A) A detailed description of the activities of the Office, including a detailed description of the amounts expended and the purposes for which expended.

''(B) An assessment of the progress made by the Department of Defense and the Department of Veterans Affairs in the full implementation of electronic health record systems or capabilities described in subsection (d).

''(C) A description and analysis of the level of interoperability and security of technologies for sharing healthcare information among the Department of Defense, the Department of Veterans Affairs, and their transaction partners.

''(D) A description and analysis of the problems the Department of Defense and the Department of Veterans Affairs are having with, and the progress such departments are making toward, ensuring interoperable and secure healthcare information systems and electronic healthcare records.

''(2) AVAILABILITY TO PUBLIC.—The Secretary of Defense and the Secretary of Veterans Affairs shall make available to the public each report submitted under paragraph (1), including by posting such report on the Internet website of the Department of Defense and the Department of Veterans Affairs, respectively, that is available to the public.

''(i) COMPTROLLER GENERAL ASSESSMENT OF IMPLEMENTATION.—Not later than six months after the date of the enactment of this Act [Jan. 28, 2008] and every six months thereafter until the completion of the implementation of electronic health record systems or capabilities described in subsection (d), the Comptroller General of the United States shall submit to the appropriate committees of Congress a report setting forth the assessment of the Comptroller General of the progress of the Department of Defense and the Department of Veterans Affairs in implementing electronic health record systems or capabilities described in subsection (d).

''(j) TECHNOLOGY-NEUTRAL GUIDELINES AND STANDARDS.—The Director, in consultation with industry and appropriate Federal agencies, shall develop, or shall adopt from industry, technology-neutral information technology infrastructure guidelines and standards for use by the Department of Defense and the Department of Veterans Affairs to enable those departments to effectively select and utilize information technologies to meet the requirements of this section. [As amended Pub. L. 110–417, [div. A], title II, §252, Oct. 14, 2008, 122 Stat. 4400.]

''SEC. 1644. AUTHORIZATION OF PILOT PROGRAMS TO IMPROVE THE DISABILITY EVALUATION SYSTEM FOR MEMBERS OF THE ARMED FORCES.

''(a) PILOT PROGRAMS.—

''(1) PROGRAMS AUTHORIZED.—For the purposes set forth in subsection (c), the Secretary of Defense may establish and conduct pilot programs with respect to the system of the Department of Defense for the evaluation of the disabilities of members of the Armed Forces who are being separated or retired from the Armed Forces for disability under chapter 61 of title 10, United States Code (in this section referred to as the 'disability evaluation system').

''(2) TYPES OF PILOT PROGRAMS.—In carrying out this section, the Secretary of Defense may conduct one or more of the pilot programs described in paragraphs (1) through (3) of subsection (b) or such other pilot programs as the Secretary of Defense considers appropriate.

''(3) CONSULTATION.—In establishing and conducting any pilot program under this section, the Secretary of Defense shall consult with the Secretary of Veterans Affairs.

''(b) SCOPE OF PILOT PROGRAMS.—

''(1) DISABILITY DETERMINATIONS BY DOD UTILIZING VA ASSIGNED DISABILITY RATING.—Under one of the pilot programs authorized by subsection (a), for purposes of making a determination of disability of a member of the Armed Forces under section 1201(b) of title 10, United States Code, for the retirement, separation, or placement of the member on the temporary disability retired list under chapter 61 of such title, upon a determination by the Secretary of the military department concerned that the member is unfit to perform the duties of the member's office, grade, rank, or rating because of a physical disability as described in section 1201(a) of such title—

''(A) the Secretary of Veterans Affairs may—

''(i) conduct an evaluation of the member for physical disability; and

''(ii) assign the member a rating of disability in accordance with the schedule for rating disabilities utilized by the Secretary of Veterans Affairs based on all medical conditions (whether individually or collectively) that render the member unfit for duty; and

''(B) the Secretary of the military department concerned may make the determination of disability regarding the member utilizing the rating of disability assigned under subparagraph (A)(ii).

''(2) DISABILITY DETERMINATIONS UTILIZING JOINT DOD/VA ASSIGNED DISABILITY RATING.—Under one of the pilot programs authorized by subsection (a), in making a determination of disability of a member of the Armed Forces under section 1201(b) of title 10, United States Code, for the retirement, separation, or placement of the member on the temporary disability retired list under chapter 61 of such title, the Secretary of the military department concerned may, upon determining that the member is unfit to perform the duties of the member's office, grade, rank, or rating because of a physical disability as described in section 1201(a) of such title—

''(A) provide for the joint evaluation of the member for disability by the Secretary of the military department concerned and the Secretary of Veterans Affairs, including the assignment of a rating of disability for the member in accordance with the schedule for rating disabilities utilized by the Secretary of Veterans Affairs based on all medical conditions (whether individually or collectively) that render the member unfit for duty; and

''(B) make the determination of disability regarding the member utilizing the rating of disability assigned under subparagraph (A).

''(3) ELECTRONIC CLEARING HOUSE.—Under one of the pilot programs authorized by subsection (a), the Secretary of Defense may establish and operate a single Internet website for the disability evaluation system of the Department of Defense that enables participating members of the Armed Forces to fully utilize such system through the Internet, with such Internet website to include the following:

''(A) The availability of any forms required for the utilization of the disability evaluation system by members of the Armed Forces under the system.

''(B) Secure mechanisms for the submission of such forms by members of the Armed Forces under the system, and for the tracking of the acceptance and review of any forms so submitted.

''(C) Secure mechanisms for advising members of the Armed Forces under the system of any additional information, forms, or other items that are required for the acceptance and review of any forms so submitted.

''(D) The continuous availability of assistance to members of the Armed Forces under the system (including assistance through the caseworkers assigned to such members of the Armed Forces) in submitting and tracking such forms, including assistance in obtaining information, forms, or other items described by subparagraph (C).

''(E) Secure mechanisms to request and receive personnel files or other personnel records of mem-

bers of the Armed Forces under the system that are required for submission under the disability evaluation system, including the capability to track requests for such files or records and to determine the status of such requests and of responses to such requests.

''(4) OTHER PILOT PROGRAMS.—The pilot programs authorized by subsection (a) may also provide for the development, evaluation, and identification of such practices and procedures under the disability evaluation system as the Secretary considers appropriate for purposes set forth in subsection (c).

''(c) PURPOSES.—A pilot program established under subsection (a) may have one or more of the following purposes:

''(1) To provide for the development, evaluation, and identification of revised and improved practices and procedures under the disability evaluation system in order to—

''(A) reduce the processing time under the disability evaluation system of members of the Armed Forces who are likely to be retired or separated for disability, and who have not requested continuation on active duty, including, in particular, members who are severely wounded;

''(B) identify and implement or seek the modification of statutory or administrative policies and requirements applicable to the disability evaluation system that—

''(i) are unnecessary or contrary to applicable best practices of civilian employers and civilian healthcare systems; or

''(ii) otherwise result in hardship, arbitrary, or inconsistent outcomes for members of the Armed Forces, or unwarranted inefficiencies and delays;

''(C) eliminate material variations in policies, interpretations, and overall performance standards among the military departments under the disability evaluation system; and

''(D) determine whether it enhances the capability of the Department of Veterans Affairs to receive and determine claims from members of the Armed Forces for compensation, pension, hospitalization, or other veterans benefits.

''(2) In conjunction with the findings and recommendations of applicable Presidential and Department of Defense study groups, to provide for the eventual development of revised and improved practices and procedures for the disability evaluation system in order to achieve the objectives set forth in paragraph (1).

''(d) UTILIZATION OF RESULTS IN UPDATES OF COMPREHENSIVE POLICY ON CARE, MANAGEMENT, AND TRANSITION OF RECOVERING SERVICE MEMBERS.—The Secretary of Defense and the Secretary of Veterans Affairs, acting jointly, may incorporate responses to any findings and recommendations arising under the pilot programs conducted under subsection (a) in updating the comprehensive policy on the care and management of covered service members under section 1611(a)(4).

''(e) CONSTRUCTION WITH OTHER AUTHORITIES.—

''(1) IN GENERAL.—Subject to paragraph (2), in carrying out a pilot program under subsection (a)—

''(A) the rules and regulations of the Department of Defense and the Department of Veterans Affairs relating to methods of determining fitness or unfitness for duty and disability ratings for members of the Armed Forces shall apply to the pilot program only to the extent provided in the report on the pilot program under subsection (g)(1); and

''(B) the Secretary of Defense and the Secretary of Veterans Affairs may waive any provision of title 10, 37, or 38, United States Code, relating to methods of determining fitness or unfitness for duty and disability ratings for members of the Armed Forces if the Secretaries determine in writing that the application of such provision would be inconsistent with the purpose of the pilot program.

''(2) LIMITATION.—Nothing in paragraph (1) shall be construed to authorize the waiver of any provision of section 1216a of title 10, United States Code, as added by section 1642 of this Act.

''(f) DURATION.—Each pilot program conducted under subsection (a) shall be completed not later than one year after the date of the commencement of such pilot program under that subsection.

''(g) REPORTS.—

''(1) INITIAL REPORT.—Not later than 90 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall submit to the appropriate committees of Congress a report on each pilot program that has been commenced as of that date under subsection (a). The report shall include—

''(A) a description of the scope and objectives of the pilot program;

''(B) a description of the methodology to be used under the pilot program to ensure rapid identification under such pilot program of revised or improved practices under the disability evaluation system in order to achieve the objectives set forth in subsection (c)(1); and

''(C) a statement of any provision described in subsection (e)(1)(B) that will not apply to the pilot program by reason of a waiver under that subsection.

''(2) INTERIM REPORT.—Not later than 180 days after the date of the submittal of the report required by paragraph (1) with respect to a pilot program, the Secretary shall submit to the appropriate committees of Congress a report describing the current status of the pilot program.

''(3) FINAL REPORT.—Not later than 90 days after the completion of all of the pilot programs conducted under subsection (a), the Secretary shall submit to the appropriate committees of Congress a report setting forth a final evaluation and assessment of the pilot programs. The report shall include such recommendations for legislative or administrative action as the Secretary considers appropriate in light of such pilot programs.

''SEC. 1648. STANDARDS FOR MILITARY MEDICAL TREATMENT FACILITIES, SPECIALTY MEDICAL CARE FACILITIES, AND MILITARY QUARTERS HOUSING PATIENTS AND ANNUAL REPORT ON SUCH FACILITIES.

''(a) ESTABLISHMENT OF STANDARDS.—The Secretary of Defense shall establish for the military facilities of the Department of Defense and the military departments referred to in subsection (b) standards with respect to the matters set forth in subsection (c). To the maximum extent practicable, the standards shall—

''(1) be uniform and consistent for all such facilities; and

''(2) be uniform and consistent throughout the Department of Defense and the military departments.

''(b) COVERED MILITARY FACILITIES.—The military facilities covered by this section are the following:

''(1) Military medical treatment facilities.

''(2) Specialty medical care facilities.

''(3) Military quarters or leased housing for patients.

''(c) SCOPE OF STANDARDS.—The standards required by subsection (a) shall include the following:

''(1) Generally accepted standards for the accreditation of medical facilities, or for facilities used to quarter individuals that may require medical supervision, as applicable, in the United States.

''(2) To the extent not inconsistent with the standards described in paragraph (1), minimally acceptable conditions for the following:

''(A) Appearance and maintenance of facilities generally, including the structure and roofs of facilities.

''(B) Size, appearance, and maintenance of rooms housing or utilized by patients, including furniture and amenities in such rooms.

''(C) Operation and maintenance of primary and back-up facility utility systems and other systems required for patient care, including electrical sys-

tems, plumbing systems, heating, ventilation, and air conditioning systems, communications systems, fire protection systems, energy management systems, and other systems required for patient care.

''(D) Compliance of facilities, rooms, and grounds, to the maximum extent practicable, with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

''(E) Such other matters relating to the appearance, size, operation, and maintenance of facilities and rooms as the Secretary considers appropriate.

''(d) COMPLIANCE WITH STANDARDS.—

''(1) DEADLINE.—In establishing standards under subsection (a), the Secretary shall specify a deadline for compliance with such standards by each facility referred to in subsection (b). The deadline shall be at the earliest date practicable after the date of the enactment of this Act [Jan. 28, 2008], and shall, to the maximum extent practicable, be uniform across the facilities referred to in subsection (b).

''(2) INVESTMENT.—In carrying out this section, the Secretary shall also establish guidelines for investment to be utilized by the Department of Defense and the military departments in determining the allocation of financial resources to facilities referred to in subsection (b) in order to meet the deadline specified under paragraph (1).

''(e) REPORT ON DEVELOPMENT AND IMPLEMENTATION OF STANDARDS.—

''(1) IN GENERAL.—Not later than March 1, 2008, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the actions taken to carry out subsection (a).

''(2) ELEMENTS.—The report under paragraph (1) shall include the following:

''(A) The standards established under subsection (a).

''(B) An assessment of the appearance, condition, and maintenance of each facility referred to in subsection (b), including—

''(i) an assessment of the compliance of the facility with the standards established under subsection (a); and

''(ii) a description of any deficiency or noncompliance in each facility with the standards.

''(C) A description of the investment to be allocated to address each deficiency or noncompliance identified under subparagraph (B)(ii).

''(f) ANNUAL REPORT.—Not later than the date on which the President submits the budget for a fiscal year to Congress pursuant to section 1105 of title 31, United States Code, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the adequacy, suitability, and quality of each facility referred to in subsection (b). The Secretary shall include in each report information regarding—

''(1) any deficiencies in the adequacy, quality, or state of repair of medical-related support facilities raised as a result of information received during the period covered by the report through the toll-free hot line required by section 1616; and

''(2) the investigations conducted and plans of action prepared under such section to respond to such deficiencies.

''SEC. 1651. HANDBOOK FOR MEMBERS OF THE ARMED FORCES ON COMPENSATION AND BENEFITS AVAILABLE FOR SERIOUS INJURIES AND ILLNESSES.

''(a) INFORMATION ON AVAILABLE COMPENSATION AND BENEFITS.—Not later than October 1, 2008, the Secretary of Defense shall develop and maintain, in handbook and electronic form, a comprehensive description of the compensation and other benefits to which a member of the Armed Forces, and the family of such member, would be entitled upon the separation or retirement of the member from the Armed Forces as a result of a serious injury or illness. The handbook shall set forth the range of such compensation and benefits based on grade, length of service, degree of disability at separation or retirement, and such other factors affecting such compensation and benefits as the Secretary considers appropriate.

''(b) CONSULTATION.—The Secretary of Defense shall develop and maintain the comprehensive description required by subsection (a), including the handbook and electronic form of the description, in consultation with the Secretary of Veterans Affairs, the Secretary of Health and Human Services, and the Commissioner of Social Security.

''(c) UPDATE.—The Secretary of Defense shall update the comprehensive description required by subsection (a), including the handbook and electronic form of the description, on a periodic basis, but not less often than annually.

''(d) PROVISION TO MEMBERS.—The Secretary of the military department concerned shall provide the descriptive handbook under subsection (a) to each member of the Armed Forces described in that subsection as soon as practicable following the injury or illness qualifying the member for coverage under such subsection.

''(e) PROVISION TO REPRESENTATIVES.—If a member is incapacitated or otherwise unable to receive the descriptive handbook to be provided under subsection (a), the handbook shall be provided to the next of kin or a legal representative of the member, as determined in accordance with regulations prescribed by the Secretary of the military department concerned for purposes of this section.

''SEC. 1662. ACCESS OF RECOVERING SERVICE MEMBERS TO ADEQUATE OUTPATIENT RESIDENTIAL FACILITIES.

''(a) REQUIRED INSPECTIONS OF FACILITIES.—All quarters of the United States and housing facilities under the jurisdiction of the Armed Forces that are occupied by recovering service members shall be inspected on a semiannual basis for the first two years after the enactment of this Act [Jan. 28, 2008] and annually thereafter by the inspectors general of the regional medical commands.

''(b) INSPECTOR GENERAL REPORTS.—The inspector general for each regional medical command shall—

''(1) submit a report on each inspection of a facility conducted under subsection (a) to the post commander at such facility, the commanding officer of the hospital affiliated with such facility, the surgeon general of the military department that operates such hospital, the Secretary of the military department concerned, the Assistant Secretary of Defense for Health Affairs, and the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives]; and

''(2) post each such report on the Internet website of such regional medical command.

''SEC. 1671. PROHIBITION ON TRANSFER OF RESOURCES FROM MEDICAL CARE.

''Neither the Secretary of Defense nor the Secretaries of the military departments may transfer funds or personnel from medical care functions to administrative functions within the Department of Defense in order to comply with the new administrative requirements imposed by this title [see Short Title of 2008 Amendment note above] or the amendments made by this title.

''SEC. 1672. MEDICAL CARE FOR FAMILIES OF MEMBERS OF THE ARMED FORCES RECOVERING FROM SERIOUS INJURIES OR ILLNESSES.

''(a) MEDICAL CARE AT MILITARY MEDICAL FACILITIES.—

''(1) MEDICAL CARE.—A family member of a recovering service member who is not otherwise eligible for medical care at a military medical treatment facility may be eligible for such care at such facilities, on a space-available basis, if the family member is—

''(A) on invitational orders while caring for the service member;

''(B) a non-medical attendee caring for the service member; or

''(C) receiving per diem payments from the Department of Defense while caring for the service member.

''(2) SPECIFICATION OF FAMILY MEMBERS.—The Secretary of Defense may prescribe in regulations the family members of recovering service members who shall be considered to be a family member of a service member for purposes of this subsection.

''(3) SPECIFICATION OF CARE.—The Secretary of Defense shall prescribe in regulations the medical care that may be available to family members under this subsection at military medical treatment facilities.

''(4) RECOVERY OF COSTS.—The United States may recover the costs of the provision of medical care under this subsection as follows (as applicable):

''(A) From third-party payers, in the same manner as the United States may collect costs of the charges of health care provided to covered beneficiaries from third-party payers under section 1095 of title 10, United States Code.

''(B) As if such care was provided under the authority of section 1784 of title 38, United States Code.

''(b) MEDICAL CARE AT DEPARTMENT OF VETERANS AFFAIRS MEDICAL FACILITIES.—

''(1) MEDICAL CARE.—When a recovering service member is receiving hospital care and medical services at a medical facility of the Department of Veterans Affairs, the Secretary of Veterans Affairs may provide medical care for eligible family members under this section when that care is readily available at that Department facility and on a space-available basis.

''(2) REGULATIONS.—The Secretary of Veterans Affairs shall prescribe in regulations the medical care that may be available to family members under this subsection at medical facilities of the Department of Veterans Affairs.

''SEC. 1676. MORATORIUM ON CONVERSION TO CONTRACTOR PERFORMANCE OF DEPARTMENT OF DEFENSE FUNCTIONS AT MILITARY MEDICAL FACILITIES.

''(a) MORATORIUM.—No study or competition may be begun or announced pursuant to section 2461 of title 10, United States Code, or otherwise pursuant to Office of Management and Budget circular A-76, relating to the possible conversion to performance by a contractor of any Department of Defense function carried out at a military medical facility until the Secretary of Defense—

''(1) submits the certification required by subsection (b) to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives together with a description of the steps taken by the Secretary in accordance with the certification; and

''(2) submits the report required by subsection (c).

''(b) CERTIFICATION.—The certification referred to in paragraph (a)(1) is a certification that the Secretary has taken appropriate steps to ensure that neither the quality of military medical care nor the availability of qualified personnel to carry out Department of Defense functions related to military medical care will be adversely affected by either—

''(1) the process of considering a Department of Defense function carried out at a military medical facility for possible conversion to performance by a contractor; or

''(2) the conversion of such a function to performance by a contractor.

''(c) REPORT REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the public-private competitions being conducted for Department of Defense functions carried out at military medical facilities as of the date of the enactment of this Act by each military department and defense agency. Such report shall include—

''(1) for each such competition—

''(A) the cost of conducting the public-private competition;

''(B) the number of military personnel and civilian employees of the Department of Defense affected;

''(C) the estimated savings identified and the savings actually achieved;

''(D) an evaluation whether the anticipated and budgeted savings can be achieved through a public-private competition; and

''(E) the effect of converting the performance of the function to performance by a contractor on the quality of the performance of the function; and

''(2) an assessment of whether any method of business reform or reengineering other than a public-private competition could, if implemented in the future, achieve any anticipated or budgeted savings.''

DISEASE AND CHRONIC CARE MANAGEMENT

Pub. L. 109–364, div. A, title VII, § 734, Oct. 17, 2006, 120 Stat. 2299, provided that:

''(a) PROGRAM DESIGN AND DEVELOPMENT REQUIRED.—Not later than October 1, 2007, the Secretary of Defense shall design and develop a fully integrated program on disease and chronic care management for the military health care system that provides, to the extent practicable, uniform policies and practices on disease management and chronic care management throughout that system, including both military hospitals and clinics and civilian healthcare providers within the TRICARE network.

''(b) PURPOSES OF PROGRAM.—The purposes of the program required by subsection (a) are as follows:

''(1) To facilitate the improvement of the health status of individuals under care in the military health care system.

''(2) To ensure the availability of effective health care services in that system for individuals with diseases and other chronic conditions.

''(3) To ensure the proper allocation of health care resources for individuals who need care for disease or other chronic conditions.

''(c) ELEMENTS OF PROGRAM DESIGN.—The program design required by subsection (a) shall meet the following requirements:

''(1) Based on uniform policies prescribed by the Secretary, the program shall, at a minimum, address the following chronic diseases and conditions:

''(A) Diabetes.

''(B) Cancer.

''(C) Heart disease.

''(D) Asthma.

''(E) Chronic obstructive pulmonary disorder.

''(F) Depression and anxiety disorders.

''(2) The program shall meet nationally recognized accreditation standards for disease and chronic care management.

''(3) The program shall include specific outcome measures and objectives on disease and chronic care management.

''(4) The program shall include strategies for disease and chronic care management for all beneficiaries, including beneficiaries eligible for benefits under the Medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.), for whom the TRICARE program is not the primary payer for health care benefits.

''(5) Activities under the program shall conform to applicable laws and regulations relating to the confidentiality of health care information.

''(d) IMPLEMENTATION PLAN REQUIRED.—Not later than February 1, 2008, the Secretary of Defense, in coordination with the Secretaries of the military departments, shall develop an implementation plan for the

disease and chronic care management program. In order to facilitate the carrying out of the program, the plan developed by the Secretary shall—

''(1) require a comprehensive analysis of the disease and chronic care management opportunities within each region of the TRICARE program, including within military treatment facilities and through contractors under the TRICARE program;

''(2) ensure continuous, adequate funding of disease and chronic care management activities throughout the military health care system in order to achieve maximum health outcomes and cost avoidance;

''(3) eliminate, to the extent practicable, any financial disincentives to sustained investment by military hospitals and health care services contractors of the Department of Defense in the disease and chronic care management activities of the Department;

''(4) ensure that appropriate clinical and claims data, including pharmacy utilization data, is available for use in implementing the program;

''(5) ensure outreach to eligible beneficiaries who, on the basis of their clinical conditions, are candidates for the program utilizing print and electronic media, telephone, and personal interaction; and

''(6) provide a system for monitoring improvements in health status and clinical outcomes under the program and savings associated with the program.

''(e) REPORT.—

''(1) IN GENERAL.—Not later than March 1, 2008, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the design, development, and implementation of the program on disease and chronic care management required by this section.

''(2) REPORT ELEMENTS.—The report required by paragraph (1) shall include the following:

''(A) A description of the design and development of the program required by subsection (a).

''(B) A description of the implementation plan required by subsection (d).

''(C) A description and assessment of improvements in health status and clinical outcomes that are anticipated as a result of implementation of the program.

''(D) A description of the savings and return on investment associated with the program.

''(E) A description of an investment strategy to assure the sustainment of the disease and chronic care management programs of the Department of Defense.''

PREVENTION, MITIGATION, AND TREATMENT OF BLAST INJURIES

Pub. L. 109–163, div. A, title II, § 256, as amended by Pub. L. 111–383, div. A, title IX, § 901(a)(2), Jan. 7, 2011, 124 Stat. 4317, Jan. 6, 2006, 119 Stat. 3181, provided that:

''(a) DESIGNATION OF EXECUTIVE AGENT.—The Secretary of Defense shall designate an executive agent to be responsible for coordinating and managing the medical research efforts and programs of the Department of Defense relating to the prevention, mitigation, and treatment of blast injuries.

''(b) GENERAL RESPONSIBILITIES.—The executive agent designated under subsection (a) shall be responsible for—

''(1) planning for the medical research and development projects, diagnostic and field treatment programs, and patient tracking and monitoring activities within the Department that relate to combat blast injuries;

''(2) efficient execution of such projects, programs, and activities;

''(3) enabling the sharing of blast injury health hazards and survivability data collected through such projects, programs, and activities with the programs of the Department of Defense;

''(4) working with the Assistant Secretary of Defense for Research and Engineering and the Secretaries of the military departments to ensure resources are adequate to also meet non-medical requirements related to blast injury prevention, mitigation, and treatment; and

''(5) ensuring that a joint combat trauma registry is established and maintained for the purposes of collection and analysis of contemporary combat casualties, including casualties with traumatic brain injury.

''(c) MEDICAL RESEARCH EFFORTS.—

''(1) IN GENERAL.—The executive agent designated under subsection (a) shall review and assess the adequacy of medical research efforts of the Department of Defense as of the date of the enactment of this Act [Jan. 6, 2006] relating to the following:

''(A) The characterization of blast effects leading to injury, including the injury potential of blasts in various environments.

''(B) Medical technologies and protocols to more accurately detect and diagnose blast injuries, including improved discrimination between traumatic brain injuries and mental health disorders.

''(C) Enhanced treatment of blast injuries in the field.

''(D) Integrated treatment approaches for members of the Armed Forces who have a combination of traumatic brain injuries and mental health disorders or other injuries.

''(E) Such other blast injury matters as the executive agent considers appropriate.

''(2) REQUIREMENTS FOR RESEARCH EFFORTS.—Based on the assessment under paragraph (1), the executive agent shall establish requirements for medical research efforts described in that paragraph in order to enhance and accelerate those research efforts.

''(3) OVERSIGHT OF RESEARCH EFFORTS.—The executive agent shall establish, coordinate, and oversee Department-wide medical research efforts relating to the prevention, mitigation, and treatment of blast injuries, as necessary, to fulfill requirements established under paragraph (2).

''(d) OTHER RELATED RESEARCH EFFORTS.—The Assistant Secretary of Defense for Research and Engineering, in coordination with the executive agent designated under subsection (a) and the Director of the Joint IED Defeat Task Force, shall—

''(1) review and assess the adequacy of current research efforts of the Department on the prevention and mitigation of blast injuries;

''(2) based on subsection (c)(1), establish requirements for further research; and

''(3) address any deficiencies identified in paragraphs (1) and (2) by establishing, coordinating, and overseeing Department-wide research and development initiatives on the prevention and mitigation of blast injuries, including explosive detection and defeat and personnel and vehicle blast protection.

''(e) STUDIES.—The executive agent designated under subsection (a) shall conduct studies on the prevention, mitigation, and treatment of blast injuries, including—

''(1) studies to improve the clinical evaluation and treatment approach for blast injuries, with an emphasis on traumatic brain injuries and other consequences of blast injury, including acoustic and eye injuries and injuries resulting from over-pressure wave;

''(2) studies on the incidence of traumatic brain injuries attributable to blast injury in soldiers returning from combat;

''(3) studies to develop protocols for medical tracking of members of the Armed Forces for up to five years following blast injuries; and

''(4) studies to refine and improve educational interventions for blast injury survivors and their families.

''(f) TRAINING.—The executive agent designated under subsection (a), in coordination with the Director of the Joint IED Defeat Task Force, shall develop training protocols for medical and non-medical personnel on the prevention, mitigation, and treatment of blast injuries. Those protocols shall be intended to improve field and clinical training on early identification of blast injury consequences, both seen and unseen, including trau-

matic brain injuries, acoustic injuries, and internal injuries.

''(g) INFORMATION SHARING.—The executive agent designated under subsection (a) shall make available the results of relevant medical research and development projects and studies to—

''(1) Department of Defense programs focused on—

''(A) promoting the exchange of blast health hazards data with blast characterization data and blast modeling and simulation tools; and

''(B) encouraging the incorporation of blast hazards data into design and operational features of blast detection, mitigation, and defeat capabilities, such as comprehensive armor systems which provide blast, ballistic, and fire protection for the head, neck, ears, eyes, torso, and extremities; and

''(2) traumatic brain injury treatment programs to enhance the evaluation and care of members of the Armed Forces with traumatic brain injuries in medical facilities in the United States and in deployed medical facilities, including those outside the Department of Defense.

''(h) REPORTS ON BLAST INJURY MATTERS.—

''(1) REPORTS REQUIRED.—Not later than 270 days after the date of the enactment of this Act [Jan. 6, 2006], and annually thereafter through 2008, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the efforts and programs of the Department of Defense relating to the prevention, mitigation, and treatment of blast injuries.

''(2) ELEMENTS.—Each report under paragraph (1) shall include the following:

''(A) A description of the activities undertaken under this section during the two years preceding the report to improve the prevention, mitigation, and treatment of blast injuries.

''(B) A consolidated budget presentation for Department of Defense biomedical research efforts and studies related to blast injury for the two fiscal years following the year of the report.

''(C) A description of any gaps in the capabilities of the Department and any plans to address such gaps within biomedical research related to blast injury, blast injury diagnostic and treatment programs, and blast injury tracking and monitoring activities.

''(D) A description of collaboration, if any, with other departments and agencies of the Federal Government, and with other countries, during the two years preceding the report in efforts for the prevention, mitigation, and treatment of blast injuries.

''(E) A description of any efforts during the two years preceding the report to disseminate findings on the diagnosis and treatment of blast injuries through civilian and military research and medical communities.

''(F) A description of the status of efforts during the two years preceding the report to incorporate blast injury effects data into appropriate programs of the Department of Defense and into the development of comprehensive force protection systems that are effective in confronting blast, ballistic, and fire threats.

''(i) DEADLINE FOR DESIGNATION OF EXECUTIVE AGENT.—The Secretary shall make the designation required by subsection (a) not later than 90 days after the date of the enactment of this Act [Jan. 6, 2006].

''(j) BLAST INJURIES DEFINED.—In this section, the term 'blast injuries' means injuries that occur as the result of the detonation of high explosives, including vehicle-borne and person-borne explosive devices, rocket-propelled grenades, and improvised explosive devices.

''(k) EXECUTIVE AGENT DEFINED.—In this section, the term 'executive agent' has the meaning provided such term in Department of Defense Directive 5101.1.''

ACCESS TO HEALTH CARE SERVICES FOR BENEFICIARIES ELIGIBLE FOR TRICARE AND DEPARTMENT OF VETERANS AFFAIRS HEALTH CARE

Pub. L. 107–314, div. A, title VII, § 708, Dec. 2, 2002, 116 Stat. 2585, provided that:

''(a) REQUIREMENT TO ESTABLISH PROCESS.—(1) The Secretary of Defense shall prescribe in regulations a process for resolving issues relating to patient safety and continuity of care for covered beneficiaries who are concurrently entitled to health care under the TRICARE program and eligible for health care services provided by the Department of Veterans Affairs. The Secretary shall—

''(A) ensure that the process provides for coordination of, and access to, health care from the two sources in a manner that prevents diminution of access to health care from either source; and

''(B) in consultation with the Secretary of Veterans Affairs, prescribe a clear definition of an 'episode of care' for use in the resolution of patient safety and continuity of care issues under such process.

''(2) Not later than May 1, 2003, the Secretary shall submit to the Committees on Armed Services of the Senate and of the House of Representatives a report describing the process prescribed under paragraph (1).

''(3) While prescribing the process under paragraph (1) and upon completion of the report under paragraph (2), the Secretary shall provide to the Comptroller General information that would be relevant in carrying out the study required by subsection (b).

''(b) COMPTROLLER GENERAL STUDY AND REPORT.—(1) The Comptroller General shall conduct a study of the health care issues of covered beneficiaries described in subsection (a). The study shall include the following:

''(A) An analysis of whether covered beneficiaries who seek services through the Department of Veterans Affairs are receiving needed health care services in a timely manner from the Department of Veterans Affairs, as compared to the timeliness of the care available to covered beneficiaries under TRICARE Prime (as set forth in access to care standards under TRICARE program policy that are applicable to the care being sought).

''(B) An evaluation of the quality of care for covered beneficiaries who do not receive needed services from the Department of Veterans Affairs within a time period that is comparable to the time period provided for under such access to care standards and who then must seek alternative care under the TRICARE program.

''(C) Recommendations to improve access to, and timeliness and quality of, care for covered beneficiaries described in subsection (a).

''(D) An evaluation of the feasibility and advisability of making access to care standards applicable jointly under the TRICARE program and the Department of Veterans Affairs health care system.

''(E) A review of the process prescribed by the Secretary of Defense under subsection (a) to determine whether the process ensures the adequacy and quality of the health care services provided to covered beneficiaries under the TRICARE program and through the Department of Veterans Affairs, together with timeliness of access to such services and patient safety.

''(2) Not later than 60 days after the congressional committees specified in subsection (a)(2) receive the report required under that subsection, the Comptroller General shall submit to those committees a report on the study conducted under this subsection.

''(c) DEFINITIONS.—In this section:

''(1) The term 'covered beneficiary' has the meaning provided by section 1072(5) of title 10, United States Code.

''(2) The term 'TRICARE program' has the meaning provided by section 1072(7) of such title.

''(3) The term 'TRICARE Prime' has the meaning provided by section 1097a(f) of such title.''

PILOT PROGRAM PROVIDING FOR DEPARTMENT OF VETERANS AFFAIRS SUPPORT IN THE PERFORMANCE OF SEPARATION PHYSICAL EXAMINATIONS

Pub. L. 107–107, div. A, title VII, § 734, Dec. 28, 2001, 115 Stat. 1170, authorized the Secretary of Defense and the Secretary of Veterans Affairs to jointly carry out a pilot program, to begin not later than July 1, 2002, and terminate on Dec. 31, 2005, under which the Secretary of Veterans Affairs, in one or more geographic areas, could perform the physical examinations required for separation of members from the uniformed services, and directed the Secretaries to jointly submit to Congress interim and final reports not later than Mar. 1, 2005.

HEALTH CARE MANAGEMENT DEMONSTRATION PROGRAM

Pub. L. 106–398, § 1 [[div. A], title VII, § 733], Oct. 30, 2000, 114 Stat. 1654, 1654A–191, as amended by Pub. L. 107–107, div. A, title VII, § 737, Dec. 28, 2001, 115 Stat. 1173, directed the Secretary of Defense to carry out a demonstration program on health care management, to begin not later than 180 days after Oct. 30, 2000, and terminate on Dec. 31, 2003, to explore opportunities for improving the planning, programming, budgeting systems, and management of the Department of Defense health care system, and directed the Secretary to submit a report on such program to committees of Congress not later than Mar. 15, 2004.

PROCESSES FOR PATIENT SAFETY IN MILITARY AND VETERANS HEALTH CARE SYSTEMS

Pub. L. 106–398, § 1 [[div. A], title VII, § 742], Oct. 30, 2000, 114 Stat. 1654, 1654A–192, provided that:

''(a) ERROR TRACKING PROCESS.—The Secretary of Defense shall implement a centralized process for reporting, compilation, and analysis of errors in the provision of health care under the defense health program that endanger patients beyond the normal risks associated with the care and treatment of such patients. To the extent practicable, that process shall emulate the system established by the Secretary of Veterans Affairs for reporting, compilation, and analysis of errors in the provision of health care under the Department of Veterans Affairs health care system that endanger patients beyond such risks.

''(b) SHARING OF INFORMATION.—The Secretary of Defense and the Secretary of Veterans Affairs—

''(1) shall share information regarding the designs of systems or protocols established to reduce errors in the provision of health care described in subsection (a); and

''(2) shall develop such protocols as the Secretaries consider necessary for the establishment and administration of effective processes for the reporting, compilation, and analysis of such errors.''

COOPERATION IN DEVELOPING PHARMACEUTICAL IDENTIFICATION TECHNOLOGY

Pub. L. 106–398, § 1 [[div. A], title VII, § 743], Oct. 30, 2000, 114 Stat. 1654, 1654A–192, provided that: ''The Secretary of Defense and the Secretary of Veterans Affairs shall cooperate in developing systems for the use of bar codes for the identification of pharmaceuticals in the health care programs of the Department of Defense and the Department of Veterans Affairs. In any case in which a common pharmaceutical is used in such programs, the bar codes for those pharmaceuticals shall, to the maximum extent practicable, be identical.''

PATIENT CARE REPORTING AND MANAGEMENT SYSTEM

Pub. L. 106–398, § 1 [[div. A], title VII, § 754], Oct. 30, 2000, 114 Stat. 1654, 1654A–196, as amended by Pub. L. 109–163, div. A, title VII, § 741, Jan. 6, 2006, 119 Stat. 3360, provided that:

''(a) ESTABLISHMENT.—The Secretary of Defense shall establish a patient care error reporting and management system.

''(b) PURPOSES OF SYSTEM.—The purposes of the system are as follows:

''(1) To study the occurrences of errors in the patient care provided under chapter 55 of title 10, United States Code.

''(2) To identify the systemic factors that are associated with such occurrences.

''(3) To provide for action to be taken to correct the identified systemic factors.

''(c) REQUIREMENTS FOR SYSTEM.—The patient care error reporting and management system shall include the following:

''(1) A hospital-level patient safety center, within the quality assurance department of each health care organization of the Department of Defense, to collect, assess, and report on the nature and frequency of errors related to patient care.

''(2) For each health care organization of the Department of Defense and for the entire Defense health program, patient safety standards that are necessary for the development of a full understanding of patient safety issues in each such organization and the entire program, including the nature and types of errors and the systemic causes of the errors.

''(3) Establishment of a Department of Defense Patient Safety Center, which shall have the following missions:

''(A) To analyze information on patient care errors that is submitted to the Center by each military health care organization.

''(B) To develop action plans for addressing patterns of patient care errors.

''(C) To execute those action plans to mitigate and control errors in patient care with a goal of ensuring that the health care organizations of the Department of Defense provide highly reliable patient care with virtually no error.

''(D) To provide, through the Assistant Secretary of Defense for Health Affairs, to the Agency for Healthcare Research and Quality of the Department of Health and Human Services any reports that the Assistant Secretary determines appropriate.

''(E) To review and integrate processes for reducing errors associated with patient care and for enhancing patient safety.

''(F) To contract with a qualified and objective external organization to manage the national patient safety database of the Department of Defense.

''(d) MEDICAL TEAM TRAINING PROGRAM.—The Secretary shall expand the health care team coordination program to integrate that program into all Department of Defense health care operations. In carrying out this subsection, the Secretary shall take the following actions:

''(1) Establish not less than two Centers of Excellence for the development, validation, proliferation, and sustainment of the health care team coordination program, one of which shall support all fixed military health care organizations, the other of which shall support all combat casualty care organizations.

''(2) Deploy the program to all fixed and combat casualty care organizations of each of the Armed Forces, at the rate of not less than 10 organizations in each fiscal year.

''(3) Expand the scope of the health care team coordination program from a focus on emergency department care to a coverage that includes care in all major medical specialties, at the rate of not less than one specialty in each fiscal year.

''(4) Continue research and development investments to improve communication, coordination, and team work in the provision of health care.

''(e) CONSULTATION.—The Secretary shall consult with the other administering Secretaries (as defined in sec-

tion 1072(3) of title 10, United States Code) in carrying out this section.''

CONFIDENTIALITY OF COMMUNICATIONS WITH PROFESSIONALS PROVIDING THERAPEUTIC OR RELATED SERVICES REGARDING SEXUAL OR DOMESTIC ABUSE

Pub. L. 106–65, div. A, title V, § 585, Oct. 5, 1999, 113 Stat. 636, provided that:

''(a) STUDY AND REPORT.—(1) The Comptroller General of the United States shall study the policies, procedures, and practices of the military departments for protecting the confidentiality of communications between—

''(A) a dependent (as defined in section 1072(2) of title 10, United States Code, with respect to a member of the Armed Forces) of a member of the Armed Forces who—

''(i) is a victim of sexual harassment, sexual assault, or intrafamily abuse; or

''(ii) has engaged in such misconduct; and

''(B) a therapist, counselor, advocate, or other professional from whom the dependent seeks professional services in connection with effects of such misconduct.

''(2) Not later than 180 days after the date of the enactment of this Act [Oct. 5, 1999], the Comptroller General shall conclude the study and submit a report on the results of the study to Congress and the Secretary of Defense.

''(b) REGULATIONS.—The Secretary of Defense shall prescribe in regulations the policies and procedures that the Secretary considers appropriate to provide the maximum protections for the confidentiality of communications described in subsection (a) relating to misconduct described in that subsection, taking into consideration—

''(1) the findings of the Comptroller General;

''(2) the standards of confidentiality and ethical standards issued by relevant professional organizations;

''(3) applicable requirements of Federal and State law;

''(4) the best interest of victims of sexual harassment, sexual assault, or intrafamily abuse;

''(5) military necessity; and

''(6) such other factors as the Secretary, in consultation with the Attorney General, may consider appropriate.

''(c) REPORT BY SECRETARY OF DEFENSE.—Not later than January 21, 2000, the Secretary of Defense shall submit to Congress a report on the actions taken under subsection (b) and any other actions taken by the Secretary to provide the maximum possible protections for confidentiality described in that subsection.''

HEALTH CARE QUALITY INFORMATION AND TECHNOLOGY ENHANCEMENT

Pub. L. 106–65, div. A, title VII, § 723, Oct. 5, 1999, 113 Stat. 695, as amended by Pub. L. 106–398, § 1 [[div. A], title VII, § 753(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–195; Pub. L. 109–163, div. A, title VII, § 742, Jan. 6, 2006, 119 Stat. 3360; Pub. L. 109–364, div. A, title X, § 1046(e), Oct. 17, 2006, 120 Stat. 2394, provided that:

''(a) PURPOSE.—The purpose of this section is to ensure that the Department of Defense addresses issues of medical quality surveillance and implements solutions for those issues in a timely manner that is consistent with national policy and industry standards.

''(b) DEPARTMENT OF DEFENSE PROGRAM FOR MEDICAL INFORMATICS AND DATA.—The Secretary of Defense shall establish a Department of Defense program, the purposes of which shall be the following:

''(1) To develop parameters for assessing the quality of health care information.

''(2) To develop the defense digital patient record.

''(3) To develop a repository for data on quality of health care.

''(4) To develop capability for conducting research on quality of health care.

''(5) To conduct research on matters of quality of health care.

''(6) To develop decision support tools for health care providers.

''(7) To refine medical performance report cards.

''(8) To conduct educational programs on medical informatics to meet identified needs.

''(c) AUTOMATION AND CAPTURE OF CLINICAL DATA.—(1) Through the program established under subsection (b), the Secretary of Defense shall accelerate the efforts of the Department of Defense to automate, capture, and exchange controlled clinical data and present providers with clinical guidance using a personal information carrier, clinical lexicon, or digital patient record.

''(2) The program shall serve as a primary resource for the Department of Defense for matters concerning the capture, processing, and dissemination of data on health care quality.

''(d) MEDICAL INFORMATICS ADVISORY COMMITTEE.—(1) The Secretary of Defense shall establish a Medical Informatics Advisory Committee (hereinafter referred to as the 'Committee'), the members of which shall be the following:

''(A) The Assistant Secretary of Defense for Health Affairs.

''(B) The Director of the TRICARE Management Activity of the Department of Defense.

''(C) The Surgeon General of the Army.

''(D) The Surgeon General of the Navy.

''(E) The Surgeon General of the Air Force.

''(F) Representatives of the Department of Veterans Affairs, designated by the Secretary of Veterans Affairs.

''(G) Representatives of the Department of Health and Human Services, designated by the Secretary of Health and Human Services.

''(H) Any additional members appointed by the Secretary of Defense to represent health care insurers and managed care organizations, academic health institutions, health care providers (including representatives of physicians and representatives of hospitals), and accreditors of health care plans and organizations.

''(2) The primary mission of the Committee shall be to advise the Secretary on the development, deployment, and maintenance of health care informatics systems that allow for the collection, exchange, and processing of health care quality information for the Department of Defense in coordination with other Federal departments and agencies and with the private sector.

''(3) Specific areas of responsibility of the Committee shall include advising the Secretary on the following:

''(A) The ability of the medical informatics systems at the Department of Defense and Department of Veterans Affairs to monitor, evaluate, and improve the quality of care provided to beneficiaries.

''(B) The coordination of key components of medical informatics systems, including digital patient records, both within the Federal Government and between the Federal Government and the private sector.

''(C) The development of operational capabilities for executive information systems and clinical decision support systems within the Department of Defense and Department of Veterans Affairs.

''(D) Standardization of processes used to collect, evaluate, and disseminate health care quality information.

''(E) Refinement of methodologies by which the quality of health care provided within the Department of Defense and Department of Veterans Affairs is evaluated.

''(F) Protecting the confidentiality of personal health information.

''(4) The Assistant Secretary of Defense for Health Affairs shall consult with the Committee on the issues described in paragraph (3).

''(5) Members of the Committee shall not be paid by reason of their service on the Committee.

''(6) The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Committee.

''(e) ANNUAL REPORT.—The Assistant Secretary of Defense for Health Affairs shall submit to Congress on an annual basis a report on the quality of health care furnished under the health care programs of the Department of Defense. The report shall cover the most recent fiscal year ending before the date the report is submitted and shall contain a discussion of the quality of the health care measured on the basis of each statistical and customer satisfaction factor that the Assistant Secretary determines appropriate, including, at a minimum, a discussion of the following:

''(1) Measures of the quality of health care furnished, including timeliness and accessibility of care.

''(2) Population health.

''(3) Patient safety.

''(4) Patient satisfaction.

''(5) The extent of use of evidence-based health care practices.

''(6) The effectiveness of biosurveillance in detecting an emerging epidemic.''

JOINT DEPARTMENT OF DEFENSE AND DEPARTMENT OF VETERANS AFFAIRS REPORTS RELATING TO INTERDEPARTMENTAL COOPERATION IN DELIVERY OF MEDICAL CARE

Pub. L. 105–261, div. A, title VII, § 745, Oct. 17, 1998, 112 Stat. 2075, as amended by Pub. L. 106–65, div. A, title X, § 1067(3), Oct. 5, 1999, 113 Stat. 774; Pub. L. 108–136, div. A, title X, § 1031(g)(1), Nov. 24, 2003, 117 Stat. 1604, (1) directed the Secretary of Defense and the Secretary of Veterans Affairs to jointly conduct a survey of their respective medical care beneficiary populations to identify the expectations of, requirements for, and behavior patterns of the beneficiaries with respect to medical care, and to submit a report on the results of the survey to committees of Congress not later than Jan. 1, 2000; (2) directed the same Secretaries to jointly conduct a review to identify impediments to cooperation between the Department of Defense and the Department of Veterans Affairs regarding the delivery of medical care and to submit a report on the results of the review to committees of Congress not later than Mar. 1, 1999; (3) directed the Secretary of Defense to review the TRICARE program to identify opportunities for increased participation by the Department of Veterans Affairs in that program; (4) directed the Department of Defense-Department of Veterans Affairs Federal Pharmacy Executive Steering Committee to examine existing pharmaceutical benefits and programs for beneficiaries and review existing methods for contracting for and distributing medical supplies and services and to submit a report on the results of the examination to committees of Congress not later than 60 days after its completion; and (5) directed the Secretary of Defense and the Secretary of Veterans Affairs to jointly submit to committees of Congress a report, not later than Mar. 1, 1999, on the status of the efforts of the Department of Defense and the Department of Veterans Affairs to standardize physical examinations administered by the two departments for the purpose of determining or rating disabilities.

EXTERNAL PEER REVIEW FOR DEFENSE HEALTH PROGRAM EXTRAMURAL MEDICAL RESEARCH INVOLVING HUMAN SUBJECTS

Pub. L. 104–201, div. A, title VII, § 742, Sept. 23, 1996, 110 Stat. 2600, provided that:

''(a) ESTABLISHMENT OF EXTERNAL PEER REVIEW PROCESS.—The Secretary of Defense shall establish a peer review process that will use persons who are not officers or employees of the Government to review the research protocols of medical research projects.

''(b) PEER REVIEW REQUIREMENTS.—Funds of the Department of Defense may not be obligated or expended for any medical research project unless the research protocol for the project has been approved by the external peer review process established under subsection (a).

''(c) MEDICAL RESEARCH PROJECT DEFINED.—For purposes of this section, the term 'medical research project' means a research project that—

''(1) involves the participation of human subjects;

''(2) is conducted solely by a non-Federal entity; and

''(3) is funded through the Defense Health Program account.

''(d) EFFECTIVE DATE.—The peer review requirements of subsection (b) shall take effect on October 1, 1996, and, except as provided in subsection (e), shall apply to all medical research projects proposed funded on or after that date, including medical research projects funded pursuant to any requirement of law enacted before, on, or after that date.

''(e) EXCEPTIONS.—Only the following medical research projects shall be exempt from the peer review requirements of subsection (b):

''(1) A medical research project that the Secretary determines has been substantially completed by October 1, 1996.

''(2) A medical research project funded pursuant to any provision of law enacted on or after that date if the provision of law specifically refers to this section and specifically states that the peer review requirements do not apply.''

ANNUAL BENEFICIARY SURVEY

Pub. L. 102–484, div. A, title VII, § 724, Oct. 23, 1992, 106 Stat. 2440, as amended by Pub. L. 103–337, div. A, title VII, § 717, Oct. 5, 1994, 108 Stat. 2804, provided that:

''(a) SURVEY REQUIRED.—The administering Secretaries shall conduct annually a formal survey of persons receiving health care under chapter 55 of title 10, United States Code, in order to determine the following:

''(1) The availability of health care services to such persons through the health care system provided for under that chapter, the types of services received, and the facilities in which the services were provided.

''(2) The familiarity of such persons with the services available under that system and with the facilities in which such services are provided.

''(3) The health of such persons.

''(4) The level of satisfaction of such persons with that system and the quality of the health care provided through that system.

''(5) Such other matters as the administering Secretaries determine appropriate.

''(b) EXEMPTION.—An annual survey under subsection (a) shall be treated as not a collection of information for the purposes for which such term is defined in section 3502(4) of title 44, United States Code.

''(c) DEFINITION.—For purposes of this section, the term 'administering Secretaries' has the meaning given such term in section 1072(3) of title 10, United States Code.''

COMPREHENSIVE STUDY OF MILITARY MEDICAL CARE SYSTEM

Pub. L. 102–190, div. A, title VII, § 733, Dec. 5, 1991, 105 Stat. 1408, as amended by Pub. L. 102–484, div. A, title VII, § 723, Oct. 23, 1992, 106 Stat. 2440, directed Secretary of Defense to conduct a comprehensive study of the military medical care system, not later than Dec. 15, 1992, to submit to congressional defense committees a detailed accounting on progress of the study, including preliminary results of the study, and not later than Dec. 15, 1993, submit to congressional defense committees a final report on the study.

IDENTIFICATION AND TREATMENT OF DRUG AND ALCOHOL DEPENDENT PERSONS IN THE ARMED FORCES

Pub. L. 92–129, title V, § 501, Sept. 28, 1971, 85 Stat. 361, which directed Secretary of Defense to devise ways to identify, treat, and rehabilitate drug and alcohol dependent members of the armed forces, to identify, refuse admission to, and refer to civilian treatment facilities such persons seeking entrance to the armed forces, and to report to Congress on and suggest additional legislation concerning these matters, was repealed and restated as sections 978 and 1090 of this title

by Pub. L. 97–295, §§ 1(14)(A), (15)(A), 6(b), Oct. 12, 1982, 96 Stat. 1289, 1290, 1314.

§ 1072. Definitions

In this chapter:

(1) The term ''uniformed services'' means the armed forces and the Commissioned Corps of the National Oceanic and Atmospheric Administration and of the Public Health Service.

(2) The term ''dependent'', with respect to a member or former member of a uniformed service, means—

(A) the spouse;

(B) the unremarried widow;

(C) the unremarried widower;

(D) a child who—

(i) has not attained the age of 21;

(ii) has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary and is, or was at the time of the member's or former member's death, in fact dependent on the member or former member for over one-half of the child's support; or

(iii) is incapable of self-support because of a mental or physical incapacity that occurs while a dependent of a member or former member under clause (i) or (ii) and is, or was at the time of the member's or former member's death, in fact dependent on the member or former member for over one-half of the child's support;

(E) a parent or parent-in-law who is, or was at the time of the member's or former member's death, in fact dependent on him for over one-half of his support and residing in his household;

(F) the unremarried former spouse of a member or former member who (i) on the date of the final decree of divorce, dissolution, or annulment, had been married to the member or former member for a period of at least 20 years during which period the member or former member performed at least 20 years of service which is creditable in determining that member's or former member's eligibility for retired or retainer pay, or equivalent pay, and (ii) does not have medical coverage under an employer-sponsored health plan;

(G) a person who (i) is the unremarried former spouse of a member or former member who performed at least 20 years of service which is creditable in determining the member or former member's eligibility for retired or retainer pay, or equivalent pay, and on the date of the final decree of divorce, dissolution, or annulment before April 1, 1985, had been married to the member or former member for a period of at least 20 years, at least 15 of which, but less than 20 of which, were during the period the member or former member performed service creditable in determining the member or former member's eligibility for retired or retainer pay, and (ii) does not have medical coverage under an employer-sponsored health plan;

(H) a person who would qualify as a dependent under clause (G) but for the fact that the date of the final decree of divorce, dissolution, or annulment of the person is on or after April 1, 1985, except that the term does not include the person after the end of the one-year period beginning on the date of that final decree; and

(I) an unmarried person who—

(i) is placed in the legal custody of the member or former member as a result of an order of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months;

(ii) either—

(I) has not attained the age of 21;

(II) has not attained the age of 23 and is enrolled in a full time course of study at an institution of higher learning approved by the administering Secretary; or

(III) is incapable of self support because of a mental or physical incapacity that occurred while the person was considered a dependent of the member or former member under this subparagraph pursuant to subclause (I) or (II);

(iii) is dependent on the member or former member for over one-half of the person's support;

(iv) resides with the member or former member unless separated by the necessity of military service or to receive institutional care as a result of disability or incapacitation or under such other circumstances as the administering Secretary may by regulation prescribe; and

(v) is not a dependent of a member or a former member under any other subparagraph.

(3) The term ''administering Secretaries'' means the Secretaries of executive departments specified in section 1073 of this title as having responsibility for administering this chapter.

(4) The term ''Civilian Health and Medical Program of the Uniformed Services'' means the program authorized under sections 1079 and 1086 of this title and includes contracts entered into under section 1091 or 1097 of this title and demonstration projects under section 1092 of this title.

(5) The term ''covered beneficiary'' means a beneficiary under this chapter other than a beneficiary under section 1074(a) of this title.

(6) The term ''child'', with respect to a member or former member of a uniformed service, means the following:

(A) An unmarried legitimate child.

(B) An unmarried adopted child.

(C) An unmarried stepchild.

(D) An unmarried person—

(i) who is placed in the home of the member or former member by a placement agency (recognized by the Secretary of Defense), or by any other source authorized by State or local law to provide adoption placement, in anticipation of the legal adoption of the person by the member or former member; and

(ii) who otherwise meets the requirements specified in paragraph (2)(D).

(7) The term ''TRICARE program'' means the managed health care program that is established by the Department of Defense under the authority of this chapter, principally section 1097 of this title, and includes the competitive selection of contractors to financially underwrite the delivery of health care services under the Civilian Health and Medical Program of the Uniformed Services.

(8) The term ''custodial care'' means treatment or services, regardless of who recommends such treatment or services or where such treatment or services are provided, that—

(A) can be rendered safely and reasonably by a person who is not medically skilled; or

(B) is or are designed mainly to help the patient with the activities of daily living.

(9) The term ''domiciliary care'' means care provided to a patient in an institution or homelike environment because—

(A) providing support for the activities of daily living in the home is not available or is unsuitable; or

(B) members of the patient's family are unwilling to provide the care.

(10) The term ''health care'' includes mental health care.

(Added Pub. L. 85–861, §1(25)(B), Sept. 2, 1958, 72 Stat. 1446; amended Pub. L. 89–614, §2(1), Sept. 30, 1966, 80 Stat. 862; Pub. L. 89–718, §8(a), Nov. 2, 1966, 80 Stat. 1117; Pub. L. 96–513, title I, §115(b), title V, §511(34)(A), (35), (36), Dec. 12, 1980, 94 Stat. 2877, 2922, 2923; Pub. L. 97–252, title X, §1004(a), Sept. 8, 1982, 96 Stat. 737; Pub. L. 98–525, title VI, §645(a), Oct. 19, 1984, 98 Stat. 2548; Pub. L. 98–557, §19(1), Oct. 30, 1984, 98 Stat. 2869; Pub. L. 99–661, div. A, title VII, §701(b), Nov. 14, 1986, 100 Stat. 3898; Pub. L. 101–189, div. A, title VII, §731(a), Nov. 29, 1989, 103 Stat. 1481; Pub. L. 102–484, div. A, title VII, §706, Oct. 23, 1992, 106 Stat. 2433; Pub. L. 103–160, div. A, title VII, §702(a), Nov. 30, 1993, 107 Stat. 1686; Pub. L. 103–337, div. A, title VII, §701(a), Oct. 5, 1994, 108 Stat. 2797; Pub. L. 105–85, div. A, title VII, §711, Nov. 18, 1997, 111 Stat. 1808; Pub. L. 107–107, div. A, title VII, §701(c), Dec. 28, 2001, 115 Stat. 1160; Pub. L. 109–163, div. A, title V, §592(b), title X, §1057(a)(2), Jan. 6, 2006, 119 Stat. 3280, 3440; Pub. L. 110–181, div. A, title VII, §708(a), Jan. 28, 2008, 122 Stat. 190.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1072(1)	37:402(a)(1).	June 7, 1956, ch. 374, §102(a)(1), (4), 70 Stat. 250.
1072(2)	37:402(a)(4).	

In clause (1), the words ''the armed forces'' are substituted for the words ''the Army, the Navy, the Air Force, the Marine Corps, the Coast Guard'' to reflect section 101(4) of this title.

In clause (2), the words ''or to a person who died while a member or retired member of a uniformed service'' and ''lawful'' are omitted as surplusage. The word ''former'' is substituted for the word ''retired'', since a retired member or a member of the Fleet Reserve or the Fleet Marine Corps Reserve is already included as a ''member'' of an armed force.

Clause (2)(E) combines 37:402(a)(4)(E) and (G).

PRIOR PROVISIONS

A prior section 1072, act Aug. 10, 1956, ch. 1041, 70A Stat. 81, defined terms used in former sections 1071 to 1086 of this title, prior to repeal by Pub. L. 85–861, §36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

2008—Par. (10). Pub. L. 110–181 added par. (10).

2006—Par. (2)(I)(i). Pub. L. 109–163, §1057(a)(2), struck out ''or a Territory'' before ''or possession''.

Par. (6)(D)(i). Pub. L. 109–163, §592(b), inserted '', or by any other source authorized by State or local law to provide adoption placement,'' after ''(recognized by the Secretary of Defense)''.

2001—Pars. (8), (9). Pub. L. 107–107 added pars. (8) and (9).

1997—Par. (7). Pub. L. 105–85 added par. (7).

1994—Par. (2)(D). Pub. L. 103–337, §701(a)(1), substituted ''a child who'' for ''an unmarried legitimate child, including an adopted child or stepchild, who'' in introductory provisions.

Par. (6). Pub. L. 103–337, §701(a)(2), added par. (6).

1993—Par. (2)(I). Pub. L. 103–160 added subpar. (I).

1992—Par. (2)(D). Pub. L. 102–484 added subpar. (D) and struck out former subpar. (D) which read as follows: ''an unmarried legitimate child, including an adopted child or a stepchild, who either—

''(i) has not passed his twenty-first birthday;

''(ii) is incapable of self-support because of a mental or physical incapacity that existed before that birthday and is, or was at the time of the member's or former member's death, in fact dependent on him for over one-half of his support; or

''(iii) has not passed his twenty-third birthday, is enrolled in a full-time course of study in an institution of higher learning approved by the administering Secretary and is, or was at the time of the member's or former member's death, in fact dependent on him for over one-half of his support;''.

1989—Par. (2)(H). Pub. L. 101–189 added subpar. (H).

1986—Par. (1). Pub. L. 99–661, §701(b)(1), substituted ''The term 'uniformed services' means'' for '''Uniformed services' means''.

Par. (2). Pub. L. 99–661, §701(b)(2), substituted ''The term 'dependent', with respect to'' for '''Dependent', with respect to''.

Par. (3). Pub. L. 99–661, §701(b)(3), substituted ''The term 'administering Secretaries' means'' for '''Administering Secretaries' means''.

Pars. (4), (5). Pub. L. 99–661, §701(b)(4), added pars. (4) and (5).

1984—Par. (2)(D)(iii). Pub. L. 98–557, §19(1)(A), substituted reference to the administering Secretary for reference to the Secretary of Defense or the Secretary of Health and Human Services.

Par. (2)(G). Pub. L. 98–525 added subpar. (G).

Par. (3). Pub. L. 98–557, §19(1)(B), added par. (3).

1982—Par. (2)(F). Pub. L. 97–252 added cl. (F).

1980—Pub. L. 96–513, §511(34)(A), substituted in introductory material reference to this chapter for reference to sections 1071–1087 of this title.

Par. (1). Pub. L. 96–513, §511(35), substituted ''National Oceanic and Atmospheric Administration'' for ''Environmental Science Services Administration''.

Par. (2). Pub. L. 96–513, §§115(b), 511(36), substituted ''spouse'' for ''wife'' in cl. (A), struck out cl. (C) ''the husband, if he is in fact dependent on the member or former member for over one-half of his support;'', redesignated cls. (D), (E), and (F) as (C), (D), and (E), respectively, in cl. (C) as so redesignated, struck out '', if, because of mental or physical incapacity he was in fact dependent on the member or former member at the time of her death for over one-half of his support'' after ''the unremarried widower'', and in cl. (D)(iii) as so redesignated, substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

1966—Pub. L. 89–718 substituted ''Environmental Science Services Administration'' for ''Coast and Geodetic Survey'' in clause (1).

Pub. L. 89–614 substituted ''1087'' for ''1085'' in introductory phrase.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 702(b) of Pub. L. 103–160 provided that: ''Section 1072(2)(I) of title 10, United States Code, as added by subsection (a), shall apply with respect to determinations of dependency made on or after July 1, 1994.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 731(d) of Pub. L. 101–189 provided that:

''(1) The amendments made by this section [enacting section 1086a of this title and amending this section and sections 1076 and 1086 of this title] apply to a person referred to in section 1072(2)(H) of title 10, United States Code (as added by subsection (a)), whose decree of divorce, dissolution, or annulment becomes final on or after the date of the enactment of this Act [Nov. 29, 1989].

''(2) The amendments made by this section shall also apply to a person referred to in such section whose decree of divorce, dissolution, or annulment became final during the period beginning on September 29, 1988, and ending on the day before the date of the enactment of this Act, as if the amendments had become effective on September 29, 1988.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 645(d) of Pub. L. 98–525 provided that: ''The amendments made by subsections (a), (b), and (c) [amending this section and provisions set out as a note under section 1408 of this title and enacting provisions set out as a note under this section] shall be effective on January 1, 1985, and shall apply with respect to health care furnished on or after that date.''

EFFECTIVE DATE OF 1982 AMENDMENT; TRANSITION PROVISIONS

Amendment by Pub. L. 97–252 effective Feb. 1, 1983, and applicable in the case of any former spouse of a member or former member of the uniformed services whether final decree of divorce, dissolution, or annulment of marriage of former spouse and such member or former member is dated before, on, or after Feb. 1, 1983, see section 1006 of Pub. L. 97–252, set out as an Effective Date; Transition Provisions note under section 1408 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 115(b) of Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, and amendment by section 511(34)(A), (35), (36) of Pub. L. 96–513 effective Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

For effective date of amendment by Pub. L. 89–614, see section 3 of Pub. L. 89–614, set out as a note under section 1071 of this title.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 89–718, § 8(a), Nov. 2, 1966, 80 Stat. 1117, cited as a credit to this section, was repealed by Pub. L. 97–295, § 6(b), Oct. 12, 1982, 96 Stat. 1314.

CONTINUATION OF INDIVIDUAL CASE MANAGEMENT SERVICES FOR CERTAIN ELIGIBLE BENEFICIARIES

Pub. L. 107–107, div. A, title VII, § 701(d), Dec. 28, 2001, 115 Stat. 1160, provided that:

''(1) Notwithstanding the termination of the Individual Case Management Program by subsection (g) [amending section 1079 of this title and repealing provisions set out as a note under section 1077 of this title], the Secretary of Defense shall, in any case in which the Secretary makes the determination described in paragraph (2), continue to provide payment as if such program were in effect for home health care or custodial care services provided to an eligible beneficiary that would otherwise be excluded from coverage under regulations implementing chapter 55 of title 10, United States Code.

''(2) The determination referred to in paragraph (1) is a determination that discontinuation of payment for services not otherwise provided under such chapter would result in the provision of services inadequate to meet the needs of the eligible beneficiary and would be unjust to such beneficiary.

''(3) For purposes of this subsection, 'eligible beneficiary' means a covered beneficiary (as that term is defined in section 1072 of title 10, United States Code) who, before the effective date of this section [Dec. 28, 2001], was provided custodial care services under the Individual Case Management Program for which the Secretary provided payment.''

IMPROVEMENTS IN ADMINISTRATION OF THE TRICARE PROGRAM; FLEXIBILITY OF CONTRACTING

Pub. L. 107–107, div. A, title VII, § 708(a), Dec. 28, 2001, 115 Stat. 1164, provided that:

''(1) During the one-year period following the date of the enactment of this Act [Dec. 28, 2001], section 1072(7) of title 10, United States Code, shall be deemed to be amended by striking 'the competitive selection of contractors to financially underwrite'.

''(2) The terms and conditions of any contract to provide health care services under the TRICARE program entered into during the period described in paragraph (1) shall not be considered to be modified or terminated as a result of the termination of such period.''

TRANSITIONAL PROVISIONS FOR QUALIFICATION FOR CONVERSION HEALTH POLICIES; PREEXISTING CONDITIONS

Section 731(e) of Pub. L. 101–189 provided that:

''(1) In the case of a person who qualified as a dependent under section 645(c) of the Department of Defense Authorization Act, 1985 (Public Law 98–525; 98 Stat. 2549) [set out below], on September 28, 1988, the Secretary of Defense shall make a conversion health policy available for purchase by the person during the remaining period the person is considered to be a dependent under that section (or within a reasonable time after that period as prescribed by the Secretary of Defense).

''(2) Purchase of a conversion health policy under paragraph (1) by a person shall entitle the person to health care for preexisting conditions in the same manner and to the same extent as provided by section 1086a(b) of title 10, United States Code (as added by subsection (b)), until the end of the one-year period beginning on the later of—

''(A) the date the person is no longer qualified as a dependent under section 645(c) of the Department of Defense Authorization Act, 1985; and

''(B) the date of the purchase of the policy.

''(3) For purposes of this subsection, the term 'conversion health policy' has the meaning given that term in section 1086a(c) of title 10, United States Code (as added by subsection (b)).''

DEPENDENT; QUALIFICATION AS; EFFECTIVE DATE

Section 645(c) of Pub. L. 98–525, as amended by Pub. L. 99–661, div. A, title VI, § 646, Nov. 14, 1986, 100 Stat. 3887; Pub. L. 100–271, § 1, Mar. 29, 1988, 102 Stat. 45; Pub. L. 100–271, § 1, Mar. 29, 1988, 102 Stat. 45, provided that a person who would qualify as a dependent under section 1072(2)(G) of title 10 but for the fact that the person's final decree of divorce, dissolution, or annulment was dated on or after Apr. 1, 1985, would be considered to be a dependent under such section until the later of (1) Dec. 31, 1988, and (2) the last day of the two-year period beginning on the date of such final decree, prior to repeal by Pub. L. 100–456, div. A, title VI, § 651(b), Sept.

29, 1988, 102 Stat. 1990, effective Sept. 29, 1988, or 30 days after the Secretary of Defense first makes available a conversion health policy (as defined in section 1076(f) of title 10), whichever is later.

§ 1073. Administration of this chapter

(a) RESPONSIBLE OFFICIALS.—(1) Except as otherwise provided in this chapter, the Secretary of Defense shall administer this chapter for the armed forces under his jurisdiction, the Secretary of Homeland Security shall administer this chapter for the Coast Guard when the Coast Guard is not operating as a service in the Navy, and the Secretary of Health and Human Services shall administer this chapter for the National Oceanic and Atmospheric Administration and the Public Health Service. This chapter shall be administered consistent with the Assisted Suicide Funding Restriction Act of 1997 (42 U.S.C. 14401 et seq.).

(2) Except as otherwise provided in this chapter, the Secretary of Defense shall have responsibility for administering the TRICARE program and making any decision affecting such program.

(b) STABILITY IN PROGRAM OF BENEFITS.—The Secretary of Defense shall, to the maximum extent practicable, provide a stable program of benefits under this chapter throughout each fiscal year. To achieve the stability in the case of managed care support contracts entered into under this chapter, the contracts shall be administered so as to implement all changes in benefits and administration on a quarterly basis. However, the Secretary of Defense may implement any such change prior to the next fiscal quarter if the Secretary determines that the change would significantly improve the provision of care to eligible beneficiaries under this chapter.

(Added Pub. L. 85–861, § 1(25)(B), Sept. 2, 1958, 72 Stat. 1446; amended Pub. L. 89–614, § 2(1), Sept. 30, 1966, 80 Stat. 862; Pub. L. 89–718, § 8(a), Nov. 2, 1966, 80 Stat. 1117; Pub. L. 96–513, title V, § 511(34)(A), (C), (35), (36), Dec. 12, 1980, 94 Stat. 2922, 2923; Pub. L. 98–557, § 19(2), Oct. 30, 1984, 98 Stat. 2869; Pub. L. 105–12, § 9(h), Apr. 30, 1997, 111 Stat. 27; Pub. L. 106–65, div. A, title VII, § 725, title X, § 1066(a)(7), Oct. 5, 1999, 113 Stat. 698, 770; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 111–383, div. A, title VII, § 711, Jan. 7, 2011, 124 Stat. 4246.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1073	37:402(b).	June 7, 1956, ch. 374, § 102(b), 70 Stat. 251.

The words ''armed forces under his jurisdiction'' are substituted for the words ''Army, Navy, Air Force, and Marine Corps and for the Coast Guard when it is operating as a service in the Navy'' to reflect section 101(4) of this title.

REFERENCES IN TEXT

The Assisted Suicide Funding Restriction Act of 1997, referred to in subsec. (a)(1), is Pub. L. 105–12, Apr. 30, 1997, 111 Stat. 23, which is classified principally to chapter 138 (§ 14401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 14401 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 1073, act Aug. 10, 1956, ch. 1041, 70A Stat. 82, related to right to vote in war-time presidential and congressional election, prior to repeal by Pub. L. 85–861, § 36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§ 1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

2011—Subsec. (a). Pub. L. 111–383 designated existing provisions as par. (1) and added par. (2).

2002—Subsec. (a). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1999—Pub. L. 106–65, § 725, designated existing provisions, as amended by Pub. L. 106–65, § 1066(a)(7), as subsec. (a), inserted heading, and added subsec. (b).

Pub. L. 106–65, § 1066(a)(7), inserted ''(42 U.S.C. 14401 et seq.)'' after ''Act of 1997''.

1997—Pub. L. 105–12 inserted at end ''This chapter shall be administered consistent with the Assisted Suicide Funding Restriction Act of 1997.''

1984—Pub. L. 98–557 inserted provisions which transferred authority to administer chapter for the Coast Guard when the Coast Guard is not operating as a service in the Navy from the Secretary of Health and Human Services to the Secretary of Transportation.

1980—Pub. L. 96–513 substituted in section catchline ''of this chapter'' for ''of sections 1071–1087 of this title'', and substituted in text ''this chapter'' for ''sections 1071–1087 of this title'', ''those sections'', and ''them'', ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare'', and ''National Oceanic and Atmospheric Administration'' for ''Environmental Science Services Administration''.

1966—Pub. L. 89–718 substituted ''Environmental Science Services Administration'' for ''Coast and Geodetic Survey''.

Pub. L. 89–614 substituted ''1087'' for ''1085'' in section catchline and text.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–12 effective Apr. 30, 1997, and applicable to Federal payments made pursuant to obligations incurred after Apr. 30, 1997, for items and services provided on or after such date, subject to also being applicable with respect to contracts entered into, renewed, or extended after Apr. 30, 1997, as well as contracts entered into before Apr. 30, 1997, to the extent permitted under such contracts, see section 11 of Pub. L. 105–12, set out as an Effective Date note under section 14401 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

For effective date of amendment by Pub. L. 89–614, see section 3 of Pub. L. 89–614, set out as a note under section 1071 of this title.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 89–718, § 8(a), Nov. 2, 1966, 80 Stat. 1117, cited as a credit to this section, was repealed by Pub. L. 97–295, § 6(b), Oct. 12, 1982, 96 Stat. 1314.

COOPERATIVE HEALTH CARE AGREEMENTS BETWEEN MILITARY INSTALLATIONS AND NON-MILITARY HEALTH CARE SYSTEMS

Pub. L. 111–84, div. A, title VII, § 713, Oct. 28, 2009, 123 Stat. 2380, provided that:

''(a) AUTHORITY.—The Secretary of Defense may establish cooperative health care agreements between military installations and local or regional health care systems.

''(b) REQUIREMENTS.—In establishing an agreement under subsection (a), the Secretary shall—

''(1) consult with—

''(A) the Secretary of the military department concerned;

''(B) representatives from the military installation selected for the agreement, including the TRICARE managed care support contractor with responsibility for such installation; and

''(C) Federal, State, and local government officials;

''(2) identify and analyze health care services available in the area in which the military installation is located, including such services available at a military medical treatment facility or in the private sector (or a combination thereof);

''(3) determine the cost avoidance or savings resulting from innovative partnerships between the Department of Defense and the private sector; and

''(4) determine the opportunities for and barriers to coordinating and leveraging the use of existing health care resources, including such resources of Federal, State, local, and private entities.

''(c) ANNUAL REPORTS.—Not later than December 31 of each year an agreement entered into under this section is in effect, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on each such agreement. Each report shall include, at a minimum, the following:

''(1) A description of the agreement.

''(2) Any cost avoidance, savings, or increases as a result of the agreement.

''(3) A recommendation for continuing or ending the agreement.

''(d) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as authorizing the provision of health care services at military medical treatment facilities or other facilities of the Department of Defense to individuals who are not otherwise entitled or eligible for such services under chapter 55 of title 10, United States Code.''

INPATIENT MENTAL HEALTH SERVICE

Pub. L. 110–329, div. C, title VIII, § 8095, Sept. 30, 2008, 122 Stat. 3642, provided that: ''None of the funds appropriated by this Act [div. C of Pub. L. 110–329, see Tables for classification], and hereafter, available for the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) or TRICARE shall be available for the reimbursement of any health care provider for inpatient mental health service for care received when a patient is referred to a provider of inpatient mental health care or residential treatment care by a medical or health care professional having an economic interest in the facility to which the patient is referred: *Provided*, That this limitation does not apply in the case of inpatient mental health services provided under the program for persons with disabilities under subsection (d) of section 1079 of title 10, United States Code, provided as partial hospital care, or provided pursuant to a waiver authorized by the Secretary of Defense because of medical or psychological circumstances of the patient that are confirmed by a health professional who is not a Federal employee after a review, pursuant to rules prescribed by the Secretary, which takes into account the appropriate level of care for the patient, the intensity of services required by the patient, and the availability of that care.''

SURVEYS ON CONTINUED VIABILITY OF TRICARE STANDARD AND TRICARE EXTRA

Pub. L. 110–181, div. A, title VII, § 711, Jan. 28, 2008, 122 Stat. 190, provided that:

''(a) REQUIREMENT FOR SURVEYS.—

''(1) IN GENERAL.—The Secretary of Defense shall conduct surveys of health care providers and beneficiaries who use TRICARE in the United States to determine, utilizing a reconciliation of the responses of providers and beneficiaries to such surveys, each of the following:

''(A) How many health care providers in TRICARE Prime service areas selected under paragraph (3)(A) are accepting new patients under each of TRICARE Standard and TRICARE Extra.

''(B) How many health care providers in geographic areas in which TRICARE Prime is not offered are accepting patients under each of TRICARE Standard and TRICARE Extra.

''(C) The availability of mental health care providers in TRICARE Prime service areas selected under paragraph (3)(C) and in geographic areas in which TRICARE Prime is not offered.

''(2) BENCHMARKS.—The Secretary shall establish for purposes of the surveys required by paragraph (1) benchmarks for primary care and specialty care providers, including mental health care providers, to be utilized to determine the adequacy of the availability of health care providers to beneficiaries eligible for TRICARE.

''(3) SCOPE OF SURVEYS.—The Secretary shall carry out the surveys required by paragraph (1) as follows:

''(A) In the case of the surveys required by subparagraph (A) of that paragraph, in at least 20 TRICARE Prime service areas in the United States in each of fiscal years 2008 through 2011.

''(B) In the case of the surveys required by subparagraph (B) of that paragraph, in 20 geographic areas in which TRICARE Prime is not offered and in which significant numbers of beneficiaries who are members of the Selected Reserve reside.

''(C) In the case of the surveys required by subparagraph (C) of that paragraph, in at least 40 geographic areas.

''(4) PRIORITY FOR SURVEYS.—In prioritizing the areas which are to be surveyed under paragraph (1), the Secretary shall—

''(A) consult with representatives of TRICARE beneficiaries and health care and mental health care providers to identify locations where TRICARE Standard beneficiaries are experiencing significant levels of access-to-care problems under TRICARE Standard or TRICARE Extra;

''(B) give a high priority to surveying health care and mental health care providers in such areas; and

''(C) give a high priority to surveying beneficiaries and providers located in geographic areas with high concentrations of members of the Selected Reserve.

''(5) INFORMATION FROM PROVIDERS.—The surveys required by paragraph (1) shall include questions seeking to determine from health care and mental health care providers the following:

''(A) Whether the provider is aware of the TRICARE program.

''(B) What percentage of the provider's current patient population uses any form of TRICARE.

''(C) Whether the provider accepts patients for whom payment is made under the medicare program for health care and mental health care services.

''(D) If the provider accepts patients referred to in subparagraph (C), whether the provider would accept additional such patients who are not in the provider's current patient population.

''(6) INFORMATION FROM BENEFICIARIES.—The surveys required by paragraph (1) shall include questions seeking information to determine from TRICARE beneficiaries whether they have difficulties in finding health care and mental health care providers willing to provide services under TRICARE Standard or TRICARE Extra.

''(b) GAO REVIEW.—

''(1) ONGOING REVIEW.—The Comptroller General shall, on an ongoing basis, review—

''(A) the processes, procedures, and analysis used by the Department of Defense to determine the adequacy of the number of health care and mental health care providers—

''(i) that currently accept TRICARE Standard or TRICARE Extra beneficiaries as patients under TRICARE Standard in each TRICARE area as of the date of completion of the review; and

''(ii) that would accept TRICARE Standard or TRICARE Extra beneficiaries as new patients under TRICARE Standard or TRICARE Extra, as applicable, within a reasonable time after the date of completion of the review; and

''(B) the actions taken by the Department of Defense to ensure ready access of TRICARE Standard beneficiaries to health care and mental health care under TRICARE Standard in each TRICARE area, including any pending or resolved requests for waiver of payment limits in order to improve access to health care or mental health care in a specific geographic area.

''(2) REPORTS.—The Comptroller General shall submit to the Committees on Armed Services of the Senate and the House of Representatives on a bi-annual basis a report on the results of the review under paragraph (1). Each report shall include the following:

''(A) An analysis of the adequacy of the surveys under subsection (a).

''(B) An identification of any impediments to achieving adequacy of availability of health care and mental health care under TRICARE Standard or TRICARE Extra.

''(C) An assessment of the adequacy of Department of Defense education programs to inform health care and mental health care providers about TRICARE Standard and TRICARE Extra.

''(D) An assessment of the adequacy of Department of Defense initiatives to encourage health care and mental health care providers to accept patients under TRICARE Standard and TRICARE Extra.

''(E) An assessment of the adequacy of information available to TRICARE Standard beneficiaries to facilitate access by such beneficiaries to health care and mental health care under TRICARE Standard and TRICARE Extra.

''(F) An assessment of any need for adjustment of health care and mental health care provider payment rates to attract participation in TRICARE Standard by appropriate numbers of health care and mental health care providers.

''(G) An assessment of the adequacy of Department of Defense programs to inform members of the Selected Reserve about the TRICARE Reserve Select program.

''(H) An assessment of the ability of TRICARE Reserve Select beneficiaries to receive care in their geographic area.

''(c) EFFECTIVE DATE.—This section shall take effect on October 1, 2007.

''(d) REPEAL OF SUPERSEDED REQUIREMENTS AND AUTHORITY.—Section 723 of the National Defense Authorization Act for Fiscal Year 2004 (10 U.S.C. 1073 note) is repealed, effective as of October 1, 2007.

''(e) DEFINITIONS.—In this section:

''(1) The term 'TRICARE Extra' means the option of the TRICARE program under which TRICARE Standard beneficiaries may obtain discounts on cost-sharing as a result of using TRICARE network providers.

''(2) The term 'TRICARE Prime' means the managed care option of the TRICARE program.

''(3) The term 'TRICARE Prime service area' means a geographic area designated by the Department of Defense in which managed care support contractors develop a managed care network under TRICARE Prime.

''(4) The term 'TRICARE Standard' means the option of the TRICARE program that is also known as the Civilian Health and Medical Program of the Uniformed Services, as defined in section 1072(4) of title 10, United States Code.

''(5) The term 'TRICARE Reserve Select' means the option of the TRICARE program that allows members of the Selected Reserve to enroll in TRICARE Standard, pursuant to section 1076d of title 10, United States Code.

''(6) The term 'member of the Selected Reserve' means a member of the Selected Reserve of the Ready Reserve of a reserve component of the Armed Forces.

''(7) The term 'United States' means the United States (as defined in section 101(a) of title 10, United States Code), its possessions (as defined in such section), and the Commonwealth of Puerto Rico.''

REGULATIONS TO ESTABLISH CRITERIA FOR LICENSED OR CERTIFIED MENTAL HEALTH COUNSELORS UNDER TRICARE

Pub. L. 111–383, div. A, title VII, §724, Jan. 7, 2011, 124 Stat. 4252, provided that: ''Not later than June 20, 2011, the Secretary of Defense shall prescribe the regulations required by section 717 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 10 U.S.C. 1073 note).''

Pub. L. 110–181, div. A, title VII, §717(a), Jan. 28, 2008, 122 Stat. 196, provided that: ''The Secretary of Defense shall prescribe regulations to establish criteria that licensed or certified mental health counselors shall meet in order to be able to independently provide care to TRICARE beneficiaries and receive payment under the TRICARE program for such services. The criteria shall include requirements for education level, licensure, certification, and clinical experience as considered appropriate by the Secretary.''

INSPECTION OF MILITARY MEDICAL TREATMENT FACILITIES, MILITARY QUARTERS HOUSING MEDICAL HOLD PERSONNEL, AND MILITARY QUARTERS HOUSING MEDICAL HOLDOVER PERSONNEL

Pub. L. 110–28, title III, §3307, May 25, 2007, 121 Stat. 137, provided that:

''(a) INSPECTION OF MILITARY MEDICAL TREATMENT FACILITIES, MILITARY QUARTERS HOUSING MEDICAL HOLD PERSONNEL, AND MILITARY QUARTERS HOUSING MEDICAL HOLDOVER PERSONNEL.—

''(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [May 25, 2007], and annually thereafter, the Secretary of Defense shall inspect each facility of the Department of Defense as follows:

''(A) Each military medical treatment facility.

''(B) Each military quarters housing medical hold personnel.

''(C) Each military quarters housing medical holdover personnel.

''(2) PURPOSE.—The purpose of an inspection under this subsection is to ensure that the facility or quarters concerned meets acceptable standards for the maintenance and operation of medical facilities, quarters housing medical hold personnel, or quarters housing medical holdover personnel, as applicable.

''(b) ACCEPTABLE STANDARDS.—For purposes of this section, acceptable standards for the operation and maintenance of military medical treatment facilities, military quarters housing medical hold personnel, or military quarters housing medical holdover personnel are each of the following:

''(1) Generally accepted standards for the accreditation of medical facilities, or for facilities used to quarter individuals with medical conditions that may require medical supervision, as applicable, in the United States.

''(2) Where appropriate, standards under the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

''(c) ADDITIONAL INSPECTIONS ON IDENTIFIED DEFICIENCIES.—

''(1) IN GENERAL.—In the event a deficiency is identified pursuant to subsection (a) at a facility or quarters described in paragraph (1) of that subsection—

''(A) the commander of such facility or quarters, as applicable, shall submit to the Secretary a detailed plan to correct the deficiency; and

''(B) the Secretary shall reinspect such facility or quarters, as applicable, not less often than once every 180 days until the deficiency is corrected.

''(2) CONSTRUCTION WITH OTHER INSPECTIONS.—An inspection of a facility or quarters under this subsection is in addition to any inspection of such facility or quarters under subsection (a).

''(d) REPORTS ON INSPECTIONS.—A complete copy of the report on each inspection conducted under subsections (a) and (c) shall be submitted in unclassified form to the applicable military medical command and to the congressional defense committees.

''(e) REPORT ON STANDARDS.—In the event no standards for the maintenance and operation of military medical treatment facilities, military quarters housing medical hold personnel, or military quarters housing medical holdover personnel exist as of the date of the enactment of this Act, or such standards as do exist do not meet acceptable standards for the maintenance and operation of such facilities or quarters, as the case may be, the Secretary shall, not later than 30 days after that date, submit to the congressional defense committees a report setting forth the plan of the Secretary to ensure—

''(1) the adoption by the Department of standards for the maintenance and operation of military medical facilities, military quarters housing medical hold personnel, or military quarters housing medical holdover personnel, as applicable, that meet—

''(A) acceptable standards for the maintenance and operation of such facilities or quarters, as the case may be; and

''(B) where appropriate, standards under the Americans with Disabilities Act of 1990; and

''(2) the comprehensive implementation of the standards adopted under paragraph (1) at the earliest date practicable.''

REQUIREMENTS FOR SUPPORT OF MILITARY TREATMENT FACILITIES BY CIVILIAN CONTRACTORS UNDER TRICARE

Pub. L. 109–364, div. A, title VII, § 732, Oct. 17, 2006, 120 Stat. 2296, provided that:

''(a) ANNUAL INTEGRATED REGIONAL REQUIREMENTS ON SUPPORT.—The Regional Director of each region under the TRICARE program shall develop each year integrated, comprehensive requirements for the support of military treatment facilities in such region that is provided by contract civilian health care and administrative personnel under the TRICARE program.

''(b) PURPOSES.—The purposes of the requirements established under subsection (a) shall be as follows:

''(1) To ensure consistent standards of quality in the support of military treatment facilities by contract civilian health care personnel under the TRICARE program.

''(2) To identify targeted, actionable opportunities throughout each region of the TRICARE program for the most efficient and cost effective delivery of health care and support of military treatment facilities.

''(3) To ensure the most effective use of various available contracting methods in securing support of military treatment facilities by civilian health care personnel under the TRICARE program, including resource-sharing and clinical support agreements, direct contracting, and venture capital investments.

''(c) FACILITATION AND ENHANCEMENT OF CONTRACTOR SUPPORT.—

''(1) IN GENERAL.—The Secretary of Defense shall take appropriate actions to facilitate and enhance the support of military treatment facilities under the TRICARE program in order to assure maximum quality and productivity.

''(2) ACTIONS.—In taking actions under paragraph (1), the Secretary shall—

''(A) require consistent standards of quality for contract civilian health care personnel providing support of military treatment facilities under the TRICARE program, including—

''(i) consistent credentialing requirements among military treatment facilities;

''(ii) consistent performance standards for private sector companies providing health care staffing services to military treatment facilities and clinics, including, at a minimum, those standards established for accreditation of health care staffing firms by the Joint Commission on the Accreditation of Health Care Organizations Health Care Staffing Standards; and

''(iii) additional standards covering—

''(I) financial stability;

''(II) medical management;

''(III) continuity of operations;

''(IV) training;

''(V) employee retention;

''(VI) access to contractor data; and

''(VII) fraud prevention;

''(B) ensure the availability of adequate and sustainable funding support for projects which produce a return on investment to the military treatment facilities;

''(C) ensure that a portion of any return on investment is returned to the military treatment facility to which such savings are attributable;

''(D) remove financial disincentives for military treatment facilities and civilian contractors to initiate and sustain agreements for the support of military treatment facilities by such contractors under the TRICARE program;

''(E) provide for a consistent methodology across all regions of the TRICARE program for developing cost benefit analyses of agreements for the support of military treatment facilities by civilian contractors under the TRICARE program based on actual cost and utilization data within each region of the TRICARE program; and

''(F) provide for a system for monitoring the performance of significant projects for support of military treatment facilities by a civilian contractor under the TRICARE program.

''(d) REPORTS TO CONGRESS.—

''(1) ANNUAL REPORTS REQUIRED.—Not later than February 1, 2008, and each year thereafter, the Secretary, in coordination with the military departments, shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the support of military treatment facilities by civilian contractors under the TRICARE program during the preceding fiscal year.

''(2) ELEMENTS.—Each report shall set forth, for the fiscal year covered by such report, the following:

''(A) The level of support of military health treatment facilities that is provided by contract civilian health care personnel under the TRICARE program in each region of the TRICARE program.

''(B) An assessment of the compliance of such support with regional requirements under subsection (a).

''(C) The number and type of agreements for the support of military treatment facilities by contract civilian health care personnel.

''(D) The standards of quality in effect under the requirements under subsection (a).

''(E) The savings anticipated, and any savings achieved, as a result of the implementation of the requirements under subsection (a).

''(F) An assessment of the compliance of contracts for health care staffing services for Department of Defense facilities with the requirements of subsection (c)(2)(A).

''(e) EFFECTIVE DATE.—This section shall take effect on October 1, 2006.''

TRICARE STANDARD IN TRICARE REGIONAL OFFICES

Pub. L. 109–163, div. A, title VII, § 716, Jan. 6, 2006, 119 Stat. 3345, provided that:

''(a) RESPONSIBILITIES OF TRICARE REGIONAL OFFICE.—The responsibilities of each TRICARE Regional

Office shall include the monitoring, oversight, and improvement of the TRICARE Standard option in the TRICARE region concerned, including—

''(1) identifying health care providers who will participate in the TRICARE program and provide the TRICARE Standard option under that program;

''(2) communicating with beneficiaries who receive the TRICARE Standard option;

''(3) outreach to community health care providers to encourage their participation in the TRICARE program; and

''(4) publication of information that identifies health care providers in the TRICARE region concerned who provide the TRICARE Standard option.

''(b) ANNUAL REPORT.—The Secretary of Defense shall submit an annual report to the Committees on Armed Services of the Senate and the House of Representatives on the monitoring, oversight, and improvement of TRICARE Standard activities of each TRICARE Regional Office. The report shall include—

''(1) a description of the activities of the TRICARE Regional Office to monitor, oversee, and improve the TRICARE Standard option;

''(2) an assessment of the participation of eligible health care providers in TRICARE Standard in each TRICARE region; and

''(3) a description of any problems or challenges that have been identified by both providers and beneficiaries with respect to use of the TRICARE Standard option and the actions undertaken to address such problems or challenges.

''(c) DEFINITION.—In this section, the term 'TRICARE Standard' or 'TRICARE standard option' means the Civilian Health and Medical Program of the Uniformed Services option under the TRICARE program.''

QUALIFICATIONS FOR INDIVIDUALS SERVING AS TRICARE REGIONAL DIRECTORS

Pub. L. 109–163, div. A, title VII, §717, Jan. 6, 2006, 119 Stat. 3345, provided that:

''(a) QUALIFICATIONS.—Effective as of the date of the enactment of this Act [Jan. 6, 2006], no individual may be selected to serve in the position of Regional Director under the TRICARE program unless the individual—

''(1) is—

''(A) an officer of the Armed Forces in a general or flag officer grade;

''(B) a civilian employee of the Department of Defense in the Senior Executive Service; or

''(C) a civilian employee of the Federal Government in a department or agency other than the Department of Defense, or a civilian working in the private sector, who has experience in a position comparable to an officer described in subparagraph (A) or a civilian employee described in subparagraph (B); and

''(2) has at least 10 years of experience, or equivalent expertise or training, in the military health care system, managed care, and health care policy and administration.

''(b) TRICARE PROGRAM DEFINED.—In this section, the term 'TRICARE program' has the meaning given such term in section 1072(7) of title 10, United States Code.''

PILOT PROJECTS ON PEDIATRIC EARLY LITERACY AMONG CHILDREN OF MEMBERS OF THE ARMED FORCES

Pub. L. 109–163, div. A, title VII, §740, Jan. 6, 2006, 119 Stat. 3359, as amended by Pub. L. 109–364, div. A, title X, §1071(e)(8), Oct. 17, 2006, 120 Stat. 2402, provided that:

''(a) PILOT PROJECTS AUTHORIZED.—The Secretary of Defense may conduct pilot projects to assess the feasibility, advisability, and utility of encouraging pediatric early literacy among the children of members of the Armed Forces.

''(b) LOCATIONS.—

''(1) IN GENERAL.—The pilot projects conducted under subsection (a) shall be conducted at not more than 20 military medical treatment facilities designated by the Secretary for purposes of this section.

''(2) CO-LOCATION WITH CERTAIN INSTALLATIONS.—In designating military medical treatment facilities under paragraph (1), the Secretary shall, to the extent practicable, designate facilities that are located on, or co-located with, military installations at which the mobilization or demobilization of members of the Armed Forces occurs.

''(c) ACTIVITIES.—Activities under the pilot projects conducted under subsection (a) shall include the following:

''(1) The provision of training to health care providers and other appropriate personnel on early literacy promotion.

''(2) The purchase and distribution of children's books to members of the Armed Forces, their spouses, and their children.

''(3) The modification of treatment facility and clinic waiting rooms to include a full selection of literature for children.

''(4) The dissemination to members of the Armed Forces and their spouses of parent education materials on pediatric early literacy.

''(5) Such other activities as the Secretary considers appropriate.

''(d) REPORT.—

''(1) IN GENERAL.—Not later than March 1, 2007, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the pilot projects conducted under this section.

''(2) ELEMENTS.—The report under paragraph (1) shall include—

''(A) a description of the pilot projects conducted under this section, including the location of each pilot project and the activities conducted under each pilot project; and

''(B) an assessment of the feasibility, advisability, and utility of encouraging pediatric early literacy among the children of members of the Armed Forces.''

SURVEYS ON CONTINUED VIABILITY OF TRICARE STANDARD

Pub. L. 108–136, div. A, title VII, §723, Nov. 24, 2003, 117 Stat. 1532, as amended by Pub. L. 109–163, div. A, title VII, §711, Jan. 6, 2006, 119 Stat. 3343, required the Secretary of Defense to conduct surveys in the TRICARE market areas in the United States to determine how many health care providers were accepting new patients under TRICARE Standard in each such market area, and required the Comptroller General to review the processes, procedures, and analysis used by the Department of Defense to determine the adequacy of the number of health care providers and the actions taken by the Department of Defense to ensure ready access of TRICARE Standard beneficiaries to health care under TRICARE Standard in each TRICARE market area, prior to repeal by Pub. L. 110–181, div. A, title VII, §711(d), Jan. 28, 2008, 122 Stat. 193, eff. Oct. 1, 2007.

MODERNIZATION OF TRICARE BUSINESS PRACTICES AND INCREASE OF USE OF MILITARY TREATMENT FACILITIES

Pub. L. 106–398, §1 [[div. A], title VII, §723], Oct. 30, 2000, 114 Stat. 1654, 1654A–186, provided that:

''(a) REQUIREMENT TO IMPLEMENT INTERNET-BASED SYSTEM.—Not later than October 1, 2001, the Secretary of Defense shall implement a system to simplify and make accessible through the use of the Internet, through commercially available systems and products, critical administrative processes within the military health care system and the TRICARE program. The purposes of the system shall be to enhance efficiency, improve service, and achieve commercially recognized standards of performance.

''(b) ELEMENTS OF SYSTEM.—The system required by subsection (a)—

''(1) shall comply with patient confidentiality and security requirements, and incorporate data requirements, that are currently widely used by insurers under medicare and commercial insurers;

''(2) shall be designed to achieve improvements with respect to—

''(A) the availability and scheduling of appointments;

''(B) the filing, processing, and payment of claims;

''(C) marketing and information initiatives;

''(D) the continuation of enrollments without expiration;

''(E) the portability of enrollments nationwide;

''(F) education of beneficiaries regarding the military health care system and the TRICARE program; and

''(G) education of health care providers regarding such system and program; and

''(3) may be implemented through a contractor under TRICARE Prime.

''(c) AREAS OF IMPLEMENTATION.—The Secretary shall implement the system required by subsection (a) in at least one region under the TRICARE program.

''(d) PLAN FOR IMPROVED PORTABILITY OF BENEFITS.—Not later than March 15, 2001, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a plan to provide portability and reciprocity of benefits for all enrollees under the TRICARE program throughout all TRICARE regions.

''(e) INCREASE OF USE OF MILITARY MEDICAL TREATMENT FACILITIES.—The Secretary shall initiate a program to maximize the use of military medical treatment facilities by improving the efficiency of health care operations in such facilities.

''(f) DEFINITION.—In this section the term 'TRICARE program' has the meaning given such term in section 1072 of title 10, United States Code.''

IMPROVEMENT OF ACCESS TO HEALTH CARE UNDER THE TRICARE PROGRAM

Pub. L. 107–107, div. A, title VII, § 735(e), Dec. 28, 2001, 115 Stat. 1172, directed the Secretary of Defense to submit to committees of Congress, not later than Mar. 1, 2002, a report on the Secretary's plans for implementing Pub. L. 106–398, § 1 [[div. A], title VII, § 721], as amended, set out below.

Pub. L. 106–398, § 1 [[div. A], title VII, § 721], Oct. 30, 2000, 114 Stat. 1654, 1654A–184, as amended by Pub. L. 107–107, div. A, title VII, § 735(a)–(d), Dec. 28, 2001, 115 Stat. 1171, 1172, provided that:

''(a) WAIVER OF NONAVAILABILITY STATEMENT OR PREAUTHORIZATION.—In the case of a covered beneficiary under TRICARE Standard pursuant to chapter 55 of title 10, United States Code, the Secretary of Defense may not require with regard to authorized health care services (other than mental health services) under such chapter that the beneficiary—

''(1) obtain a nonavailability statement or preauthorization from a military medical treatment facility in order to receive the services from a civilian provider; or

''(2) obtain a nonavailability statement for care in specialized treatment facilities outside the 200-mile radius of a military medical treatment facility.

''(b) WAIVER AUTHORITY.—The Secretary may waive the prohibition in subsection (a) if—

''(1) the Secretary—

''(A) demonstrates that significant costs would be avoided by performing specific procedures at the affected military medical treatment facility or facilities;

''(B) determines that a specific procedure must be provided at the affected military medical treatment facility or facilities to ensure the proficiency levels of the practitioners at the facility or facilities; or

''(C) determines that the lack of nonavailability statement data would significantly interfere with TRICARE contract administration;

''(2) the Secretary provides notification of the Secretary's intent to grant a waiver under this subsection to covered beneficiaries who receive care at the military medical treatment facility or facilities that will be affected by the decision to grant a waiver under this subsection;

''(3) the Secretary notifies the Committees on Armed Services of the House of Representatives and the Senate of the Secretary's intent to grant a waiver under this subsection, the reason for the waiver, and the date that a nonavailability statement will be required; and

''(4) 60 days have elapsed since the date of the notification described in paragraph (3).

''(c) WAIVER EXCEPTION FOR MATERNITY CARE.—Subsection (b) shall not apply with respect to maternity care.

''(d) EFFECTIVE DATE.—This section shall take effect on the earlier of the following:

''(1) The date that a new contract entered into by the Secretary to provide health care services under TRICARE Standard takes effect.

''(2) The date that is two years after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2002 [Dec. 28, 2001].''.

Pub. L. 106–65, div. A, title VII, § 712(a), (b), Oct. 5, 1999, 113 Stat. 687, provided that:

''(a) ACCESS.—The Secretary of Defense shall, to the maximum extent practicable, minimize the authorization and certification requirements imposed on covered beneficiaries under the TRICARE program as a condition of access to benefits under that program.

''(b) REPORT ON INITIATIVES TO IMPROVE ACCESS.—Not later than March 31, 2000, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on specific actions taken to—

''(1) reduce the requirements for preauthorization for care under the TRICARE program;

''(2) reduce the requirements for beneficiaries to obtain preventive services, such as obstetric or gynecologic examinations, mammograms for females over 35 years of age, and urological examinations for males over the age of 60 without preauthorization; and

''(3) reduce the requirements for statements of nonavailability of services.''

TRICARE MANAGED CARE SUPPORT CONTRACTS

Pub. L. 106–398, § 1 [[div. A], title VII, § 724], Oct. 30, 2000, 114 Stat. 1654, 1654A–187, provided that:

''(a) AUTHORITY.—Notwithstanding any other provision of law and subject to subsection (b), any TRICARE managed care support contract in effect, or in the final stages of acquisition, on September 30, 1999, may be extended for four years.

''(b) CONDITIONS.—Any extension of a contract under subsection (a)—

''(1) may be made only if the Secretary of Defense determines that it is in the best interest of the United States to do so; and

''(2) shall be based on the price in the final best and final offer for the last year of the existing contract as adjusted for inflation and other factors mutually agreed to by the contractor and the Federal Government.''

Pub. L. 106–259, title VIII, § 8090, Aug. 9, 2000, 114 Stat. 694, provided that: ''Notwithstanding any other provision of law, the TRICARE managed care support contracts in effect, or in final stages of acquisition as of September 30, 2000, may be extended for 2 years: *Provided*, That any such extension may only take place if the Secretary of Defense determines that it is in the best interest of the Government: *Provided further*, That any contract extension shall be based on the price in the final best and final offer for the last year of the existing contract as adjusted for inflation and other factors mutually agreed to by the contractor and the Government: *Provided further*, That notwithstanding any other provision of law, all future TRICARE managed care support contracts replacing contracts in effect, or in the final stages of acquisition as of September 30, 2000, may include a base contract period for transition and up to seven 1-year option periods.''

Similar provisions were contained in the following prior appropriation act:

Pub. L. 106–79, title VIII, § 8095, Oct. 25, 1999, 113 Stat. 1254.

Pub. L. 105–262, title VIII, § 8107, Oct. 17, 1998, 112 Stat. 2321.

REDESIGN OF MILITARY PHARMACY SYSTEM

Pub. L. 105–261, div. A, title VII, § 703, Oct. 17, 1998, 112 Stat. 2057, provided that:

''(a) PLAN REQUIRED.—The Secretary of Defense shall submit to Congress a plan that would provide for a system-wide redesign of the military and contractor retail and mail-order pharmacy system of the Department of Defense by incorporating 'best business practices' of the private sector. The Secretary shall work with contractors of TRICARE retail pharmacy and national mail-order pharmacy programs to develop a plan for the redesign of the pharmacy system that—

''(1) may include a plan for an incentive-based formulary for military medical treatment facilities and contractors of TRICARE retail pharmacies and the national mail-order pharmacy; and

''(2) shall include a plan for each of the following:

''(A) A uniform formulary for such facilities and contractors.

''(B) A centralized database that integrates the patient databases of pharmacies of military medical treatment facilities and contractor retail and mail-order programs to implement automated prospective drug utilization review systems.

''(C) A system-wide drug benefit for covered beneficiaries under chapter 55 of title 10, United States Code, who are entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.).

''(b) SUBMISSION OF PLAN.—The Secretary shall submit the plan required under subsection (a) not later than March 1, 1999.

''(c) SUSPENSION OF IMPLEMENTATION OF PROGRAM.—The Secretary shall suspend any plan to establish a national retail pharmacy program for the Department of Defense until—

''(1) the plan required under subsection (a) is submitted; and

''(2) the Secretary implements cost-saving reforms with respect to the military and contractor retail and mail order pharmacy system.''

Pub. L. 105–261, div. A, title VII, § 723, Oct. 17, 1998, 112 Stat. 2068, as amended by Pub. L. 106–65, div. A, title X, § 1067(3), Oct. 5, 1999, 113 Stat. 774; Pub. L. 106–398, § 1 [[div. A], title VII, § 711(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–175, provided that:

''(a) IN GENERAL.—Not later than April 1, 2001, the Secretary of Defense shall implement, with respect to eligible individuals described in subsection (e), the redesign of the pharmacy system under TRICARE (including the mail-order and retail pharmacy benefit under TRICARE) to incorporate 'best business practices' of the private sector in providing pharmaceuticals, as developed under the plan described in section 703 [set out as a note above].

''(b) PROGRAM REQUIREMENTS.—The same coverage for pharmacy services and the same requirements for cost sharing and reimbursement as are applicable under section 1086 of title 10, United States Code, shall apply with respect to the program required by subsection (a).

''(c) EVALUATION.—The Secretary shall provide for an evaluation of the implementation of the redesign of the pharmacy system under TRICARE under this section by an appropriate person or entity that is independent of the Department of Defense. The evaluation shall include the following:

''(1) An analysis of the costs of the implementation of the redesign of the pharmacy system under TRICARE and to the eligible individuals who participate in the system.

''(2) An assessment of the extent to which the implementation of such system satisfies the requirements of the eligible individuals for the health care services available under TRICARE.

''(3) An assessment of the effect, if any, of the implementation of the system on military medical readiness.

''(4) A description of the rate of the participation in the system of the individuals who were eligible to participate.

''(5) An evaluation of any other matters that the Secretary considers appropriate.

''(d) REPORTS.—The Secretary shall submit two reports on the results of the evaluation under subsection (c), together with the evaluation, to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives. The first report shall be submitted not later than December 31, 2001, and the second report shall be submitted not later than December 31, 2003.

''(e) ELIGIBLE INDIVIDUALS.—(1) An individual is eligible to participate under this section if the individual is a member or former member of the uniformed services described in section 1074(b) of title 10, United States Code, a dependent of the member described in section 1076(a)(2)(B) or 1076(b) of that title, or a dependent of a member of the uniformed services who died while on active duty for a period of more than 30 days, who—

''(A) is 65 years of age or older;

''(B) is entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.); and

''(C) except as provided in paragraph (2), is enrolled in the supplemental medical insurance program under part B of such title XVIII (42 U.S.C. 1395j et seq.).

''(2) Paragraph (1)(C) shall not apply in the case of an individual who, before April 1, 2001, has attained the age of 65 and did not enroll in the program described in such paragraph.''

SYSTEM FOR TRACKING DATA AND MEASURING PERFORMANCE IN MEETING TRICARE ACCESS STANDARDS

Pub. L. 105–261, div. A, title VII, § 713, Oct. 17, 1998, 112 Stat. 2060, provided that:

''(a) REQUIREMENT TO ESTABLISH SYSTEM.—(1) The Secretary of Defense shall establish a system—

''(A) to track data regarding access of covered beneficiaries under chapter 55 of title 10, United States Code, to primary health care under the TRICARE program; and

''(B) to measure performance in increasing such access against the primary care access standards established by the Secretary under the TRICARE program.

''(2) In implementing the system described in paragraph (1), the Secretary shall collect data on the timeliness of appointments and precise waiting times for appointments in order to measure performance in meeting the primary care access standards established under the TRICARE program.

''(b) DEADLINE FOR ESTABLISHMENT.—The Secretary shall establish the system described in subsection (a) not later than April 1, 1999.''

TRICARE AS SUPPLEMENT TO MEDICARE DEMONSTRATION

Pub. L. 105–261, div. A, title VII, § 722, Oct. 17, 1998, 112 Stat. 2065, as amended by Pub. L. 106–65, div. A, title X, §§ 1066(b)(6), 1067(3), Oct. 5, 1999, 113 Stat. 773, 774, required the Secretary of Defense to carry out a demonstration project (known as the TRICARE Senior Supplement) in order to assess the feasibility and advisability of providing medical care coverage under the TRICARE program to certain members and former members of the uniformed services and their dependents and further required the Secretary to evaluate and terminate the project and submit a report on the evaluation to Congress not later than Dec. 31, 2002.

STUDY CONCERNING PROVISION OF COMPARATIVE INFORMATION

Pub. L. 105–85, div. A, title VII, § 703, Nov. 18, 1997, 111 Stat. 1807, provided that:

''(a) STUDY.—The Secretary of Defense shall conduct a study concerning the provision of the information described in subsection (b) to beneficiaries under the TRICARE program established under the authority of chapter 55 of title 10, United States Code, and prepare and submit to Congress a report concerning such study.

''(b) PROVISION OF COMPARATIVE INFORMATION.—Information described in this subsection, with respect to a managed care entity that contracts with the Secretary of Defense to provide medical assistance under the program described in subsection (a), shall include the following:

''(1) The benefits covered by the entity involved, including—

''(A) covered items and services beyond those provided under a traditional fee-for-service program;

''(B) any beneficiary cost sharing; and

''(C) any maximum limitations on out-of-pocket expenses.

''(2) The net monthly premium, if any, under the entity.

''(3) The service area of the entity.

''(4) To the extent available, quality and performance indicators for the benefits under the entity (and how they compare to such indicators under the traditional fee-for-service programs in the area involved), including—

''(A) disenrollment rates for enrollees electing to receive benefits through the entity for the previous two years (excluding disenrollment due to death or moving outside the service area of the entity);

''(B) information on enrollee satisfaction;

''(C) information on health process and outcomes;

''(D) grievance procedures;

''(E) the extent to which an enrollee may select the health care provider of their [sic] choice, including health care providers within the network of the entity and out-of-network health care providers (if the entity covers out-of-network items and services); and

''(F) an indication of enrollee exposure to balance billing and the restrictions on coverage of items and services provided to such enrollee by an out-of-network health care provider.

''(5) Whether the entity offers optional supplemental benefits and the terms and conditions (including premiums) for such coverage.

''(6) An overall summary description as to the method of compensation of participating physicians.''

DISCLOSURE OF CAUTIONARY INFORMATION ON PRESCRIPTION MEDICATIONS

Pub. L. 105–85, div. A, title VII, §744, Nov. 18, 1997, 111 Stat. 1820, provided that:

''(a) REGULATIONS REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Nov. 18, 1997], the Secretary of Defense, in consultation with the administering Secretaries referred to in section 1073 of title 10, United States Code, shall prescribe regulations to require each source described in subsection (d) that dispenses a prescription medication to a beneficiary under chapter 55 of such title to include with the medication the written cautionary information required by subsection (b).

''(b) INFORMATION TO BE DISCLOSED.—Information required to be disclosed about a medication under the regulations shall include appropriate cautions about usage of the medication, including possible side effects and potentially hazardous interactions with foods.

''(c) FORM OF INFORMATION.—The regulations shall require that information be furnished in a form that, to the maximum extent practicable, is easily read and understood.

''(d) COVERED SOURCES.—The regulations shall apply to the following:

''(1) Pharmacies and any other dispensers of prescription medications in medical facilities of the uniformed services.

''(2) Sources of prescription medications under any mail order pharmaceuticals program provided by any of the administering Secretaries under chapter 55 of title 10, United States Code.

''(3) Pharmacies paid under the Civilian Health and Medical Program of the Uniformed Services (including the TRICARE program).

''(4) Pharmacies, and any other pharmaceutical dispensers, of designated providers referred to in section 721(5) of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 110 Stat. 2593; 10 U.S.C. 1073 note).''

COMPETITIVE PROCUREMENT OF OPHTHALMIC SERVICES

Pub. L. 105–85, div. A, title VII, §745, Nov. 18, 1997, 111 Stat. 1820, provided that:

''(a) COMPETITIVE PROCUREMENT REQUIRED.—Beginning not later than October 1, 1998, the Secretary of Defense shall competitively procure from private-sector sources, or other sources outside of the Department of Defense, all ophthalmic services related to the provision of single vision and multivision eyeware [sic] for members of the Armed Forces, retired members, and certain covered beneficiaries under chapter 55 of title 10, United States Code, who would otherwise receive such ophthalmic services through the Department of Defense.

''(b) EXCEPTION.—Subsection (a) shall not apply to the extent that the Secretary of Defense determines that the use of sources within the Department of Defense to provide such ophthalmic services—

''(1) is necessary to meet the readiness requirements of the Armed Forces; or

''(2) is more cost effective.

''(c) COMPLETION OF EXISTING ORDERS.—Subsection (a) shall not apply to orders for ophthalmic services received on or before September 30, 1998.''

INCLUSION OF CERTAIN DESIGNATED PROVIDERS IN UNIFORMED SERVICES HEALTH CARE DELIVERY SYSTEM

Pub. L. 104–201, div. A, title VII, subtitle C, Sept. 23, 1996, 110 Stat. 2592, as amended by Pub. L. 104–208, div. A, title I, §101(b) [title VIII, §8131(a)], Sept. 30, 1996, 110 Stat. 3009–71, 3009–117; Pub. L. 105–85, div. A, title VII, §§721–723, Nov. 18, 1997, 111 Stat. 1809, 1810; Pub. L. 106–65, div. A, title VII, §707, Oct. 5, 1999, 113 Stat. 684; Pub. L. 107–296, title XVII, §1704(e)(2), Nov. 25, 2002, 116 Stat. 2315; Pub. L. 108–136, div. A, title VII, §714, Nov. 24, 2003, 117 Stat. 1531; Pub. L. 108–199, div. H, §109, Jan. 23, 2004, 118 Stat. 438, provided that:

''SEC. 721. DEFINITIONS.

''In this subtitle:

''(1) The term 'administering Secretaries' means the Secretary of Defense, the Secretary of Homeland Security, and the Secretary of Health and Human Services.

''(2) The term 'agreement' means the agreement required under section 722(b) between the Secretary of Defense and a designated provider.

''(3) The term 'capitation payment' means an actuarially sound payment for a defined set of health care services that is established on a per enrollee per month basis.

''(4) The term 'covered beneficiary' means a beneficiary under chapter 55 of title 10, United States Code, other than a beneficiary under section 1074(a) of such title.

''(5) The term 'designated provider' means a public or nonprofit private entity that was a transferee of a Public Health Service hospital or other station under section 987 of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97–35; 42 U.S.C. 248b) and that, before the date of the enactment of this Act [Sept. 23, 1996], was deemed to be a facility of the uniformed services for the purposes of chapter 55 of title 10, United States Code. The term includes any legal successor in interest of the transferee.

''(6) The term 'enrollee' means a covered beneficiary who enrolls with a designated provider.

''(7) The term 'health care services' means the health care services provided under the health plan

known as the 'TRICARE PRIME' option under the TRICARE program.

''(8) The term 'Secretary' means the Secretary of Defense.

''(9) The term 'TRICARE program' means the managed health care program that is established by the Secretary of Defense under the authority of chapter 55 of title 10, United States Code, principally section 1097 of such title, and includes the competitive selection of contractors to financially underwrite the delivery of health care services under the Civilian Health and Medical Program of the Uniformed Services.

''SEC. 722. INCLUSION OF DESIGNATED PROVIDERS IN UNIFORMED SERVICES HEALTH CARE DELIVERY SYSTEM.

''(a) INCLUSION IN SYSTEM.—The health care delivery system of the uniformed services shall include the designated providers.

''(b) AGREEMENTS TO PROVIDE MANAGED HEALTH CARE SERVICES.—(1) After consultation with the other administering Secretaries, the Secretary of Defense shall negotiate and enter into an agreement with each designated provider under which the designated provider will provide health care services in or through managed care plans to covered beneficiaries who enroll with the designated provider.

''(2) The agreement shall be entered into on a sole source basis. The Federal Acquisition Regulation, except for those requirements regarding competition, issued pursuant to section 25(c) of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 421(c)) [now 41 U.S.C. 1303(a)] shall apply to the agreements as acquisitions of commercial items.

''(3) The implementation of an agreement is subject to availability of funds for such purpose.

''(c) EFFECTIVE DATE OF AGREEMENTS.—(1) Unless an earlier effective date is agreed upon by the Secretary and the designated provider, the agreement shall take effect upon the later of the following:

''(A) The date on which a managed care support contract under the TRICARE program is implemented in the service area of the designated provider.

''(B) October 1, 1997.

''(2) The Secretary may modify the effective date established under paragraph (1) for an agreement to permit a transition period of not more than six months between the date on which the agreement is executed by the parties and the date on which the designated provider commences the delivery of health care services under the agreement.

''(d) TEMPORARY CONTINUATION OF EXISTING PARTICIPATION AGREEMENTS.—The Secretary shall extend the participation agreement of a designated provider in effect immediately before the date of the enactment of this Act [Sept. 23, 1996] under section 718(c) of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; [former] 42 U.S.C. 248c [note]) until the agreement required by this section takes effect under subsection (c), including any transitional period provided by the Secretary under paragraph (2) of such subsection.

''(e) SERVICE AREA.—The Secretary may not reduce the size of the service area of a designated provider below the size of the service area in effect as of September 30, 1996.

''(f) COMPLIANCE WITH ADMINISTRATIVE REQUIREMENTS.—(1) Unless otherwise agreed upon by the Secretary and a designated provider, the designated provider shall comply with necessary and appropriate administrative requirements established by the Secretary for other providers of health care services and requirements established by the Secretary of Health and Human Services for risk-sharing contractors under section 1876 of the Social Security Act (42 U.S.C. 1395mm). The Secretary and the designated provider shall determine and apply only such administrative requirements as are minimally necessary and appropriate. A designated provider shall not be required to comply with a law or regulation of a State government requiring licensure as a health insurer or health maintenance organization.

''(2) A designated provider may not contract out more than five percent of its primary care enrollment without the approval of the Secretary, except in the case of primary care contracts between a designated provider and a primary care contractor in force on the date of the enactment of this Act [Sept. 23, 1996].

''(g) CONTINUED ACQUISITION OF REDUCED-COST DRUGS.—A designated provider shall be treated as part of the Department of Defense for purposes of section 8126 of title 38, United States Code, in connection with the provision by the designated provider of health care services to covered beneficiaries pursuant to the participation agreement of the designated provider under section 718(c) of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; [former] 42 U.S.C. 248c note) or pursuant to the agreement entered into under subsection (b).

''SEC. 723. PROVISION OF UNIFORM BENEFIT BY DESIGNATED PROVIDERS.

''(a) UNIFORM BENEFIT REQUIRED.—A designated provider shall offer to enrollees the health benefit option prescribed and implemented by the Secretary under section 731 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 10 U.S.C. 1073 note), including accompanying cost-sharing requirements.

''(b) TIME FOR IMPLEMENTATION OF BENEFIT.—A designated provider shall offer the health benefit option described in subsection (a) to enrollees upon the later of the following:

''(1) The date on which health care services within the health care delivery system of the uniformed services are rendered through the TRICARE program in the region in which the designated provider operates.

''(2) October 1, 1997.

''(c) ADJUSTMENTS.—The Secretary may establish a later date under subsection (b)(2) or prescribe reduced cost-sharing requirements for enrollees.

''SEC. 724. ENROLLMENT OF COVERED BENEFICIARIES.

''(a) FISCAL YEAR 1997 LIMITATION.—(1) During fiscal year 1997, the number of covered beneficiaries who are enrolled in managed care plans offered by designated providers may not exceed the number of such enrollees as of October 1, 1995.

''(2) The Secretary may waive the limitation under paragraph (1) if the Secretary determines that additional enrollment authority for a designated provider is required to accommodate covered beneficiaries who are dependents of members of the uniformed services entitled to health care under section 1074(a) of title 10, United States Code.

''(b) PERMANENT LIMITATION.—For each fiscal year beginning after September 30, 1997, the number of enrollees in managed care plans offered by designated providers may not exceed 110 percent of the number of such enrollees as of the first day of the immediately preceding fiscal year. The Secretary may waive this limitation as provided in subsection (a)(2).

''(c) RETENTION OF CURRENT ENROLLEES.—An enrollee in the managed care plan of a designated provider as of September 30, 1997, or such earlier date as the designated provider and the Secretary may agree upon, shall continue receiving services from the designated provider pursuant to the agreement entered into under section 722 unless the enrollee disenrolls from the designated provider. Except as provided in subsection (e), the administering Secretaries may not disenroll such an enrollee unless the disenrollment is agreed to by the Secretary and the designated provider.

''(d) ADDITIONAL ENROLLMENT AUTHORITY.—(1) Subject to paragraph (2), other covered beneficiaries may also receive health care services from a designated provider.

''(2)(A) The designated provider may market such services to, and enroll, covered beneficiaries who—

''(i) do not have other primary health insurance coverage (other than Medicare coverage) covering basic primary care and inpatient and outpatient services;

''(ii) subject to the limitation in subparagraph (B), have other primary health insurance coverage (other than Medicare coverage) covering basic primary care and inpatient and outpatient services; or

''(iii) are enrolled in the direct care system under the TRICARE program, regardless of whether the covered beneficiaries were users of the health care delivery system of the uniformed services in prior years.

''(B) For each fiscal year beginning after September 30, 2003, the number of covered beneficiaries newly enrolled by designated providers pursuant to clause (ii) of subparagraph (A) during such fiscal year may not exceed 10 percent of the total number of the covered beneficiaries who are newly enrolled under such subparagraph during such fiscal year.

''(3) For purposes of this subsection, a covered beneficiary who has other primary health insurance coverage includes any covered beneficiary who has primary health insurance coverage—

''(A) on the date of enrollment with a designated provider pursuant to paragraph (2)(A)(i); or

''(B) on such date of enrollment and during the period after such date while the beneficiary is enrolled with the designated provider.

''(e) SPECIAL RULE FOR MEDICARE-ELIGIBLE BENEFICIARIES.—If a covered beneficiary who desires to enroll in the managed care program of a designated provider is also entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.), the covered beneficiary shall elect whether to receive health care services as an enrollee or under part A of title XVIII of the Social Security Act. The Secretary may disenroll an enrollee who subsequently violates the election made under this subsection and receives benefits under part A of title XVIII of the Social Security Act.

''(f) INFORMATION REGARDING ELIGIBLE COVERED BENEFICIARIES.—The Secretary shall provide, in a timely manner, a designated provider with an accurate list of covered beneficiaries within the marketing area of the designated provider to whom the designated provider may offer enrollment.

''(g) OPEN ENROLLMENT DEMONSTRATION PROGRAM.—(1) The Secretary of Defense shall conduct a demonstration program under which covered beneficiaries shall be permitted to enroll at any time in a managed care plan offered by a designated provider consistent with the enrollment requirements for the TRICARE Prime option under the TRICARE program, but without regard to the limitation in subsection (b). The demonstration program under this subsection shall cover designated providers, selected by the Secretary of Defense, and the service areas of the designated providers.

''(2) The demonstration program carried out under this section shall commence on October 1, 1999, and end on September 30, 2001.

''(3) Not later than March 15, 2001, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the demonstration program carried out under this subsection. The report shall include, at a minimum, an evaluation of the benefits of the open enrollment opportunity to covered beneficiaries and a recommendation on whether to authorize open enrollments in the managed care plans of designated providers permanently.

''SEC. 725. APPLICATION OF CHAMPUS PAYMENT RULES.

''(a) APPLICATION OF PAYMENT RULES.—Subject to subsection (b), the Secretary shall require a private facility or health care provider that is a health care provider under the Civilian Health and Medical Program of the Uniformed Services to apply the payment rules described in section 1074(c) of title 10, United States Code, in imposing charges for health care that the private facility or provider provides to enrollees of a designated provider.

''(b) AUTHORIZED ADJUSTMENTS.—The payment rules imposed under subsection (a) shall be subject to such modifications as the Secretary considers appropriate. The Secretary may authorize a lower rate than the maximum rate that would otherwise apply under subsection (a) if the lower rate is agreed to by the designated provider and the private facility or health care provider.

''(c) REGULATIONS.—The Secretary shall prescribe regulations to implement this section after consultation with the other administering Secretaries.

''(d) CONFORMING AMENDMENT.—[Amended section 1074 of this title.]

''SEC. 726. PAYMENTS FOR SERVICES.

''(a) FORM OF PAYMENT.—Unless otherwise agreed to by the Secretary and a designated provider, the form of payment for health care services provided by a designated provider shall be on a full risk capitation payment basis. The capitation payments shall be negotiated and agreed upon by the Secretary and the designated provider. In addition to such other factors as the parties may agree to apply, the capitation payments shall be based on the utilization experience of enrollees and competitive market rates for equivalent health care services for a comparable population to such enrollees in the area in which the designated provider is located.

''(b) LIMITATION ON TOTAL PAYMENTS.—Total capitation payments for health care services to a designated provider shall not exceed an amount equal to the cost that would have been incurred by the Government if the enrollees had received such health care services through a military treatment facility, the TRICARE program, or the Medicare program, as the case may be. In establishing the ceiling rate for enrollees with the designated providers who are also eligible for the Civilian Health and Medical Program of the Uniformed Services, the Secretary of Defense shall take into account the health status of the enrollees.

''(c) ESTABLISHMENT OF PAYMENT RATES ON ANNUAL BASIS.—The Secretary and a designated provider shall establish capitation payments on an annual basis, subject to periodic review for actuarial soundness and to adjustment for any adverse or favorable selection reasonably anticipated to result from the design of the program under this subtitle.

''(d) ALTERNATIVE BASIS FOR CALCULATING PAYMENTS.—After September 30, 1999, the Secretary and a designated provider may mutually agree upon a new basis for calculating capitation payments.

''SEC. 727. REPEAL OF SUPERSEDED AUTHORITIES.

''(a) REPEALS.—[Repealed sections 248c and 248d of Title 42, The Public Health and Welfare, and section 718(c) of Pub. L. 101–510 and section 726 of Pub. L. 104–106, set out as notes under section 248c of Title 42.]

''(b) EFFECTIVE DATE.—The amendments made by paragraphs (1), (2), and (3) of subsection (a) shall take effect on October 1, 1997.''

[Pub. L. 108–199, div. H, § 109, Jan. 23, 2004, 118 Stat. 438, provided that the amendment made by section 109, amending section 724 of Pub. L. 104–201, set out above, is effective immediately after the enactment of Pub. L. 108–136.

[Pub. L. 104–208, div. A, title I, § 101(b) [title VIII, § 8131(b)], Sept. 30, 1996, 110 Stat. 3009–71, 3009–117, provided that: ''The amendments made by subsection (a) [amending section 722 of Pub. L. 104–201, set out above] shall take effect as of the date of the enactment of the National Defense Authorization Act for Fiscal Year 1997 [Sept. 23, 1996] as if section 722 of such Act had been enacted as so amended.'']

DEFINITION OF TRICARE PROGRAM

Pub. L. 104–106, div. A, title VII, § 711, Feb. 10, 1996, 110 Stat. 374, provided that: ''For purposes of this subtitle

[subtitle B (§§711–718) of title VII of div. A of Pub. L. 104–106, amending section 1097 of this title, enacting provisions set out as notes below, and amending provisions set out as a note below], the term 'TRICARE program' means the managed health care program that is established by the Secretary of Defense under the authority of chapter 55 of title 10, United States Code, principally section 1097 of such title, and includes the competitive selection of contractors to financially underwrite the delivery of health care services under the Civilian Health and Medical Program of the Uniformed Services.''

TRAINING IN HEALTH CARE MANAGEMENT AND ADMINISTRATION FOR TRICARE LEAD AGENTS

Pub. L. 104–106, div. A, title VII, §715, Feb. 10, 1996, 110 Stat. 375, as amended by Pub. L. 106–398, §1 [[div. A], title VII, §760(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–200, provided that:

''(a) PROVISION OF TRAINING.—The Secretary of Defense shall implement a professional educational program to provide appropriate training in health care management and administration—

''(1) to each commander, deputy commander, and managed care coordinator of a military medical treatment facility of the Department of Defense, and any other person, who is selected to serve as a lead agent to coordinate the delivery of health care by military and civilian providers under the TRICARE program; and

''(2) to appropriate members of the support staff of the treatment facility who will be responsible for daily operation of the TRICARE program.

''(b) LIMITATION ON ASSIGNMENT UNTIL COMPLETION OF TRAINING.—No person may be assigned as the commander, deputy commander, or managed care coordinator of a military medical treatment facility or as a TRICARE lead agent or senior member of the staff of a TRICARE lead agent office until the Secretary of the military department concerned submits a certification to the Secretary of Defense that such person has completed the training described in subsection (a).''

[Pub. L. 106–398, §1 [[div. A], title VII, §760(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–200, provided that: ''The amendments made by subsection (a) to section 715 of such Act [section 715 of Pub. L. 104–106, set out above]—

[''(1) shall apply to a deputy commander, a managed care coordinator of a military medical treatment facility, or a lead agent for coordinating the delivery of health care by military and civilian providers under the TRICARE program, who is assigned to such position on or after the date that is one year after the date of the enactment of this Act [Oct. 30, 2000]; and

[''(2) may apply, in the discretion of the Secretary of Defense, to a deputy commander, a managed care coordinator of such a facility, or a lead agent for coordinating the delivery of such health care, who is assigned to such position before the date that is one year after the date of the enactment of this Act.'']

PILOT PROGRAM OF INDIVIDUALIZED RESIDENTIAL MENTAL HEALTH SERVICES

Pub. L. 104–106, div. A, title VII, §716, Feb. 10, 1996, 110 Stat. 375, provided that:

''(a) PROGRAM REQUIRED.—(1) During fiscal year 1996, the Secretary of Defense, in consultation with the other administering Secretaries under chapter 55 of title 10, United States Code, shall implement a pilot program to provide residential and wraparound services to children described in paragraph (2) who are in need of mental health services. The Secretary shall implement the pilot program for an initial period of at least two years in a military health care region in which the TRICARE program has been implemented.

''(2) A child shall be eligible for selection to participate in the pilot program if the child is a dependent (as described in subparagraph (D) or (I) of section 1072(2) of title 10, United States Code) who—

''(A) is eligible for health care under section 1079 or 1086 of such title; and

''(B) has a serious emotional disturbance that is generally regarded as amenable to treatment.

''(b) WRAPAROUND SERVICES DEFINED.—For purposes of this section, the term 'wraparound services' means individualized mental health services that are provided principally to allow a child to remain in the family home or other least-restrictive and least-costly setting, but also are provided as an aftercare planning service for children who have received acute or residential care. Such term includes nontraditional mental health services that will assist the child to be maintained in the least-restrictive and least-costly setting.

''(c) PILOT PROGRAM AGREEMENT.—Under the pilot program the Secretary of Defense shall enter into one or more agreements that require a mental health services provider under the agreement—

''(1) to provide wraparound services to a child described in subsection (a)(2);

''(2) to continue to provide such services as needed during the period of the agreement even if the child moves to another location within the same TRICARE program region during that period; and

''(3) to share financial risk by accepting as a maximum annual payment for such services a case-rate reimbursement not in excess of the amount of the annual standard CHAMPUS residential treatment benefit payable (as determined in accordance with section 8.1 of chapter 3 of volume II of the CHAMPUS policy manual).

''(d) REPORT.—Not later than March 1, 1998, 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 program carried out under this section. The report shall contain—

''(1) an assessment of the effectiveness of the program; and

''(2) the Secretary's views regarding whether the program should be implemented throughout the military health care system.''

EVALUATION AND REPORT ON TRICARE PROGRAM EFFECTIVENESS

Pub. L. 104–106, div. A, title VII, §717, Feb. 10, 1996, 110 Stat. 376, provided that:

''(a) EVALUATION REQUIRED.—The Secretary of Defense shall arrange for an on-going evaluation of the effectiveness of the TRICARE program in meeting the goals of increasing the access of covered beneficiaries under chapter 55 of title 10, United States Code, to health care and improving the quality of health care provided to covered beneficiaries, without increasing the costs incurred by the Government or covered beneficiaries. The evaluation shall specifically address—

''(1) the impact of the TRICARE program on military retirees with regard to access, costs, and quality of health care services; and

''(2) identify noncatchment areas in which the health maintenance organization option of the TRICARE program is available or is proposed to become available.

''(b) ENTITY TO CONDUCT EVALUATION.—The Secretary may use a federally funded research and development center to conduct the evaluation required by subsection (a).

''(c) ANNUAL REPORT.—Not later than March 1, 1997, and each March 1 thereafter, the Secretary shall submit to Congress a report describing the results of the evaluation under subsection (a) during the preceding year.''

USE OF HEALTH MAINTENANCE ORGANIZATION MODEL AS OPTION FOR MILITARY HEALTH CARE

Pub. L. 103–160, div. A, title VII, §731, Nov. 30, 1993, 107 Stat. 1696, as amended by Pub. L. 103–337, div. A, title VII, §715, Oct. 5, 1994, 108 Stat. 2803; Pub. L. 104–106, div. A, title VII, §714, Feb. 10, 1996, 110 Stat. 374, provided that:

''(a) USE OF MODEL.—The Secretary of Defense shall prescribe and implement a health benefit option (and accompanying cost-sharing requirements) for covered beneficiaries eligible for health care under chapter 55 of title 10, United States Code, that is modelled on health maintenance organization plans offered in the private sector and other similar Government health insurance programs. The Secretary shall include, to the maximum extent practicable, the health benefit option required under this subsection as one of the options available to covered beneficiaries in all managed health care initiatives undertaken by the Secretary after December 31, 1994.

''(b) ELEMENTS OF OPTION.—The Secretary shall offer covered beneficiaries who enroll in the health benefit option required under subsection (a) reduced out-of-pocket costs and a benefit structure that is as uniform as possible throughout the United States. The Secretary shall allow enrollees to seek health care outside of the option, except that the Secretary may prescribe higher out-of-pocket costs than are provided under section 1079 or 1086 of title 10, United States Code, for enrollees who obtain health care outside of the option.

''(c) GOVERNMENT COSTS.—The health benefit option required under subsection (a) shall be administered so that the costs incurred by the Secretary under the TRICARE program are no greater than the costs that would otherwise be incurred to provide health care to the members of the uniformed services and covered beneficiaries who participate in the TRICARE program.

''(d) DEFINITIONS.—For purposes of this section:

''(1) The term 'covered beneficiary' means a beneficiary under chapter 55 of title 10, United States Code, other than a beneficiary under section 1074(a) of such title.

''(2) The term 'TRICARE program' means the managed health care program that is established by the Secretary of Defense under the authority of chapter 55 of title 10, United States Code, principally section 1097 of such title, and includes the competitive selection of contractors to financially underwrite the delivery of health care services under the Civilian Health and Medical Program of the Uniformed Services.

''(e) REGULATIONS.—Not later than December 31, 1994, the Secretary shall prescribe final regulations to implement the health benefit option required by subsection (a).

''(f) MODIFICATION OF EXISTING CONTRACTS.—In the case of managed health care contracts in effect or in final stages of acquisition as of December 31, 1994, the Secretary may modify such contracts to incorporate the health benefit option required under subsection (a).''

MANAGED HEALTH CARE PROGRAM AND CONTRACTS FOR MILITARY HEALTH SERVICES SYSTEM

Pub. L. 104–61, title VI, Dec. 1, 1995, 109 Stat. 649, provided in part that the date for implementation of the nation-wide managed care military health services system would be extended to Sept. 30, 1997.

Pub. L. 103–139, title VIII, § 8025, Nov. 11, 1993, 107 Stat. 1443, provided that: ''Notwithstanding any other provision of law, to establish region-wide, at-risk, fixed price managed care contracts possessing features similar to those of the CHAMPUS Reform Initiative, the Secretary of Defense shall submit to the Congress a plan to implement a nation-wide managed health care program for the military health services system not later than December 31, 1993: *Provided*, That the program shall include, but not be limited to: (1) a uniform, stabilized benefit structure characterized by a triple option health benefit feature; (2) a regionally-based health care management system; (3) cost minimization incentives including 'gatekeeping' and annual enrollment procedures, capitation budgeting, and at-risk managed care support contracts; and (4) full and open competition for all managed care support contracts: *Provided further*, That the implementation of the nation-wide managed care military health services system shall be completed by September 30, 1996: *Provided further*, That the Department shall competitively award contracts in fiscal year 1994 for at least four new region-wide, at-risk, fixed price managed care support contracts consistent with the nation-wide plan, that one such contract shall include the State of Florida (which may include Department of Veterans Affairs' medical facilities with the concurrence of the Secretary of Veterans Affairs), one such contract shall include the States of Washington and Oregon, and one such contract shall include the State of Texas: *Provided further*, That any law or regulation of a State or local government relating to health insurance, prepaid health plans, or other health care delivery, administration, and financing methods shall be preempted and shall not apply to any region-wide, at-risk, fixed price managed care contract entered into pursuant to chapter 55 of title 10, United States Code: *Provided further*, That the Department shall competitively award within 13 months after the date of enactment of this Act [Nov. 11, 1993] two contracts for stand-alone, at-risk managed mental health services in high utilization, high-cost areas, consistent with the management and service delivery features in operation in Department of Defense managed mental health care contracts: *Provided further*, That the Assistant Secretary of Defense for Health Affairs shall, during the current fiscal year, initiate through competitive procedures a managed health care program for eligible beneficiaries in the area of Homestead Air Force Base with benefits and services substantially identical to those established to serve beneficiary populations in areas where military medical facilities have been terminated, to include retail pharmacy networks available to Medicare-eligible beneficiaries, and shall present a plan to implement this program to the House and Senate Committees on Appropriations not later than January 15, 1994.''

CONDITION ON EXPANSION OF CHAMPUS REFORM INITIATIVE TO OTHER LOCATIONS

Pub. L. 102–484, div. A, title VII, § 712, Oct. 23, 1992, 106 Stat. 2435, as amended by Pub. L. 103–160, div. A, title VII, § 720, Nov. 30, 1993, 107 Stat. 1695; Pub. L. 103–337, div. A, title VII, § 714(c), Oct. 5, 1994, 108 Stat. 2803, provided that:

''(a) CONDITION.—(1) Except as provided in subsection (b), the Secretary of Defense may not expand the CHAMPUS reform initiative underway in the States of California and Hawaii to another location until not less than 90 days after the date on which the Secretary certifies to Congress that expansion of the initiative to that location is the most efficient method of providing health care to covered beneficiaries in that location. In determining whether the expansion of the CHAMPUS reform initiative to a location is the most efficient method of providing health care to covered beneficiaries in that location, the Secretary shall consider the cost-effectiveness of the initiative (while assuring that the combined cost of care in military treatment facilities and under the Civilian Health and Medical Program of the Uniformed Services will not be increased as a result of the expansion) and the effect of the expansion of the initiative on the access of covered beneficiaries to health care and on the quality of health care received by covered beneficiaries.

''(2) To the extent any revision of the CHAMPUS reform initiative is necessary in order to make the certification required by this subsection, the Secretary shall assure that enrolled covered beneficiaries may obtain health care services with reduced out-of-pocket costs, as compared to standard CHAMPUS.

''(b) EXCEPTION.—The Secretary of Defense may waive the operation of the condition on the expansion of the CHAMPUS reform initiative specified in subsection (a) in order to expand the initiative to a location adversely affected by the closure or realignment of a military installation in that location, as determined by the Secretary.

''(c) EVALUATION OF CERTIFICATION.—The Comptroller General of the United States and the Director of the

Congressional Budget Office shall evaluate each certification made by the Secretary of Defense under subsection (a) that expansion of the CHAMPUS reform initiative to another location is the most efficient method of providing health care to covered beneficiaries in that location. They shall submit their findings to Congress if these findings differ substantially from the findings upon which the Secretary made the decision to expand the CHAMPUS reform initiative.

''(d) DEFINITIONS.—For purposes of this section:

''(1) The terms 'CHAMPUS reform initiative' and 'initiative' mean the health care delivery project required by section 702 of the National Defense Authorization Act for Fiscal Year 1987 (Public Law 99–661; 10 U.S.C. 1073 note).

''(2) The term 'covered beneficiary' has the meaning given that term in section 1072(5) of title 10, United States Code.

''(3) The terms 'Civilian Health and Medical Program of the Uniformed Services' and 'CHAMPUS' have the meaning given the term 'Civilian Health and Medical Program of the Uniformed Services' in section 1072(4) of title 10, United States Code.''

ALTERNATIVE HEALTH CARE DELIVERY METHODOLOGIES

Pub. L. 102–484, div. A, title VII, § 713, Oct. 23, 1992, 106 Stat. 2435, as amended by Pub. L. 103–160, div. A, title VII, § 719, Nov. 30, 1993, 107 Stat. 1694, directed the Secretary of Defense to continue to conduct during fiscal years 1993 through 1996 a broad array of reform initiatives for furnishing health care to persons who were eligible to receive health care under chapter 55 of this title and to submit to Congress a report regarding such initiatives not later than Sept. 30, 1994, and further directed the Secretary to take certain steps to ensure the continuation of the CHAMPUS reform initiative in the States of California and Hawaii.

MILITARY HEALTH CARE FOR PERSONS RELIANT ON HEALTH CARE FACILITIES AT BASES BEING CLOSED OR REALIGNED

Pub. L. 102–484, div. A, title VII, § 722, Oct. 23, 1992, 106 Stat. 2439, as amended by Pub. L. 108–136, div. A, title VII, § 726, Nov. 24, 2003, 117 Stat. 1535; Pub. L. 110–181, div. A, title X, § 1063(i), Jan. 28, 2008, 122 Stat. 324, provided that:

''(a) ESTABLISHMENT.—Not later than December 31, 2003, the Secretary of Defense shall establish a working group on the provision of military health care to persons who rely for health care on health care facilities located at military installations—

''(1) inside the United States that are selected for closure or realignment in the 2005 round of realignments and closures authorized by sections 2912, 2913, and 2914 of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note), as added by title XXX of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107; 115 Stat. 1342); or

''(2) outside the United States that are selected for closure or realignment as a result of force posture changes.

''(b) MEMBERSHIP.—The members of the working group shall include, at a minimum, the following:

''(1) The Assistant Secretary of Defense for Health Affairs, or a designee of the Assistant Secretary.

''(2) The Surgeon General of the Army, or a designee of that Surgeon General.

''(3) The Surgeon General of the Navy, or a designee of that Surgeon General.

''(4) The Surgeon General of the Air Force, or a designee of that Surgeon General.

''(5) At least one independent member (appointed by the Secretary of Defense) from each TRICARE region, but not to exceed a total of 12 members appointed under this paragraph, whose experience in matters within the responsibility of the working group qualify that person to represent persons authorized health care under chapter 55 of title 10, United States Code.

''(c) DUTIES.—(1) In developing the recommendations for the 2005 round of realignments and closures required by sections 2913 and 2914 of the Defense Base Closure and Realignment Act of 1990 [Pub. L. 101–510, 10 U.S.C. 268 note], the Secretary of Defense shall consult with the working group.

''(2) The working group shall be available to provide assistance to the Defense Base Closure and Realignment Commission.

''(3) In the case of each military installation referred to in paragraph (1) or (2) of subsection (a) whose closure or realignment will affect the accessibility to health care services for persons entitled to such services under chapter 55 of title 10, United States Code, the working group shall provide to the Secretary of Defense a plan for the provision of the health care services to such persons.

''(d) SPECIAL CONSIDERATIONS.—In carrying out its duties under subsection (c), the working group—

''(1) shall conduct meetings with persons entitled to health care services under chapter 55 of title 10, United States Code, or representatives of such persons;

''(2) may use reliable sampling techniques;

''(3) may visit the areas where closures or realignments of military installations will adversely affect the accessibility of health care for such persons and may conduct public meetings; and

''(4) shall ensure that members of the uniformed services on active duty, members and former members of the uniformed services entitled to retired or retainer pay, and dependents and survivors of such members and retired personnel are afforded the opportunity to express their views.

''(e) APPLICATION OF ADVISORY COMMITTEE ACT.—The provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the working group established pursuant to this section.

''(f) TERMINATION.—The working group established pursuant to subsection (a) shall terminate on December 31, 2006.''

AUTHORIZATION FOR EXTENSION OF CHAMPUS REFORM INITIATIVE

Pub. L. 102–190, div. A, title VII, § 722, Dec. 5, 1991, 105 Stat. 1406, provided that:

''(a) AUTHORITY.—Upon the termination (for any reason) of the contract of the Department of Defense in effect on the date of the enactment of this Act [Dec. 5, 1991] under the CHAMPUS reform initiative established under section 702 of the National Defense Authorization Act for Fiscal Year 1987 [Pub. L. 99–661] (10 U.S.C. 1073 note), the Secretary of Defense may enter into a replacement or successor contract with the same or a different contractor and for such amount as may be determined in accordance with applicable procurement laws and regulations and without regard to any limitation (enacted before, on, or after the date of the enactment of this Act) on the availability of funds for that purpose.

''(b) TREATMENT OF LIMITATION ON FUNDS FOR PROGRAM.—No provision of law stated as a limitation on the availability of funds may be treated as constituting the extension of, or as requiring the extension of, any contract under the CHAMPUS reform initiative that would otherwise expire in accordance with its terms.''

EXTENSION OF CHAMPUS REFORM INITIATIVE FOR CERTAIN STATES

Pub. L. 102–172, title VIII, § 8032, Nov. 26, 1991, 105 Stat. 1178, provided: ''That notwithstanding any other provision of law, the CHAMPUS Reform Initiative contract for California and Hawaii shall be extended until February 1, 1994, within the limits and rates specified in the contract: *Provided further*, That the Department shall competitively award contracts for the geographic expansion of the CHAMPUS Reform Initiative in Florida (which may include Department of Veterans Affairs medical facilities with the concurrence of the Sec-

retary of Veterans Affairs), Washington, Oregon, and the Tidewater region of Virginia: *Provided further*, That competitive expansion of the CHAMPUS Reform Initiative may occur in any other regions that the Assistant Secretary of Defense for Health Affairs deems appropriate.''

CONDITIONS ON EXPANSION OF CHAMPUS REFORM INITIATIVE

Pub. L. 101–510, div. A, title VII, § 715, Nov. 5, 1990, 104 Stat. 1584, provided that:

''(a) CERTIFICATION OF COST-EFFECTIVENESS.—The Secretary of Defense may not proceed with the proposed expansion of the CHAMPUS reform initiative underway in the States of California and Hawaii until not less than 90 days after the date on which the Secretary certifies to the Congress that—

''(1) such CHAMPUS reform initiative has been demonstrated to be more cost-effective than the Civilian Health and Medical Program of the Uniformed Services or any other health care demonstration program being conducted by the Secretary;

''(2) the contractor selected to underwrite the delivery of health care under the CHAMPUS reform initiative will accomplish the expansion without the disruption of services to beneficiaries under the Civilian Health and Medical Program of the Uniformed Services or delays in the processing of claims; and

''(3) such contractor is currently, and projected to remain, financially able to underwrite the CHAMPUS reform initiative.

''(b) REPORT ON CERTIFICATION.—Not later than 30 days after the date on which the Secretary of Defense submits the certification required by subsection (a), the Comptroller General of the United States and the Director of the Congressional Budget Office shall jointly submit to Congress a report evaluating such certification.

''(c) CHAMPUS REFORM INITIATIVE DEFINED.—For purposes of this section, the term 'CHAMPUS reform initiative' has the meaning given that term in section 702(d)(1) of the Department of Defense Authorization Act for Fiscal Year 1987 [Pub. L. 99–661] (10 U.S.C. 1073 note).''

REQUIREMENTS PRIOR TO TERMINATION OF MEDICAL SERVICES AT MILITARY MEDICAL TREATMENT FACILITIES

Pub. L. 101–510, div. A, title VII, § 716, Nov. 5, 1990, 104 Stat. 1585, prohibited the Secretary of a military department, during the period beginning on Nov. 5, 1990, and ending on Sept. 30, 1995, from taking any action to close a military medical facility or reduce the level of care provided at such a facility until 90 days after the Secretary had submitted to Congress a report describing the reason for the action, projected savings, impact on costs, and alternative methods of providing care.

REQUIREMENT FOR AVAILABILITY OF ADDITIONAL INSURANCE COVERAGE; FUNDING LIMITATIONS; DEFINITION

Pub. L. 100–180, div. A, title VII, § 732(e)–(g), Dec. 4, 1987, 101 Stat. 1120, 1121, provided that:

''(e) REQUIREMENT FOR AVAILABILITY OF ADDITIONAL INSURANCE COVERAGE.—(1) The Secretary of Defense shall make every effort to enter into an agreement, similar to the one being negotiated with a private insurer on the date of the enactment of this Act [Dec. 4, 1987], that would provide an insurance plan that meets the requirements described in paragraph (3).

''(2) If an agreement referred to in paragraph (1) is not entered into before a request for proposals with respect to the second phase of the CHAMPUS reform initiative is issued, the Secretary shall provide for an insurance plan which meets the requirements described in paragraph (3) through either of the following means:

''(A) By including, in any request for proposals with respect to the second (and any subsequent) phase of the CHAMPUS reform initiative, a requirement for the contractor to offer an option to elect an insurance plan which meets the requirements described in paragraph (3).

''(B) By including, in any request for proposals for a contract to process claims for CHAMPUS, a requirement for the contractor (known as a fiscal intermediary) to offer an option to elect an insurance plan which meets the requirements described in paragraph (3).

''(3) The insurance plan requirements referred to in paragraphs (1) and (2) are the following:

''(A) At the election of the individual, the plan shall be available to an individual losing eligibility (by reason of discharge, release from active duty, a change in family status (including divorce or annulment, or, in the case of a child, reaching age 22), or other similar reason) to be a covered beneficiary under chapter 55 of title 10, United States Code.

''(B) The plan shall provide for coverage of benefits similar to the coverage of benefits available to the individual under CHAMPUS, regardless of any pre-existing condition.

''(C) The plan shall provide that enrollees in the plan shall pay the full periodic charges for the benefit coverage.

''(f) FUNDING LIMITATIONS.—(1) None of the funds appropriated or otherwise made available to the Department of Defense may be obligated or expended for the purpose of entering into a contract for the demonstration phase of the CHAMPUS reform initiative required by section 702(a)(1) of the National Defense Authorization Act for Fiscal Year 1987 [section 702(a)(1) of Pub. L. 99–661, set out as a note below] until the requirements of section 702(a)(4) of such Act (as added by subsection (a)) are met.

''(2) None of the funds appropriated or otherwise made available to the Department of Defense may be obligated or expended for the purpose of requesting a proposal for the second (or any subsequent) phase of the CHAMPUS reform initiative as described in section 702(c) of the National Defense Authorization Act for Fiscal Year 1987 until the requirements of paragraph (2) of section 702(c) of such Act (as added by subsection (c)) are met.

''(g) CHAMPUS DEFINED.—In this section, the term 'CHAMPUS' has the meaning given such term by section 1072(4) of title 10, United States Code.''

CHAMPUS REFORM INITIATIVE

Pub. L. 99–661, div. A, title VII, § 702, Nov. 14, 1986, 100 Stat. 3899, as amended by Pub. L. 100–180, div. A, title VII, § 732(a), (c), Dec. 4, 1987, 101 Stat. 1119, provided that:

''(a) DEMONSTRATION PROJECT.—(1) The Secretary of Defense shall conduct a project designed to demonstrate the feasibility of improving the effectiveness of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) through the competitive selection of contractors to financially underwrite the delivery of health care services under the program.

''(2) The demonstration project required by paragraph (1)—

''(A) shall begin not later than September 30, 1988, and continue for not less than one year;

''(B) shall include not more than one-third of covered beneficiaries; and

''(C) shall include a health care enrollment system that meets the requirements specified in section 1099 of title 10, United States Code (as added by section 701(a)(1)).

''(3)(A) The Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the development of the demonstration project required by paragraph (1). Such report shall include—

''(i) a description of the scope and structure of the project;

''(ii) an estimate of the costs of the care to be provided under the project; and

''(iii) a description of the health care enrollment system included in the project.

''(B) The report required by subparagraph (A) shall be submitted—

''(i) not later than 60 days before the initiation of the project, if the project is to be restricted to a contiguous area of the United States; or

''(ii) not later than 60 days before a solicitation for bids or proposals with respect to such project is issued, if the project will not be restricted to a contiguous area of the United States.

''(4) The Secretary of Defense shall develop a methodology to be used in evaluating the results of the demonstration project required by paragraph (1) and shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on such methodology.

''(b) STUDY OF HEALTH CARE ALTERNATIVES.—(1) The demonstration project required by subsection (a)(1) shall include a study of—

''(A) methods to guarantee the maintenance of competition among providers of health care to persons under the jurisdiction of the Secretary;

''(B) the merits of the use of a voucher system or a fee schedule for provision of health care to such persons; and

''(C) methods to guarantee that community hospitals are given equal consideration with other health care providers for provision of health care services under contracts with the Department of Defense.

''(2) The Secretary shall submit to Congress a report discussing the matters evaluated in the study required by paragraph (1) before the end of the 90-day period beginning on the date of the enactment of this Act [Nov. 14, 1986].

''(c) PHASED IMPLEMENTATION OF CHAMPUS REFORM INITIATIVE.—(1) The Secretary of Defense may proceed with implementation of the CHAMPUS reform initiative, to be carried out in two phases during a period of not less than two years, if—

''(A) the Secretary determines, based on the results of the demonstration project required by subsection (a)(1), that such initiative should be implemented;

''(B) not less than one year elapses after the date on which the demonstration project required by subsection (a)(1) is initiated; and

''(C) 90 days elapse after the date on which the Secretary submits to the Committees on Armed Services of the Senate and House of Representatives a report that includes—

''(i) a description of the results of the demonstration project, evaluated in accordance with the methodology developed under subsection (a)(4);

''(ii) a description of any changes the Secretary intends to make in the initiative during the proposed implementation; and

''(iii) a comparison of the costs of providing health care under CHAMPUS with the costs of providing health care under the demonstration project and the estimated costs of providing health care under the CHAMPUS reform initiative if fully implemented.

''(2) The Secretary may not issue a request for proposals with respect to the second (or any subsequent) phase of the CHAMPUS reform initiative until—

''(A) all principal features of the demonstration project, including networks of providers of health care, have been in operation for not less than one year; and

''(B) the expiration of 60 days after the date on which the report described in paragraph (1)(C) has been received by the committees referred to in such paragraph.

''(d) DEFINITIONS.—In this section:

''(1) The term 'CHAMPUS reform initiative' means the competitive selection of contractors to financially underwrite the delivery of health care services under the Civilian Health and Medical Program of the Uniformed Services.

''(2) The term 'Civilian Health and Medical Program of the Uniformed Services' has the meaning given such term in section 1072(4) of title 10, United States Code (as added by section 701(b)).

''(3) The term 'covered beneficiary' has the meaning given such term in section 1072(5) of title 10, United States Code (as added by section 701(b)).''

§ 1073a. Contracts for health care: best value contracting

(a) AUTHORITY.—Under regulations prescribed by the administering Secretaries, health care contracts shall be awarded in the administration of this chapter to the offeror or offerors that will provide the best value to the United States to the maximum extent consistent with furnishing high-quality health care in a manner that protects the fiscal and other interests of the United States.

(b) FACTORS CONSIDERED.—In the determination of best value under subsection (a)—

(1) consideration shall be given to the factors specified in the regulations; and

(2) greater weight shall be accorded to technical and performance-related factors than to cost and price-related factors.

(c) APPLICABILITY.—The authority under the regulations prescribed under subsection (a) shall apply to any contract in excess of $5,000,000.

(Added Pub. L. 106–65, div. A, title VII, § 722(a), Oct. 5, 1999, 113 Stat. 695.)

§ 1073b. Recurring reports

(a) ANNUAL REPORT ON HEALTH PROTECTION QUALITY.—(1) The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives each year a report on the Force Health Protection Quality Assurance Program of the Department of Defense. The report shall cover the calendar year preceding the year in which the report is submitted and include the following matters:

(A) The results of an audit conducted during the calendar year covered by the report of the extent to which the blood samples required to be obtained as described in section 733(b) of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 from members of the armed forces before and after a deployment are stored in the blood serum repository of the Department of Defense.

(B) The results of an audit conducted during the calendar year covered by the report of the extent to which the records of the health assessments required under section 1074f of this title for members of the armed forces before and after a deployment are being maintained in the electronic database of the Defense Medical Surveillance System.

(C) An analysis of the actions taken by Department of Defense personnel to respond to health concerns expressed by members of the armed forces upon return from a deployment.

(D) An analysis of the actions taken by Department of Defense personnel to evaluate or treat members of the armed forces who are confirmed to have been exposed to occupational or environmental hazards deleterious to their health during a deployment.

(2) The Secretary of Defense shall act through the Assistant Secretary of Defense for Health Affairs in carrying out this subsection.

(b) ANNUAL REPORT ON RECORDING OF HEALTH ASSESSMENT DATA IN MILITARY HEALTH RECORDS.—The Secretary of Defense shall issue each year a report on the compliance by the military departments with applicable law and policies on the recording of health assessment data in military health records, including compliance with section 1074f(c) of this title. The report shall cover the calendar year preceding the year in which the report is submitted and include a discussion of the extent to which immunization status and predeployment and postdeployment health care data are being recorded in such records.

(Added Pub. L. 108–375, div. A, title VII, § 739(a)(1), Oct. 28, 2004, 118 Stat. 2001.)

REFERENCES IN TEXT

Section 733(b) of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, referred to in subsec. (a)(1)(A), is section 733(b) of Pub. L. 108–375, which is set out as a note under section 1074f of this title.

INCLUSION OF DENTAL CARE

For purposes of amendment by Pub. L. 108–375 adding this section, references to medical readiness, health status, and health care to be considered to include dental readiness, dental status, and dental care, see section 740 of Pub. L. 108–375, set out as a note under section 1074 of this title.

INITIAL REPORTS

Pub. L. 108–375, div. A, title VII, § 739(a)(3), Oct. 28, 2004, 118 Stat. 2002, directed that the first reports under this section be completed not later than 180 days after Oct. 28, 2004.

§ 1074. Medical and dental care for members and certain former members

(a)(1) Under joint regulations to be prescribed by the administering Secretaries, a member of a uniformed service described in paragraph (2) is entitled to medical and dental care in any facility of any uniformed service.

(2) Members of the uniformed services referred to in paragraph (1) are as follows:

(A) A member of a uniformed service on active duty.

(B) A member of a reserve component of a uniformed service who has been commissioned as an officer if—

(i) the member has requested orders to active duty for the member's initial period of active duty following the commissioning of the member as an officer;

(ii) the request for orders has been approved;

(iii) the orders are to be issued but have not been issued or the orders have been issued but the member has not entered active duty; and

(iv) the member does not have health care insurance and is not covered by any other health benefits plan.

(b)(1) Under joint regulations to be prescribed by the administering Secretaries, a member or former member of a uniformed service who is entitled to retired or retainer pay, or equivalent pay may, upon request, be given medical and dental care in any facility of any uniformed service, subject to the availability of space and facilities and the capabilities of the medical and dental staff. The administering Secretaries may, with the agreement of the Secretary of Veterans Affairs, provide care to persons covered by this subsection in facilities operated by the Secretary of Veterans Affairs and determined by him to be available for this purpose on a reimbursable basis at rates approved by the President.

(2) Paragraph (1) does not apply to a member or former member entitled to retired pay for non-regular service under chapter 1223 of this title who is under 60 years of age.

(c)(1) Funds appropriated to a military department, the Department of Homeland Security (with respect to the Coast Guard when it is not operating as a service in the Navy), or the Department of Health and Human Services (with respect to the National Oceanic and Atmospheric Administration and the Public Health Service) may be used to provide medical and dental care to persons entitled to such care by law or regulations, including the provision of such care (other than elective private treatment) in private facilities for members of the uniformed services. If a private facility or health care provider providing care under this subsection is a health care provider under the Civilian Health and Medical Program of the Uniformed Services, the Secretary of Defense, after consultation with the other administering Secretaries, may by regulation require the private facility or health care provider to provide such care in accordance with the same payment rules (subject to any modifications considered appropriate by the Secretary) as apply under that program.

(2)(A) Subject to such exceptions as the Secretary of Defense considers necessary, coverage for medical care for members of the uniformed services under this subsection, and standards with respect to timely access to such care, shall be comparable to coverage for medical care and standards for timely access to such care under the managed care option of the TRICARE program known as TRICARE Prime.

(B) The Secretary of Defense shall enter into arrangements with contractors under the TRICARE program or with other appropriate contractors for the timely and efficient processing of claims under this subsection.

(C) The Secretary of Defense shall consult with the other administering Secretaries in the administration of this paragraph.

(3)(A) A member of the uniformed services described in subparagraph (B) may not be required to receive routine primary medical care at a military medical treatment facility.

(B) A member referred to in subparagraph (A) is a member of the uniformed services on active duty who is entitled to medical care under this subsection and who—

(i) receives a duty assignment described in subparagraph (C); and

(ii) pursuant to the assignment of such duty, resides at a location that is more than 50 miles, or approximately one hour of driving time, from the nearest military medical treatment facility adequate to provide the needed care.

(C) A duty assignment referred to in subparagraph (B) means any of the following:

(i) Permanent duty as a recruiter.

(ii) Permanent duty at an educational institution to instruct, administer a program of instruction, or provide administrative services in support of a program of instruction for the Reserve Officers' Training Corps.

(iii) Permanent duty as a full-time adviser to a unit of a reserve component.

(iv) Any other permanent duty designated by the Secretary concerned for purposes of this paragraph.

(4)(A) Subject to such terms and conditions as the Secretary of Defense considers appropriate, coverage comparable to that provided by the Secretary under subsections (d) and (e) of section 1079 of this title shall be provided under this subsection to members of the uniformed services who incur a serious injury or illness on active duty as defined by regulations prescribed by the Secretary.

(B) The Secretary of Defense shall prescribe in regulations—

(i) the individuals who shall be treated as the primary caregivers of a member of the uniformed services for purposes of this paragraph; and

(ii) the definition of serious injury or illness for the purposes of this paragraph.

(d)(1) For the purposes of this chapter, a member of a reserve component of the armed forces who is issued a delayed-effective-date active-duty order, or is covered by such an order, shall be treated as being on active duty for a period of more than 30 days beginning on the later of the date that is—

(A) the date of the issuance of such order; or

(B) 180 days before the date on which the period of active duty is to commence under such order for that member.

(2) In this subsection, the term ''delayed-effective-date active-duty order'' means an order to active duty for a period of more than 30 days in support of a contingency operation under a provision of law referred to in section 101(a)(13)(B) of this title that provides for active-duty service to begin under such order on a date after the date of the issuance of the order.

(Added Pub. L. 85–861, § 1(25)(B), Sept. 2, 1958, 72 Stat. 1446; amended Pub. L. 89–614, § 2(2), Sept. 30, 1966, 80 Stat. 862; Pub. L. 96–513, title V, § 511(36), (37), Dec. 12, 1980, 94 Stat. 2923; Pub. L. 98–525, title XIV, § 1401(e)(1), Oct. 19, 1984, 98 Stat. 2616; Pub. L. 98–557, § 19(3), Oct. 30, 1984, 98 Stat. 2869; Pub. L. 101–189, div. A, title VII, § 729, title XVI, § 1621(a)(2), Nov. 29, 1989, 103 Stat. 1481, 1603; Pub. L. 101–510, div. A, title XIV, § 1484(j)(1), Nov. 5, 1990, 104 Stat. 1718; Pub. L. 104–106, div. A, title VII, § 723, Feb. 10, 1996, 110 Stat. 377; Pub. L. 104–201, div. A, title VII, § 725(d), Sept. 23, 1996, 110 Stat. 2596; Pub. L. 105–85, div. A, title VII, § 731(a)(1), Nov. 18, 1997, 111 Stat. 1810; Pub. L. 106–398, § 1 [[div. A], title VII, § 722(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–185; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 108–106, title I, § 1116, Nov. 6, 2003, 117 Stat. 1218; Pub. L. 108–136, div. A, title VII, §§ 703, 708, Nov. 24, 2003, 117 Stat. 1527, 1530; Pub. L. 108–375, div. A, title VII, § 703, Oct. 28, 2004, 118 Stat. 1982; Pub. L. 109–163, div. A, title VII, § 743(a), Jan. 6, 2006, 119 Stat. 3360; Pub. L. 110–181, div. A, title VI, § 647(b), title XVI, § 1633(a), Jan. 28, 2008, 122 Stat. 161, 459; Pub. L. 111–84, div. A, title VII, § 702, Oct. 28, 2009, 123 Stat. 2373.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1074(a)	37:421(a).	June 7, 1956, ch. 374, §§ 102(a)(3) (as applicable to § 301(b)), 301(a), (b), 70 Stat. 250, 253.
1074(b)	37:402(a)(3) (as applicable to 37:421(b)). 37:421(b).	

In subsection (a), words of entitlement are substituted for the correlative words of obligation.

In subsection (b), the words ''active duty (other than for training)'' are substituted for the words ''active duty as defined in section 901(b) of Title 50'' to reflect section 101(22) of this title. The words ''and dental'' are inserted before the word ''staff'' for clarity. The words ''retirement'' and ''retirement pay'' are omitted as surplusage.

PRIOR PROVISIONS

Provisions similar to those in subsec. (c) of this section were contained in Pub. L. 98–212, title VII, § 735, Dec. 8, 1983, 97 Stat. 1444, which was formerly set out as a note under section 138 [now 114] of this title, and which was amended by Pub. L. 98–525, title XIV, §§ 1403(a)(2), 1404, Oct. 19, 1984, 98 Stat. 2621, eff. Oct. 1, 1985, to strike out these provisions.

A prior section 1074, act Aug. 10, 1956, ch. 1041, 70A Stat. 82, related to enactment of legislation relating to voting in other elections, prior to repeal by Pub. L. 85–861, § 36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§ 1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

2009—Subsec. (d)(1)(B). Pub. L. 111–84 substituted ''180 days'' for ''90 days''.

2008—Subsec. (b). Pub. L. 110–181, § 647(b), designated existing provisions as par. (1) and added par. (2).

Subsec. (c)(4). Pub. L. 110–181, § 1633(a), added par. (4).

2006—Subsec. (a)(2)(B)(iii). Pub. L. 109–163 inserted ''or the orders have been issued but the member has not entered active duty'' before semicolon at end.

2004—Subsec. (d)(3). Pub. L. 108–375 struck out par. (3) which read as follows: ''This subsection shall cease to be effective on December 31, 2004.''

2003—Subsec. (a). Pub. L. 108–136, § 708, inserted ''(1)'' after ''(a)'', substituted ''described in paragraph (2)'' for ''who is on active duty'', and added par. (2).

Subsec. (d). Pub. L. 108–136, § 703, amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows:

''(1) For the purposes of this chapter, a member of a reserve component of the armed forces who is issued a delayed-effective-date active-duty order, or is covered by such an order, shall be treated as being on active duty for a period of more than 30 days beginning on the later of the date that is—

''(A) the date of the issuance of such order; or

''(B) 90 days before date on which the period of active duty is to commence under such order for that member.

''(2) In this subsection, the term 'delayed-effective-date active-duty order' means an order to active duty for a period of more than 30 days in support of a contingency operation under a provision of law referred to in section 101(a)(13)(B) of this title that provides for active-duty service to begin under such order on a date after the date of the issuance of the order.

''(3) This section shall cease to be effective on September 30, 2004.''

Pub. L. 108–106 added subsec. (d).

2002—Subsec. (c)(1). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

2000—Subsec. (c). Pub. L. 106–398, § 1 [[div. A], title VII, § 722(a)(1)(A)], substituted ''uniformed services'' for ''armed forces'' in pars. (1), (2)(A), and (3)(B).

Subsec. (c)(1). Pub. L. 106–398, § 1 [[div. A], title VII, § 722(a)(1)(B)], inserted '', the Department of Transportation (with respect to the Coast Guard when it is not operating as a service in the Navy), or the Department of Health and Human Services (with respect to the National Oceanic and Atmospheric Administration and the Public Health Service)'' after ''military department''.

Subsec. (c)(2)(C). Pub. L. 106–398, § 1 [[div. A], title VII, § 722(a)(1)(C)], added subpar. (C).

Subsec. (c)(3)(A). Pub. L. 106–398, § 1 [[div. A], title VII, § 722(a)(1)(D)], substituted ''A member of the uniformed services described in subparagraph (B) may not be required'' for ''The Secretary of Defense may not require a member of the armed forces described in subparagraph (B)''.

1997—Subsec. (c). Pub. L. 105–85 designated existing provisions as par. (1) and added pars. (2) and (3).

1996—Subsec. (d). Pub. L. 104–201 struck out subsec. (d) which read as follows:

''(d)(1) The Secretary of Defense may require, by regulation, a private CHAMPUS provider to apply the CHAMPUS payment rules (subject to any modifications considered appropriate by the Secretary) in imposing charges for health care that the private CHAMPUS provider provides to a member of the uniformed services who is enrolled in a health care plan of a facility deemed to be a facility of the uniformed services under section 911(a) of the Military Construction Authorization Act, 1982 (42 U.S.C. 248c(a)) when the health care is provided outside the catchment area of the facility.

''(2) In this subsection:

''(A) The term 'private CHAMPUS provider' means a private facility or health care provider that is a health care provider under the Civilian Health and Medical Program of the Uniformed Services.

''(B) The term 'CHAMPUS payment rules' means the payment rules referred to in subsection (c).

''(3) The Secretary of Defense shall prescribe regulations under this subsection after consultation with the other administering Secretaries.''

Pub. L. 104–106 added subsec. (d).

1990—Subsec. (b). Pub. L. 101–510 substituted ''Secretary of Veterans Affairs'' for ''Administrator'' after ''operated by the''.

1989—Subsec. (b). Pub. L. 101–189, § 1621(a)(2), substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs''.

Subsec. (c). Pub. L. 101–189, § 729, inserted at end ''If a private facility or health care provider providing care under this subsection is a health care provider under the Civilian Health and Medical Program of the Uniformed Services, the Secretary of Defense, after consultation with the other administering Secretaries, may by regulation require the private facility or health care provider to provide such care in accordance with the same payment rules (subject to any modifications considered appropriate by the Secretary) as apply under that program.''

1984—Subsecs. (a), (b). Pub. L. 98–557 substituted reference to administering Secretaries for reference to Secretary of Defense and Secretary of Health and Human Services wherever appearing.

Subsec. (c). Pub. L. 98–525 added subsec. (c).

1980—Subsec. (a). Pub. L. 96–513, § 511(36), substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

Subsec. (b). Pub. L. 96–513, § 511(36), (37), substituted ''Secretary of Health and Human Services'' and ''President'' for ''Secretary of Health, Education, and Welfare'' and ''Bureau of the Budget'', respectively.

1966—Subsec. (b). Pub. L. 89–614 struck out provision which excepted from medical and dental care a member or former member who is entitled to retired pay under chapter 67 of this title and has served less than eight years on active duty (other than for training) and authorized care to be provided to persons covered by subsec. (b) in facilities operated by the Administrator of Veterans' Affairs and available on a reimbursable basis at rates approved by the Bureau of the Budget.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–181, div. A, title XVI, § 1633(b), Jan. 28, 2008, 122 Stat. 459, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on January 1, 2008.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–163, div. A, title VII, § 743(b), Jan. 6, 2006, 119 Stat. 3360, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect as of November 24, 2003, and as if included in the enactment of paragraph (2) of section 1074(a) of title 10, United States Code, by section 708 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1530).''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, § 1 [[div. A], title VII, § 722(c)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–186, provided that: ''The amendments made by subsections (a)(1) and (b)(1) [amending this section and section 1079 of this title] shall take effect on October 1, 2001.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 731(a)(2) of Pub. L. 105–85 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply with respect to coverage of medical care for, and the provision of such care to, a member of the Armed Forces under section 1074(c) of title 10, United States Code, on and after the later of the following:

''(A) April 1, 1998.

''(B) The date on which the TRICARE program is in place in the service area of the member.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–525 effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as an Effective Date note under section 520b of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

For effective date of amendment by Pub. L. 89–614, see section 3 of Pub. L. 89–614, set out as a note under section 1071 of this title.

DELEGATION OF FUNCTIONS

Authority of President under subsec. (b) to approve uniform rates of reimbursement for care provided in facilities operated by Secretary of Veterans Affairs delegated to Secretary of Veterans Affairs, see section 7(a) of Ex. Ord. No. 11609, July 22, 1971, 36 F.R. 13747, set out as a note under section 301 of Title 3, The President.

SMOKING CESSATION PROGRAM UNDER TRICARE

Pub. L. 110–417, [div. A], title VII, § 713, Oct. 14, 2008, 122 Stat. 4503, provided that:

''(a) TRICARE SMOKING CESSATION PROGRAM.—Not later than 180 days after the date of the enactment of this Act [Oct. 14, 2008], the Secretary of Defense shall

establish a smoking cessation program under the TRICARE program, to be made available to all beneficiaries under the TRICARE program, subject to subsection (b). The Secretary may prescribe such regulations as may be necessary to implement the program.

''(b) EXCLUSION FOR MEDICARE-ELIGIBLE BENEFICIARIES.—The smoking cessation program shall not be made available to medicare-eligible beneficiaries.

''(c) ELEMENTS.—The program shall include, at a minimum, the following elements:

''(1) The availability, at no cost to the beneficiary, of pharmaceuticals used for smoking cessation, with a limitation on the availability of such pharmaceuticals to the national mail-order pharmacy program under the TRICARE program if appropriate.

''(2) Counseling.

''(3) Access to a toll-free quit line that is available 24 hours a day, 7 days a week.

''(4) Access to printed and Internet web-based tobacco cessation material.

''(d) CHAIN OF COMMAND INVOLVEMENT.—In establishing the program, the Secretary of Defense shall provide for involvement by officers in the chain of command of participants in the program who are on active duty.

''(e) PLAN.—Not later than 90 days after the date of the enactment of this Act [Oct. 14, 2008], the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a plan to implement the program.

''(f) REFUND OF COPAYMENTS.—

''(1) AUTHORITY.—Under regulations prescribed by the Secretary of Defense, the Secretary may pay a refund to a medicare-eligible beneficiary otherwise excluded by this section, subject to the availability of appropriations specifically for such refunds, consisting of an amount up to the difference between—

''(A) the amount the beneficiary pays for copayments for smoking cessation services described in subsection (c) during fiscal year 2009; and

''(B) the amount the beneficiary would have paid during such fiscal year if the beneficiary had not been excluded under subsection (b) from the smoking cessation program under subsection (a).

''(2) COPAYMENTS COVERED.—The refunds under paragraph (1) are available only for copayments paid by medicare-eligible beneficiaries during fiscal year 2009.

''(g) REPORT.—Not later than one year after the date of the enactment of this Act [Oct. 14, 2008], the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report covering the following:

''(1) The status of the program.

''(2) The number of participants in the program.

''(3) The cost of the program.

''(4) The costs avoided that are attributed to the program.

''(5) The success rates of the program compared to other nationally recognized smoking cessation programs.

''(6) Findings regarding the success rate of participants in the program.

''(7) Recommendations to modify the policies and procedures of the program.

''(8) Recommendations concerning the future utility of the program.

''(h) DEFINITIONS.—In this section:

''(1) TRICARE PROGRAM.—The term 'TRICARE program' has the meaning provided by section 1072(7) of title 10, United States Code.

''(2) MEDICARE-ELIGIBLE.—The term 'medicare-eligible' has the meaning provided by section 1111(b) of title 10, United States Code.''

LONGITUDINAL STUDY ON TRAUMATIC BRAIN INJURY INCURRED BY MEMBERS OF THE ARMED FORCES IN OPERATION IRAQI FREEDOM AND OPERATION ENDURING FREEDOM

Pub. L. 109–364, div. A, title VII, §721, Oct. 17, 2006, 120 Stat. 2294, provided that:

''(a) STUDY REQUIRED.—The Secretary of Defense shall conduct a longitudinal study on the effects of traumatic brain injury incurred by members of the Armed Forces serving in Operation Iraqi Freedom or Operation Enduring Freedom on the members who incur such an injury and their families.

''(b) DURATION.—The study required by subsection (a) shall be conducted for a period of 15 years.

''(c) ELEMENTS.—The study required by subsection (a) shall specifically address the following:

''(1) The long-term physical and mental health effects of traumatic brain injuries incurred by members of the Armed Forces during service in Operation Iraqi Freedom or Operation Enduring Freedom.

''(2) The health care, mental health care, and rehabilitation needs of such members for such injuries after the completion of inpatient treatment through the Department of Defense, the Department of Veterans Affairs, or both.

''(3) The type and availability of long-term care rehabilitation programs and services within and outside the Department of Defense and the Department of Veterans Affairs for such members for such injuries, including community-based programs and services and in-home programs and services.

''(4) The effect on family members of a member incurring such an injury.

''(d) CONSULTATION.—The Secretary of Defense shall conduct the study required by subsection (a) and prepare the reports required by subsection (e) in consultation with the Secretary of Veterans Affairs.

''(e) PERIODIC AND FINAL REPORTS.—After the third, seventh, eleventh, and fifteenth years of the study required by subsection (a), the Secretary of Defense shall submit to Congress a comprehensive report on the results of the study during the preceding years. Each report shall include the following:

''(1) Current information on the cumulative outcomes of the study.

''(2) Such recommendations as the Secretary of Defense and the Secretary of Veterans Affairs jointly consider appropriate based on the outcomes of the study, including recommendations for legislative, programmatic, or administrative action to improve long-term care and rehabilitation programs and services for members of the Armed Forces with traumatic brain injuries.''

STANDARDS AND TRACKING OF ACCESS TO HEALTH CARE SERVICES FOR WOUNDED, INJURED, OR ILL SERVICEMEMBERS RETURNING TO THE UNITED STATES FROM A COMBAT ZONE

Pub. L. 109–364, div. A, title VII, §733, Oct. 17, 2006, 120 Stat. 2298, provided that:

''(a) REPORT ON UNIFORM STANDARDS FOR ACCESS.—Not later than 90 days after the date of the enactment of this Act [Oct. 17, 2006], the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on uniform standards for the access of wounded, injured, or ill members of the Armed Forces to health care services in the United States following return from a combat zone.

''(b) MATTERS COVERED.—The report required by subsection (a) shall describe in detail policies with respect to the following:

''(1) The access of wounded, injured, or ill members of the Armed Forces to emergency care.

''(2) The access of such members to surgical services.

''(3) Waiting times for referrals and consultations of such members by medical personnel, dental personnel, mental health specialists, and rehabilitative service specialists, including personnel and specialists with expertise in prosthetics and in the treatment of head, vision, and spinal cord injuries.

''(4) Waiting times of such members for acute care and for routine follow-up care.

''(c) REFERRAL TO PROVIDERS OUTSIDE MILITARY HEALTH CARE SYSTEM.—The Secretary shall require

that health care services and rehabilitation needs of members described in subsection (a) be met through whatever means or mechanisms possible, including through the referral of members described in that subsection to health care providers outside the military health care system.

''(d) UNIFORM SYSTEM FOR TRACKING OF PERFORMANCE.—The Secretary shall establish a uniform system for tracking the performance of the military health care system in meeting the requirements for access of wounded, injured, or ill members of the Armed Forces to health care services described in subsection (a).

''(e) REPORTS.—

''(1) TRACKING SYSTEM.—Not later than 180 days after the date of the enactment of this Act [Oct. 17, 2006], the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the system established under subsection (d).

''(2) ACCESS.—Not later than October 1, 2006, and each quarter thereafter during fiscal year 2007, the Secretary shall submit to such committees a report on the performance of the health care system in meeting the access standards described in the report required by subsection (a).''

PILOT PROJECTS ON EARLY DIAGNOSIS AND TREATMENT OF POST TRAUMATIC STRESS DISORDER AND OTHER MENTAL HEALTH CONDITIONS

Pub. L. 109–364, div. A, title VII, § 741, Oct. 17, 2006, 120 Stat. 2304, provided that:

''(a) PILOT PROJECTS REQUIRED.—The Secretary of Defense shall carry out not less than three pilot projects to evaluate the efficacy of various approaches to improving the capability of the military and civilian health care systems to provide early diagnosis and treatment of post traumatic stress disorder and other mental health conditions.

''(b) DURATION.—Any pilot project carried out under this section shall begin not later than October 1, 2007, and cease on September 30, 2008.

''(c) PILOT PROJECT REQUIREMENTS.—

''(1) DIAGNOSTIC AND TREATMENT APPROACHES.—One of the pilot projects under this section shall be designed to evaluate effective diagnostic and treatment approaches for use by primary care providers in the military health care system in order to improve the capability of such providers to diagnose and treat post traumatic stress disorder.

''(2) NATIONAL GUARD OR RESERVE MEMBERS.—

''(A) One of the pilot projects under this section shall be focused on members of the National Guard or Reserves who are located more than 40 miles from a military medical facility and who are served primarily by civilian community health resources.

''(B) The pilot project described in subparagraph (A) shall be designed to develop educational materials and other tools for use by members of the National Guard or Reserves who come into contact with other members of the National Guard or Reserves who may suffer from post traumatic stress disorder in order to encourage and facilitate early reporting and referral for treatment.

''(3) OUTREACH.—One of the pilot projects under this section shall be designed to provide outreach to the family members of the members of the Armed Forces on post traumatic stress disorder and other mental health conditions.

''(d) EVALUATION OF PILOT PROJECTS.—The Secretary shall evaluate each pilot project carried out under this section in order to assess the effectiveness of the approaches taken under such pilot project—

''(1) to improve the capability of the military and civilian health care systems to provide early diagnosis and treatment of post traumatic stress disorder and other mental health conditions among members of the regular components of the Armed Forces, and among members of the National Guard and Reserves, who have returned from deployment; and

''(2) to provide outreach to the family members of the members of the Armed Forces described in paragraph (1) on post traumatic stress disorder and other mental health conditions among such members of the Armed Forces.

''(e) REPORT TO CONGRESS.—

''(1) REPORT REQUIRED.—Not later than December 31, 2008, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the pilot projects carried out under this section.

''(2) ELEMENTS.—The report required by paragraph (1) shall include the following:

''(A) A description of each pilot project carried out under this section.

''(B) An assessment of the effectiveness of the approaches taken under each pilot project to improve the capability of the military and civilian health care systems to provide early diagnosis and treatment of post traumatic stress disorder and other mental health conditions among members of the Armed Forces.

''(C) Any recommendations for legislative or administrative action that the Secretary considers appropriate in light of the pilot projects, including recommendations on—

''(i) the training of health care providers in the military and civilian health care systems on early diagnosis and treatment of post traumatic stress disorder and other mental health conditions; and

''(ii) the provision of outreach on post traumatic stress disorder and other mental health conditions to members of the National Guard and Reserves who have returned from deployment.

''(D) A plan, in light of the pilot projects, for the improvement of the health care services provided to members of the Armed Forces in order to better assure the early diagnosis and treatment of post traumatic stress disorder and other mental health conditions among members of the Armed Forces, including a specific plan for outreach on post traumatic stress disorder and other mental health conditions to members of the National Guard and Reserves who have returned from deployment in order to facilitate and enhance the early diagnosis and treatment of post traumatic stress disorder and other mental health conditions among such members of the National Guard and Reserves.''

TRAINING CURRICULA FOR FAMILY CAREGIVERS ON CARE AND ASSISTANCE FOR MEMBERS AND FORMER MEMBERS OF THE ARMED FORCES WITH TRAUMATIC BRAIN INJURY

Pub. L. 109–364, div. A, title VII, § 744, Oct. 17, 2006, 120 Stat. 2308, provided that:

''(a) TRAUMATIC BRAIN INJURY FAMILY CAREGIVER PANEL.—

''(1) ESTABLISHMENT.—The Secretary of Defense shall establish a panel within the Department of Defense, to be known as the 'Traumatic Brain Injury Family Caregiver Panel', to develop coordinated, uniform, and consistent training curricula to be used in training family members in the provision of care and assistance to members and former members of the Armed Forces with traumatic brain injuries.

''(2) MEMBERS.—The Traumatic Brain Injury Family Caregiver Panel shall consist of 15 members appointed by the Secretary of Defense from among the following:

''(A) Physicians, nurses, rehabilitation therapists, and other individuals with an expertise in caring for and assisting individuals with traumatic brain injury, including persons who specialize in caring for and assisting individuals with traumatic brain injury incurred in combat.

''(B) Representatives of family caregivers or family caregiver associations.

''(C) Health and medical personnel of the Department of Defense and the Department of Veterans Affairs with expertise in traumatic brain injury and

personnel and readiness representatives of the Department of Defense with expertise in traumatic brain injury.

''(D) Psychologists or other individuals with expertise in the mental health treatment and care of individuals with traumatic brain injury.

''(E) Experts in the development of training curricula.

''(F) Family members of members of the Armed Forces with traumatic brain injury.

''(G) Such other individuals the Secretary considers appropriate.

''(3) CONSULTATION.—In establishing the Traumatic Brain Injury Family Caregiver Panel and appointing the members of the Panel, the Secretary of Defense shall consult with the Secretary of Veterans Affairs.

''(b) DEVELOPMENT OF CURRICULA.—

''(1) DEVELOPMENT.—The Traumatic Brain Injury Family Caregiver Panel shall develop training curricula to be used by family members of members and former members of the Armed Forces on techniques, strategies, and skills for care and assistance for such members and former members with traumatic brain injury.

''(2) SCOPE OF CURRICULA.—The curricula shall—

''(A) be based on empirical research and validated techniques; and

''(B) shall provide for training that permits recipients to tailor caregiving to the unique circumstances of the member or former member of the Armed Forces receiving care.

''(3) PARTICULAR REQUIREMENTS.—In developing the curricula, the Traumatic Brain Injury Family Caregiver Panel shall—

''(A) specify appropriate training commensurate with the severity of traumatic brain injury; and

''(B) identify appropriate care and assistance to be provided for the degree of severity of traumatic brain injury for caregivers of various levels of skill and capability.

''(4) USE OF EXISTING MATERIALS.—In developing the curricula, the Traumatic Brain Injury Family Caregiver Panel shall use and enhance any existing training curricula, materials, and resources applicable to such curricula as the Panel considers appropriate.

''(5) DEADLINE FOR DEVELOPMENT.—The Traumatic Brain Injury Family Caregiver Panel shall develop the curricula not later than one year after the date of the enactment of this Act [Oct. 17, 2006].

''(c) DISSEMINATION OF CURRICULA.—

''(1) DISSEMINATION MECHANISMS.—The Secretary of Defense shall develop mechanisms for the dissemination of the curricula developed under subsection (b)—

''(A) to health care professionals who treat or otherwise work with members and former members of the Armed Forces with traumatic brain injury;

''(B) to family members affected by the traumatic brain injury of such members and former members; and

''(C) to other care or support personnel who may provide service to members or former members affected by traumatic brain injury.

''(2) USE OF EXISTING MECHANISMS.—In developing such mechanisms, the Secretary may use and enhance existing mechanisms, including the Military Severely Injured Center (authorized under section 564 of this Act [10 U.S.C. 113 note]) and the programs for service to severely injured members established by the military departments.

''(d) REPORT.—Not later than one year after the development of the curricula required by subsection (b), the Secretary of Defense and the Secretary of Veterans Affairs shall submit to the Committees on Armed Services and Veterans Affairs of the Senate and the House of Representatives a report on the following:

''(1) The actions undertaken under this section.

''(2) Recommendations for the improvement or updating of training curriculum developed and provided under this section.''

PILOT PROJECTS ON EARLY DIAGNOSIS AND TREATMENT OF POST TRAUMATIC STRESS DISORDER AND OTHER MENTAL HEALTH CONDITIONS

Pub. L. 109–163, div. A, title VII, §722, Jan. 6, 2006, 119 Stat. 3347, provided that:

''(a) PILOT PROJECTS REQUIRED.—The Secretary of Defense may carry out pilot projects to evaluate the efficacy of various approaches to improving the capability of the military and civilian health care systems to provide early diagnosis and treatment of post traumatic stress disorder (PTSD) and other mental health conditions.

''(b) PILOT PROJECT REQUIREMENTS.—

''(1) MOBILIZATION-DEMOBILIZATION FACILITY.—

''(A) IN GENERAL.—A pilot project under subsection (a) may be carried out at a military medical facility at a large military installation at which the mobilization or demobilization of members of the Armed Forces occurs.

''(B) ELEMENTS.—The pilot project under this paragraph shall be designed to evaluate and produce effective diagnostic and treatment approaches for use by primary care providers in the military health care system in order to improve the capability of such providers to diagnose and treat post traumatic stress disorder in a manner that avoids the referral of patients to specialty care by a psychiatrist or other mental health professional.

''(2) NATIONAL GUARD OR RESERVE FACILITY.—

''(A) IN GENERAL.—A pilot project under subsection (a) may be carried out at the location of a National Guard or Reserve unit or units that are located more than 40 miles from a military medical facility and whose personnel are served primarily by civilian community health resources.

''(B) ELEMENTS.—The pilot project under this paragraph shall be designed—

''(i) to evaluate approaches for providing evidence-based clinical information on post traumatic stress disorder to civilian primary care providers; and

''(ii) to develop educational materials and other tools for use by members of the National Guard or Reserve who come into contact with other members of the National Guard or Reserve who may suffer from post traumatic stress disorder in order to encourage and facilitate early reporting and referral for treatment.

''(c) REPORT.—Not later than September 1, 2006, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the progress toward identifying pilot projects to be carried out under this section. To the extent possible the report shall include a description of each such pilot project, including the location of the pilot projects under paragraphs (1) and (2) of subsection (b), and the scope and objectives of each such pilot project.''

COOPERATIVE OUTREACH TO MEMBERS AND FORMER MEMBERS OF THE NAVAL SERVICE EXPOSED TO ENVIRONMENTAL FACTORS RELATED TO SARCOIDOSIS

Pub. L. 109–163, div. A, title VII, §746, Jan. 6, 2006, 119 Stat. 3362, provided that:

''(a) OUTREACH PROGRAM REQUIRED.—The Secretary of the Navy, in coordination with the Secretary of Veterans Affairs, shall conduct an outreach program intended to contact as many members and former members of the naval service as possible who, in connection with service aboard Navy ships, may have been exposed to aerosolized particles resulting from the removal of nonskid coating used on those ships.

''(b) PURPOSES OF OUTREACH PROGRAM.—The purposes of the outreach program are as follows:

''(1) To develop additional data for use in subsequent studies aimed at determining a causative link between sarcoidosis and military service.

''(2) To inform members and former members identified in subsection (a) of the findings of Navy studies identifying an association between service aboard certain naval ships and sarcoidosis.

''(3) To provide information to assist members and former members identified in subsection (a) in getting medical evaluations to help clarify linkages between their disease and their service aboard Navy ships.

''(4) To provide the Department of Veterans Affairs with data and information for the effective evaluation of veterans who may seek care for sarcoidosis.

''(c) IMPLEMENTATION AND REPORT.—Not later than six months after the date of the enactment of this Act [Jan. 6, 2006], the Secretary of the Navy shall begin the outreach program. Not later than one year after beginning the program, the Secretary shall provide to the Committees on Armed Services of the Senate and the House of Representatives and the Committees on Veterans Affairs of the Senate and House of Representatives a report on the results of the outreach program.''

MEDICAL READINESS PLAN AND JOINT MEDICAL READINESS OVERSIGHT COMMITTEE

Pub. L. 108–375, div. A, title VII, § 731, Oct. 28, 2004, 118 Stat. 1993, as amended by Pub. L. 109–163, div. A, title V, § 515(h), Jan. 6, 2006, 119 Stat. 3237; Pub. L. 109–364, div. A, title X, § 1071(g)(8), Oct. 17, 2006, 120 Stat. 2402, provided that:

''(a) REQUIREMENT FOR PLAN.—The Secretary of Defense shall develop a comprehensive plan to improve medical readiness, and Department of Defense tracking of the health status, of members of the Armed Forces throughout their service in the Armed Forces, and to strengthen medical readiness and tracking before, during, and after deployment of members of the Armed Forces overseas. The matters covered by the comprehensive plan shall include all elements that are described in this subtitle [subtitle D [§§ 731 to 740] of title VII of Pub. L. 108–375, enacting sections 1073b and 1092a of this title and enacting provisions set out as notes under this section and sections 1073b, 1074f, and 1092a of this title] and the amendments made by this subtitle and shall comply with requirements in law.

''(b) JOINT MEDICAL READINESS OVERSIGHT COMMITTEE.—

''(1) ESTABLISHMENT.—The Secretary of Defense shall establish a Joint Medical Readiness Oversight Committee.

''(2) COMPOSITION.—The members of the Committee are as follows:

''(A) The Under Secretary of Defense for Personnel and Readiness, who shall chair the Committee.

''(B) The Vice Chief of Staff of the Army, the Vice Chief of Naval Operations, the Vice Chief of Staff of the Air Force, and the Assistant Commandant of the Marine Corp.

''(C) The Assistant Secretary of Defense for Health Affairs.

''(D) The Assistant Secretary of Defense for Reserve Affairs.

''(E) The Surgeon General of each of the Army, the Navy, and the Air Force.

''(F) The Assistant Secretary of the Army for Manpower and Reserve Affairs.

''(G) The Assistant Secretary of the Navy for Manpower and Reserve Affairs.

''(H) The Assistant Secretary of the Air Force for Manpower, Reserve Affairs, Installations, and Environment.

''(I) The Chief of the National Guard Bureau.

''(J) The Chief of Army Reserve.

''(K) The Chief of Navy Reserve.

''(L) The Chief of Air Force Reserve.

''(M) The Commander, Marine Corps Reserve.

''(N) The Director of the Defense Manpower Data Center.

''(O) A representative of the Department of Veterans Affairs designated by the Secretary of Veterans Affairs.

''(3) DUTIES.—The duties of the Committee are as follows:

''(A) To advise the Secretary of Defense on the medical readiness and health status of the members of the active and reserve components of the Armed Forces.

''(B) To advise the Secretary of Defense on the compliance of the Armed Forces with the medical readiness tracking and health surveillance policies of the Department of Defense.

''(C) To oversee the development and implementation of the comprehensive plan required by subsection (a) and the actions required by this subtitle and the amendments made by this subtitle, including with respect to matters relating to—

''(i) the health status of the members of the reserve components of the Armed Forces;

''(ii) accountability for medical readiness;

''(iii) medical tracking and health surveillance;

''(iv) declassification of information on environmental hazards;

''(v) postdeployment health care for members of the Armed Forces; and

''(vi) compliance with Department of Defense and other applicable policies on blood serum repositories.

''(D) To ensure unity and integration of efforts across functional and organizational lines within the Department of Defense with regard to medical readiness tracking and health surveillance of members of the Armed Forces.

''(E) To establish and monitor compliance with the medical readiness standards that are applicable to members and those that are applicable to units.

''(F) To improve continuity of care in coordination with the Secretary of Veterans Affairs, for members of the Armed Forces separating from active service with service-connected medical conditions.

''(4) FIRST MEETING.—The first meeting of the Committee shall be held not later than 120 days after the date of the enactment of this Act [Oct. 28, 2004].

''(c) ANNUAL REPORT.—

''(1) IN GENERAL.—In addition to the duties described in subsection (b)(3), the Committee shall prepare and submit to the Secretary of Defense and to the Committees on Armed Services of the Senate and the House of Representatives, not later than February 1 of each year, a report on—

''(A) the health status and medical readiness of the members of the Armed Forces, including the members of reserve components, based on the comprehensive plan required under subsection (a) and the actions required by this subtitle and the amendments made by this subtitle; and

''(B) compliance with Department of Defense policies on medical readiness tracking and health surveillance.

''(2) OPPORTUNITY FOR COMMENT.—Each year, before the Committee submits to Congress the report required under paragraph (1), the Secretary of Defense shall provide an opportunity for representatives of veterans and military health advocacy organizations, and others the Secretary of Defense considers appropriate, to comment on the report. The report submitted to Congress shall include a summary of the comments received and the Secretary's response to them.''

ACCOUNTABILITY FOR MEDICAL READINESS OF INDIVIDUALS AND UNITS OF THE RESERVE COMPONENTS

Pub. L. 108–375, div. A, title VII, § 732(b), Oct. 28, 2004, 118 Stat. 1997, provided that:

''(1) POLICY.—The Secretary of Defense shall take measures, in addition to those required by section 1074f of title 10, United States Code, to ensure that individual members and commanders of reserve component

units fulfill their responsibilities and meet the requirements for medical and dental readiness of members of the units. Such measures may include—

''(A) requiring more frequent health assessments of members than is required by section 1074f(b) of title 10, United States Code, with an objective of having every member of the Selected Reserve receive a health assessment as specified in section 1074f of such title not less frequently than once every two years; and

''(B) providing additional support and information to commanders to assist them in improving the health status of members of their units.

''(2) REVIEW AND FOLLOWUP CARE.—The measures under this subsection shall provide for review of the health assessments under paragraph (1) by a medical professional and for any followup care and treatment that is otherwise authorized for medical or dental readiness.

''(3) MODIFICATION OF PREDEPLOYMENT HEALTH ASSESSMENT SURVEY.—In carrying out paragraph (1), the Secretary shall—

''(A) to the extent practicable, modify the predeployment health assessment survey to bring such survey into conformity with the detailed postdeployment health assessment survey in use as of October 1, 2004; and

''(B) ensure the use of the predeployment health assessment survey, as so modified, for predeployment health assessments after that date.''

UNIFORM POLICY ON DEFERRAL OF MEDICAL TREATMENT PENDING DEPLOYMENT TO THEATERS OF OPERATIONS

Pub. L. 108–375, div. A, title VII, §732(c), Oct. 28, 2004, 118 Stat. 1997, provided that:

''(1) REQUIREMENT FOR POLICY.—The Secretary of Defense shall prescribe, for uniform applicability throughout the Armed Forces, a policy on deferral of medical treatment of members pending deployment.

''(2) CONTENT.—The policy prescribed under paragraph (1) may specify the following matters:

''(A) The circumstances under which treatment for medical conditions may be deferred to be provided within a theater of operations in order to prevent delay or other disruption of a deployment to that theater.

''(B) The circumstances under which medical conditions are to be treated before deployment to that theater.''

MEDICAL CARE AND TRACKING AND HEALTH SURVEILLANCE IN THE THEATER OF OPERATIONS

Pub. L. 108–375, div. A, title VII, §734, Oct. 28, 2004, 118 Stat. 1998, provided that:

''(a) RECORDKEEPING POLICY.—The Secretary of Defense shall prescribe a policy that requires the records of all medical care provided to a member of the Armed Forces in a theater of operations to be maintained as part of a complete health record for the member.

''(b) IN-THEATER MEDICAL TRACKING AND HEALTH SURVEILLANCE.—

''(1) REQUIREMENT FOR EVALUATION.—The Secretary of Defense shall evaluate the system for the medical tracking and health surveillance of members of the Armed Forces in theaters of operations and take such actions as may be necessary to improve the medical tracking and health surveillance.

''(2) REPORT.—Not later than one year after the date of the enactment of this Act [Oct. 28, 2004], the Secretary of Defense shall submit a report on the actions taken under paragraph (1) to the Committees on Armed Services of the Senate and the House of Representatives. The report shall include the following matters:

''(A) An analysis of the strengths and weaknesses of the medical tracking system administered under section 1074f of title 10, United States Code.

''(B) An analysis of the efficacy of health surveillance systems as a means of detecting—

''(i) any health problems (including mental health conditions) of members of the Armed Forces contemporaneous with the performance of the assessment under the system; and

''(ii) exposures of the assessed members to environmental hazards that potentially lead to future health problems.

''(C) An analysis of the strengths and weaknesses of such medical tracking and surveillance systems as a means for supporting future research on health issues.

''(D) Recommended changes to such medical tracking and health surveillance systems.

''(E) A summary of scientific literature on blood sampling procedures used for detecting and identifying exposures to environmental hazards.

''(F) An assessment of whether there is a need for changes to regulations and standards for drawing blood samples for effective tracking and health surveillance of the medical conditions of personnel before deployment, upon the end of a deployment, and for a followup period of appropriate length.

''(c) PLAN TO OBTAIN HEALTH CARE RECORDS FROM ALLIES.—The Secretary of Defense shall develop a plan for obtaining all records of medical treatment provided to members of the Armed Forces by allies of the United States in Operation Enduring Freedom and Operation Iraqi Freedom. The plan shall specify the actions that are to be taken to obtain all such records.

''(d) POLICY ON IN-THEATER PERSONNEL LOCATOR DATA.—Not later than one year after the date of the enactment of this Act [Oct. 28, 2004], the Secretary of Defense shall prescribe a Department of Defense policy on the collection and dissemination of in-theater individual personnel location data.''

DECLASSIFICATION OF INFORMATION ON EXPOSURES TO ENVIRONMENTAL HAZARDS

Pub. L. 108–375, div. A, title VII, §735, Oct. 28, 2004, 118 Stat. 1999, provided that:

''(a) REQUIREMENT FOR REVIEW.—The Secretary of Defense shall review and, as determined appropriate, revise the classification policies of the Department of Defense with a view to facilitating the declassification of data that is potentially useful for the monitoring and assessment of the health of members of the Armed Forces who have been exposed to environmental hazards during deployments overseas, including the following data:

''(1) In-theater injury rates.

''(2) Data derived from environmental surveillance.

''(3) Health tracking and surveillance data.

''(b) CONSULTATION WITH COMMANDERS OF THEATER COMBATANT COMMANDS.—The Secretary shall, to the extent that the Secretary considers appropriate, consult with the senior commanders of the in-theater forces of the combatant commands in carrying out the review and revising policies under subsection (a).''

UNIFORM POLICY FOR MEETING MOBILIZATION-RELATED MEDICAL CARE NEEDS AT MILITARY INSTALLATIONS

Pub. L. 108–375, div. A, title VII, §737, Oct. 28, 2004, 118 Stat. 2000, provided that:

''(a) HEALTH CARE AT MOBILIZATION INSTALLATIONS.—The Secretary of Defense shall take such steps as necessary, including through the uniform policy established under subsection (c), to ensure that anticipated health care needs of members of the Armed Forces at mobilization installations can be met at those installations. Such steps may, within authority otherwise available to the Secretary, include the following with respect to any such installation:

''(1) Arrangements for health care to be provided by the Secretary of Veterans Affairs.

''(2) Procurement of services from local health care providers.

''(3) Temporary employment of health care personnel to provide services at such installation.

''(b) MOBILIZATION INSTALLATIONS.—For purposes of this section, the term 'mobilization installation' means

a military installation at which members of the Armed Forces, in connection with a contingency operation or during a national emergency—

''(1) are mobilized;

''(2) are deployed; or

''(3) are redeployed from a deployment location.

''(c) REQUIREMENT FOR REGULATIONS.—

''(1) POLICY ON IMPLEMENTATION.—The Secretary of Defense shall by regulation establish a policy for the implementation of subsection (a) throughout the Department of Defense.

''(2) IDENTIFICATION AND ANALYSIS OF NEEDS.—As part of the policy prescribed under paragraph (1), the Secretary shall require the Secretary of each military department, with respect to each mobilization installation under the jurisdiction of that Secretary, to identify and analyze the anticipated health care needs at that installation with respect to members of the Armed Forces who may be expected to mobilize or deploy or redeploy at that installation as described in subsection (b)(1). Such identification and analysis shall be carried out so as to be completed before the arrival of such members at the installation.

''(3) RESPONSE TO NEEDS.—The policy established by the Secretary of Defense under paragraph (1) shall require that, based on the results of the identification and analysis under paragraph (2), the Secretary of the military department concerned shall determine how to expeditiously and effectively respond to those anticipated health care needs that cannot be met within the resources otherwise available at that installation, in accordance with subsection (a).

''(4) IMPLEMENTATION OF AUTHORITY.—In implementing the policy established under paragraph (1) at any installation, the Secretary of the military department concerned shall ensure that the commander of the installation, and the officers and other personnel superior to that commander in that commander's chain of command, have appropriate authority and responsibility for such implementation.

''(d) POLICY.—The Secretary of Defense shall ensure—

''(1) that the policy prescribed under subsection (c) is carried out with respect to any mobilization installation with the involvement of all agencies of the Department of Defense that have responsibility for management of the installation and all organizations of the Department that have command authority over any activity at the installation; and

''(2) that such policy is implemented on a uniform basis throughout the Department of Defense.''

FULL IMPLEMENTATION OF MEDICAL READINESS TRACKING AND HEALTH SURVEILLANCE PROGRAM AND FORCE HEALTH PROTECTION AND READINESS PROGRAM

Pub. L. 108–375, div. A, title VII, § 738, Oct. 28, 2004, 118 Stat. 2001, provided that:

''(a) IMPLEMENTATION AT ALL LEVELS.—The Secretary of Defense, in conjunction with the Secretaries of the military departments, shall take such actions as are necessary to ensure that the Army, Navy, Air Force, and Marine Corps fully implement at all levels—

''(1) the Medical Readiness Tracking and Health Surveillance Program under this title [see Tables for classification] and the amendments made by this title; and

''(2) the Force Health Protection and Readiness Program of the Department of Defense (relating to the prevention of injury and illness and the reduction of disease and noncombat injury threats).

''(b) ACTION OFFICIAL.—The Secretary of Defense may act through the Under Secretary of Defense for Personnel and Readiness in carrying out subsection (a).''

INTERNET ACCESSIBILITY OF HEALTH ASSESSMENT INFORMATION FOR MEMBERS OF THE ARMED FORCES

Pub. L. 108–375, div. A, title VII, § 739(b), Oct. 28, 2004, 118 Stat. 2002, provided that: ''Not later than one year after the date of the enactment of this Act [Oct. 28, 2004], the Chief Information Officer of each military department shall ensure that the online portal website of that military department includes the following information relating to health assessments:

''(1) Information on the policies of the Department of Defense and the military department concerned regarding predeployment and postdeployment health assessments, including policies on the following matters:

''(A) Health surveys.

''(B) Physical examinations.

''(C) Collection of blood samples and other tissue samples.

''(2) Procedural information on compliance with such policies, including the following information:

''(A) Information for determining whether a member is in compliance.

''(B) Information on how to comply.

''(3) Health assessment surveys that are either—

''(A) web-based; or

''(B) accessible (with instructions) in printer-ready form by download.''

INCLUSION OF DENTAL CARE

Pub. L. 108–375, div. A, title VII, § 740, as added by Pub. L. 109–163, div. A, title VII, § 745(a), Jan. 6, 2006, 119 Stat. 3362, provided that: ''For purposes of the plan, this subtitle [subtitle D (§§ 731–740) of title VII of div. A of Pub. L. 108–375, enacting sections 1073b and 1092a of this title and enacting provisions set out as notes under this section and sections 1073b, 1074f, and 1092a of this title], and the amendments made by this subtitle, references to medical readiness, health status, and health care shall be considered to include dental readiness, dental status, and dental care.''

LIMITATION ON FISCAL YEAR 2004 OUTLAYS FOR TEMPORARY RESERVE HEALTH CARE PROGRAMS

Pub. L. 108–136, div. A, title VII, § 706, Nov. 24, 2003, 117 Stat. 1529, as amended by Pub. L. 110–181, div. A, title X, § 1063(g)(1), Jan. 28, 2008, 122 Stat. 323, provided that:

''(a) OUTLAY LIMITATION.—In the administration of the temporary Reserve health care programs, the Secretary of Defense shall carry out those programs so as to limit the total Department of Defense expenditures under those programs during fiscal year 2004 to an amount not in excess $400,000,000.

''(b) CONTINUITY OF CARE.—In the administration of the temporary Reserve health care programs, the Secretary of Defense shall carry out the implementation and termination of those programs so as to ensure the least amount of disruption to the continuity of care for persons provided care under those programs.

''(c) TEMPORARY RESERVE HEALTH CARE PROGRAMS.—For purposes of this section, the term 'temporary Reserve health care programs' means the following:

''(1) The program under [former] section 1076b of title 10, United States Code, as amended by section 702.

''(2) The program under section 1074(d) of title 10, United States Code, as amended by section 703.

''(3) The program under section 704 [former 10 U.S.C. 1145 note].''

DISCLOSURE OF INFORMATION ON PROJECT 112 TO DEPARTMENT OF VETERANS AFFAIRS

Pub. L. 107–314, div. A, title VII, § 709, Dec. 2, 2002, 116 Stat. 2586, provided that:

''(a) PLAN FOR DISCLOSURE OF INFORMATION.—Not later than 90 days after the date of the enactment of this Act [Dec. 2, 2002], the Secretary of Defense shall submit to Congress and the Secretary of Veterans Affairs a comprehensive plan for the review, declassification, and submittal to the Department of Veterans Affairs of all records and information of the Department of Defense on Project 112 that are relevant to the provision of benefits by the Secretary of Veterans Affairs to members of the Armed Forces who participated in that project.

''(b) PLAN REQUIREMENTS.—(1) The records and information covered by the plan under subsection (a) shall

be the records and information necessary to permit the identification of members of the Armed Forces who were or may have been exposed to chemical or biological agents as a result of Project 112.

''(2) The plan shall provide for completion of all activities contemplated by the plan not later than one year after the date of the enactment of this Act [Dec. 2, 2002].

''(c) IDENTIFICATION OF OTHER PROJECTS OR TESTS.—The Secretary of Defense also shall work with veterans and veterans service organizations to identify other projects or tests conducted by the Department of Defense that may have exposed members of the Armed Forces to chemical or biological agents.

''(d) GAO REPORTS ON PLAN AND IMPLEMENTATION.—(1) Not later than 30 days after submission of the plan under subsection (a), the Comptroller General shall submit to Congress a report reviewing the plan. The report shall include an examination of whether adequate resources have been committed, the timeliness of the information to be released to the Department of Veterans Affairs, and the adequacy of the procedures to notify affected veterans of potential exposure.

''(2) Not later than six months after implementation of the plan begins, the Comptroller General shall submit to Congress a report evaluating the progress in the implementation of the plan.

''(e) DOD REPORTS ON IMPLEMENTATION.—(1) Not later than six months after the date of the enactment of this Act [Dec. 2, 2002], and upon completion of all activities contemplated by the plan under subsection (a), the Secretary of Defense shall submit to Congress and the Secretary of Veterans Affairs a report on progress in the implementation of the plan.

''(2) Each report under paragraph (1) shall include, for the period covered by such report—

''(A) the number of records reviewed;

''(B) each test, if any, under Project 112 identified during such review;

''(C) for each test so identified—

''(i) the test name;

''(ii) the test objective;

''(iii) the chemical or biological agent or agents involved; and

''(iv) the number of members of the Armed Forces, and civilian personnel, potentially effected by such test; and

''(D) the extent of submittal of records and information to the Secretary of Veterans Affairs under this section.

''(f) PROJECT 112.—For purposes of this section, Project 112 refers to the chemical and biological weapons vulnerability-testing program of the Department of Defense conducted by the Deseret Test Center from 1963 to 1969. The project included the Shipboard Hazard and Defense (SHAD) project of the Navy.''

HEALTH CARE AT FORMER UNIFORMED SERVICES TREATMENT FACILITIES FOR ACTIVE DUTY MEMBERS STATIONED AT CERTAIN REMOTE LOCATIONS

Pub. L. 106–65, div. A, title VII, §706, Oct. 5, 1999, 113 Stat. 684, as amended by Pub. L. 106–398, §1 [[div. A], title VII, §722(a)(3)], Oct. 30, 2000, 114 Stat. 1654, 1654A–185, provided that:

''(a) AUTHORITY.—Health care may be furnished by a designated provider pursuant to any contract entered into by the designated provider under section 722(b) of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 10 U.S.C. 1073 note) to eligible members who reside within the service area of the designated provider.

''(b) ELIGIBILITY.—A member of the uniformed services (as defined in section 1072(1) of title 10, United States Code) is eligible for health care under subsection (a) if the member is a member described in section 731(c) of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85; 111 Stat. 1811; 10 U.S.C. 1074 note).

''(c) APPLICABLE POLICIES.—In furnishing health care to an eligible member under subsection (a), a designated provider shall adhere to the Department of Defense policies applicable to the furnishing of care under the TRICARE Prime Remote program, including coordinating with uniformed services medical authorities for hospitalizations and all referrals for specialty care.

''(d) REIMBURSEMENT RATES.—The Secretary of Defense, in consultation with the designated providers, shall prescribe reimbursement rates for care furnished to eligible members under subsection (a). The rates prescribed for health care may not exceed the amounts allowable under the TRICARE Standard plan for the same care.''

TEMPORARY AUTHORITY FOR MANAGED CARE EXPANSION TO MEMBERS ON ACTIVE DUTY AT CERTAIN REMOTE LOCATIONS; ''TRICARE PROGRAM'' AND ''TRICARE PRIME PLAN'' DEFINED

Pub. L. 105–85, div. A, title VII, §731(b)–(f), Nov. 18, 1997, 111 Stat. 1811, 1812, as amended by Pub. L. 106–398, §1 [[div. A], title VII, §722(a)(2), (b)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–185, 1654A–186, provided that:

''(b) TEMPORARY AUTHORITY FOR MANAGED CARE EXPANSION TO MEMBERS ON ACTIVE DUTY AT CERTAIN REMOTE LOCATIONS.—(1) A member of the uniformed services described in subsection (c) is entitled to receive care under the Civilian Health and Medical Program of the Uniformed Services. In connection with such care, the Secretary of Defense shall waive the obligation of the member to pay a deductible, copayment, or annual fee that would otherwise be applicable under that program for care provided to the members under the program. A dependent of the member, as described in subparagraph (A), (D), or (I) of section 1072(2) of title 10, United States Code, who is residing with the member shall have the same entitlement to care and to waiver of charges as the member.

''(2) A member or dependent of the member, as the case may be, who is entitled under paragraph (1) to receive health care services under CHAMPUS shall receive such care from a network provider under the TRICARE program if such a provider is available in the service area of the member.

''(3) Paragraph (1) shall take effect on the date of the enactment of this Act [Nov. 18, 1997] and shall expire with respect to a member upon the later of the following:

''(A) The date that is one year after the date of the enactment of this Act.

''(B) The date on which the amendments made by subsection (a) [amending this section] apply with respect to the coverage of medical care for, and provision of such care to, the member.

''(4) The Secretary of Defense shall consult with the other administering Secretaries in the administration of this subsection.

''(c) ELIGIBLE MEMBERS.—A member referred to in subsection (b) is a member of the uniformed services on active duty who—

''(1) receives a duty assignment described in subsection (d); and

''(2) pursuant to the assignment of such duty, resides at a location that is more than 50 miles, or approximately one hour of driving time, from—

''(A) the nearest health care facility of the uniformed services adequate to provide the needed care under chapter 55 of title 10, United States Code; and

''(B) the nearest source of the needed care that is available to the member under the TRICARE Prime plan.

''(d) DUTY ASSIGNMENTS COVERED.—A duty assignment referred to in subsection (c)(1) means any of the following:

''(1) Permanent duty as a recruiter.

''(2) Permanent duty at an educational institution to instruct, administer a program of instruction, or provide administrative services in support of a program of instruction for the Reserve Officers' Training Corps.

''(3) Permanent duty as a full-time adviser to a unit of a reserve component of the uniformed services.

''(4) Any other permanent duty designated by the Secretary concerned for purposes of this subsection.

''(e) PAYMENT OF COSTS.—Deductibles, copayments, and annual fees not payable by a member by reason of a waiver granted under the regulations prescribed pursuant to subsection (b) shall be paid out of funds available to the Department of Defense for the Defense Health Program.

''(f) DEFINITIONS.—In this section [amending this section and enacting provisions set out as a note above]:

''(1) The term 'TRICARE program' has the meaning given that term in section 1072(7) of title 10, United States Code.

''(2) The term 'TRICARE Prime plan' means a plan under the TRICARE program that provides for the voluntary enrollment of persons for the receipt of health care services to be furnished in a manner similar to the manner in which health care services are furnished by health maintenance organizations.

''(3) The terms 'uniformed services' and 'administering Secretaries' have the meanings given those terms in section 1072 of title 10, United States Code.''

[Pub. L. 106–398, §1 [[div. A], title VII, §722(c)(2), (3)], Oct. 30, 2000, 114 Stat. 1654, 1654A–186, provided that:

[''(2) The amendments made by subsection (a)(2) [amending section 731(b)–(f) of Pub. L. 105–85, set out above], with respect to members of the uniformed services, and the amendments made by subsection (b)(2) [amending section 731(b)–(f) of Pub. L. 105–85, set out above], with respect to dependents of members, shall take effect on the date of the enactment of this Act [Oct. 30, 2000] and shall expire with respect to a member or the dependents of a member, respectively, on the later of the following:

[''(A) The date that is one year after the date of the enactment of this Act.

[''(B) The date on which the policies required by the amendments made by subsection (a)(1) or (b)(1) [amending this section and section 1079 of this title] are implemented with respect to the coverage of medical care for and provision of such care to the member or dependents, respectively.

[''(3) Section 731(b)(3) of Public Law 105–85 [set out above] does not apply to a member of the Coast Guard, the National Oceanic and Atmospheric Administration, or the Commissioned Corps of the Public Health Service, or to a dependent of a member of a uniformed service.''']

INDEPENDENT RESEARCH REGARDING GULF WAR SYNDROME

Section 743 of Pub. L. 104–201 provided that:

''(a) DEFINITIONS.—For purposes of this section:

''(1) The term 'Gulf War service' means service on active duty as a member of the Armed Forces in the Southwest Asia theater of operations during the Persian Gulf War.

''(2) The term 'Gulf War syndrome' means the complex of illnesses and symptoms commonly known as Gulf War syndrome.

''(3) The term 'Persian Gulf War' has the meaning given that term in section 101(33) of title 38, United States Code.

''(b) RESEARCH.—The Secretary of Defense shall provide, by contract, grant, or other transaction, for scientific research to be carried out by entities independent of the Federal Government on possible causal relationships between Gulf War syndrome and—

''(1) the possible exposures of members of the Armed Forces to chemical warfare agents or other hazardous materials during Gulf War service; and

''(2) the use by the Department of Defense during the Persian Gulf War of combinations of various inoculations and investigational new drugs.

''(c) PROCEDURES FOR AWARDING GRANTS.—The Secretary shall prescribe the procedures to be used to make research awards under subsection (b). The procedures shall—

''(1) include a comprehensive, independent peer-review process for the evaluation of proposals for scientific research that are submitted to the Department of Defense; and

''(2) provide for the final selection of proposals for award to be based on the scientific merit and program relevance of the proposed research.

''(d) AVAILABILITY OF FUNDS.—Of the amount authorized to be appropriated under section 301(21) [110 Stat. 2475] for defense medical programs, $10,000,000 is available for research under subsection (b).''

PERSIAN GULF ILLNESS

Sections 761, 762, and 770 of title VII of Pub. L. 105–85 provided that:

''SEC. 761. DEFINITIONS.

''For purposes of this subtitle [subtitle F (§§761–771) of title VII of Pub. L. 105–85, enacting sections 1074e, 1074f, and 1107 of this title and this note]:

''(1) The term 'Gulf War illness' means any one of the complex of illnesses and symptoms that might have been contracted by members of the Armed Forces as a result of service in the Southwest Asia theater of operations during the Persian Gulf War.

''(2) The term 'Persian Gulf War' has the meaning given that term in section 101 of title 38, United States Code.

''(3) The term 'Persian Gulf veteran' means an individual who served on active duty in the Armed Forces in the Southwest Asia theater of operations during the Persian Gulf War.

''(4) The term 'contingency operation' has the meaning given that term in section 101(a) of title 10, United States Code, and includes a humanitarian operation, peacekeeping operation, or similar operation.

''SEC. 762. PLAN FOR HEALTH CARE SERVICES FOR PERSIAN GULF VETERANS.

''(a) PLAN REQUIRED.—The Secretary of Defense and the Secretary of Veterans Affairs, acting jointly, shall prepare a plan to provide appropriate health care to Persian Gulf veterans (and dependents eligible by law) who suffer from a Gulf War illness.

''(b) CONTENTS OF PLAN.—In preparing the plan, the Secretaries shall—

''(1) use the presumptions of service connection and illness specified in paragraphs (1) and (2) of section 721(d) of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 10 U.S.C. 1074 note) to determine the Persian Gulf veterans (and dependents eligible by law) who should be covered by the plan;

''(2) consider the need and methods available to provide health care services to Persian Gulf veterans who are no longer on active duty in the Armed Forces, such as Persian Gulf veterans who are members of the reserve components and Persian Gulf veterans who have been separated from the Armed Forces; and

''(3) estimate the costs to the Government of providing full or partial health care services under the plan to covered Persian Gulf veterans (and covered dependents eligible by law).

''(c) FOLLOW-UP TREATMENT.—The plan required by subsection (a) shall specifically address the measures to be used to monitor the quality, appropriateness, and effectiveness of, and patient satisfaction with, health care services provided to Persian Gulf veterans after their initial medical examination as part of registration in the Persian Gulf War Veterans Health Registry or the Comprehensive Clinical Evaluation Program.

''(d) SUBMISSION OF PLAN.—Not later than March 1, 1998, the Secretaries shall submit to Congress the plan required by subsection (a).

''SEC. 770. PERSIAN GULF ILLNESS CLINICAL TRIALS PROGRAM.

''(a) FINDINGS.—Congress finds the following:

''(1) There are many ongoing studies that investigate risk factors which may be associated with the health problems experienced by Persian Gulf veter-

ans; however, there have been no studies that examine health outcomes and the effectiveness of the treatment received by such veterans.

''(2) The medical literature and testimony presented in hearings on Gulf War illnesses indicate that there are therapies, such as cognitive behavioral therapy, that have been effective in treating patients with symptoms similar to those seen in many Persian Gulf veterans.

''(b) ESTABLISHMENT OF PROGRAM.—The Secretary of Defense and the Secretary of Veterans Affairs, acting jointly, shall establish a program of cooperative clinical trials at multiple sites to assess the effectiveness of protocols for treating Persian Gulf veterans who suffer from ill-defined or undiagnosed conditions. Such protocols shall include a multidisciplinary treatment model, of which cognitive behavioral therapy is a component.

''(c) FUNDING.—Of the funds authorized to be appropriated in section 201(1) [111 Stat. 1655] for research, development, test, and evaluation for the Army, the sum of $4,500,000 shall be available for program element 62787A (medical technology) in the budget of the Department of Defense for fiscal year 1998 to carry out the clinical trials program established pursuant to subsection (b).''

Pub. L. 103–337, div. A, title VII, §§721, 722, Oct. 5, 1994, 108 Stat. 2804, 2807, as amended by Pub. L. 104–106, div. A, title XV, §1504(a)(4), (5), Feb. 10, 1996, 110 Stat. 513; Pub. L. 108–136, div. A, title X, §1031(e), Nov. 24, 2003, 117 Stat. 1604, provided that:

''SEC. 721. PROGRAMS RELATED TO DESERT STORM MYSTERY ILLNESS.

''(a) OUTREACH PROGRAM TO PERSIAN GULF VETERANS AND FAMILIES.—The Secretary of Defense shall institute a comprehensive outreach program to inform members of the Armed Forces who served in the Southwest Asia theater of operations during the Persian Gulf Conflict, and the families of such members, of illnesses that may result from such service. The program shall be carried out through both medical and command channels, as well as any other means the Secretary considers appropriate. Under the program, the Secretary shall—

''(1) inform such individuals regarding—

''(A) common disease symptoms reported by Persian Gulf veterans that may be due to service in the Southwest Asia theater of operations;

''(B) blood donation policy;

''(C) available counseling and medical care for such members; and

''(D) possible health risks to children of Persian Gulf veterans;

''(2) inform such individuals of the procedures for registering in either the Persian Gulf Veterans Health Surveillance System of the Department of Defense or the Persian Gulf War Health Registry of the Department of Veterans Affairs; and

''(3) encourage such members to report any symptoms they may have and to register in the appropriate health surveillance registry.

''(b) INCENTIVES TO PERSIAN GULF VETERANS TO REGISTER.—In order to encourage Persian Gulf veterans to register any symptoms they may have in one of the existing health registries, the Secretary of Defense shall provide the following:

''(1) For any Persian Gulf veteran who is on active duty and who registers with the Department of Defense's Persian Gulf War Veterans Health Surveillance System, a full medical evaluation and any required medical care.

''(2) For any Persian Gulf War veteran who is, as of the date of the enactment of this Act [Oct. 5, 1994], a member of a reserve component, opportunity to register at a military medical facility in the Persian Gulf Veterans Health Care Surveillance System and, in the case of a Reserve who registers in that registry, a full medical evaluation by the Department of Defense. Depending on the results of the evaluation and on eligibility status, reserve personnel may be provided medical care by the Department of Defense.

''(3) For a Persian Gulf veteran who is not, as of the date of the enactment of this Act [Oct. 5, 1994], on active duty or a member of a reserve component, assistance and information at a military medical facility on registering with the Persian Gulf War Registry of the Department of Veterans Affairs and information related to support services provided by the Department of Veterans Affairs.

''(c) COMPATIBILITY OF DEPARTMENT OF DEFENSE AND DEPARTMENT OF VETERANS AFFAIRS REGISTRIES.—The Secretary of Defense shall take appropriate actions to ensure—

''(1) that the data collected by and the testing protocols of the Persian Gulf War Health Surveillance System maintained by the Department of Defense are compatible with the data collected by and the testing protocols of the Persian Gulf War Veterans Health Registry maintained by the Department of Veterans Affairs; and

''(2) that all information on individuals who register with the Department of Defense for purposes of the Persian Gulf War Health Surveillance System is provided to the Secretary of Veterans Affairs for incorporation into the Persian Gulf War Veterans Health Registry.

''(d) PRESUMPTIONS ON BEHALF OF SERVICE MEMBER.—(1) A member of the Armed Forces who is a Persian Gulf veteran, who has symptoms of illness, and who the Secretary concerned finds may have become ill as a result of serving on active duty in the Southwest Asia theater of operations during the Persian Gulf War shall be considered for Department of Defense purposes to have become ill as a result of serving in that theater of operations.

''(2) A member of the Armed Forces who is a Persian Gulf veteran and who reports being ill as a result of serving on active duty in the Southwest Asia theater of operations during the Persian Gulf War shall be considered for Department of Defense purposes to have become ill as a result of serving in that theater of operations until such time as the weight of medical evidence establishes other cause or causes of the member's illness.

''(3) The Secretary concerned shall ensure that, for the purposes of health care treatment by the Department of Defense, health care and personnel administration, and disability evaluation by the Department of Defense, the symptoms of any member of the Armed Forces covered by paragraph (1) or (2) are examined in light of the member's service in the Persian Gulf War and in light of the reported symptoms of other Persian Gulf veterans. The Secretary shall ensure that, in providing health care diagnosis and treatment of the member, a broad range of potential causes of the member's symptoms are considered and that the member's symptoms are considered collectively, as well as by type of symptom or medical specialty, and that treatment across medical specialties is coordinated appropriately.

''(4) The Secretary of Defense shall ensure that the presumptions of service connection and illness specified in paragraphs (1) and (2) are incorporated in appropriate service medical and personnel regulations and are widely disseminated throughout the Department of Defense.

''(e) REVISION OF THE PHYSICAL EVALUATION BOARD CRITERIA.—(1) The Secretary of Defense, in consultation with the Secretary of Veterans Affairs and the Secretary of Health and Human Services, shall ensure that case definitions of Persian Gulf related illnesses, as well as the Physical Evaluation Board criteria used to set disability ratings for members no longer medically qualified for continuation on active duty, are established as soon as possible to permit accurate disability ratings related to a diagnosis of Persian Gulf illnesses.

''(2) Until revised disability criteria can be implemented and members of the Armed Forces can be rated against those criteria, the Secretary of Defense shall ensure—

''(A) that any member of the Armed Forces on active duty who may be suffering from a Persian Gulf-

related illness is afforded continued military medical care; and

''(B) that any member of the Armed Forces on active duty who is found by a Physical Evaluation Board to be unfit for continuation on active duty as a result of a Persian Gulf-related illness for which the board has no rating criteria (or inadequate rating criteria) for the illness or condition from which the member suffers is placed on the temporary disability retired list.

''(f) REVIEW OF RECORDS AND RERATING OF PREVIOUSLY DISCHARGED GULF WAR VETERANS.—(1) The Secretary of Defense, in consultation with the Secretary of Veterans Affairs, shall ensure that a review is made of the health and personnel records of each Persian Gulf veteran who before the date of the enactment of this Act [Oct. 5, 1994] was discharged from active duty, or was medically retired, as a result of a Physical Evaluation Board process.

''(2) The review under paragraph (1) shall be carried out to ensure that former Persian Gulf veterans who may have been suffering from a Persian Gulf-related illness at the time of discharge or retirement from active duty as a result of the Physical Evaluation Board process are reevaluated in accordance with the criteria established under subsection (e)(1) and, if appropriate, are rerated.

''(g) PERSIAN GULF ILLNESS MEDICAL REFERRAL CENTERS.—The Secretary of Defense shall evaluate the feasibility of establishing one or more medical referral centers to provide uniform, coordinated medical care for Persian Gulf veterans on active duty who are or may be suffering from a Persian Gulf-related illness. The Secretary shall submit a report on such feasibility to the Committees on Armed Services of the Senate and House of Representatives not later than six months after the date of the enactment of this Act [Oct. 5, 1994].

''[(h) Repealed. Pub. L. 108–136, div. A, title X, § 1031(e), Nov. 24, 2003, 117 Stat. 1604.]

''(i) PERSIAN GULF VETERAN.—For purposes of this section, a Persian Gulf veteran is an individual who served on active duty in the Armed Forces in the Southwest Asia theater of operations during the Persian Gulf Conflict.

''SEC. 722. STUDIES OF HEALTH CONSEQUENCES OF MILITARY SERVICE OR EMPLOYMENT IN SOUTHWEST ASIA DURING THE PERSIAN GULF WAR.

''(a) IN GENERAL.—The Secretary of Defense, in coordination with the Secretary of Veterans Affairs and the Secretary of Health and Human Services, shall conduct studies and administer grants for studies to determine—

''(1) the nature and causes of illnesses suffered by individuals as a consequence of service or employment by the United States in the Southwest Asia theater of operations during the Persian Gulf War; and

''(2) the appropriate treatment for those illnesses.

''(b) NATURE OF THE STUDIES.—(1) Studies under subsection (a)—

''(A) shall include consideration of the range of potential exposure of individuals to environmental, battlefield, and other conditions incident to service in the theater;

''(B) shall be conducted so as to provide assessments of both short-term and long-term effects to the health of individuals as a result of those exposures; and

''(C) shall include, at a minimum, the following types of studies:

''(i) An epidemiological study or studies on the incidence, prevalence, and nature of the illness and symptoms and the risk factors associated with symptoms or illnesses.

''(ii) Studies to determine the health consequences of the use of pyridostigmine bromide as a pretreatment antidote enhancer during the Persian Gulf War, alone or in combination with exposure to pesticides, environmental toxins, and other hazardous substances.

''(iii) Clinical research and other studies on the causes, possible transmission, and treatment of Persian Gulf-related illnesses.

''(2)(A) The first project carried out under paragraph (1)(C)(ii) shall be a retrospective study of members of the Armed Forces who served in the Southwest Asia theater of operations during the Persian Gulf War.

''(B) The second project carried out under paragraph (1)(C)(ii) shall consist of animal research and non-animal research, including in vitro systems, as required, designed to determine whether the use of pyridostigmine bromide in combination with exposure to pesticides or other organophosphates, carbamates, or relevant chemicals will result in increased toxicity in animals and is likely to have a similar effect on humans.

''(c) INDIVIDUALS COVERED BY THE STUDIES.—Studies conducted pursuant to subsections [sic] (a) shall apply to the following individuals:

''(1) Individuals who served as members of the Armed Forces in the Southwest Asia theater of operations during the Persian Gulf War.

''(2) Individuals who were civilian employees of the Department of Defense in that theater during that period.

''(3) To the extent appropriate, individuals who were employees of contractors of the Department of Defense in that theater during that period.

''(4) To the extent appropriate, the spouses and children of individuals described in paragraph (1).

''(d) PLAN FOR THE STUDIES.—(1) The Secretary of Defense shall prepare a coordinated plan for the studies to be conducted pursuant to subsection (a). The plan shall include plans and requirements for research grants in support of the studies. The Secretary shall submit the plan to the National Academy of Sciences for review and comment.

''(2) The plan for studies pursuant to subsection (a) shall be updated annually. The Secretary of Defense shall request an annual review by the National Academy of Sciences of the updated plan and study progress and results achieved during the preceding year.

''(3) The plan, and annual updates to the plan, shall be prepared in coordination with the Secretary of Veterans Affairs and the Secretary of Health and Human Services.

''(e) FUNDING.—(1) From the amount authorized to be appropriated pursuant to section 201 [108 Stat. 2690] for Defense-wide activities, the Secretary of Defense shall make available such funds as the Secretary considers necessary to support the studies conducted pursuant to subsection (a).

''(2) For each year in which activities continue in support of the studies conducted pursuant to subsection (a), the Secretary of Defense shall include in the budget request for the Department of Defense a request for such funds as the Secretary determines necessary to continue the activities during that fiscal year.

''(f) REPORTS.—(1) Not later than March 31, 1995, the Secretary of Defense shall submit to Congress the coordinated plan for the studies to be conducted pursuant to subsection (a) and the results of the review of that plan by the National Academy of Sciences.

''(2) Not later than October 1 of each year through 1998, the Secretary shall submit to Congress a report on the results of the studies conducted pursuant to subsection (a), plans for continuation of the studies, and the results of the annual review of the studies by the National Academy of Sciences.

''(3) Each report under this section shall be prepared in coordination with the Secretary of Veterans Affairs and the Secretary of Health and Human Services.

''(g) DEFINITION.—In this section, the term 'Persian Gulf War' has the meaning given such term in section 101 of title 38, United States Code.''

[For provisions establishing the Persian Gulf War Veterans Health Registry, provisions requiring a study

by the Office of Technology Assessment of the Persian Gulf Registry and the Persian Gulf War Veterans Health Registry, provisions relating to an agreement with the National Academy of Sciences for review of health consequences of service during the Persian Gulf War, and coordination of government activities on health-related research on the Persian Gulf War, see title VII of Pub. L. 102–585, set out as a note under section 527 of Title 38, Veterans' Benefits.]

FUNDING OF FISHER HOUSES ASSOCIATED WITH ARMY MEDICAL TREATMENT FACILITIES

Pub. L. 103–335, title VIII, §8017, Sept. 30, 1994, 108 Stat. 2620, which provided that during fiscal year 1995 and thereafter, proceeds from investment of Fisher House Investment Trust Fund were to be used to support operation and maintenance of Fisher Houses associated with Army medical treatment facilities, was repealed and restated in section 2221(c)(1) of this title by Pub. L. 104–106, div. A, title IX, §914(a)(1), (d)(4), Feb. 10, 1996, 110 Stat. 412, 413.

MENTAL HEALTH EVALUATIONS OF MEMBERS OF ARMED FORCES

Pub. L. 102–484, div. A, title V, §546(a)–(h), Oct. 23, 1992, 106 Stat. 2416–2419, directed Secretary of Defense, not later than 180 days after Oct. 23, 1992, to revise applicable regulations to incorporate certain requirements with respect to mental health evaluations of members of Armed Forces, including requirements relating to procedures for outpatient and inpatient evaluations, rights of members, additional rights of members and procedures for emergency or involuntary inpatient evaluations, and prohibition against use of referrals for mental health evaluations to retaliate against whistleblowers, and directed Secretary to submit to Committees on Armed Services of Senate and House of Representatives a report describing process of preparing regulations.

STUDY ON RISK-SHARING CONTRACTS FOR HEALTH CARE

Pub. L. 102–484, div. A, title VII, §725, Oct. 23, 1992, 106 Stat. 2440, directed Secretary of Defense, in consultation with Secretary of Health and Human Services, not later than 18 months after Oct. 23, 1992, to carry out a study of the feasibility and advisability of entering into risk-sharing contracts with eligible organizations described in 42 U.S.C. 1395mm(b) to furnish health care services to persons entitled to health care in a facility of a uniformed service under section 1074(b) or 1076(b) of this title, to develop a plan for the entry into contracts in accordance with the Secretary's determinations under the study, and to submit to Congress a report describing the results of the study and containing any plan developed.

REGISTRY OF MEMBERS OF ARMED FORCES SERVING IN OPERATION DESERT STORM

Pub. L. 102–190, div. A, title VII, §734, Dec. 5, 1991, 105 Stat. 1411, as amended by Pub. L. 102–585, title VII, §704, Nov. 4, 1992, 106 Stat. 4977; Pub. L. 108–136, div. A, title X, §1031(c)(1), Nov. 24, 2003, 117 Stat. 1604, provided that:

''(a) ESTABLISHMENT OF REGISTRY.—The Secretary of Defense shall establish and maintain a special record (in this section referred to as the 'Registry') relating to the following members of the Armed Forces:

''(1) Members who, as determined by the Secretary, were exposed to the fumes of burning oil in the Operation Desert Storm theater of operations during the Persian Gulf conflict.

''(2) Any other members who served in the Operation Desert Storm theater of operations during the Persian Gulf conflict.

''(b) CONTENTS OF REGISTRY.—(1) The Registry shall include—

''(A) with respect to each class of members referred to in each of paragraphs (1) and (2) of subsection (a)—

''(i) a list containing each such member's name and other relevant identifying information with respect to the member; and

''(ii) to the extent that data are available and inclusion of the data is feasible, a description of the circumstances of the member's service during the Persian Gulf conflict, including the locations in the Operation Desert Storm theater of operations in which such service occurred and the atmospheric and other environmental circumstances in such locations at the time of such service; and

''(B) with respect to the members referred to in subsection (a)(1), a description of the circumstances of each exposure of each such member to the fumes of burning oil as described in such subsection (a)(1), including the length of time of the exposure.

''(2) The Secretary shall establish the Registry with the advice of an independent scientific organization.

''[(c) Repealed. Pub. L. 108–136, div. A, title X, §1031(c)(1), Nov. 24, 2003, 117 Stat. 1604.]

''(d) MEDICAL EXAMINATION.—Upon the request of any member listed in the Registry pursuant to subsection (a)(1), the Secretary of the military department concerned shall, if medically appropriate, furnish a pulmonary function examination and chest x-ray to such person.

''(e) EFFECTIVE DATE.—The Secretary shall establish the Registry not later than 180 days after the date of the enactment of this Act [Dec. 5, 1991].

''(f) DEFINITIONS.—For purposes of this section:

''(1) The term 'Operation Desert Storm' has the meaning given such term in section 3(1) of the Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991 (Public Law 102–25; 105 Stat. 77; 10 U.S.C. 101 note).

''(2) The term 'Persian Gulf conflict' has the meaning given such term in section 3(3) of such Act.''

[For provisions relating to the Persian Gulf War Veterans Health Registry, see title VII of Pub. L. 102–585, set out as a note under section 527 of Title 38, Veterans' Benefits.]

ADVISORY COMMITTEE ON MENTAL HEALTH EVALUATION PROTECTIONS

Section 554 of Pub. L. 101–510, as amended by Pub. L. 102–484, div. A, title V, §546(j)[(i)], Oct. 23, 1992, 106 Stat. 2419, directed Secretary of Defense, not later than 60 days after Nov. 5, 1990, to establish an advisory committee to develop and recommend to the Secretary, not later than 6 months after Nov. 5, 1990, regulations on procedural protections that should be afforded to any member of the Armed Forces who is referred by a commanding officer for a mental health evaluation by a mental health professional and directed Secretary, not later than 30 days after receipt of the report, to submit to Congress the report of the advisory committee, along with such additional comments and recommendations by the Secretary as the Secretary considers appropriate.

PROHIBITION ON FEE FOR OUTPATIENT CARE AT MILITARY MEDICAL TREATMENT FACILITIES

Section 721 of Pub. L. 101–189 provided that during fiscal years 1990 and 1991, the Secretary of Defense could not impose a charge for the receipt of outpatient medical or dental care at a military medical treatment facility. Similar provisions were contained in the following prior authorization act:

Pub. L. 100–180, div. A, title VII, §722, Dec. 4, 1987, 101 Stat. 1116.

RESTRICTION ON USE OF INFORMATION OBTAINED DURING CERTAIN EPIDEMIOLOGIC-ASSESSMENT INTERVIEWS

Pub. L. 99–661, div. A, title VII, §705(c), Nov. 14, 1986, 100 Stat. 3904, provided that:

''(1) Information obtained by the Department of Defense during or as a result of an epidemiologic-assessment interview with a serum-positive member of the Armed Forces may not be used to support any adverse personnel action against the member.

''(2) For purposes of paragraph (1):

''(A) The term 'epidemiologic-assessment interview' means questioning of a serum-positive member of the

Armed Forces for purposes of medical treatment or counseling or for epidemiologic or statistical purposes.

''(B) The term 'serum-positive member of the Armed Forces' means a member of the Armed Forces who has been identified as having been exposed to a virus associated with the acquired immune deficiency syndrome.

''(C) The term 'adverse personnel action' includes—

''(i) a court-martial;

''(ii) non-judicial punishment;

''(iii) involuntary separation (other than for medical reasons);

''(iv) administrative or punitive reduction in grade;

''(v) denial of promotion;

''(vi) an unfavorable entry in a personnel record;

''(vii) a bar to reenlistment; and

''(viii) any other action considered by the Secretary concerned to be an adverse personnel action.''

STUDY OF MEDICAL NEEDS OF ARMED FORCES; REPORT TO PRESIDENT AND CONGRESS

Pub. L. 92–129, title I, § 101(c), Sept. 28, 1971, 85 Stat. 354, authorized Secretary of Defense and Secretary of Health, Education, and Welfare to conduct a joint study of means of meeting medical needs of Armed Forces through means requiring less dependence on Armed Forces medical personnel, giving consideration to providing medical care for military personnel and their dependents under contracts with clinics, hospitals, and individual members of the medical profession at or near military installations within and outside the United States. The study and recommendations were to be submitted to President and Congress no later than 6 months after Sept. 28, 1971.

EXECUTIVE ORDER NO. 13075

Ex. Ord. No. 13075, Feb. 19, 1997, 63 F.R. 9085, which established the Special Oversight Board for Department of Defense Investigations of Gulf War Chemical and Biological Incidents, was revoked by Ex. Ord. No. 13225, § 3(e), Sept. 28, 2001, 66 F.R. 50292.

§ 1074a. Medical and dental care: members on duty other than active duty for a period of more than 30 days

(a) Under joint regulations prescribed by the administering Secretaries, the following persons are entitled to the benefits described in subsection (b):

(1) Each member of a uniformed service who incurs or aggravates an injury, illness, or disease in the line of duty while performing—

(A) active duty for a period of 30 days or less;

(B) inactive-duty training; or

(C) service on funeral honors duty under section 12503 of this title or section 115 of title 32.

(2) Each member of a uniformed service who incurs or aggravates an injury, illness, or disease while traveling directly to or from the place at which that member is to perform or has performed—

(A) active duty for a period of 30 days or less;

(B) inactive-duty training; or

(C) service on funeral honors duty under section 12503 of this title or section 115 of title 32.

(3) Each member of the armed forces who incurs or aggravates an injury, illness, or disease in the line of duty while remaining overnight immediately before the commencement of inactive-duty training, or while remaining overnight, between successive periods of inactive-duty training, at or in the vicinity of the site of the inactive-duty training.

(4) Each member of the armed forces who incurs or aggravates an injury, illness, or disease in the line of duty while remaining overnight immediately before serving on funeral honors duty under section 12503 of this title or section 115 of title 32 at or in the vicinity of the place at which the member was to so serve, if the place is outside reasonable commuting distance from the member's residence.

(b) A person described in subsection (a) is entitled to—

(1) the medical and dental care appropriate for the treatment of the injury, illness, or disease of that person until the resulting disability cannot be materially improved by further hospitalization or treatment; and

(2) subsistence during hospitalization.

(c) A member is not entitled to benefits under subsection (b) if the injury, illness, or disease, or aggravation of an injury, illness, or disease described in subsection (a)(2), is the result of the gross negligence or misconduct of the member.

(d)(1) The Secretary concerned shall provide to members of the Selected Reserve who are assigned to units scheduled for deployment within 75 days after mobilization the following medical and dental services:

(A) An annual medical screening.

(B) For members who are over 40 years of age, a full physical examination not less often than once every two years.

(C) An annual dental screening.

(D) The dental care identified in an annual dental screening as required to ensure that a member meets the dental standards required for deployment in the event of mobilization.

(2) The services provided under this subsection shall be provided at no cost to the member.

(e)(1) A member of a uniformed service on active duty for health care or recuperation reasons, as described in paragraph (2), is entitled to medical and dental care on the same basis and to the same extent as members covered by section 1074(a) of this title while the member remains on active duty.

(2) Paragraph (1) applies to a member described in paragraph (1) or (2) of subsection (a) who, while being treated for (or recovering from) an injury, illness, or disease incurred or aggravated in the line of duty, is continued on active duty pursuant to a modification or extension of orders, or is ordered to active duty, so as to result in active duty for a period of more than 30 days.

(f)(1) At any time after the Secretary concerned notifies members of the Ready Reserve that the members are to be called or ordered to active duty for a period of more than 30 days, the administering Secretaries may provide to each such member any medical and dental screening and care that is necessary to ensure that the member meets the applicable medical and dental standards for deployment.

(2) The notification to members of the Ready Reserve described in paragraph (1) shall include

notice that the members are eligible for screening and care under this section.

(3) A member provided medical or dental screening or care under paragraph (1) may not be charged for the screening or care.

(g)(1) The Secretary concerned may provide to any member of the Selected Reserve not described in subsection (d)(1) or (f), and to any member of the Individual Ready Reserve described in section 10144(b) of this title the medical and dental services specified in subsection (d)(1) if the Secretary determines that the receipt of such services by such member is necessary to ensure that the member meets applicable standards of medical and dental readiness.

(2) Services may not be provided to a member under this subsection for a condition that is the result of the member's own misconduct.

(3) The services provided under this subsection shall be provided at no cost to the member.

(h) Amounts available for operation and maintenance of a reserve component of the armed forces may be available for purposes of this section to ensure the medical and dental readiness of members of such reserve component.

(Added Pub. L. 98–94, title X, §1012(a)(1), Sept. 24, 1983, 97 Stat. 664; amended Pub. L. 98–525, title VI, §631(a)(1), Oct. 19, 1984, 98 Stat. 2542; Pub. L. 98–557, §19(4), Oct. 30, 1984, 98 Stat. 2869; Pub. L. 99–145, title XIII, §1303(a)(7), Nov. 8, 1985, 99 Stat. 739; Pub. L. 99–661, div. A, title VI, §604(a)(1), Nov. 14, 1986, 100 Stat. 3874; Pub. L. 104–106, div. A, title VII, §§702(a), 704(a), Feb. 10, 1996, 110 Stat. 371, 372; Pub. L. 105–85, div. A, title V, §513(a), Nov. 18, 1997, 111 Stat. 1730; Pub. L. 106–65, div. A, title V, §578(i)(1), title VII, §705(b), Oct. 5, 1999, 113 Stat. 629, 683; Pub. L. 107–107, div. A, title V, §513(a), Dec. 28, 2001, 115 Stat. 1093; Pub. L. 108–106, title I, §1114, Nov. 6, 2003, 117 Stat. 1216; Pub. L. 108–136, div. A, title VII, §701, Nov. 24, 2003, 117 Stat. 1525; Pub. L. 110–417, [div. A], title VII, §735(a), Oct. 14, 2008, 122 Stat. 4513.)

AMENDMENTS

2008—Subsec. (d)(1). Pub. L. 110–417, §735(a)(1), substituted "The Secretary concerned shall provide to members of the Selected Reserve" for "The Secretary of the Army shall provide to members of the Selected Reserve of the Army".

Subsecs. (g), (h). Pub. L. 110–417, §735(a)(2), (3), added subsecs. (g) and (h).

2003—Subsec. (f). Pub. L. 108–136 amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows:

"(1) At any time after the Secretary concerned notifies members of the Ready Reserve that the members are to be called or ordered to active duty, the administering Secretaries may provide to each such member any medical and dental screening and care that is necessary to ensure that the member meets the applicable medical and dental standards for deployment.

"(2) The Secretary concerned shall promptly transmit to each member of the Ready Reserve eligible for screening and care under this subsection a notification of eligibility for such screening and care.

"(3) A member provided medical or dental screening or care under paragraph (1) may not be charged for the screening or care.

"(4) Screening and care may not be provided under this section after September 30, 2004."

Pub. L. 108–106 added subsec. (f).

2001—Subsec. (a)(3). Pub. L. 107–107 struck out ", if the site is outside reasonable commuting distance from the member's residence" before period at end.

1999—Subsec. (a)(1)(C). Pub. L. 106–65, §578(i)(1)(A), added subpar. (C).

Subsec. (a)(2)(C). Pub. L. 106–65, §578(i)(1)(A), added subpar. (C).

Subsec. (a)(4). Pub. L. 106–65, §578(i)(1)(B), added par. (4).

Subsec. (e). Pub. L. 106–65, §705(b), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: "A member of a uniformed service described in paragraph (1)(A) or (2)(A) of subsection (a) whose orders are modified or extended, while the member is being treated for (or recovering from) the injury, illness, or disease incurred or aggravated in the line of duty, so as to result in active duty for a period of more than 30 days shall be entitled, while the member remains on active duty, to medical and dental care on the same basis and to the same extent as members covered by section 1074(a) of this title."

1997—Subsec. (a)(3). Pub. L. 105–85, §513(a)(1), inserted "while remaining overnight immediately before the commencement of inactive-duty training, or" after "in the line of duty".

Subsec. (e). Pub. L. 105–85, §513(a)(2), added subsec. (e).

1996—Subsec. (a)(3). Pub. L. 104–106, §702(a), added par. (3).

Subsec. (c). Pub. L. 104–106, §704(a)(1), substituted "subsection (b)" for "this section".

Subsec. (d). Pub. L. 104–106, §704(a)(2), added subsec. (d).

1986—Pub. L. 99–661 amended section generally substituting "active duty for a period of more than 30 days" for "active duty; injuries, diseases and illnesses incident to duty" in section catchline and new text for prior text which read as follows:

"(a) Under joint regulations prescribed by the administering Secretaries, the following persons are entitled to the benefits described in subsection (b):

"(1) Each member of a uniformed service who contracts a disease or becomes ill in line of duty while on active duty for a period of 30 days or less, or while traveling to or from that duty.

"(2) Each member of the National Guard who contracts a disease or becomes ill in line of duty while on full-time National Guard duty, or while traveling to or from that duty.

"(3) Each member of a uniformed service who contracts a disease or becomes ill in line of duty while on inactive duty training under circumstances in which it is determined that the disease or illness was contracted or aggravated as an incident of that inactive duty training.

"(4) Each member of a uniformed service who incurs or aggravates an injury while traveling directly to or from the place at which he is to perform, or has performed, inactive duty training, unless the injury is incurred or aggravated as a result of the member's own gross negligence or misconduct.

"(b) A person described in subsection (a) is entitled to—

"(1) the medical and dental care appropriate for the treatment of his injury, disease, or illness until the resulting disability cannot be materially improved by further hospitalization or treatment; and

"(2) subsistence during hospitalization."

1985—Subsec. (a). Pub. L. 99–145 substituted reference to the administering Secretaries, for references to Secretaries of Defense, Transportation, and Health and Human Services.

1984—Pub. L. 98–525 substituted "Medical and dental care: members on duty other than active duty; injuries, diseases and illnesses incident to duty" for "Medical and dental care for members of the uniformed services for injuries incurred or aggravated while traveling to and from inactive duty training" in section catchline.

Subsec. (a). Pub. L. 98–557, which directed the amendment of subsec. (a) by substituting "administering Secretaries" for "Secretary of Defense and the Secretary of Health and Human Services", could not be executed in view of the prior amendment by Pub. L. 98–525.

Pub. L. 98–525 amended subsec. (a) generally, thereby authorizing the Secretary of Transportation to participate in issuance of joint regulations, adding pars. (1) to (3), and incorporating existing provisions in par. (4).

Subsec. (b). Pub. L. 98–525 amended subsec. (b) generally, thereby including treatment of diseases or illnesses.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 604(g) of Pub. L. 99–661 provided that: ''The amendments made by this section [amending this section, sections 1076, 1086, 1204–1206, 1475, 1476, 1481, 3723, and 8723 of this title, and sections 204 and 206 of Title 37, Pay and Allowances of the Uniformed Services and repealing sections 3687, 3721, 3722, 6148, 8687, 8721, and 8722 of this title and sections 318–321 of Title 32, National Guard] shall apply with respect to persons who, after the date of enactment of this Act [Nov. 14, 1986], incur or aggravate an injury, illness, or disease or die.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 631(c) of Pub. L. 98–525 provided that: ''The amendments made by this section [amending this section and section 6148 of this title] shall apply only with respect to injuries incurred or aggravated and diseases or illnesses contracted or aggravated after September 30, 1984.''

EFFECTIVE DATE

Section 1012(c) of Pub. L. 98–94 provided that: ''The amendments made by subsections (a) and (b) [enacting this section and amending section 204 of Title 37, Pay and Allowances of the Uniformed Services] shall apply only in cases of injuries incurred or aggravated on or after the date of the enactment of this Act [Sept. 24, 1983].''

§ 1074b. Medical and dental care: Academy cadets and midshipmen; members of, and designated applicants for membership in, Senior ROTC

(a) ELIGIBILITY.—Under joint regulations prescribed by the administering Secretaries, the following persons are, except as provided in subsection (c), entitled to the benefits described in subsection (b):

(1) A cadet at the United States Military Academy, the United States Air Force Academy, or the Coast Guard Academy, and a midshipman at the United States Naval Academy, who incurs or aggravates an injury, illness, or disease in the line of duty.

(2) A member of, and a designated applicant for membership in, the Senior Reserve Officers' Training Corps who incurs or aggravates an injury, illness, or disease—

(A) in the line of duty while performing duties under section 2109 of this title;

(B) while traveling directly to or from the place at which that member or applicant is to perform or has performed duties pursuant to section 2109 of this title; or

(C) in the line of duty while remaining overnight immediately before the commencement of duties performed pursuant to section 2109 of this title or, while remaining overnight, between successive periods of performing duties pursuant to section 2109 of this title, at or in the vicinity of the site of the duties performed pursuant to section 2109 of this title, if the site is outside reasonable commuting distance from the residence of the member or designated applicant.

(b) BENEFITS.—A person eligible for benefits under subsection (a) for an injury, illness, or disease is entitled to—

(1) the medical and dental care under this chapter that is appropriate for the treatment of the injury, illness, or disease until the injury, illness, disease, or any resulting disability cannot be materially improved by further hospitalization or treatment; and

(2) meals during hospitalization.

(c) EXCEPTION FOR GROSS NEGLIGENCE OR MISCONDUCT.—A person is not entitled to benefits under subsection (b) for an injury, illness, or disease, or the aggravation of an injury, illness, or disease that is a result of the gross negligence or the misconduct of that person.

(Added Pub. L. 108–375, div. A, title V, § 555(a)(1), Oct. 28, 2004, 118 Stat. 1913.)

PRIOR PROVISIONS

A prior section 1074b, added Pub. L. 102–190, div. A, title VI, § 640(a)(2), Dec. 5, 1991, 105 Stat. 1385; amended Pub. L. 104–106, div. A, title XV, § 1501(c)(10), Feb. 10, 1996, 110 Stat. 499, which related to transitional medical and dental care for members on active duty in support of contingency operations, was repealed by Pub. L. 107–107, div. A, title VII, § 736(c)(1), (d), Dec. 28, 2001, 115 Stat. 1173, with provision that the section, as in effect before Dec. 28, 2001, was to continue to apply to a member of the Armed Forces who was released from active duty in support of a contingency operation before that date.

Another prior section 1074b was renumbered section 1074c of this title.

§ 1074c. Medical care: authority to provide a wig

A person entitled to medical care under this chapter who has alopecia resulting from the treatment of a malignant disease may be furnished a wig if the person has not previously been furnished one at the expense of the United States.

(Added Pub. L. 98–525, title XIV, § 1401(e)(2)(A), Oct. 19, 1984, 98 Stat. 2616, § 1074b; renumbered § 1074c, Pub. L. 102–190, div. A, title VI, § 640(a)(1), Dec. 5, 1991, 105 Stat. 1385.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following appropriation acts:

Pub. L. 98–473, title I, § 101(h) [title VIII, § 8033], Oct. 12, 1984, 98 Stat. 1904, 1929.

Pub. L. 98–212, title VII, § 739, Dec. 8, 1983, 97 Stat. 1445.

Pub. L. 97–377, title I, § 101(c) [title VII, § 742], Dec. 21, 1982, 96 Stat. 1833, 1858.

Pub. L. 97–114, title VII, § 743, Dec. 29, 1981, 95 Stat. 1586.

Pub. L. 96–527, title VII, § 744, Dec. 15, 1980, 94 Stat. 3089.

AMENDMENTS

1991—Pub. L. 102–190 renumbered section 1074b of this title as this section.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

§ 1074d. Certain primary and preventive health care services

(a) SERVICES AVAILABLE.—(1) Female members and former members of the uniformed services entitled to medical care under section 1074 or

1074a of this title shall also be entitled to primary and preventive health care services for women as part of such medical care. The services described in paragraphs (1) and (2) of subsection (b) shall be provided under such procedures and at such intervals as the Secretary of Defense shall prescribe.

(2) Male members and former members of the uniformed services entitled to medical care under section 1074 or 1074a of this title shall also be entitled to preventive health care screening for colon or prostate cancer at such intervals and using such screening methods as the administering Secretaries consider appropriate.

(b) DEFINITION.—In this section, the term ''primary and preventive health care services for women'' means health care services, including related counseling services, provided to women with respect to the following:

(1) Cervical cancer screening.

(2) Breast cancer screening.

(3) Comprehensive obstetrical and gynecological care, including care related to pregnancy and the prevention of pregnancy.

(4) Infertility and sexually transmitted diseases, including prevention.

(5) Menopause, including hormone replacement therapy and counseling regarding the benefits and risks of hormone replacement therapy.

(6) Physical or psychological conditions arising out of acts of sexual violence.

(7) Gynecological cancers.

(8) Colon cancer screening, at the intervals and using the screening methods prescribed under subsection (a)(2).

(Added Pub. L. 103–160, div. A, title VII, § 701(a)(1), Nov. 30, 1993, 107 Stat. 1685; amended Pub. L. 104–201, div. A, title VII, § 701(a)(1), (2)(A), Sept. 23, 1996, 110 Stat. 2587; Pub. L. 109–364, div. A, title VII, § 703(a), Oct. 17, 2006, 120 Stat. 2279.)

AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109–364, § 703(a)(1), inserted at end ''The services described in paragraphs (1) and (2) of subsection (b) shall be provided under such procedures and at such intervals as the Secretary of Defense shall prescribe.''

Subsec. (b)(1). Pub. L. 109–364, § 703(a)(2)(A), substituted ''Cervical cancer screening'' for ''Papanicolaou tests (pap smear)''.

Subsec. (b)(2). Pub. L. 109–364, § 703(a)(2)(B), substituted ''Breast cancer screening'' for ''Breast examinations and mammography''.

1996—Pub. L. 104–201, § 701(a)(2)(A), amended catchline generally, substituting ''Certain primary and preventive health care services'' for ''Primary and preventive health care services for women''.

Subsec. (a). Pub. L. 104–201, § 701(a)(1)(A), designated existing provisions as par. (1) and added par. (2).

Subsec. (b)(8). Pub. L. 104–201, § 701(a)(1)(B), added par. (8).

DEFENSE WOMEN'S HEALTH RESEARCH PROGRAM

Pub. L. 103–337, div. A, title II, § 241, Oct. 5, 1994, 108 Stat. 2701, provided that:

''(a) CONTINUATION OF PROGRAM.—The Secretary of Defense shall continue the Defense Women's Health Research Program established in fiscal year 1994 pursuant to the authority in section 251 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 107 Stat. 1606) [set out below]. The program shall continue to serve as the coordinating agent for multi-disciplinary and multi-institutional research within the Department of Defense on women's health issues related to service in the Armed Forces. The program also shall continue to coordinate with research supported by other Federal agencies that is aimed at improving the health of women.

''(b) PARTICIPATION BY ALL MILITARY DEPARTMENTS.—The Departments of the Army, Navy, and Air Force shall each participate in the activities under the program.

''(c) ARMY TO BE EXECUTIVE AGENT.—The Secretary of Defense shall designate the Secretary of the Army to be the executive agent for administering the program.

''(d) IMPLEMENTATION PLAN.—If the Secretary of Defense intends to change the plan for the implementation of the program previously submitted to the Committees on Armed Services of the Senate and House of Representatives, the amended plan shall be submitted to such committees before implementation.

''(e) PROGRAM ACTIVITIES.—The program shall include the following activities regarding health risks and health care for women in the Armed Forces:

''(1) The coordination and support activities described in section 251 of Public Law 103–160 [set out below].

''(2) Epidemiologic research regarding women deployed for military operations, including research on patterns of illness and injury, environmental and occupational hazards (including exposure to toxins), side-effects of pharmaceuticals used by women so deployed, psychological stress associated with military training, deployment, combat and other traumatic incidents, and other conditions of life, and human factor research regarding women so deployed.

''(3) Development of a data base to facilitate long-term research studies on issues related to the health of women in military service, and continued development and support of a women's health information clearinghouse to serve as an information resource for clinical, research, and policy issues affecting women in the Armed Forces.

''(4) Research on policies and standards issues, including research supporting the development of military standards related to training, operations, deployment, and retention and the relationship between such activities and factors affecting women's health.

''(5) Research on interventions having a potential for addressing conditions of military service that adversely affect the health of women in the Armed Forces.

''(f) FUNDING.—Of the amount authorized to be appropriated pursuant to section 201 [108 Stat. 2690], $40,000,000 shall be available for the Defense Women's Health Research Program referred to in subsection (a).''

Pub. L. 103–160, div. A, title II, § 251, Nov. 30, 1993, 107 Stat. 1606, provided that:

''(a) AUTHORITY TO ESTABLISH CENTER.—The Secretary of Defense may establish a Defense Women's Health Research Center (hereinafter in this section referred to as the 'Center') at an existing Department of Defense medical center to serve as the coordinating agent for multidisciplinary and multi-institutional research within the Department of Defense on women's health issues related to service in the Armed Forces. The Secretary shall determine whether or not to establish the Center not later than May 1, 1994. If established, the Center shall also coordinate with research supported by the Department of Health and Human Services and other agencies that is aimed at improving the health of women.

''(b) SUPPORT OF RESEARCH.—The Center shall support health research into matters relating to the service of women in the military, including the following matters:

''(1) Combat stress and trauma.

''(2) Exposure to toxins and other environmental hazards associated with military equipment.

''(3) Psychology related stress in warfare situations.

''(4) Mental health, including post-traumatic stress disorder and depression.

''(5) Human factor studies related to women in combat areas.

''(c) COMPETITION REQUIREMENT RELATING TO ESTABLISHMENT OF CENTER.—The Center may be established only pursuant to a competition among existing Department of Defense medical centers.

''(d) IMPLEMENTATION PLAN.—The Secretary of Defense shall prepare a plan for the implementation of subsection (a). The plan shall be submitted to the Committees on Armed Services of the Senate and House of Representatives before May 1, 1994.

''(e) ACTIVITIES FOR FISCAL YEAR 1994.—During fiscal year 1994, the Center may address the following:

''(1) Program planning, infrastructure development, baseline information gathering, technology infusion, and connectivity.

''(2) Management and technical staffing.

''(3) Data base development of health issues related to service by women on active duty as compared to service by women in the National Guard or Reserves.

''(4) Research protocols, cohort development, health surveillance, and epidemiologic studies, to be developed in coordination with the Centers for Disease Control and the National Institutes of Health whenever possible.

''(f) FUNDING.—Of the funds authorized to be appropriated pursuant to section 201 [107 Stat. 1583], $20,000,000 shall be available for the establishment of the Center or for medical research at existing Department of Defense medical centers into matters relating to service by women in the military.

''(g) REPORT.—(1) If the Secretary of Defense determines not to establish a women's health center under subsection (a), the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives, not later than May 1, 1994, a report on the plans of the Secretary for the use of the funds described in subsection (f).

''(2) If the Secretary determines to establish the Center, the Secretary shall, not less than 60 days before the establishment of the Center, submit to those committees a report describing the planned location for the Center and the competitive process used in the selection of that location.''

REPORT ON PROVISION OF PRIMARY AND PREVENTATIVE HEALTH CARE SERVICES FOR WOMEN

Pub. L. 103–160, div. A, title VII, § 735, Nov. 30, 1993, 107 Stat. 1698, directed the Secretary of Defense to prepare a report evaluating the provision of primary and preventive health care services through military medical treatment facilities and the Civilian Health and Medical Program of the Uniformed Services to female members of the uniformed services and female covered beneficiaries eligible for health care under this chapter, and directed the Secretary, as part of such report, to conduct a study to determine the health care needs of female members and female covered beneficiaries, and to submit such report to Congress not later than Oct. 1, 1994, and a revised report not later than Oct. 1, 1999.

§ 1074e. Medical care: certain Reserves who served in Southwest Asia during the Persian Gulf Conflict

(a) ENTITLEMENT TO MEDICAL CARE.—A member of the armed forces described in subsection (b) is entitled to medical care for a qualifying Persian Gulf symptom or illness to the same extent and under the same conditions (other than the requirement that the member be on active duty) as a member of a uniformed service who is entitled to such care under section 1074(a) of this title.

(b) COVERED MEMBERS.—Subsection (a) applies to a member of a reserve component who—

(1) is a Persian Gulf veteran;

(2) has a qualifying Persian Gulf symptom or illness; and

(3) is not otherwise entitled to medical care for such symptom or illness under this chapter and is not otherwise eligible for hospital care and medical services for such symptom or illness under section 1710 of title 38.

(c) DEFINITIONS.—In this section:

(1) The term ''Persian Gulf veteran'' means a member of the armed forces who served on active duty in the Southwest Asia theater of operations during the Persian Gulf Conflict.

(2) The term ''qualifying Persian Gulf symptom or illness'' means, with respect to a member described in subsection (b), a symptom or illness—

(A) that the member registered before September 1, 1997, in the Comprehensive Clinical Evaluation Program of the Department of Defense and that is presumed under section 721(d) of the National Defense Authorization Act for Fiscal Year 1995 (10 U.S.C. 1074 note) to be a result of service in the Southwest Asia theater of operations during the Persian Gulf Conflict; or

(B) that the member registered before September 1, 1997, in the Persian Gulf War Veterans Health Registry maintained by the Department of Veterans Affairs pursuant to section 702 of the Persian Gulf War Veterans' Health Status Act (38 U.S.C. 527 note).

(Added Pub. L. 105–85, div. A, title VII, § 764(a), Nov. 18, 1997, 111 Stat. 1825.)

REFERENCES IN TEXT

Section 721(d) of the National Defense Authorization Act for Fiscal Year 1995, referred to in subsec. (c)(2)(A), is section 721(d) of Pub. L. 103–337, which is set out as a note under section 1074 of this title.

Section 702 of the Persian Gulf War Veterans' Health Status Act, referred to in subsec. (c)(2)(B), is section 702 of Pub. L. 102–585, which is set out as a note under section 527 of Title 38, Veterans' Benefits.

§ 1074f. Medical tracking system for members deployed overseas

(a) SYSTEM REQUIRED.—The Secretary of Defense shall establish a system to assess the medical condition of members of the armed forces (including members of the reserve components) who are deployed outside the United States or its territories or possessions as part of a contingency operation (including a humanitarian operation, peacekeeping operation, or similar operation) or combat operation.

(b) ELEMENTS OF SYSTEM.—(1)(A) The system described in subsection (a) shall include the use of predeployment medical examinations and postdeployment medical examinations (including the assessment of mental health and the drawing of blood samples) and postdeployment health reassessments to—

(i) accurately record the health status of members before their deployment;

(ii) accurately record any changes in their health status during the course of their deployment; and

(iii) identify health concerns, including mental health concerns, that may become manifest several months following their deployment.

(B) The postdeployment medical examination shall be conducted when the member is redeployed or otherwise leaves an area in which the system is in operation (or as soon as possible thereafter).

(C) The postdeployment health reassessment shall be conducted at an appropriate time during the period beginning 90 days after the member is redeployed and ending 180 days after the member is redeployed.

(2) The predeployment medical examination, postdeployment medical examination, and postdeployment health reassessment of a member of the armed forces required under paragraph (1) shall include the following:

(A) An assessment of the current treatment of the member and any use of psychotropic medications by the member for a mental health condition or disorder.

(B) An assessment of traumatic brain injury.

(C) An assessment of post-traumatic stress disorder.

(3)(A) The Secretary shall establish for purposes of subparagraphs (B) and (C) of paragraph (2) a protocol for the predeployment assessment and documentation of the cognitive (including memory) functioning of a member who is deployed outside the United States in order to facilitate the assessment of the postdeployment cognitive (including memory) functioning of the member.

(B) The protocol under subparagraph (A) shall include appropriate mechanisms to permit the differential diagnosis of traumatic brain injury in members returning from deployment in a combat zone.

(c) RECORDKEEPING.—The results of all medical examinations and reassessments conducted under the system, records of all health care services (including immunizations and the prescription and administration of psychotropic medications) received by members described in subsection (a) in anticipation of their deployment or during the course of their deployment, and records of events occurring in the deployment area that may affect the health of such members shall be retained and maintained in a centralized location to improve future access to the records.

(d) QUALITY ASSURANCE.—(1) The Secretary of Defense shall establish a quality assurance program to evaluate the success of the system in ensuring that members described in subsection (a) receive predeployment medical examinations, postdeployment medical examinations, and postdeployment health reassessments and that the recordkeeping requirements with respect to the system are met.

(2) The quality assurance program established under paragraph (1) shall also include the following elements:

(A) The types of healthcare providers conducting postdeployment health assessments and reassessments.

(B) The training received by such providers applicable to the conduct of such assessments and reassessments, including training on assessments and referrals relating to mental health.

(C) The guidance available to such providers on how to apply the clinical practice guidelines developed under subsection (e)(1) in determining whether to make a referral for further evaluation of a member of the armed forces relating to mental health.

(D) The effectiveness of the tracking mechanisms required under this section in ensuring that members who receive referrals for further evaluations relating to mental health receive such evaluations and obtain such care and services as are warranted.

(E) Programs established for monitoring the mental health of each member who, after deployment to a combat operation or contingency operations, is known—

(i) to have a mental health condition or disorder; or

(ii) to be receiving treatment, including psychotropic medications, for a mental health condition or disorder.

(F) The diagnosis and treatment of traumatic brain injury and post-traumatic stress disorder.

(e) CRITERIA FOR REFERRAL FOR FURTHER EVALUATIONS.—The system described in subsection (a) shall include—

(1) development of clinical practice guidelines to be utilized by healthcare providers in determining whether to refer a member of the armed forces for further evaluation relating to mental health (including traumatic brain injury);

(2) mechanisms to ensure that healthcare providers are trained in the application of such clinical practice guidelines; and

(3) mechanisms for oversight to ensure that healthcare providers apply such guidelines consistently.

(f) MINIMUM STANDARDS FOR DEPLOYMENT.—(1) The Secretary of Defense shall prescribe in regulations minimum standards for mental health for the eligibility of a member of the armed forces for deployment to a combat operation or contingency operation.

(2) The standards required by paragraph (1) shall include the following:

(A) A specification of the mental health conditions, treatment for such conditions, and receipt of psychotropic medications for such conditions that preclude deployment of a member of the armed forces to a combat operation or contingency operation, or to a specified type of such operation.

(B) Guidelines for the deployability and treatment of members of the armed forces diagnosed with a severe mental illness, traumatic brain injury, or post traumatic stress disorder.

(3) The Secretary shall take appropriate actions to ensure the utilization of the standards prescribed under paragraph (1) in the making of determinations regarding the deployability of members of the armed forces to a combat operation or contingency operation.

(Added Pub. L. 105–85, div. A, title VII, § 765(a)(1), Nov. 18, 1997, 111 Stat. 1826; amended Pub. L. 109–364, div. A, title VII, § 738(a)–(d), Oct. 17, 2006, 120 Stat. 2303; Pub. L. 110–181, div. A, title XVI, § 1673(a)(1), (b), (c), Jan. 28, 2008, 122 Stat. 482, 483; Pub. L. 111–84, div. A, title X, § 1073(a)(9), Oct. 28,

2009, 123 Stat. 2472; Pub. L. 111–383, div. A, title VII, § 712, Jan. 7, 2011, 124 Stat. 4247.)

AMENDMENTS

2011—Subsec. (b)(1). Pub. L. 111–383, § 712(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The system described in subsection (a) shall include the use of predeployment medical examinations and postdeployment medical examinations (including an assessment of mental health and the drawing of blood samples) to accurately record the medical condition of members before their deployment and any changes in their medical condition during the course of their deployment. The postdeployment examination shall be conducted when the member is redeployed or otherwise leaves an area in which the system is in operation (or as soon as possible thereafter).''

Subsec. (b)(2). Pub. L. 111–383, § 712(b), substituted ''medical examination, postdeployment medical examination, and postdeployment health reassessment'' for ''and postdeployment medical examination'' in introductory provisions.

Subsec. (c). Pub. L. 111–383, § 712(c), inserted ''and reassessments'' after ''medical examinations'' and ''and the prescription and administration of psychotropic medications'' after ''including immunizations''.

Subsec. (d)(1). Pub. L. 111–383, § 712(d)(1), substituted '', postdeployment medical examinations, and postdeployment health reassessments'' for ''and postdeployment medical examinations''.

Subsec. (d)(2)(A). Pub. L. 111–383, § 712(d)(2)(A), inserted ''and reassessments'' after ''postdeployment health assessments''.

Subsec. (d)(2)(B). Pub. L. 111–383, § 712(d)(2)(B), inserted ''and reassessments'' after ''such assessments''.

2009—Subsec. (f)(3). Pub. L. 111–84 substituted ''contingency'' for ''continency''.

2008—Subsec. (b)(2)(C). Pub. L. 110–181, § 1673(a)(1)(A), added subpar. (C).

Subsec. (b)(3). Pub. L. 110–181, § 1673(a)(1)(B), added par. (3).

Subsec. (d)(2)(F). Pub. L. 110–181, § 1673(b), added subpar. (F).

Subsec. (f). Pub. L. 110–181, § 1673(c)(1), struck out ''Mental Health'' after ''Minimum'' in heading.

Subsec. (f)(2)(B). Pub. L. 110–181, § 1673(c)(2), substituted '', traumatic brain injury, or'' for ''or''.

2006—Subsec. (b). Pub. L. 109–364, § 738(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (d). Pub. L. 109–364, § 738(d), designated existing provisions as par. (1) and added par. (2).

Subsec. (e). Pub. L. 109–364, § 738(b), added subsec. (e).

Subsec. (f). Pub. L. 109–364, § 738(c), added subsec. (f).

COMPREHENSIVE POLICY ON CONSISTENT NEUROLOGICAL COGNITIVE ASSESSMENTS OF MEMBERS OF THE ARMED FORCES BEFORE AND AFTER DEPLOYMENT

Pub. L. 111–383, div. A, title VII, § 722, Jan. 7, 2011, 124 Stat. 4251, provided that:

''(a) COMPREHENSIVE POLICY REQUIRED.—Not later than January 31, 2011, the Secretary of Defense shall develop and implement a comprehensive policy on consistent neurological cognitive assessments of members of the Armed Forces before and after deployment.

''(b) UPDATES.—The Secretary shall revise the policy required by subsection (a) on a periodic basis in accordance with experience and evolving best practice guidelines.''

MENTAL HEALTH ASSESSMENTS FOR MEMBERS OF THE ARMED FORCES DEPLOYED IN CONNECTION WITH A CONTINGENCY OPERATION

Pub. L. 111–84, div. A, title VII, § 708, Oct. 28, 2009, 123 Stat. 2376, provided that:

''(a) MENTAL HEALTH ASSESSMENTS.—

''(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Oct. 28, 2009], the Secretary of Defense shall issue guidance for the provision of a person-to-person mental health assessment for each member of the Armed Forces who is deployed in connection with a contingency operation as follows:

''(A) At a time during the period beginning 60 days before the date of deployment in connection with the contingency operation.

''(B) At a time during the period beginning 90 days after the date of redeployment from the contingency operation and ending 180 days after the date of redeployment from the contingency operation.

''(C) Subject to subsection (d), not later than each of 6 months, 12 months, and 24 months after return from deployment.

''(2) EXCLUSION OF CERTAIN MEMBERS.—A mental health assessment is not required for a member of the Armed Forces under subparagraphs (B) and (C) of paragraph (1) if the Secretary determines that the member was not subjected or exposed to operational risk factors during deployment in the contingency operation concerned.

''(b) PURPOSE.—The purpose of the mental health assessments provided pursuant to this section shall be to identify post-traumatic stress disorder, suicidal tendencies, and other behavioral health conditions identified among members of the Armed Forces described in subsection (a) in order to determine which such members are in need of additional care and treatment for such health conditions.

''(c) ELEMENTS.—

''(1) IN GENERAL.—The mental health assessments provided pursuant to this section shall—

''(A) be performed by personnel trained and certified to perform such assessments and may be performed by licensed mental health professionals if such professionals are available and the use of such professionals for the assessments would not impair the capacity of such professionals to perform higher priority tasks;

''(B) include a person-to-person dialogue between members of the Armed Forces described in subsection (a) and the professionals or personnel described by paragraph (1), as applicable, on such matters as the Secretary shall specify in order that the assessments achieve the purpose specified in subsection (b) for such assessments;

''(C) be conducted in a private setting to foster trust and openness in discussing sensitive health concerns; and

''(D) be provided in a consistent manner across the military departments.

''(2) TREATMENT OF CURRENT ASSESSMENTS.—The Secretary may treat periodic health assessments and other person-to-person assessments that are provided to members of the Armed Forces as of the date of the enactment of this Act [Oct. 28, 2009] as meeting the requirements for mental health assessments required under this section if the Secretary determines that such assessments and person-to-person assessments meet the requirements for mental health assessments established by this section.

''(d) CESSATION OF ASSESSMENTS.—No mental health assessment is required to be provided to an individual under subsection (a)(1)(C) after the individual's discharge or release from the Armed Forces.

''(e) SHARING OF INFORMATION.—

''(1) IN GENERAL.—The Secretary of Defense shall share with the Secretary of Veterans Affairs such information on members of the Armed Forces that is derived from confidential mental health assessments, including mental health assessments provided pursuant to this section and health assessments and other person-to-person assessments provided before the date of the enactment of this Act [Oct. 28, 2009], as the Secretary of Defense and the Secretary of Veterans Affairs jointly consider appropriate to ensure continuity of mental health care and treatment of members of the Armed Forces during their transition from health care and treatment provided by the Department of Defense to health care and treatment provided by the Department of Veterans Affairs.

''(2) PROTOCOLS.—Any sharing of information under paragraph (1) shall occur pursuant to a protocol jointly established by the Secretary of Defense and the Secretary of Veterans Affairs for purposes of this subsection. Any such protocol shall be consistent with the following:

''(A) Applicable provisions of the Wounded Warrior Act (title XVI of Public Law 110–181; 10 U.S.C. 1071 note), including in particular, section 1614 of that Act (122 Stat. 443; 10 U.S.C. 1071 note).

''(B) Section 1720F of title 38, United States Code.

''(f) CONTINGENCY OPERATION DEFINED.—In this section, the term 'contingency operation' has the meaning given that term in section 101(a)(13) of title 10, United States Code.

''(g) REPORTS.—

''(1) REPORT ON GUIDANCE.—Upon the issuance of the guidance required by subsection (a), the Secretary of Defense shall submit to Congress a report describing the guidance.

''(2) REPORTS ON IMPLEMENTATION OF GUIDANCE.—

''(A) INITIAL REPORT.—Not later than 270 days after the date of the issuance of the guidance, the Secretary shall submit to Congress an initial report on the implementation of the guidance by the military departments.

''(B) SUBSEQUENT REPORT.—Not later than two years after the date of the issuance of the guidance, the Secretary shall submit to Congress a report on the implementation of the guidance by the military departments. The report shall include an evidence-based assessment of the effectiveness of the mental health assessments provided pursuant to the guidance in achieving the purpose specified in subsection (b) for such assessments.''

ADMINISTRATION AND PRESCRIPTION OF PSYCHOTROPIC MEDICATIONS FOR MEMBERS OF THE ARMED FORCES BEFORE AND DURING DEPLOYMENT

Pub. L. 111–84, div. A, title VII, §712, Oct. 28, 2009, 123 Stat. 2379, provided that:

''(a) REPORT REQUIRED.—Not later than October 1, 2010, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the implementation of policy guidance dated November 7, 2006, regarding deployment-limiting psychiatric conditions and medications.

''(b) POLICY REQUIRED.—Not later than October 1, 2010, the Secretary shall establish and implement a policy for the use of psychotropic medications for deployed members of the Armed Forces. The policy shall, at a minimum, address the following:

''(1) The circumstances or diagnosed conditions for which such medications may be administered or prescribed.

''(2) The medical personnel who may administer or prescribe such medications.

''(3) The method in which the administration or prescription of such medications will be documented in the medical records of members of the Armed Forces.

''(4) The exam, treatment, or other care that is required following the administration or prescription of such medications.''

PILOT PROJECTS

Pub. L. 110–181, div. A, title XVI, §1673(a)(2), Jan. 28, 2008, 122 Stat. 482, provided that:

''(A) In developing the protocol required by paragraph (3) of section 1074f(b) of title 10, United States Code (as amended by paragraph (1) of this subsection), for purposes of assessments for traumatic brain injury, the Secretary of Defense shall conduct up to three pilot projects to evaluate various mechanisms for use in the protocol for such purposes. One of the mechanisms to be so evaluated shall be a computer-based assessment tool which shall, at a minimum, include the following:

''(i) Administration of computer-based neurocognitive assessment.

''(ii) Pre-deployment assessments to establish a neurocognitive baseline for members of the Armed Forces for future treatment.

''(B) Not later than 60 days after the completion of the pilot projects conducted under this paragraph, the Secretary shall submit to the appropriate committees of Congress [Committees on Armed Services, Veterans' Affairs, and Appropriations of the Senate and the House of Representatives] a report on the pilot projects. The report shall include—

''(i) a description of the pilot projects so conducted;

''(ii) an assessment of the results of each such pilot project; and

''(iii) a description of any mechanisms evaluated under each such pilot project that will be incorporated into the protocol.

''(C) Not later than 180 days after completion of the pilot projects conducted under this paragraph, the Secretary shall establish a means for implementing any mechanism evaluated under such a pilot project that is selected for incorporation in the protocol.''

IMPLEMENTATION

Pub. L. 109–364, div. A, title VII, §738(f), Oct. 17, 2006, 120 Stat. 2304, provided that: ''The Secretary of Defense shall implement the requirements of the amendments made by this section [amending this section] not later than six months after the date of the enactment of this Act [Oct. 17, 2006].''

INTERIM STANDARDS FOR BLOOD SAMPLING

Pub. L. 108–375, div. A, title VII, §733(b), Oct. 28, 2004, 118 Stat. 1998, as amended by Pub. L. 109–364, div. A, title X, §1071(g)(9), Oct. 17, 2006, 120 Stat. 2402, provided that:

''(1) TIME REQUIREMENTS.—Subject to paragraph (2), the Secretary of Defense shall require that—

''(A) the blood samples necessary for the pre-deployment medical examination of a member of the Armed Forces required under section 1074f(b) of title 10, United States Code, be drawn not earlier than 120 days before the date of the deployment; and

''(B) the blood samples necessary for the post-deployment medical examination of a member of the Armed Forces required under such section 1074f(b) of such title be drawn not later than 30 days after the date on which the deployment ends.

''(2) CONTINGENT APPLICABILITY.—The standards under paragraph (1) shall apply unless the Joint Medical Readiness Oversight Committee established by section 731(b) [10 U.S.C. 1074 note] recommends, and the Secretary approves, different standards for blood sampling.''

§1074g. Pharmacy benefits program

(a) PHARMACY BENEFITS.—(1) The Secretary of Defense, after consulting with the other administering Secretaries, shall establish an effective, efficient, integrated pharmacy benefits program under this chapter (hereinafter in this section referred to as the ''pharmacy benefits program'').

(2)(A) The pharmacy benefits program shall include a uniform formulary of pharmaceutical agents, which shall assure the availability of pharmaceutical agents in the complete range of therapeutic classes. The selection for inclusion on the uniform formulary of particular pharmaceutical agents in each therapeutic class shall be based on the relative clinical and cost effectiveness of the agents in such class.

(B) In considering the relative clinical effectiveness of agents under subparagraph (A), the Secretary shall presume inclusion in a thera-

peutic class of a pharmaceutical agent, unless the Pharmacy and Therapeutics Committee established under subsection (b) finds that a pharmaceutical agent does not have a significant, clinically meaningful therapeutic advantage in terms of safety, effectiveness, or clinical outcome over the other drugs included on the uniform formulary.

(C) In considering the relative cost effectiveness of agents under subparagraph (A), the Secretary shall rely on the evaluation by the Pharmacy and Therapeutics Committee of the costs of agents in a therapeutic class in relation to the safety, effectiveness, and clinical outcomes of such agents.

(D) The Secretary shall establish procedures for the selection of particular pharmaceutical agents for the uniform formulary. Such procedures shall be established so as best to accomplish, in the judgment of the Secretary, the objectives set forth in paragraph (1). No pharmaceutical agent may be excluded from the uniform formulary except upon the recommendation of the Pharmacy and Therapeutics Committee. The Secretary shall begin to implement the uniform formulary not later than October 1, 2000.

(E) Pharmaceutical agents included on the uniform formulary shall be available to eligible covered beneficiaries through—

(i) facilities of the uniformed services, consistent with the scope of health care services offered in such facilities and additional determinations by the Pharmacy and Therapeutics Committee of the relative clinical and cost effectiveness of the agents;

(ii) retail pharmacies designated or eligible under the TRICARE program or the Civilian Health and Medical Program of the Uniformed Services to provide pharmaceutical agents to covered beneficiaries; or

(iii) the national mail-order pharmacy program.

(3) The pharmacy benefits program shall assure the availability of clinically appropriate pharmaceutical agents to members of the armed forces, including, where appropriate, agents not included on the uniform formulary described in paragraph (2).

(4) The pharmacy benefits program may provide that prior authorization be required for certain pharmaceutical agents to assure that the use of such agents is clinically appropriate.

(5) The pharmacy benefits program shall assure the availability to eligible covered beneficiaries of pharmaceutical agents not included on the uniform formulary. Such pharmaceutical agents shall be available through at least one of the means described in paragraph (2)(E) under terms and conditions that may include cost sharing by the eligible covered beneficiary in addition to any such cost sharing applicable to agents on the uniform formulary.

(6)(A) The Secretary, in the regulations prescribed under subsection (g),[1] may establish cost sharing requirements (which may be established as a percentage or fixed dollar amount) under the pharmacy benefits program for generic, formulary, and nonformulary agents. For nonformulary agents, cost sharing shall be consistent with common industry practice and not in excess of amounts generally comparable to 20 percent for beneficiaries covered by section 1079 of this title or 25 percent for beneficiaries covered by section 1086 of this title.

(B) For a medicare-eligible beneficiary, the cost-sharing requirements may not be in excess of the cost-sharing requirements applicable to all other beneficiaries covered by section 1086 of this title. For purposes of the preceding sentence, a medicare-eligible beneficiary is a beneficiary eligible for health benefits under section 1086 of this title pursuant to subsection (d)(2) of such section.

(7) The Secretary shall establish procedures for eligible covered beneficiaries to receive pharmaceutical agents that are not included on the uniform formulary but that are considered to be clinically necessary. Such procedures shall include peer review procedures under which the Secretary may determine that there is a clinical justification for the use of a pharmaceutical agent that is not on the uniform formulary, in which case the pharmaceutical agent shall be provided under the same terms and conditions as an agent on the uniform formulary. Such procedures shall also include an expeditious appeals process for an eligible covered beneficiary, or a network or uniformed provider on behalf of the beneficiary, to establish clinical justification for the use of a pharmaceutical agent that is not on the uniform formulary.

(8) In carrying out this subsection, the Secretary shall ensure that an eligible covered beneficiary may continue to receive coverage for any maintenance pharmaceutical that is not on the uniform formulary and that was prescribed for the beneficiary before October 5, 1999, and stabilized the medical condition of the beneficiary.

(b) ESTABLISHMENT OF COMMITTEE.—(1) The Secretary of Defense shall, in consultation with the Secretaries of the military departments, establish a Pharmacy and Therapeutics Committee for the purpose of developing the uniform formulary of pharmaceutical agents required by subsection (a), reviewing such formulary on a periodic basis, and making additional recommendations regarding the formulary as the committee determines necessary and appropriate. The committee shall include representatives of pharmacies of the uniformed services facilities and representatives of providers in facilities of the uniformed services. Committee members shall have expertise in treating the medical needs of the populations served through such entities and in the range of pharmaceutical and biological medicines available for treating such populations. The committee shall function under procedures established by the Secretary under the regulations prescribed under subsection (g).[1]

(2) Not later than 90 days after the establishment of the Pharmacy and Therapeutics Committee by the Secretary, the committee shall convene to design a proposed uniform formulary for submission to the Secretary. After such 90-day period, the committee shall meet at least quarterly and shall, during meetings, consider

[1] See References in Text note below.

for inclusion on the uniform formulary under the standards established in subsection (a) any drugs newly approved by the Food and Drug Administration.

(c) ADVISORY PANEL.—(1) Concurrent with the establishment of the Pharmacy and Therapeutics Committee under subsection (b), the Secretary shall establish a Uniform Formulary Beneficiary Advisory Panel to review and comment on the development of the uniform formulary. The Secretary shall consider the comments of the panel before implementing the uniform formulary or implementing changes to the uniform formulary.

(2) The Secretary shall determine the size and membership of the panel established under paragraph (1), which shall include members that represent—

(A) nongovernmental organizations and associations that represent the views and interests of a large number of eligible covered beneficiaries;

(B) contractors responsible for the TRICARE retail pharmacy program;

(C) contractors responsible for the national mail-order pharmacy program; and

(D) TRICARE network providers.

(d) PROCEDURES.—(1) In the operation of the pharmacy benefits program under subsection (a), the Secretary of Defense shall assure through management and new contractual arrangements that financial resources are aligned such that the cost of prescriptions is borne by the organization that is financially responsible for the health care of the eligible covered beneficiary.

(2) Effective not later than April 5, 2000, the Secretary shall use a modification to the bid price adjustment methodology in the current managed care support contracts to ensure equitable and timely reimbursement to the TRICARE managed care support contractors for pharmaceutical products delivered in the nonmilitary environments. The methodology shall take into account the ''at-risk'' nature of the contracts as well as managed care support contractor pharmacy costs attributable to changes to pharmacy service or formulary management at military medical treatment facilities, and other military activities and policies that affect costs of pharmacy benefits provided through the Civilian Health and Medical Program of the Uniformed Services. The methodology shall also account for military treatment facility costs attributable to the delivery of pharmaceutical products in the military facility environment which were prescribed by a network provider.

(e) PHARMACY DATA TRANSACTION SERVICE.—The Secretary of Defense shall implement the use of the Pharmacy Data Transaction Service in all fixed facilities of the uniformed services under the jurisdiction of the Secretary, in the TRICARE retail pharmacy program, and in the national mail-order pharmacy program.

(f) PROCUREMENT OF PHARMACEUTICALS BY TRICARE RETAIL PHARMACY PROGRAM.—With respect to any prescription filled after January 28, 2008, the TRICARE retail pharmacy program shall be treated as an element of the Department of Defense for purposes of the procurement of drugs by Federal agencies under section 8126 of title 38 to the extent necessary to ensure that pharmaceuticals paid for by the Department of Defense that are provided by pharmacies under the program to eligible covered beneficiaries under this section are subject to the pricing standards in such section 8126.

(g) DEFINITIONS.—In this section:

(1) The term ''eligible covered beneficiary'' means a covered beneficiary for whom eligibility to receive pharmacy benefits through the means described in subsection (a)(2)(E) is established under this chapter or another provision of law.

(2) The term ''pharmaceutical agent'' means drugs, biological products, and medical devices under the regulatory authority of the Food and Drug Administration.

(h) REGULATIONS.—The Secretary of Defense shall, after consultation with the other administering Secretaries, prescribe regulations to carry out this section.

(Added Pub. L. 106–65, div. A, title VII, §701(a)(1), Oct. 5, 1999, 113 Stat. 677; amended Pub. L. 106–398, §1 [[div. A], title X, §1087(a)(5)], Oct. 30, 2000, 114 Stat. 1654, 1654A–290; Pub. L. 107–107, div. A, title X, §1048(c)(4), Dec. 28, 2001, 115 Stat. 1226; Pub. L. 108–136, div. A, title VII, §725, Nov. 24, 2003, 117 Stat. 1535; Pub. L. 108–375, div. A, title VII, §714, Oct. 28, 2004, 118 Stat. 1985; Pub. L. 110–181, div. A, title VII, §703(a), Jan. 28, 2008, 122 Stat. 188; Pub. L. 111–84, div. A, title X, §1073(a)(10), Oct. 28, 2009, 123 Stat. 2473.)

REFERENCES IN TEXT

Subsection (g), referred to in subsecs. (a)(6)(A) and (b)(1), was redesignated subsection (h) of this section by Pub. L. 110–181, div. A, title VII, §703(a)(1), Jan. 28, 2008, 122 Stat. 188.

AMENDMENTS

2009—Subsec. (f). Pub. L. 111–84 substituted ''after January 28, 2008'' for ''on or after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2008''.

2008—Subsecs. (f) to (h). Pub. L. 110–181 added subsec. (f) and redesignated former subsecs. (f) and (g) as (g) and (h), respectively.

2004—Subsec. (a)(2)(E)(i). Pub. L. 108–375, §714(b), inserted before semicolon at end ''and additional determinations by the Pharmacy and Therapeutics Committee of the relative clinical and cost effectiveness of the agents''.

Subsec. (a)(6). Pub. L. 108–375, §714(a), designated existing provisions as subpar. (A) and added subpar. (B).

2003—Subsec. (b)(1). Pub. L. 108–136, §725(1), substituted ''facilities and representatives of providers in facilities of the uniformed services'' for ''facilities, contractors responsible for the TRICARE retail pharmacy program, contractors responsible for the national mail-order pharmacy program, providers in facilities of the uniformed services, and TRICARE network providers'' in second sentence.

Subsec. (c)(2). Pub. L. 108–136, §725(2), substituted ''represent—'' for ''represent nongovernmental'', inserted ''(A) nongovernmental'' before ''organizations'', substituted ''beneficiaries;'' for ''beneficiaries.'', and added subpars. (B) to (D).

2001—Subsec. (a)(8). Pub. L. 107–107 substituted ''October 5, 1999,'' for ''the date of the enactment of this section''.

2000—Subsec. (a)(6). Pub. L. 106–398, §1 [[div. A], title X, §1087(a)(5)(A)], substituted ''in the regulations prescribed'' for ''as part of the regulations established''.

Subsec. (a)(7). Pub. L. 106–398, §1 [[div. A], title X, §1087(a)(5)(B)], substituted ''that are not included on

the uniform formulary but that are'' for ''not included on the uniform formulary, but,''.

Subsec. (b)(1). Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(5)(C)], substituted ''prescribed under'' for ''required by'' in last sentence.

Subsec. (d)(2). Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(5)(D)], substituted ''Effective not later than April 5, 2000, the Secretary shall use'' for ''Not later than 6 months after the date of the enactment of this section, the Secretary shall utilize''.

Subsec. (e). Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(5)(E)], substituted ''The'' for ''Not later than April 1, 2000, the'' and inserted ''in'' before ''the TRICARE'' and before ''the national''.

Subsec. (f). Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(5)(F)], substituted ''In this section:'' for ''As used in this section—'' in introductory provisions, ''The term'' for ''the term'' in pars. (1) and (2), and a period for ''; and'' at end of par. (1).

Subsec. (g). Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(5)(G)], substituted ''prescribe'' for ''promulgate''.

REGULATIONS

Pub. L. 110–181, div. A, title VII, § 703(b), Jan. 28, 2008, 122 Stat. 188, as amended by Pub. L. 110–417, [div. A], title X, § 1061(b)(3), Oct. 14, 2008, 122 Stat. 4613; Pub. L. 111–84, div. A, title X, § 1073(c)(12), Oct. 28, 2009, 123 Stat. 2475, provided that: ''The Secretary of Defense shall, after consultation with the other administering Secretaries under chapter 55 of title 10, United States Code, modify the regulations under subsection (h) of section 1074g of title 10, United States Code (as redesignated by subsection (a)(1) of this section), to implement the requirements of subsection (f) of section 1074g of title 10, United States Code (as inserted by subsection (a)(2) of this section). The Secretary shall so modify such regulations not later than December 31, 2007.''

[Pub. L. 111–84, div. A, title X, § 1073(c), Oct. 28, 2009, 123 Stat. 2474, provided that the amendment made by section 1073(c)(12) to section 1061(b)(3) of Pub. L. 110–417, included in the credit set out above, is effective as of Oct. 14, 2008, and as if included in Pub. L. 110–417 as enacted.]

TERMINATION OF ADVISORY PANELS

Advisory panels established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a panel established by the President or an officer of the Federal Government, such panel is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a panel established by Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

EDUCATION AND TRAINING ON USE OF PHARMACEUTICALS IN REHABILITATION PROGRAMS FOR WOUNDED WARRIORS

Pub. L. 111–383, div. A, title VII, § 716, Jan. 7, 2011, 124 Stat. 4250, provided that:

''(a) EDUCATION AND TRAINING REQUIRED.—The Secretary of Defense shall develop and implement training, available through the Internet or other means, on the use of pharmaceuticals in rehabilitation programs for seriously ill or injured members of the Armed Forces.

''(b) RECIPIENTS OF TRAINING.—The training developed and implemented under subsection (a) shall be training for each category of individuals as follows:

''(1) Patients in or transitioning to a wounded warrior unit, with special accommodation in such training for such patients with cognitive disabilities.

''(2) Nonmedical case managers.

''(3) Military leaders.

''(4) Family members.

''(c) ELEMENTS OF TRAINING.—The training developed and implemented under subsection (a) shall include the following:

''(1) An overview of the fundamentals of safe prescription drug use.

''(2) Familiarization with the benefits and risks of using pharmaceuticals in rehabilitation therapies.

''(3) Examples of the use of pharmaceuticals for individuals with multiple, complex injuries, including traumatic brain injury and post-traumatic stress disorder.

''(4) Familiarization with means of finding additional resources for information on pharmaceuticals.

''(5) Familiarization with basic elements of pain and pharmaceutical management.

''(6) Familiarization with complementary and alternative therapies.

''(d) TAILORING OF TRAINING.—The training developed and implemented under subsection (a) shall appropriately tailor the elements specified in subsection (c) for and among each category of individuals set forth in subsection (b).

''(e) REVIEW OF PHARMACY.—

''(1) REVIEW.—The Secretary shall review all policies and procedures of the Department of Defense regarding the use of pharmaceuticals in rehabilitation programs for seriously ill or injured members of the Armed Forces.

''(2) RECOMMENDATIONS.—Not later than September 20, 2011, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] any recommendations for administrative or legislative action with respect to the review under paragraph (1) as the Secretary considers appropriate.''

DEMONSTRATION PROJECT ON COVERAGE OF SELECTED OVER-THE-COUNTER DRUGS UNDER THE PHARMACY BENEFITS PROGRAM

Pub. L. 109–364, div. A, title VII, § 705, Oct. 17, 2006, 120 Stat. 2280, as amended by Pub. L. 111–383, div. A, title X, § 1075(g)(5), Jan. 7, 2011, 124 Stat. 4377, provided that:

''(a) REQUIREMENT TO CONDUCT DEMONSTRATION.—The Secretary of Defense shall conduct a demonstration project under section 1092 of title 10, United States Code, to allow particular over-the-counter drugs to be included on the uniform formulary under section 1074g of such title.

''(b) ELEMENTS OF DEMONSTRATION PROJECT.—

''(1) INCLUSION OF CERTAIN OVER-THE-COUNTER DRUGS.—(A) As part of the demonstration project, the Secretary shall modify uniform formulary specifications under section 1074g(a) of such title to include an over-the-counter drug (referred to in this section as an 'OTC drug') on the uniform formulary if the Pharmacy and Therapeutics Committee finds that the OTC drug is cost-effective and therapeutically equivalent to a prescription drug. If the Pharmacy and Therapeutics Committee makes such a finding, the OTC drug shall be considered to be in the same therapeutic class of pharmaceutical agents as the prescription drug.

''(B) An OTC drug shall be made available to a beneficiary through the demonstration project, but only if—

''(i) the beneficiary has a prescription for a drug requiring a prescription; and

''(ii) pursuant to subparagraph (A), the OTC drug—

''(I) is on the uniform formulary; and

''(II) has been determined to be therapeutically equivalent to the prescription drug.

''(2) CONDUCT THROUGH MILITARY FACILITIES, RETAIL PHARMACIES, OR MAIL ORDER PROGRAM.—The Secretary shall conduct the demonstration project through at least two of the means described in subparagraph (E) of section 1074g(a)(2) of such title through which OTC drugs are provided and may conduct the demonstration project throughout the entire pharmacy benefits program or at a limited number of sites. If the project is conducted at a limited number of sites, the number of sites shall be not less than five in each

TRICARE region for each of the two means described in such subparagraph.

''(3) PERIOD OF DEMONSTRATION.—The Secretary shall provide for conducting the demonstration project for a period of time necessary to evaluate the feasibility and cost effectiveness of the demonstration. Such period shall be at least as long as the period covered by pharmacy contracts in existence on the date of the enactment of this Act [Oct. 17, 2006] (including any extensions of the contracts), or five years, whichever is shorter.

''(4) IMPLEMENTATION DEADLINE.—Implementation of the demonstration project shall begin not later than May 1, 2007.

''(c) EVALUATION OF DEMONSTRATION PROJECT.—The Secretary shall evaluate the demonstration project for the following:

''(1) The costs and benefits of providing OTC drugs under the pharmacy benefits program in each of the means chosen by the Secretary to conduct the demonstration project.

''(2) The clinical effectiveness of providing OTC drugs under the pharmacy benefits program.

''(3) Customer satisfaction with the demonstration project.

''(d) REPORT.—Not later than two years after implementation of the demonstration project begins, the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the demonstration project. The report shall contain—

''(1) the evaluation required by subsection (c);

''(2) recommendations for improving the provision of OTC drugs under the pharmacy benefits program; and

''(3) recommendations on whether permanent authority should be provided to cover OTC drugs under the pharmacy benefits program.

''(e) CONTINUATION OF DEMONSTRATION PROJECT.—If the Secretary recommends in the report under subsection (d) that permanent authority should be provided, the Secretary may continue the demonstration project for up to one year after submitting the report.

''(f) DEFINITIONS.—In this section:

''(1) The term 'drug' means a drug, including a biological product, within the meaning of section 1074g(f)(2) [now 1074g(g)(2)] of title 10, United States Code.

''(2) The term 'OTC drug' has the meaning indicated for such term in subsection (b)(1)(A).

''(3) The term 'over-the-counter drug' means a drug that is not subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 353(b)].

''(4) The term 'prescription drug' means a drug that is subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act.''

INTEROPERABILITY OF DEPARTMENT OF VETERANS AFFAIRS AND DEPARTMENT OF DEFENSE PHARMACY DATA SYSTEMS

Pub. L. 107–314, div. A, title VII, § 724, Dec. 2, 2002, 116 Stat. 2598, provided that:

''(a) INTEROPERABILITY.—The Secretary of Veterans Affairs and the Secretary of Defense shall seek to ensure that on or before October 1, 2004, the Department of Veterans Affairs pharmacy data system and the Department of Defense pharmacy data system (known as the 'Pharmacy Data Transaction System') are interoperable for both Department of Defense beneficiaries and Department of Veterans Affairs beneficiaries by achieving real-time interface, data exchange, and checking of prescription drug data of outpatients, and using national standards for the exchange of outpatient medication information.

''(b) ALTERNATIVE REQUIREMENT.—If the interoperability specified in subsection (a) is not achieved by October 1, 2004, as determined jointly by the Secretary of Defense and the Secretary of Veterans Affairs, the Secretary of Veterans Affairs shall adopt the Department of Defense Pharmacy Data Transaction System for use by the Department of Veterans Affairs health care system. Such system shall be fully operational not later than October 1, 2005.

''(c) IMPLEMENTATION FUNDING FOR ALTERNATIVE REQUIREMENT.—The Secretary of Defense shall transfer to the Secretary of Veterans Affairs, or shall otherwise bear the cost of, an amount sufficient to cover three-fourths of the cost to the Department of Veterans Affairs for computer programming activities and relevant staff training expenses related to implementation of subsection (b). Such amount shall be determined in such manner as agreed to by the two Secretaries.''

DEADLINE FOR ESTABLISHMENT OF COMMITTEE

Pub. L. 106–65, div. A, title VII, § 701(b), Oct. 5, 1999, 113 Stat. 680, directed the Secretary of Defense to establish the Pharmacy and Therapeutics Committee required by subsec. (b) of this section not later than 30 days after Oct. 5, 1999.

REPORTS REQUIRED

Pub. L. 106–65, div. A, title VII, § 701(c), Oct. 5, 1999, 113 Stat. 680, directed the Secretary of Defense to submit reports to Congress, not later than Apr. 1 and Oct. 1 of fiscal years 2000 and 2001, on the implementation of the uniform formulary required under subsec. (a) of this section, the results of a survey conducted by the Secretary of prescribers for military medical treatment facilities and TRICARE contractors, the operation of the Pharmacy Data Transaction Service required by subsec. (e) of this section, and any other actions taken by the Secretary to improve management of the pharmacy benefits program under this section.

STUDY FOR DESIGN OF PHARMACY BENEFIT FOR CERTAIN COVERED BENEFICIARIES

Pub. L. 106–65, div. A, title VII, § 701(d), Oct. 5, 1999, 113 Stat. 680, required the Secretary of Defense to prepare and submit to Congress, by Apr. 15, 2001, a study on a design for a comprehensive pharmacy benefit for covered beneficiaries under chapter 55 of title 10, who are entitled to benefits under part A, and enrolled under part B, of title XVIII of the Social Security Act, and to provide an estimate of the costs of implementing and operating such design, prior to repeal by Pub. L. 107–107, div. A, title VII, § 723, Dec. 28, 2001, 115 Stat. 1168.

§ 1074h. Medical and dental care: medal of honor recipients; dependents

(a) MEDAL OF HONOR RECIPIENTS.—A former member of the armed forces who is a Medal of Honor recipient and who is not otherwise entitled to medical and dental benefits under this chapter may, upon request, be given medical and dental care provided by the administering Secretaries in the same manner as if entitled to retired pay.

(b) IMMEDIATE DEPENDENTS.—A person who is an immediate dependent of a Medal of Honor recipient and who is not otherwise entitled to medical and dental benefits under this chapter may, upon request, be given medical and dental care provided by the administering Secretaries in the same manner as if the Medal of Honor recipient were, or (if deceased) was at the time of death, entitled to retired pay.

(c) DEFINITIONS.—In this section:

(1) The term ''Medal of Honor recipient'' means a person who has been awarded a medal of honor under section 3741, 6241, or 8741 of this title or section 491 of title 14.

(2) The term ''immediate dependent'' means a dependent described in subparagraph (A), (B), (C), or (D) of section 1072(2) of this title.

(Added Pub. L. 106–398, § 1 [[div. A], title VII, § 706(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–175.)

EFFECTIVE DATE

Pub. L. 106–398, § 1 [[div. A], title VII, § 706(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–175, provided that: ''Section 1074h of title 10, United States Code, shall apply with respect to medical and dental care provided on or after the date of the enactment of this Act [Oct. 30, 2000].''

§ 1074i. Reimbursement for certain travel expenses

(a) IN GENERAL.—In any case in which a covered beneficiary is referred by a primary care physician to a specialty care provider who provides services more than 100 miles from the location in which the primary care provider provides services to the covered beneficiary, the Secretary of Defense shall provide reimbursement for reasonable travel expenses for the covered beneficiary and, when accompaniment by an adult is necessary, for a parent or guardian of the covered beneficiary or another member of the covered beneficiary's family who is at least 21 years of age.

(b) REIMBURSEMENT FOR TRAVEL UNDER EXCEPTIONAL CIRCUMSTANCES.—The Secretary of Defense may provide reimbursement for reasonable travel expenses of travel of members of the armed forces on active duty and their dependents, and accompaniment, to a specialty care provider not otherwise authorized by subsection (a) under such exceptional circumstances as the Secretary considers appropriate for purposes of this section.

(c) OUTREACH PROGRAM AND TRAVEL REIMBURSEMENT FOR FOLLOW-ON SPECIALTY CARE AND RELATED SERVICES.—The Secretary concerned shall ensure that an outreach program is implemented for each member of the uniformed services who incurred a combat-related disability and is entitled to retired or retainer pay, or equivalent pay, so that—

(1) the progress of the member is closely monitored; and

(2) the member receives the travel reimbursement authorized by subsection (a) whenever the member requires follow-on specialty care, services, or supplies.

(d) DEFINITIONS.—In this section:

(1) The term ''specialty care provider'' includes a dental specialist.

(2) The term ''dental specialist'' means an oral surgeon, orthodontist, prosthodontist, periodontist, endodontist, or pediatric dentist, and includes such other providers of dental care and services as determined appropriate by the Secretary of Defense.

(3) The term ''combat-related disability'' has the meaning given that term in section 1413a of this title.

(Added Pub. L. 106–398, § 1 [[div. A], title VII, § 758(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–199; amended Pub. L. 107–107, div. A, title VII, § 706, Dec. 28, 2001, 115 Stat. 1163; Pub. L. 108–136, div. A, title VII, § 712, Nov. 24, 2003, 117 Stat. 1530; Pub. L. 110–181, div. A, title XVI, § 1632(a), (b), Jan. 28, 2008, 122 Stat. 458, 459; Pub. L. 111–84, div. A, title VI, § 634, Oct. 28, 2009, 123 Stat. 2363.)

AMENDMENTS

2009—Subsec. (a). Pub. L. 111–84, § 634(b), inserted ''of Defense'' after ''the Secretary''.

Subsecs. (b) to (d). Pub. L. 111–84, § 634(a), added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively.

2008—Subsecs. (b), (c). Pub. L. 110–181, § 1632(a), added subsec. (b) and redesignated former subsec. (b) as (c).

Subsec. (c)(3). Pub. L. 110–181, § 1632(b), added par. (3).

2003—Pub. L. 108–136 inserted ''(a) IN GENERAL.—'' before ''In any case'' and added subsec. (b).

2001—Pub. L. 107–107 inserted before period at end ''and, when accompaniment by an adult is necessary, for a parent or guardian of the covered beneficiary or another member of the covered beneficiary's family who is at least 21 years of age''.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–181, div. A, title XVI, § 1632(c), Jan. 28, 2008, 122 Stat. 459, provided that: ''Subsection (b) of section 1074i of title 10, United States Code, as added by subsection (a)(2), shall apply with respect to travel described in subsection (a) of such section that occurs on or after January 1, 2008, for follow-on specialty care, services, or supplies.''

§ 1074j. Sub-acute care program

(a) ESTABLISHMENT.—The Secretary of Defense shall establish an effective, efficient, and integrated sub-acute care benefits program under this chapter (hereinafter referred to in this section as the ''program''). Except as otherwise provided in this section, the types of health care authorized under the program shall be the same as those provided under section 1079 of this title. The Secretary, after consultation with the other administering Secretaries, shall promulgate regulations to carry out this section.

(b) BENEFITS.—(1) The program shall include a uniform skilled nursing facility benefit that shall be provided in the manner and under the conditions described in section 1861 (h) and (i) of the Social Security Act (42 U.S.C. 1395x (h) and (i)), except that the limitation on the number of days of coverage under section 1812 (a) and (b) of such Act (42 U.S.C. 1395d (a) and (b)) shall not be applicable under the program. Skilled nursing facility care for each spell of illness shall continue to be provided for as long as medically necessary and appropriate.

(2) In this subsection:

(A) The term ''skilled nursing facility'' has the meaning given such term in section 1819(a) of the Social Security Act (42 U.S.C. 1395i–3(a)).

(B) The term ''spell of illness'' has the meaning given such term in section 1861(a) of such Act (42 U.S.C. 1395x(a)).

(3) The program shall include a comprehensive, part-time or intermittent home health care benefit that shall be provided in the manner and under the conditions described in section 1861(m) of the Social Security Act (42 U.S.C. 1395x(m)).

(4) The Secretary of Defense may take such actions as are necessary to ensure that there is an effective transition in the furnishing of part-time or intermittent home health care benefits for covered beneficiaries who were receiving such benefits before the establishment of the program under this section. The actions taken under this paragraph may include the continuation of such benefits on an extended basis for

such time as the Secretary determines appropriate.

(Added Pub. L. 107–107, div. A, title VII, § 701(a)(1), Dec. 28, 2001, 115 Stat. 1158; amended Pub. L. 108–375, div. A, title VII, § 713, Oct. 28, 2004, 118 Stat. 1985.)

AMENDMENTS

2004—Subsec. (b)(4). Pub. L. 108–375 added par. (4).

§ 1074k. Long-term care insurance

Provisions regarding long-term care insurance for members and certain former members of the uniformed services and their families are set forth in chapter 90 of title 5.

(Added Pub. L. 107–107, div. A, title VII, § 701(f)(1), Dec. 28, 2001, 115 Stat. 1161.)

§ 1074*l*. Notification to Congress of hospitalization of combat wounded members

(a) NOTIFICATION REQUIRED.—The Secretary concerned shall provide notification of the hospitalization of any member of the armed forces evacuated from a theater of combat and admitted to a military treatment facility within the United States to the appropriate Members of Congress.

(b) APPROPRIATE MEMBERS.—In this section, the term ''appropriate Members of Congress'', with respect to the member of the armed forces about whom notification is being made, means the Senators representing the State, and the Member, Delegate, or Resident Commissioner of the House of Representatives representing the district, that includes the member's home of record or a different location as provided by the member.

(c) CONSENT OF MEMBER REQUIRED.—The notification under subsection (a) may be provided only with the consent of the member of the armed forces about whom notification is to be made. In the case of a member who is unable to provide consent, information and consent may be provided by next of kin.

(Added Pub. L. 110–181, div. A, title XVI, § 1617(a)(1), Jan. 28, 2008, 122 Stat. 449.)

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–181, div. A, title XVI, § 1617(a)(2), Jan. 28, 2008, 122 Stat. 449, provided that: ''The notification requirement under section 1074l(a) of title 10, United States Code, as added by paragraph (1), shall apply beginning 60 days after the date of the enactment of this Act [Jan. 28, 2008].''

[§ 1075. Repealed. Pub. L. 108–375, div. A, title VI, § 607(a)(1), Oct. 28, 2004, 118 Stat. 1946]

Section, added Pub. L. 85–861, § 1(25)(B), Sept. 2, 1958, 72 Stat. 1447; amended Pub. L. 97–22, § 10(b)(2), July 10, 1981, 95 Stat. 137; Pub. L. 108–87, title VIII, § 8146(a), Sept. 30, 2003, 117 Stat. 1109; Pub. L. 108–106, title I, § 1112(a), Nov. 6, 2003, 117 Stat. 1215, related to subsistence charges for officers and certain enlisted members.

A prior section 1075, act Aug. 10, 1956, ch. 1041, 70A Stat. 82, related to post card requests for absentee ballots, and for printing and transmission thereof, prior to repeal by Pub. L. 85–861, § 36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§ 1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

§ 1076. Medical and dental care for dependents: general rule

(a)(1) A dependent described in paragraph (2) is entitled, upon request, to the medical and dental care prescribed by section 1077 of this title in facilities of the uniformed services, subject to the availability of space and facilities and the capabilities of the medical and dental staff.

(2) A dependent referred to in paragraph (1) is a dependent of a member of a uniformed service described in one of the following subparagraphs:

(A) A member who is on active duty for a period of more than 30 days or died while on that duty.

(B) A member who died from an injury, illness, or disease incurred or aggravated—

(i) while the member was on active duty under a call or order to active duty of 30 days or less, on active duty for training, or on inactive-duty training; or

(ii) while the member was traveling to or from the place at which the member was to perform, or had performed, such active duty, active duty for training, or inactive-duty training.

(C) A member who died from an injury, illness, or disease incurred or aggravated in the line of duty while the member remained overnight immediately before the commencement of inactive-duty training, or while the member remained overnight between successive periods of inactive-duty training, at or in the vicinity of the site of the inactive-duty training.

(D) A member on active duty who is entitled to benefits under subsection (e) of section 1074a of this title by reason of paragraph (1), (2), or (3) of subsection (a) of such section.

(E) A member who died from an injury, illness, or disease incurred or aggravated while the member—

(i) was serving on funeral honors duty under section 12503 of this title or section 115 of title 32;

(ii) was traveling to or from the place at which the member was to so serve; or

(iii) remained overnight at or in the vicinity of that place immediately before so serving, if the place is outside reasonable commuting distance from the member's residence.

(b) Under regulations to be prescribed jointly by the administering Secretaries, a dependent of a member or former member—

(1) who is, or (if deceased) was at the time of his death, entitled to retired or retainer pay or equivalent pay; or

(2) who died before attaining age 60 and at the time of his death would have been eligible for retired pay under chapter 1223 of this title (or under chapter 67 of this title as in effect before December 1, 1994) but for the fact that he was under 60 years of age;

may, upon request, be given the medical and dental care prescribed by section 1077 of this title in facilities of the uniformed services, subject to the availability of space and facilities and the capabilities of the medical and dental staff, except that a dependent of a member or former member described in paragraph (2) may

not be given such medical or dental care until the date on which such member or former member would have attained age 60.

(c) A determination by the medical or dental officer in charge, or the contract surgeon in charge, or his designee, as to the availability of space and facilities and to the capabilities of the medical and dental staff is conclusive. Care under this section may not be permitted to interfere with the primary mission of those facilities.

(d) To utilize more effectively the medical and dental facilities of the uniformed services, the administering Secretaries shall prescribe joint regulations to assure that dependents entitled to medical or dental care under this section will not be denied equal opportunity for that care because the facility concerned is that of a uniformed service other than that of the member.

(e)(1) Subject to paragraph (3), the administering Secretary shall furnish an abused dependent of a former member of a uniformed service described in paragraph (4), during that period that the abused dependent is in receipt of transitional compensation under section 1059 of this title, with medical and dental care, including mental health services, in facilities of the uniformed services in accordance with the same eligibility and benefits as were applicable for that abused dependent during the period of active service of the former member.

(2) Subject to paragraph (3), upon request of any dependent of a former member of a uniformed service punished for an abuse described in paragraph (4), the administering Secretary for such uniformed service may furnish medical care in facilities of the uniformed services to the dependent for the treatment of any adverse health condition resulting from such dependent's knowledge of (A) the abuse, or (B) any injury or illness suffered by the abused person as a result of such abuse.

(3) Medical and dental care furnished to a dependent of a former member of the uniformed services in facilities of the uniformed services under paragraph (1) or (2)—

(A) shall be limited to the health care prescribed by section 1077 of this title; and

(B) shall be subject to the availability of space and facilities and the capabilities of the medical and dental staff.

(4)(A) A former member of a uniformed service referred to in paragraph (1) is a member who—

(i) received a dishonorable or bad-conduct discharge or was dismissed from a uniformed service as a result of a court-martial conviction for an offense, under either military or civil law, involving abuse of a dependent of the member; or

(ii) was administratively discharged from a uniformed service as a result of such an offense.

(B) A determination of whether an offense involved abuse of a dependent of the member shall be made in accordance with regulations prescribed by the administering Secretary for such uniformed service.

(f)(1) The administering Secretaries shall furnish an eligible dependent a physical examination that is required by a school in connection with the enrollment of the dependent as a student in that school.

(2) A dependent is eligible for a physical examination under paragraph (1) if the dependent—

(A) is entitled to receive medical care under subsection (a) or is authorized to receive medical care under subsection (b); and

(B) is at least 5 years of age and less than 12 years of age.

(3) Nothing in paragraph (2) may be construed to prohibit the furnishing of a school-required physical examination to any dependent who, except for not satisfying the age requirement under that paragraph, would otherwise be eligible for a physical examination required to be furnished under this subsection.

(Added Pub. L. 85–861, § 1(25)(B), Sept. 2, 1958, 72 Stat. 1447; amended Pub. L. 89–614, § 2(3), Sept. 30, 1966, 80 Stat. 862; Pub. L. 95–397, title III, § 301, Sept. 30, 1978, 92 Stat. 849; Pub. L. 96–513, title V, § 511(36), Dec. 12, 1980, 94 Stat. 2923; Pub. L. 97–252, title X, § 1004(b), Sept. 8, 1982, 96 Stat. 737; Pub. L. 98–557, § 19(5), Oct. 30, 1984, 98 Stat. 2869; Pub. L. 99–145, title VI, § 652(a), Nov. 8, 1985, 99 Stat. 656; Pub. L. 99–661, div. A, title VI, §§ 604(f)(1)(C), 652(c), Nov. 14, 1986, 100 Stat. 3877, 3889; Pub. L. 100–456, div. A, title VI, § 651(a), Sept. 29, 1988, 102 Stat. 1990; Pub. L. 101–189, div. A, title VI, § 653(a)(4), title VII, § 731(c)(1), Nov. 29, 1989, 103 Stat. 1462, 1482; Pub. L. 103–337, div. A, title VII, §§ 704(a), (b), title XVI, § 1671(c)(7)(A), Oct. 5, 1994, 108 Stat. 2798, 2799, 3014; Pub. L. 104–106, div. A, title VII, § 703, title XV, § 1501(c)(11), Feb. 10, 1996, 110 Stat. 372, 499; Pub. L. 105–85, div. A, title V, § 513(b), title X, § 1073(d)(1)(D), Nov. 18, 1997, 111 Stat. 1730, 1905; Pub. L. 105–261, div. A, title VII, § 732, Oct. 17, 1998, 112 Stat. 2071; Pub. L. 106–65, div. A, title V, § 578(i)(2), title VII, § 705(c), Oct. 5, 1999, 113 Stat. 629, 684; Pub. L. 106–398, § 1 [[div. A], title VII, § 703], Oct. 30, 2000, 114 Stat. 1654, 1654A–174; Pub. L. 107–107, div. A, title V, § 513(a), Dec. 28, 2001, 115 Stat. 1093.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1076(a)	37:402(a)(2) (as applicable to 37:403(a)).	June 7, 1956, ch. 374, §§ 102(a)(2) (as applicable to § 103(a)), (3) (as applicable to § 301(c)), 103(a), (b), 301(c), 70 Stat. 250, 251, 253.
	37:403(a) (1st sentence).	
1076(b)	37:402(a)(3) (as applicable to 37:421(c)).	
	37:421(c) (less last 28 words).	
1076(c)	37:403(a) (less 1st sentence).	
	37:421(c) (last 28 words).	
1076(d)	37:403(b).	

Appropriate references are made to dental care throughout the section to reflect the fact that in certain limited situations dependents are entitled to dental care under 37:403(h)(4), restated as section 1077 of this title.

In subsection (a), the words ''appointed, enlisted, inducted or called, ordered or conscripted in a uniformed service'' are omitted as surplusage, since it does not matter how a member became a member. The words ''active duty for a period of more than 30 days'' are substituted for the words ''active duty or active duty for training pursuant to a call or order that does not specify a period of thirty days or less'' to reflect section 101(22) and (23) of this title.

In subsection (b), the words ''active duty (other than for training)'' are substituted for the words ''active

duty as defined in section 901(b) of title 50'' to reflect section 101(22) of this title. The words ''retirement'' and ''retirement pay'' are omitted as surplusage.

In subsection (c), 37:421(c) (last 28 words) is omitted as unnecessary since this subsection and section 1077 of this title are written so as to apply to subsection (b) as well as subsection (a).

In subsection (d), the words ''because the facility concerned is that of a uniformed service other than that of the member'' is substituted for the words ''because of the service affiliation of the service member''.

REFERENCES IN TEXT

Chapter 67 of this title as in effect before December 1, 1994, referred to in subsec. (b)(2), means chapter 67 (§1331 et seq.) of this title prior to its transfer to part II of subtitle E of this title, its renumbering as chapter 1223, and its general revision by section 1662(j)(1) of Pub. L. 103–337. A new chapter 67 (§1331) of this title was added by section 1662(j)(7) of Pub. L. 103–337.

PRIOR PROVISIONS

A prior section 1076, act Aug. 10, 1956, ch. 1041, 70A Stat. 84, related to use of post cards, waiver of registration, and voting by discharged persons, prior to repeal by Pub. L. 85–861, §36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

2001—Subsec. (a)(2)(C). Pub. L. 107–107 struck out '', if the site was outside reasonable commuting distance from the member's residence'' before period at end.

2000—Subsec. (f). Pub. L. 106–398 added subsec. (f).

1999—Subsec. (a)(2)(D). Pub. L. 106–65, §705(c), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''A member who incurred or aggravated an injury, illness, or disease in the line of duty while serving on active duty for a period of 30 days or less (or while traveling to or from the place of such duty) and the member's orders are modified or extended, while the member is being treated for (or recovering from) the injury, illness, or disease, so as to result in active duty for a period of more than 30 days. However, this subparagraph entitles the dependent to medical and dental care only while the member remains on active duty.''

Subsec. (a)(2)(E). Pub. L. 106–65, §578(i)(2), added subpar. (E).

1998—Subsec. (e)(1). Pub. L. 105–261, §732(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Subject to paragraph (3), if an abused dependent of a former member of a uniformed service described in paragraph (4) needs medical or dental care for an injury or illness resulting from abuse by the member, the administering Secretary may, upon request of the abused dependent, furnish medical or dental care to the dependent for the treatment of such injury or illness in facilities of the uniformed services.''

Subsec. (e)(3). Pub. L. 105–261, §732(2), inserted ''and'' at end of subpar. (A), substituted a period for ''; and'' at end of subpar. (B), and struck out subpar. (C) which read as follows: ''shall terminate one year after the date on which the former member was discharged or dismissed from a uniformed service as described in paragraph (4).''

1997—Subsec. (a)(2). Pub. L. 105–85, §513(b), added par. (2) and struck out former par. (2) which read as follows: ''A dependent referred to in paragraph (1) is a dependent of a member of a uniformed service—

''(A) who is on active duty for a period of more than 30 days or who died while on that duty; or

''(B) who died from an injury, illness, or disease incurred or aggravated—

''(i) while on active duty under a call or order to active duty of 30 days or less, on active duty for training, or on inactive duty training; or

''(ii) while traveling to or from the place at which the member is to perform, or has performed, such active duty, active duty for training, or inactive duty training.''

Subsec. (b). Pub. L. 105–85, §1073(d)(1)(D), made technical correction to directory language of Pub. L. 104–106, §703(b). See 1996 Amendment note below.

1996—Subsec. (b). Pub. L. 104–106, §703(b), as amended by Pub. L. 105–85, §1073(d)(1)(D), in concluding provisions, substituted ''paragraph (2) may'' for ''clause (2) may'' and struck out ''A dependent described in section 1072(2)(F) of this title may be provided medical and dental care pursuant to clause (2) without regard to subclause (B) of such clause.'' after ''age 60.''

Subsec. (b)(2). Pub. L. 104–106, §703(a), substituted ''death would'' for ''death (A) would'' and struck out '', and (B) had elected to participate in the Survivor Benefit Plan established under subchapter II of chapter 73 of this title'' after ''60 years of age''.

Pub. L. 104–106, §1501(c)(11), substituted ''before December 1, 1994'' for ''before the effective date of the Reserve Officer Personnel Management Act'' in subpar. (A).

1994—Subsec. (b)(2)(A). Pub. L. 103–337, §1671(c)(7)(A), substituted ''under chapter 1223 of this title (or under chapter 67 of this title as in effect before the effective date of the Reserve Officer Personnel Management Act)'' for ''under chapter 67 of this title''.

Subsec. (e)(1). Pub. L. 103–337, §704(a)(1), added par. (1) and struck out former par. (1) which read as follows: ''Subject to paragraph (3), if—

''(A) a member of a uniformed service receives a dishonorable or bad-conduct discharge or is dismissed from a uniformed service as a result of a court-martial conviction for an offense involving abuse of a dependent of the member, as determined in accordance with regulations prescribed by the administering Secretary for such uniformed service; and

''(B) the abused dependent needs medical or dental care for an injury or illness resulting from the abuse,

the administering Secretary may, upon request of the abused dependent, furnish medical or dental care to the dependent for the treatment of such injury or illness in facilities of the uniformed services.''

Subsec. (e)(2). Pub. L. 103–337, §704(b)(1), (2), inserted ''former'' before ''member'' and substituted ''paragraph (4)'' for ''paragraph (1)(A)''.

Subsec. (e)(3). Pub. L. 103–337, §704(b)(1), (3), inserted ''former'' before ''member'' in introductory provisions and in subpar. (C) and substituted ''was'' for ''is'' and ''paragraph (4)'' for ''paragraph (1)(A)'' in subpar. (C).

Subsec. (e)(4). Pub. L. 103–337, §704(a)(2), added par. (4).

1989—Subsec. (e)(3)(C). Pub. L. 101–189, §653(a)(4), substituted ''one year'' for ''1 year''.

Subsec. (f). Pub. L. 101–189, §731(c)(1), struck out subsec. (f) which read as follows:

''(1) A person described in paragraph (2) shall be considered a dependent for purposes of this section for a period of one year after the date of the person's final decree of divorce, dissolution, or annulment. In addition, if such a person purchases a conversion health policy within the one-year period referred to in the preceding sentence, such person shall be entitled, upon request, to medical and dental care prescribed by section 1077 of this title for a period of one year after the purchase of the policy for any condition of the person that existed on the date on which coverage under the policy begins and for which care is not provided under that policy.

''(2) A person referred to in paragraph (1) is a person who would qualify as a dependent under section 1072(2)(G) but for the fact that the person's final decree of divorce, dissolution, or annulment is dated on or after April 1, 1985.

''(3) In this subsection, the term 'conversion health policy' means a health insurance plan with a private insurer, developed through negotiations between the Secretary of Defense and a private insurer, that is available for purchase by or for the use of persons described in paragraph (2).''

1988—Subsec. (f). Pub. L. 100–456 added subsec. (f).

1986—Subsec. (a)(2)(B). Pub. L. 99–661, § 604(f)(1)(C), inserted reference to disease.

Subsec. (e). Pub. L. 99–661, § 652(c), added subsec. (e).

1985—Subsec. (a). Pub. L. 99–145 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''A dependent of a member of a uniformed service who is on active duty for a period of more than 30 days, or of such a member who died while on that duty, is entitled, upon request, to the medical and dental care prescribed by section 1077 of this title in facilities of the uniformed services, subject to the availability of space and facilities and the capabilities of the medical and dental staff.''

1984—Subsecs. (b), (d). Pub. L. 98–557 substituted reference to administering Secretaries for reference to Secretary of Defense and Secretary of Health and Human Services.

1982—Subsec. (b). Pub. L. 97–252 provided for medical and dental care, for a dependent described in section 1072(2)(F) of this title, pursuant to clause (2) without regard to subclause (B) of such clause.

1980—Subsecs. (b), (d). Pub. L. 96–513 substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

1978—Subsec. (b). Pub. L. 95–397 substituted ''Under regulations to be prescribed jointly by the Secretary of Defense and the Secretary of Health, Education, and Welfare, a dependent of a member or former member-'' for ''Under joint regulations to be prescribed by the Secretary of Defense and the Secretary of Health, Education, and Welfare, a dependent of a member or former member who is, or was at the time of his death, entitled to retired or retainer pay, or equivalent pay, may, upon request, be given the medical and dental care prescribed by section 1077 of this title in facilities of the uniformed services, subject to the availability of space and facilities and the capabilities of the medical and dental staff'', added pars. (1), (2), and provisions following par. (2) relating to medical and dental care on request in facilities of the uniformed services subject to the availability of space, facilities and capabilities of staff, and excepting from such care provision a dependent of a member or former member until such member or former member would have attained age 60.

1966—Subsec. (b). Pub. L. 89–614 struck out provision which excepted from medical and dental care a member or former member who is, or was at the time of his death, entitled to retired pay under chapter 67 of this title and has served less than eight years on active duty (other than for training).

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1073(d)(1) of Pub. L. 105–85 provided that the amendment made by that section is effective Feb. 10, 1996, and as if included in the National Defense Authorization Act for Fiscal Year 1996, Pub. L. 104–106, as enacted.

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 section 1671(c)(7)(A) of Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 731(c)(1) of Pub. L. 101–189 applicable to a person referred to in 10 U.S.C. 1072(2)(H) whose decree of divorce, dissolution, or annulment becomes final on or after Nov. 29, 1989, and to a person so referred to whose decree became final during the period from Sept. 29, 1988 to Nov. 28, 1989, as if the amendment had become effective on Sept. 29, 1988, see section 731(d) of Pub. L. 101–189, set out as a note under section 1072 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 651(d) of Pub. L. 100–456 provided that: ''Section 1076(f) of title 10, United States Code, as added by subsection (a), shall take effect on the date of enactment of this Act [Sept. 29, 1988] or 30 days after the Secretary of Defense first makes available a conversion health policy (as defined in such section), whichever is later. Such section shall apply to persons whose decree of divorce, dissolution, or annulment becomes final after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 604 of Pub. L. 99–661 applicable with respect to persons who, after Nov. 14, 1986, incur or aggravate an injury, illness, or disease or die, see section 604(g) of Pub. L. 99–661, set out as a note under section 1074a of this title.

Section 652(e)(3) of Pub. L. 99–661 provided that: ''The amendment made by subsection (c) [amending this section] shall apply only with respect to dependents who request medical or dental care on or after the date of the enactment of this Act [Nov. 14, 1986].''

EFFECTIVE DATE OF 1985 AMENDMENT

Section 652(c) of Pub. L. 99–145 provided that: ''The amendments made by this section [amending this section and section 1086 of this title] shall apply only with respect to dependents of members of the uniformed services whose deaths occur after September 30, 1985.''

EFFECTIVE DATE OF 1982 AMENDMENT; TRANSITION PROVISIONS

Amendment by Pub. L. 97–252 effective Feb. 1, 1983, and applicable in the case of any former spouse of a member or former member of the uniformed services whether final decree of divorce, dissolution, or annulment of marriage of former spouse and such member or former member is dated before, on, or after Feb. 1, 1983, see section 1006 of Pub. L. 97–252, set out as an Effective Date; Transition Provisions note under section 1408 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 302 of Pub. L. 95–397 provided that: ''The amendment made by section 301 [amending this section] shall become effective on October 1, 1978, or on the date of the enactment of this Act [Sept. 30, 1978], whichever is later.''

EFFECTIVE DATE OF 1966 AMENDMENT

For effective date of amendment by Pub. L. 89–614, see section 3 of Pub. L. 89–614, set out as a note under section 1071 of this title.

STIPEND FOR MEMBERS OF RESERVE COMPONENTS FOR HEALTH CARE FOR CERTAIN DEPENDENTS

Pub. L. 110–181, div. A, title VII, § 704, Jan. 28, 2008, 122 Stat. 188, provided that: ''The Secretary of Defense may, pursuant to regulations prescribed by the Secretary, pay a stipend to a member of a reserve component of the Armed Forces who is called or ordered to active duty for a period of more than 30 days for purposes of maintaining civilian health care coverage for a dependant whom the Secretary determines to possess a special health care need that would be best met by remaining in the member's civilian health plan. In making such determination, the Secretary shall consider whether—

''(1) the dependent of the member was receiving treatment for the special health care need before the call or order to active duty of the member; and

''(2) the call or order to active duty would result in an interruption in treatment or a change in health care provider for such treatment.''

TRANSITIONAL HEALTH CARE FOR MEMBERS, OR DEPENDENTS OF MEMBERS, UPON RELEASE OF MEMBER FROM ACTIVE DUTY IN CONNECTION WITH OPERATION DESERT STORM

Pub. L. 102–25, title III, § 313, Apr. 6, 1991, 105 Stat. 85, provided that:

''(a) HEALTH CARE PROVIDED.—A member of the Armed Forces described in subsection (b), and the dependents of the member, shall be entitled to receive health care described in subsection (c) upon the release of the member from active duty in connection with Operation Desert Storm until the earlier of—

''(1) 30 days after the date of the release of the member from active duty; or

''(2) the date on which the member and the dependents of the member are covered by a health plan sponsored by an employer.

''(b) ELIGIBLE MEMBER DESCRIBED.—A member of the Armed Forces referred to in subsection (a) is a member who—

''(1) is a member of a reserve component of the Armed Forces and is called or ordered to active duty under chapter 39 of title 10, United States Code, in connection with Operation Desert Storm;

''(2) is involuntarily retained on active duty under section 673c [now 12305] of title 10, United States Code, in connection with Operation Desert Storm; or

''(3) voluntarily agrees to remain on active duty for a period of less than one year in connection with Operation Desert Storm.

''(c) HEALTH CARE DESCRIBED.—The health care referred to in subsection (a) is—

''(1) medical and dental care under section 1076 of title 10, United States Code, in the same manner as a dependent described in subsection (a)(2) of that section; and

''(2) health benefits contracted under the authority of section 1079(a) of that title and subject to the same rates and conditions as apply to persons covered under that section.

''(d) DEPENDENT DEFINED.—For purposes of this section, the term 'dependent' has the meaning given that term in section 1072(2) of title 10, United States Code.''

DEPENDENT; QUALIFICATION AS; TRANSITION

Section 651(c) of Pub. L. 100–456 provided that: ''Any person who qualified as a dependent under section 645(c) of the Department of Defense Authorization Act, 1985 [Pub. L. 98–525, formerly set out as a note under section 1072 of this title], as in effect before its repeal by subsection (b), shall remain qualified as a dependent as specified in that section and shall become eligible for benefits in accordance with section 1076(f) of title 10, United States Code (as added by subsection (a)), when no longer qualified as a dependent pursuant to such section 645(c).''

§ 1076a. TRICARE dental program

(a) ESTABLISHMENT OF DENTAL PLANS.—The Secretary of Defense may establish, and in the case of the dental plan described in paragraph (1) shall establish, the following voluntary enrollment dental plans:

(1) PLAN FOR SELECTED RESERVE AND INDIVIDUAL READY RESERVE.—A dental insurance plan for members of the Selected Reserve of the Ready Reserve and for members of the Individual Ready Reserve described in subsection 10144(b) of this title.

(2) PLAN FOR OTHER RESERVES.—A dental insurance plan for members of the Individual Ready Reserve not eligible to enroll in the plan established under paragraph (1).

(3) PLAN FOR ACTIVE DUTY DEPENDENTS.—Dental benefits plans for eligible dependents of members of the uniformed services who are on active duty for a period of more than 30 days.

(4) PLAN FOR READY RESERVE DEPENDENTS.—A dental benefits plan for eligible dependents of members of the Ready Reserve of the reserve components who are not on active duty for more than 30 days.

(b) ADMINISTRATION OF PLANS.—The plans established under this section shall be administered under regulations prescribed by the Secretary of Defense in consultation with the other administering Secretaries.

(c) CARE AVAILABLE UNDER PLANS.—Dental plans established under subsection (a) may provide for the following dental care:

(1) Diagnostic, oral examination, and preventive services and palliative emergency care.

(2) Basic restorative services of amalgam and composite restorations, stainless steel crowns for primary teeth, and dental appliance repairs.

(3) Orthodontic services, crowns, gold fillings, bridges, complete or partial dentures, and such other services as the Secretary of Defense considers to be appropriate.

(d) PREMIUMS.—

(1) PREMIUM SHARING PLANS.—(A) The dental insurance plan established under subsection (a)(1) and the dental benefits plans established under subsection (a)(3) are premium sharing plans.

(B) Members enrolled in a premium sharing plan for themselves or for their dependents shall be required to pay a share of the premium charged for the benefits provided under the plan. The member's share of the premium charge may not exceed $20 per month for the enrollment.

(C) Effective as of January 1 of each year, the amount of the premium required under subparagraph (A) shall be increased by the percent equal to the lesser of—

(i) the percent by which the rates of basic pay of members of the uniformed services are increased on such date; or

(ii) the sum of one-half percent and the percent computed under section 5303(a) of title 5 for the increase in rates of basic pay for statutory pay systems for pay periods beginning on or after such date.

(D) The Secretary of Defense may reduce the monthly premium required to be paid under paragraph (1) in the case of enlisted members in pay grade E–1, E–2, E–3, or E–4 if the Secretary determines that such a reduction is appropriate to assist such members to participate in a dental plan referred to in subparagraph (A).

(2) FULL PREMIUM PLANS.—(A) The dental insurance plan established under subsection (a)(2) and the dental benefits plan established under subsection (a)(4) are full premium plans.

(B) Members enrolled in a full premium plan for themselves or for their dependents shall be required to pay the entire premium charged for the benefits provided under the plan.

(3) PAYMENT PROCEDURES.—A member's share of the premium for a plan established

under subsection (a) may be paid by deductions from the basic pay of the member and from compensation paid under section 206 of title 37, as the case may be. The regulations prescribed under subsection (b) shall specify the procedures for payment of the premiums by enrollees who do not receive such pay.

(e) COPAYMENTS UNDER PREMIUM SHARING PLANS.—(1) Except as provided pursuant to paragraph (2), a member or dependent who receives dental care under a premium sharing plan referred to in subsection (d)(1) shall—

(A) in the case of care described in subsection (c)(1), pay no charge for the care;

(B) in the case of care described in subsection (c)(2), pay 20 percent of the charges for the care; and

(C) in the case of care described in subsection (c)(3), pay a percentage of the charges for the care that is determined appropriate by the Secretary of Defense, after consultation with the other administering Secretaries.

(2)(A) During a national emergency declared by the President or Congress and subject to regulations prescribed by the Secretary of Defense, the Secretary may waive, in whole or in part, the charges otherwise payable by a member of the Selected Reserve of the Ready Reserve or a member of the Individual Ready Reserve under paragraph (1) for the coverage of the member alone under the dental insurance plan established under subsection (a)(1) if the Secretary determines that such waiver of the charges would facilitate or ensure the readiness of a unit or individual for deployment.

(B) The waiver under subparagraph (A) may apply only with respect to charges for coverage of dental care required for readiness.

(f) TRANSFER OF MEMBERS.—If a member whose dependents are enrolled in the plan established under subsection (a)(3) is transferred to a duty station where dental care is provided to the member's eligible dependents under a program other than that plan, the member may discontinue participation under the plan. If the member is later transferred to a duty station where dental care is not provided to such member's eligible dependents except under the plan established under subsection (a)(3), the member may re-enroll the dependents in that plan.

(g) CARE OUTSIDE THE UNITED STATES.—The Secretary of Defense may exercise the authority provided under subsection (a) to establish dental insurance plans and dental benefits plans for dental benefits provided outside the United States for the eligible members and dependents of members of the uniformed services. In the case of such an overseas dental plan, the Secretary may waive or reduce any copayments required by subsection (e) to the extent the Secretary determines appropriate for the effective and efficient operation of the plan.

(h) WAIVER OF REQUIREMENTS FOR SURVIVING DEPENDENTS.—The Secretary of Defense may waive (in whole or in part) any requirements of a dental plan established under this section as the Secretary determines necessary for the effective administration of the plan for a dependent who is an eligible dependent described in subsection (k)(2).

(i) AUTHORITY SUBJECT TO APPROPRIATIONS.—The authority of the Secretary of Defense to enter into a contract under this section for any fiscal year is subject to the availability of appropriations for that purpose.

(j) LIMITATION ON REDUCTION OF BENEFITS.—The Secretary of Defense may not reduce benefits provided under a plan established under this section until—

(1) the Secretary provides notice of the Secretary's intent to reduce such benefits to the Committees on Armed Services of the Senate and the House of Representatives; and

(2) one year has elapsed following the date of such notice.

(k) ELIGIBLE DEPENDENT DEFINED.—(1) In this section, the term ''eligible dependent'' means a dependent described in subparagraph (A), (D), or (I) of section 1072(2) of this title.

(2) Such term includes any such dependent of a member who dies—

(A) while on active duty for a period of more than 30 days; or

(B) while such member is a member of the Ready Reserve.

(3) Such term does not include a dependent by reason of paragraph (2) after the end of the three-year period beginning on the date of the member's death, except that, in the case of a dependent of the deceased who is described by subparagraph (D) or (I) of section 1072(2) of this title, the period of continued eligibility shall be the longer of the following periods beginning on such date:

(A) Three years.

(B) The period ending on the date on which such dependent attains 21 years of age.

(C) In the case of such dependent who, at 21 years of age, is enrolled in a full-time course of study in a secondary school or in a full-time course of study in an institution of higher education approved by the administering Secretary and was, at the time of the member's death, in fact dependent on the member for over one-half of such dependent's support, the period ending on the earlier of the following dates:

(i) The date on which such dependent ceases to pursue such a course of study, as determined by the administering Secretary.

(ii) The date on which such dependent attains 23 years of age.

(Added Pub. L. 106–65, div. A, title VII, § 711(a), Oct. 5, 1999, 113 Stat. 685; amended Pub. L. 106–398, § 1 [[div. A], title VII, § 704(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–174; Pub. L. 107–314, div. A, title VII, § 703, Dec. 2, 2002, 116 Stat. 2584; Pub. L. 108–375, div. A, title VII, § 711, Oct. 28, 2004, 118 Stat. 1984; Pub. L. 109–163, div. A, title VII, § 713, Jan. 6, 2006, 119 Stat. 3343; Pub. L. 110–417, [div. A], title VII, § 735(b), Oct. 14, 2008, 122 Stat. 4514; Pub. L. 111–84, div. A, title VII, § 704, Oct. 28, 2009, 123 Stat. 2373; Pub. L. 111–383, div. A, title VII, § 703, Jan. 7, 2011, 124 Stat. 4245.)

PRIOR PROVISIONS

A prior section 1076a, added Pub. L. 99–145, title VI, § 651(a)(1), Nov. 8, 1985, 99 Stat. 655; amended Pub. L. 99–661, div. A, title VII, § 707(a), (b), Nov. 14, 1986, 100 Stat. 3905; Pub. L. 102–190, div. A, title VII, § 701, Dec. 5,

1991, 105 Stat. 1399; Pub. L. 102–484, div. A, title VII, § 701(a)–(e), Oct. 23, 1992, 106 Stat. 2430; Pub. L. 103–337, div. A, title VII, §§ 702(b), 703(a), 707(b), Oct. 5, 1994, 108 Stat. 2797, 2798, 2800; Pub. L. 105–85, div. A, title VII, § 732, Nov. 18, 1997, 111 Stat. 1812; Pub. L. 105–261, div. A, title VII, § 701(a)(1), (b), Oct. 17, 1998, 112 Stat. 2056; Pub. L. 106–65, div. A, title X, § 1066(a)(8), Oct. 5, 1999, 113 Stat. 770; Pub. L. 106–398, § 1 [[div. A], title X, § 1087(d)(4)], Oct. 30, 2000, 114 Stat. 1654, 1654A–293, related to dependents' dental program, prior to repeal by Pub. L. 106–65, div. A, title VII, § 711(a), Oct. 5, 1999, 113 Stat. 685.

AMENDMENTS

2011—Subsec. (k)(2). Pub. L. 111–383 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Such term includes any such dependent of a member who dies while on active duty for a period of more than 30 days or a member of the Ready Reserve if, on the date of the death of the member, the dependent—

''(A) is enrolled in a dental benefits plan established under subsection (a); or

''(B) if not enrolled in such a plan on such date—

''(i) is not enrolled by reason of a discontinuance of a former enrollment under subsection (f); or

''(ii) is not qualified for such enrollment because—

''(I) the dependent is a child under the minimum age for such enrollment; or

''(II) the dependent is a spouse who is a member of the armed forces on active duty for a period of more than 30 days.''

2009—Subsec. (k)(3). Pub. L. 111–84 amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''Such term does not include a dependent by reason of paragraph (2) after the end of the three-year period beginning on the date of the member's death.''

2008—Subsec. (e). Pub. L. 110–417 designated existing provisions as par. (1), substituted ''Except as provided pursuant to paragraph (2), a member or dependent'' for ''A member or dependent'', redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, of par. (1) and added par. (2).

2006—Subsec. (k). Pub. L. 109–163 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''In this section, the term 'eligible dependent'—

''(1) means a dependent described in subparagraph (A), (D), or (I) of section 1072(2) of this title; and

''(2) includes any such dependent of a member who dies while on active duty for a period of more than 30 days or a member of the Ready Reserve if, on the date of the death of the member, the dependent is enrolled in a dental benefits plan established under subsection (a), is not enrolled in such a plan by reason of a discontinuance of a former enrollment under subsection (f), or is not enrolled because the dependent is a child under the minimum age for enrollment, except that the term does not include the dependent after the end of the three-year period beginning on the date of the member's death.''

2004—Subsec. (k)(2). Pub. L. 108–375 substituted ''under subsection (a),'' for ''under subsection (a) or'' and inserted ''or is not enrolled because the dependent is a child under the minimum age for enrollment,'' after ''under subsection (f),''.

2002—Subsec. (k)(2). Pub. L. 107–314 substituted ''if, on the date of the death of the member, the dependent is enrolled in a dental benefits plan established under subsection (a) or is not enrolled in such a plan by reason of a discontinuance of a former enrollment under subsection (f)'' for ''if the dependent is enrolled on the date of the death of the member in a dental benefits plan established under subsection (a)''.

2000—Subsec. (k)(2). Pub. L. 106–398 substituted ''three-year period'' for ''one-year period''.

AUTHORIZATION TO EXPAND ENROLLMENT IN DEPENDENTS' DENTAL PROGRAM TO CERTAIN MEMBERS RETURNING FROM OVERSEAS ASSIGNMENTS

Pub. L. 103–160, div. A, title VII, § 703, Nov. 30, 1993, 107 Stat. 1687, provided that:

''(a) AUTHORITY TO EXPAND PROGRAM.—After March 31, 1994, the Secretary of Defense may expand the dependents' dental program established under section 1076a of title 10, United States Code, to permit a member of the uniformed services described in subsection (b) to enroll dependents described in subsection (a) of such section in a dental benefits plan under the program without regard to the length of the uncompleted portion of the member's period of obligated service.

''(b) COVERED MEMBERS.—A member referred to in subsection (a) is a member of the uniformed services who is—

''(1) on active duty for a period of more than 30 days (as defined in section 101(d)(2) of title 10, United States Code); and

''(2) reassigned from a permanent duty station where a dental benefits plan under the dependents' dental program is not available to a permanent duty station where such a plan is available.

''(c) REPORT ON ADVISABILITY OF EXPANSION.—Not later than February 28, 1994, the Secretary shall submit to Congress a report evaluating the advisability of expanding the enrollment eligibility of members of the uniformed services in the dependents' dental program in the manner authorized in subsection (a). The report shall include an analysis of the cost implications for such an expansion to the Federal Government, beneficiaries under the dependents' dental program, and contractors under the program.

''(d) NOTIFICATION OF EXERCISE OF AUTHORITY.—The Secretary shall notify Congress of any decision to expand the enrollment eligibility of dependents in the dependents' dental program as provided in subsection (a) not later than 30 days before such expansion takes effect.''

[§ 1076b. Repealed. Pub. L. 109–364, div. A, title VII, § 706(d), Oct. 17, 2006, 120 Stat. 2282]

Section, added Pub. L. 108–106, title I, § 1115(a), Nov. 6, 2003, 117 Stat. 1216; amended Pub. L. 108–136, div. A, title VII, § 702, Nov. 24, 2003, 117 Stat. 1525; Pub. L. 109–163, div. A, title VII, § 702(a)(1), Jan. 6, 2006, 119 Stat. 3340; Pub. L. 109–364, div. A, title VII, § 704(d), Oct. 17, 2006, 120 Stat. 2280, related to TRICARE Standard coverage for members of the Selected Reserve.

A prior section 1076b, added Pub. L. 104–106, div. A, title VII, § 705(a)(1), Feb. 10, 1996, 110 Stat. 372; amended Pub. L. 104–201, div. A, title VII, § 702(a), (b), Sept. 23, 1996, 110 Stat. 2588; Pub. L. 105–85, div. A, title VII, § 733(a), Nov. 18, 1997, 111 Stat. 1812, related to Selected Reserve dental insurance, prior to repeal by Pub. L. 106–65, div. A, title VII, § 711(a), Oct. 5, 1999, 113 Stat. 685.

EFFECTIVE DATE OF REPEAL

Pub. L. 109–364, div. A, title VII, § 706(d), Oct. 17, 2006, 120 Stat. 2282, provided that the repeal made by section 706(d) is effective Oct. 1, 2007.

§ 1076c. Dental insurance plan: certain retirees and their surviving spouses and other dependents

(a) REQUIREMENT FOR PLAN.—The Secretary of Defense, in consultation with the other administering Secretaries, shall establish a dental insurance plan for retirees of the uniformed services, certain unremarried surviving spouses, and dependents in accordance with this section.

(b) PERSONS ELIGIBLE FOR PLAN.—The following persons are eligible to enroll in the dental insurance plan established under subsection (a):

(1) Members of the uniformed services who are entitled to retired pay.

(2) Members of the Retired Reserve who would be entitled to retired pay under chapter 1223 of this title but for being under 60 years of age.

(3) Eligible dependents of a member described in paragraph (1) or (2) who are covered by the enrollment of the member in the plan.

(4) Eligible dependents of a member described in paragraph (1) or (2) who is not enrolled in the plan and who—

(A) is enrolled under section 1705 of title 38 to receive dental care from the Secretary of Veterans Affairs;

(B) is enrolled in a dental plan that—

(i) is available to the member as a result of employment by the member that is separate from the military service of the member; and

(ii) is not available to dependents of the member as a result of such separate employment by the member; or

(C) is prevented by a medical or dental condition from being able to obtain benefits under the plan.

(5) The unremarried surviving spouse and eligible child dependents of a deceased member—

(A) who died while in a status described in paragraph (1) or (2);

(B) who is described in section 1448(d)(1) of this title; or

(C) who died while on active duty for a period of more than 30 days and whose eligible dependents are not eligible, or no longer eligible, for dental benefits under section 1076a of this title.

(c) PREMIUMS.—(1) A member enrolled in the dental insurance plan established under subsection (a) shall pay the premiums charged for the insurance coverage.

(2) The Secretary of Defense shall establish procedures for the collection of the premiums charged for coverage by the dental insurance plan. To the maximum extent practicable, the premiums payable by a member entitled to retired pay shall be deducted and withheld from the retired pay of the member (if pay is available to the member).

(d) BENEFITS AVAILABLE UNDER THE PLAN.—The dental insurance plan established under subsection (a) shall provide benefits for dental care and treatment which may be comparable to the benefits authorized under section 1076a of this title for plans established under that section and shall include diagnostic services, preventative services, endodontics and other basic restorative services, surgical services, and emergency services.

(e) COVERAGE.—(1) The Secretary shall prescribe a minimum required period for enrollment by a member or surviving spouse in the dental insurance plan established under subsection (a).

(2) The dental insurance plan shall provide for voluntary enrollment of participants and shall authorize a member or eligible unremarried surviving spouse to enroll for self only or for self and eligible dependents.

(f) REQUIRED TERMINATIONS OF ENROLLMENT.—The Secretary shall terminate the enrollment of any enrollee, and any eligible dependents of the enrollee covered by the enrollment, in the dental insurance plan established under subsection (a) upon the occurrence of the following:

(1) In the case of an enrollment under subsection (b)(1), termination of the member's entitlement to retired pay.

(2) In the case of an enrollment under subsection (b)(2), termination of the member's status as a member of the Retired Reserve.

(3) In the case of an enrollment under subsection (b)(5), remarriage of the surviving spouse.

(g) CONTINUATION OF DEPENDENTS' ENROLLMENT UPON DEATH OF ENROLLEE.—Coverage of a dependent in the dental insurance plan established under subsection (a) under an enrollment of a member or a surviving spouse who dies during the period of enrollment shall continue until the end of that period and may be renewed by (or for) the dependent, so long as the premium paid is sufficient to cover continuation of the dependent's enrollment. The Secretary may terminate coverage of the dependent when the premiums paid are no longer sufficient to cover continuation of the enrollment. The Secretary shall prescribe in regulations under subsection (h) the parties responsible for paying the remaining premiums due on the enrollment and the manner for collection of the premiums.

(h) REGULATIONS.—The dental insurance plan established under subsection (a) shall be administered under regulations prescribed by the Secretary of Defense, in consultation with the other administering Secretaries.

(i) VOLUNTARY DISENROLLMENT.—(1) With respect to enrollment in the dental insurance plan established under subsection (a), the Secretary of Defense—

(A) shall allow for a period of up to 30 days at the beginning of the prescribed minimum enrollment period during which an enrollee may disenroll; and

(B) shall provide for limited circumstances under which disenrollment shall be permitted during the prescribed enrollment period, without jeopardizing the fiscal integrity of the dental program.

(2) The circumstances described in paragraph (1)(B) shall include—

(A) a case in which a retired member, surviving spouse, or dependent of a retired member who is also a Federal employee is assigned to a location outside the jurisdiction of the dental insurance plan established under subsection (a) that prevents utilization of dental benefits under the plan;

(B) a case in which a retired member, surviving spouse, or dependent of a retired member is prevented by a serious medical condition from being able to obtain benefits under the plan;

(C) a case in which severe financial hardship would result; and

(D) any other circumstances which the Secretary considers appropriate.

(3) The Secretary shall establish procedures for timely decisions on requests for disenrollment under this section and for appeal to the TRICARE Management Activity of adverse decisions.

(j) DEFINITIONS.—In this section:

(1) The term ''eligible dependent'' means a dependent described in subparagraph (A), (D), or (I) of section 1072(2) of this title.

(2) The term ''eligible child dependent'' means a dependent described in subparagraph (D) or (I) of section 1072(2) of this title.

(3) The term ''retired pay'' includes retainer pay.

(Added Pub. L. 104–201, div. A, title VII, § 703(a)(1), Sept. 23, 1996, 110 Stat. 2588; amended Pub. L. 105–85, div. A, title VII, §§ 701, 733(b), 734, Nov. 18, 1997, 111 Stat. 1807, 1812, 1813; Pub. L. 105–261, div. A, title VII, § 702, Oct. 17, 1998, 112 Stat. 2056; Pub. L. 106–65, div. A, title VII, § 704, Oct. 5, 1999, 113 Stat. 683; Pub. L. 106–398, § 1 [[div. A], title VII, § 726, title X, § 1087(a)(6)], Oct. 30, 2000, 114 Stat. 1654, 1654A–187, 1654A–290.)

AMENDMENTS

2000—Subsec. (b)(5)(C). Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(6)], struck out ''pursuant to subsection (i)(2) of such section'' after ''section 1076a of this title''.

Subsec. (f). Pub. L. 106–398, § 1 [[div. A], title VII, § 726(b)], substituted ''Required Terminations'' for ''Termination'' in heading.

Subsecs. (i), (j). Pub. L. 106–398, § 1 [[div. A], title VII, § 726(a)], added subsec. (i) and redesignated former subsec. (i) as (j).

1999—Subsec. (d). Pub. L. 106–65 amended heading and text of subsec. (d) generally. Text read as follows: ''The dental insurance plan established under subsection (a) shall provide benefits for basic dental care and treatment, including diagnostic services, preventative services, basic restorative services (including endodontics), surgical services, and emergency services.''

1998—Subsec. (b)(4), (5). Pub. L. 105–261, § 702(a), added par. (4) and redesignated former par. (4) as (5).

Subsec. (f)(3). Pub. L. 105–261, § 702(b), substituted ''(b)(5)'' for ''(b)(4)''.

1997—Subsec. (a). Pub. L. 105–85, § 734(a)(1), (b)(1), substituted ''The Secretary of Defense, in consultation with the other administering Secretaries, shall establish a dental insurance plan for retirees of the uniformed services'' for ''The Secretary of Defense shall establish a dental insurance plan for military retirees''.

Subsec. (b)(1). Pub. L. 105–85, § 734(a)(2), substituted ''uniformed services'' for ''Armed Forces''.

Subsec. (b)(4)(A). Pub. L. 105–85, § 701(1)(A), substituted ''died'' for ''dies''.

Subsec. (b)(4)(C). Pub. L. 105–85, § 701(1)(B), (2), (3), added subpar. (C).

Subsec. (c)(2). Pub. L. 105–85, § 733(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The amount of the premiums payable by a member entitled to retired pay shall be deducted and withheld from the retired pay and shall be disbursed to pay the premiums. The regulations prescribed under subsection (h) shall specify the procedures for payment of the premiums by other enrolled members and by enrolled surviving spouses.''

Subsec. (h). Pub. L. 105–85, § 734(b)(2), substituted ''other administering Secretaries'' for ''Secretary of Transportation''.

LIMITATION ON IMPLEMENTATION OF ALTERNATIVE COLLECTION PROCEDURES

Pub. L. 105–85, div. A, title VII, § 733(d), Nov. 18, 1997, 111 Stat. 1813, provided that: ''The Secretary of Defense may not implement procedures for collecting premiums under [former] section 1076b(b)(3) of title 10, United States Code, or section 1076c(c)(2) of such title other than by deductions and withholding from pay until 120 days after the date that the Secretary submits a report to Congress describing the justifications for implementing such alternative procedures.''

IMPLEMENTATION OF DENTAL PLAN

Section 703(b) of Pub. L. 104–201, as amended by Pub. L. 105–85, div. A, title VII, § 733(e), Nov. 18, 1997, 111 Stat. 1813, provided that: ''Beginning not later than April 1, 1998, the Secretary of Defense shall—

''(1) offer members of the Armed Forces and other persons described in subsection (b) of section 1076c of title 10, United States Code (as added by subsection (a)(1) of this section), the opportunity to enroll in the dental insurance plan required under that section; and

''(2) begin to provide benefits under the plan.''

§ 1076d. TRICARE program: TRICARE Standard coverage for members of the Selected Reserve

(a) ELIGIBILITY.—(1) Except as provided in paragraph (2), a member of the Selected Reserve of the Ready Reserve of a reserve component of the armed forces is eligible for health benefits under TRICARE Standard as provided in this section.

(2) Paragraph (1) does not apply to a member who is enrolled, or is eligible to enroll, in a health benefits plan under chapter 89 of title 5.

(b) TERMINATION OF ELIGIBILITY UPON TERMINATION OF SERVICE.—Eligibility for TRICARE Standard coverage of a member under this section shall terminate upon the termination of the member's service in the Selected Reserve.

(c) FAMILY MEMBERS.—While a member of a reserve component is covered by TRICARE Standard under the section, the members of the immediate family of such member are eligible for TRICARE Standard coverage as dependents of the member. If a member of a reserve component dies while in a period of coverage under this section, the eligibility of the members of the immediate family of such member for TRICARE Standard coverage shall continue for six months beyond the date of death of the member.

(d) PREMIUMS.—(1) A member of a reserve component covered by TRICARE Standard under this section shall pay a premium for that coverage.

(2) The Secretary of Defense shall prescribe for the purposes of this section one premium for TRICARE Standard coverage of members without dependents and one premium for TRICARE Standard coverage of members with dependents referred to in subsection (f)(1). The premium prescribed for a coverage shall apply uniformly to all covered members of the reserve components.

(3)(A) The monthly amount of the premium in effect for a month for TRICARE Standard coverage under this section shall be the amount equal to 28 percent of the total monthly amount determined on an appropriate actuarial basis as being reasonable for that coverage.

(B) The appropriate actuarial basis for purposes of subparagraph (A) shall be determined, for each calendar year after calendar year 2009, by utilizing the actual cost of providing benefits under this section to members and their dependents during the calendar years preceding such calendar year.

(4) The premiums payable by a member of a reserve component under this subsection may be deducted and withheld from basic pay payable to the member under section 204 of title 37 or from compensation payable to the member under section 206 of such title. The Secretary shall prescribe the requirements and procedures applicable to the payment of premiums.

(5) Amounts collected as premiums under this subsection shall be credited to the appropriation available for the Defense Health Program Account under section 1100 of this title, shall be merged with sums in such Account that are available for the fiscal year in which collected, and shall be available under subsection (b) of such section for such fiscal year.

(e) REGULATIONS.—The Secretary of Defense, in consultation with the other administering Secretaries, shall prescribe regulations for the administration of this section.

(f) DEFINITIONS.—In this section:

(1) The term ''immediate family'', with respect to a member of a reserve component, means all of the member's dependents described in subparagraphs (A), (D), and (I) of section 1072(2) of this title.

(2) The term ''TRICARE Standard'' means—

(A) medical care to which a dependent described in section 1076(a)(2) of this title is entitled; and

(B) health benefits contracted for under the authority of section 1079(a) of this title and subject to the same rates and conditions as apply to persons covered under that section.

(Added Pub. L. 108–375, div. A, title VII, § 701(a)(1), Oct. 28, 2004, 118 Stat. 1980; amended Pub. L. 109–163, div. A, title VII, § 701(a)–(f)(1), Jan. 6, 2006, 119 Stat. 3339, 3340; Pub. L. 109–364, div. A, title VII, §§ 704(c), 706(a)–(c), Oct. 17, 2006, 120 Stat. 2280, 2282; Pub. L. 110–181, div. A, title VII, § 701(c), Jan. 28, 2008, 122 Stat. 188; Pub. L. 110–417, [div. A], title VII, § 704(a), Oct. 14, 2008, 122 Stat. 4498; Pub. L. 111–84, div. A, title X, § 1073(a)(11), Oct. 28, 2009, 123 Stat. 2473.)

AMENDMENTS

2009—Pub. L. 111–84 substituted ''Standard'' for ''standard'' in section catchline.

2008—Subsec. (d)(3). Pub. L. 110–417 designated existing provisions as subpar. (A), substituted ''determined'' for ''that the Secretary determines'', struck out at end ''During the period beginning on April 1, 2006, and ending on September 30, 2008, the monthly amount of the premium may not be increased above the amount in effect for the month of March 2006.'', and added subpar. (B).

Pub. L. 110–181 substituted ''September 30, 2008'' for ''September 30, 2007''.

2006—Pub. L. 109–364, § 706(c)(2), substituted ''TRICARE standard coverage for members of the Selected Reserve'' for ''coverage for members of reserve components who commit to continued service in the Selected Reserve after release from active duty in support of a contingency operation'' in section catchline.

Pub. L. 109–163, § 701(f)(1), substituted ''active duty in support of a contingency operation'' for ''active duty'' in section catchline.

Subsec. (a). Pub. L. 109–364, § 706(a), designated introductory provisions as par. (1), substituted ''Except as provided in paragraph (2), a member'' for ''A member'', substituted period at end for ''after the member completes service on active duty to which the member was called or ordered for a period of more than 30 days on or after September 11, 2001, under a provision of law referred to in section 101(a)(13)(B), if the member—'', added par. (2), and struck out former pars. (1) and (2) which read as follows:

''(1) served continuously on active duty for 90 or more days pursuant to such call or order; and

''(2) not later than 90 days after release from such active-duty service, entered into an agreement with the Secretary concerned to serve continuously in the Selected Reserve for a period of one or more whole years following such date.''

Subsec. (a)(2). Pub. L. 109–163, § 701(d), substituted ''not later than 90 days after release'' for ''on or before the date of the release''.

Subsec. (b). Pub. L. 109–364, § 706(b), substituted ''Termination of Eligibility Upon Termination of Service'' for ''Period of Coverage'' in heading, struck out ''(4)'' before ''Eligibility'', and struck out pars. (1) to (3) and (5), which related to beginning of period of coverage, length of coverage period, period of coverage in the case of a member recalled to active duty, and coverage for a member of the Individual Ready Reserve.

Subsec. (b)(2). Pub. L. 109–163, § 701(a)(2), substituted ''Subject to paragraph (3) and unless earlier terminated under paragraph (4)'' for ''Unless earlier terminated under paragraph (3)''.

Subsec. (b)(3), (4). Pub. L. 109–163, § 701(a)(1), added par. (3) and redesignated former par. (3) as (4).

Subsec. (b)(5). Pub. L. 109–163, § 701(b), added par. (5).

Subsec. (c). Pub. L. 109–163, § 701(c), inserted at end ''If a member of a reserve component dies while in a period of coverage under this section, the eligibility of the members of the immediate family of such member for TRICARE Standard coverage shall continue for six months beyond the date of death of the member.''

Subsec. (d)(3). Pub. L. 109–364, § 704(c), inserted at end ''During the period beginning on April 1, 2006, and ending on September 30, 2007, the monthly amount of the premium may not be increased above the amount in effect for the month of March 2006.''

Subsec. (e). Pub. L. 109–364, § 706(c)(1)(A), (B), redesignated subsec. (g) as (e) and struck out heading and text of former subsec. (e). Text read as follows: ''The service agreement required of a member of a reserve component under subsection (a)(2) is separate from any other form of commitment of the member to a period of obligated service in that reserve component and may cover any part or all of the same period that is covered by another commitment of the member to a period of obligated service in that reserve component.''.

Subsec. (f)(2). Pub. L. 109–163, § 701(e), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The term 'TRICARE Standard' means the Civilian Health and Medical Program of the Uniformed Services option under the TRICARE program.''

Subsec. (f)(3). Pub. L. 109–364, § 706(c)(1)(C), struck out par. (3) which read as follows: ''The term 'member recalled to active duty' means, with respect to a member who is eligible for coverage under this section based on a period of active duty service, a member who is called or ordered to active duty for an additional period of active duty subsequent to the period of active duty on which that eligibility is based.''

Pub. L. 109–163, § 701(a)(3), added par. (3).

Subsec. (g). Pub. L. 109–364, § 706(c)(1)(B), redesignated subsec. (g) as (e).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–417, [div. A], title VII, § 704(c), Oct. 14, 2008, 122 Stat. 4499, provided that: ''The amendments made by this section [amending this section] shall take effect as of October 1, 2008.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–364, div. A, title VII, § 706(g), Oct. 17, 2006, 120 Stat. 2282, provided that: ''The Secretary of Defense shall ensure that health care under TRICARE Standard is provided under section 1076d of title 10, United States Code, as amended by this section, beginning not later than October 1, 2007.''

SAVINGS PROVISION

Pub. L. 109–364, div. A, title VII, § 706(f), Oct. 17, 2006, 120 Stat. 2282, as amended by Pub. L. 110–181, div. A, title VII, § 706(a), Jan. 28, 2008, 122 Stat. 189, provided that:

''(1) Except as provided in paragraph (2), enrollments in TRICARE Standard that are in effect on the day be-

fore the date of the enactment of this Act [Oct. 17, 2006] under section 1076d of title 10, United States Code, as in effect on such day, shall be continued until terminated after such day under such section 1076d as amended by this section.

''(2) The enrollment of a member in TRICARE Standard that is in effect on the day before health care under TRICARE Standard is provided pursuant to the effective date in subsection (g) [set out as an Effective Date of 2006 Amendment note above] shall not be terminated by operation of the exclusion of eligibility under subsection (a)(2) of such section 1076d, as so amended, for the duration of the eligibility of the member under TRICARE Standard as in effect on October 16, 2006.''

[Pub. L. 110–181, div. A, title VII, § 706(b), Jan. 28, 2008, 122 Stat. 189, provided that: ''The amendments made by subsection (a) [amending section 706(f) of Pub. L. 109–364, set out above] shall take effect on October 1, 2007.'']

CALCULATION OF MONTHLY PREMIUMS FOR 2009

Pub. L. 110–417, [div. A], title VII, § 704(b), Oct. 14, 2008, 122 Stat. 4499, provided that: ''For purposes of section 1076d(d)(3) of title 10, United States Code, the appropriate actuarial basis for purposes of subparagraph (A) of that section shall be determined for calendar year 2009 by utilizing the reported cost of providing benefits under that section to members and their dependents during calendar years 2006 and 2007, except that the monthly amount of the premium determined pursuant to this subsection may not exceed the amount in effect for the month of March 2007.''

IMPLEMENTATION

Pub. L. 108–375, div. A, title VII, § 701(b), Oct. 28, 2004, 118 Stat. 1981, provided that:

''(1) The Secretary of Defense shall implement section 1076d of title 10, United States Code, not later than 180 days after the date of the enactment of this Act [Oct. 28, 2004].

''(2)(A) A member of a reserve component of the Armed Forces who performed active-duty service described in subsection (a) of section 1076d of title 10, United States Code, for a period beginning on or after September 11, 2001, and was released from that active-duty service before the date of the enactment of this Act, or is released from that active-duty service on or within 180 days after the date of the enactment of this Act, may, for the purpose of paragraph (2) of such subsection, enter into an agreement described in such paragraph not later than one year after the date of the enactment of this Act. TRICARE Standard coverage (under such section 1076d) of a member who enters into such an agreement under this paragraph shall begin on the later of—

''(i) the date applicable to the member under subsection (b) of such section; or

''(ii) the date of the agreement.

''(B) The Secretary of Defense shall take such action as is necessary to ensure, to the maximum extent practicable, that members of the reserve components eligible to enter into an agreement as provided in subparagraph (A) actually receive information on the opportunity and procedures for entering into such an agreement together with a clear explanation of the benefits that the members are eligible to receive as a result of entering into such an agreement under section 1076d of title 10, United States Code.''

§ 1076e. TRICARE program: TRICARE Standard coverage for certain members of the Retired Reserve who are qualified for a non-regular retirement but are not yet age 60

(a) ELIGIBILITY.—(1) Except as provided in paragraph (2), a member of the Retired Reserve of a reserve component of the armed forces who is qualified for a non-regular retirement at age 60 under chapter 1223 of this title, but is not age 60, is eligible for health benefits under TRICARE Standard as provided in this section.

(2) Paragraph (1) does not apply to a member who is enrolled, or is eligible to enroll, in a health benefits plan under chapter 89 of title 5.

(b) TERMINATION OF ELIGIBILITY UPON OBTAINING OTHER TRICARE STANDARD COVERAGE.—Eligibility for TRICARE Standard coverage of a member under this section shall terminate upon the member becoming eligible for TRICARE Standard coverage at age 60 under section 1086 of this title.

(c) FAMILY MEMBERS.—While a member of a reserve component is covered by TRICARE Standard under this section, the members of the immediate family of such member are eligible for TRICARE Standard coverage as dependents of the member. If a member of a reserve component dies while in a period of coverage under this section, the eligibility of the members of the immediate family of such member for TRICARE Standard coverage under this section shall continue for the same period of time that would be provided under section 1086 of this title if the member had been eligible at the time of death for TRICARE Standard coverage under such section (instead of under this section).

(d) PREMIUMS.—(1) A member of a reserve component covered by TRICARE Standard under this section shall pay a premium for that coverage.

(2) The Secretary of Defense shall prescribe for the purposes of this section one premium for TRICARE Standard coverage of members without dependents and one premium for TRICARE Standard coverage of members with dependents referred to in subsection (f)(1). The premium prescribed for a coverage shall apply uniformly to all members of the reserve components covered under this section.

(3) The monthly amount of the premium in effect for a month for TRICARE Standard coverage under this section shall be the amount equal to the cost of coverage that the Secretary determines on an appropriate actuarial basis.

(4) The Secretary shall prescribe the requirements and procedures applicable to the payment of premiums under this subsection.

(5) Amounts collected as premiums under this subsection shall be credited to the appropriation available for the Defense Health Program Account under section 1100 of this title, shall be merged with sums in such Account that are available for the fiscal year in which collected, and shall be available under subsection (b) of such section for such fiscal year.

(e) REGULATIONS.—The Secretary of Defense, in consultation with the other administering Secretaries, shall prescribe regulations for the administration of this section.

(f) DEFINITIONS.—In this section:

(1) The term ''immediate family'', with respect to a member of a reserve component, means all of the member's dependents described in subparagraphs (A), (D), and (I) of section 1072(2) of this title.

(2) The term ''TRICARE Standard'' means—

(A) medical care to which a dependent described in section 1076(b)(1) of this title is entitled; and

(B) health benefits contracted for under the authority of section 1086(a) of this title

and subject to the same rates and conditions as apply to persons covered under that section.

(Added Pub. L. 111–84, div. A, title VII, § 705(a), Oct. 28, 2009, 123 Stat. 2374.)

EFFECTIVE DATE

Pub. L. 111–84, div. A, title VII, § 705(c), Oct. 28, 2009, 123 Stat. 2375, provided that: ''Section 1076e of title 10, United States Code, as inserted by subsection (a), shall apply to coverage for months beginning on or after October 1, 2009, or such earlier date as the Secretary of Defense may specify.''

§ 1077. Medical care for dependents: authorized care in facilities of uniformed services

(a) Only the following types of health care may be provided under section 1076 of this title:

(1) Hospitalization.

(2) Outpatient care.

(3) Drugs.

(4) Treatment of medical and surgical conditions.

(5) Treatment of nervous, mental, and chronic conditions.

(6) Treatment of contagious diseases.

(7) Physical examinations, including eye examinations, and immunizations.

(8) Maternity and infant care, including well-baby care that includes one screening of an infant for the level of lead in the blood of the infant.

(9) Diagnostic tests and services, including laboratory and X-ray examinations.

(10) Dental care.

(11) Ambulance service and home calls when medically necessary.

(12) Durable equipment, which may be provided on a loan basis.

(13) Primary and preventive health care services for women (as defined in section 1074d(b) of this title).

(14) Preventive health care screening for colon or prostate cancer, at the intervals and using the screening methods prescribed under section 1074d(a)(2) of this title.

(15) Prosthetic devices, as determined by the Secretary of Defense to be necessary because of significant conditions resulting from trauma, congenital anomalies, or disease.

(16) A hearing aid, but only for a dependent of a member of the uniformed services on active duty and only if the dependent has a profound hearing loss, as determined under standards prescribed in regulations by the Secretary of Defense in consultation with the administering Secretaries.

(17) Any rehabilitative therapy to improve, restore, or maintain function, or to minimize or prevent deterioration of function, of a patient when prescribed by a physician.

(b) The following types of health care may not be provided under section 1076 of this title:

(1) Domiciliary or custodial care.

(2) Orthopedic footwear and spectacles, except that, outside of the United States and at stations inside the United States where adequate civilian facilities are unavailable, such items may be sold to dependents at cost to the United States.

(3) The elective correction of minor dermatological blemishes and marks or minor anatomical anomalies.

(c)(1) Except as specified in paragraph (2), a dependent participating under a dental plan established under section 1076a of this title may not be provided dental care under section 1076(a) of this title except for emergency dental care, dental care provided outside the United States, and dental care that is not covered by such plan.

(2)(A) Dependents who are 12 years of age or younger and are covered by a dental plan established under section 1076a of this title may be treated by postgraduate dental residents in a dental treatment facility of the uniformed services under a graduate dental education program accredited by the American Dental Association if—

(i) treatment of pediatric dental patients is necessary in order to satisfy an accreditation standard of the American Dental Association that is applicable to such program, or training in pediatric dental care is necessary for the residents to be professionally qualified to provide dental care for dependent children accompanying members of the uniformed services outside the United States; and

(ii) the number of pediatric patients at such facility is insufficient to support satisfaction of the accreditation or professional requirements in pediatric dental care that apply to such program or students.

(B) The total number of dependents treated in all facilities of the uniformed services under subparagraph (A) in a fiscal year may not exceed 2,000.

(d)(1) Notwithstanding subsection (b)(1), hospice care may be provided under section 1076 of this title in facilities of the uniformed services to a terminally ill patient who chooses (pursuant to regulations prescribed by the Secretary of Defense in consultation with the other administering Secretaries) to receive hospice care rather than continuing hospitalization or other health care services for treatment of the patient's terminal illness.

(2) In this section, the term ''hospice care'' means the items and services described in section 1861(dd) of the Social Security Act (42 U.S.C. 1395x(dd)).

(e)(1) Authority to provide a prosthetic device under subsection (a)(15) includes authority to provide the following:

(A) Any accessory or item of supply that is used in conjunction with the device for the purpose of achieving therapeutic benefit and proper functioning.

(B) Services necessary to train the recipient of the device in the use of the device.

(C) Repair of the device for normal wear and tear or damage.

(D) Replacement of the device if the device is lost or irreparably damaged or the cost of repair would exceed 60 percent of the cost of replacement.

(2) An augmentative communication device may be provided as a voice prosthesis under subsection (a)(15).

(3) A prosthetic device customized for a patient may be provided under this section only by

a prosthetic practitioner who is qualified to customize the device, as determined under regulations prescribed by the Secretary of Defense in consultation with the administering Secretaries.

(f)(1) Items that may be provided to a patient under subsection (a)(12) include the following:

(A) Any durable medical equipment that can improve, restore, or maintain the function of a malformed, diseased, or injured body part, or can otherwise minimize or prevent the deterioration of the patient's function or condition.

(B) Any durable medical equipment that can maximize the patient's function consistent with the patient's physiological or medical needs.

(C) Wheelchairs.

(D) Iron lungs.

(E) Hospital beds.

(2) In addition to the authority to provide durable medical equipment under subsection (a)(12), any customization of equipment owned by the patient that is durable medical equipment authorized to be provided to the patient under this section or section 1079(a)(5) of this title, and any accessory or item of supply for any such equipment, may be provided to the patient if the customization, accessory, or item of supply is essential for—

(A) achieving therapeutic benefit for the patient;

(B) making the equipment serviceable; or

(C) otherwise assuring the proper functioning of the equipment.

(Added Pub. L. 85–861, §1(25)(B), Sept. 2, 1958, 72 Stat. 1447; amended Pub. L. 89–614, §2(4), Sept. 30, 1966, 80 Stat. 863; Pub. L. 98–525, title VI, §633(a), title XIV, §§1401(e)(3), 1405(22), Oct. 19, 1984, 98 Stat. 2544, 2617, 2623; Pub. L. 99–145, title VI, §651(b), Nov. 8, 1985, 99 Stat. 656; Pub. L. 102–190, div. A, title VII, §§702(a), 703, Dec. 5, 1991, 105 Stat. 1400, 1401; Pub. L. 103–160, div. A, title VII, §701(b), Nov. 30, 1993, 107 Stat. 1686; Pub. L. 103–337, div. A, title VII, §§703(b), 705, Oct. 5, 1994, 108 Stat. 2798, 2799; Pub. L. 104–201, div. A, title VII, §701(b)(1), Sept. 23, 1996, 110 Stat. 2587; Pub. L. 105–85, div. A, title VII, §702, Nov. 18, 1997, 111 Stat. 1807; Pub. L. 107–107, div. A, title VII, §§702, 703(a), 704, Dec. 28, 2001, 115 Stat. 1161, 1162; Pub. L. 108–375, div. A, title VII, §715, Oct. 28, 2004, 118 Stat. 1985.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1077(a)	37:403(f).	June 7, 1956, ch. 374, §103(f), (g), (h), 70 Stat. 251, 252.
1077(b)	37:403(g).	
1077(c)	37:403(h) (less clause (4)).	
1077(d)	37:403(h) (clause (4)).	

In subsection (a), clause (6) is inserted to reflect subsection (b).

PRIOR PROVISIONS

Provisions similar to those in subsec. (b)(3) of this section were contained in the following appropriation acts:

Pub. L. 98–473, title I, §101(h)[title VIII, §8045], Oct. 12, 1984, 98 Stat. 1904, 1931.

Pub. L. 98–212, title VII, §752, Dec. 8, 1983, 97 Stat. 1447.

Pub. L. 97–377, title I, §101(c) [title VII, §756], Dec. 21, 1982, 96 Stat. 1833, 1860.

Pub. L. 97–114, title VII, §759, Dec. 29, 1981, 95 Stat. 1588.

Pub. L. 96–527, title VII, §763, Dec. 15, 1980, 94 Stat. 3092.

Pub. L. 96–154, title VII, §769, Dec. 21, 1979, 93 Stat. 1163.

A prior section 1077, act Aug. 10, 1956, ch. 1041, 70A Stat. 84, related to distribution of ballots, envelopes, and voting instructions, prior to repeal by Pub. L. 85–861, §36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–375 designated existing provisions as par. (1), substituted "Except as specified in paragraph (2), a" for "A", and added par. (2).

2001—Subsec. (a)(12). Pub. L. 107–107, §703(a)(1), substituted "which" for "such as wheelchairs, iron lungs, and hospital beds".

Subsec. (a)(16). Pub. L. 107–107, §702(1), added par. (16).

Subsec. (a)(17). Pub. L. 107–107, §704, added par. (17).

Subsec. (b)(2). Pub. L. 107–107, §702(2), substituted "Orthopedic footwear" for "Hearing aids, orthopedic footwear,".

Subsec. (e). Pub. L. 107–107, §702(3), added subsec. (e).

Subsec. (f). Pub. L. 107–107, §703(a)(2), added subsec. (f).

1997—Subsec. (a)(15). Pub. L. 105–85, §702(a), added cl. (15).

Subsec. (b)(2). Pub. L. 105–85, §702(b), added par. (2) and struck out former par. (2) which read as follows: "Prosthetic devices, hearing aids, orthopedic footwear, and spectacles except that—

"(A) outside the United States and at stations inside the United States where adequate civilian facilities are unavailable, such items may be sold to dependents at cost to the United States, and

"(B) artificial limbs, voice prostheses, and artificial eyes may be provided."

1996—Subsec. (a)(14). Pub. L. 104–201 added cl. (14).

1994—Subsec. (b)(2)(B). Pub. L. 103–337, §705, inserted ", voice prostheses," after "artificial limbs".

Subsec. (c). Pub. L. 103–337, §703(b), substituted ", dental care provided outside the United States, and dental care" for "and care".

1993—Subsec. (a)(13). Pub. L. 103–160 added cl. (13).

1991—Subsec. (a)(8). Pub. L. 102–190, §703, inserted before period at end ", including well-baby care that includes one screening of an infant for the level of lead in the blood of the infant".

Subsec. (d). Pub. L. 102–190, §702(a), added subsec. (d).

1985—Subsec. (c). Pub. L. 99–145 added subsec. (c).

1984—Pub. L. 98–525, §1405(22), substituted a colon for the semicolon in section catchline.

Subsec. (a)(10). Pub. L. 98–525, §633(a)(1), added cl. (10). Former cl. (10) "Emergency dental care worldwide." was struck out.

Subsec. (a)(11). Pub. L. 98–525, §633(a)(1), redesignated cl. (13) as (11). Former cl. (11) "Routine dental care outside the United States and at stations in the United States where adequate civilian facilities are unavailable." was struck out.

Subsec. (a)(12). Pub. L. 98–525, §633(a)(1), redesignated cl. (14) as (12). Former cl. (12) "Dental care worldwide as a necessary adjunct of medical, surgical, or preventive treatment." was struck out.

Subsec. (a)(13), (14). Pub. L. 98–525, §633(a)(2), redesignated cls. (13) and (14) as cls. (11) and (12), respectively.

Subsec. (b)(3). Pub. L. 98–525, §1401(e)(3), added par. (3).

1966—Pub. L. 89–614 authorized an improved health benefits program for dependents of active duty members of the uniformed services in facilities of such services, expanding health care to be provided to include: hospitalization, outpatient care, and drugs in clauses (1) to (3) of subsec. (a) (hospitalization being limited by

former subsec. (b) to treatment of nervous or mental disturbances or chronic diseases or for elective medical and surgical treatment to one year period in special cases); treatment of mental and surgical conditions in clause (4) minus acute condition restriction of former subsec. (a)(2); treatment of nervous, mental, and chronic conditions in clause (5) formerly restricted as stated above; clause (6) reenactment of former subsec. (a)(3); physical, including eye, examinations in clause (7) reenacting former subsec. (a)(4) immunization provisions; clause (8) reenactment of former subsec. (a)(5); diagnostic tests and services, including laboratory and X-ray examinations (diagnosis being covered in former subsec. (a)(1)); dental care provisions in clauses (10) to (12) (provided in former subsec. (d)) as (1) emergency care to relieve pain and suffering, but not including permanent restorative work or dental prosthesis, (2) care as a necessary adjunct to medical or surgical treatment, and care outside the United States, and in remote areas inside the United States, where adequate civilian facilities are unavailable; ambulance service and home calls in clause 13 (covering former subsec. (c)(2), (3)); durable equipment on loan basis in clause (14); and to exclude in subsec. (b)(1) (incorporating last sentence of former subsec. (b)) custodial care; subsec. (b)(2)(A) reenactment of former subsec. (e)(1); and permitted in subsec. (b)(2)(B) artificial limbs and eyes to be provided.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 633(b) of Pub. L. 98–525 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on July 1, 1985.''

Amendment by section 1401(e)(3) of Pub. L. 98–525 effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as an Effective Date note under section 520b of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

For effective date of amendment by Pub. L. 89–614, see section 3 of Pub. L. 89–614, set out as a note under section 1071 of this title.

STUDY, PLAN, AND PILOT FOR THE MENTAL HEALTH CARE NEEDS OF DEPENDENT CHILDREN OF MEMBERS OF THE ARMED FORCES

Pub. L. 111–84, div. A, title VII, § 722, Oct. 28, 2009, 123 Stat. 2387, provided that:

''(a) REPORT AND PLAN ON THE MENTAL HEALTH CARE AND COUNSELING SERVICES AVAILABLE TO MILITARY CHILDREN.—

''(1) IN GENERAL.—The Secretary of Defense shall conduct a comprehensive review of the mental health care and counseling services available to dependent children of members of the Armed Forces through the Department of Defense.

''(2) ELEMENTS.—The review under paragraph (1) shall include an assessment of the following:

''(A) The availability, quality, and effectiveness of Department of Defense programs intended to meet the mental health care needs of military children.

''(B) The availability, quality, and effectiveness of Department of Defense programs intended to promote resiliency in military children in coping with deployment cycles, injury, or death of military parents.

''(C) The extent of access to, adequacy, and availability of mental health care and counseling services for military children in military medical treatment facilities, in family assistance centers, through Military OneSource, under the TRICARE program, and in Department of Defense Education Activity schools.

''(D) Whether the status of a member of the Armed Forces on active duty, or in reserve active status, affects the access of a military child to mental health care and counseling services.

''(E) Whether, and to what extent, waiting lists, geographic distance, and other factors may obstruct the receipt by military children of mental health care and counseling services.

''(F) The extent of access to, availability, and viability of specialized mental health care for military children (including adolescents).

''(G) The extent of any gaps in the current capabilities of the Department of Defense to provide preventive mental health services for military children.

''(H) Such other matters as the Secretary considers appropriate.

''(3) REPORT.—Not later than one year after the date of the enactment of this Act [Oct. 28, 2009], the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the review conducted under paragraph (1), including the findings and recommendations of the Secretary as a result of the review.

''(b) COMPREHENSIVE PLAN FOR IMPROVEMENTS IN ACCESS TO CARE AND COUNSELING.—The Secretary shall develop and implement a comprehensive plan for improvements in access to quality mental health care and counseling services for military children in order to develop and promote psychological health and resilience in children of deploying and deployed members of the Armed Forces. The information in the report required by subsection (a) shall provide the basis for the development of the plan.

''(c) PILOT PROGRAM.—

''(1) ELEMENTS.—The Secretary of the Army shall carry out a pilot program on the mental health care needs of military children and adolescents. In carrying out the pilot program, the Secretary shall establish a center to—

''(A) develop teams to train primary care managers in mental health evaluations and treatment of common psychiatric disorders affecting children and adolescents;

''(B) develop strategies to reduce barriers to accessing behavioral health services and encourage better use of the programs and services by children and adolescents; and

''(C) expand the evaluation of mental health care using common indicators, including—

''(i) psychiatric hospitalization rates;

''(ii) non-psychiatric hospitalization rates; and

''(iii) mental health relative value units.

''(2) REPORTS.—

''(A) Not later than 90 days after establishing the pilot program, the Secretary of the Army shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report describing the—

''(i) structure and mission of the program; and

''(ii) the resources allocated to the program.

''(B) Not later than September 30, 2012, the Secretary of the Army shall submit to the congressional defense committees a report that addresses the elements described under paragraph (1).''

PROGRAM FOR MENTAL HEALTH AWARENESS FOR DEPENDENTS AND PILOT PROJECT ON POST TRAUMATIC STRESS DISORDER

Pub. L. 109–163, div. A, title VII, § 721, Jan. 6, 2006, 119 Stat. 3346, provided that:

''(a) PROGRAM ON MENTAL HEALTH AWARENESS.—

''(1) REQUIREMENT.—Not later than one year after the date of the enactment of this Act [Jan. 6, 2006], the Secretary of Defense shall develop a program to improve awareness of the availability of mental health services for, and warning signs about mental health problems in, dependents of members of the Armed Forces whose sponsor served or will serve in a combat theater during the previous or next 60 days.

''(2) MATTERS COVERED.—The program developed under paragraph (1) shall be designed to—

''(A) increase awareness of mental health services available to dependents of members of the Armed Forces on active duty;

''(B) increase awareness of mental health services available to dependents of Reservists and National Guard members whose sponsors have been activated; and

''(C) increase awareness of mental health issues that may arise in dependents referred to in subparagraphs (A) and (B) whose sponsor is deployed to a combat theater.

''(3) COORDINATION.—The Secretary may permit the Department of Defense to coordinate the program developed under paragraph (1) with an accredited college, university, hospital-based, or community-based mental health center or engage mental health professionals to develop programs to help implement this section.

''(4) AVAILABILITY IN OTHER LANGUAGES.—The Secretary shall evaluate whether the effectiveness of the program developed under paragraph (1) would be improved by providing materials in languages other than English and take action accordingly[.]

''(5) REPORT.—Not later than one year after implementation of the program developed under paragraph (1), the Secretary shall submit to Congress a report on the effectiveness of the program, including the extent to which the program is used by low-English-proficient individuals.

''(b) PILOT PROJECT ON POST TRAUMATIC STRESS DISORDER.—

''(1) REQUIREMENT.—The Secretary of Defense shall carry out a pilot project to evaluate the efficacy of various approaches to improving the capability of the military and civilian health care systems to provide early diagnosis and treatment of post traumatic stress disorder (PTSD) and other mental health conditions.

''(2) INTERNET-BASED DIAGNOSIS AND TREATMENT.—The pilot project shall be designed to evaluate—

''(A) Internet-based automated tools available to military and civilian health care providers for the early diagnosis and treatment of post traumatic stress disorder, and for tracking patients who suffer from post traumatic stress disorder; and

''(B) Internet-based tools available to family members of members of the Armed Forces in order to assist such family members in the identification of the emergence of post traumatic stress disorder.

''(3) REPORT.—Not later than June 1, 2006, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the pilot project. The report shall include a description of the pilot project, including the location of the pilot project and the scope and objectives of the pilot project.''

PROVISION OF DOMICILIARY AND CUSTODIAL CARE FOR CERTAIN CHAMPUS BENEFICIARIES

Pub. L. 106–65, div. A, title VII, §703, Oct. 5, 1999, 113 Stat. 682, as amended by Pub. L. 106–398, §1 [[div. A], title VII, § 701(a), (b), (c)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–172, related to the continued provision of domiciliary and custodial care for certain CHAMPUS beneficiaries, prohibited the establishment of a limited transition period for such program, required a survey and report of case management and custodial care policies, and provided for cost limitations for each fiscal year, prior to repeal by Pub. L. 107–107, div. A, title VII, §701(g)(1)(A), Dec. 28, 2001, 115 Stat. 1161.

OBSTETRICAL CARE FACILITIES

Pub. L. 89–188, title VI, §610, Sept. 16, 1965, 79 Stat. 818, required that military hospitals in the United States and its possessions be constructed so as to include facilities for obstetrical care, prior to repeal by Pub. L. 97–214, §7(7), July 12, 1982, 96 Stat. 173, eff. Oct. 1, 1982.

§1078. Medical and dental care for dependents: charges

(a) The Secretary of Defense, after consulting the other administering Secretaries, shall prescribe fair charges for inpatient medical and dental care given to dependents under section 1076 of this title. The charge or charges prescribed shall be applied equally to all classes of dependents.

(b) As a restraint on excessive demands for medical and dental care under section 1076 of this title, uniform minimal charges may be imposed for outpatient care. Charges may not be more than such amounts, if any, as the Secretary of Defense may prescribe after consulting the other administering Secretaries, and after a finding that such charges are necessary.

(c) Amounts received for subsistence and medical and dental care given under section 1076 of this title shall be deposited to the credit of the appropriation supporting the maintenance and operation of the facility furnishing the care.

(Added Pub. L. 85–861, §1(25)(B), Sept. 2, 1958, 72 Stat. 1448; amended Pub. L. 89–614, §2(5), Sept. 30, 1966, 80 Stat. 863; Pub. L. 96–513, title V, §511(36), Dec. 12, 1980, 94 Stat. 2923; Pub. L. 98–557, §19(6), Oct. 30, 1984, 98 Stat. 2869.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1078(a)	37:403(c).	June 7, 1956, ch. 374, §103(c)(d), (e), 70 Stat. 251.
1078(b)	37:403(d).	
1078(c)	37:403(e).	

Appropriate references are made to dental care throughout the section to reflect the fact that in certain limited situations, dependents are entitled to dental care under 37:403(h)(4), restated as section 1077(d) of this title.

In subsection (b), the word ''special'' is omitted as surplusage.

PRIOR PROVISIONS

A prior section 1078, act Aug. 10, 1956, ch. 1041, 70A Stat. 84, prescribed instructions for marking ballots, prior to repeal by Pub. L. 85–861, §36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

1984—Subsecs. (a), (b). Pub. L. 98–557 substituted reference to other administering Secretaries for reference to Secretary of Health and Human Services.

1980—Subsecs. (a), (b). Pub. L. 96–513 substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

1966—Subsec. (a). Pub. L. 89–614 substituted ''The charge or charges prescribed shall be applied equally to all classes of dependents'' for ''Charges shall be the same for all dependents''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

For effective date of amendment by Pub. L. 89–614, see section 3 of Pub. L. 89–614, set out as a note under section 1071 of this title.

§1078a. Continued health benefits coverage

(a) PROVISION OF CONTINUED HEALTH COVERAGE.—The Secretary of Defense shall implement and carry out a program of continued

health benefits coverage in accordance with this section to provide persons described in subsection (b) with temporary health benefits comparable to the health benefits provided for former civilian employees of the Federal Government and other persons under section 8905a of title 5.

(b) ELIGIBLE PERSONS.—The persons referred to in subsection (a) are the following:

(1) A member of the uniformed services who—

(A) is discharged or released from active duty (or full-time National Guard duty), whether voluntarily or involuntarily, under other than adverse conditions, as characterized by the Secretary concerned;

(B) immediately preceding that discharge or release, is entitled to medical and dental care under section 1074(a) of this title (except in the case of a member discharged or released from full-time National Guard duty); and

(C) after that discharge or release and any period of transitional health care provided under section 1145(a) of this title, would not otherwise be eligible for any benefits under this chapter.

(2) A person who—

(A) ceases to meet the requirements for being considered an unmarried dependent child of a member or former member of the uniformed services under section 1072(2)(D) of this title or ceases to meet the requirements for being considered an unmarried dependent under section 1072(2)(I) of this title;

(B) on the day before ceasing to meet those requirements, was covered under a health benefits plan under this chapter or transitional health care under section 1145(a) of this title as a dependent of the member or former member; and

(C) would not otherwise be eligible for any benefits under this chapter.

(3) A person who—

(A) is an unremarried former spouse of a member or former member of the uniformed services; and

(B) on the day before the date of the final decree of divorce, dissolution, or annulment was covered under a health benefits plan under this chapter or transitional health care under section 1145(a) of this title as a dependent of the member or former member; and

(C) is not a dependent of the member or former member under subparagraph (F) or (G) of section 1072(2) of this title or ends a one-year period of dependency under subparagraph (H) of such section.

(4) Any other person specified in regulations prescribed by the Secretary of Defense for purposes of this paragraph who loses entitlement to health care services under this chapter or section 1145 of this title, subject to such terms and conditions as the Secretary shall prescribe in the regulations.

(c) NOTIFICATION OF ELIGIBILITY.—(1) The Secretary of Defense shall prescribe regulations to provide for persons described in subsection (b) to be notified of eligibility to receive health benefits under this section.

(2) In the case of a member who becomes (or will become) eligible for continued coverage under subsection (b)(1), the regulations shall provide for the Secretary concerned to notify the member of the member's rights under this section as part of preseparation counseling conducted under section 1142 of this title or any other provision of other law.

(3) In the case of a dependent of a member or former member who becomes eligible for continued coverage under subsection (b)(2), the regulations shall provide that—

(A) the member or former member may submit to the Secretary concerned a written notice of the dependent's change in status (including the dependent's name, address, and such other information as the Secretary of Defense may require); and

(B) the Secretary concerned shall, within 14 days after receiving that notice, inform the dependent of the dependent's rights under this section.

(4) In the case of a former spouse of a member or former member who becomes eligible for continued coverage under subsection (b)(3), the regulations shall provide appropriate notification provisions and a 60-day election period under subsection (d)(3).

(d) ELECTION OF COVERAGE.—In order to obtain continued coverage under this section, an appropriate written election (submitted in such manner as the Secretary of Defense may prescribe) shall be made as follows:

(1) In the case of a member described in subsection (b)(1), the written election shall be submitted to the Secretary concerned before the end of the 60-day period beginning on the later of—

(A) the date of the discharge or release of the member from active duty or full-time National Guard duty;

(B) the date on which the period of transitional health care applicable to the member under section 1145(a) of this title ends; or

(C) the date the member receives the notification required pursuant to subsection (c).

(2)(A) In the case of a dependent of a member or former member who becomes eligible for continued coverage under subsection (b)(2), the written election shall be submitted to the Secretary concerned before the end of the 60-day period beginning on the later of—

(i) the date on which the dependent first ceases to meet the requirements for being considered a dependent under subparagraph (D) or (I) of section 1072(2) of this title; or

(ii) the date the dependent receives the notification pursuant to subsection (c).

(B) Notwithstanding subparagraph (A), if the Secretary concerned determines that the dependent's parent has failed to provide the notice referred to in subsection (c)(3)(A) with respect to the dependent in a timely fashion, the 60-day period under this paragraph shall be based only on the date under subparagraph (A)(i).

(3) In the case of a former spouse of a member or a former member who becomes eligible

for continued coverage under subsection (b)(3), the written election shall be submitted to the Secretary concerned before the end of the 60-day period beginning on the later of—

(A) the date as of which the former spouse first ceases to meet the requirements for being considered a dependent under section 1072(2) of this title; or

(B) such other date as the Secretary of Defense may prescribe.

(4) In the case of a person described in subsection (b)(4), by such date as the Secretary shall prescribe in the regulations required for purposes of that subsection.

(e) COVERAGE OF DEPENDENTS.—A person eligible under subsection (b)(1) to elect to receive coverage may elect coverage either as an individual or, if appropriate, for self and dependents. A person eligible under subsection (b)(2) or subsection (b)(3) may elect only individual coverage.

(f) CHARGES.—(1) Under arrangements satisfactory to the Secretary of Defense, a person receiving continued coverage under this section shall be required to pay into the Military Health Care Account or other appropriate account an amount equal to the sum of—

(A) the employee and agency contributions which would be required in the case of a similarly situated employee enrolled in a comparable health benefits plan under section 8905a(d)(1)(A)(i) of title 5; and

(B) an amount, not to exceed 10 percent of the amount determined under subparagraph (A), determined under regulations prescribed by the Secretary of Defense to be necessary for administrative expenses; and

(2) If a person elects to continue coverage under this section before the end of the applicable period under subsection (d), but after the person's coverage under this chapter (and any transitional extension of coverage under section 1145(a) of this title) expires, coverage shall be restored retroactively, with appropriate contributions (determined in accordance with paragraph (1)) and claims (if any), to the same extent and effect as though no break in coverage had occurred.

(g) PERIOD OF CONTINUED COVERAGE.—(1) Continued coverage under this section may not extend beyond—

(A) in the case of a member described in subsection (b)(1), the date which is 18 months after the date the member ceases to be entitled to care under section 1074(a) of this title and any transitional care under section 1145 of this title, as the case may be;

(B) in the case of a person described in subsection (b)(2), the date which is 36 months after the date on which the person first ceases to meet the requirements for being considered a dependent under subparagraph (D) or (I) of section 1072(2) of this title;

(C) in the case of a person described in subsection (b)(3), except as provided in paragraph (4), the date which is 36 months after the later of—

(i) the date on which the final decree of divorce, dissolution, or annulment occurs; and

(ii) if applicable, the date the one-year extension of dependency under section 1072(2)(H) of this title expires; and

(D) in the case of a person described in subsection (b)(4), the date that is 36 months after the date on which the person loses entitlement to health care services as described in that subsection.

(2) Notwithstanding paragraph (1)(B), if a dependent of a member becomes eligible for continued coverage under subsection (b)(2) during a period of continued coverage of the member for self and dependents under this section, extended coverage of the dependent under this section may not extend beyond the date which is 36 months after the date the member became ineligible for medical and dental care under section 1074(a) of this title and any transitional health care under section 1145(a) of this title.

(3) Notwithstanding paragraph (1)(C), if a person becomes eligible for continued coverage under subsection (b)(3) as the former spouse of a member during a period of continued coverage of the member for self and dependents under this section, extended coverage of the former spouse under this section may not extend beyond the date which is 36 months after the date the member became ineligible for medical and dental care under section 1074(a) of this title and any transitional health care under section 1145(a) of this title.

(4)(A) Notwithstanding paragraph (1), in the case of a former spouse described in subparagraph (B), continued coverage under this section shall continue for such period as the former spouse may request.

(B) A former spouse referred to in subparagraph (A) is a former spouse of a member or former member (other than a former spouse whose marriage was dissolved after the separation of the member from the service unless such separation was by retirement)—

(i) who has not remarried before age 55 after the marriage to the employee, former employee, or annuitant was dissolved;

(ii) who was enrolled in an approved health benefits plan under this chapter as a family member at any time during the 18-month period before the date of the divorce, dissolution, or annulment; and

(iii)(I) who is receiving any portion of the retired or retainer pay of the member or former member or an annuity based on the retired or retainer pay of the member; or

(II) for whom a court order (as defined in section 1408(a)(2) of this title) has been issued for payment of any portion of the retired or retainer pay or for whom a court order (as defined in section 1447(13) of this title) or a written agreement (whether voluntary or pursuant to a court order) provides for an election by the member or former member to provide an annuity to the former spouse.

(Added Pub. L. 102–484, div. D, title XLIV, §4408(a)(1), Oct. 23, 1992, 106 Stat. 2708; amended Pub. L. 103–35, title II, §201(g)(1), May 31, 1993, 107 Stat. 99; Pub. L. 103–337, div. A, title VII, §702(c), Oct. 5, 1994, 108 Stat. 2798; Pub. L. 104–201, div. A, title X, §1074(a)(4), Sept. 23, 1996, 110 Stat. 2658; Pub. L. 105–85, div. A, title X,

§ 1073(a)(17), Nov. 18, 1997, 111 Stat. 1901; Pub. L. 108–136, div. A, title VII, § 713(a), Nov. 24, 2003, 117 Stat. 1530; Pub. L. 110–181, div. A, title VII, § 705, Jan. 28, 2008, 122 Stat. 189.)

AMENDMENTS

2008—Subsec. (b)(4). Pub. L. 110–181, § 705(a), added par. (4).

Subsec. (d)(4). Pub. L. 110–181, § 705(b), added par. (4).

Subsec. (g)(1)(D). Pub. L. 110–181, § 705(c), added subpar. (D).

2003—Subsec. (b)(1), (2)(A), (3)(A). Pub. L. 108–136 substituted ''uniformed services'' for ''armed forces''.

1997—Subsec. (g)(4)(B)(iii)(II). Pub. L. 105–85 substituted ''section 1447(13)'' for ''section 1447(8)''.

1996—Subsec. (a). Pub. L. 104–201 substituted ''The Secretary'' for ''Beginning on October 1, 1994, the Secretary''.

1994—Subsec. (b)(2)(A). Pub. L. 103–337, § 702(c)(1), inserted before semicolon ''or ceases to meet the requirements for being considered an unmarried dependent under section 1072(2)(I) of this title''.

Subsec. (c)(3). Pub. L. 103–337, § 702(c)(2), substituted ''dependent'' for ''child'' in two places and ''dependent's'' for ''child's'' wherever appearing.

Subsec. (d)(2)(A). Pub. L. 103–337, § 702(c)(3), substituted ''a dependent'' for ''a child'' in introductory provisions, ''the dependent'' for ''the child'' in cls. (i) and (ii), and ''a dependent under subparagraph (D) or (I) of section 1072(2) of this title;'' for ''an unmarried dependent child under section 1072(2)(D) of this title,'' in cl. (i).

Subsec. (d)(2)(B). Pub. L. 103–337, § 702(c)(4), substituted ''dependent's'' for ''child's'' and ''dependent'' for ''child''.

Subsec. (g)(1)(B). Pub. L. 103–337, § 702(c)(5), substituted ''a dependent under subparagraph (D) or (I) of section 1072(2) of this title'' for ''an unmarried dependent child under section 1072(2)(D) of this title''.

Subsec. (g)(2). Pub. L. 103–337, § 702(c)(6), substituted ''dependent'' for ''child'' in two places.

1993—Subsec. (b)(3)(C). Pub. L. 103–35, § 201(g)(1)(A), substituted ''subparagraph'' for ''subparagraphs'' after ''member under''.

Subsec. (d)(2)(A). Pub. L. 103–35, § 201(g)(1)(B), inserted ''under'' after ''coverage''.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–136, div. A, title VII, § 713(b), Nov. 24, 2003, 117 Stat. 1531, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to members of the uniformed services who are not otherwise covered by section 1078a of title 10, United States Code, before the date of the enactment of this Act [Nov. 24, 2003] and who, on or after such date, first meet the eligibility criteria specified in subsection (b) of that section.''

§ 1079. Contracts for medical care for spouses and children: plans

(a) To assure that medical care is available for dependents, as described in subparagraphs (A), (D), and (I) of section 1072(2) of this title, of members of the uniformed services who are on active duty for a period of more than 30 days, the Secretary of Defense, after consulting with the other administering Secretaries, shall contract, under the authority of this section, for medical care for those persons under such insurance, medical service, or health plans as he considers appropriate. The types of health care authorized under this section shall be the same as those provided under section 1076 of this title, except as follows:

(1) With respect to dental care—

(A) except as provided in subparagraph (B), only that care required as a necessary adjunct to medical or surgical treatment may be provided; and

(B) in connection with dental treatment for patients with developmental, mental, or physical disabilities or for pediatric patients age 5 or under, only institutional and anesthesia services may be provided.

(2) Consistent with such regulations as the Secretary of Defense may prescribe regarding the content of health promotion and disease prevention visits, the schedule and method of cervical cancer screenings and breast cancer screenings, the schedule and method of colon and prostate cancer screenings, and the types and schedule of immunizations—

(A) for dependents under six years of age, both health promotion and disease prevention visits and immunizations may be provided; and

(B) for dependents six years of age or older, health promotion and disease prevention visits may be provided in connection with immunizations or with diagnostic or preventive cervical and breast cancer screenings or colon and prostate cancer screenings.

(3) Not more than one eye examination may be provided to a patient in any calendar year.

(4) Under joint regulations to be prescribed by the administering Secretaries, the services of Christian Science practitioners and nurses and services obtained in Christian Science sanatoriums may be provided.

(5) Durable equipment provided under this section may be provided on a rental basis.

(6) Inpatient mental health services may not (except as provided in subsection (i)) be provided to a patient in excess of—

(A) 30 days in any year, in the case of a patient 19 years of age or older;

(B) 45 days in any year, in the case of a patient under 19 years of age; or

(C) 150 days in any year, in the case of inpatient mental health services provided as residential treatment care.

(7) Services in connection with nonemergency inpatient hospital care may not be provided if such services are available at a facility of the uniformed services located within a 40-mile radius of the residence of the patient, except that those services may be provided in any case in which another insurance plan or program provides primary coverage for those services.

(8) Services of pastoral counselors, family and child counselors, or marital counselors (other than certified marriage and family therapists) may not be provided unless the patient has been referred to the counselor by a medical doctor for treatment of a specific problem with the results of that treatment to be communicated back to the medical doctor who made the referral and services of certified marriage and family therapists may be provided consistent with such rules as may be prescribed by the Secretary of Defense, including credentialing criteria and a requirement that the therapists accept payment under this section as full payment for all services provided.

(9) Special education may not be provided, except when provided as secondary to the ac-

tive psychiatric treatment on an institutional inpatient basis.

(10) Therapy or counseling for sexual dysfunctions or sexual inadequacies may not be provided.

(11) Treatment of obesity may not be provided if obesity is the sole or major condition treated.

(12) Surgery which improves physical appearance but is not expected to significantly restore functions (including mammary augmentation, face lifts, and sex gender changes) may not be provided, except that—

(A) breast reconstructive surgery following a mastectomy may be provided;

(B) reconstructive surgery to correct serious deformities caused by congenital anomalies or accidental injuries may be provided; and

(C) neoplastic surgery may be provided.

(13) Any service or supply which is not medically or psychologically necessary to prevent, diagnose, or treat a mental or physical illness, injury, or bodily malfunction as assessed or diagnosed by a physician, dentist, clinical psychologist, certified marriage and family therapist, optometrist, podiatrist, certified nurse-midwife, certified nurse practitioner, or certified clinical social worker, as appropriate, may not be provided, except as authorized in paragraph (4). Pursuant to an agreement with the Secretary of Health and Human Services and under such regulations as the Secretary of Defense may prescribe, the Secretary of Defense may waive the operation of this paragraph in connection with clinical trials sponsored or approved by the National Institutes of Health if the Secretary of Defense determines that such a waiver will promote access by covered beneficiaries to promising new treatments and contribute to the development of such treatments.

(14) The prohibition contained in section 1077(b)(3) of this title shall not apply in the case of a member or former member of the uniformed services.

(15) Electronic cardio-respiratory home monitoring equipment (apnea monitors) for home use may be provided if a physician prescribes and supervises the use of the monitor for an infant—

(A) who has had an apparent life-threatening event,

(B) who is a subsequent sibling of a victim of sudden infant death syndrome,

(C) whose birth weight was 1,500 grams or less, or

(D) who is a pre-term infant with pathologic apnea,

in which case the coverage may include the cost of the equipment, hard copy analysis of physiological alarms, professional visits, diagnostic testing, family training on how to respond to apparent life threatening events, and assistance necessary for proper use of the equipment.

(16) Hospice care may be provided only in the manner and under the conditions provided in section 1861(dd) of the Social Security Act (42 U.S.C. 1395x(dd)).

(17) Forensic examinations following a sexual assault or domestic violence may be provided.

(b) Plans covered by subsection (a) shall include provisions for payment by the patient of the following amounts:

(1) $25 for each admission to a hospital, or the amount the patient would have been charged under section 1078(a) of this title had the care being paid for been obtained in a hospital of the uniformed services, whichever amount is the greater. The Secretary of Defense may exempt a patient from paying such amount if the hospital to which the patient is admitted does not impose a legal obligation on any of its patients to pay for inpatient care.

(2) Except as provided in clause (3), the first $150 each fiscal year of the charges for all types of care authorized by subsection (a) and received while in an outpatient status and 20 percent of all subsequent charges for such care during a fiscal year. Notwithstanding the preceding sentence, in the case of a dependent of an enlisted member in a pay grade below E–5, the initial deductible each fiscal year under this paragraph shall be limited to $50.

(3) A family group of two or more persons covered by this section shall not be required to pay collectively more than the first $300 (or in the case of the family group of an enlisted member in a pay grade below E–5, the first $100) each fiscal year of the charges for all types of care authorized by subsection (a) and received while in an outpatient status and 20 percent of the additional charges for such care during a fiscal year.

(4) $25 for surgical care that is authorized by subsection (a) and received while in an outpatient status and that has been designated (under joint regulations to be prescribed by the administering Secretaries) as care to be treated as inpatient care for purposes of this subsection. Any care for which payment is made under this clause shall not be considered to be care received while in an outpatient status for purposes of clauses (2) and (3).

(5) An individual or family group of two or more persons covered by this section may not be required by reason of this subsection to pay a total of more than $1,000 for health care received during any fiscal year under a plan under subsection (a).

(c) The methods for making payment under subsection (b) shall be prescribed under joint regulations issued by the administering Secretaries.

(d)(1) The Secretary of Defense shall establish a program to provide extended benefits for eligible dependents, which may include the provision of comprehensive health care services, including case management services, to assist in the reduction of the disabling effects of a qualifying condition of an eligible dependent. Registration shall be required to receive the extended benefits.

(2) The Secretary of Defense, after consultation with the other administering Secretaries, shall promulgate regulations to carry out this subsection.

(3) In this subsection:

(A) The term ''eligible dependent'' means a dependent of a member of the uniformed services on active duty for a period of more than 30 days, as described in subparagraph (A), (D), or (I) of section 1072(2) of this title, who has a qualifying condition.

(B) The term ''qualifying condition'' means the condition of a dependent who is moderately or severely mentally retarded, has a serious physical disability, or has an extraordinary physical or psychological condition.

(e) Extended benefits for eligible dependents under subsection (d) may include comprehensive health care services (including services necessary to maintain, or minimize or prevent deterioration of, function of the patient) and case management services with respect to the qualifying condition of such a dependent, and include, to the extent such benefits are not provided under provisions of this chapter other than under this section, the following:

(1) Diagnosis.

(2) Inpatient, outpatient, and comprehensive home health care supplies and services which may include cost effective and medically appropriate services other than part-time or intermittent services (within the meaning of such terms as used in the second sentence of section 1861(m) of the Social Security Act).

(3) Training, rehabilitation, special education, and assistive technology devices.

(4) Institutional care in private nonprofit, public, and State institutions and facilities and, if appropriate, transportation to and from such institutions and facilities.

(5) Custodial care, notwithstanding the prohibition in section 1077(b)(1) of this title.

(6) Respite care for the primary caregiver of the eligible dependent.

(7) Such other services and supplies as determined appropriate by the Secretary, notwithstanding the limitations in subsection (a)(13).

(f)(1) Members shall be required to share in the cost of any benefits provided to their dependents under subsection (d) as follows:

(A) Members in the lowest enlisted pay grade shall be required to pay the first $25 incurred each month, and members in the highest commissioned pay grade shall be required to pay the first $250 incurred each month. The amounts to be paid by members in all other pay grades shall be determined under regulations to be prescribed by the Secretary of Defense in consultation with the administering Secretaries.

(B) A member who has more than one dependent incurring expenses in a given month under a plan covered by subsection (d) shall not be required to pay an amount greater than would be required if the member had only one such dependent.

(2) In the case of extended benefits provided under paragraph (3) or (4) of subsection (e) to a dependent of a member of the uniformed services—

(A) the Government's share of the total cost of providing such benefits in any year shall not exceed $36,000, prorated as determined by the Secretary of Defense, except for costs that a member is exempt from paying under paragraph (3); and

(B) the member shall pay (in addition to any amount payable under paragraph (1)) the amount, if any, by which the amount of such total cost for the year exceeds the Government's maximum share under subparagraph (A).

(3) A member of the uniformed services who incurs expenses under paragraph (2) for a month for more than one dependent shall not be required to pay for the month under subparagraph (B) of that paragraph an amount greater than the amount the member would otherwise be required to pay under that subparagraph for the month if the member were incurring expenses under that subparagraph for only one dependent.

(4) To qualify for extended benefits under paragraph (3) or (4) of subsection (e), a dependent of a member of the uniformed services shall be required to use public facilities to the extent such facilities are available and adequate, as determined under joint regulations of the administering Secretaries.

(5) The Secretary of Defense, in consultation with the other administering Secretaries, shall prescribe regulations to carry out this subsection.

(g)(1) When a member dies while he is eligible for receipt of hostile fire pay under section 310 of title 37 or from a disease or injury incurred while eligible for such pay, his dependents who are receiving benefits under a plan covered by subsection (d) shall continue to be eligible for such benefits until they pass their twenty-first birthday.

(2) In addition to any continuation of eligibility for benefits under paragraph (1), when a member dies while on active duty for a period of more than 30 days, the member's dependents who are receiving benefits under a plan covered by subsection (a) shall continue to be eligible for benefits under TRICARE Prime during the three-year period beginning on the date of the member's death, except that, in the case of such a dependent of the deceased who is described by subparagraph (D) or (I) of section 1072(2) of this title, the period of continued eligibility shall be the longer of the following periods beginning on such date:

(A) Three years.

(B) The period ending on the date on which such dependent attains 21 years of age.

(C) In the case of such a dependent who, at 21 years of age, is enrolled in a full-time course of study in a secondary school or in a full-time course of study in an institution of higher education approved by the administering Secretary and was, at the time of the member's death, in fact dependent on the member for over one-half of such dependent's support, the period ending on the earlier of the following dates:

(i) The date on which such dependent ceases to pursue such a course of study, as determined by the administering Secretary.

(ii) The date on which such dependent attains 23 years of age.

(3) For the purposes of paragraph (2)(C), a dependent shall be treated as being enrolled in a full-time course of study in an institution of higher education during any reasonable period

of transition between the dependent's completion of a full-time course of study in a secondary school and the commencement of an enrollment in a full-time course of study in an institution of higher education, as determined by the administering Secretary.

(4) The terms and conditions under which health benefits are provided under this chapter to a dependent of a deceased member under paragraph (2) shall be the same as those that would apply to the dependent under this chapter if the member were living and serving on active duty for a period of more than 30 days.

(5) In this subsection, the term ''TRICARE Prime'' means the managed care option of the TRICARE program.

(h)(1) Except as provided in paragraphs (2) and (3), payment for a charge for services by an individual health care professional (or other noninstitutional health care provider) for which a claim is submitted under a plan contracted for under subsection (a) shall be equal to an amount determined to be appropriate, to the extent practicable, in accordance with the same reimbursement rules as apply to payments for similar services under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.). The Secretary of Defense shall determine the appropriate payment amount under this paragraph in consultation with the other administering Secretaries.

(2) The Secretary of Defense, in consultation with the other administering Secretaries, shall prescribe regulations to provide for such exceptions to the payment limitations under paragraph (1) as the Secretary determines to be necessary to assure that covered beneficiaries retain adequate access to health care services. Such exceptions may include the payment of amounts higher than the amount allowed under paragraph (1) when enrollees in managed care programs obtain covered services from nonparticipating providers. To provide a suitable transition from the payment methodologies in effect before February 10, 1996, to the methodology required by paragraph (1), the amount allowable for any service may not be reduced by more than 15 percent below the amount allowed for the same service during the immediately preceding 12-month period (or other period as established by the Secretary of Defense).

(3) In addition to the authority provided under paragraph (2), the Secretary of Defense may authorize the commander of a facility of the uniformed services, the lead agent (if other than the commander), and the health care contractor to modify the payment limitations under paragraph (1) for certain health care providers when necessary to ensure both the availability of certain services for covered beneficiaries and lower costs than would otherwise be incurred to provide the services. With the consent of the health care provider, the Secretary is also authorized to reduce the authorized payment for certain health care services below the amount otherwise required by the payment limitations under paragraph (1).

(4)(A) The Secretary of Defense, in consultation with the other administering Secretaries, shall prescribe regulations to establish limitations (similar to the limitations established under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.)) on beneficiary liability for charges of an individual health care professional (or other noninstitutional health care provider).

(B) The regulations shall include a restriction that prohibits an individual health care professional (or other noninstitutional health care provider) from billing a beneficiary for services for more than the amount that is equal to—

(i) the excess of the limiting charge (as defined in section 1848(g)(2) of the Social Security Act (42 U.S.C. 1395w–4(g)(2))) that would be applicable if the services had been provided by the professional (or other provider) as an individual health care professional (or other noninstitutional health care provider) on a nonassignment-related basis under part B of title XVIII of such Act over the amount that is payable by the United States for those services under this subsection, plus

(ii) any unpaid amounts of deductibles or copayments that are payable directly to the professional (or other provider) by the beneficiary.

(C)(i) In the case of a dependent described in clause (ii), the regulations shall provide that, in addition to amounts otherwise payable by the United States, the Secretary may pay the amount referred to in subparagraph (B)(i).

(ii) This subparagraph applies to a dependent referred to in subsection (a) of a member of a reserve component serving on active duty pursuant to a call or order to active duty for a period of more than 30 days in support of a contingency operation under a provision of law referred to in section 101(a)(13)(B) of this title.

(5) To assure access to care for all covered beneficiaries, the Secretary of Defense, in consultation with the other administering Secretaries, shall designate specific rates for reimbursement for services in certain localities if the Secretary determines that without payment of such rates access to health care services would be severely impaired. Such a determination shall be based on consideration of the number of providers in a locality who provide the services, the number of such providers who are CHAMPUS participating providers, the number of covered beneficiaries under CHAMPUS in the locality, the availability of military providers in the location or a nearby location, and any other factors determined to be relevant by the Secretary.

(i)(1) The limitation in subsection (a)(6) does not apply in the case of inpatient mental health services—

(A) provided under the program for the handicapped under subsection (d);

(B) provided as partial hospital care; or

(C) provided pursuant to a waiver authorized by the Secretary of Defense because of medical or psychological circumstances of the patient that are confirmed by a health professional who is not a Federal employee after a review, pursuant to rules prescribed by the Secretary, which takes into account the appropriate level of care for the patient, the intensity of services required by the patient, and the availability of that care.

(2) Notwithstanding subsection (b) or section 1086(b) of this title, the Secretary of Defense (after consulting with the other administering

Secretaries) may prescribe separate payment requirements (including deductibles, copayments, and catastrophic limits) for the provision of mental health services to persons covered by this section or section 1086 of this title. The payment requirements may vary for different categories of covered beneficiaries, by type of mental health service provided, and based on the location of the covered beneficiaries.

(3)(A) Except as provided in subparagraph (B), the Secretary of Defense shall require preadmission authorization before inpatient mental health services may be provided to persons covered by this section or section 1086 of this title. In the case of the provision of emergency inpatient mental health services, approval for the continuation of such services shall be required within 72 hours after admission.

(B) Preadmission authorization for inpatient mental health services is not required under subparagraph (A) in the following cases:

(i) In the case of an emergency.

(ii) In a case in which any benefits are payable for such services under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.), subject to subparagraph (C).

(C) In a case of inpatient mental health services to which subparagraph (B)(ii) applies, the Secretary shall require advance authorization for a continuation of the provision of such services after benefits cease to be payable for such services under such part A.

(j)(1) A benefit may not be paid under a plan covered by this section in the case of a person enrolled in, or covered by, any other insurance, medical service, or health plan, including any plan offered by a third-party payer (as defined in section 1095(h)(1) of this title), to the extent that the benefit is also a benefit under the other plan, except in the case of a plan administered under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(2) The amount to be paid to a provider of services for services provided under a plan covered by this section shall be determined under joint regulations to be prescribed by the administering Secretaries which provide that the amount of such payments shall be determined to the extent practicable in accordance with the same reimbursement rules as apply to payments to providers of services of the same type under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(3) A contract for a plan covered by this section shall include a clause that prohibits each provider of services under the plan from billing any person covered by the plan for any balance of charges for services in excess of the amount paid for those services under the joint regulations referred to in paragraph (2), except for any unpaid amounts of deductibles or copayments that are payable directly to the provider by the person.

(4) In this subsection, the term ''provider of services'' means a hospital, skilled nursing facility, comprehensive outpatient rehabilitation facility, home health agency, hospice program (as defined in section 1861(dd)(2) of the Social Security Act (42 U.S.C. 1395x(dd)(2))), or other institutional facility providing services for which payment may be made under a plan covered by this section.

(k) A plan covered by this section may include provision of liver transplants (including the cost of acquisition and transportation of the donated liver) in accordance with this subsection. Such a liver transplant may be provided if—

(1) the transplant is for a dependent considered appropriate for that procedure by the Secretary of Defense in consultation with the other administering Secretaries and such other entities as the Secretary considers appropriate; and

(2) the transplant is to be carried out at a health-care facility that has been approved for that purpose by the Secretary of Defense after consultation with the other administering Secretaries and such other entities as the Secretary considers appropriate.

(*l*)(1) Contracts entered into under subsection (a) shall also provide for medical care for dependents of former members of the uniformed services who are authorized to receive medical and dental care under section 1076(e) of this title in facilities of the uniformed services.

(2) Except as provided in paragraph (3), medical care in the case of a dependent described in section 1076(e) shall be furnished under the same conditions and subject to the same limitations as medical care furnished under this section to spouses and children of members of the uniformed services described in the first sentence of subsection (a).

(3) Medical care may be furnished to a dependent pursuant to paragraph (1) only for an injury, illness, or other condition described in section 1076(e) of this title.

(m)(1) Subject to paragraph (2), the Secretary of Defense may, upon request, make payments under this section for a charge for services for which a claim is submitted under a plan contracted for under subsection (a) to a hospital that does not impose a legal obligation on any of its patients to pay for such services.

(2) A payment under paragraph (1) may not exceed the average amount paid for comparable services in the geographic area in which the hospital is located or, if no comparable services are available in that area, in an area similar to the area in which the hospital is located.

(3) The Secretary of Defense shall periodically review the billing practices of each hospital the Secretary approves for payment under this subsection to ensure that the hospital's practices of not billing patients for payment are not resulting in increased costs to the Government.

(4) The Secretary of Defense may require each hospital the Secretary approves for payment under this subsection to provide evidence that it has sources of revenue to cover unbilled costs.

(n) The Secretary of Defense may enter into contracts (or amend existing contracts) with fiscal intermediaries under which the intermediaries agree to organize and operate, directly or through subcontractors, managed health care networks for the provision of health care under this chapter. The managed health care networks shall include cost containment methods, such as utilization review and contracting for care on a discounted basis.

(*o*)(1) Health care services provided pursuant to this section or section 1086 of this title (or pursuant to any other contract or project under

the Civilian Health and Medical Program of the Uniformed Services) may not include services determined under the CHAMPUS Peer Review Organization program to be not medically or psychologically necessary.

(2) The Secretary of Defense, after consulting with the other administering Secretaries, may adopt or adapt for use under the CHAMPUS Peer Review Organization program, as the Secretary considers appropriate, any of the quality and utilization review requirements and procedures that are used by the Peer Review Organization program under part B of title XI of the Social Security Act (42 U.S.C. 1320c et seq.).

(p)(1) Subject to such exceptions as the Secretary of Defense considers necessary, coverage for medical care under this section for the dependents described in paragraph (3), and standards with respect to timely access to such care, shall be comparable to coverage for medical care and standards for timely access to such care under the managed care option of the TRICARE program known as TRICARE Prime.

(2) The Secretary of Defense shall enter into arrangements with contractors under the TRICARE program or with other appropriate contractors for the timely and efficient processing of claims under this subsection.

(3) This subsection applies with respect to a dependent referred to in subsection (a) who—

(A) is a dependent of a member of the uniformed services referred to in section 1074(c)(3) of this title and is residing with the member;

(B) is a dependent of a member who, after having served in a duty assignment described in section 1074(c)(3) of this title, has relocated without the dependent pursuant to orders for a permanent change of duty station from a remote location described in subparagraph (B)(ii) of such section where the member and the dependent resided together while the member served in such assignment, if the orders do not authorize dependents to accompany the member to the new duty station at the expense of the United States and the dependent continues to reside at the same remote location, or

(C) is a dependent of a reserve component member ordered to active duty for a period of more than 30 days and is residing with the member, and the residence is located more than 50 miles, or approximately one hour of driving time, from the nearest military medical treatment facility adequate to provide the needed care.

(4) The Secretary of Defense may provide for coverage of a dependent referred to in subsection (a) who is not described in paragraph (3) if the Secretary determines that exceptional circumstances warrant such coverage.

(5) The Secretary of Defense shall consult with the other administering Secretaries in the administration of this subsection.

(q) Subject to subsection (a), a physician or other health care practitioner who is eligible to receive reimbursement for services provided under medicare (as defined in section 1086(d)(3)(C) of this title) shall be considered approved to provide medical care authorized under this section and section 1086 of this title unless the administering Secretaries have information indicating medicare, TRICARE, or other Federal health care program integrity violations by the physician or other health care practitioner.

(Added Pub. L. 85–861, § 1(25)(B), Sept. 2, 1958, 72 Stat. 1448; amended Pub. L. 89–614, § 2(6), Sept. 30, 1966, 80 Stat. 863; Pub. L. 92–58, § 1, July 29, 1971, 85 Stat. 157; Pub. L. 95–485, title VIII, § 806(a)(1), Oct. 20, 1978, 92 Stat. 1622; Pub. L. 96–342, title VIII, § 810(a), (b), Sept. 8, 1980, 94 Stat. 1097; Pub. L. 96–513, title V, §§ 501(13), 511(36), (38), Dec. 12, 1980, 94 Stat. 2908, 2923; Pub. L. 96–552, Dec. 19, 1980, 94 Stat. 3254; Pub. L. 97–22, § 11(a)(2), July 10, 1981, 95 Stat. 137; Pub. L. 97–86, title IX, § 906(a)(1), Dec. 1, 1981, 95 Stat. 1117; Pub. L. 98–94, title IX, § 931(a), title XII, § 1268(4), Sept. 24, 1983, 97 Stat. 648, 705; Pub. L. 98–525, title VI, § 632(a)(1), title XIV, §§ 1401(e)(4), 1405(23), Oct. 19, 1984, 98 Stat. 2543, 2617, 2623; Pub. L. 98–557, § 19(7), Oct. 30, 1984, 98 Stat. 2869; Pub. L. 99–661, div. A, title VI, § 652(d), title VII, § 703, Nov. 14, 1986, 100 Stat. 3889, 3900; Pub. L. 100–180, div. A, title VII, §§ 721(a), 726(a), Dec. 4, 1987, 101 Stat. 1115, 1117; Pub. L. 100–456, div. A, title VI, § 646(a), Sept. 29, 1988, 102 Stat. 1989; Pub. L. 101–189, div. A, title VII, § 730(a), Nov. 29, 1989, 103 Stat. 1481; Pub. L. 101–510, div. A, title VII, §§ 701(a), 702(a), 703(a), (b), 712(a), title XIV, § 1484(g)(1), Nov. 5, 1990, 104 Stat. 1580, 1581, 1583, 1717; Pub. L. 102–25, title III, § 316(b), Apr. 6, 1991, 105 Stat. 87; Pub. L. 102–190, div. A, title VII, §§ 702(b), 711, 712(a), 713, Dec. 5, 1991, 105 Stat. 1400, 1402, 1403; Pub. L. 102–484, div. A, title VII, § 704, title X, §§ 1052(13), 1053(3), Oct. 23, 1992, 106 Stat. 2432, 2499, 2501; Pub. L. 103–35, title II, § 202(a)(5), May 31, 1993, 107 Stat. 101; Pub. L. 103–160, div. A, title VII, §§ 711, 716(c), Nov. 30, 1993, 107 Stat. 1688, 1693; Pub. L. 103–337, div. A, title VII, §§ 702(a), 707(a), Oct. 5, 1994, 108 Stat. 2797, 2800; Pub. L. 104–106, div. A, title VII, §§ 701, 731(a)–(d), Feb. 10, 1996, 110 Stat. 370, 380, 381; Pub. L. 104–201, div. A, title VII, §§ 701(b)(2), 711, 731, 732, 735(c), Sept. 23, 1996, 110 Stat. 2587, 2590, 2597, 2599; Pub. L. 105–85, div. A, title VII, § 735, Nov. 18, 1997, 111 Stat. 1813; Pub. L. 106–398, § 1 [[div. A], title VII, §§ 701(c)(1), 704(b), 722(b)(1), 757(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–172, 1654A–175, 1654A–185, 1654A–198; Pub. L. 107–107, div. A, title VII, §§ 701(b), (g)(2), 703(b), 707(a), (b), title X, § 1048(c)(5), Dec. 28, 2001, 115 Stat. 1158, 1161–1163, 1226; Pub. L. 107–314, div. A, title VII, §§ 701(a), § 702, § 705(a), Dec. 2, 2002, 116 Stat. 2583, 2584; Pub. L. 108–375, div. A, title VII, § 705, Oct. 28, 2004, 118 Stat. 1983; Pub. L. 109–163, div. A, title VII, §§ 714, 715(a), Jan. 6, 2006, 119 Stat. 3344; Pub. L. 109–364, div. A, title VII, §§ 701, 702, 703(b), Oct. 17, 2006, 120 Stat. 2279; Pub. L. 110–417, [div. A], title VII, § 732, Oct. 14, 2008, 122 Stat. 4511; Pub. L. 111–84, div. A, title X, § 1073(a)(12), Oct. 28, 2009, 123 Stat. 2473.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1079(a)	37:402(a)(2) (as applicable to 37:411(a)).	June 7, 1956, ch. 374, §§ 102(a)(2) (as applicable to § 201(a)), 201(a), (b), 204, 70 Stat. 250, 252, 253.
	37:411(a).	
1079(b)	37:411(b).	
	37:414.	

In subsection (a), the words ''appointed, enlisted, inducted or called, ordered or conscripted in a uniformed service'', in 37:402(a)(2) are omitted as surplusage, since

it does not matter how a member became a member. The words ''active duty for a period of more than 30 days'' are substituted for the words ''active duty or active duty for training pursuant to a call or order that does not specify a period of thirty days or less'', in 37:402(a)(2), to reflect section 101(22) and (23) of this title. The words '', under the authority of this section,'' are substituted for the words ''pursuant to the provisions of this title'' to make clear that the section provides independent procurement authority. The words ''all'', ''by the hospital'', and ''a period of'', in 37:411(a), are omitted as surplusage.

In subsection (a)(1), the word ''rooms'', in 37:411(a), is substituted for the word ''accommodations''.

In subsection (a)(5), the word ''services'' is substituted for the word ''procedures'' and the word ''performed'' is substituted for the word ''accomplished'', in 37: 411(a). The words ''or surgeon'' are inserted for clarity.

In subsection (b), the word ''variances'' is substituted for the words ''limitations, additions, exclusions''. The words ''or care other than that provided for in sections 1076–1078 of this title'' are substituted for 37:414. The words ''definitions, and related provisions'', in 37:411(b), are omitted as surplusage, since the Secretary of an executive department has inherent authority to interpret laws and issue regulations.

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (h)(1), (4)(A), (B)(i), (i)(3)(B)(ii), (C), (j)(1), (2), and (*o*)(2), is act Aug. 13, 1935, ch. 531, 49 Stat. 620, as amended. Part B of title XI of the Act is classified generally to part B (§1320c et seq.) of subchapter XI of chapter 7 of Title 42, The Public Health and Welfare. Titles XVIII and XIX of the Act are classified generally to subchapters XVIII (§1395 et seq.) and XIX (§1396 et seq.), respectively, of chapter 7 of Title 42. Parts A and B of title XVIII of the Act are classified generally to part A (§1395c et seq.) and part B (§1395j et seq.), respectively, of subchapter XVIII of chapter 7 of Title 42. Section 1861(m) of the Act is classified to section 1395x(m) of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

PRIOR PROVISIONS

Provisions similar to those in subsec. (a)(7) to (14) of this section were contained in the following appropriation acts, with the exception of the provisions similar to par. (14) which first appeared in Pub. L. 96–154:

Pub. L. 98–473, title I, §101(h)[title VIII, §§8031, 8032, 8045], Oct. 12, 1984, 98 Stat. 1904, 1929, 1931.

Pub. L. 98–212, title VII, §§737, 738, 752, Dec. 8, 1983, 97 Stat. 1445, 1447.

Pub. L. 97–377, title I, §101(c) [title VII, §§740, 741, 756], Dec. 21, 1982, 96 Stat. 1833, 1857, 1860.

Pub. L. 97–114, title VII, §§741, 742, 759, Dec. 29, 1981, 95 Stat. 1585, 1588.

Pub. L. 96–527, title VII, §§742, 743, 763, Dec. 15, 1980, 94 Stat. 3088, 3092.

Pub. L. 96–154, title VII, §§744, 745, 769, Dec. 21, 1979, 93 Stat. 1159, 1163.

Pub. L. 95–457, title VIII, §§844, 845, Oct. 13, 1978, 92 Stat. 1251.

Pub. L. 95–111, title VIII, §§843, 844, Sept. 21, 1977, 91 Stat. 907.

Pub. L. 94–419, title VII, §§742, 743, Sept. 22, 1976, 90 Stat. 1298.

Pub. L. 94–212, title VII, §§750, 751, Feb. 9, 1976, 90 Stat. 176.

Provisions similar to those added to subsec. (h)(2) of this section by section 1401(e)(4)(B) of Pub. L. 98–525 were contained in the following prior appropriation acts:

Pub. L. 98–473, title I, §101(h)[title VIII, §8077], Oct. 12, 1984, 98 Stat. 1904, 1938.

Pub. L. 98–212, title VII, §785, Dec. 8, 1983, 97 Stat. 1453.

A prior section 1079, act Aug. 10, 1956, ch. 1041, 70A Stat. 84, related to establishment of right to vote, prior to repeal by Pub. L. 85–861, §36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

2009—Subsec. (f)(2)(B). Pub. L. 111–84 struck out period after ''year''.

2008—Subsec. (f)(2). Pub. L. 110–417 substituted ''year shall not exceed $36,000, prorated as determined by the Secretary of Defense,'' for ''month shall not exceed $2,500,'' in subpar. (A) and ''year.'' for ''month'' in subpar. (B).

2006—Subsec. (a)(1). Pub. L. 109–364, §702, amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''With respect to dental care, only that care required as a necessary adjunct to medical or surgical treatment may be provided.''

Subsec. (a)(2). Pub. L. 109–364, §703(b)(1), substituted ''the schedule and method of cervical cancer screenings and breast cancer screenings'' for ''the schedule of pap smears and mammograms'' in introductory provisions.

Subsec. (a)(2)(B). Pub. L. 109–364, §703(b)(2), substituted ''cervical and breast cancer screenings'' for ''pap smears and mammograms''.

Subsec. (a)(17). Pub. L. 109–364, §701, added par. (17).

Subsec. (g). Pub. L. 109–163, §715(a), designated existing provisions as par. (1), struck out last sentence which read ''In addition, when a member dies while on active duty for a period of more than 30 days, the member's dependents who are receiving benefits under a plan covered by subsection (a) shall continue to be eligible for such benefits during the three-year period beginning on the date of the death of the member.'', and added pars. (2) to (5).

Subsec. (p)(4), (5). Pub. L. 109–163, §714, added par. (4) and redesignated former par. (4) as (5).

2004—Subsec. (h)(4)(C). Pub. L. 108–375 added subpar. (C).

2002—Subsec. (i)(3). Pub. L. 107–314, §701(a), designated existing provisions as subpar. (A), substituted ''Except as provided in subparagraph (B),'' for ''Except in the case of an emergency,'', and added subpars. (B) and (C).

Subsec. (p)(1). Pub. L. 107–314, §702(1), substituted ''dependents described in paragraph (3)'' for ''dependents referred to in subsection (a) of a member of the uniformed services referred to in section 1074(c)(3) of this title who are residing with the member''.

Subsec. (p)(3), (4). Pub. L. 107–314, §702(2), (3), added par. (3) and redesignated former par. (3) as (4).

Subsec. (q). Pub. L. 107–314, §705(a), added subsec. (q).

2001—Subsec. (a)(5). Pub. L. 107–107, §703(b), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''Durable equipment, such as wheelchairs, iron lungs and hospital beds may be provided on a rental basis.''

Subsec. (a)(17). Pub. L. 107–107, §701(g)(2), struck out par. (17) which read as follows:

''(17)(A) The Secretary of Defense may establish a program for the individual case management of a person covered by this section or section 1086 of this title who has extraordinary medical or psychological disorders and, under such a program, may waive benefit limitations contained in paragraphs (5) and (13) of this subsection or section 1077(b)(1) of this title and authorize the payment for comprehensive home health care services, supplies, and equipment if the Secretary determines that such a waiver is cost-effective and appropriate.

''(B) The total amount expended under subparagraph (A) for a fiscal year may not exceed $100,000,000.''

Subsec. (d) to (f). Pub. L. 107–107, §701(b), added subsecs. (d) to (f) and struck out former subsecs. (d) to (f) which related to medical care provided for retarded or handicapped dependents, the requirement of members sharing in cost of benefits provided, and the requirement that members use public facilities to the extent available and adequate, respectively.

Subsec. (h)(2). Pub. L. 107–107, § 1048(c)(5), substituted ''February 10, 1996,'' for ''the date of the enactment of this paragraph''.

Subsec. (h)(4). Pub. L. 107–107, § 707(b), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (j)(2) to (4). Pub. L. 107–107, § 707(a), designated existing provisions of subpar. (A) of par. (2) as par. (2) and substituted ''shall be determined under joint regulations'' for ''may be determined under joint regulations'', redesignated subpar. (B) of par. (2) as par. (4) and substituted therein ''this subsection,'' for ''subparagraph (A),'', and added par. (3).

2000—Subsec. (a)(17). Pub. L. 106–398, § 1 [[div. A], title VII, § 701(c)(1)], designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (g). Pub. L. 106–398, § 1 [[div. A], title VII, § 704(b)], substituted ''three-year period'' for ''one-year period''.

Subsec. (h)(5). Pub. L. 106–398, § 1 [[div. A], title VII, § 757(a)], added par. (5).

Subsec. (p). Pub. L. 106–398, § 1 [[div. A], title VII, § 722(b)(1)], added subsec. (p).

1997—Subsec. (h)(1). Pub. L. 105–85, § 735(a), added par. (1) and struck out former par. (1) which read as follows: ''Payment for a charge for services by an individual health care professional (or other noninstitutional health care provider) for which a claim is submitted under a plan contracted for under subsection (a) may not exceed the lesser of—

''(A) the amount equivalent to the 80th percentile of billed charges made for similar services in the same locality during the base period; or

''(B) an amount determined to be appropriate, to the extent practicable, in accordance with the same reimbursement rules as apply to payments for similar services under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).''

Subsec. (h)(2). Pub. L. 105–85, § 735(c)(2), redesignated par. (4) as (2).

Pub. L. 105–85, § 735(a), struck out par. (2) which read as follows: ''For the purposes of paragraph (1)(A), the 80th percentile of charges shall be determined by the Secretary of Defense, in consultation with the other administering Secretaries, and the base period shall be a period of twelve calendar months. The Secretary of Defense shall adjust the base period as frequently as he considers appropriate.''

Subsec. (h)(3). Pub. L. 105–85, § 735(c)(2), redesignated par. (5) as (3).

Pub. L. 105–85, § 735(a), struck out par. (3) which read as follows: ''For the purposes of paragraph (1)(B), the appropriate payment amount shall be determined by the Secretary of Defense, in consultation with the other administering Secretaries.''

Subsec. (h)(4). Pub. L. 105–85, § 735(c)(2), redesignated par. (4) as (2).

Subsec. (h)(5). Pub. L. 105–85, § 735(c)(2), redesignated par. (5) as (3).

Pub. L. 105–85, § 735(b), (c)(1), substituted ''paragraph (2), the Secretary of Defense'' for ''paragraph (4), the Secretary'' and inserted at end ''With the consent of the health care provider, the Secretary is also authorized to reduce the authorized payment for certain health care services below the amount otherwise required by the payment limitations under paragraph (1).''

Subsec. (h)(6). Pub. L. 105–85, § 735(c)(2), redesignated par. (6) as (4).

1996—Subsec. (a). Pub. L. 104–201, § 731(b)(1), substituted ''except as follows:'' for ''except that—'' in introductory provisions.

Subsec. (a)(1). Pub. L. 104–201, § 731(b)(2), (3), capitalized first letter of first word and substituted a period for the semicolon at end.

Subsec. (a)(2). Pub. L. 104–201, § 731(b)(2), (3), capitalized first letter of first word and substituted a period for the semicolon at end.

Pub. L. 104–201, § 701(b)(2), inserted ''the schedule and method of colon and prostate cancer screenings,'' after ''pap smears and mammograms,'' in introductory provisions and ''or colon and prostate cancer screenings'' after ''pap smears and mammograms'' in subpar. (B).

Pub. L. 104–106, § 701, added par. (2) and struck out former par. (2) which read as follows: ''routine physical examinations and immunizations of dependents over two years of age may only be provided when required in the case of dependents who are traveling outside the United States as a result of a member's duty assignment and such travel is being performed under orders issued by a uniformed service, except that pap smears and mammograms may be provided on a diagnostic or preventive basis;''.

Subsec. (a)(3) to (12). Pub. L. 104–201, § 731(b)(2), (3), capitalized first letter of first word and substituted a period for the semicolon at end.

Subsec. (a)(13). Pub. L. 104–201, § 731(a), (b)(2), substituted ''Any service'' for ''any service'' and ''paragraph (4).'' for ''paragraph (4);'' and inserted at end ''Pursuant to an agreement with the Secretary of Health and Human Services and under such regulations as the Secretary of Defense may prescribe, the Secretary of Defense may waive the operation of this paragraph in connection with clinical trials sponsored or approved by the National Institutes of Health if the Secretary of Defense determines that such a waiver will promote access by covered beneficiaries to promising new treatments and contribute to the development of such treatments.''

Subsec. (a)(14), (15). Pub. L. 104–201, § 731(b)(2), (3), capitalized first letter of first word and substituted a period for the semicolon at end.

Subsec. (a)(16). Pub. L. 104–201, § 731(b)(2), (4), capitalized first letter of first word and substituted a period for ''; and'' at end.

Subsec. (a)(17). Pub. L. 104–201, § 731(b)(2), capitalized first letter of first word.

Subsec. (h)(1). Pub. L. 104–106, § 731(a), added par. (1) and struck out former par. (1) which read as follows: ''Payment for a charge for services by an individual health-care professional (or other noninstitutional health-care provider) for which a claim is submitted under a plan contracted for under subsection (a) may be denied only to the extent that the charge exceeds the amount equivalent to the 80th percentile of billed charges made for similar services in the same locality during the base period.''

Subsec. (h)(2). Pub. L. 104–106, § 731(d), substituted ''paragraph (1)(A)'' for ''paragraph (1)''.

Subsec. (h)(3). Pub. L. 104–106, § 731(b), added par. (3).

Subsec. (h)(4). Pub. L. 104–201, § 711, struck out ''emergency'' before ''services from nonparticipating providers.''

Pub. L. 104–106, § 731(c), added par. (4).

Subsec. (h)(5). Pub. L. 104–201, § 732(2), added par. (5). Former par. (5) redesignated (6).

Pub. L. 104–106, § 731(c), added par. (5).

Subsec. (h)(6). Pub. L. 104–201, § 732(1), redesignated par. (5) as (6).

Subsec. (j)(1). Pub. L. 104–201, § 735(c), inserted '', including any plan offered by a third-party payer (as defined in section 1095(h)(1) of this title),'' after ''or health plan''.

1994—Subsec. (a). Pub. L. 103–337, § 702(a)(1), substituted ''dependents, as described in subparagraphs (A), (D), and (I) of section 1072(2) of this title,'' for ''spouses and children''.

Subsec. (d). Pub. L. 103–337, § 702(a)(2), substituted ''as described in subparagraph (A), (D), or (I) of section 1072(2)'' for ''as defined in section 1072(2)(A) or (D)''.

Subsec. (g). Pub. L. 103–337, § 707(a), inserted at end ''In addition, when a member dies while on active duty for a period of more than 30 days, the member's dependents who are receiving benefits under a plan covered by subsection (a) shall continue to be eligible for such benefits during the one-year period beginning on the date of the death of the member.''

1993—Subsec. (a)(7). Pub. L. 103–160, § 716(c), substituted ''except that those services may be provided in any case in which another insurance plan or program provides primary coverage for those services;'' for ''except that—

''(A) those services may be provided in any case in which another insurance plan or program provides primary coverage for those services; and

''(B) the Secretary of Defense may waive the 40-mile radius restriction with regard to the provision of a particular service before October 1, 1993, if the Secretary determines that the use of a different geographical area restriction will result in a more cost-effective provision of the service;''.

Subsec. (a)(15). Pub. L. 103–35 made technical amendment to directory language of Pub. L. 102–484, § 704(1). See 1992 Amendment note below.

Subsec. (*o*). Pub. L. 103–160, § 711, added subsec. (*o*).

1992—Subsec. (a)(15). Pub. L. 102–484, § 1053(3), made technical amendment to directory language of Pub. L. 102–190, § 702(b)(1)(C). See 1991 Amendment note below.

Pub. L. 102–484, § 704(1), as amended by Pub. L. 103–35, struck out ''and'' at end of par. (15).

Subsec. (a)(16). Pub. L. 102–484, § 704(2), substituted ''; and'' for period at end.

Subsec. (a)(17). Pub. L. 102–484, § 704(3), added par. (17).

Subsec. (j)(2)(B). Pub. L. 102–484, § 1052(13), inserted a close parenthesis after ''1395x(dd)(2)''.

1991—Subsec. (a)(6). Pub. L. 102–25, § 316(b), revived par. (6) as in effect on Feb. 14, 1991, thus negating amendment to par. (6) by Pub. L. 101–510, § 703(a), from its original effective date (Feb. 15, 1991) to the effective date as amended (Oct. 1, 1991). See 1990 Amendment note and Effective Date of 1990 Amendment note below.

Subsec. (a)(7). Pub. L. 102–190, § 711, substituted ''except that—'' and subpars. (A) and (B), for ''except that such services may be provided in any case in which another insurance plan or program provides primary coverage for the services;''.

Subsec. (a)(13). Pub. L. 102–190, § 702(b)(1)(A), substituted ''paragraph (4)'' for ''clause (4)''.

Subsec. (a)(14). Pub. L. 102–190, § 702(b)(1)(B), struck out ''and'' at end.

Subsec. (a)(15). Pub. L. 102–190, § 702(b)(1)(C), as amended by Pub. L. 102–484, § 1053(3), substituted ''; and'' for period at end.

Subsec. (a)(16). Pub. L. 102–190, § 702(b)(1)(D), added par. (16).

Subsec. (i). Pub. L. 102–25, § 316(b), revived subsec. (i) as in effect on Feb. 14, 1991, thus negating amendment to subsec. (i) by Pub. L. 101–510, § 703(b), from its original effective date (Feb. 15, 1991) to the effective date as amended (Oct. 1, 1991). See 1990 Amendment note and Effective Date of 1990 Amendment note below.

Subsec. (j)(1). Pub. L. 102–190, § 713, inserted '', or covered by,'' after ''person enrolled in''.

Subsec. (j)(2)(B). Pub. L. 102–190, § 702(b)(2), inserted ''hospice program (as defined in section 1861(dd)(2) of the Social Security Act (42 U.S.C. 1395x(dd)(2)),''.

Subsec. (n). Pub. L. 102–190, § 712(a), added subsec. (n).

1990—Subsec. (a)(2). Pub. L. 101–510, § 701(a), inserted before the semicolon '', except that pap smears and mammograms may be provided on a diagnostic or preventive basis''.

Subsec. (a)(6). Pub. L. 101–510, § 703(a), substituted ''in excess of—'' for ''in excess of 60 days in any year;'' and added subpars. (A) to (C).

Subsec. (a)(8). Pub. L. 101–510, § 702(a)(1), inserted ''(other than certified marriage and family therapists)'' after ''marital counselors'' and inserted before semicolon ''and services of certified marriage and family therapists may be provided consistent with such rules as may be prescribed by the Secretary of Defense, including credentialing criteria and a requirement that the therapists accept payment under this section as full payment for all services provided''.

Subsec. (a)(13). Pub. L. 101–510, § 702(a)(2), inserted ''certified marriage and family therapist,'' after ''psychologist,''.

Subsec. (b)(2). Pub. L. 101–510, § 712(a)(1), substituted ''$150'' for ''$50'' and inserted at end ''Notwithstanding the preceding sentence, in the case of a dependent of an enlisted member in a pay grade below E–5, the initial deductible each fiscal year under this paragraph shall be limited to $50.''

Subsec. (b)(3). Pub. L. 101–510, § 712(a)(2), substituted ''$300 (or in the case of the family group of an enlisted member in a pay grade below E–5, the first $100)'' for ''$100''.

Subsec. (i). Pub. L. 101–510, § 703(b), amended subsec. (i) generally. Prior to amendment, subsec. (i) read as follows: ''The limitation in subsection (a)(6) does not apply in the case of inpatient mental health services—

''(1) provided under the program for the handicapped under subsection (d);

''(2) provided as residential treatment care;

''(3) provided as partial hospital care; or

''(4) provided pursuant to a waiver authorized by the Secretary of Defense because of extraordinary medical or psychological circumstances that are confirmed by review by a non-Federal health professional pursuant to regulations prescribed by the Secretary of Defense.''

Subsec. (j)(2)(B). Pub. L. 101–510, § 1484(g)(1), inserted ''the term'' after ''In subparagraph (A),''.

1989—Subsec. (h)(1), (2). Pub. L. 101–189 substituted ''80th percentile'' for ''90th percentile''.

1988—Subsec. (b)(1). Pub. L. 100–456, § 646(a)(1), inserted provisions authorizing Secretary of Defense to exempt a patient from paying such amount if the hospital to which the patient is admitted does not impose a legal obligation on any of its patients to pay for inpatient care.

Subsec. (m). Pub. L. 100–456, § 646(a)(2), added subsec. (m).

1987—Subsec. (a)(15). Pub. L. 100–180, § 726(a), added par. (15).

Subsec. (b)(5). Pub. L. 100–180, § 721(a), added par. (5).

1986—Subsec. (a)(7). Pub. L. 99–661, § 703, substituted ''provides primary coverage for the services'' for ''pays for at least 75 percent of the services''.

Subsec. (*l*). Pub. L. 99–661, § 652(d), added subsec. (*l*).

1984—Subsec. (a). Pub. L. 98–557, § 19(7)(B), substituted reference to other administering Secretaries for reference to Secretary of Health and Human Services in provisions preceding cl. (1).

Subsec. (a)(3). Pub. L. 98–525, § 632(a)(1), substituted ''not more than one eye examination may be provided to a patient in any calendar year'' for ''eye examinations may not be provided''.

Subsec. (a)(4). Pub. L. 98–557, § 19(7)(A), substituted reference to the administering Secretaries for reference to the Secretary of Defense and the Secretary of Health and Human Services.

Subsec. (a)(7) to (14). Pub. L. 98–525, § 1401(e)(4)(A), added cls. (7) to (14).

Subsecs. (b)(4), (c), (d). Pub. L. 98–557, § 19(7)(A), substituted reference to the administering Secretaries for reference to the Secretary of Defense and the Secretary of Health and Human Services.

Subsec. (e). Pub. L. 98–525, § 1405(23), substituted ''under subsection (d) as follows:'' for ''under subsection (d).'' in provisions preceding cl. (1).

Subsecs. (e)(1), (f). Pub. L. 98–557, § 19(7)(A), substituted reference to the administering Secretaries for reference to the Secretary of Defense and the Secretary of Health and Human Services.

Subsec. (h)(2). Pub. L. 98–557, § 19(7)(B), substituted reference to other administering Secretaries for reference to Secretary of Health and Human Services.

Pub. L. 98–525, § 1401(e)(4)(B), substituted ''The Secretary of Defense shall adjust the base period as frequently as he considers appropriate'' for ''The base period shall be adjusted at least once a year''.

Subsec. (j)(2)(A). Pub. L. 98–557, § 19(7)(A), substituted reference to the administering Secretaries for reference to the Secretary of Defense and the Secretary of Health and Human Services.

Subsec. (k)(1), (2). Pub. L. 98–557, § 19(7)(B), substituted reference to other administering Secretaries for reference to Secretary of Health and Human Services.

1983—Subsec. (a). Pub. L. 98–94, § 1268(4)(A), substituted ''30'' for ''thirty'' in provisions preceding par. (1).

Subsec. (a)(6). Pub. L. 98–94, §931(a)(1), added par. (6).

Subsec. (d). Pub. L. 98–94, §1268(4)(A), substituted ''30'' for ''thirty''.

Subsec. (g). Pub. L. 98–94, §1268(4)(B), struck out ''of this section'' after ''subsection (d)''.

Subsecs. (i) to (k). Pub. L. 98–94, §931(a)(2), added subsecs. (i) to (k).

1981—Subsec. (b)(4). Pub. L. 97–22 substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

Subsec. (h). Pub. L. 97–86 substituted reference to services of individual health-care professionals for former reference to physician services, struck out provisions that had used the concept of a predetermined charge level based upon customary charges, and inserted provisions requiring a readjustment of the base period at least once a year.

1980—Subsec. (a). Pub. L. 96–513, §511(36), (38)(A), substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare'' wherever appearing, and ''that—'' for ''that:''.

Subsec. (a)(2). Pub. L. 96–342, §810(a)(1), inserted ''of dependents over two years of age'' after ''immunizations''.

Subsec. (a)(3). Pub. L. 96–342, §810(a)(2), struck out ''routine care of the newborn, well-baby care, and'' after ''(3)''.

Subsec. (b)(4). Pub. L. 96–552 added par. (4).

Pub. L. 96–513, §511(38)(B), substituted ''percent'' for ''per centum'' wherever appearing.

Subsec. (c). Pub. L. 96–513, §511(36), substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

Subsec. (d). Pub. L. 96–513, §§501(13), 511(36), substituted ''section 1072(2)(A) or (D) of this title'' for ''section 1072(2)(A), (C), or (E) of this title'', and ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

Subsec. (e). Pub. L. 96–513, §511(36), (38)(C), substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare'', and ''(d) as follows:'' for ''(d).''.

Subsec. (e)(2). Pub. L. 96–342, §810(b), substituted ''$1,000'' for ''$350''.

Subsec. (f). Pub. L. 96–513, §511(36), substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

Subsec. (g). Pub. L. 96–513, §511(38)(D), struck out '', United States Code,'' after ''37''.

Subsec. (h). Pub. L. 96–513, §511(36), substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

1978—Subsec. (h). Pub. L. 95–485 added subsec. (h).

1971—Subsec. (g). Pub. L. 92–58 added subsec. (g).

1966—Subsec. (a). Pub. L. 89–614 struck out ''dependent'' before ''spouses and children'' and substituted sentence providing that ''The types of health care authorized under this section, shall be the same as those provided under section 1076 of this title'', enumerating exceptions in pars. (1) to (5) for former provisions which required the insurance, medical service, or health plans to include (1) hospitalization in semiprivate rooms for not more than 365 days for each admission, (2) medical and surgical care incident to hospitalization, (3) obstetrical and maternity service, including prenatal and postnatal care, (4) services of physician or surgeon before or after hospitalization for bodily injury or surgical operation, (5) diagnostic tests and services incident to hospitalization, and (6) payments by patient of hospital expenses, now incorporated in subsec. (b)(1).

Subsec. (b). Pub. L. 89–614 incorporated existing provisions of subsec. (a)(6) in par. (1) and added pars. (2) and (3). Former subsec. (b) authorized the Secretary of Defense to make variances from subsec. (a) requirements as appropriate other than outpatient care or care other than provided for in sections 1076 to 1078 of this title.

Subsecs. (c) to (f). Pub. L. 89–614 added subsecs. (c) to (f).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–163, div. A, title VII, §715(b), Jan. 6, 2006, 119 Stat. 3345, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on October 7, 2001, and shall apply with respect to deaths occurring on or after that date.''

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–314, div. A, title VII, §701(b), Dec. 2, 2002, 116 Stat. 2583, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect October 1, 2003.''

Pub. L. 107–314, div. A, title VII, §705(b), Dec. 2, 2002, 116 Stat. 2585, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to any contract under the TRICARE program entered into on or after the date of the enactment of this Act [Dec. 2, 2002].''

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title VII, §707(c), Dec. 28, 2001, 115 Stat. 1164, provided that: ''The amendments made by this section [amending this section] shall take effect on the date that is 90 days after the date of the enactment of this Act [Dec. 28, 2001].''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, §1 [[div. A], title VII, §701(c)(3)], Oct. 30, 2000, 114 Stat. 1654, 1654A–172, provided that: ''The amendments made by paragraphs (1) and (2) [amending this section and provisions set out as a note under section 1077 of this title] shall apply to fiscal years after fiscal year 1999.''

Amendment by section 1 [[div. A], title VII, §722(b)(1)] of Pub. L. 106–398 effective Oct. 1, 2001, see section 1 [[div. A], title VII, §722(c)(1)] of Pub. L. 106–398, set out as a note under section 1074 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–337, div. A, title VII, §707(c), Oct. 5, 1994, 108 Stat. 2801, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1076a of this title] shall apply with respect to the dependents described in such amendments of a member of a uniformed service who dies on or after October 1, 1993, while on active duty for a period of more than 30 days.''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–35 applicable as if included in the enactment of Pub. L. 102–484, see section 202(b) of Pub. L. 103–35, set out as a note under section 155 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 1053(3) of Pub. L. 102–484 provided that the amendment made by that section is effective Dec. 5, 1991.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 316(b) of Pub. L. 102–25 provided that the amendment made by that section is effective Feb. 15, 1991.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 701(b) of Pub. L. 101–510 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to the provision of pap smears and mammograms under section 1079 or 1086 of title 10, United States Code, on or after the date of the enactment of this Act [Nov. 5, 1990].''

Section 702(b) of Pub. L. 101–510 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to the services of certified marriage and family therapists provided under section 1079 or 1086 of title 10, United States Code, on or after the date of the enactment of this Act [Nov. 5, 1990].''

Section 703(d) of Pub. L. 101–510, as amended by Pub. L. 102–25, title III, §316(a)(1), Apr. 6, 1991, 105 Stat. 87, provided that: ''This section and the amendments made

by this section [amending this section] shall take effect on October 1, 1991, and shall apply with respect to mental health services provided under section 1079 or 1086 of title 10, United States Code, on or after that date.''

Section 712(c) of Pub. L. 101–510 provided that: ''The amendments made by this section [amending this section and section 1086 of this title] shall apply with respect to health care provided under sections 1079 and 1086 of title 10, United States Code, on or after April 1, 1991.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 730(b) of Pub. L. 101–189 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services provided on or after October 1, 1989.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 646(c) of Pub. L. 100–456 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1086 of this title] shall apply with respect to medical care received after September 30, 1988.''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 721(c) of Pub. L. 100–180 provided that: ''Paragraph (5) of section 1079(b) of title 10, United States Code, as added by subsection (a), and paragraph (4) of section 1086(b) of such title, as added by subsection (b), shall apply with respect to fiscal years beginning after September 30, 1987.''

Section 726(b) of Pub. L. 100–180 provided that: ''Paragraph (15) of section 1079(a) of such title, as added by subsection (a), shall apply with respect to costs incurred for home monitoring equipment after the date of the enactment of this Act [Dec. 4, 1987].''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 652(e)(4) of Pub. L. 99–661 provided that: ''The amendment made by subsection (d) [amending this section] shall apply only with respect to care furnished under section 1079 of title 10, United States Code, on or after the date of the enactment of this Act [Nov. 14, 1986].''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 632(a)(3) of Pub. L. 98–525 provided that: ''The amendments made by this subsection [amending this section and section 1086 of this title] shall apply only to health care furnished after September 30, 1984.''

Amendment by section 1401(e)(4) of Pub. L. 98–525 effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as an Effective Date note under section 520b of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 931(c) of Pub. L. 98–94 provided that: ''The amendments made by this section [amending this section and section 1086 of this title] shall take effect on October 1, 1983, except that—

''(1) clause (6) of section 1079(a) of title 10, United States Code, as added by subsection (a)(1), shall not apply in the case of inpatient mental health services provided to a patient admitted before January 1, 1983, for so long as that patient remains continuously in inpatient status for medically or psychologically necessary reasons; and

''(2) subsection (k) of section 1079 of such title, as added by subsection (a)(1), shall apply with respect to liver transplant operations performed on or after July 1, 1983.''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 906(b) of Pub. L. 97–86 provided that: ''The amendments made by subsection (a) [amending this section and section 1086 of this title] shall apply with respect to claims submitted for payment for services provided after the end of the 30-day period beginning on the date of the enactment of this Act [Dec. 1, 1981].''

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by section 501(13) of Pub. L. 96–513 effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

Amendment by section 511 of Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513.

Section 810(c) of Pub. L. 96–342 provided that: ''The amendments made by this section [amending this section] shall apply to medical care provided after September 30, 1980.''

EFFECTIVE DATE OF 1978 AMENDMENT

Section 806(b) of Pub. L. 95–485 provided that: ''the amendments made by subsection (a) [amending this section and section 1086 of this title] shall apply with respect to claims submitted for payment for services provided on or after the first day of the first calendar year beginning after the date of enactment of this Act [Oct. 20, 1978].''

EFFECTIVE DATE OF 1971 AMENDMENT

Section 2 of Pub. L. 92–58 provided that: ''This Act [amending this section] becomes effective as of January 1, 1967. However, no person is entitled to any benefits because of this Act for any period before the date of enactment [July 29, 1971].''

EFFECTIVE DATE OF 1966 AMENDMENT

For effective date of amendment by Pub. L. 89–614, see section 3 of Pub. L. 89–614, set out as a note under section 1071 of this title.

WAIVER OF COPAYMENTS FOR PREVENTIVE SERVICES FOR CERTAIN TRICARE BENEFICIARIES

Pub. L. 110–417, [div. A], title VII, § 711, Oct. 14, 2008, 122 Stat. 4500, as amended by Pub. L. 111–383, div. A, title X, § 1075(e)(11), Jan. 7, 2011, 124 Stat. 4375, provided that:

''(a) WAIVER OF CERTAIN COPAYMENTS.—Subject to subsection (b) and under regulations prescribed by the Secretary of Defense, the Secretary shall—

''(1) waive all copayments under sections 1079(b) and 1086(b) of title 10, United States Code, for preventive services for all beneficiaries who would otherwise pay copayments; and

''(2) ensure that a beneficiary pays nothing for preventive services during a year even if the beneficiary has not paid the amount necessary to cover the beneficiary's deductible for the year.

''(b) EXCLUSION FOR MEDICARE-ELIGIBLE BENEFICIARIES.—Subsection (a) shall not apply to a medicare-eligible beneficiary.

''(c) REFUND OF COPAYMENTS.—

''(1) AUTHORITY.—Under regulations prescribed by the Secretary of Defense, the Secretary may pay a refund to a medicare-eligible beneficiary excluded by subsection (b), subject to the availability of appropriations specifically for such refunds, consisting of an amount up to the difference between—

''(A) the amount the beneficiary pays for copayments for preventive services during fiscal year 2009; and

''(B) the amount the beneficiary would have paid during such fiscal year if the copayments for preventive services had been waived pursuant to subsection (a) during that year.

''(2) COPAYMENTS COVERED.—The refunds under paragraph (1) are available only for copayments paid by medicare-eligible beneficiaries during fiscal year 2009.

''(d) DEFINITIONS.—In this section:

''(1) PREVENTIVE SERVICES.—The term 'preventive services' includes, taking into consideration the age and gender of the beneficiary:

''(A) Colorectal screening.

''(B) Breast screening.

''(C) Cervical screening.

''(D) Prostate screening.

''(E) Annual physical exam.

''(F) Vaccinations.

''(G) Other services as determined by the Secretary of Defense.

''(2) MEDICARE-ELIGIBLE.—The term 'medicare-eligible' has the meaning provided by section 1111(b)(3) of title 10, United States Code.''

PLAN FOR PROVIDING HEALTH COVERAGE INFORMATION TO MEMBERS, FORMER MEMBERS, AND DEPENDENTS ELIGIBLE FOR CERTAIN HEALTH BENEFITS

Pub. L. 108–136, div. A, title VII, § 724, Nov. 24, 2003, 117 Stat. 1534, provided that:

''(a) HEALTH INFORMATION PLAN REQUIRED.—The Secretary of Defense shall develop a plan to—

''(1) ensure that each household that includes one or more eligible persons is provided information concerning—

''(A) the extent of health coverage provided by sections 1079 or 1086 of title 10, United States Code, for each such person;

''(B) the costs, including the limits on such costs, that each such person is required to pay for such health coverage;

''(C) sources of information for locating TRICARE-authorized providers in the household's locality; and

''(D) methods to obtain assistance in resolving difficulties encountered with billing, payments, eligibility, locating TRICARE-authorized providers, collection actions, and such other issues as the Secretary considers appropriate;

''(2) provide mechanisms to ensure that each eligible person has access to information identifying TRICARE-authorized providers in the person's locality who have agreed to accept new patients under section 1079 or 1086 of title 10, United States Code, and to ensure that such information is periodically updated;

''(3) provide mechanisms to ensure that each eligible person who requests assistance in locating a TRICARE-authorized provider is provided such assistance;

''(4) provide information and recruitment materials and programs aimed at attracting participation of health care providers as necessary to meet health care access requirements for all eligible persons; and

''(5) provide mechanisms to allow for the periodic identification by the Department of Defense of the number and locality of eligible persons who may intend to rely on TRICARE-authorized providers for health care services.

''(b) IMPLEMENTATION OF PLAN.—The Secretary of Defense shall implement the plan required by subsection (a) with respect to any contract entered into by the Department of Defense after May 31, 2003, for managed health care.

''(c) DEFINITIONS.—In this section:

''(1) The term 'eligible person' means a person eligible for health benefits under section 1079 or 1086 of title 10, United States Code.

''(2) The term 'TRICARE-authorized provider' means a facility, doctor, or other provider of health care services—

''(A) that meets the licensing and credentialing certification requirements in the State where the services are rendered;

''(B) that meets requirements under regulations relating to TRICARE for the type of health care services rendered; and

''(C) that has accepted reimbursement by the Secretary of Defense as payment for services rendered during the 12-month period preceding the date of the most recently updated provider information provided to households under the plan required by subsection (a).

''(d) SUBMISSION OF PLAN.—Not later than March 31, 2004, the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives the plan required by subsection (a), together with a schedule for implementation of the plan.''

REPORT ON ACTIONS TO ESTABLISH SPECIAL REIMBURSEMENT RATES

Pub. L. 106–398, § 1 [[div. A], title VII, § 757(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–199, directed the Secretary of Defense, not later than Mar. 31, 2001, to submit to the Committees on Armed Services of the Senate and the House of Representatives and the General Accounting Office a report on actions taken to carry out sections 1079(h)(5) and 1097b of this title.

PROGRAMS RELATING TO SALE OF PHARMACEUTICALS

Pub. L. 102–484, div. A, title VII, § 702, Oct. 23, 1992, 106 Stat. 2431, as amended by Pub. L. 103–160, div. A, title VII, § 721, Nov. 30, 1993, 107 Stat. 1695; Pub. L. 103–337, div. A, title VII, § 706, Oct. 5, 1994, 108 Stat. 2800; Pub. L. 106–398, § 1 [[div. A], title VII, § 711(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–176, directed the Secretary of Defense to conduct a demonstration project that would permit eligible persons to obtain prescription pharmaceuticals by mail, directed the Secretary to include in each managed health care program awarded or renewed after Jan. 1, 1993, a program to supply prescription pharmaceuticals through a managed care network of retail pharmacies, directed the Secretary to submit to Congress a report regarding the demonstration project not later than two years after its establishment and an additional report regarding the programs not later than Jan. 1, 1994, and provided for termination of section 702 of Pub. L. 102–484 no later than one year after Oct. 30, 2000.

CORRECTION OF OMISSION IN DELAY OF INCREASE OF CHAMPUS DEDUCTIBLES RELATED TO OPERATION DESERT STORM

Pub. L. 102–484, div. A, title VII, § 721, Oct. 23, 1992, 106 Stat. 2438, provided that during the period beginning on Apr. 1, 1991, and ending on Sept. 30, 1991, the annual deductibles specified in this section or section 1086 of this title applicable to CHAMPUS beneficiaries who had served on active duty in the Persian Gulf theater of operations in connection with Operation Desert Storm would not exceed the annual deductibles in effect on Nov. 4, 1990, and provided for the credit or reimbursement of excess amounts paid.

TEMPORARY CHAMPUS PROVISIONS FOR DEPENDENTS OF OPERATION DESERT SHIELD/DESERT STORM ACTIVE DUTY PERSONNEL

Pub. L. 102–172, title VIII, § 8085, Nov. 26, 1991, 105 Stat. 1192, provided that any CHAMPUS health care provider could voluntarily waive the patient copayment for medical services provided from Aug. 2, 1990, until the termination of Operation Desert Shield/Desert Storm for dependents of active duty personnel, provided that the Government's share of medical services was not increased during such time period.

Similar provisions were contained in Pub. L. 102–28, § 105, Apr. 10, 1991, 105 Stat. 165.

Pub. L. 102–25, title III, § 312, Apr. 6, 1991, 105 Stat. 85, provided that the annual deductibles specified in subsec. (b) of this section, as in effect on Nov. 4, 1990, would apply until Oct. 1, 1991, in the case of health care provided under that section to the dependents of a member of the uniformed services who had served on active duty in the Persian Gulf theater of operations in connection with Operation Desert Storm, and that patient copayment requirements could be waived upon the provider's certification to the Secretary of Defense that the amount charged the Federal Government for such health care had not been increased above the amount that the provider would have charged the Federal Government for such health care had the payment not been waived.

TRANSITIONAL HEALTH CARE FOR MEMBERS, OR DEPENDENTS OF MEMBERS, UPON RELEASE OF MEMBER FROM ACTIVE DUTY IN CONNECTION WITH OPERATION DESERT STORM

For provision authorizing transitional health care, including health benefits contracted for under subsec.

(a) of this section, for members, or dependents of members, upon release of member from active duty in connection with Operation Desert Storm, see section 313 of Pub. L. 102–25, set out as a note under section 1076 of this title.

§ 1079a. CHAMPUS: treatment of refunds and other amounts collected

All refunds and other amounts collected in the administration of the Civilian Health and Medical Program of the Uniformed Services shall be credited to the appropriation available for that program for the fiscal year in which the refund or amount is collected.

(Added Pub. L. 104–201, div. A, title VII, § 733(a)(1), Sept. 23, 1996, 110 Stat. 2597.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following appropriations acts:

Pub. L. 104–61, title VIII, § 8094, Dec. 1, 1995, 109 Stat. 671.

Pub. L. 103–335, title VIII, § 8144, Sept. 30, 1994, 108 Stat. 2656.

§ 1079b. Procedures for charging fees for care provided to civilians; retention and use of fees collected

(a) REQUIREMENT TO IMPLEMENT PROCEDURES.—The Secretary of Defense shall implement procedures under which a military medical treatment facility may charge civilians who are not covered beneficiaries (or their insurers) fees representing the costs, as determined by the Secretary, of trauma and other medical care provided to such civilians.

(b) USE OF FEES COLLECTED.—A military medical treatment facility may retain and use the amounts collected under subsection (a) for—

(1) trauma consortium activities;

(2) administrative, operating, and equipment costs; and

(3) readiness training.

(Added Pub. L. 107–107, div. A, title VII, § 732(a)(1), Dec. 28, 2001, 115 Stat. 1169.)

DEADLINE FOR IMPLEMENTATION

Pub. L. 107–107, div. A, title VII, § 732(b), Dec. 28, 2001, 115 Stat. 1170, directed the Secretary of Defense to begin to implement the procedures required by subsec. (a) of this section not later than one year after Dec. 28, 2001.

§ 1080. Contracts for medical care for spouses and children: election of facilities

(a) ELECTION.—A dependent covered by section 1079 of this title may elect to receive inpatient medical care either in (1) the facilities of the uniformed services, under the conditions prescribed by sections 1076–1078 of this title, or (2) the facilities provided under a plan contracted for under section 1079 of this title. However, under such regulations as the Secretary of Defense, after consulting the other administering Secretaries, may prescribe, the right to make this election may be limited for dependents residing in the area where the member concerned is assigned, if adequate medical facilities of the uniformed services are available in that area for those dependents.

(b) ISSUANCE OF NONAVAILABILITY-OF-HEALTH-CARE STATEMENTS.—In determining whether to issue a nonavailability-of-health-care statement for a dependent described in subsection (a), the commanding officer of a facility of the uniformed services may consider the availability of health care services for the dependent pursuant to any contract or agreement entered into under this chapter for the provision of health care services. Notwithstanding any other provision of law, with respect to obstetrics and gynecological care for beneficiaries not enrolled in a managed care plan offered pursuant to any contract or agreement under this chapter, a nonavailability-of-health-care statement shall be required for receipt of health care services related to outpatient prenatal, outpatient or inpatient delivery, and outpatient post-partum care subsequent to the visit which confirms the pregnancy.

(c) WAIVERS AND EXCEPTIONS TO REQUIREMENTS.—(1) A covered beneficiary enrolled in a managed care plan offered pursuant to any contract or agreement under this chapter for the provision of health care services shall not be required to obtain a nonavailability-of-health-care statement as a condition for the receipt of health care.

(2) The Secretary of Defense may waive the requirement to obtain nonavailability-of-health-care statements following an evaluation of the effectiveness of such statements in optimizing the use of facilities of the uniformed services.

(Added Pub. L. 85–861, § 1(25)(B), Sept. 2, 1958, 72 Stat. 1449; amended Pub. L. 96–513, title V, § 511(36), Dec. 12, 1980, 94 Stat. 2923; Pub. L. 98–557, § 19(8), Oct. 30, 1984, 98 Stat. 2870; Pub. L. 103–160, div. A, title VII, § 716(b)(1), Nov. 30, 1993, 107 Stat. 1692; Pub. L. 104–201, div. A, title VII, § 734(a)(1), (b)(1), (c), Sept. 23, 1996, 110 Stat. 2598; Pub. L. 106–65, div. A, title VII, § 712(c), Oct. 5, 1999, 113 Stat. 687.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1080	37:411(c).	June 7, 1956, ch. 374, § 201(c), 70 Stat. 252.

The words ''a plan contracted for under section 1079 of this title'' are substituted for the words ''such insurance, medical service, or health plan or plans as may be provided by the authority contained in this section''. The words ''under the terms of this chapter'' are omitted as surplusage.

PRIOR PROVISIONS

A prior section 1080, act Aug. 10, 1956, ch. 1041, 70A Stat. 85, related to style and marking of envelopes, inserts, return envelopes, and to weight of ballots, prior to repeal by Pub. L. 85–861, § 36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§ 1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

1999—Subsec. (b). Pub. L. 106–65 inserted at end ''Notwithstanding any other provision of law, with respect to obstetrics and gynecological care for beneficiaries not enrolled in a managed care plan offered pursuant to any contract or agreement under this chapter, a nonavailability-of-health-care statement shall be required for receipt of health care services related to outpatient prenatal, outpatient or inpatient delivery, and out-

patient post-partum care subsequent to the visit which confirms the pregnancy.''

1996—Subsec. (a). Pub. L. 104–201, § 734(a)(1), inserted ''inpatient'' before ''medical care'' in first sentence.

Subsec. (b). Pub. L. 104–201, § 734(c), substituted ''Non-availability-of-Health-Care Statements'' for ''Non-availability of Health Care Statements'' in heading and ''nonavailability-of-health-care statement'' for ''non-availability of health care statement'' in text.

Subsec. (c). Pub. L. 104–201, § 734(b)(1), added subsec. (c).

1993—Pub. L. 103–160 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

1984—Pub. L. 98–557 substituted reference to administering Secretaries for reference to Secretary of Health and Human Services.

1980—Pub. L. 96–513 substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 1081. Contracts for medical care for spouses and children: review and adjustment of payments

Each plan under section 1079 of this title shall provide for a review, and if necessary an adjustment of payments, by the appropriate administering Secretary, not later than 120 days after the close of each year the plan is in effect.

(Added Pub. L. 85–861, § 1(25)(B), Sept. 2, 1958, 72 Stat. 1449; amended Pub. L. 96–513, title V, § 511(36), Dec. 12, 1980, 94 Stat. 2923; Pub. L. 97–375, title I, § 104(a), Dec. 21, 1982, 96 Stat. 1819; Pub. L. 98–94, title XII, § 1268(5)(A), Sept. 24, 1983, 97 Stat. 706; Pub. L. 98–557, § 19(9), Oct. 30, 1984, 98 Stat. 2870.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1081	37:412.	June 7, 1956, ch. 374, § 202, 70 Stat. 253.

The words ''Each plan under section 1079 of this title'' are substituted for the words ''Any insurance, medical service, or health plan or plans which may be entered into by the Secretary of Defense with respect to medical care under the provisions of this chapter''. The words ''after the close of each year the plan is in effect'' are substituted for the words ''after the first year the plan or plans have been in effect and each year thereafter''. The words ''Not later than'' are substituted for the word ''within''.

PRIOR PROVISIONS

A prior section 1081, act Aug. 10, 1956, ch. 1041, 70A Stat. 86, related to notification of elections, prior to repeal by Pub. L. 85–861, § 36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§ 1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

1984—Pub. L. 98–557 substituted reference to appropriate administering Secretary for reference to Secretary of Defense and Secretary of Health and Human Services.

1983—Pub. L. 98–94 struck out ''; reports'' after ''adjustment of payments'' in section catchline.

1982—Pub. L. 97–375 struck out requirement that the Secretary of Defense report to the Committees on Armed Services of the Congress amounts paid and adjustments made during the year covered by the review not later than 90 days after such review.

1980—Pub. L. 96–513 substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 1082. Contracts for health care: advisory committees

To carry out sections 1079–1081 and 1086 of this title, the Secretary of Defense may establish advisory committees on insurance, medical service, and health plans, to advise and make recommendations to him. He shall prescribe regulations defining their scope, activities, and procedures. Each committee shall consist of the Secretary, or his designee, as chairman, and such other persons as the Secretary may select. So far as possible, the members shall be representative of the organizations in the field of insurance, medical service, and health plans. They shall serve without compensation but may be allowed transportation and a per diem payment in place of subsistence and other expenses.

(Added Pub. L. 85–861, § 1(25)(B), Sept. 2, 1958, 72 Stat. 1449; amended Pub. L. 89–614, § 2(8), Sept. 30, 1966, 80 Stat. 866.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1082	37:413.	June 7, 1956, ch. 374, § 203, 70 Stat. 253.

The word ''organizations'' is inserted for clarity. The words ''consult'' and ''or plans'' are omitted as surplusage.

PRIOR PROVISIONS

A prior section 1082, act Aug. 10, 1956, ch. 1041, 70A Stat. 87, related to extension of time limit for making ballots available, prior to repeal by Pub. L. 85–861, § 36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§ 1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

1966—Pub. L. 89–614 substituted ''Contracts for health care'' for ''Contracts for medical care for spouses and children'' in section catchline and included reference to section 1086 in text.

EFFECTIVE DATE OF 1966 AMENDMENT

For effective date of amendment by Pub. L. 89–614, see section 3 of Pub. L. 89–614, set out as a note under section 1071 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1083. Contracts for medical care for spouses and children: additional hospitalization

If a dependent covered by a plan under section 1079 of this title needs hospitalization beyond the time limits in that plan, and if the hospitalization is authorized in medical facilities of the uniformed services, he may be transferred to such a facility for additional hospitalization. If transfer is not feasible, the expenses of additional hospitalization in the civilian facility may be paid under such regulations as the Secretary of Defense may prescribe after consulting the other administering Secretaries.

(Added Pub. L. 85–861, § 1(25)(B), Sept. 2, 1958, 72 Stat. 1449; amended Pub. L. 96–513, title V, § 511(36), Dec. 12, 1980, 94 Stat. 2923; Pub. L. 98–557, § 19(10), Oct. 30, 1984, 98 Stat. 2870.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1083	37:423.	June 7, 1956, ch. 374, § 303, 70 Stat. 254.

The words ''dependent covered by a plan under section 1079 of this title'' are substituted for the words ''person who is covered under an insurance, medical service, or health plan or plans, as provided in this chapter''. The words ''period of'', ''or plans'', and ''required by such person in a civilian facility'' are omitted as surplusage.

PRIOR PROVISIONS

A prior section 1083, act Aug. 10, 1956, ch. 1041, 70A Stat. 87, related to transmission, delivery, and return of post cards, ballots, etc., prior to repeal by Pub. L. 85–861, § 36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§ 1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

1984—Pub. L. 98–557 substituted reference to other administering Secretaries for reference to Secretary of Health and Human Services.

1980—Pub. L. 96–513 substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 1084. Determinations of dependency

A determination of dependency by an administering Secretary under this chapter is conclusive. However, the administering Secretary may change a determination because of new evidence or for other good cause. The Secretary's determination may not be reviewed in any court or by the Comptroller General, unless there has been fraud or gross negligence.

(Added Pub. L. 85–861, § 1(25)(B), Sept. 2, 1958, 72 Stat. 1450; amended Pub. L. 89–614, § 2(1), Sept. 30, 1966, 80 Stat. 862; Pub. L. 96–513, title V, § 511(34)(A), (36), Dec. 12, 1980, 94 Stat. 2922, 2923; Pub. L. 98–557, § 19(11), Oct. 30, 1984, 98 Stat. 2870; Pub. L. 108–375, div. A, title X, § 1084(c)(1), Oct. 28, 2004, 118 Stat. 2061.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1084	37:404.	June 7, 1956, ch. 374, § 304, 70 Stat. 254.

The words ''the General Accounting Office'' are substituted for the words ''any accounting officer of the Government'' for clarity. The words ''All'' and ''for all purposes'' are omitted as surplusage.

PRIOR PROVISIONS

A prior section 1084, act Aug. 10, 1956, ch. 1041, 70A Stat. 87, related to administration of former sections 1071 to 1086 of this title, prior to repeal by Pub. L. 85–861, § 36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§ 1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

2004—Pub. L. 108–375 substituted ''Comptroller General'' for ''General Accounting Office''.

1984—Pub. L. 98–557 substituted reference to administering Secretary for reference to Secretary of Defense and Secretary of Health and Human Services and reference to administering Secretary for reference to he.

1980—Pub. L. 96–513 substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare'', and ''this chapter'' for ''sections 1071–1087 of this title''.

1966—Pub. L. 89–614 substituted ''1087'' for ''1085''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

For effective date of amendment by Pub. L. 89–614, see section 3 of Pub. L. 89–614, set out as a note under section 1071 of this title.

§ 1085. Medical and dental care from another executive department: reimbursement

If a member or former member of a uniformed service under the jurisdiction of one executive department (or a dependent of such a member or former member) receives inpatient medical or dental care in a facility under the jurisdiction of another executive department, the appropriation for maintaining and operating the facility furnishing the care shall be reimbursed at rates established by the President to reflect the average cost of providing the care.

(Added Pub. L. 85–861, § 1(25)(B), Sept. 2, 1958, 72 Stat. 1450; amended Pub. L. 89–264, § 1, Oct. 19, 1965, 79 Stat. 989; Pub. L. 96–513, title V, § 511(36), (37), Dec. 12, 1980, 94 Stat. 2923; Pub. L. 98–94, title XII, § 1268(6), Sept. 24, 1983, 97 Stat. 706; Pub. L. 98–557, § 19(12), Oct. 30, 1984, 98 Stat. 2870; Pub. L. 99–145, title XIII, § 1303(a)(8), Nov. 8, 1985, 99 Stat. 739.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1085	37:421(d).	June 7, 1956, ch. 374, § 301(d), 70 Stat. 253.

The words ''other than that of the member or former member concerned'' are substituted for the words ''that is not the service of which he is a member or retired member, or that is not the service of the member or re-

tired member upon whom he is dependent''. The word ''medical'' before the word ''facility'' is omitted to make clear that the provision also relates to dental care. The words ''pursuant to the provisions of this chapter'' are omitted as surplusage.

PRIOR PROVISIONS

A prior section 1085, act Aug. 10, 1956, ch. 1041, 70A Stat. 87, related to prevention of fraud, coercion, and undue influence, to free discussion, and to acts done in good faith, prior to repeal by Pub. L. 85–861, § 36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§ 1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

1985—Pub. L. 99–145 indented first line of text.

1984—Pub. L. 98–557 substituted ''If a member or former member of a uniformed service under the jurisdiction of one executive department (or a dependent of such a member or former member) receives inpatient medical or dental care in a facility under the jurisdiction of another executive department, the appropriation for maintaining and operating the facility furnishing the care shall be reimbursed at rates established by the President to reflect the average cost of providing the care'' for ''If a member or former member of an armed force under the jurisdiction of a military department, or his dependent, receives inpatient medical or dental care in a facility under the jurisdiction of the Secretary of Health and Human Services, or if a member or former member of a uniformed service not under the jurisdiction of a military department, or his dependent, receives inpatient medical or dental care in a facility of an armed force under the jurisdiction of a military department, the appropriation for maintaining and operating the facility furnishing that care shall be reimbursed at rates established by the President to reflect the average cost of providing such care''.

1983—Pub. L. 98–94 inserted a comma after ''If a member or former member of an armed force under the jurisdiction of a military department, or his dependent''.

1980—Pub. L. 96–513 substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare'', and ''President'' for ''Bureau of the Budget''.

1965—Pub. L. 89–264 substituted ''executive department'' for ''uniformed service'' in section catchline, and provisions requiring reimbursement if a member or former member of an armed force under the jurisdiction of a military department, or his dependent receives care in a facility under the jurisdiction of Secretary of Health, Education, and Welfare, or if a member or former member of a uniformed service not under the jurisdiction of a military department, or his dependent, receives care in a facility of an armed force under the jurisdiction of a military department, for provisions which required reimbursement if a person received care in a facility of a uniformed service other than that of the member or former member concerned.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

DELEGATION OF FUNCTIONS

Authority of President under this section to establish uniform rates of reimbursement for inpatient medical or dental care delegated to Secretary of Health and Human Services in respect of such care in a facility under his jurisdiction and to Secretary of Defense in respect of such care in a facility of an armed force under jurisdiction of a military department, see section 6 of Ex. Ord. No. 11609, July 22, 1971, 36 F.R. 13747, set out as a note under section 301 of Title 3, The President.

§ 1086. Contracts for health benefits for certain members, former members, and their dependents

(a) To assure that health benefits are available for the persons covered by subsection (c), the Secretary of Defense, after consulting with the other administering Secretaries, shall contract under the authority of this section for health benefits for those persons under the same insurance, medical service, or health plans he contracts for under section 1079(a) of this title. However, eye examinations may not be provided under such plans for persons covered by subsection (c).

(b) For persons covered by this section the plans contracted for under section 1079(a) of this title shall contain the following provisions for payment by the patient:

(1) Except as provided in clause (2), the first $150 each fiscal year of the charges for all types of care authorized by this section and received while in an outpatient status and 25 percent of all subsequent charges for such care during a fiscal year.

(2) A family group of two or more persons covered by this section shall not be required to pay collectively more than the first $300 each fiscal year of the charges for all types of care authorized by this section and received while in an outpatient status and 25 percent of the additional charges for such care during a fiscal year.

(3) 25 percent of the charges for inpatient care, except that in no case may the charges for inpatient care for a patient exceed $535 per day during the period beginning on April 1, 2006, and ending on September 30, 2011. The Secretary of Defense may exempt a patient from paying such charges if the hospital to which the patient is admitted does not impose a legal obligation on any of its patients to pay for inpatient care.

(4) A member or former member of a uniformed service covered by this section by reason of section 1074(b) of this title, or an individual or family group of two or more persons covered by this section, may not be required to pay a total of more than $3,000 for health care received during any fiscal year under a plan contracted for under section 1079(a) of this title.

(c) Except as provided in subsection (d), the following persons are eligible for health benefits under this section:

(1) Those covered by sections 1074(b) and 1076(b) of this title, except those covered by section 1072(2)(E) of this title.

(2) A dependent (other than a dependent covered by section 1072(2)(E) of this title) of a member of a uniformed service—

(A) who died while on active duty for a period of more than 30 days; or

(B) who died from an injury, illness, or disease incurred or aggravated—

(i) while on active duty under a call or order to active duty of 30 days or less, on active duty for training, or on inactive duty training; or

(ii) while traveling to or from the place at which the member is to perform, or has

performed, such active duty, active duty for training, or inactive duty training.

(3) A dependent covered by clause (F), (G), or (H) of section 1072(2) of this title who is not eligible under paragraph (1).

(d)(1) A person who is entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.) is not eligible for health benefits under this section.

(2) The prohibition contained in paragraph (1) shall not apply to a person referred to in subsection (c) who—

(A) is enrolled in the supplementary medical insurance program under part B of such title (42 U.S.C. 1395j et seq.); and

(B) in the case of a person under 65 years of age, is entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act pursuant to subparagraph (A) or (C) of section 226(b)(2) of such Act (42 U.S.C. 426(b)(2)) or section 226A(a) of such Act (42 U.S.C. 426–1(a)).

(3)(A) Subject to subparagraph (B), if a person described in paragraph (2) receives medical or dental care for which payment may be made under medicare and a plan contracted for under subsection (a), the amount payable for that care under the plan shall be the amount of the actual out-of-pocket costs incurred by the person for that care over the sum of—

(i) the amount paid for that care under medicare; and

(ii) the total of all amounts paid or payable by third party payers other than medicare.

(B) The amount payable for care under a plan pursuant to subparagraph (A) may not exceed the total amount that would be paid under the plan if payment for that care were made solely under the plan.

(C) In this paragraph:

(i) The term ''medicare'' means title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(ii) The term ''third party payer'' has the meaning given such term in section 1095(h)(1) of this title.

(4)(A) If a person referred to in subsection (c) and described by paragraph (2)(B) is subject to a retroactive determination by the Social Security Administration of entitlement to hospital insurance benefits described in paragraph (1), the person shall, during the period described in subparagraph (B), be deemed for purposes of health benefits under this section—

(i) not to have been covered by paragraph (1); and

(ii) not to have been subject to the requirements of section 1079(j)(1) of this title, whether through the operation of such section or subsection (g) of this section.

(B) The period described in this subparagraph with respect to a person covered by subparagraph (A) is the period that—

(i) begins on the date that eligibility of the person for hospital insurance benefits referred to in paragraph (1) is effective under the retroactive determination of eligibility with respect to the person as described in subparagraph (A); and

(ii) ends on the date of the issuance of such retroactive determination of eligibility by the Social Security Administration.

(5) The administering Secretaries shall develop a mechanism by which persons described in subparagraph (B) of paragraph (2) who do not satisfy the condition specified in subparagraph (A) of such paragraph are promptly notified of their ineligibility for health benefits under this section. In developing the notification mechanism, the administering Secretaries shall consult with the Administrator of the Centers for Medicare & Medicaid Services.

(e) A person covered by this section may elect to receive inpatient medical care either in (1) Government facilities, under the conditions prescribed in sections 1074 and 1076–1078 of this title, or (2) the facilities provided under a plan contracted for under this section. However, under joint regulations issued by the administering Secretaries, the right to make this election may be limited for those persons residing in an area where adequate facilities of the uniformed service are available. In addition, subsections (b) and (c) of section 1080 of this title shall apply in making the determination whether to issue a nonavailability of health care statement for a person covered by this section.

(f) The provisions of section 1079(h) of this title shall apply to payments for services by an individual health-care professional (or other noninstitutional health-care provider) under a plan contracted for under subsection (a).

(g) Section 1079(j) of this title shall apply to a plan contracted for under this section, except that no person eligible for health benefits under this section may be denied benefits under this section with respect to care or treatment for any service-connected disability which is compensable under chapter 11 of title 38 solely on the basis that such person is entitled to care or treatment for such disability in facilities of the Department of Veterans Affairs.

(h)(1) Subject to paragraph (2), the Secretary of Defense may, upon request, make payments under this section for a charge for services for which a claim is submitted under a plan contracted for under subsection (a) to a hospital that does not impose a legal obligation on any of its patients to pay for such services.

(2) A payment under paragraph (1) may not exceed the average amount paid for comparable services in the geographic area in which the hospital is located or, if no comparable services are available in that area, in an area similar to the area in which the hospital is located.

(3) The Secretary of Defense shall periodically review the billing practices of each hospital the Secretary approves for payment under this subsection to ensure that the hospital's practices of not billing patients for payment are not resulting in increased costs to the Government.

(4) The Secretary of Defense may require each hospital the Secretary approves for payment under this subsection to provide evidence that it has sources of revenue to cover unbilled costs.

(Added Pub. L. 89–614, § 2(7), Sept. 30, 1966, 80 Stat. 865; amended Pub. L. 95–485, title VIII,

§ 806(a)(2), Oct. 20, 1978, 92 Stat. 1622; Pub. L. 96–173, § 1, Dec. 29, 1979, 93 Stat. 1287; Pub. L. 96–513, title V, §§ 501(14), 511(36), (39), Dec. 12, 1980, 94 Stat. 2908, 2923; Pub. L. 97–86, title IX, § 906(a)(2), Dec. 1, 1981, 95 Stat. 1117; Pub. L. 97–252, title X, § 1004(c), Sept. 8, 1982, 96 Stat. 737; Pub. L. 98–94, title IX, § 931(b), Sept. 24, 1983, 97 Stat. 649; Pub. L. 98–525, title VI, § 632(a)(2), Oct. 19, 1984, 98 Stat. 2543; Pub. L. 98–557, § 19(13), Oct. 30, 1984, 98 Stat. 2870; Pub. L. 99–145, title VI, § 652(b), Nov. 8, 1985, 99 Stat. 657; Pub. L. 99–661, div. A, title VI, § 604(f)(1)(C), Nov. 14, 1986, 100 Stat. 3877; Pub. L. 100–180, div. A, title VII, § 721(b), Dec. 4, 1987, 101 Stat. 1115; Pub. L. 100–456, div. A, title VI, § 646(b), Sept. 29, 1988, 102 Stat. 1989; Pub. L. 101–189, div. A, title VII, § 731(c)(2), title XVI, § 1621(a)(3), Nov. 29, 1989, 103 Stat. 1482, 1603; Pub. L. 101–510, div. A, title VII, § 712(b), Nov. 5, 1990, 104 Stat. 1583; Pub. L. 102–190, div. A, title VII, § 704(a), (b)(1), Dec. 5, 1991, 105 Stat. 1401; Pub. L. 102–484, div. A, title VII, §§ 703(a), 705(a), Oct. 23, 1992, 106 Stat. 2432; Pub. L. 103–35, title II, § 203(b)(2), May 31, 1993, 107 Stat. 102; Pub. L. 103–160, div. A, title VII, § 716(b)(2), Nov. 30, 1993, 107 Stat. 1693; Pub. L. 103–337, div. A, title VII, § 711, Oct. 5, 1994, 108 Stat. 2801; Pub. L. 104–106, div. A, title VII, § 732, Feb. 10, 1996, 110 Stat. 381; Pub. L. 104–201, div. A, title VII, § 734(a)(2), (b)(2), Sept. 23, 1996, 110 Stat. 2598; Pub. L. 106–398, § 1 [[div. A], title VII, §§ 712(a)(1), 759], Oct. 30, 2000, 114 Stat. 1654, 1654A–176, 1654A–200; Pub. L. 108–173, title IX, § 900(e)(4)(A), Dec. 8, 2003, 117 Stat. 2373; Pub. L. 109–364, div. A, title VII, § 704(b), Oct. 17, 2006, 120 Stat. 2280; Pub. L. 110–181, div. A, title VII, § 701(b), Jan. 28, 2008, 122 Stat. 187; Pub. L. 110–417, [div. A], title VII, § 701(b), Oct. 14, 2008, 122 Stat. 4498; Pub. L. 111–84, div. A, title VII, §§ 706, 709, Oct. 28, 2009, 123 Stat. 2375, 2378; Pub. L. 111–383, div. A, title VII, § 701(b), Jan. 7, 2011, 124 Stat. 4244.)

References in Text

The Social Security Act, referred to in subsec. (d), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Act is classified generally to subchapter XVIII (§ 1395 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. Parts A and B of title XVIII of the Act are classified generally to parts A (§ 1395c et seq.) and B (§ 1395j et seq.), respectively, of subchapter XVIII of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Prior Provisions

A prior section 1086, act Aug. 10, 1956, ch. 1041, 70A Stat. 88, authorized the mailing of official post cards, ballots, voting instructions, and envelopes, free of postage, prior to repeal by Pub. L. 85–861, § 36(B)(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§ 1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

Amendments

2011—Subsec. (b)(3). Pub. L. 111–383 substituted ''September 30, 2011'' for ''September 30, 2010''.

2009—Subsec. (b)(3). Pub. L. 111–84, § 709, substituted ''September 30, 2010'' for ''September 30, 2009''.

Subsec. (d)(4), (5). Pub. L. 111–84, § 706, added par. (4) and redesignated former par. (4) as (5).

2008—Subsec. (b)(3). Pub. L. 110–417 substituted ''September 30, 2009'' for ''September 30, 2008''.

Pub. L. 110–181 substituted ''September 30, 2008'' for ''September 30, 2007.''

2006—Subsec. (b)(3). Pub. L. 109–364 inserted '', except that in no case may the charges for inpatient care for a patient exceed $535 per day during the period beginning on April 1, 2006, and ending on September 30, 2007.'' after ''charges for inpatient care''.

2003—Subsec. (d)(4). Pub. L. 108–173 substituted ''Administrator of the Centers for Medicare & Medicaid Services'' for ''administrator of the Health Care Financing Administration'' in last sentence.

2000—Subsec. (b)(4). Pub. L. 106–398, § 1 [[div. A], title VII, § 759], substituted ''$3,000'' for ''$7,500''.

Subsec. (d)(2). Pub. L. 106–398, § 1 [[div. A], title VII, § 712(a)(1)(A)], added par. (2) and struck out former par. (2) which read as follows: ''The prohibition contained in paragraph (1) shall not apply in the case of a person referred to in subsection (c) who—

''(A) is entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act pursuant to subparagraph (A) or (C) of section 226(b)(2) of such Act (42 U.S.C. 426(b)(2)) or section 226A(a) of such Act (42 U.S.C. 426–1(a));

''(B) is under 65 years of age; and

''(C) is enrolled in the supplementary medical insurance program under part B of such title (42 U.S.C. 1395j et seq.).''

Subsec. (d)(4). Pub. L. 106–398, § 1 [[div. A], title VII, § 712(a)(1)(B)], substituted ''subparagraph (B) of paragraph (2) who do not satisfy the condition specified in subparagraph (A) of such paragraph'' for ''paragraph (1) who satisfy only the criteria specified in subparagraphs (A) and (B) of paragraph (2), but not subparagraph (C) of such paragraph,''.

1996—Subsec. (d)(4). Pub. L. 104–106 added par. (4).

Subsec. (e). Pub. L. 104–201 substituted ''inpatient medical care'' for ''benefits'' in first sentence and ''subsections (b) and (c) of section 1080'' for ''section 1080(b)'' in last sentence.

1994—Subsec. (d)(3). Pub. L. 103–337 added par. (3) and struck out former par. (3) which read as follows: ''If a person described in paragraph (2) receives medical or dental care for which payment may be made under both title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) and a plan contracted for under subsection (a), the amount payable for that care under the plan may not exceed the difference between—

''(A) the sum of any deductibles, coinsurance, and balance billing charges that would be imposed on the person if payment for that care were made solely under that title; and

''(B) the sum of any deductibles, coinsurance, and balance billing charges that would be imposed on the person if payment for that care were made solely under the plan.''

1993—Subsec. (d). Pub. L. 103–35 made technical amendment to directory language of Pub. L. 102–190, § 704(a). See 1991 Amendment note below.

Subsec. (e). Pub. L. 103–160 inserted at end ''In addition, section 1080(b) of this title shall apply in making the determination whether to issue a nonavailability of health care statement for a person covered by this section.''

1992—Subsec. (b)(4). Pub. L. 102–484, § 703(a), substituted ''$7,500'' for ''$10,000''.

Subsec. (d)(2)(A). Pub. L. 102–484, § 705(a), inserted before semicolon ''or section 226A(a) of such Act (42 U.S.C. 426–1(a))''.

1991—Subsec. (c). Pub. L. 102–190, § 704(b)(1)(A), substituted ''Except as provided in subsection (d), the following'' for ''The following'' in introductory provisions and struck out at end ''However, a person who is entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.) is not eligible for health benefits under this section.''

Subsec. (d). Pub. L. 102–190, § 704(a), as amended by Pub. L. 103–35, added subsec. (d) and struck out former subsec. (d) which read as follows: ''The provisions of section 1079(j) of this title shall apply to a plan covered by this section.''

Subsec. (g). Pub. L. 102–190, § 704(b)(1)(B), substituted ''Section 1079(j) of this title shall apply to a plan con-

tracted for under this section, except that'' for ''Notwithstanding subsection (d) or any other provision of this chapter,''.

1990—Subsec. (b)(1), (2). Pub. L. 101–510 substituted ''$150'' for ''$50'' in par. (1) and ''$300'' for ''$100'' in par. (2).

1989—Subsec. (c)(3). Pub. L. 101–189, § 731(c)(2), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''A dependent covered by section 1072(2)(F) of this title.''

Subsec. (g). Pub. L. 101–189, § 1621(a)(3), substituted ''facilities of the Department of Veterans Affairs'' for ''Veterans' Administration facilities''.

1988—Subsec. (b)(3). Pub. L. 100–456, § 646(b)(1), inserted provision authorizing Secretary of Defense to exempt a patient from paying such charges if the hospital to which the patient is admitted does not impose a legal obligation on any of its patients to pay for inpatient care.

Subsec. (h). Pub. L. 100–456, § 646(b)(2), added subsec. (h).

1987—Subsec. (b)(4). Pub. L. 100–180 added par. (4).

1986—Subsec. (c)(2)(B). Pub. L. 99–661 inserted reference to disease.

1985—Subsec. (c)(2). Pub. L. 99–145 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''A dependent of a member of a uniformed service who died while on active duty for a period of more than thirty days, except a dependent covered by section 1072(2)(E) of this title.''

1984—Subsec. (a). Pub. L. 98–557, § 19(13)(A), substituted reference to other administering Secretaries for reference to Secretary of Health and Human Services.

Pub. L. 98–525 inserted ''However, eye examinations may not be provided under such plans for persons covered by subsection (c).''

Subsec. (e). Pub. L. 98–557, § 19(13)(B), substituted reference to the administering Secretaries for reference to the Secretary of Defense and the Secretary of Health and Human Services.

1983—Subsec. (d). Pub. L. 98–94 substituted ''The provisions of section 1079(j) of this title shall apply to a plan covered by this section'' for ''No benefits shall be payable under any plan covered by this section in the case of a person enrolled in any other insurance, medical service, or health plan provided by law or through employment unless that person certifies that the particular benefit he is claiming is not payable under the other plan''.

1982—Subsec. (c)(3). Pub. L. 97–252 added par. (3).

1981—Subsec. (f). Pub. L. 97–86 substituted ''services by an individual health-care professional (or other noninstitutional health-care provider)'' for ''physician services''.

1980—Subsec. (a). Pub. L. 96–513, § 511(36), substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

Subsec. (b). Pub. L. 96–513, § 511(39)(A), substituted ''percent'' for ''per centum'' wherever appearing.

Subsec. (c). Pub. L. 96–513, §§ 501(14), 511(39)(B), substituted ''section 1072(2)(E)'' for ''section 1072(2)(F)'' in pars. (1) and (2) and, in provisions following par. (2), substituted ''part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.)'' for ''title I of the Social Security Amendments of 1965 (79 Stat. 286)''.

1979—Subsec. (g). Pub. L. 96–173 added subsec. (g).

1978—Subsec. (f). Pub. L. 95–485 added subsec. (f).

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, § 1 [[div. A], title VII, § 712(a)(3)], Oct. 30, 2000, 114 Stat. 1654, 1654A–177, provided that: ''The amendments made by paragraphs (1) and (2) [amending this section and section 1395ggg of Title 42, The Public Health and Welfare] shall take effect on October 1, 2001.''

EFFECTIVE DATE OF 1992 AMENDMENT

Section 703(b) of Pub. L. 102–484 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to fiscal years beginning after September 30, 1992.''

EFFECTIVE DATE OF 1991 AMENDMENT

Section 704(c) of Pub. L. 102–190, which provided that subsection (d) of this section was to apply with respect to health care benefits or services received by a person described in such subsection on or after Dec. 5, 1991, was repealed by Pub. L. 102–484, div. A, title VII, § 705(c)(1), Oct. 23, 1992, 106 Stat. 2433.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–510 applicable with respect to health care provided under this section and section 1079 of this title on or after Apr. 1, 1991, see section 712(c) of Pub. L. 101–510, set out as a note under section 1079 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 731(c)(2) of Pub. L. 101–189 applicable to a person referred to in 10 U.S.C. 1072(2)(H) whose decree of divorce, dissolution, or annulment becomes final on or after Nov. 29, 1989, and to a person so referred to whose decree became final during the period from Sept. 29, 1988 to Nov. 28, 1989, as if the amendment had become effective on Sept. 29, 1988, see section 731(d) of Pub. L. 101–189, set out as a note under section 1072 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–456 applicable with respect to medical care received after September 30, 1988, see section 646(c) of Pub. L. 100–456, set out as a note under section 1079 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–180 applicable with respect to fiscal years beginning after September 30, 1987, see section 721(c) of Pub. L. 100–180, set out as a note under section 1079 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–661 applicable with respect to persons who, after Nov. 14, 1986, incur or aggravate an injury, illness, or disease or die, see section 604(g) of Pub. L. 99–661, set out as a note under section 1074a of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–145 applicable only with respect to dependents of members of the uniformed services whose deaths occur after Sept. 30, 1985, see section 652(c) of Pub. L. 99–145, set out as a note under section 1076 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–525 applicable only to health care furnished after Sept. 30, 1984, see section 632(a)(3) of Pub. L. 98–525, set out as a note under section 1079 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–94 effective Oct. 1, 1983, see section 931(c) of Pub. L. 98–94, set out as a note under section 1079 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT; TRANSITION PROVISIONS

Amendment by Pub. L. 97–252 effective Feb. 1, 1983, and applicable in the case of any former spouse of a member or former member of the uniformed services whether final decree of divorce, dissolution, or annulment of marriage of former spouse and such member or former member is dated before, on, or after Feb. 1, 1983, see section 1006 of Pub. L. 97–252, set out as an Effective Date; Transition Provisions note under section 1408 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–86 to apply with respect to claims submitted for payment for services provided after the end of the 30-day period beginning on Dec. 1, 1981, see section 906(b) of Pub. L. 97–86, set out as a note under section 1079 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 501(14) of Pub. L. 96–513 effective Sept. 15, 1981, and amendment by section 511(36), (39) of Pub. L. 96–513 effective Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Section 2 of Pub. L. 96–173 provided that: ''The amendment made by the first section of this Act [amending this section] shall take effect on October 1, 1979.''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–485 applicable with respect to claims submitted for payment for services provided on or after the first day of the first calendar year beginning after Oct. 20, 1978, see section 806(b) of Pub. L. 95–485, set out as a note under section 1079 of this title.

EFFECTIVE DATE

For effective date of section, see section 3 of Pub. L. 89–614, set out as a note under section 1071 of this title.

TEMPORARY AUTHORITY FOR WAIVER OF COLLECTION OF PAYMENTS DUE FOR CHAMPUS BENEFITS RECEIVED BY CERTAIN PERSONS UNAWARE OF LOSS OF CHAMPUS ELIGIBILITY

Pub. L. 108–375, div. A, title VII, §716, Oct. 28, 2004, 118 Stat. 1986, authorized the Secretary of Defense to waive the collection of payments otherwise due for health benefits from certain persons described in subsec. (d) of this section who were unaware of the loss of eligibility to receive health benefits under such subsection and authorized a continuation of benefits for such persons during the period beginning on July 1, 1999, and ending on Dec. 31, 2004.

Similar provisions were contained in the following prior authorization acts:

Pub. L. 105–261, div. A, title VII, §704, Oct. 17, 1998, 112 Stat. 2057.

Pub. L. 104–106, div. A, title VII, §743, Feb. 10, 1996, 110 Stat. 385.

MINIMUM AMOUNT PAYABLE FOR SERVICES PROVIDED UNDER THIS SECTION

Pub. L. 103–335, title VIII, §8052, Sept. 30, 1994, 108 Stat. 2629, provided that: ''Notwithstanding any other provision of law, of the funds appropriated for the Defense Health Program during this fiscal year and hereafter, the amount payable for services provided under this section shall not be less than the amount calculated under the coordination of benefits reimbursement formula utilized when CHAMPUS is a secondary payor to medical insurance programs other than Medicare, and such appropriations as necessary shall be available (notwithstanding the last sentence of section 1086(c) of title 10, United States Code) to continue Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) benefits, until age 65, under such section for a former member of a uniformed service who is entitled to retired or retainer pay or equivalent pay, or a dependent of such a member, or any other beneficiary described by section 1086(c) of title 10, United States Code, who becomes eligible for hospital insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) [42 U.S.C. 1395c et seq.] solely on the grounds of physical disability, or end stage renal disease: *Provided*, That expenses under this section shall only be covered to the extent that such expenses are not covered under parts A and B of title XVIII of the Social Security Act [42 U.S.C. 1395c et seq., 1395j et seq.] and are otherwise covered under CHAMPUS: *Provided further*, That no reimbursement shall be made for services provided prior to October 1, 1991.''

AUTHORIZATION TO APPLY SECTION 1079 PAYMENT RULES FOR SPOUSE AND CHILDREN OF MEMBER WHO DIES WHILE ON ACTIVE DUTY

Pub. L. 103–160, div. A, title VII, §704, Nov. 30, 1993, 107 Stat. 1687, provided that in the case of an eligible dependent of a member of a uniformed service who died while on active duty for a period of more than 30 days, the administering Secretary could apply the payment provisions set forth in section 1079(b) of this title (in lieu of the payment provisions set forth in section 1086(b) of this title), with respect to health benefits received by the dependent under such section 1086 in connection with an illness or medical condition for which the dependent was receiving treatment under chapter 55 of this title at time of death of the member, prior to repeal by Pub. L. 103–337, div. A, title VII, §707(d), Oct. 5, 1994, 108 Stat. 2801.

[Section 707(d) of Pub. L. 103–337 provided in part that: ''The repeal of such section [section 704 of Pub. L. 103–160, formerly set out above] shall not terminate the special payment rules provided in such section with respect to any person eligible for such payment rules on the date of the enactment of this Act [Oct. 5, 1994].'']

COVERAGE OF CARE PROVIDED SINCE SEPTEMBER 30, 1991

Section 705(b) of Pub. L. 102–484 provided that: ''Subsection (d) of section 1086 of title 10, United States Code, as added by section 704(a) of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102–190; 105 Stat. 1401) and amended by subsection (a) of this section, shall apply with respect to health care benefits or services received after September 30, 1991, by a person described in subsection (d)(2) of such section 1086 if such benefits or services would have been covered under a plan contracted for under such section 1086.''

§1086a. Certain former spouses: extension of period of eligibility for health benefits

(a) AVAILABILITY OF CONVERSION HEALTH POLICIES.—The Secretary of Defense shall inform each person who has been a dependent for a period of one year or more under section 1072(2)(H) of this title of the availability of a conversion health policy for purchase by the person. A conversion health policy offered under this subsection shall provide coverage for not less than a 24-month period.

(b) EFFECT OF PURCHASE.—(1) Subject to paragraph (2), if a person who is a dependent for a one-year period under section 1072(2)(H) of this title purchases a conversion health policy within that period (or within a reasonable time after that period as prescribed by the Secretary of Defense), the person shall continue to be eligible for medical and dental care in the manner described in section 1076 of this title and health benefits under section 1086 of this title until the end of the 24-month period beginning on the later of—

(A) the date the person is no longer a dependent under section 1072(2)(H) of this title; and

(B) the date of the purchase of the policy.

(2) The extended period of eligibility provided under paragraph (1) shall apply only with regard to a condition of the person that—

(A) exists on the date on which coverage under the conversion health policy begins; and

(B) for which care is not provided under the policy solely on the grounds that the condition is a preexisting condition.

(c) EFFECT OF UNAVAILABILITY OF POLICIES.—(1) If the Secretary of Defense is unable, within a reasonable time, to enter into a contract with a private insurer to offer conversion health policies under subsection (a) at a rate not to exceed the payment required under section 8905a(d)(1)(A) of title 5 for comparable coverage, the Secretary shall provide the coverage required under such a policy through the Civilian Health and Medical Program of the Uniformed Services. Subject to paragraph (2), a person receiving coverage under this subsection shall be required to pay into the Military Health Care Account or other appropriate account an amount equal to the sum of—

(A) the individual and Government contributions which would be required in the case of a person enrolled in a health benefits plan contracted for under section 1079 of this title; and

(B) an amount necessary for administrative expenses, but not to exceed two percent of the amount under subparagraph (A).

(2) The amount paid by a person who purchases a conversion health policy from the Secretary of Defense under paragraph (1) may not exceed the payment required under section 8905a(d)(1)(A) of title 5 for comparable coverage.

(3) In order to reduce premiums required under paragraph (1), the Secretary of Defense may offer a program of coverage that, with respect to mental health services, offers reduced coverage and increased cost-sharing by the purchaser.

(d) CONVERSION HEALTH POLICY DEFINED.—In this section, the term ''conversion health policy'' means a health insurance policy with a private insurer, developed through negotiations between the Secretary of Defense and the private insurer, that is available for purchase by or for the use of a person who is a dependent for a one-year period under section 1072(2)(H) of this title.

(Added Pub. L. 101–189, div. A, title VII, § 731(b)(1), Nov. 29, 1989, 103 Stat. 1482; amended Pub. L. 102–484, div. D, title XLIV, § 4407(b), Oct. 23, 1992, 106 Stat. 2707; Pub. L. 103–35, title II, § 202(a)(16), May 31, 1993, 107 Stat. 102.)

AMENDMENTS

1993—Subsec. (b)(1). Pub. L. 103–35 made technical amendment to directory language of Pub. L. 102–484, § 4407(b)(2). See 1992 Amendment note below.

1992—Subsec. (a). Pub. L. 102–484, § 4407(b)(1), inserted at end ''A conversion health policy offered under this subsection shall provide coverage for not less than a 24-month period.''

Subsec. (b)(1). Pub. L. 102–484, § 4407(b)(2), as amended by Pub. L. 103–35, substituted ''24-month period'' for ''one-year period'' the second place appearing in the introductory provisions of par. (1).

Subsecs. (c), (d). Pub. L. 102–484, § 4407(b)(3), (4), added subsec. (c) and redesignated former subsec. (c) as (d).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–35 applicable as if included in the enactment of Pub. L. 102–484, see section 202(b) of Pub. L. 103–35, set out as a note under section 155 of this title.

EFFECTIVE DATE

Section applicable to a person referred to in 10 U.S.C. 1072(2)(H) whose decree of divorce, dissolution, or annulment becomes final on or after Nov. 29, 1989, and to a person so referred to whose decree became final during the period from Sept. 29, 1988 to Nov. 28, 1989, as if section had become effective on Sept. 29, 1988, see section 731(d) of Pub. L. 101–189, set out as an Effective Date of 1989 Amendment note under section 1072 of this title.

APPLICATION OF AMENDMENTS BY PUB. L. 102–484 TO EXISTING CONTRACTS

Section 4407(c) of Pub. L. 102–484 provided that: ''In the case of conversion health policies provided under section 1145(b) or 1086a(a) of title 10, United States Code, and in effect on the date of the enactment of this Act [Oct. 23, 1992], the Secretary of Defense shall—

''(1) arrange with the private insurer providing these policies to extend the term of the policies (and coverage of preexisting conditions) as provided by the amendments made by this section [amending this section and section 1145 of this title]; or

''(2) make other arrangements to implement the amendments made by this section with respect to these policies.''

TERMINATION OF APPLICABILITY OF OTHER CONVERSION HEALTH POLICIES

Section 4408(c) of Pub. L. 102–484 provided that:

''(1) No person may purchase a conversion health policy under section 1145(b) or 1086a of title 10, United States Code, on or after October 1, 1994. A person covered by such a conversion health policy on that date may cancel that policy and enroll in a health benefits plan under section 1078a of such title.

''(2) No person may be covered concurrently by a conversion health policy under section 1145(b) or 1086a of such title and a health benefits plan under section 1078a of such title.''

§ 1086b. Prohibition against requiring retired members to receive health care solely through the Department of Defense

The Secretary of Defense may not take any action that would require, or have the effect of requiring, a member or former member of the armed forces who is entitled to retired or retainer pay to enroll to receive health care from the Federal Government only through the Department of Defense.

(Added Pub. L. 107–107, div. A, title VII, § 731(a), Dec. 28, 2001, 115 Stat. 1169.)

§ 1087. Programing facilities for certain members, former members, and their dependents in construction projects of the uniformed services

(a) Space for inpatient and outpatient care may be programed in facilities of the uniformed services for persons covered by sections 1074(b) and 1076(b) of this title. The maximum amount of space that may be so programed for a facility is the greater of—

(1) the amount of space that would be so programed for the facility in order to meet the requirements to be placed on the facility for support of the teaching and training of health-care professionals; and

(2) the amount of space that would be so programed for the facility based upon the most cost-effective provision of inpatient and outpatient care to persons covered by sections 1074(b) and 1076(b) of this title.

(b)(1) In making determinations for the purposes of clauses (1) and (2) of subsection (a), the

Secretary concerned shall take into consideration—

(A) the amount of space that would be so programed for the facility based upon projected inpatient and outpatient workloads at the facility for persons covered by sections 1074(b) and 1076(b) of this title; and

(B) the anticipated capability of the medical and dental staff of the facility, determined in accordance with regulations prescribed by the Secretary of Defense and based upon realistic projections of the number of physicians and other health-care providers that it can reasonably be expected will be assigned to or will otherwise be available to the facility.

(2) In addition, a determination made for the purpose of clause (2) of subsection (a) shall be made in accordance with an economic analysis (including a life-cycle cost analysis) of the facility and consideration of all reasonable and available medical care treatment alternatives (including treatment provided under a contract under section 1086 of this title or under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.)).

(Added Pub. L. 89–614, § 2(7), Sept. 30, 1966, 80 Stat. 866; amended Pub. L. 97–337, § 1, Oct. 15, 1982, 96 Stat. 1631; Pub. L. 98–525, title XIV, § 1405(24), Oct. 19, 1984, 98 Stat. 2623; Pub. L. 99–661, div. A, title XIII, § 1343(a)(4), Nov. 14, 1986, 100 Stat. 3992.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(2), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. Part A of title XVIII of the Social Security Act, is classified generally to Part A (§ 1395c et seq.) of subchapter XVIII of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1986—Subsec. (b)(2). Pub. L. 99–661 substituted ''Act (42 U.S.C. 1395c et seq.))'' for ''Act. (42 U.S.C. 1395c et seq.)''.

1984—Subsec. (b)(2). Pub. L. 98–525 which directed that ''(42 U.S.C. 1395c et seq.)'' be inserted after ''the Social Security Act.'', was executed by inserting parenthetical after ''the Social Security Act'' to reflect the probable intent of Congress. See 1986 Amendment note above.

1982—Subsec. (a). Pub. L. 97–337, § 1(1), designated existing provisions as subsec. (a).

Pub. L. 97–337, § 1(2), substituted provisions limiting the maximum amount of space to be programed as the greater of the amounts of space described in par. (1) or (2) for provisions limiting the amount of space to be programed to that amount needed to support teaching and training requirements, except that space may be programed in areas having large concentrations of retired members where there is a critical shortage of facilities.

Subsec. (b). Pub. L. 97–337, § 1(2), added subsec. (b).

EFFECTIVE DATE OF 1982 AMENDMENT

Section 2 of Pub. L. 97–337 provided that: ''The amendment made by paragraph (2) of the first section of this Act [amending this section] shall apply only with respect to a facility for which funds for construction (or a major alteration) are first appropriated for a fiscal year after fiscal year 1983.''

EFFECTIVE DATE

For effective date of section, see section 3 of Pub. L. 89–614, set out as a note under section 1071 of this title.

§ 1088. Air evacuation patients: furnished subsistence

Notwithstanding any other provision of law, and under regulations to be prescribed by the Secretary concerned, a person entitled to medical and dental care under this chapter may be furnished subsistence without charge while being evacuated as a patient by military aircraft of the United States.

(Added Pub. L. 91–481, § 2(1), Oct. 21, 1970, 84 Stat. 1081.)

§ 1089. Defense of certain suits arising out of medical malpractice

(a) The remedy against the United States provided by sections 1346(b) and 2672 of title 28 for damages for personal injury, including death, caused by the negligent or wrongful act or omission of any physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (including medical and dental technicians, nursing assistants, and therapists) of the armed forces, the National Guard while engaged in training or duty under section 316, 502, 503, 504, or 505 of title 32, the Department of Defense, the Armed Forces Retirement Home, or the Central Intelligence Agency in the performance of medical, dental, or related health care functions (including clinical studies and investigations) while acting within the scope of his duties or employment therein or therefor shall hereafter be exclusive of any other civil action or proceeding by reason of the same subject matter against such physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (or the estate of such person) whose act or omission gave rise to such action or proceeding. This subsection shall also apply if the physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (or the estate of such person) involved is serving under a personal services contract entered into under section 1091 of this title.

(b) The Attorney General shall defend any civil action or proceeding brought in any court against any person referred to in subsection (a) of this section (or the estate of such person) for any such injury. Any such person against whom such civil action or proceeding is brought shall deliver within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon such person or an attested true copy thereof to such person's immediate superior or to whomever was designated by the head of the agency concerned to receive such papers and such person shall promptly furnish copies of the pleading and process therein to the United States attorney for the district embracing the place wherein the action or proceeding is brought, to the Attorney General and to the head of the agency concerned.

(c) Upon a certification by the Attorney General that any person described in subsection (a) was acting in the scope of such person's duties or employment at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of

the United States of the district and division embracing the place wherein it is pending and the proceeding deemed a tort action brought against the United States under the provisions of title 28 and all references thereto. Should a United States district court determine on a hearing on a motion to remand held before a trial on the merits that the case so removed is one in which a remedy by suit within the meaning of subsection (a) of this section is not available against the United States, the case shall be remanded to the State court.

(d) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28, and with the same effect.

(e) For purposes of this section, the provisions of section 2680(h) of title 28 shall not apply to any cause of action arising out of a negligent or wrongful act or omission in the performance of medical, dental, or related health care functions (including clinical studies and investigations).

(f)(1) The head of the agency concerned may, to the extent that the head of the agency concerned considers appropriate, hold harmless or provide liability insurance for any person described in subsection (a) for damages for personal injury, including death, caused by such person's negligent or wrongful act or omission in the performance of medical, dental, or related health care functions (including clinical studies and investigations) while acting within the scope of such person's duties if such person is assigned to a foreign country or detailed for service with other than a Federal department, agency, or instrumentality or if the circumstances are such as are likely to preclude the remedies of third persons against the United States described in section 1346(b) of title 28, for such damage or injury.

(2) With respect to the Secretary of Defense and the Armed Forces Retirement Home Board, the authority provided by paragraph (1) also includes the authority to provide for reasonable attorney's fees for persons described in subsection (a), as determined necessary pursuant to regulations prescribed by the head of the agency concerned.

(g) In this section, the term ''head of the agency concerned'' means—

(1) the Director of the Central Intelligence Agency, in the case of an employee of the Central Intelligence Agency;

(2) the Secretary of Homeland Security, in the case of a member or employee of the Coast Guard when it is not operating as a service in the Navy;

(3) the Armed Forces Retirement Home Board, in the case of an employee of the Armed Forces Retirement Home; and

(4) the Secretary of Defense, in all other cases.

(Added Pub. L. 94–464, §1(a), Oct. 8, 1976, 90 Stat. 1985; amended Pub. L. 97–124, §2, Dec. 29, 1981, 95 Stat. 1666; Pub. L. 98–94, title IX, §934(a)–(c), Sept. 24, 1983, 97 Stat. 651, 652; Pub. L. 100–180, div. A, title XII, §1231(18)(A), Dec. 4, 1987, 101 Stat. 1161; Pub. L. 101–510, div. A, title XV, §1533(a)(1), Nov. 5, 1990, 104 Stat. 1733; Pub. L. 105–85, div. A, title VII, §736(b), Nov. 18, 1997, 111 Stat. 1814; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 110–181, div. A, title IX, §931(b)(3), Jan. 28, 2008, 122 Stat. 285.)

AMENDMENTS

2008—Subsec. (g)(1). Pub. L. 110–181 substituted ''Director of the Central Intelligence Agency'' for ''Director of Central Intelligence''.

2002—Subsec. (g)(2). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1997—Subsec. (a). Pub. L. 105–85, §736(b)(1), inserted at end ''This subsection shall also apply if the physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (or the estate of such person) involved is serving under a personal services contract entered into under section 1091 of this title.''

Subsec. (f). Pub. L. 105–85, §736(b)(2), designated existing provisions as par. (1) and added par. (2).

1990—Subsec. (a). Pub. L. 101–510, §1533(a)(1)(A), substituted ''Armed Forces Retirement Home'' for ''United States Soldiers' and Airmen's Home''.

Subsec. (g)(3). Pub. L. 101–510, §1533(a)(1)(B), added par. (3) and struck out former par. (3) which read as follows: ''the Board of Commissioners of the United States Soldiers' and Airmen's home, in the case of an employee of the United States Soldiers' and Airmen's Home; and''.

1987—Subsec. (g). Pub. L. 100–180 inserted ''the term'' after ''In this section,''.

1983—Subsec. (a). Pub. L. 98–94, §934(a), inserted ''the United States Soldiers' and Airmen's Home,''.

Subsec. (f). Pub. L. 98–94, §934(b), substituted ''may, to the extent that the head of the agency concerned considers'' for ''or his designee may, to the extent that he or his designee deems''.

Subsec. (g)(3), (4). Pub. L. 98–94, §934(c)(3), added par. (3) and redesignated former par. (3) as (4).

1981—Subsec. (a). Pub. L. 97–124 inserted ''the National Guard while engaged in training or duty under section 316, 502, 503, 504, or 505 of title 32,'' after ''armed forces,''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–510 effective one year after Nov. 5, 1990, see section 1541 of Pub. L. 101–510, formerly set out as an Effective Date note under section 401 of Title 24, Hospitals and Asylums.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 934(d) of Pub. L. 98–94 provided that: ''The amendments made by this section [amending this section] shall apply only to claims accruing on or after the date of the enactment of this Act [Sept. 24, 1983].''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 4 of Pub. L. 97–124 provided that: ''The amendments made by this Act [amending this section and section 2671 of Title 28, Judiciary and Judicial Procedure] and the repeal made by section 3 of this Act [repealing section 334 of Title 32, National Guard] shall apply only with respect to claims arising on or after the date of enactment of this Act [Dec. 29, 1981].''

EFFECTIVE DATE

Section 4 of Pub. L. 94–464 provided that: ''This Act [enacting this section, section 334 of Title 32, National Guard, section 2458a of Title 42, The Public Health and Welfare, and provisions set out as notes under this section and section 334 of Title 32] shall become effective on the date of its enactment [Oct. 8, 1976] and shall apply only to those claims accruing on or after such date of enactment.''

CONGRESSIONAL FINDINGS

Section 2(a) of Pub. L. 94–464 provided that: ''The Congress finds—

''(1) that the Army National Guard and the Air National Guard are critical components of the defense posture of the United States;

''(2) that a medical capability is essential to the performance of the mission of the National Guard when in Federal service;

''(3) that the current medical malpractice crisis poses a serious threat to the availability of sufficient medical personnel for the National Guard; and

''(4) that in order to insure that such medical personnel will continue to be available to the National Guard, it is necessary for the Federal Government to assume responsibility for the payment of malpractice claims made against such personnel arising out of actions or omissions on the part of such personnel while they are performing certain training exercises.''

§ 1090. Identifying and treating drug and alcohol dependence

The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations, implement procedures using each practical and available method, and provide necessary facilities to identify, treat, and rehabilitate members of the armed forces who are dependent on drugs or alcohol.

(Added Pub. L. 97–295, § 1(15)(A), Oct. 12, 1982, 96 Stat. 1290; amended Pub. L. 98–94, title XII, § 1268(7), Sept. 24, 1983, 97 Stat. 706; Pub. L. 101–510, div. A, title V, § 553, Nov. 5, 1990, 104 Stat. 1567; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1090	10:1071 (note).	Sept. 28, 1971, Pub. L. 92–129, § 501(a)(1), 85 Stat. 361.

The word ''regulations'' is added for consistency. The word ''persons'' is omitted as surplus.

AMENDMENTS

2002—Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1990—Pub. L. 101–510 inserted '', and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy,'' after ''Secretary of Defense''.

1983—Pub. L. 98–94 struck out ''(a)'' before ''The Secretary of Defense''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

§ 1091. Personal services contracts

(a) AUTHORITY.—(1) The Secretary of Defense, with respect to medical treatment facilities of the Department of Defense, and the Secretary of Homeland Security, with respect to medical treatment facilities of the Coast Guard when the Coast Guard is not operating as a service in the Navy, may enter into personal services contracts to carry out health care responsibilities in such facilities, as determined to be necessary by the Secretary. The authority provided in this subsection is in addition to any other contract authorities of the Secretary, including authorities relating to the management of such facilities and the administration of this chapter.

(2) The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, may also enter into personal services contracts to carry out other health care responsibilities of the Secretary (such as the provision of medical screening examinations at Military Entrance Processing Stations) at locations outside medical treatment facilities, as determined necessary pursuant to regulations prescribed by the Secretary.

(b) LIMITATION ON AMOUNT OF COMPENSATION.—In no case may the total amount of compensation paid to an individual in any year under a personal services contract entered into under subsection (a) exceed the amount of annual compensation (excluding the allowances for expenses) specified in section 102 of title 3.

(c) PROCEDURES.—(1) The Secretary shall establish by regulation procedures for entering into personal services contracts with individuals under subsection (a). At a minimum, such procedures shall assure—

(A) the provision of adequate notice of contract opportunities to individuals residing in the area of the medical treatment facility involved; and

(B) consideration of interested individuals solely on the basis of the qualifications established for the contract and the proposed contract price.

(2) Upon the establishment of the procedures under paragraph (1), the Secretary may exempt contracts covered by this section from the competitive contracting requirements specified in section 2304 of this title or any other similar requirements of law.

(d) EXCEPTIONS.—The procedures and exemptions provided under subsection (c) shall not apply to personal services contracts entered into under subsection (a) with entities other than individuals or to any contract that is not an authorized personal services contract under subsection (a).

(Added Pub. L. 98–94, title IX, § 932(a)(1), Sept. 24, 1983, 97 Stat. 649; amended Pub. L. 101–510, div. A, title VII, § 714, Nov. 5, 1990, 104 Stat. 1584; Pub. L. 103–160, div. A, title VII, § 712(a)(1), Nov. 30, 1993, 107 Stat. 1688; Pub. L. 104–106, div. A, title VII, § 733(a), Feb. 10, 1996, 110 Stat. 381; Pub. L. 105–85, div. A, title VII, § 736(a), Nov. 18, 1997, 111 Stat. 1814; Pub. L. 105–261, div. A, title VII, § 733(a), Oct. 17, 1998, 112 Stat. 2072; Pub. L. 106–398, § 1 [[div. A], title VII, § 705], Oct. 30, 2000, 114 Stat. 1654, 1654A–175; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 107–314, div. A, title VII, § 707, Dec. 2, 2002, 116 Stat. 2585; Pub. L. 108–136, div. A, title VII, § 721, Nov. 24, 2003, 117 Stat. 1531.)

AMENDMENTS

2003—Subsec. (a)(2). Pub. L. 108–136 struck out at end ''The Secretary may not enter into a contract under this paragraph after December 31, 2003.''

2002—Subsec. (a). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation'' in two places.

Subsec. (a)(2). Pub. L. 107–314 substituted ''December 31, 2003'' for ''December 31, 2002''.

2000—Subsec. (a)(2). Pub. L. 106–398 substituted ''December 31, 2002'' for ''December 31, 2000''.

1998—Subsec. (a)(2). Pub. L. 105–261 substituted ''December 31, 2000'' for ''the end of the one-year period beginning on the date of the enactment of this paragraph''.

1997—Subsec. (a). Pub. L. 105–85 designated existing provisions as par. (1) and added par. (2).

1996—Subsec. (a). Pub. L. 104–106 inserted '', with respect to medical treatment facilities of the Department of Defense, and the Secretary of Transportation, with respect to medical treatment facilities of the Coast Guard when the Coast Guard is not operating as a service in the Navy,'' after ''Secretary of Defense'' and substituted ''such facilities'' for ''medical treatment facilities of the Department of Defense''.

1993—Pub. L. 103–160 substituted ''Personal services contracts'' for ''Contracts for direct health care providers'' in section catchline and amended text generally. Prior to amendment, text read as follows:

''(a) The Secretary concerned may contract with persons for services (including personal services) for the provision of direct health care services determined by the Secretary concerned to be required for the purposes of this chapter.

''(b) A person with whom the Secretary contracts under this section for the provision of direct health care services under this chapter may be compensated at a rate prescribed by the Secretary concerned, but at a rate not greater than the rate of basic pay, special and incentive pays and bonuses, and allowances authorized by chapters 3, 5, and 7 of title 37 for a commissioned officer with comparable professional qualifications in pay grade O–6 with 26 or more years of service computed under section 205 of such title.''

1990—Subsec. (b). Pub. L. 101–510 substituted ''basic pay, special and incentive pays and bonuses, and allowances authorized by chapters 3, 5, and 7 of title 37 for a commissioned officer with comparable professional qualifications'' for ''basic pay and allowances authorized by chapters 3 and 7 of title 37 for a commissioned officer''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 733(c) of Pub. L. 104–106 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect as of October 1, 1995.''

EFFECTIVE DATE

Section 932(f) of Pub. L. 98–94 provided that: ''The amendments made by this section [enacting this section, amending section 201 of Title 37, Pay and Allowances of the Uniformed Services, and repealing sections 4022 and 9022 of this title and section 421 of Title 37] shall take effect on October 1, 1983. Any contract of employment entered into under the authority of section 4022 or 9022 of title 10, United States Code, before the effective date of this section and which is in effect on such date shall remain in effect in accordance with the terms of such contract.''

TEST OF ALTERNATIVE PROCESS FOR CONDUCTING MEDICAL SCREENINGS FOR ENLISTMENT QUALIFICATION

Pub. L. 105–261, div. A, title VII, § 733(b), Oct. 17, 1998, 112 Stat. 2072, as amended by Pub. L. 106–65, div. A, title X, § 1067(3), Oct. 5, 1999, 113 Stat. 774, directed the Secretary of Defense to conduct a test to determine whether an alternative to the system used by the Department of Defense of employing fee-basis physicians for determining the medical qualifications for enlistment of applicants for military service would reduce the number of disqualifying medical conditions detected during the initial entry training of such applicants, and whether an alternative system would meet or exceed the cost, responsiveness, and timeliness standards of the system in use or achieve any savings or cost avoidance, and to submit to committees of Congress a report on the results and findings of the test not later than Mar. 1, 2000.

RATIFICATION OF EXISTING CONTRACTS

Section 733(b) of Pub. L. 104–106 provided that: ''Any exercise of authority under section 1091 of title 10, United States Code, to enter into a personal services contract on behalf of the Coast Guard before the effective date of the amendments made by subsection (a) [Oct. 1, 1995] is hereby ratified.''

PERSONAL SERVICE CONTRACTS TO PROVIDE CARE

Pub. L. 103–337, div. A, title VII, § 704(c), Oct. 5, 1994, 108 Stat. 2799, as amended by Pub. L. 108–375, div. A, title VII, § 717(a), Oct. 28, 2004, 118 Stat. 1986, provided that:

''(1) The Secretary of Defense may enter into personal service contracts under the authority of section 1091 of title 10, United States Code, with persons described in paragraph (2) to provide the services of clinical counselors, family advocacy program staff, and victim's services representatives to members of the Armed Forces and covered beneficiaries who require such services. Notwithstanding subsection (a) of such section, such services may be provided in medical treatment facilities of the Department of Defense or elsewhere as determined appropriate by the Secretary.

''(2) The persons with whom the Secretary may enter into a personal services contract under this subsection shall include clinical social workers, psychologists, marriage and family therapists certified as such by a certification recognized by the Secretary of Defense, psychiatrists, and other comparable professionals who have advanced degrees in counseling or related academic disciplines and who meet all requirements for State licensure and board certification requirements, if any, within their fields of specialization.''

REPORT ON COMPENSATION BY MEDICAL SPECIALTY

Pub. L. 103–160, div. A, title VII, § 712(b), Nov. 30, 1993, 107 Stat. 1689, directed the Secretary of Defense to submit to Congress a report, not later than 30 days after the end of the 180-day period beginning on the date on which the Secretary had first used the authority provided under this section, as amended by Pub. L. 103–160, specifying the compensation provided to medical specialists who had agreed to enter into personal services contracts under such section during that period, the extent to which amounts of compensation exceeded amounts previously provided, the total number and medical specialties of specialists serving during that period pursuant to such contracts, and the number of specialists who had received compensation in an amount in excess of the maximum which had been authorized under this section, as in effect on Nov. 29, 1993.

§ 1092. Studies and demonstration projects relating to delivery of health and medical care

(a)(1) The Secretary of Defense, in consultation with the other administering Secretaries, shall conduct studies and demonstration projects on the health care delivery system of the uniformed services with a view to improving the quality, efficiency, convenience, and cost effectiveness of providing health care services (including dental care services) under this title to members and former members and their dependents. Such studies and demonstration projects may include the following:

(A) Alternative methods of payment for health and medical care services.

(B) Cost-sharing by eligible beneficiaries.

(C) Methods of encouraging efficient and economical delivery of health and medical care services.

(D) Innovative approaches to delivery and financing of health and medical care services.

(E) Alternative approaches to reimbursement for the administrative charges of health care plans.

(F) Prepayment for medical care services provided to maintain the health of a defined population.

(2) The Secretary of Defense shall include in the studies conducted under paragraph (1) alternative programs for the provision of dental care to the spouses and dependents of members of the uniformed services who are on active duty, including a program under which dental care would be provided the spouses and dependents of such members under insurance or dental plan contracts. A demonstration project may not be conducted under this section that provides for the furnishing of dental care under an insurance or dental plan contract.

(3) The Secretary of Defense may include in the studies and demonstration projects conducted under paragraph (1) studies and demonstration projects to provide awards and incentives to members of the armed forces and covered beneficiaries who obtain health promotion and disease prevention health care services under the TRICARE program in accordance with terms and schedules prescribed by the Secretary. Such awards and incentives may include cash awards and, in the case of members of the armed forces, personnel incentives.

(4)(A) The Secretary of Defense may, in consultation with the other administering Secretaries, include in the studies and demonstration projects conducted under paragraph (1) studies and demonstration projects to provide awards or incentives to individual health care professionals under the authority of such Secretaries, including members of the uniformed services, Federal civilian employees, and contractor personnel, to encourage and reward effective implementation of innovative health care programs designed to improve quality, cost-effectiveness, health promotion, medical readiness, and other priority objectives. Such awards and incentives may include cash awards and, in the case of members of the armed forces and Federal civilian employees, personnel incentives.

(B) Amounts available for the pay of members of the uniformed services shall be available for awards and incentives under this paragraph with respect to members of the uniformed services.

(5) The Secretary of Defense may include in the studies and demonstration projects conducted under paragraph (1) studies and demonstration projects to improve the medical and dental readiness of members of reserve components of the armed forces, including the provision of health care services to such members for which they are not otherwise entitled or eligible under this chapter.

(6) The Secretary of Defense may include in the studies and demonstration projects conducted under paragraph (1) studies and demonstration projects to improve the continuity of health care services for family members of mobilized members of the reserve components of the armed forces who are eligible for such services under this chapter, including payment of a stipend for continuation of employer-provided health coverage during extended periods of active duty.

(b) Subject to the availability of appropriations for that purpose, the Secretary of Defense may enter into contracts with public or private agencies, institutions, and organizations to conduct studies and demonstration projects under subsection (a).

(c) The Secretary of Defense may obtain the advice and recommendations of such advisory committees as the Secretary considers appropriate. Each such committee consulted by the Secretary under this subsection shall evaluate the proposed study or demonstration project as to the soundness of the objectives of such study or demonstration project, the likelihood of obtaining productive results based on such study or demonstration project, the resources which were required to conduct such study or demonstration project, and the relationship of such study or demonstration project to other ongoing or completed studies and demonstration projects.

(Added Pub. L. 98–94, title IX, § 933(a)(1), Sept. 24, 1983, 97 Stat. 650; amended Pub. L. 98–557, § 19(14), Oct. 30, 1984, 98 Stat. 2870; Pub. L. 105–261, div. A, title X, § 1031(a), Oct. 17, 1998, 112 Stat. 2123; Pub. L. 110–417, [div. A], title VII, § 715, Oct. 14, 2008, 122 Stat. 4505.)

AMENDMENTS

2008—Subsec. (a)(3) to (6). Pub. L. 110–417 added pars. (3) to (6).

1998—Subsec. (a)(3). Pub. L. 105–261 struck out par. (3) which read as follows: ''The Secretary of Defense shall submit to Congress from time to time written reports on the results of the studies and demonstration projects conducted under this subsection and shall include in such reports such recommendations for improving the health-care delivery systems of the uniformed services as the Secretary considers appropriate.''

1984—Subsec. (a)(1). Pub. L. 98–557 substituted reference to other administering Secretaries for reference to Secretary of Health and Human Services.

EFFECTIVE DATE

Section 933(b) of Pub. L. 98–94 provided that: ''Section 1092 of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 1983.''

MILITARY HEALTH RISK MANAGEMENT DEMONSTRATION PROJECT

Pub. L. 110–417, [div. A], title VII, § 712, Oct. 14, 2008, 122 Stat. 4501, provided that:

''(a) DEMONSTRATION PROJECT REQUIRED.—The Secretary of Defense shall conduct a demonstration project designed to evaluate the efficacy of providing incentives to encourage healthy behaviors on the part of eligible military health system beneficiaries.

''(b) ELEMENTS OF DEMONSTRATION PROJECT.—

''(1) WELLNESS ASSESSMENT.—The Secretary shall develop a wellness assessment to be offered to beneficiaries enrolled in the demonstration project. The wellness assessment shall incorporate nationally recognized standards for health and healthy behaviors and shall be offered to determine a baseline and at appropriate intervals determined by the Secretary. The wellness assessment shall include the following:

''(A) A self-reported health risk assessment.

''(B) Physiological and biometric measures, including at least—

''(i) blood pressure;

''(ii) glucose level;

''(iii) lipids;

''(iv) nicotine use; and

''(v) weight.

''(2) POPULATION ENROLLED.—Non-medicare eligible retired beneficiaries of the military health system and their dependents who are enrolled in TRICARE Prime and who reside in the demonstration project service area shall be offered the opportunity to enroll in the demonstration project.

''(3) GEOGRAPHIC COVERAGE OF DEMONSTRATION PROJECT.—The demonstration project shall be conducted in at least three geographic areas within the United States where TRICARE Prime is offered, as determined by the Secretary. The area covered by the project shall be referred to as the demonstration project service area.

''(4) PROGRAMS.—The Secretary shall develop programs to assist enrollees to improve healthy behaviors, as identified by the wellness assessment.

''(5) INCLUSION OF INCENTIVES REQUIRED.—For the purpose of conducting the demonstration project, the Secretary may offer monetary and non-monetary incentives to enrollees to encourage participation in the demonstration project.

''(c) EVALUATION OF DEMONSTRATION PROJECT.—The Secretary shall annually evaluate the demonstration project for the following:

''(1) The extent to which the health risk assessment and the physiological and biometric measures of beneficiaries are improved from the baseline (as determined in the wellness assessment).

''(2) In the case of baseline health risk assessments and physiological and biometric measures that reflect healthy behaviors, the extent to which the measures are maintained.

''(d) IMPLEMENTATION PLAN.—The Secretary of Defense shall submit a plan to implement the health risk management demonstration project required by this section not later than 90 days after the date of the enactment of this Act [Oct. 14, 2008].

''(e) DURATION OF PROJECT.—The health risk management demonstration project shall be implemented for a period of three years, beginning not later than March 1, 2009, and ending three years after that date.

''(f) REPORT.—

''(1) IN GENERAL.—The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives an annual report on the effectiveness of the health risk management demonstration project in improving the health risk measures of military health system beneficiaries enrolled in the demonstration project. The first report shall be submitted not later than one year after the date of the enactment of this Act [Oct. 14, 2008], and subsequent reports shall be submitted for each year of the demonstration project with the final report being submitted not later than 90 days after the termination of the demonstration project.

''(2) MATTERS COVERED.—Each report shall address, at a minimum, the following:

''(A) The number of beneficiaries who were enrolled in the project.

''(B) The number of enrolled beneficiaries who participate in the project.

''(C) The incentives to encourage healthy behaviors that were provided to the beneficiaries in each beneficiary category, and the extent to which the incentives encouraged healthy behaviors.

''(D) An assessment of the effectiveness of the demonstration project.

''(E) Recommendations for adjustments to the demonstration project.

''(F) The estimated costs avoided as a result of decreased health risk conditions on the part of each of the beneficiary categories.

''(G) Recommendations for extending the demonstration project or implementing a permanent wellness assessment program.

''(H) Identification of legislative authorities required to implement a permanent program.''

AVAILABILITY OF CHIROPRACTIC HEALTH CARE SERVICES

Pub. L. 109–163, div. A, title VII, § 712, Jan. 6, 2006, 119 Stat. 3343, provided that:

''(a) AVAILABILITY OF CHIROPRACTIC HEALTH CARE SERVICES.—The Secretary of the Air Force shall ensure that chiropractic health care services are available at all medical treatment facilities listed in table 5 of the report to Congress dated August 16, 2001, titled 'Chiropractic Health Care Implementation Plan'. If the Secretary determines that it is not necessary or feasible to provide chiropractic health care services at any such facility, the Secretary shall provide such services at an alternative site for each such facility.

''(b) IMPLEMENTATION AND REPORT.—Not later than September 30, 2006, the Secretary of the Air Force shall—

''(1) implement subsection (a); and

''(2) submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the availability of chiropractic health care services as required under subsection (a), including information on alternative sites at which such services have been made available.''

PILOT PROGRAM FOR HEALTH CARE DELIVERY

Pub. L. 108–375, div. A, title VII, § 721, Oct. 28, 2004, 118 Stat. 1988, as amended by Pub. L. 110–181, div. A, title VII, § 707, Jan. 28, 2008, 122 Stat. 189; Pub. L. 110–417, [div. A], title X, § 1061(e), Oct. 14, 2008, 122 Stat. 4613, provided that:

''(a) PILOT PROGRAM.—The Secretary of Defense may conduct a pilot program at two or more military installations for purposes of testing initiatives that build cooperative health care arrangements and agreements between military installations and local and regional non-military health care systems.

''(b) REQUIREMENTS OF PILOT PROGRAM.—In conducting the pilot program, the Secretary of Defense shall—

''(1) identify and analyze health care delivery options involving the private sector and health care services in military facilities located on the installation;

''(2) determine the cost avoidance or savings resulting from innovative partnerships between the Department of Defense and the private sector;

''(3) study the potential, viability, cost efficiency, and health care effectiveness of Department of Defense health care providers delivering health care in civilian community hospitals;

''(4) determine the opportunities for and barriers to coordinating and leveraging the use of existing health care resources, including Federal, State, local, and contractor assets; and

''(5) collaborate with State and local authorities to create an arrangement to share and exchange, between the Department of Defense and non-military health care systems, personal health information and data of military personnel and their families.

''(c) CONSULTATION REQUIREMENTS.—The Secretary of Defense shall develop the pilot program in consultation with the Secretaries of the military departments, representatives from the military installation selected for the pilot program, Federal, State, and local entities, and the TRICARE managed care support contractor with responsibility for that installation.

''(d) SELECTION OF MILITARY INSTALLATION.—The pilot program may be implemented at two or more military installations selected by the Secretary of Defense. At least one of the selected military installations shall meet the following criteria:

''(1) The military installation has members of the Armed Forces on active duty and members of reserve components of the Armed Forces that use the installation as a training and operational base, with members routinely deploying in support of the global war on terrorism.

''(2) The number of members of the Armed Forces on active duty permanently assigned to the military installation is [sic] has increased over the five years preceding 2008.

''(3) One or more cooperative arrangements exist at the military installation with civilian health care entities in the form of specialty care services in the military medical treatment facility on the installation.

''(4) There is a military treatment facility on the installation that does not have inpatient or trauma center care capabilities.

''(5) There is a civilian community hospital near the military installation with—

''(A) limited capability to expand inpatient care beds, intensive care, and specialty services; and

''(B) limited or no capability to provide trauma care.

''(e) DURATION OF PILOT PROGRAM.—Implementation of the pilot program developed under this section shall begin not later than May 1, 2005, and shall be conducted during fiscal years 2005 through 2010.

''(f) REPORTS.—With respect to any pilot program conducted under this section, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and of the House of Representatives—

''(1) an interim report on the program, not later than 60 days after commencement of the program; and

''(2) a final report describing the results of the program with recommendations for a model health care delivery system for other military installations, not later than July 1, 2010.''

DEMONSTRATION PROJECT FOR EXPANDED ACCESS TO MENTAL HEALTH COUNSELORS

Pub. L. 106–398, § 1 [[div. A], title VII, § 731], Oct. 30, 2000, 114 Stat. 1654, 1654A–189, directed the Secretary of Defense, not later than Mar. 31, 2001, to submit to committees of Congress a plan to carry out a demonstration project under which licensed and certified professional mental health counselors who had met eligibility requirements for participation as providers under CHAMPUS or the TRICARE program could provide services to covered beneficiaries under this chapter without referral by physicians or adherence to supervision requirements, and directed the Secretary to conduct such project during the 2-year period beginning Oct. 1, 2001, and to submit to Congress a report on such project not later than Feb. 1, 2003.

TELERADIOLOGY DEMONSTRATION PROJECT

Pub. L. 106–398, § 1 [[div. A], title VII, § 732], Oct. 30, 2000, 114 Stat. 1654, 1654A–191, authorized the Secretary of Defense to conduct a demonstration project during the 2-year period beginning on Oct. 30, 2000, under which a military medical treatment facility and each clinic supported by such facility would be linked by a digital radiology network through which digital radiology X-rays could be sent electronically from clinics to the military medical treatment facility.

JOINT TELEMEDICINE AND TELEPHARMACY DEMONSTRATION PROJECTS BY THE DEPARTMENT OF DEFENSE AND DEPARTMENT OF VETERANS AFFAIRS

Pub. L. 106–65, div. A, title VII, § 724, Oct. 5, 1999, 113 Stat. 697, as amended by Pub. L. 108–136, div. A, title X, § 1031(h)(2), Nov. 24, 2003, 117 Stat. 1605, authorized the Secretary of Defense and the Secretary of Veterans Affairs, during the three-year period beginning on Oct. 1, 1999, to carry out joint demonstration projects for purposes of evaluating the feasibility and practicability of using telecommunications to provide radiologic and imaging services, diagnostic services, referral services, pharmacy services, and any other health care services designated by the Secretaries.

DEMONSTRATION PROGRAM TO TRAIN MILITARY MEDICAL PERSONNEL IN CIVILIAN SHOCK TRAUMA UNITS

Pub. L. 104–106, div. A, title VII, § 744, Feb. 10, 1996, 110 Stat. 386, directed the Secretary of Defense to implement, not later than Apr. 1, 1996, a demonstration program to evaluate the feasibility of providing shock trauma training for military medical personnel through an agreement with one or more public or nonprofit hospitals, and to submit to Congress a report describing the scope and activities of the program not later than Mar. 1 of each year in which it was conducted, provided for the termination of the program on Mar. 31, 1998, and required the Comptroller General of the United States to submit to Congress a report evaluating its effectiveness not later than May 1, 1998.

DEMONSTRATION PROJECT ON MANAGEMENT OF HEALTH CARE IN CATCHMENT AREAS AND OTHER DEMONSTRATION PROJECTS

Pub. L. 100–180, div. A, title VII, § 731, Dec. 4, 1987, 101 Stat. 1117, directed Secretary of Defense to conduct, beginning in fiscal year 1988 for at least two years, projects designed to demonstrate the alternative health care delivery system under which the commander of a medical facility of the uniformed services is responsible for all funding and all medical care of the covered beneficiaries in the catchment area of the facility and to conduct specific projects for the purpose of demonstrating alternatives to providing health care under the military health care system, directed Secretary not later than 60 days after Dec. 4, 1987, to submit to Congress a report that provides an outline and discussion of the manner in which the Secretary intends to structure and conduct each demonstration project and to develop and submit to Congress a methodology to be used in evaluating the results of the demonstration projects, and submit to Congress an interim report on each demonstration project after such project has been in effect for at least 12 months and a final report on each such project when each project is completed.

CHIROPRACTIC HEALTH CARE

Pub. L. 108–375, div. A, title VII, § 718, Oct. 28, 2004, 118 Stat. 1987, provided that:

''(a) ESTABLISHMENT.—Not later than 120 days after the date of the enactment of this Act [Oct. 28, 2004], the Secretary of Defense shall establish an oversight advisory committee to provide the Secretary with advice and recommendations regarding the continued development and implementation of an effective program of chiropractic health care benefits for members of the uniformed services on active duty.

''(b) MEMBERSHIP.—The advisory committee shall be composed of members selected from among persons who, by reason of education, training, and experience, are experts in chiropractic health care, as follows:

''(1) Members appointed by the Secretary of Defense in such number as the Secretary determines appropriate for carrying out the duties of the advisory committee effectively, including not fewer than three practicing representatives of the chiropractic health care profession.

''(2) A representative of each of the uniformed services, as designated by the administering Secretary concerned.

''(c) CHAIRMAN.—The Secretary of Defense shall designate one member of the advisory committee to serve as the Chairman of the advisory committee.

''(d) MEETINGS.—The advisory committee shall meet at the call of the Chairman, but not fewer than three times each fiscal year, beginning in fiscal year 2005.

''(e) DUTIES.—The advisory committee shall have the following duties:

''(1) Review and evaluate the program of chiropractic health care benefits provided to members of the uniformed services on active duty under chapter 55 of title 10, United States Code.

''(2) Provide the Secretary of Defense with advice and recommendations as described in subsection (a).

''(3) Upon the Secretary's determination that the program of chiropractic health care benefits referred to in paragraph (1) has been fully implemented, prepare and submit to the Secretary a report containing the advisory committee's evaluation of the implementation of such program.

''(f) REPORT.—The Secretary of Defense, following receipt of the report by the advisory committee under subsection (e)(3), shall submit to the Committees on Armed Services of the Senate and of the House of Representatives a report containing the following:

''(1) A copy of the advisory committee report, together with the Secretary's comments on the report.

''(2) An explanation of the criteria and rationale that the Secretary used to determine that the program of chiropractic health care benefits was fully implemented.

''(3) The Secretary's views with regard to the future implementation of the program of chiropractic health care benefits.

''(g) APPLICABILITY OF TEMPORARY ORGANIZATIONS LAW.—(1) Section 3161 of title 5, United States Code, shall apply to the advisory committee under this section.

''(2) The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the oversight advisory committee under this section.

''(h) TERMINATION.—The advisory committee shall terminate 90 days after the date on which the Secretary submits the report under subsection (f).''

Pub. L. 108–136, div. A, title VII, § 711, Nov. 24, 2003, 117 Stat. 1530, provided that: ''The Secretary of Defense shall accelerate the implementation of the plan required by section 702 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398; 114 Stat. 1654A–173) [set out below] (relating to chiropractic health care services and benefits), with a goal of completing implementation of the plan by October 1, 2005.''

Pub. L. 106–398, § 1 [[div. A], title VII, § 702], Oct. 30, 2000, 114 Stat. 1654, 1654A–173, provided that:

''(a) PLAN REQUIRED.—(1) Not later than March 31, 2001, the Secretary of Defense shall complete development of a plan to provide chiropractic health care services and benefits, as a permanent part of the Defense Health Program (including the TRICARE program), for all members of the uniformed services who are entitled to care under section 1074(a) of title 10, United States Code.

''(2) The plan shall provide for the following:

''(A) Access, at designated military medical treatment facilities, to the scope of chiropractic services as determined by the Secretary, which includes, at a minimum, care for neuro-musculoskeletal conditions typical among military personnel on active duty.

''(B) A detailed analysis of the projected costs of fully integrating chiropractic health care services into the military health care system.

''(C) An examination of the proposed military medical treatment facilities at which such services would be provided.

''(D) An examination of the military readiness requirements for chiropractors who would provide such services.

''(E) An examination of any other relevant factors that the Secretary considers appropriate.

''(F) Phased-in implementation of the plan over a 5-year period, beginning on October 1, 2001.

''(b) CONSULTATION REQUIREMENTS.—The Secretary of Defense shall consult with the other administering Secretaries described in section 1073 of title 10, United States Code, and the oversight advisory committee established under section 731 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 10 U.S.C. 1092 note) regarding the following:

''(1) The development and implementation of the plan required under subsection (a).

''(2) Each report that the Secretary is required to submit to Congress regarding the plan.

''(3) The selection of the military medical treatment facilities at which the chiropractic services described in subsection (a)(2)(A) are to be provided.

''(c) CONTINUATION OF CURRENT SERVICES.—Until the plan required under subsection (a) is implemented, the Secretary shall continue to furnish the same level of chiropractic health care services and benefits under the Defense Health Program that is provided during fiscal year 2000 at military medical treatment facilities that provide such services and benefits.

''(d) REPORT REQUIRED.—Not later than January 31, 2001, the Secretary of Defense shall submit a report on the plan required under subsection (a), together with appropriate appendices and attachments, to the Committees on Armed Services of the Senate and the House of Representatives.

''(e) GAO REPORTS.—The Comptroller General shall monitor the development and implementation of the plan required under subsection (a), including the administration of services and benefits under the plan, and periodically submit to the committees referred to in subsection (d) written reports on such development and implementation.''

Pub. L. 103–337, div. A, title VII, § 731, Oct. 5, 1994, 108 Stat. 2809, as amended by Pub. L. 105–85, div. A, title VII, § 739, Nov. 18, 1997, 111 Stat. 1815; Pub. L. 106–65, div. A, title VII, § 702(a), Oct. 5, 1999, 113 Stat. 680, directed the Secretary of Defense to develop and carry out a demonstration program for fiscal years 1995 to 1999 to evaluate the feasibility and advisability of furnishing chiropractic care through the medical care facilities of the Armed Forces, to continue to furnish the same chiropractic care in fiscal year 2000, to submit reports to Congress in 1995 and 1998 with a final report due Jan. 31, 2000, to establish an oversight advisory committee to assist and advise the Secretary with regard to the development and conduct of the demonstration program, and, not later than Mar. 31, 2000, to submit to Congress an implementation plan for the full integration of chiropractic health care services into the military health care system of the Department of Defense, including the TRICARE program, if the provision of such care was the Secretary's recommendation.

Pub. L. 98–525, title VI, § 632(b), Oct. 19, 1984, 98 Stat. 2543, provided that: ''The Secretary of Defense, in consultation with the Secretary of Health and Human Services, shall conduct demonstration projects under section 1092 of title 10, United States Code, for the purpose of evaluating the cost-effectiveness of chiropractic care. In the conduct of such demonstration projects, chiropractic care (including manual manipulation of the spine and other routine chiropractic procedures authorized under joint regulations prescribed by the Secretary of Defense and the Secretary of Health and Human Services and not otherwise prohibited by law) may be provided as appropriate under chapter 55 of title 10, United States Code.''

§ 1092a. Persons entering the armed forces: baseline health data

(a) PROGRAM REQUIRED.—The Secretary of Defense shall carry out a program—

(1) to collect baseline health data from each person entering the armed forces, at the time of entry into the armed forces; and

(2) to provide for computerized compilation and maintenance of the baseline health data.

(b) PURPOSES.—The program under this section shall be designed to achieve the following purposes:

(1) To facilitate understanding of how subsequent exposures related to service in the armed forces affect health.

(2) To facilitate development of early intervention and prevention programs to protect health and readiness.

(Added Pub. L. 108–375, div. A, title VII, § 733(a)(1), Oct. 28, 2004, 118 Stat. 1997.)

TIME FOR IMPLEMENTATION

Pub. L. 108–375, div. A, title VII, § 733(a)(3), Oct. 28, 2004, 118 Stat. 1998, provided that: ''The Secretary of Defense shall implement the program required under

section 1092a of title 10, United States Code (as added by paragraph (1)), not later than two years after the date of the enactment of this Act [Oct. 28, 2004].''

§ 1093. Performance of abortions: restrictions

(a) RESTRICTION ON USE OF FUNDS.—Funds available to the Department of Defense may not be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term.

(b) RESTRICTION ON USE OF FACILITIES.—No medical treatment facility or other facility of the Department of Defense may be used to perform an abortion except where the life of the mother would be endangered if the fetus were carried to term or in a case in which the pregnancy is the result of an act of rape or incest.

(Added Pub. L. 98–525, title XIV, § 1401(e)(5)(A), Oct. 19, 1984, 98 Stat. 2617; amended Pub. L. 104–106, div. A, title VII, § 738(a), (b)(1), Feb. 10, 1996, 110 Stat. 383.)

PRIOR PROVISIONS

Provisions similar to those in subsec. (a) of this section were contained in the following appropriation acts:

Pub. L. 98–473, title I, § 101(h) [title VIII, § 8044], Oct. 12, 1984, 98 Stat. 1904, 1931.

Pub. L. 98–212, title VII, § 751, Dec. 8, 1983, 97 Stat. 1447.

Pub. L. 97–377, title I, § 101(c) [title VII, § 755], Dec. 21, 1982, 96 Stat. 1833, 1860.

Pub. L. 97–114, title VII, § 757, Dec. 29, 1981, 95 Stat. 1588.

Pub. L. 96–527, title VII, § 760, Dec. 15, 1980, 94 Stat. 3091.

Pub. L. 96–154, title VII, § 762, Dec. 21, 1979, 93 Stat. 1162.

Pub. L. 95–457, title VIII, § 863, Oct. 13, 1978, 92 Stat. 1254.

AMENDMENTS

1996—Pub. L. 104–106, § 738(b)(1), amended section catchline generally, substituting ''Performance of abortions: restrictions'' for ''Restrictions on use of funds for abortions''.

Pub. L. 104–106, § 738(a), designated existing provisions as subsec. (a), inserted subsec. heading, and added subsec. (b).

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

PRIVATELY FUNDED ABORTIONS AT MILITARY HOSPITALS

Memorandum of the President of the United States, Jan. 22, 1993, 58 F.R. 6439, provided:

Memorandum for the Secretary of Defense

Section 1093 of title 10 of the United States Code prohibits the use of Department of Defense (''DOD'') funds to perform abortions except where the life of a woman would be endangered if the fetus were carried to term. By memoranda of December 21, 1987, and June 21, 1988, DOD has gone beyond what I am informed are the requirements of the statute and has banned all abortions at U.S. military facilities, even where the procedure is privately funded. This ban is unwarranted. Accordingly, I hereby direct that you reverse the ban immediately and permit abortion services to be provided, if paid for entirely with non-DOD funds and in accordance with other relevant DOD policies and procedures.

You are hereby authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

§ 1094. Licensure requirement for health-care professionals

(a)(1) A person under the jurisdiction of the Secretary of a military department may not provide health care independently as a health-care professional under this chapter unless the person has a current license to provide such care. In the case of a physician, the physician may not provide health care as a physician under this chapter unless the current license is an unrestricted license that is not subject to limitation on the scope of practice ordinarily granted to other physicians for a similar specialty by the jurisdiction that granted the license.

(2) The Secretary of Defense may waive paragraph (1) with respect to any person in unusual circumstances. The Secretary shall prescribe by regulation the circumstances under which such a waiver may be granted.

(b) The commanding officer of each health care facility of the Department of Defense shall ensure that each person who provides health care independently as a health-care professional at the facility meets the requirement of subsection (a).

(c)(1) A person (other than a person subject to chapter 47 of this title) who provides health care in violation of subsection (a) is subject to a civil money penalty of not more than $5,000.

(2) The provisions of subsections (c) and (e) through (h) of section 1128A of the Social Security Act (42 U.S.C. 1320a–7a) shall apply to the imposition of a civil money penalty under paragraph (1) in the same manner as they apply to the imposition of a civil money penalty under that section, except that for purposes of this subsection—

(A) a reference to the Secretary in that section is deemed a reference to the Secretary of Defense; and

(B) a reference to a claimant in subsection (e) of that section is deemed a reference to the person described in paragraph (1).

(d)(1) Notwithstanding any law regarding the licensure of health care providers, a health-care professional described in paragraph (2) or (3) may practice the health profession or professions of the health-care professional in any State, the District of Columbia, or a Commonwealth, territory, or possession of the United States, regardless of whether the practice occurs in a health care facility of the Department of Defense, a civilian facility affiliated with the Department of Defense, or any other location authorized by the Secretary of Defense.

(2) A health-care professional referred to in paragraph (1) as being described in this paragraph is a member of the armed forces who—

(A) has a current license to practice medicine, osteopathic medicine, dentistry, or another health profession; and

(B) is performing authorized duties for the Department of Defense.

(3) A health-care professional referred to in paragraph (1) as being described in this paragraph is a member of the National Guard who—

(A) has a current license to practice medicine, osteopathic medicine, dentistry, or another health profession; and

(B) is performing training or duty under section 502(f) of title 32 in response to an actual or potential disaster.

(e) In this section:

(1) The term ''license''—

(A) means a grant of permission by an official agency of a State, the District of Columbia, or a Commonwealth, territory, or possession of the United States to provide health care independently as a health-care professional; and

(B) includes, in the case of such care furnished in a foreign country by any person who is not a national of the United States, a grant of permission by an official agency of that foreign country for that person to provide health care independently as a health-care professional.

(2) The term ''health-care professional'' means a physician, dentist, clinical psychologist, marriage and family therapist certified as such by a certification recognized by the Secretary of Defense, or nurse and any other person providing direct patient care as may be designated by the Secretary of Defense in regulations.

(Added Pub. L. 99–145, title VI, § 653(a)(1), Nov. 8, 1985, 99 Stat. 657; amended Pub. L. 99–661, div. A, title XIII, § 1343(a)(5), Nov. 14, 1986, 100 Stat. 3992; Pub. L. 101–189, div. A, title VI, § 653(e)(1), title XVI, § 1622(e)(3), Nov. 29, 1989, 103 Stat. 1463, 1605; Pub. L. 105–85, div. A, title VII, § 737, Nov. 18, 1997, 111 Stat. 1814; Pub. L. 105–261, div. A, title VII, § 734(a), Oct. 17, 1998, 112 Stat. 2072; Pub. L. 108–375, div. A, title VII, § 717(b), Oct. 28, 2004, 118 Stat. 1986; Pub. L. 111–383, div. A, title VII, § 713, Jan. 7, 2011, 124 Stat. 4247.)

AMENDMENTS

2011—Subsec. (d)(1). Pub. L. 111–383, § 713(1), inserted ''or (3)'' after ''paragraph (2)''.

Subsec. (d)(2). Pub. L. 111–383, § 713(2), inserted ''as being described in this paragraph'' after ''paragraph (1)'' in introductory provisions.

Subsec. (d)(3). Pub. L. 111–383, § 713(3), added par. (3).

2004—Subsec. (e)(2). Pub. L. 108–375 inserted ''marriage and family therapist certified as such by a certification recognized by the Secretary of Defense,'' after ''psychologist,''.

1998—Subsec. (a)(1). Pub. L. 105–261 inserted at end ''In the case of a physician, the physician may not provide health care as a physician under this chapter unless the current license is an unrestricted license that is not subject to limitation on the scope of practice ordinarily granted to other physicians for a similar specialty by the jurisdiction that granted the license.''

1997—Subsecs. (d), (e). Pub. L. 105–85 added subsec. (d) and redesignated former subsec. (d) as (e).

1989—Subsec. (c)(2). Pub. L. 101–189, § 653(e)(1), substituted ''subsections (c) and (e) through (h)'' for ''subsections (b) and (d) through (g)''.

Subsec. (d)(1). Pub. L. 101–189, § 1622(e)(3)(A), substituted ''The term 'license'' for ''License'' in introductory provisions.

Subsec. (d)(2). Pub. L. 101–189, § 1622(e)(3)(B), substituted ''The term 'health-care'' for ''Health-care''.

1986—Subsec. (d)(2). Pub. L. 99–661 realigned margin of par. (2) to conform to margin of par. (1).

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–261, div. A, title VII, § 734(c)(1), Oct. 17, 1998, 112 Stat. 2073, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on October 1, 1999.''

EFFECTIVE DATE

Section 653(b) of Pub. L. 99–145 provided that: ''Section 1094 of title 10, United States Code, as added by subsection (a), does not apply during the three-year period beginning on the date of the enactment of this Act [Nov. 8, 1985] with respect to the provision of health care by any person who on the date of the enactment of this Act is a member of the Armed Forces.''

§ 1094a. Continuing medical education requirements: system for monitoring physician compliance

The Secretary of Defense shall establish a mechanism for ensuring that each person under the jurisdiction of the Secretary of a military department who provides health care under this chapter as a physician satisfies the continuing medical education requirements applicable to the physician.

(Added Pub. L. 105–261, div. A, title VII, § 734(b)(1), Oct. 17, 1998, 112 Stat. 2073.)

IMPLEMENTATION

Pub. L. 105–261, div. A, title VII, § 734(c)(2), Oct. 17, 1998, 112 Stat. 2073, provided that: ''The system required by section 1094a of title 10, United States Code (as added by subsection (b)), shall take effect on the date that is three years after the date of the enactment of this Act [Oct. 17, 1998].''

JOINT PILOT PROGRAM FOR PROVIDING GRADUATE MEDICAL EDUCATION AND TRAINING FOR PHYSICIANS

Pub. L. 107–314, div. A, title VII, § 725(a)–(d), Dec. 2, 2002, 116 Stat. 2599, provided that:

''(a) IN GENERAL.—The Secretary of Defense and the Secretary of Veterans Affairs shall jointly carry out a pilot program under which graduate medical education and training is provided to military physicians and physician employees of the Department of Defense and the Department of Veterans Affairs through one or more programs carried out in military medical treatment facilities of the Department of Defense and medical centers of the Department of Veterans Affairs. The pilot program shall begin not later than January 1, 2003.

''(b) COST-SHARING AGREEMENT.—The Secretaries shall enter into an agreement for carrying out the pilot program. The agreement shall establish means for each Secretary to assist in paying the costs, with respect to individuals under the jurisdiction of that Secretary, incurred by the other Secretary in providing medical education and training under the pilot program.

''(c) USE OF EXISTING AUTHORITIES.—To carry out the pilot program, the Secretary of Defense and the Secretary of Veterans Affairs may use authorities provided to them under this subtitle [subtitle C (§§ 721–726) of title VII of div. A of Pub. L. 107–314, amending section 1104 of this title and sections 8110 and 8111 of Title 38, Veterans' Benefits, enacting provisions set out as notes under section 1074g of this title and sections 8110 and 8111 of Title 38, and repealing provisions set out as a note under this section], section 8111 of title 38, United States Code (as amended by section 721(a)), and other laws relating to the furnishing or support of medical education and the cooperative use of facilities.

''(d) TERMINATION OF PROGRAM.—The pilot program under this section shall terminate on July 31, 2008.''

JOINT DOD–VA PILOT PROGRAM FOR PROVIDING GRADUATE MEDICAL EDUCATION AND TRAINING FOR PHYSICIANS

Pub. L. 107–107, div. A, title VII, § 738, Dec. 28, 2001, 115 Stat. 1173, authorized a pilot program providing graduate medical education and training for physicians to be carried out jointly by the Secretary of Defense and the Secretary of Veterans Affairs, prior to repeal by

Pub. L. 107–314, div. A, title VII, § 725(e), Dec. 2, 2002, 116 Stat. 2599.

§ 1095. Health care services incurred on behalf of covered beneficiaries: collection from third-party payers

(a)(1) In the case of a person who is a covered beneficiary, the United States shall have the right to collect from a third-party payer reasonable charges for health care services incurred by the United States on behalf of such person through a facility of the uniformed services to the extent that the person would be eligible to receive reimbursement or indemnification from the third-party payer if the person were to incur such charges on the person's own behalf. If the insurance, medical service, or health plan of that payer includes a requirement for a deductible or copayment by the beneficiary of the plan, then the amount that the United States may collect from the third-party payer is a reasonable charge for the care provided less the appropriate deductible or copayment amount.

(2) A covered beneficiary may not be required to pay an additional amount to the United States for health care services by reason of this section.

(b) No provision of any insurance, medical service, or health plan contract or agreement having the effect of excluding from coverage or limiting payment of charges for certain care shall operate to prevent collection by the United States under subsection (a) if that care is provided—

(1) through a facility of the uniformed services;

(2) directly or indirectly by a governmental entity;

(3) to an individual who has no obligation to pay for that care or for whom no other person has a legal obligation to pay; or

(4) by a provider with which the third party payer has no participation agreement.

(c) Under regulations prescribed under subsection (f), records of the facility of the uniformed services that provided health care services to a beneficiary of an insurance, medical service, or health plan of a third-party payer shall be made available for inspection and review by representatives of the payer from which collection by the United States is sought.

(d) Notwithstanding subsections (a) and (b), and except as provided in subsection (j), collection may not be made under this section in the case of a plan administered under title XVIII or XIX of the Social Security Act (42 U.S.C. 1395 et seq.).

(e)(1) The United States may institute and prosecute legal proceedings against a third-party payer to enforce a right of the United States under this section.

(2) The administering Secretary may compromise, settle, or waive a claim of the United States under this section.

(f) The Secretary of Defense, in consultation with the other administering Secretaries, shall prescribe regulations for the administration of this section. Such regulations shall provide for computation of the reasonable cost of health care services. Computation of such reasonable cost may be based on—

(1) per diem rates;

(2) all-inclusive per visit rates;

(3) diagnosis-related groups; or

(4) such other method as may be appropriate.

(g) Amounts collected under this section from a third-party payer or under any other provision of law from any other payer for health care services provided at or through a facility of the uniformed services shall be credited to the appropriation supporting the maintenance and operation of the facility and shall not be taken into consideration in establishing the operating budget of the facility.

(h) In this section:

(1) The term ''third-party payer'' means an entity that provides an insurance, medical service, or health plan by contract or agreement, including an automobile liability insurance or no fault insurance carrier, and any other plan or program that is designed to provide compensation or coverage for expenses incurred by a beneficiary for health care services or products. Such term also includes entities described in subsection (j) under the terms and to the extent provided in such subsection.

(2) The term ''insurance, medical service, or health plan'' includes a preferred provider organization, an insurance plan described as Medicare supplemental insurance, and a personal injury protection plan or medical payments benefit plan for personal injuries resulting from the operation of a motor vehicle.

(3) The term ''health care services'' includes products provided or purchased through a facility of the uniformed services.

(i)(1) In the case of a third-party payer that is an automobile liability insurance or no fault insurance carrier, the right of the United States to collect under this section shall extend to health care services provided to a person entitled to health care under section 1074(a) of this title.

(2) In cases in which a tort liability is created upon some third person, collection from a third-party payer that is an automobile liability insurance carrier shall be governed by the provisions of Public Law 87–693 (42 U.S.C. 2651 et seq.).

(j) The Secretary of Defense may enter into an agreement with any health maintenance organization, competitive medical plan, health care prepayment plan, or other similar plan (pursuant to regulations issued by the Secretary) providing for collection under this section from such organization or plan for services provided to a covered beneficiary who is an enrollee in such organization or plan.

(k)(1) To improve the administration of this section and sections 1079(j)(1) and 1086(d) of this title, the Secretary of Defense, in consultation with the other administering Secretaries, may prescribe regulations providing for the collection of information regarding insurance, medical service, or health plans of third-party payers held by covered beneficiaries.

(2) The collection of information under regulations prescribed under paragraph (1) shall be conducted in the same manner as is provided in section 1862(b)(5) of the Social Security Act (42 U.S.C. 1395y(b)(5)). The Secretary may provide for obtaining from the Commissioner of Social

Security employment information comparable to the information provided to the Administrator of the Centers for Medicare & Medicaid Services pursuant to such section. Such regulations may require the mandatory disclosure of Social Security account numbers for all covered beneficiaries.

(3) The Secretary may disclose relevant employment information collected under this subsection to fiscal intermediaries or other designated contractors.

(4) The Secretary may provide for contacting employers of covered beneficiaries to obtain group health plan information comparable to the information authorized to be obtained under section 1862(b)(5)(C) of the Social Security Act (42 U.S.C. 1395y(b)(5)(C)). Notwithstanding clause (iii) of such section, clause (ii) of such section regarding the imposition of civil money penalties shall apply to the collection of information under this paragraph.

(5) Information obtained under this subsection may not be disclosed for any purpose other than to carry out the purpose of this section and sections 1079(j)(1) and 1086(d) of this title.

(Added Pub. L. 99–272, title II, § 2001(a)(1), Apr. 7, 1986, 100 Stat. 100; amended Pub. L. 101–189, div. A, title VII, § 727(a), title XVI, § 1622(e)(5), Nov. 29, 1989, 103 Stat. 1480, 1605; Pub. L. 101–510, div. A, title VII, § 713(a)–(d)(2), Nov. 5, 1990, 104 Stat. 1583, 1584; Pub. L. 102–25, title VII, § 701(j)(8), Apr. 6, 1991, 105 Stat. 116; Pub. L. 102–190, div. A, title VII, § 714, Dec. 5, 1991, 105 Stat. 1403; Pub. L. 103–160, div. A, title VII, § 713, Nov. 30, 1993, 107 Stat. 1689; Pub. L. 103–337, div. A, title VII, § 714(b), title X, § 1070(b)(6), Oct. 5, 1994, 108 Stat. 2802, 2857; Pub. L. 104–106, div. A, title VII, § 734, Feb. 10, 1996, 110 Stat. 381; Pub. L. 104–201, div. A, title VII, § 735(a), (b), Sept. 23, 1996, 110 Stat. 2598; Pub. L. 106–65, div. A, title VII, § 716(c)(1), Oct. 5, 1999, 113 Stat. 691; Pub. L. 107–314, div. A, title X, § 1041(a)(5), Dec. 2, 2002, 116 Stat. 2645; Pub. L. 108–173, title IX, § 900(e)(4)(B), Dec. 8, 2003, 117 Stat. 2373.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII and XIX of the Social Security Act are classified generally to subchapters XVIII (§ 1395 et seq.) and XIX (§ 1396 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Public Law 87–693, referred to in subsec. (i)(2), is Pub. L. 87–693, Sept. 25, 1962, 76 Stat. 593, which is classified generally to chapter 32 (§ 2651 et seq.) of Title 42. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Another section 1095 was renumbered section 1095a of this title.

AMENDMENTS

2003—Subsec. (k)(2). Pub. L. 108–173 substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration'' in second sentence.

2002—Subsec. (g). Pub. L. 107–314 struck out par. (1) designation and par. (2) which read as follows: ''Not later than February 15 of each year, the Secretary of Defense shall submit to Congress a report specifying for each facility of the uniformed services the amount credited to the facility under this subsection during the preceding fiscal year.''

1999—Subsec. (a)(1). Pub. L. 106–65, § 716(c)(1)(A), substituted ''reasonable charges for'' for ''the reasonable costs of'', ''such charges'' for ''such costs'', and ''a reasonable charge for'' for ''the reasonable cost of''.

Subsec. (g)(1). Pub. L. 106–65, § 716(c)(1)(B), struck out ''the costs of'' after ''any other payer for''.

Subsec. (h)(1). Pub. L. 106–65, § 716(c)(1)(C), substituted ''The term 'third-party payer' means an entity that provides an insurance, medical service, or health plan by contract or agreement, including an automobile liability insurance or no fault insurance carrier, and any other plan or program that is designed to provide compensation or coverage for expenses incurred by a beneficiary for health care services or products.'' for ''The term 'third-party payer' means an entity that provides an insurance, medical service, or health plan by contract or agreement, including an automobile liability insurance or no fault insurance carrier and a workers' compensation program or plan.''

1996—Subsec. (g)(1). Pub. L. 104–201, § 735(a), inserted ''or through'' after ''provided at''.

Subsec. (h)(1). Pub. L. 104–201, § 735(b)(1), inserted ''and a workers' compensation program or plan'' after ''insurance carrier''.

Subsec. (h)(2). Pub. L. 104–201, § 735(b)(2), substituted ''organization,'' for ''organization and'' and inserted before period at end '', and a personal injury protection plan or medical payments benefit plan for personal injuries resulting from the operation of a motor vehicle''.

Subsec. (k). Pub. L. 104–106 added subsec. (k).

1994—Subsec. (b). Pub. L. 103–337, § 714(b)(1), substituted ''shall operate to prevent collection by the United States under subsection (a) if that care is provided—'' and pars. (1) to (4) for ''if that care is provided through a facility of the uniformed services shall operate to prevent collection by the United States under subsection (a).''

Subsec. (d). Pub. L. 103–337, § 714(b)(2), inserted ''and except as provided in subsection (j),'' after ''(b),''.

Subsec. (g). Pub. L. 103–337, § 1070(b)(6), made technical correction to directory language of Pub. L. 103–160, § 713(a)(1). See 1993 Amendment note below.

Subsec. (h)(1). Pub. L. 103–337, § 714(b)(3), inserted at end ''Such term also includes entities described in subsection (j) under the terms and to the extent provided in such subsection.''

Subsec. (j). Pub. L. 103–337, § 714(b)(4), added subsec. (j).

1993—Subsec. (g). Pub. L. 103–160, § 713(c), designated existing provisions as par. (1) and added par. (2).

Pub. L. 103–160, § 713(a)(2), inserted before period ''and shall not be taken into consideration in establishing the operating budget of the facility''.

Pub. L. 103–160, § 713(a)(1), as amended by Pub. L. 103–337, § 1070(b)(6), inserted ''or under any other provision of law from any other payer'' after ''third-party payer''.

Subsec. (h). Pub. L. 103–160, § 713(b), inserted ''a preferred provider organization and'' after ''includes'' in par. (2) and added par. (3).

1991—Subsec. (a)(1). Pub. L. 102–25 inserted ''a'' before ''covered beneficiary''.

Subsec. (i)(2). Pub. L. 102–190 struck out ''or no fault insurance'' before ''carrier''.

1990—Pub. L. 101–510, § 713(d)(2), substituted ''Health care services incurred on behalf of covered beneficiaries: collection from third-party payers'' for ''Collection from third-party payers of reasonable inpatient hospital care costs incurred on behalf of retirees and dependents'' in section catchline.

Subsec. (a)(1). Pub. L. 101–510, § 713(d)(1)(A), substituted ''covered beneficiary'' for ''covered by section 1074(b), 1076(a), or 1076(b) of this title''.

Pub. L. 101–510, § 713(a)(1), substituted ''health care services'' for ''inpatient hospital care''.

Subsec. (a)(2). Pub. L. 101–510, § 713(d)(1)(B), substituted ''covered beneficiary'' for ''person covered by section 1074(b), 1076(a), or 1076(b) of this title''.

Pub. L. 101–510, § 713(a)(1), substituted ''health care services'' for ''inpatient hospital care''.

Subsec. (c). Pub. L. 101–510, § 713(a)(1), substituted ''health care services'' for ''inpatient hospital care''.

Subsec. (f). Pub. L. 101–510, § 713(a)(1), substituted ''health care services'' for ''inpatient hospital care'' in introductory provisions.

Subsec. (f)(2) to (4). Pub. L. 101–510, § 713(b), added pars. (2) and (3) and redesignated former par. (2) as (4).

Subsec. (g). Pub. L. 101–510, § 713(a)(1), substituted ''health care services'' for ''inpatient hospital care''.

Subsecs. (h), (i). Pub. L. 101–510, § 713(c), added subsecs. (h) and (i) and struck out former subsec. (h) which read as follows: ''In this section, the term 'third-party payer' means an entity that provides an insurance, medical service, or health plan by contract or agreement.''

1989—Subsec. (g). Pub. L. 101–189, § 727(a)(2), added subsec. (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 101–189, § 1622(e)(5), which directed amendment of subsec. (g) by insertion of ''the term'' after ''In this section,'' was executed by making the insertion in subsec. (h) to reflect the probable intent of Congress and the intervening redesignation of subsec. (g) as (h) by Pub. L. 101–189, § 727(a)(1), see below.

Pub. L. 101–189, § 727(a)(1), redesignated subsec. (g) as (h).

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 1990 AMENDMENT

Section 713(e) of Pub. L. 101–510 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to health care services provided in a medical facility of the uniformed services after the date of the enactment of this Act [Nov. 5, 1990], but not with respect to collection under any insurance, medical service, or health plan agreement entered into before the date of the enactment of this Act that the Secretary of Defense determines clearly excludes payment for such services. Such an exception shall apply until the amendment or renewal of such agreement after that date.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 727(b) of Pub. L. 101–189 provided that: ''The amendment made by this section [amending this section] shall take effect on October 1, 1989, and shall apply to amounts collected under section 1095 of title 10, United States Code, on or after that date.''

EFFECTIVE DATE

Section 2001(b) of Pub. L. 99–272 provided that: ''Section 1095 of title 10, United States Code, as added by subsection (a), shall apply with respect to inpatient hospital care provided after September 30, 1986, but only with respect to an insurance, medical service, or health plan agreement entered into, amended, or renewed on or after the date of the enactment of this Act [Apr. 7, 1986].''

§ 1095a. Medical care: members held as captives and their dependents

(a) Under regulations prescribed by the President, the Secretary concerned shall pay (by advancement or reimbursement) any person who is a former captive, and any dependent of that person or of a person who is in a captive status, for health care and other expenses related to such care, to the extent that such care—

(1) is incident to the captive status; and

(2) is not covered—

(A) by any other Government medical or health program; or

(B) by insurance.

(b) In the case of any person who is eligible for medical care under section 1074 or 1076 of this title, such regulations shall require that, whenever practicable, such care be provided in a facility of the uniformed services.

(c) In this section:

(1) The terms ''captive status'' and ''former captive'' have the meanings given those terms in section 559 of title 37.

(2) The term ''dependent'' has the meaning given that term in section 551 of that title.

(Added Pub. L. 99–399, title VIII, § 806(c)(1), Aug. 27, 1986, 100 Stat. 886, § 1095; renumbered § 1095a, Pub. L. 100–26, § 7(e)(2), Apr. 21, 1987, 101 Stat. 281; amended Pub. L. 100–526, title I, § 106(b)(1), Oct. 24, 1988, 102 Stat. 2625.)

AMENDMENTS

1988—Subsec. (c). Pub. L. 100–526 substituted ''The terms 'captive status' '' for '' 'Captive status' '' in par. (1), and ''The term 'dependent' '' for '' 'Dependent' '' in par. (2).

EFFECTIVE DATE; REGULATIONS

Section 806(c)(3) of Pub. L. 99–399 provided that:

''(A) Section 1095 [now 1095a] of title 10, United States Code, as added by paragraph (1), shall apply with respect to any person whose captive status begins after January 21, 1981.

''(B) The President shall prescribe specific regulations regarding the carrying out of such section with respect to persons whose captive status begins during the period beginning on January 21, 1981, and ending on the effective date of that section [Aug. 27, 1986].''

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of Defense, see section 3 of Ex. Ord. No. 12598, June 17, 1987, 52 F.R. 23421, set out as a note under section 5569 of Title 5, Government Organization and Employees.

§ 1095b. TRICARE program: contractor payment of certain claims

(a) PAYMENT OF CLAIMS.—(1) The Secretary of Defense may authorize a contractor under the TRICARE program to pay a claim described in paragraph (2) before seeking to recover from a third-party payer the costs incurred by the contractor to provide health care services that are the basis of the claim to a beneficiary under such program.

(2) A claim under this paragraph is a claim—

(A) that is submitted to the contractor by a provider under the TRICARE program for payment for services for health care provided to a covered beneficiary; and

(B) that is identified by the contractor as a claim for which a third-party payer may be liable.

(b) RECOVERY FROM THIRD-PARTY PAYERS.—The United States shall have the same right to collect charges related to claims described in subsection (a) as charges for claims under section 1095 of this title.

(c) DEFINITION OF THIRD-PARTY PAYER.—In this section, the term ''third-party payer'' has the meaning given that term in section 1095(h) of this title, except that such term excludes primary medical insurers.

(Added Pub. L. 105–261, div. A, title VII, § 711(a)(1), Oct. 17, 1998, 112 Stat. 2058; amended Pub. L. 106–65, div. A, title VII, § 716(c)(2), Oct. 5, 1999, 113 Stat. 692.)

AMENDMENTS

1999—Subsec. (b). Pub. L. 106–65 substituted ''The United States shall have the same right to collect charges related to claims described in subsection (a) as charges for claims under section 1095 of this title.'' for ''A contractor for the provision of health care services under the TRICARE program that pays a claim described in subsection (a)(2) shall have the right to collect from the third-party payer the costs incurred by such contractor on behalf of the covered beneficiary. The contractor shall have the same right to collect such costs under this subsection as the right of the United States to collect costs under section 1095 of this title.''

§ 1095c. TRICARE program: facilitation of processing of claims

(a) REDUCTION OF PROCESSING TIME.—(1) With respect to claims for payment for medical care provided under the TRICARE program, the Secretary of Defense shall implement a system for processing of claims under which—

(A) 95 percent of all clean claims must be processed not later than 30 days after the date that such claims are submitted to the claims processor; and

(B) 100 percent of all clean claims must be processed not later than 100 days after the date that such claims are submitted to the claims processor.

(2) The Secretary may, under the system required by paragraph (1) and consistent with the provisions in chapter 39 of title 31 (commonly referred to as the ''Prompt Payment Act''), require that interest be paid on clean claims that are not processed within 30 days.

(3) For purposes of this subsection, the term ''clean claim'' means a claim that has no defect, impropriety (including a lack of any required substantiating documentation), or particular circumstance requiring special treatment that prevents timely payment on the claim under this section.

(b) REQUIREMENT TO PROVIDE START-UP TIME FOR CERTAIN CONTRACTORS.—(1) Except as provided in paragraph (3), the Secretary of Defense shall not require that a contractor described in paragraph (2) begin to provide managed care support pursuant to a contract to provide such support under the TRICARE program until at least nine months after the date of the award of the contract, but in no case later than one year after the date of such award.

(2) A contractor under this paragraph is a contractor who is awarded a contract to provide managed care support under the TRICARE program—

(A) who has not previously been awarded such a contract by the Department of Defense; or

(B) who has previously been awarded such a contract by the Department of Defense but for whom the subcontractors have not previously been awarded the subcontracts for such a contract.

(3) The Secretary may reduce the nine-month start-up period required under paragraph (1) if—

(A) the Secretary—

(i) determines that a shorter period is sufficient to ensure effective implementation of all contract requirements; and

(ii) submits notification to the Committees on Armed Services of the House of Representatives and the Senate of the Secretary's intent to reduce the nine-month start-up period; and

(B) 60 days have elapsed since the date of such notification.

(c) INCENTIVES FOR ELECTRONIC PROCESSING.—The Secretary of Defense shall require that new contracts for managed care support under the TRICARE program provide that the contractor be permitted to provide financial incentives to health care providers who file claims for payment electronically.

(d) CORRESPONDENCE TO MEDICARE CLAIMS INFORMATION REQUIREMENTS.—The Secretary of Defense, in consultation with the other administering Secretaries, shall limit the information required in support of claims for payment for health care items and services provided under the TRICARE program to that information that is identical to the information that would be required for claims for reimbursement for those items and services under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) except for that information, if any, that is uniquely required by the TRICARE program. The Secretary of Defense shall report to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives any information that is excepted under this provision, and the justification for that exception.

(Added Pub. L. 106–65, div. A, title VII, § 713(a)(1), Oct. 5, 1999, 113 Stat. 688; amended Pub. L. 107–107, div. A, title VII, § 708(b), Dec. 28, 2001, 115 Stat. 1164; Pub. L. 107–314, div. A, title VII, § 711(a), Dec. 2, 2002, 116 Stat. 2588.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Act is classified generally to subchapter XVIII (§ 1395 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2002—Subsec. (d). Pub. L. 107–314 added subsec. (d).

2001—Subsec. (b)(1). Pub. L. 107–107, § 708(b)(1), substituted ''Except as provided in paragraph (3), the Secretary'' for ''The Secretary'' and struck out ''contract. In such case the contractor may begin to provide managed care support pursuant to the contract as soon as practicable after the award of the'' before ''contract, but in no case''.

Subsec. (b)(3). Pub. L. 107–107, § 708(b)(2), added par. (3).

EFFECTIVE DATE

Pub. L. 106–65, div. A, title VII, § 713(d), Oct. 5, 1999, 113 Stat. 689, provided that: ''Section 1095c(b) of title 10, United States Code (as added by subsection (a)), shall apply with respect to any contract to provide managed care support under the TRICARE program negotiated after the date of the enactment of this Act [Oct. 5, 1999].''

APPLICABILITY

Pub. L. 107–314, div. A, title VII, § 711(b), Dec. 2, 2002, 116 Stat. 2588, provided that: ''The Secretary of Defense, in consultation with the other administering Secretaries referred to in section 1072(3) of title 10, United States Code, shall apply the limitations required under subsection (d) of section 1095c of such title (as added by subsection (a)) with respect to contracts entered into under the TRICARE program on or after October 1, 2002.''

STANDARDIZATION OF CLAIMS PROCESSING UNDER TRICARE PROGRAM AND MEDICARE PROGRAM

Pub. L. 109–364, div. A, title VII, § 731, Oct. 17, 2006, 120 Stat. 2295, provided that:

''(a) IN GENERAL.—Effective beginning with the next contract option period for managed care support contracts under the TRICARE program, the claims processing requirements under the TRICARE program on the matters described in subsection (b) shall be identical to the claims processing requirements under the Medicare program on such matters.

''(b) COVERED MATTERS.—The matters described in this subsection are as follows:

''(1) The utilization of single or multiple provider identification numbers for purposes of the payment of health care claims by Department of Defense contractors.

''(2) The documentation required to substantiate medical necessity for items and services that are covered under both the TRICARE program and the Medicare program.

''(c) REPORT ON COLLECTION OF AMOUNTS OWED.—Not later than March 1, 2007, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report setting forth a detailed description of the following:

''(1) All TRICARE policies and directives concerning collection of amounts owed to the United States pursuant to section 1095 of title 10, United States Code, from third party payers, including—

''(A) collection by military treatment facilities from third-party payers; and

''(B) collection by contractors providing managed care support under the TRICARE program from other insurers in cases of private insurance liability for health care costs of a TRICARE beneficiary.

''(2) An estimate of the outstanding amounts owed from third party payers in each of fiscal years 2002, 2003, and 2004.

''(3) The amounts collected from third party payers in each of fiscal years 2002, 2003, and 2004.

''(4) A plan of action to streamline the business practices that underlie the policies and directives described in paragraph (1).

''(5) A plan of action to accelerate and increase the collections or recoupments of amounts owed from third party payers.

''(d) ANNUAL REPORTS ON CLAIMS PROCESSING STANDARDIZATION.—

''(1) IN GENERAL.—Not later than October 1, 2007, and annually thereafter, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report setting forth a complete list of the claims processing requirements under the TRICARE program that differ from claims processing requirements under the Medicare program.

''(2) ELEMENTS.—Each report under paragraph (1) shall include, for each claims processing requirement listed in such report, a business case that justifies maintaining such requirement under the TRICARE program as a different claims processing requirement than that required under the Medicare program.

''(e) DEFINITIONS.—In this section:

''(1) The term 'Medicare program' means the program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

''(2) The term 'TRICARE program' has the meaning given that term in section 1072(7) of title 10, United States Code.''

CLAIMS PROCESSING IMPROVEMENTS

Pub. L. 106–398, § 1 [[div. A], title VII, § 727], Oct. 30, 2000, 114 Stat. 1654, 1654A–188, provided that: ''Beginning on the date of the enactment of this Act [Oct. 30, 2000], the Secretary of Defense shall, to the maximum extent practicable, take all necessary actions to implement the following improvements with respect to processing of claims under the TRICARE program:

''(1) Use of the TRICARE encounter data information system rather than the health care service record in maintaining information on covered beneficiaries under chapter 55 of title 10, United States Code.

''(2) Elimination of all delays in payment of claims to health care providers that may result from the development of the health care service record or TRICARE encounter data information.

''(3) Requiring all health care providers under the TRICARE program that the Secretary determines are high-volume providers to submit claims electronically.

''(4) Processing 50 percent of all claims by health care providers and institutions under the TRICARE program by electronic means.

''(5) Authorizing managed care support contractors under the TRICARE program to require providers to access information on the status of claims through the use of telephone automated voice response units.''

DEADLINE FOR IMPLEMENTATION

Pub. L. 106–65, div. A, title VII, § 713(c), Oct. 5, 1999, 113 Stat. 689, provided that the system for processing claims required under subsec. (a) of this section was to be implemented not later than 6 months after Oct. 5, 1999.

§ 1095d. TRICARE program: waiver of certain deductibles

(a) WAIVER AUTHORIZED.—The Secretary of Defense may waive the deductible payable for medical care provided under the TRICARE program to an eligible dependent of—

(1) a member of a reserve component on active duty pursuant to a call or order to active duty for a period of more than 30 days; or

(2) a member of the National Guard on full-time National Guard duty pursuant to a call or order to full-time National Guard duty for a period of more than 30 days.

(b) ELIGIBLE DEPENDENT.—As used in this section, the term ''eligible dependent'' means a dependent described in subparagraph (A), (D), or (I) of section 1072(2) of this title.

(Added Pub. L. 106–65, div. A, title VII, § 714(a), Oct. 5, 1999, 113 Stat. 689; amended Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(7)], Oct. 30, 2000, 114 Stat. 1654, 1654A–290; Pub. L. 108–375, div. A, title VII, § 704, Oct. 28, 2004, 118 Stat. 1983.)

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–375 substituted ''more than 30 days'' for ''less than one year'' in pars. (1) and (2).

2000—Subsec. (b). Pub. L. 106–398 substituted ''subparagraph'' for ''subparagraphs''.

§ 1095e. TRICARE program: beneficiary counseling and assistance coordinators

(a) ESTABLISHMENT OF POSITIONS.—The Secretary of Defense shall require in regulations that—

(1) each lead agent under the TRICARE program—

(A) designate a person to serve full-time as a beneficiary counseling and assistance coordinator for beneficiaries under the TRICARE program;

(B) designate for each of the TRICARE program regions at least one person (other than a person designated under subparagraph (A)) to serve full-time as a beneficiary counseling and assistance coordinator solely for members of the reserve components and their dependents who are beneficiaries under the TRICARE program; and

(C) provide for toll-free telephone communication between such beneficiaries and the beneficiary counseling and assistance coordinator; and

(2) the commander of each military medical treatment facility under this chapter designate a person to serve, as a primary or collateral duty, as beneficiary counseling and assistance coordinator for beneficiaries under the TRICARE program served at that facility.

(b) DUTIES.—The Secretary shall prescribe the duties of the position of beneficiary counseling and assistance coordinator in the regulations required by subsection (a).

(Added Pub. L. 106–65, div. A, title VII, § 715(a)(1), Oct. 5, 1999, 113 Stat. 690; amended Pub. L. 108–136, div. A, title VII, § 707, Nov. 24, 2003, 117 Stat. 1529.)

AMENDMENTS

2003—Subsec. (a)(1). Pub. L. 108–136 added subpar. (B) and redesignated former subpar. (B) as (C).

DEADLINE FOR INITIAL DESIGNATIONS

Pub. L. 106–65, div. A, title VII, § 715(b), Oct. 5, 1999, 113 Stat. 690, directed that each beneficiary counseling and assistance coordinator required under the regulations described in subsec. (a) of this section be designated not later than Jan. 15, 2000.

§ 1095f. TRICARE program: referrals for specialty health care

The Secretary of Defense shall ensure that no contract for managed care support under the TRICARE program includes any requirement that a managed care support contractor require a primary care or specialty care provider to obtain prior authorization before referring a patient to a specialty care provider that is part of the network of health care providers or institutions of the contractor.

(Added Pub. L. 106–398, § 1 [[div. A], title VII, § 728(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–189.)

EFFECTIVE DATE

Pub. L. 106–398, § 1 [[div. A], title VII, § 728(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–189, provided that: ''Section 1095f of title 10, United States Code, as added by subsection (a), shall apply with respect to a TRICARE managed care support contract entered into by the Department of Defense after the date of the enactment of this Act [Oct. 30, 2000].''

§ 1096. Military-civilian health services partnership program

(a) RESOURCES SHARING AGREEMENTS.—The Secretary of Defense may enter into an agreement providing for the sharing of resources between facilities of the uniformed services and facilities of a civilian health care provider or providers that the Secretary contracts with under section 1079, 1086, or 1097 of this title if the Secretary determines that such an agreement would result in the delivery of health care to which covered beneficiaries are entitled under this chapter in a more effective, efficient, or economical manner.

(b) ELIGIBLE RESOURCES.—An agreement entered into under subsection (a) may provide for the sharing of—

(1) personnel (including support personnel);

(2) equipment;

(3) supplies; and

(4) any other items or facilities necessary for the provision of health care services.

(c) COMPUTATION OF CHARGES.—A covered beneficiary who is a dependent, with respect to care provided to such beneficiary in facilities of the uniformed services under a sharing agreement entered into under subsection (a), shall pay the charges prescribed by section 1078 of this title.

(d) REIMBURSEMENT FOR LICENSE FEES.—In any case in which it is necessary for a member of the uniformed services to pay a professional license fee imposed by a government in order to provide health care services at a facility of a civilian health care provider pursuant to an agreement entered into under subsection (a), the Secretary of Defense may reimburse the member for up to $500 of the amount of the license fee paid by the member.

(Added Pub. L. 99–661, div. A, title VII, § 701(a)(1), Nov. 14, 1986, 100 Stat. 3894; amended Pub. L. 103–337, div. A, title VII, § 712, Oct. 5, 1994, 108 Stat. 2801; Pub. L. 108–375, div. A, title VI, § 607(b), Oct. 28, 2004, 118 Stat. 1946.)

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–375 inserted ''who is a dependent'' after ''covered beneficiary'' and substituted ''shall pay the charges prescribed by section 1078 of this title.'' for ''shall pay—

''(1) in the case of a dependent, the charges prescribed by section 1078 of this title; and

''(2) in the case of a member or former member entitled to retired or retainer pay, the charges prescribed by section 1075 of this title.''

1994—Subsec. (d). Pub. L. 103–337 added subsec. (d).

§ 1097. Contracts for medical care for retirees, dependents, and survivors: alternative delivery of health care

(a) IN GENERAL.—The Secretary of Defense, after consulting with the other administering Secretaries, may contract for the delivery of health care to which covered beneficiaries are entitled under this chapter. The Secretary may enter into a contract under this section with any of the following:

(1) Health maintenance organizations.

(2) Preferred provider organizations.

(3) Individual providers, individual medical facilities, or insurers.

(4) Consortiums of such providers, facilities, or insurers.

(b) SCOPE OF COVERAGE UNDER HEALTH CARE PLANS.—A contract entered into under this section may provide for the delivery of—

(1) selected health care services;

(2) total health care services for selected covered beneficiaries; or

(3) total health care services for all covered beneficiaries who reside in a geographical area designated by the Secretary.

(c) COORDINATION WITH FACILITIES OF THE UNIFORMED SERVICES.—The Secretary of Defense may provide for the coordination of health care services provided pursuant to any contract or agreement under this section with those services provided in medical treatment facilities of the uniformed services. Subject to the availability of space and facilities and the capabilities of the medical or dental staff, the Secretary may not deny access to facilities of the uniformed services to a covered beneficiary on the basis of whether the beneficiary enrolled or declined enrollment in any program established under, or operating in connection with, any contract under this section. Notwithstanding the preferences established by sections 1074(b) and 1076 of this title, the Secretary shall, as an incentive for enrollment, establish reasonable preferences for services in facilities of the uniformed services for covered beneficiaries enrolled in any program established under, or operating in connection with, any contract under this section.

(d) COORDINATION WITH OTHER HEALTH CARE PROGRAMS.—In the case of a covered beneficiary who is enrolled in a managed health care program not operated under the authority of this chapter, the Secretary may contract under this section with such other managed health care program for the purpose of coordinating the beneficiary's dual entitlements under such program and this chapter. A managed health care program with which arrangements may be made under this subsection includes any health maintenance organization, competitive medical plan, health care prepayment plan, or other managed care program recognized pursuant to regulations issued by the Secretary.

(e) CHARGES FOR HEALTH CARE.—The Secretary of Defense may prescribe by regulation a premium, deductible, copayment, or other charge for health care provided under this section. In the case of contracts for health care services under this section or health care plans offered under section 1099 of this title for which the Secretary permits covered beneficiaries who are covered by section 1086 of this title and who participate in such contracts or plans to pay an enrollment fee in lieu of meeting the applicable deductible amount specified in section 1086(b) of this title, the Secretary may establish the same (or a lower) enrollment fee for covered beneficiaries described in section 1086(d)(1) of this title who also participate in such contracts or plans. Without imposing additional costs on covered beneficiaries who participate in contracts for health care services under this section or health care plans offered under section 1099 of this title, the Secretary shall permit such covered beneficiaries to pay, on a quarterly basis, any enrollment fee required for such participation. A premium, deductible, copayment, or other charge prescribed by the Secretary under this subsection may not be increased during the period beginning on April 1, 2006, and ending on September 30, 2011.

(Added Pub. L. 99–661, div. A, title VII, § 701(a)(1), Nov. 14, 1986, 100 Stat. 3895; amended Pub. L. 103–337, div. A, title VII, §§ 713, 714(a), Oct. 5, 1994, 108 Stat. 2802; Pub. L. 104–106, div. A, title VII, §§ 712, 713, Feb. 10, 1996, 110 Stat. 374; Pub. L. 109–364, div. A, title VII, § 704(a), Oct. 17, 2006, 120 Stat. 2280; Pub. L. 110–181, div. A, title VII, § 701(a), Jan. 28, 2008, 122 Stat. 187; Pub. L. 110–417, [div. A], title VII, § 701(a), Oct. 14, 2008, 122 Stat. 4498; Pub. L. 111–383, div. A, title VII, § 701(a), Jan. 7, 2011, 124 Stat. 4244.)

AMENDMENTS

2011—Subsec. (e). Pub. L. 111–383 substituted ''September 30, 2011'' for ''September 30, 2009''.

2008—Subsec. (e). Pub. L. 110–417 substituted ''September 30, 2009'' for ''September 30, 2008''.

Pub. L. 110–181 substituted ''September 30, 2008'' for ''September 30, 2007''.

2006—Subsec. (e). Pub. L. 109–364 inserted at end ''A premium, deductible, copayment, or other charge prescribed by the Secretary under this subsection may not be increased during the period beginning on April 1, 2006, and ending on September 30, 2007.''

1996—Subsec. (c). Pub. L. 104–106, § 712, substituted ''Notwithstanding the preferences established by sections 1074(b) and 1076 of this title, the Secretary shall'' for ''However, the Secretary may''.

Subsec. (e). Pub. L. 104–106, § 713, inserted at end ''Without imposing additional costs on covered beneficiaries who participate in contracts for health care services under this section or health care plans offered under section 1099 of this title, the Secretary shall permit such covered beneficiaries to pay, on a quarterly basis, any enrollment fee required for such participation.''

1994—Subsec. (c). Pub. L. 103–337, § 714(a)(2), added subsec. (c). Former subsec. (c) redesignated (e).

Pub. L. 103–337, § 713, inserted at end ''In the case of contracts for health care services under this section or health care plans offered under section 1099 of this title for which the Secretary permits covered beneficiaries who are covered by section 1086 of this title and who participate in such contracts or plans to pay an enrollment fee in lieu of meeting the applicable deductible amount specified in section 1086(b) of this title, the Secretary may establish the same (or a lower) enrollment fee for covered beneficiaries described in section 1086(d)(1) of this title who also participate in such contracts or plans.''

Subsecs. (d), (e). Pub. L. 103–337, § 714(a), added subsec. (d) and redesignated former subsec. (c) as (e).

§ 1097a. TRICARE Prime: automatic enrollments; payment options

(a) AUTOMATIC ENROLLMENT OF CERTAIN DEPENDENTS.—Each dependent of a member of the uniformed services in grade E4 or below who is entitled to medical and dental care under section 1076(a)(2)(A) of this title and resides in the catchment area of a facility of a uniformed service offering TRICARE Prime shall be automatically enrolled in TRICARE Prime at the facility. The Secretary concerned shall provide written notice of the enrollment to the member. The enrollment of a dependent of the member may be terminated by the member or the dependent at any time.

(b) AUTOMATIC RENEWAL OF ENROLLMENTS OF COVERED BENEFICIARIES.—(1) An enrollment of a

covered beneficiary in TRICARE Prime shall be automatically renewed upon the expiration of the enrollment unless the renewal is declined.

(2) Not later than 15 days before the expiration date for an enrollment of a covered beneficiary in TRICARE Prime, the Secretary concerned shall—

(A) transmit a written notification of the pending expiration and renewal of enrollment to the covered beneficiary or, in the case of a dependent of a member of the uniformed services, to the member; and

(B) afford the beneficiary or member, as the case may be, an opportunity to decline the renewal of enrollment.

(c) PAYMENT OPTIONS FOR RETIREES.—A member or former member of the uniformed services eligible for medical care and dental care under section 1074(b) of this title may elect to have any fee payable by the member or former member for an enrollment in TRICARE Prime withheld from the member's retired pay, retainer pay, or equivalent pay, as the case may be, or to be paid from a financial institution through electronic transfers of funds. The fee shall be paid in accordance with the election. A member may elect under this section to pay the fee in full at the beginning of the enrollment period or to make payments on a monthly or quarterly basis.

(d) REGULATIONS AND EXCEPTIONS.—The Secretary of Defense shall prescribe regulations, including procedures, to carry out this section. Regulations prescribed to carry out the automatic enrollment requirements under this section may include such exceptions to the automatic enrollment procedures as the Secretary determines appropriate for the effective operation of TRICARE Prime.

(e) NO COPAYMENT FOR IMMEDIATE FAMILY.—No copayment shall be charged a member for care provided under TRICARE Prime to a dependent of a member of the uniformed services described in subparagraph (A), (D), or (I) of section 1072(2) of this title.

(f) DEFINITIONS.—In this section:

(1) The term ''TRICARE Prime'' means the managed care option of the TRICARE program.

(2) The term ''catchment area'', with respect to a facility of a uniformed service, means the service area of the facility, as designated under regulations prescribed by the administering Secretaries.

(Added Pub. L. 105–261, div. A, title VII, § 712(a)(1), Oct. 17, 1998, 112 Stat. 2058; amended Pub. L. 106–398, § 1 [[div. A], title VII, § 752(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–195; Pub. L. 107–107, div. A, title X, § 1048(a)(11), Dec. 28, 2001, 115 Stat. 1223.)

AMENDMENTS

2001—Subsec. (e). Pub. L. 107–107 substituted ''section 1072(2)'' for ''section 1072''.

2000—Subsecs. (e), (f). Pub. L. 106–398 added subsec. (e) and redesignated former subsec. (e) as (f).

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, § 1 [[div. A], title VII, § 752(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–195, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect 180 days after the date of the enactment of this Act [Oct. 30, 2000], and shall apply with respect to care provided on or after that date.''

EFFECTIVE DATE

Pub. L. 105–261, div. A, title VII, § 712(b), Oct. 17, 1998, 112 Stat. 2059, provided that: ''The regulations required under subsection (d) of section 1097a of title 10, United States Code (as added by subsection (a)), shall be prescribed to take effect not later than September 30, 1999. The section shall be applied under TRICARE Prime on and after the date on which the regulations take effect.''

§ 1097b. TRICARE program: financial management

(a) REIMBURSEMENT OF PROVIDERS.—(1) Subject to paragraph (2), the Secretary of Defense may reimburse health care providers under the TRICARE program at rates higher than the reimbursement rates otherwise authorized for the providers under that program if the Secretary determines that application of the higher rates is necessary in order to ensure the availability of an adequate number of qualified health care providers under that program.

(2) The amount of reimbursement provided under paragraph (1) with respect to a health care service may not exceed the lesser of the following:

(A) The amount equal to the local fee for service charge for the service in the service area in which the service is provided as determined by the Secretary based on one or more of the following payment rates:

(i) Usual, customary, and reasonable.

(ii) The Health Care Finance Administration's Resource Based Relative Value Scale.

(iii) Negotiated fee schedules.

(iv) Global fees.

(v) Sliding scale individual fee allowances.

(B) The amount equal to 115 percent of the CHAMPUS maximum allowable charge for the service.

(b) THIRD-PARTY COLLECTIONS.—(1) A medical treatment facility of the uniformed services under the TRICARE program has the same right as the United States under section 1095 of this title to collect from a third-party payer the reasonable charges for health care services described in paragraph (2) that are incurred by the facility on behalf of a covered beneficiary under that program.

(2) The Secretary of Defense shall prescribe regulations for the administration of this subsection. The regulations shall set forth the method to be used for the computation of the reasonable charges for inpatient, outpatient, and other health care services. The method of computation may be—

(A) a method that is based on—

(i) per diem rates;

(ii) all-inclusive rates for each visit;

(iii) diagnosis-related groups; or

(iv) rates prescribed under the regulations implementing sections 1079 and 1086 of this title; or

(B) any other method considered appropriate.

(c) CONSULTATION REQUIREMENT.—The Secretary of Defense shall carry out the responsibil-

ities under this section after consultation with the other administering Secretaries.

(Added Pub. L. 106–65, div. A, title VII, § 716(a)(1), Oct. 5, 1999, 113 Stat. 690.)

EFFECTIVE DATE

Pub. L. 106–65, div. A, title VII, § 716(d), Oct. 5, 1999, 113 Stat. 692, provided that: ''The amendments made by subsection (a) [enacting this section] shall take effect one year after the date of the enactment of this Act [Oct. 5, 1999].''

REPORT ON IMPLEMENTATION

Pub. L. 106–65, div. A, title VII, § 716(b), Oct. 5, 1999, 113 Stat. 691, directed the Secretary of Defense to submit to Congress a report assessing the effects of the implementation of the requirements and authorities set forth in this section not later than 6 months after Oct. 5, 1999.

§ 1097c. TRICARE program: relationship with employer-sponsored group health plans

(a) PROHIBITION ON FINANCIAL INCENTIVES NOT TO ENROLL IN A GROUP HEALTH PLAN.—(1) Except as provided in this subsection, the provisions of section 1862(b)(3)(C) of the Social Security Act shall apply with respect to financial or other incentives for a TRICARE-eligible employee not to enroll (or to terminate enrollment) under a health plan which would (in the case of such enrollment) be a primary plan under sections 1079(j)(1) and 1086(g) of this title in the same manner as such section 1862(b)(3)(C) applies to financial or other incentives for an individual entitled to benefits under title XVIII of the Social Security Act not to enroll (or to terminate enrollment) under a group health plan or a large group health plan which would (in the case of enrollment) be a primary plan (as defined in section 1862(b)(2)(A) of such Act).

(2)(A) The Secretary of Defense may by regulation adopt such additional exceptions to the prohibition referenced and applied under paragraph (1) as the Secretary deems appropriate and such paragraph (1) shall be implemented taking into account the adoption of such exceptions.

(B) The Secretary of Defense and the Secretary of Health and Human Services are authorized to enter into agreements for carrying out this subsection. Any such agreement shall provide that any expenses incurred by the Secretary of Health and Human Services pertaining to carrying out this subsection shall be reimbursed by the Secretary of Defense.

(C) Authorities of the Inspector General of the Department of Defense shall be available for oversight and investigations of responsibilities of employers and other entities under this subsection.

(D) Information obtained under section 1095(k) of this title may be used in carrying out this subsection in the same manner as information obtained under section 1862(b)(5) of the Social Security Act may be used in carrying out section 1862(b) of such Act.

(E) Any amounts collected in carrying out paragraph (1) shall be handled in accordance with section 1079a of this title.

(b) ELECTION OF TRICARE-ELIGIBLE EMPLOYEES TO PARTICIPATE IN GROUP HEALTH PLAN.—A TRICARE-eligible employee shall have the opportunity to elect to participate in the group health plan offered by the employer of the employee and receive primary coverage for health care services under the plan in the same manner and to the same extent as similarly situated employees of such employer who are not TRICARE-eligible employees.

(c) INAPPLICABILITY TO CERTAIN EMPLOYERS.—The provisions of this section do not apply to any employer who has fewer than 20 employees.

(d) RETENTION OF ELIGIBILITY FOR COVERAGE UNDER TRICARE.—Nothing in this section, including an election made by a TRICARE-eligible employee under subsection (b), shall be construed to affect, modify, or terminate the eligibility of a TRICARE-eligible employee or spouse of such employee for health care or dental services under this chapter in accordance with the other provisions of this chapter.

(e) OUTREACH.—The Secretary of Defense shall, in coordination with the other administering Secretaries, conduct outreach to inform covered beneficiaries who are entitled to health care benefits under the TRICARE program of the rights and responsibilities of such beneficiaries and employers under this section.

(f) DEFINITIONS.—In this section:

(1) The term ''employer'' includes a State or unit of local government.

(2) The term ''group health plan'' means a group health plan (as that term is defined in section 5000(b)(1) of the Internal Revenue Code of 1986 without regard to section 5000(d) of the Internal Revenue Code of 1986).

(3) The term ''TRICARE-eligible employee'' means a covered beneficiary under section 1086 of this title entitled to health care benefits under the TRICARE program.

(g) EFFECTIVE DATE.—This section shall take effect on January 1, 2008.

(Added Pub. L. 109–364, div. A, title VII, § 707(a), Oct. 17, 2006, 120 Stat. 2283.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Act is classified generally to subchapter XVIII (§ 1395 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. Section 1862 of the Act is classified to section 1395y of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 5000 of the Internal Revenue Code of 1986, referred to in subsec. (f)(2), is classified to section 5000 of Title 26, Internal Revenue Code.

§ 1098. Incentives for participation in cost-effective health care plans

(a) WAIVER OF LIMITATIONS AND COPAYMENTS.—Subject to subsection (b), the Secretary of Defense, with respect to any plan contracted for under the authority of section 1079 or 1086 of this title, may waive, in whole or in part—

(1) any limitation set out in the second sentence of section 1079(a) of this title; or

(2) any requirement for payment by the patient under section 1079(b) or 1086(b) of this title.

(b) DETERMINATION AND REPORT.—(1) Subject to paragraph (3), the Secretary may waive a limitation or requirement as authorized by sub-

section (a) if the Secretary determines that during the period of the waiver such a plan will—

(A) be less costly to the Government than a plan subject to such limitations or payment requirements; or

(B) provide better services than those provided by a plan subject to such limitations or payment requirements at no additional cost to the Government.

(2) The Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report with respect to a waiver under paragraph (1), including a comparison of costs of and benefits available under—

(A) a plan with respect to which the limitations and payment requirements are waived; and

(B) a plan with respect to which there is no such waiver.

(3) A waiver under paragraph (1) may not take effect until the end of the 180-day period beginning on the date on which the Secretary submits the report required by paragraph (2) with respect to such waiver.

(Added Pub. L. 99–661, div. A, title VII, § 701(a)(1), Nov. 14, 1986, 100 Stat. 3895; amended Pub. L. 101–510, div. A, title XIV, § 1484(h)(1), Nov. 5, 1990, 104 Stat. 1717; Pub. L. 104–106, div. A, title XV, § 1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

AMENDMENTS

1999—Subsec. (b)(2). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1996—Subsec. (b)(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''.

1990—Subsec. (a). Pub. L. 101–510 substituted ''subsection (b)'' for ''subsections (b) and (c)'' in introductory provisions.

§ 1099. Health care enrollment system

(a) ESTABLISHMENT OF SYSTEM.—The Secretary of Defense, after consultation with the other administering Secretaries, shall establish a system of health care enrollment for covered beneficiaries who reside in the United States.

(b) DESCRIPTION OF SYSTEM.—Such system shall—

(1) allow covered beneficiaries to elect a health care plan from eligible health care plans designated by the Secretary of Defense; or

(2) if necessary in order to ensure full use of facilities of the uniformed services in a geographical area, assign covered beneficiaries who reside in such area to such facilities.

(c) HEALTH CARE PLANS AVAILABLE UNDER SYSTEM.—A health care plan designated by the Secretary of Defense under the system described in subsection (a) shall provide all health care to which a covered beneficiary is entitled under this chapter. Such a plan may consist of any of the following:

(1) Use of facilities of the uniformed services.

(2) The Civilian Health and Medical Program of the Uniformed Services.

(3) Any other health care plan contracted for by the Secretary of Defense.

(4) Any combination of the plans described in paragraphs (1), (2), and (3).

(d) REGULATIONS.—The Secretary of Defense, after consultation with the other administering Secretaries, shall prescribe regulations to carry out this section.

(Added Pub. L. 99–661, div. A, title VII, § 701(a)(1), Nov. 14, 1986, 100 Stat. 3896.)

REGULATIONS

Section 701(d)(1), (2) of Pub. L. 99–661 provided that:

''(1) Except as provided in paragraph (2), the Secretary of Defense shall prescribe regulations as required by section 1099(d) of title 10, United States Code (as added by subsection (a)(1)) to implement the system of health care enrollment for covered beneficiaries—

''(A) on October 1, 1987, with respect to—

''(i) covered beneficiaries included in the demonstration project required under section 702 [10 U.S.C. 1073 note]; and

''(ii) facilities of the uniformed services located in the geographical area covered by the demonstration project; and

''(B) not later than September 30, 1990, for all other covered beneficiaries and facilities of the uniformed services.

''(2) The Secretary may not assign covered beneficiaries to facilities of the uniformed services, as authorized by section 1099(b)(2) of such title (as added by subsection (a)(1)), before October 1, 1990.''

REPORTS TO CONGRESS

Section 701(c)(1) of Pub. L. 99–661 required Secretary of Defense, not later than July 1, 1987, to submit to Congress a report detailing any plans to establish or implement a system of health care enrollment (other than as required under section 702(a)(2)(C)) under section 1099(a) of this title and the plan of the Secretary for completing implementation of such system.

§ 1100. Defense Health Program Account

(a) ESTABLISHMENT OF ACCOUNT.—(1) There is hereby established in the Department of Defense an account to be known as the ''Defense Health Program Account''. All sums appropriated to carry out the functions of the Secretary of Defense with respect to medical and health care programs of the Department of Defense shall be appropriated to the account.

(2) Of the total amount appropriated for a fiscal year for programs and activities carried out under this chapter, the amount equal to three percent of such total amount shall remain available for obligation until the end of the following fiscal year.

(b) OBLIGATION OF AMOUNTS FROM ACCOUNT BY SECRETARY OF DEFENSE.—The Secretary of Defense may obligate or expend funds from the account for purposes of conducting programs and activities under this chapter, including contracts entered into under section 1079, 1086, 1092, or 1097 of this title, to the extent amounts are available in the account.

(c) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

(Added Pub. L. 99–661, div. A, title VII, § 701(a)(1), Nov. 14, 1986, 100 Stat. 3896; amended Pub. L.

104–106, div. A, title VII, §735(a)–(d)(1), Feb. 10, 1996, 110 Stat. 382.)

AMENDMENTS

1996—Pub. L. 104–106, §735(d)(1), amended section catchline generally, substituting ''Defense Health Program Account'' for ''Military Health Care Account''.

Subsec. (a)(1). Pub. L. 104–106, §735(a)(1), substituted ''Defense Health Program Account'' for ''Military Health Care Account'' and ''medical and health care programs of the Department of Defense'' for ''the Civilian Health and Medical Program of the Uniformed Services''.

Subsec. (a)(2). Pub. L. 104–106, §735(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Amounts appropriated to the account shall remain available until obligated or expended under subsection (b) or (c).''

Subsec. (b). Pub. L. 104–106, §735(a)(2), substituted ''conducting programs and activities under this chapter, including contracts entered into'' for ''entering into a contract'' and inserted comma after ''title''.

Subsec. (c). Pub. L. 104–106, §735(c), redesignated subsec. (e) as (c) and struck out former subsec. (c) which read as follows: ''ALLOCATION OF AMOUNTS IN ACCOUNT FOR PROVISION OF MEDICAL CARE BY SERVICE SECRETARIES.—(1) The Secretary of a military department shall, before the beginning of a fiscal year quarter, provide to the Secretary of Defense an estimate of the amounts necessary to pay for charges for benefits under the program for covered beneficiaries under the jurisdiction of the Secretary for that quarter.

''(2) The Secretary of Defense shall, subject to amounts provided in advance in appropriation Acts, make available to each Secretary of a military department the amount from the account that the Secretary of Defense determines is necessary to pay for charges for benefits under the program for covered beneficiaries under the jurisdiction of such Secretary for that quarter.''

Subsec. (d). Pub. L. 104–106, §735(c)(1), struck out subsec. (d) which read as follows: ''EXPENDITURE OF AMOUNTS FROM ACCOUNT BY SERVICE SECRETARIES.—The Secretary of a military department shall provide medical and dental care to covered beneficiaries under the jurisdiction of the Secretary for a fiscal year quarter from amounts appropriated to the Secretary and from amounts from the account made available for that quarter to the Secretary by the Secretary of Defense. If the Secretary of a military department exhausts the amounts from the account made available to the Secretary for a fiscal year quarter, the Secretary shall transfer to the account from amounts appropriated to the Secretary an amount sufficient to provide medical and dental care to covered beneficiaries under the jurisdiction of the Secretary for the remainder of the fiscal year quarter.''

Subsec. (e). Pub. L. 104–106, §735(c)(2), redesignated subsec. (e) as (c).

Subsec. (f). Pub. L. 104–106, §735(c)(1), struck out subsec. (f) which read as follows: ''DEFINITIONS.—In this section:

''(1) The term 'account' means the Military Health Care Account established in subsection (a).

''(2) The term 'program' means the Civilian Health and Medical Program of the Uniformed Services.''

EFFECTIVE DATE

Section 701(d)(3) of Pub. L. 99–661 provided that: ''Section 1100 of such title (as added by subsection (a)(1)) shall take effect on October 1, 1987.''

REPORTS TO CONGRESS

Section 701(c)(2) of Pub. L. 99–661 required Secretary to submit to Congress not later than May 1, 1987, a report on plans of Secretary for establishing diagnosis-related groups for inpatient services under section 1100(a) of this title, and not later than May 1, 1988, a report on plans of Secretary for establishing diagnosis-related groups for outpatient services under such section.

§1101. Resource allocation methods: capitation or diagnosis-related groups

(a) ESTABLISHMENT OF CAPITATION OR DRG METHOD.—The Secretary of Defense, after consultation with the other administering Secretaries, shall establish by regulation the use of capitation or diagnosis-related groups as the primary criteria for allocation of resources to facilities of the uniformed services.

(b) EXCEPTION FOR MOBILIZATION MISSIONS.—Capitation or diagnosis-related groups shall not be used to allocate resources to the facilities of the uniformed services to the extent that such resources are required by such facilities for mobilization missions.

(c) CONTENT OF REGULATIONS.—Such regulations may establish a system of diagnosis-related groups similar to the system established under section 1886(d)(4) of the Social Security Act (42 U.S.C. 1395ww(d)(4)). Such regulations may include the following:

(1) A classification of inpatient treatments by diagnosis-related groups and a similar classification of outpatient treatment.

(2) A methodology for classifying specific treatments within such groups.

(3) An appropriate weighting factor for each such diagnosis-related group which reflects the relative resources used by a facility of a uniformed service with respect to treatments classified within that group compared to treatments classified within other groups.

(4) An appropriate method for calculating or estimating the annual per capita costs of providing comprehensive health care services to members of the uniformed services on active duty and covered beneficiaries.

(Added Pub. L. 99–661, div. A, title VII, §701(a)(1), Nov. 14, 1986, 100 Stat. 3897; amended Pub. L. 100–456, div. A, title XII, §1233(e)(1), Sept. 29, 1988, 102 Stat. 2057; Pub. L. 103–160, div. A, title VII, §714(a), (b)(1), Nov. 30, 1993, 107 Stat. 1690.)

AMENDMENTS

1993—Pub. L. 103–160, §714(b)(1), substituted ''Resource allocation methods: capitation or diagnosis-related groups'' for ''Diagnosis-related groups'' as section catchline.

Subsec. (a). Pub. L. 103–160, §714(a)(1), substituted ''Capitation or DRG Method'' for ''DRGs'' in heading and inserted ''capitation or'' before ''diagnosis-related groups'' in text.

Subsec. (b). Pub. L. 103–160, §714(a)(2), substituted ''Capitation or diagnosis-related groups'' for ''Diagnosis-related groups''.

Subsec. (c). Pub. L. 103–160, §714(a)(3), substituted ''may'' for ''shall'' in two places in introductory provisions and added par. (4).

1988—Subsec. (c). Pub. L. 100–456 struck out ''(1)'' before ''Such regulations'' in introductory provisions.

REGULATIONS

Pub. L. 101–189, div. A, title VII, §724, Nov. 29, 1989, 103 Stat. 1478, as amended by Pub. L. 102–190, div. A, title VII, §719, Dec. 5, 1991, 105 Stat. 1404, provided that: ''The regulations required by section 1101(a) of title 10, United States Code, to establish the use of diagnosis-related groups as the primary criteria for the allocation of resources to health care facilities of the uniformed services shall be prescribed to take effect not later than October 1, 1993, in the case of outpatient treatments.''

Section 701(d)(4) of Pub. L. 99–661, as amended by Pub. L. 100–180, div. A, title VII, §724, Dec. 4, 1987, 101 Stat.

1116, provided that: ''The Secretary of Defense shall prescribe regulations as required by section 1101(a) of such title (as added by subsection (a)(1)) to take effect—

''(A) in the case of inpatient treatments, not later than October 1, 1988; and

''(B) in the case of outpatient treatments, not later than October 1, 1989.''

§ 1102. Confidentiality of medical quality assurance records: qualified immunity for participants

(a) CONFIDENTIALITY OF RECORDS.—Medical quality assurance records created by or for the Department of Defense as part of a medical quality assurance program are confidential and privileged. Such records may not be disclosed to any person or entity, except as provided in subsection (c).

(b) PROHIBITION ON DISCLOSURE AND TESTIMONY.—(1) No part of any medical quality assurance record described in subsection (a) may be subject to discovery or admitted into evidence in any judicial or administrative proceeding, except as provided in subsection (c).

(2) A person who reviews or creates medical quality assurance records for the Department of Defense or who participates in any proceeding that reviews or creates such records may not be permitted or required to testify in any judicial or administrative proceeding with respect to such records or with respect to any finding, recommendation, evaluation, opinion, or action taken by such person or body in connection with such records except as provided in this section.

(c) AUTHORIZED DISCLOSURE AND TESTIMONY.—(1) Subject to paragraph (2), a medical quality assurance record described in subsection (a) may be disclosed, and a person referred to in subsection (b) may give testimony in connection with such a record, only as follows:

(A) To a Federal executive agency or private organization, if such medical quality assurance record or testimony is needed by such agency or organization to perform licensing or accreditation functions related to Department of Defense health care facilities or to perform monitoring, required by law, of Department of Defense health care facilities.

(B) To an administrative or judicial proceeding commenced by a present or former Department of Defense health care provider concerning the termination, suspension, or limitation of clinical privileges of such health care provider.

(C) To a governmental board or agency or to a professional health care society or organization, if such medical quality assurance record or testimony is needed by such board, agency, society, or organization to perform licensing, credentialing, or the monitoring of professional standards with respect to any health care provider who is or was a member or an employee of the Department of Defense.

(D) To a hospital, medical center, or other institution that provides health care services, if such medical quality assurance record or testimony is needed by such institution to assess the professional qualifications of any health care provider who is or was a member or employee of the Department of Defense and who has applied for or been granted authority or employment to provide health care services in or on behalf of such institution.

(E) To an officer, employee, or contractor of the Department of Defense who has a need for such record or testimony to perform official duties.

(F) To a criminal or civil law enforcement agency or instrumentality charged under applicable law with the protection of the public health or safety, if a qualified representative of such agency or instrumentality makes a written request that such record or testimony be provided for a purpose authorized by law.

(G) In an administrative or judicial proceeding commenced by a criminal or civil law enforcement agency or instrumentality referred to in subparagraph (F), but only with respect to the subject of such proceeding.

(2) With the exception of the subject of a quality assurance action, the identity of any person receiving health care services from the Department of Defense or the identity of any other person associated with such department for purposes of a medical quality assurance program that is disclosed in a medical quality assurance record described in subsection (a) shall be deleted from that record or document before any disclosure of such record is made outside the Department of Defense. Such requirement does not apply to the release of information pursuant to section 552a of title 5.

(d) DISCLOSURE FOR CERTAIN PURPOSES.—(1) Nothing in this section shall be construed as authorizing or requiring the withholding from any person or entity aggregate statistical information regarding the results of Department of Defense medical quality assurance programs.

(2) Nothing in this section shall be construed as authority to withhold any medical quality assurance record from a committee of either House of Congress, any joint committee of Congress, or the Comptroller General if such record pertains to any matter within their respective jurisdictions.

(e) PROHIBITION ON DISCLOSURE OF RECORD OR TESTIMONY.—A person or entity having possession of or access to a record or testimony described by this section may not disclose the contents of such record or testimony in any manner or for any purpose except as provided in this section.

(f) EXEMPTION FROM FREEDOM OF INFORMATION ACT.—Medical quality assurance records described in subsection (a) may not be made available to any person under section 552 of title 5.

(g) LIMITATION ON CIVIL LIABILITY.—A person who participates in or provides information to a person or body that reviews or creates medical quality assurance records described in subsection (a) shall not be civilly liable for such participation or for providing such information if the participation or provision of information was in good faith based on prevailing professional standards at the time the medical quality assurance program activity took place.

(h) APPLICATION TO INFORMATION IN CERTAIN OTHER RECORDS.—Nothing in this section shall be construed as limiting access to the information in a record created and maintained outside a medical quality assurance program, including a patient's medical records, on the grounds that

the information was presented during meetings of a review body that are part of a medical quality assurance program.

(i) REGULATIONS.—The Secretary of Defense shall prescribe regulations to implement this section.

(j) DEFINITIONS.—In this section:

(1) The term ''medical quality assurance program'' means any activity carried out before, on, or after November 14, 1986 by or for the Department of Defense to assess the quality of medical care, including activities conducted by individuals, military medical or dental treatment facility committees, or other review bodies responsible for quality assurance, credentials, infection control, patient care assessment (including treatment procedures, blood, drugs, and therapeutics), medical records, health resources management review and identification and prevention of medical or dental incidents and risks.

(2) The term ''medical quality assurance record'' means the proceedings, records, minutes, and reports that emanate from quality assurance program activities described in paragraph (1) and are produced or compiled by the Department of Defense as part of a medical quality assurance program.

(3) The term ''health care provider'' means any military or civilian health care professional who, under regulations of a military department, is granted clinical practice privileges to provide health care services in a military medical or dental treatment facility or who is licensed or certified to perform health care services by a governmental board or agency or professional health care society or organization.

(k) PENALTY.—Any person who willfully discloses a medical quality assurance record other than as provided in this section, knowing that such record is a medical quality assurance record, shall be fined not more than $3,000 in the case of a first offense and not more than $20,000 in the case of a subsequent offense.

(Added Pub. L. 99–661, div. A, title VII, § 705(a)[(1)], Nov. 14, 1986, 100 Stat. 3902; amended Pub. L. 100–180, div. A, title XII, § 1231(5), Dec. 4, 1987, 101 Stat. 1160; Pub. L. 101–189, div. A, title VI, § 653(f), Nov. 29, 1989, 103 Stat. 1463; Pub. L. 108–375, div. A, title X, § 1084(c)(2), Oct. 28, 2004, 118 Stat. 2061.)

AMENDMENTS

2004—Subsec. (d)(2). Pub. L. 108–375 substituted ''Comptroller General'' for ''General Accounting Office''.

1989—Subsec. (j)(1). Pub. L. 101–189 substituted ''November 14, 1986'' for ''the date of the enactment of this section''.

1987—Subsec. (c)(2). Pub. L. 100–180 struck out '', United States Code'' after ''title 5'' in second sentence.

EFFECTIVE DATE

Section 705(b) of Pub. L. 99–661 provided that: ''Section 1102 of title 10, United States Code, as added by subsection (a), shall apply to all records created before, on, or after the date of the enactment of this Act [Nov. 14, 1986] by or for the Department of Defense as part of a medical quality assurance program.''

§ 1103. Contracts for medical and dental care: State and local preemption

(a) OCCURRENCE OF PREEMPTION.—A law or regulation of a State or local government relating to health insurance, prepaid health plans, or other health care delivery or financing methods shall not apply to any contract entered into pursuant to this chapter by the Secretary of Defense or the administering Secretaries to the extent that the Secretary of Defense or the administering Secretaries determine that—

(1) the State or local law or regulation is inconsistent with a specific provision of the contract or a regulation promulgated by the Secretary of Defense or the administering Secretaries pursuant to this chapter; or

(2) the preemption of the State or local law or regulation is necessary to implement or administer the provisions of the contract or to achieve any other important Federal interest.

(b) EFFECT OF PREEMPTION.—In the case of the preemption under subsection (a) of a State or local law or regulation regarding financial solvency, the Secretary of Defense or the administering Secretaries shall require an independent audit of the prime contractor of each contract that is entered into pursuant to this chapter and covered by the preemption. The audit shall be performed by the Defense Contract Audit Agency.

(c) STATE DEFINED.—In this section, the term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and each possession of the United States.

(Added Pub. L. 100–180, div. A, title VII, § 725(a)(1), Dec. 4, 1987, 101 Stat. 1116; amended Pub. L. 103–160, div. A, title VII, § 715(a), Nov. 30, 1993, 107 Stat. 1690; Pub. L. 109–163, div. A, title X, § 1057(a)(2), Jan. 6, 2006, 119 Stat. 3440.)

AMENDMENTS

2006—Subsec. (c). Pub. L. 109–163 struck out ''Territory and'' before ''possession''.

1993—Pub. L. 103–160 amended section generally. Prior to amendment, section read as follows:

''(a) The provisions of any contract under this chapter which relate to the nature and extent of coverage of benefits (including payments with respect to benefits) shall preempt any law of a State or local government, or any regulation issued under such a law, which relates to health insurance or plans to the extent that such law or regulation is inconsistent with such contractual provisions.

''(b) In this section, the term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and each territory and possession of the United States.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 715(b) of Pub. L. 103–160 provided that: ''Section 1103 of title 10, United States Code, as amended by subsection (a), shall apply with respect to any contract entered into under chapter 55 of such title before, on, or after the date of the enactment of this Act [Nov. 30, 1993].''

EFFECTIVE DATE

Section 725(b) of Pub. L. 100–180 provided that: ''Section 1103 of such title, as added by subsection (a), shall apply with respect to any contract entered into after October 1, 1987.''

APPLICABILITY OF PREEMPTION PROVISIONS TO CERTAIN CONTRACTS

Pub. L. 102–396, title IX, § 9032, Oct. 6, 1992, 106 Stat. 1908, as amended by Pub. L. 103–50, ch. III, § 301, July 2, 1993, 107 Stat. 250, provided in part ''That the preemption provisions of section 1103(a) of title 10, United States Code, shall not be limited to contractual provisions relating to coverage of benefits, but shall apply to all contracts entered into pursuant to this general provision, the California and Hawaii recompetition contract, and Solicitation Number MDA 906–92–R–0004 and shall preempt any and all State and local laws and regulations which relate to health insurance or health care plans''.

APPLICABILITY TO CONTRACTS ENTERED INTO PURSUANT TO SOLICITATION NUMBER MDA–903–87–R–0047

Pub. L. 100–463, title VIII, § 8078(b), Oct. 1, 1988, 102 Stat. 2270–30, provided that preemption provisions of 10 U.S.C. 1103 shall apply to contracts entered into pursuant to Solicitation Number MDA–903–87–R–0047 and shall preempt State and local laws or regulations which relate to health insurance or prepaid health care plans. Similar provisions were contained in the following prior appropriation act:

Pub. L. 100–202, § 101(b) [title VIII, § 8104(b)], Dec. 22, 1987, 101 Stat. 1329–43, 1329–81.

§ 1104. Sharing of health-care resources with the Department of Veterans Affairs

(a) SHARING OF HEALTH-CARE RESOURCES.—Health-care resources of the Department of Defense shall be shared with health-care resources of the Department of Veterans Affairs in accordance with section 8111 of title 38 or under section 1535 of title 31.

(b) REIMBURSEMENT FROM CHAMPUS FUNDS.—Pursuant to an agreement entered into under section 8111 of title 38 or section 1535 of title 31, the Secretary of a military department may reimburse the Secretary of Veterans Affairs from funds available for that military department for the payment of medical care provided under section 1079 or 1086 of this title.

(c) CHARGES.—The Secretary of Defense may prescribe by regulation a premium, deductible, copayment, or other charge for health care provided to covered beneficiaries under this chapter pursuant to an agreement entered into by the Secretary of a military department under section 8111 of title 38 or section 1535 of title 31.

(d) PROVISION OF SERVICES DURING WAR OR NATIONAL EMERGENCY.—Members of the armed forces on active duty during and immediately following a period of war, or during and immediately following a national emergency involving the use of the armed forces in armed conflict, may be provided health-care services by the Department of Veterans Affairs in accordance with section 8111A of title 38.

(Added Pub. L. 101–189, div. A, title VII, § 722(a), Nov. 29, 1989, 103 Stat. 1477; amended Pub. L. 102–484, div. A, title X, § 1052(14), Oct. 23, 1992, 106 Stat. 2499; Pub. L. 103–35, title II, § 201(c)(1), May 31, 1993, 107 Stat. 98; Pub. L. 107–314, div. A, title VII, § 721(b), Dec. 2, 2002, 116 Stat. 2595.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–314 substituted ''shall'' for ''may''.

1993—Subsecs. (a) to (c). Pub. L. 103–35, § 201(c)(1)(A), substituted ''section 8111 of title 38'' for ''section 8011 of title 38''.

Subsec. (d). Pub. L. 103–35, § 201(c)(1)(B), substituted ''section 8111A of title 38'' for ''section 8011A of title 38''.

1992—Subsecs. (a) to (c). Pub. L. 102–484, § 1052(14)(A), substituted ''section 8011 of title 38'' for ''section 5011 of title 38''.

Subsec. (d). Pub. L. 102–484, § 1052(14)(B), substituted ''section 8011A of title 38'' for ''section 5011A of title 38''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–314 effective Oct. 1, 2003, see section 721(c) of Pub. L. 107–314, set out as a note under section 8111 of Title 38, Veterans' Benefits.

§ 1105. Specialized treatment facility program

(a) PROGRAM AUTHORIZED.—The Secretary of Defense may conduct a specialized treatment facility program pursuant to regulations prescribed by the Secretary of Defense. The Secretary shall consult with the other administering Secretaries in prescribing regulations for the program and in conducting the program.

(b) FACILITIES AUTHORIZED TO BE USED.—Under the specialized treatment facility program, the Secretary may designate health care facilities of the uniformed services and civilian health care facilities as specialized treatment facilities.

(c) WAIVER OF NONEMERGENCY HEALTH CARE RESTRICTION.—Under the specialized treatment facility program, the Secretary may waive, with regard to the provision of a particular service, the 40-mile radius restriction set forth in section 1079(a)(7) of this title if the Secretary determines that the use of a different geographical area restriction will result in a more cost-effective provision of the service.

(d) CIVILIAN FACILITY SERVICE AREA.—For purposes of the specialized treatment facility program, the service area of a civilian health care facility designated pursuant to subsection (b) shall be comparable in size to the service areas of facilities of the uniformed services.

(e) ISSUANCE OF NONAVAILABILITY OF HEALTH CARE STATEMENTS.—A covered beneficiary who resides within the service area of a specialized treatment facility designated under the specialized treatment facility program may be required to obtain a nonavailability of health care statement in the case of a specialized service offered by the facility in order for the covered beneficiary to receive the service outside of the program.

(f) PAYMENT OF COSTS RELATED TO CARE IN SPECIALIZED TREATMENT FACILITIES.—(1) Subject to paragraph (2), in connection with the treatment of a covered beneficiary under the specialized treatment facility program, the Secretary may provide the following benefits:

(A) Full or partial reimbursement of a member of the uniformed services for the reasonable expenses incurred by the member in transporting a covered beneficiary to or from a health care facility of the uniformed services or a civilian health care facility at which specialized health care services are provided pursuant to this chapter.

(B) Full or partial reimbursement of a person (including a member of the uniformed services) for the reasonable expenses of transportation, temporary lodging, and meals (not

to exceed a per diem rate determined in accordance with implementing regulations) incurred by such person in accompanying a covered beneficiary as a nonmedical attendant to a health care facility referred to in subparagraph (A).

(C) In-kind transportation, lodging, or meals instead of reimbursements under subparagraph (A) or (B) for transportation, lodging, or meals, respectively.

(2) The Secretary may make reimbursements for or provide transportation, lodging, and meals under paragraph (1) in the case of a covered beneficiary only if the total cost to the Department of Defense of doing so and of providing the health care in such case is less than the cost to the Department of providing the health care to the covered beneficiary by other means authorized under this chapter.

(g) COVERED BENEFICIARY DEFINED.—In this section, the term ''covered beneficiary'' means a person covered under section 1079 or 1086 of this title.

(Added Pub. L. 102–190, div. A, title VII, §715(a), Dec. 5, 1991, 105 Stat. 1403; amended Pub. L. 103–160, div. A, title VII, §716(a)(1), Nov. 30, 1993, 107 Stat. 1691; Pub. L. 104–106, div. A, title VII, §706, Feb. 10, 1996, 110 Stat. 373.)

AMENDMENTS

1996—Subsec. (h). Pub. L. 104–106 struck out subsec. (h) which read as follows: ''EXPIRATION OF PROGRAM.—The Secretary may not carry out the specialized treatment facility program authorized by this section after September 30, 1995.''

1993—Pub. L. 103–160 substituted ''Specialized treatment facility program'' for ''Issuance of nonavailability of health care statements'' as section catchline and amended text generally. Prior to amendment, text read as follows: ''In determining whether to issue a nonavailability of health care statement for any person entitled to health care in facilities of the uniformed services under this chapter, the commanding officer of such a facility may consider the availability of health care services for such person pursuant to any contract or agreement entered into under this chapter for the provision of health care services within the area served by that facility.''

§1106. Submittal of claims: standard form; time limits

(a) STANDARD FORM.—The Secretary of Defense, after consultation with the other administering Secretaries, shall prescribe by regulation a standard form for the submission of claims for the payment of health care services provided under this chapter.

(b) TIME FOR SUBMISSION.—A claim for payment for services provided under this chapter shall be submitted as provided in such regulations not later than one year after the services are provided.

(Added Pub. L. 102–190, div. A, title VII, §716(a)(1), Dec. 5, 1991, 105 Stat. 1403; amended Pub. L. 105–85, div. A, title VII, §738(a), Nov. 18, 1997, 111 Stat. 1815.)

AMENDMENTS

1997—Pub. L. 105–85 substituted '': standard form; time limits'' for ''under CHAMPUS'' in section catchline and amended text generally. Prior to amendment, text read as follows:

''(a) SUBMITTAL TO CLAIMS PROCESSING OFFICE.—Each provider of services under the Civilian Health and Medical Program of the Uniformed Services shall submit claims for payment for such services directly to the claims processing office designated pursuant to regulations prescribed under subsection (b). A claim for payment for services shall be submitted in a standard form (as prescribed in the regulations) not later than one year after the services are provided.

''(b) REGULATIONS.—The regulations required by subsection (a) shall be prescribed by the Secretary of Defense after consultation with the other administering Secretaries.

''(c) WAIVER.—The Secretary of Defense may waive the requirements of subsection (a) if the Secretary determines that the waiver is necessary in order to ensure adequate access for covered beneficiaries to health care services under this chapter.''

REGULATIONS

Section 716(b) of Pub. L. 102–190 provided that: ''The regulations required by section 1106 of title 10, United States Code (as added by subsection (a)), shall be prescribed to take effect not later than 180 days after the date of the enactment of this Act [Dec. 5, 1991].''

ESTABLISHMENT OF APPEALS PROCESS FOR CLAIMCHECK DENIALS

Pub. L. 105–261, div. A, title VII, §714, Oct. 17, 1998, 112 Stat. 2060, provided that:

''(a) ESTABLISHMENT OF APPEALS PROCESS.—Not later than January 1, 1999, the Secretary of Defense shall establish an appeals process in cases of denials through the ClaimCheck computer software system (or any other claims processing system that may be used by the Secretary) of claims by civilian providers for payment for health care services provided under the TRICARE program.

''(b) REPORT.—Not later than March 1, 1999, the Secretary shall submit to Congress a report on the implementation of this section.''

NATIONAL CLAIMS PROCESSING SYSTEM FOR CHAMPUS

Pub. L. 102–484, div. A, title VII, §711, Oct. 23, 1992, 106 Stat. 2433, provided that:

''(a) CLAIMS PROCESSING SYSTEM REQUIRED.—(1) The Secretary of Defense, in consultation with the other administering Secretaries, shall provide by contract for the operation of a claims processing system to be known as the 'National Claims Processing System for CHAMPUS'. The Secretary may procure the system in installments, including the use of incremental modules. The system, including completion and integration of all modules, shall be in full operation not later than seven years after the date of the enactment of this Act [Oct. 23, 1992].

''(2) The Secretary shall use competitive procedures for entering into any contract or contracts under paragraph (1).

''(b) SYSTEM FUNCTIONS.—The claims processing system shall include at least the following functions:

''(1) The maintenance in electronic or written form, or both, of appropriate information on health care services provided to covered beneficiaries by or through third parties under CHAMPUS or any alternative CHAMPUS program or demonstration project. Such information shall include—

''(A) the services to which such beneficiaries are entitled or eligible under an insurance plan, medical service plan, or health plan under CHAMPUS;

''(B) the insurers, medical services, or health plans that provide such services; and

''(C) the services available to beneficiaries under each insurance plan, medical service plan, or health plan, and the payment required of the beneficiaries and the insurer, medical service, or health plan for such services under the plan.

''(2) The ability to receive in electronic or written form claims submitted by insurers, medical services,

and health plans for services provided to covered beneficiaries.

''(3) The ability to process, adjudicate, and pay (by electronic or other means) such claims.

''(4) The provision of the information described in paragraphs (1) and (2) and information on the matters referred to in paragraph (3) by telephone, electronic, or other means to covered beneficiaries, insurers, medical services, and health plans.

''(c) CONSISTENCY WITH MEDICARE CLAIMS REQUIREMENTS.—The Secretary of Defense shall ensure, to the maximum extent practicable, that claims submitted to the claims processing system conform to the requirements applicable to claims submitted to the Secretary of Health and Human Services with respect to medical care provided under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.).

''(d) IDENTIFICATION CARD.—The Secretary of Defense shall take appropriate actions to determine whether the use by covered beneficiaries of a standard identification card containing electronically readable information will enhance the capability of the claims processing center to carry out the activities set forth in subsection (b).

''(e) TRANSITION TO SYSTEM.—After January 1, 1996, any modification or acquisition related to claims processing systems operations in the Office of the Civilian Health and Medical Program of the Uniformed Services shall contain provisions to transfer such operations to the claims processing system required by subsection (a). After January 1, 1999, any renewal or acquisition for fiscal intermediary services (including coordinated care implementations in military hospitals and clinics) shall contain provisions to transfer claims processing systems operations related to such fiscal intermediary services to the claims processing system required by subsection (a).

''(f) DEFINITIONS.—For purposes of this section:

''(1) The term 'administering Secretaries' has the meaning given that term in paragraph (3) of section 1072 of title 10, United States Code.

''(2) The term 'CHAMPUS' means the Civilian Health and Medical Program of the Uniformed Services, as defined in paragraph (4) of such section.

''(3) The term 'covered beneficiary' has the meaning given that term in paragraph (5) of such section.''

§ 1107. Notice of use of an investigational new drug or a drug unapproved for its applied use

(a) NOTICE REQUIRED.—(1) Whenever the Secretary of Defense requests or requires a member of the armed forces to receive an investigational new drug or a drug unapproved for its applied use, the Secretary shall provide the member with notice containing the information specified in subsection (d).

(2) The Secretary shall also ensure that health care providers who administer an investigational new drug or a drug unapproved for its applied use, or who are likely to treat members who receive such a drug, receive the information required to be provided under paragraphs (3) and (4) of subsection (d).

(b) TIME OF NOTICE.—The notice required to be provided to a member under subsection (a)(1) shall be provided before the investigational new drug or drug unapproved for its applied use is first administered to the member.

(c) FORM OF NOTICE.—The notice required under subsection (a)(1) shall be provided in writing.

(d) CONTENT OF NOTICE.—The notice required under subsection (a)(1) shall include the following:

(1) Clear notice that the drug being administered is an investigational new drug or a drug unapproved for its applied use.

(2) The reasons why the investigational new drug or drug unapproved for its applied use is being administered.

(3) Information regarding the possible side effects of the investigational new drug or drug unapproved for its applied use, including any known side effects possible as a result of the interaction of such drug with other drugs or treatments being administered to the members receiving such drug.

(4) Such other information that, as a condition of authorizing the use of the investigational new drug or drug unapproved for its applied use, the Secretary of Health and Human Services may require to be disclosed.

(e) RECORDS OF USE.—The Secretary of Defense shall ensure that the medical records of members accurately document—

(1) the receipt by members of any investigational new drug or drug unapproved for its applied use; and

(2) the notice required by subsection (a)(1).

(f) LIMITATION AND WAIVER.—(1) In the case of the administration of an investigational new drug or a drug unapproved for its applied use to a member of the armed forces in connection with the member's participation in a particular military operation, the requirement that the member provide prior consent to receive the drug in accordance with the prior consent requirement imposed under section 505(i)(4) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)(4)) may be waived only by the President. The President may grant such a waiver only if the President determines, in writing, that obtaining consent is not in the interests of national security.

(2) The waiver authority provided in paragraph (1) shall not be construed to apply to any case other than a case in which prior consent for administration of a particular drug is required by reason of a determination by the Secretary of Health and Human Services that such drug is subject to the investigational new drug requirements of section 505(i) of the Federal Food, Drug, and Cosmetic Act.

(3) The Secretary of Defense may request the President to waive the prior consent requirement with respect to the administration of an investigational new drug or a drug unapproved for its applied use to a member of the armed forces in connection with the member's participation in a particular military operation. With respect to any such administration—

(A) the Secretary may not delegate to any other official the authority to request the President to waive the prior consent requirement for the Department of Defense; and

(B) if the President grants the requested waiver, the Secretary shall submit to the chairman and ranking minority member of each congressional defense committee a notification of the waiver, together with the written determination of the President under paragraph (1) and the Secretary's justification for the request or requirement under subsection (a) for the member to receive the drug covered by the waiver.

(4) In this subsection:

(A) The term ''relevant FDA regulations'' means the regulations promulgated under sec-

tion 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)).

(B) The term ''prior consent requirement'' means the requirement included in the relevant FDA regulations pursuant to section 505(i)(4) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)(4)).

(g) DEFINITIONS.—In this section:

(1) The term ''investigational new drug'' means a drug covered by section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)).

(2) The term ''drug unapproved for its applied use'' means a drug administered for a use not described in the approved labeling of the drug under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355).

(Added Pub. L. 105–85, div. A, title VII, §766(a), Nov. 18, 1997, 111 Stat. 1827; amended Pub. L. 105–261, div. A, title VII, §731(a)(1), (b), Oct. 17, 1998, 112 Stat. 2070, 2071; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 108–136, div. A, title X, §1043(b)(7), Nov. 24, 2003, 117 Stat. 1611; Pub. L. 108–375, div. A, title VII, §726(a), Oct. 28, 2004, 118 Stat. 1992.)

AMENDMENTS

2004—Subsec. (f)(1). Pub. L. 108–375, §726(a)(1), substituted ''obtaining consent is'' for ''obtaining consent—

''(A) is not feasible;

''(B) is contrary to the best interests of the member; or

''(C) is''.

Subsec. (f)(2). Pub. L. 108–375, §726(a)(2), added par. (2) and struck out former par. (2) which read as follows: ''In making a determination to waive the prior consent requirement on a ground described in subparagraph (A) or (B) of paragraph (1), the President shall apply the standards and criteria that are set forth in the relevant FDA regulations for a waiver of the prior consent requirement on that ground.''

2003—Subsec. (f)(4)(C). Pub. L. 108–136 struck out subpar. (C) which read as follows: ''The term 'congressional defense committee' means each of the following:

''(i) The Committee on Armed Services and the Committee on Appropriations of the Senate.

''(ii) The Committee on Armed Services and the Committee on Appropriations of the House of Representatives.''

1999—Subsec. (f)(4)(C)(ii). Pub. L. 106–65 substituted ''Committee on Armed Services'' for ''Committee on National Security''.

1998—Subsec. (b). Pub. L. 105–261, §731(b)(1), struck out '', if practicable, but in no case later than 30 days after the drug is first administered to the member'' after ''administered to the member''.

Subsec. (c). Pub. L. 105–261, §731(b)(2), struck out ''unless the Secretary of Defense determines that the use of written notice is impractical because of the number of members receiving the investigational new drug or drug unapproved for its applied use, time constraints, or similar reasons. If the Secretary provides notice under subsection (a)(1) in a form other than in writing, the Secretary shall submit to Congress a report describing the notification method used and the reasons for the use of the alternative method'' after ''provided in writing''.

Subsecs. (f), (g). Pub. L. 105–261, §731(a)(1), added subsec. (f) and redesignated former subsec. (f) as (g).

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–261, div. A, title VII, §731(a)(2), Oct. 17, 1998, 112 Stat. 2071, provided that: ''Subsection (f) of section 1107 of title 10, United States Code (as added by paragraph (1)), shall apply to the administration of an investigational new drug or a drug unapproved for its applied use to a member of the Armed Forces in connection with the member's participation in a particular military operation on or after the date of the enactment of this Act [Oct. 17, 1998].''

WAIVERS OF REQUIREMENT FOR PRIOR CONSENT GRANTED BEFORE OCTOBER 17, 1998

Pub. L. 105–261, div. A, title VII, §731(a)(3), Oct. 17, 1998, 112 Stat. 2071, provided that: ''A waiver of the requirement for prior consent imposed under the regulations required under paragraph (4) of section 505(i) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355(i)(4)] (or under any antecedent provision of law or regulations) that has been granted under that section (or antecedent provision of law or regulations) before the date of the enactment of this Act [Oct. 17, 1998] for the administration of a drug to a member of the Armed Forces in connection with the member's participation in a particular military operation may be applied in that case after that date only if—

''(A) the Secretary of Defense personally determines that the waiver is justifiable on each ground on which the waiver was granted;

''(B) the President concurs in that determination in writing; and

''(C) the Secretary submits to the chairman and ranking minority member of each congressional committee referred to in section 1107(f)(4)(C) of title 10, United States Code (as added by paragraph (1))—

''(i) a notification of the waiver;

''(ii) the President's written concurrence; and

''(iii) the Secretary's justification for the request or for the requirement under subsection 1107(a) of such title for the member to receive the drug covered by the waiver.''

EX. ORD. NO. 13139. IMPROVING HEALTH PROTECTION OF MILITARY PERSONNEL PARTICIPATING IN PARTICULAR MILITARY OPERATIONS

Ex. Ord. No. 13139, Sept. 30, 1999, 64 F.R. 54175, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 1107 of title 10, United States Code, and in order to provide the best health protection to military personnel participating in particular military operations, it is hereby ordered as follows:

SECTION 1. *Policy*. Military personnel deployed in particular military operations could potentially be exposed to a range of chemical, biological, and radiological weapons as well as diseases endemic to an area of operations. It is the policy of the United States Government to provide our military personnel with safe and effective vaccines, antidotes, and treatments that will negate or minimize the effects of these health threats.

SEC. 2. *Administration of Investigational New Drugs to Members of the Armed Forces*.

(a) The Secretary of Defense (Secretary) shall collect intelligence on potential health threats that might be encountered in an area of operations. The Secretary shall work together with the Secretary of Health and Human Services to ensure appropriate countermeasures are developed. When the Secretary considers an investigational new drug or a drug unapproved for its intended use (investigational drug) to represent the most appropriate countermeasure, it shall be studied through scientifically based research and development protocols to determine whether it is safe and effective for its intended use.

(b) It is the expectation that the United States Government will administer products approved for their intended use by the Food and Drug Administration (FDA). However, in the event that the Secretary considers a product to represent the most appropriate countermeasure for diseases endemic to the area of op-

erations or to protect against possible chemical, biological, or radiological weapons, but the product has not yet been approved by the FDA for its intended use, the product may, under certain circumstances and strict controls, be administered to provide potential protection for the health and well-being of deployed military personnel in order to ensure the success of the military operation. The provisions of 21 CFR Part 312 contain the FDA requirements for investigational new drugs.

SEC. 3. *Informed Consent Requirements and Waiver Provisions.*

(a) Before administering an investigational drug to members of the Armed Forces, the Department of Defense (DoD) must obtain informed consent from each individual unless the Secretary can justify to the President a need for a waiver of informed consent in accordance with 10 U.S.C. 1107(f). Waivers of informed consent will be granted only when absolutely necessary.

(b) In accordance with 10 U.S.C. 1107(f), the President may waive the informed consent requirement for the administration of an investigational drug to a member of the Armed Forces in connection with the member's participation in a particular military operation, upon a written determination by the President that obtaining consent:

(1) is not feasible;

(2) is contrary to the best interests of the member; or

(3) is not in the interests of national security.

(c) In making a determination to waive the informed consent requirement on a ground described in subsection (b)(1) or (b)(2) of this section, the President is required by law to apply the standards and criteria set forth in the relevant FDA regulations, 21 CFR 50.23(d). In determining a waiver based on subsection (b)(3) of this section, the President will also consider the standards and criteria of the relevant FDA regulations.

(d) The Secretary may request that the President waive the informed consent requirement with respect to the administration of an investigational drug. The Secretary may not delegate the authority to make this waiver request. At a minimum, the waiver request shall contain:

(1) A full description of the threat, including the potential for exposure. If the threat is a chemical, biological, or radiological weapon, the waiver request shall contain an analysis of the probability the weapon will be used, the method or methods of delivery, and the likely magnitude of its affect on an exposed individual.

(2) Documentation that the Secretary has complied with 21 CFR 50.23(d). This documentation shall include:

(A) A statement that certifies and a written justification that documents that each of the criteria and standards set forth in 21 CFR 50.23(d) has been met; or

(B) If the Secretary finds it highly impracticable to certify that the criteria and standards set forth in 21 CFR 50.23(d) have been fully met because doing so would significantly impair the Secretary's ability to carry out the particular military mission, a written justification that documents which criteria and standards have or have not been met, explains the reasons for failing to meet any of the criteria and standards, and provides additional justification why a waiver should be granted solely in the interests of national security.

(3) Any additional information pertinent to the Secretary's determination, including the minutes of the Institutional Review Board's (IRB) deliberations and the IRB members' voting record.

(e) The Secretary shall develop the waiver request in consultation with the FDA.

(f) The Secretary shall submit the waiver request to the President and provide a copy to the Commissioner of the FDA (Commissioner).

(g) The Commissioner shall expeditiously review the waiver request and certify to the Assistant to the President for National Security Affairs (APNSA) and the Assistant to the President for Science and Technology (APST) whether the standards and criteria of the relevant FDA regulations have been adequately addressed and whether the investigational new drug protocol may proceed subject to a decision by the President on the informed consent waiver request. FDA shall base its decision on, and the certification shall include an analysis describing, the extent and strength of the evidence on the safety and effectiveness of the investigational new drug in relation to the medical risk that could be encountered during the military operation.

(h) The APNSA and APST will prepare a joint advisory opinion as to whether the waiver of informed consent should be granted and will forward it, along with the waiver request and the FDA certification to the President.

(i) The President will approve or deny the waiver request and will provide written notification of the decision to the Secretary and the Commissioner.

SEC. 4. *Required Action After Waiver is Issued.* (a) Following a Presidential waiver under 10 U.S.C. 1107(f), the DoD offices responsible for implementing the waiver, DoD's Office of the Inspector General, and the FDA, consistent with its regulatory role, will conduct an ongoing review and monitoring to assess adherence to the standards and criteria under 21 CFR 50.23(d) and this order. The responsible DoD offices shall also adhere to any periodic reporting requirements specified by the President at the time of the waiver approval. The Secretary shall submit the findings to the President and provide a copy to the Commissioner.

(b) The Secretary shall, as soon as practicable, make the congressional notifications required by 10 U.S.C. 1107(f)(2)(B).

(c) The Secretary shall, as soon as practicable and consistent with classification requirements, issue a public notice in the Federal Register describing each waiver of informed consent determination and a summary of the most updated scientific information on the products used, as well as other information the President determines is appropriate.

(d) The waiver will expire at the end of 1 year (or an alternative time period not to exceed 1 year, specified by the President at the time of approval), or when the Secretary informs the President that the particular military operation creating the need for the use of the investigational drug has ended, whichever is earlier. The President may revoke the waiver based on changed circumstances or for any other reason. If the Secretary seeks to renew a waiver prior to its expiration, the Secretary must submit to the President an updated request, specifically identifying any new information available relevant to the standards and criteria under 21 CFR 50.23(d). To request to renew a waiver, the Secretary must satisfy the criteria for a waiver as described in section 3 of this order.

(e) The Secretary shall notify the President and the Commissioner if the threat countered by the investigational drug changes significantly or if significant new information on the investigational drug is received.

SEC. 5. *Training for Military Personnel.* (a) The DoD shall provide ongoing training and health risk communication on the requirements of using an investigational drug in support of a military operation to all military personnel, including those in leadership positions, during chemical and biological warfare defense training and other training, as appropriate. This ongoing training and health risk communication shall include general information about 10 U.S.C. 1107 and 21 CFR 50.23(d).

(b) If the President grants a waiver under 10 U.S.C. 1107(f), the DoD shall provide training to all military personnel conducting the waiver protocol and health risk communication to all military personnel receiving the specific investigational drug to be administered prior to its use.

(c) The Secretary shall submit the training and health risk communication plans as part of the inves-

tigational new drug protocol submission to the FDA and the reviewing IRB. Training and health risk communication shall include at a minimum:

(1) The basis for any determination by the President that informed consent is not or may not be feasible;

(2) The means for tracking use and adverse effects of the investigational drug;

(3) The benefits and risks of using the investigational drug; and

(4) A statement that the investigational drug is not approved (or not approved for the intended use).

(d) The DoD shall keep operational commanders informed of the overall requirements of successful protocol execution and their role, with the support of medical personnel, in ensuring successful execution of the protocol.

SEC. 6. *Scope*. (a) This order applies to the consideration and Presidential approval of a waiver of informed consent under 10 U.S.C. 1107 and does not apply to other FDA regulations.

(b) This order is intended only to improve the internal management of the Federal Government. Nothing contained in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

WILLIAM J. CLINTON.

§ 1107a. Emergency use products

(a) WAIVER BY THE PRESIDENT.—(1) In the case of the administration of a product authorized for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act to members of the armed forces, the condition described in section 564(e)(1)(A)(ii)(III) of such Act and required under paragraph (1)(A) or (2)(A) of such section 564(e), designed to ensure that individuals are informed of an option to accept or refuse administration of a product, may be waived only by the President only if the President determines, in writing, that complying with such requirement is not in the interests of national security.

(2) The waiver authority provided in paragraph (1) shall not be construed to apply to any case other than a case in which an individual is required to be informed of an option to accept or refuse administration of a particular product by reason of a determination by the Secretary of Health and Human Services that emergency use of such product is authorized under section 564 of the Federal Food, Drug, and Cosmetic Act.

(b) PROVISION OF INFORMATION.—If the President, under subsection (a), waives the condition described in section 564(e)(1)(A)(ii)(III) of the Federal Food, Drug, and Cosmetic Act, and if the Secretary of Defense, in consultation with the Secretary of Health and Human Services, makes a determination that it is not feasible based on time limitations for the information described in section 564(e)(1)(A)(ii)(I) or (II) of such Act and required under paragraph (1)(A) or (2)(A) of such section 564(e), to be provided to a member of the armed forces prior to the administration of the product, such information shall be provided to such member of the armed forces (or next-of-kin in the case of the death of a member) to whom the product was administered as soon as possible, but not later than 30 days, after such administration. The authority provided for in this subsection may not be delegated. Information concerning the administration of the product shall be recorded in the medical record of the member.

(c) APPLICABILITY OF OTHER PROVISIONS.—In the case of an authorization by the Secretary of Health and Human Services under section 564(a)(1) of the Federal Food, Drug, and Cosmetic Act based on a determination by the Secretary of Defense under section 564(b)(1)(B) of such Act, subsections (a) through (f) of section 1107 shall not apply to the use of a product that is the subject of such authorization, within the scope of such authorization and while such authorization is effective.

(Added Pub. L. 108–136, div. A, title XVI, § 1603(b)(1), Nov. 24, 2003, 117 Stat. 1689; amended Pub. L. 108–375, div. A, title VII, § 726(b), Oct. 28, 2004, 118 Stat. 1992; Pub. L. 109–364, div. A, title X, § 1071(a)(5), (g)(7), Oct. 17, 2006, 120 Stat. 2398, 2402.)

REFERENCES IN TEXT

Section 564 of the Federal Food, Drug, and Cosmetic Act, referred to in text, is classified to section 360bbb–3 of Title 21, Food and Drugs.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–364, § 1071(g)(7), made technical correction to directory language of Pub. L. 108–375, § 726(b)(1). See 2004 Amendment note below.

Pub. L. 109–364, § 1071(a)(5), redesignated subpars. (A) and (B) as pars. (1) and (2), respectively, and, in par. (2), substituted ''paragraph (1)'' for ''subparagraph (A)''.

2004—Subsec. (a). Pub. L. 108–375, § 726(b)(1), as amended by Pub. L. 109–364, § 1071(g)(7), inserted ''(A)'' after ''PRESIDENT.—''.

Subsec. (a)(A). Pub. L. 108–375, § 726(b)(2), struck out ''is not feasible, is contrary to the best interests of the members affected, or'' after ''such requirement''.

Subsec. (a)(B). Pub. L. 108–375, § 726(b)(3), added subpar. (B).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–364, div. A, title X, § 1071(g), Oct. 17, 2006, 120 Stat. 2402, provided that the amendment made by section 1071(g)(7) is effective as of Oct. 28, 2004, and as if included in Pub. L. 108–375 as enacted.

TERMINATION DATE

Pub. L. 108–136, div. A, title XVI, § 1603(d), Nov. 24, 2003, 117 Stat. 1690, which provided that section 1603 of Pub. L. 108–136 (enacting this section and section 360bbb–3 of Title 21, Food and Drugs, and amending section 331 of Title 21) would not be in effect (and the law was to read as if that section had never been enacted) as of the date on which, following enactment of the Project Bioshield Act of 2003, the President submits to Congress a notification that the Project Bioshield Act of 2003 provides an effective emergency use authority with respect to members of the Armed Forces, was repealed by Pub. L. 108–276, § 4(b), July 21, 2004, 118 Stat. 859. [The Project Bioshield Act of 2003 was not enacted.]

§ 1108. Health care coverage through Federal Employees Health Benefits program: demonstration project

(a) FEHBP OPTION DEMONSTRATION.—The Secretary of Defense, after consulting with the other administering Secretaries, shall enter into an agreement with the Office of Personnel Management to conduct a demonstration project (in this section referred to as the ''demonstration project'') under which eligible beneficiaries described in subsection (b) and residing within one of the areas covered by the demonstration project may enroll in health benefits plans offered through the Federal Employees Health

Benefits program under chapter 89 of title 5. The number of eligible beneficiaries and family members of such beneficiaries under subsection (b)(2) who may be enrolled in health benefits plans during the enrollment period under subsection (d)(2) may not exceed 66,000.

(b) ELIGIBLE BENEFICIARIES; COVERAGE.—(1) An eligible beneficiary under this subsection is—

(A) a member or former member of the uniformed services described in section 1074(b) of this title who is entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.);

(B) an individual who is an unremarried former spouse of a member or former member described in section 1072(2)(F) or 1072(2)(G));

(C) an individual who is—

(i) a dependent of a deceased member or former member described in section 1076(b) or 1076(a)(2)(B) of this title or of a member who died while on active duty for a period of more than 30 days; and

(ii) a member of family as defined in section 8901(5) of title 5; or

(D) an individual who is—

(i) a dependent of a living member or former member described in section 1076(b)(1) of this title who is entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act, regardless of the member's or former member's eligibility for such hospital insurance benefits; and

(ii) a member of family as defined in section 8901(5) of title 5.

(2) Eligible beneficiaries may enroll in a Federal Employees Health Benefit plan under chapter 89 of title 5 under this section for self-only coverage or for self and family coverage which includes any dependent of the member or former member who is a family member for purposes of such chapter.

(3) A person eligible for coverage under this subsection shall not be required to satisfy any eligibility criteria specified in chapter 89 of title 5 (except as provided in paragraph (1)(C) or (1)(D)) as a condition for enrollment in health benefits plans offered through the Federal Employees Health Benefits program under the demonstration project.

(4) For purposes of determining whether an individual is a member of family under paragraph (5) of section 8901 of title 5 for purposes of paragraph (1)(C) or (1)(D), a member or former member described in section 1076(b) or 1076(a)(2)(B) of this title shall be deemed to be an employee under such section.

(5) An eligible beneficiary who is eligible to enroll in the Federal Employees Health Benefits program as an employee under chapter 89 of title 5 is not eligible to enroll in a Federal Employees Health Benefits plan under this section.

(c) AREA OF DEMONSTRATION PROJECT.—The Secretary of Defense and the Director of the Office of Personnel Management shall jointly identify and select the geographic areas in which the demonstration project will be conducted. The Secretary and the Director shall establish at least six, but not more than ten, such demonstration areas. In establishing the areas, the Secretary and Director shall include—

(1) an area that includes the catchment area of one or more military medical treatment facilities;

(2) an area that is not located in the catchment area of a military medical treatment facility;

(3) an area in which there is a Medicare Subvention Demonstration project area under section 1896[1] of title XVIII of the Social Security Act (42 U.S.C. 1395ggg); and

(4) not more than one area for each TRICARE region.

(d) DURATION OF DEMONSTRATION PROJECT.—(1) The Secretary of Defense shall conduct the demonstration project during three contract years under the Federal Employees Health Benefits program.

(2) Eligible beneficiaries shall, as provided under the agreement pursuant to subsection (a), be permitted to enroll in the demonstration project during an open enrollment period for the year 2000 (conducted in the fall of 1999). The demonstration project shall terminate on December 31, 2002.

(e) PROHIBITION AGAINST USE OF MTFS AND ENROLLMENT UNDER TRICARE.—Covered beneficiaries under this chapter who are provided coverage under the demonstration project shall not be eligible to receive care at a military medical treatment facility or to enroll in a health care plan under the TRICARE program.

(f) TERM OF ENROLLMENT IN PROJECT.—(1) Subject to paragraphs (2) and (3), the period of enrollment of an eligible beneficiary who enrolls in the demonstration project during the open enrollment period for the year 2000 shall be three years unless the beneficiary disenrolls before the termination of the project.

(2) A beneficiary who elects to enroll in the project, and who subsequently discontinues enrollment in the project before the end of the period described in paragraph (1), shall not be eligible to reenroll in the project.

(3) An eligible beneficiary enrolled in a Federal Employees Health Benefits plan under this section may change health benefits plans and coverage in the same manner as any other Federal Employees Health Benefits program beneficiary may change such plans.

(g) EFFECT OF CANCELLATION.—The cancellation by an eligible beneficiary of coverage under the Federal Employee Health Benefits program shall be irrevocable during the term of the demonstration project.

(h) SEPARATE RISK POOLS; CHARGES.—(1) The Director of the Office of Personnel Management shall require health benefits plans under chapter 89 of title 5 that participate in the demonstration project to maintain a separate risk pool for purposes of establishing premium rates for eligible beneficiaries who enroll in such a plan in accordance with this section.

(2) The Director shall determine total subscription charges for self only or for family coverage for eligible beneficiaries who enroll in a health benefits plan under chapter 89 of title 5 in accordance with this section. The subscription charges shall include premium charges paid to

[1] See References in Text note below.

the plan and amounts described in section 8906(c) of title 5 for administrative expenses and contingency reserves.

(i) GOVERNMENT CONTRIBUTIONS.—The Secretary of Defense shall be responsible for the Government contribution for an eligible beneficiary who enrolls in a health benefits plan under chapter 89 of title 5 in accordance with this section, except that the amount of the contribution may not exceed the amount of the Government contribution which would be payable if the electing beneficiary were an employee (as defined for purposes of such chapter) enrolled in the same health benefits plan and level of benefits.

(j) REPORT REQUIREMENTS.—(1) The Secretary of Defense and the Director of the Office of Personnel Management shall jointly submit to Congress two reports containing the information described in paragraph (2). The first report shall be submitted not later than the date that is 15 months after the date that the Secretary begins to implement the demonstration project. The second report shall be submitted not later than December 31, 2002.

(2) The reports required by paragraph (1) shall include the following:

(A) Information on the number of eligible beneficiaries who elect to participate in the demonstration project.

(B) An analysis of the percentage of eligible beneficiaries who participate in the demonstration project as compared to the percentage of covered beneficiaries under this chapter who elect to enroll in a health care plan under such chapter.

(C) Information on eligible beneficiaries who elect to participate in the demonstration project and did not have Medicare Part B coverage before electing to participate in the project.

(D) An analysis of the enrollment rates and cost of health services provided to eligible beneficiaries who elect to participate in the demonstration project as compared with similarly situated enrollees in the Federal Employees Health Benefits program under chapter 89 of title 5.

(E) An analysis of how the demonstration project affects the accessibility of health care in military medical treatment facilities, and a description of any unintended effects on the treatment priorities in those facilities in the demonstration area.

(F) An analysis of any problems experienced by the Department of Defense in managing the demonstration project.

(G) A description of the effects of the demonstration project on medical readiness and training of the Armed Forces at military medical treatment facilities located in the demonstration area, and a description of the probable effects that making the project permanent would have on the medical readiness and training.

(H) An examination of the effects that the demonstration project, if made permanent, would be expected to have on the overall budget of the Department of Defense, the budget of the Office of Personnel Management, and the budgets of individual military medical treatment facilities.

(I) An analysis of whether the demonstration project affects the cost to the Department of Defense of prescription drugs or the accessibility, availability, and cost of such drugs to eligible beneficiaries.

(J) Any additional information that the Secretary of Defense or the Director of the Office of Personnel Management considers appropriate to assist Congress in determining the viability of expanding the project to all Medicare-eligible members of the uniformed services and their dependents.

(K) Recommendations on whether eligible beneficiaries—

(i) should be given more than one chance to enroll in the demonstration project under this section;

(ii) should be eligible to enroll in the project only during the first year following the date that the eligible beneficiary becomes eligible to receive hospital insurance benefits under part A of title XVIII of the Social Security Act; or

(iii) should be eligible to enroll in the project only during the 2-year period following the date on which the beneficiary first becomes eligible to enroll in the project.

(k) COMPTROLLER GENERAL REPORT.—Not later than December 31, 2002, the Comptroller General shall submit to Congress a report addressing the same matters required to be addressed under subsection (j)(2). The report shall describe any limitations with respect to the data contained in the report as a result of the size and design of the demonstration project.

(*l*) APPLICATION OF MEDIGAP PROTECTIONS TO DEMONSTRATION PROJECT ENROLLEES.—(1) Subject to paragraph (2), the provisions of section 1882(s)(3) (other than clauses (i) through (iv) of subparagraph (B)) and 1882(s)(4) of the Social Security Act shall apply to enrollment (and termination of enrollment) in the demonstration project under this section, in the same manner as they apply to enrollment (and termination of enrollment) with a Medicare+Choice[2] organization in a Medicare+Choice[2] plan.

(2) In applying paragraph (1)—

(A) any reference in clause (v) or (vi) of section 1882(s)(3)(B) of such Act to 12 months is deemed a reference to 36 months; and

(B) the notification required under section 1882(s)(3)(D) of such Act shall be provided in a manner specified by the Secretary of Defense in consultation with the Director of the Office of Personnel Management.

(Added Pub. L. 105–261, div. A, title VII, § 721(a)(1), Oct. 17, 1998, 112 Stat. 2061; amended Pub. L. 108–375, div. A, title X, § 1084(d)(8), Oct. 28, 2004, 118 Stat. 2061.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (b)(1)(A), (D)(i), (j)(2)(K)(ii), and (*l*)(1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title XVIII of the Act is classified generally to Part A (§ 1395c et seq.) of subchapter XVIII of chapter 7 of Title 42, The Public Health and Welfare. Section 1882 of the Act is classified to section 1395ss of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

[2] See Change of Name note below.

Section 1896 of the Social Security Act, referred to in subsec. (c)(3), was classified to section 1395ggg of Title 42, The Public Health and Welfare, and was omitted from the Code.

AMENDMENTS

2004—Subsec. (e). Pub. L. 108–375 substituted ''health'' for ''heath''.

CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201(b) of Pub. L. 108–173, set out as a note under section 1395w–21 of Title 42, The Public Health and Welfare.

COMPREHENSIVE EVALUATION OF IMPLEMENTATION OF DEMONSTRATION PROJECTS AND TRICARE PHARMACY REDESIGN

Pub. L. 105–261, div. A, title VII, § 724, Oct. 17, 1998, 112 Stat. 2069, as amended by Pub. L. 106–65, div. A, title X, § 1067(3), Oct. 5, 1999, 113 Stat. 774, required the Comptroller General, not later than Mar. 31, 2003, to submit to committees of Congress a report containing a comprehensive comparative analysis of the FEHBP demonstration project conducted under this section, the TRICARE Senior Supplement under Pub. L. 105–261, § 722, formerly set out as a note under section 1073 of this title, and the redesign of the TRICARE pharmacy system under section Pub. L. 105–261, § 723, set out as a note under section 1073 of this title.

§ 1109. Organ and tissue donor program

(a) RESPONSIBILITIES OF THE SECRETARY OF DEFENSE.—The Secretary of Defense shall ensure that the advanced systems developed for recording armed forces members' personal data and information (such as the SMARTCARD, MEDITAG, and Personal Information Carrier) include the capability to record organ and tissue donation elections.

(b) RESPONSIBILITIES OF THE SECRETARIES OF THE MILITARY DEPARTMENTS.—The Secretaries of the military departments shall ensure that—

(1) appropriate information about organ and tissue donation is provided—

(A) to each officer candidate during initial training; and

(B) to each recruit—

(i) after completion by the recruit of basic training; and

(ii) before arrival of the recruit at the first duty assignment of the recruit;

(2) members of the armed forces are given recurring, specific opportunities to elect to be organ or tissue donors during service in the armed forces and upon retirement; and

(3) members of the armed forces electing to be organ or tissue donors are encouraged to advise their next of kin concerning the donation decision and any subsequent change of that decision.

(c) RESPONSIBILITIES OF THE SURGEONS GENERAL OF THE MILITARY DEPARTMENTS.—The Surgeons General of the military departments shall ensure that—

(1) appropriate training is provided to enlisted and officer medical personnel to facilitate the effective operation of organ and tissue donation activities under garrison conditions and, to the extent possible, under operational conditions; and

(2) medical logistical activities can, to the extent possible without jeopardizing operational requirements, support an effective organ and tissue donation program.

(Added Pub. L. 105–261, div. A, title VII, § 741(b)(1), Oct. 17, 1998, 112 Stat. 2073; amended Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(8)], Oct. 30, 2000, 114 Stat. 1654, 1654A–290.)

AMENDMENTS

2000—Subsec. (b). Pub. L. 106–398 struck out ''(1)'' before ''The Secretaries'' in introductory provisions.

FINDINGS

Pub. L. 105–261, div. A, title VII, § 741(a), Oct. 17, 1998, 112 Stat. 2073, provided that: ''Congress makes the following findings:

''(1) Organ and tissue transplantation is one of the most remarkable medical success stories in the history of medicine.

''(2) Each year, the number of people waiting for organ or tissue transplantation increases. It is estimated that there are approximately 39,000 patients, ranging in age from babies to those in retirement, awaiting transplants of kidneys, hearts, livers, and other solid organs.

''(3) The Department of Defense has made significant progress in increasing the awareness of the importance of organ and tissue donations among members of the Armed Forces.

''(4) The inclusion of organ and tissue donor elections in the Defense Enrollment Eligibility Reporting System (DEERS) central database represents a major step in ensuring that organ and tissue donor elections are a matter of record and are accessible in a timely manner.''

REPORT ON IMPLEMENTATION

Pub. L. 105–261, div. A, title VII, § 741(c), Oct. 17, 1998, 112 Stat. 2074, as amended by Pub. L. 106–65, div. A, title X, § 1067(3), Oct. 5, 1999, 113 Stat. 774, directed the Secretary of Defense to submit to committees of Congress a report on the implementation of this section not later than Sept. 1, 1999.

§ 1110. Anthrax vaccine immunization program; procedures for exemptions and monitoring reactions

(a) PROCEDURES FOR MEDICAL AND ADMINISTRATIVE EXEMPTIONS.—(1) The Secretary of Defense shall establish uniform procedures under which members of the armed forces may be exempted from participating in the anthrax vaccine immunization program for either administrative or medical reasons.

(2) The Secretaries of the military departments shall provide for notification of all members of the armed forces of the procedures established pursuant to paragraph (1).

(b) SYSTEM FOR MONITORING ADVERSE REACTIONS.—(1) The Secretary shall establish a system for monitoring adverse reactions of members of the armed forces to the anthrax vaccine. That system shall include the following:

(A) Independent review of Vaccine Adverse Event Reporting System reports.

(B) Periodic surveys of personnel to whom the vaccine is administered.

(C) A continuing longitudinal study of a preidentified group of members of the armed forces (including men and women and members from all services).

(D) Active surveillance of a sample of members to whom the anthrax vaccine has been ad-

ministered that is sufficient to identify, at the earliest opportunity, any patterns of adverse reactions, the discovery of which might be delayed by reliance solely on the Vaccine Adverse Event Reporting System.

(2) The Secretary may extend or expand any ongoing or planned study or analysis of trends in adverse reactions of members of the armed forces to the anthrax vaccine in order to meet any of the requirements in paragraph (1).

(3) The Secretary shall establish guidelines under which members of the armed forces who are determined by an independent expert panel to be experiencing unexplained adverse reactions may obtain access to a Department of Defense Center of Excellence treatment facility for expedited treatment and follow up.

(Added Pub. L. 106–398, § 1 [[div. A], title VII, § 751(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–193.)

DEADLINES FOR ESTABLISHMENT AND IMPLEMENTATION

Pub. L. 106–398, § 1 [[div. A], title VII, § 751(e)], Oct. 30, 2000, 114 Stat. 1654, 1654A–195, provided that: ''The Secretary of Defense shall—

''(1) not later than April 1, 2001, establish the uniform procedures for exemption from participation in the anthrax vaccine immunization program of the Department of Defense required under subsection (a) of section 1110 of title 10, United States Code (as added by subsection (b));

''(2) not later than July 1, 2001, establish the system for monitoring adverse reactions of members of the Armed Forces to the anthrax vaccine required under subsection (b)(1) of such section;

''(3) not later than April 1, 2001, establish the guidelines under which members of the Armed Forces may obtain access to a Department of Defense Center of Excellence treatment facility for expedited treatment and follow up required under subsection (b)(3) of such section; and

''(4) not later than July 1, 2001, prescribe the regulations regarding emergency essential employees of the Department of Defense required under subsection (a) of section 1580a of such title (as added by subsection(c)).''

§ 1110a. Notification of certain individuals regarding options for enrollment under Medicare part B

(a) IN GENERAL.—(1) As soon as practicable, the Secretary of Defense shall notify each individual described in subsection (b)—

(A) that the individual is no longer eligible for health care benefits under the TRICARE program under this chapter; and

(B) of options available for enrollment of the individual in the supplementary medical insurance program under part B of title XVIII of the Social Security Act (42 U.S.C. 1395j et seq.).

(2) In carrying out this subsection, the Secretary of Defense shall—

(A) establish procedures for identifying individuals described in subsection (b); and

(B) consult with the Secretary of Health and Human Services to accurately identify and notify such individuals.

(b) INDIVIDUALS DESCRIBED.—An individual described in this subsection is an individual who is—

(1) a covered beneficiary;

(2) entitled to benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c) under section 226(b) or section 226A of such Act (42 U.S.C. 426(b) and 426–1); and

(3) eligible to enroll in the supplementary medical insurance program under part B of such title (42 U.S.C. 1395j et seq.).

(Added Pub. L. 111–84, div. A, title VII, § 707(a), Oct. 28, 2009, 123 Stat. 2376.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a)(1)(B) and (b)(2), (3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Parts A and B of title XVIII of the Act are classified generally to parts A (§ 1395c et seq.) and B (§ 1395j et seq.), respectively, of subchapter XVIII of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

§ 1110b. TRICARE program: extension of dependent coverage

(a) IN GENERAL.—In accordance with subsection (c), an individual described in subsection (b) shall be deemed to be a dependent (as described in section 1072(2)(D) of this title) for purposes of coverage under the TRICARE program.

(b) INDIVIDUAL DESCRIBED.—An individual described in this subsection is an individual who—

(1) would be a dependent under section 1072(2) of this title but for exceeding an age limit under such section;

(2) has not attained the age of 26;

(3) is not eligible to enroll in an eligible employer-sponsored plan (as defined in section 5000A(f)(2) of the Internal Revenue Code of 1986);

(4) is not otherwise a dependent of a member or a former member under any subparagraph of section 1072(2) of this title; and

(5) meets other criteria specified in regulations prescribed by the Secretary, similar to regulations prescribed by the Secretary of Health and Human Services under section 2714(b) of the Public Health Service Act.

(c) PREMIUM.—(1) The Secretary shall prescribe by regulation a premium (or premiums) for coverage under the TRICARE program provided pursuant to this section to an individual described in subsection (b).

(2) The monthly amount of the premium in effect for a month for coverage under the TRICARE program pursuant to this section shall be the amount equal to the cost of such coverage that the Secretary determines on an appropriate actuarial basis.

(3) The Secretary shall prescribe the requirements and procedures applicable to the payment of premiums under this subsection.

(4) Amounts collected as premiums under this subsection shall be credited to the appropriation available for the Defense Health Program Account under section 1100 of this title, shall be merged with sums in such Account that are available for the fiscal year in which collected, and shall be available under subsection (b) of such section for such fiscal year.

(Added Pub. L. 111–383, div. A, title VII, § 702(a)(1), Jan. 7, 2011, 124 Stat. 4244.)

REFERENCES IN TEXT

Section 5000A of the Internal Revenue Code of 1986, referred to in subsec. (b)(3), is classified to section 5000A of Title 26, Internal Revenue Code.

Section 2714 of the Public Health Service Act, referred to in subsec. (b)(5), is classified to section 300gg–14 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE AND REGULATIONS

Pub. L. 111–383, div. A, title VII, § 702(b), Jan. 7, 2011, 124 Stat. 4245, provided that: ''The amendments made by this section [enacting this section] shall take effect on January 1, 2011. The Secretary of Defense shall prescribe an interim final rule with respect to such amendments, effective not later than January 1, 2011.''

CHAPTER 56—DEPARTMENT OF DEFENSE MEDICARE-ELIGIBLE RETIREE HEALTH CARE FUND

Sec.
1111. Establishment and purpose of Fund; definitions; authority to enter into agreements.
1112. Assets of Fund.
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1114. Board of Actuaries.
1115. Determination of contributions to the Fund.
1116. Payments into the Fund.
1117. Investment of assets of Fund.

AMENDMENTS

2001—Pub. L. 107–107, div. A, title VII, § 711(e)(3), Dec. 28, 2001, 115 Stat. 1167, inserted ''; authority to enter into agreements'' after ''definitions'' in item 1111.

§ 1111. Establishment and purpose of Fund; definitions; authority to enter into agreements

(a) There is established on the books of the Treasury a fund to be known as the Department of Defense Medicare-Eligible Retiree Health Care Fund (hereinafter in this chapter referred to as the ''Fund''), which shall be administered by the Secretary of the Treasury. The Fund shall be used for the accumulation of funds in order to finance on an actuarially sound basis liabilities of the uniformed services under uniformed services retiree health care programs for medicare-eligible beneficiaries.

(b) In this chapter:

(1) The term ''uniformed services retiree health care programs'' means the provisions of this title or any other provision of law creating an entitlement to or eligibility for health care for a member or former member of a participating uniformed service who is entitled to retired or retainer pay, and an eligible dependent under such program.

(2) The term ''eligible dependent'' means a dependent described in section 1076(a)(2) (other than a dependent of a member on active duty), 1076(b), 1086(c)(2), or 1086(c)(3) of this title.

(3) The term ''medicare-eligible'', with respect to any person, means entitled to benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.).

(4) The term ''participating uniformed service'' means the Army, Navy, Air Force, and Marine Corps, and any other uniformed service that is covered by an agreement entered into under subsection (c).

(5) The term ''members of the uniformed services on active duty'' does not include a cadet at the United States Military Academy, the United States Air Force Academy, or the Coast Guard Academy or a midshipman at the United States Naval Academy.

(c) The Secretary of Defense shall enter into an agreement with each other administering Secretary (as defined in section 1072(3) of this title) for participation in the Fund by a uniformed service under the jurisdiction of that Secretary. The agreement shall require that Secretary to determine contributions to the Fund on behalf of the members of the uniformed service under the jurisdiction of that Secretary in a manner comparable to the determination with respect to contributions to the Fund made by the Secretary of Defense under section 1115(b) of this title, and such contributions shall be paid into the Fund as provided in section 1116(a).

(Added Pub. L. 106–398, § 1 [[div. A], title VII, § 713(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–179; amended Pub. L. 107–107, div. A, title VII, § 711(a), (b)(1), (e)(1), (2), title X, § 1048(a)(12), Dec. 28, 2001, 115 Stat. 1164–1166, 1223; Pub. L. 107–314, div. A, title VII, § 704(b), Dec. 2, 2002, 116 Stat. 2584; Pub. L. 108–375, div. A, title VII, § 725(c)(1), Oct. 28, 2004, 118 Stat. 1992; Pub. L. 109–364, div. A, title V, § 592(a), Oct. 17, 2006, 120 Stat. 2233.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title XVIII of the Act is classified generally to part A (§ 1395c et seq.) of subchapter XVIII of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–364, § 592(a)(1), substituted ''of the uniformed services'' for ''of the Department of Defense''.

Subsec. (b)(5). Pub. L. 109–364, § 592(a)(2), added par. (5).

2004—Subsec. (c). Pub. L. 108–375 substituted ''1115(b) of this title, and such contributions shall be paid into the Fund as provided in section 1116(a)'' for ''1116 of this title, and such administering Secretary may make such contributions''.

2002—Subsec. (c). Pub. L. 107–314 substituted ''shall enter into an agreement with each other administering Secretary'' for ''may enter into an agreement with any other administering Secretary'' in first sentence and ''The'' for ''Any such'' in second sentence.

2001—Pub. L. 107–107, § 711(e)(2), inserted ''; authority to enter into agreements'' after ''definitions'' in section catchline.

Subsec. (a). Pub. L. 107–107, § 1048(a)(12), substituted ''hereinafter'' for ''hereafter''.

Pub. L. 107–107, § 711(e)(1), substituted ''uniformed services retiree health care programs'' for ''Department of Defense retiree health care programs''.

Subsec. (b). Pub. L. 107–107, § 711(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''In this chapter:

''(1) The term 'Department of Defense retiree health care programs for medicare-eligible beneficiaries' means the provisions of this title or any other provision of law creating entitlement to health care for a medicare-eligible member or former member of the uniformed services entitled to retired or retainer pay, or a medicare-eligible dependent of a member or former member of the uniformed services entitled to retired or retainer pay.

''(2) The term 'medicare-eligible' means entitled to benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.).

''(3) The term 'dependent' means a dependent (as such term is defined in section 1072 of this title) described in section 1076(b)(1) of this title.''

Subsec. (c). Pub. L. 107–107, § 711(b)(1), added subsec. (c).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–364, div. A, title V, § 592(c), Oct. 17, 2006, 120 Stat. 2234, provided that: ''The amendments made

by this section [amending this section and section 1115 of this title] shall take effect with respect to payments under chapter 56 of title 10, United States Code, beginning with fiscal year 2008.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–375, div. A, title VII, § 725(d), Oct. 28, 2004, 118 Stat. 1992, provided that: ''The amendments made by this section [amending this section and sections 1115 and 1116 of this title] shall take effect on October 1, 2005.''

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title VII, § 711(f), Dec. 28, 2001, 115 Stat. 1167, provided that: ''The amendments made by this section [amending this section and sections 1112, 1113, 1115, and 1116 of this title] shall take effect as if included in the enactment of chapter 56 of title 10, United States Code, by section 713(a)(1) 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–179).''

PAYMENT OF CONTRIBUTIONS FOR THE UNIFORMED SERVICE OF THE PUBLIC HEALTH SERVICE

Pub. L. 108–7, div. F, title II, Feb. 20, 2003, 117 Stat. 261, provided in part: ''That notwithstanding any other provision of law, contributions authorized by 10 U.S.C. 1111 for the Uniformed Service of the Public Health Service shall be paid in fiscal year 2003 and thereafter from the Department of Health and Human Services' Retirement Pay and Medical Benefits for Commissioned Officers account without charges billed to the Indian Health Service''.

§ 1112. Assets of Fund

There shall be deposited into the Fund the following, which shall constitute the assets of the Fund:

(1) Amounts paid into the Fund under section 1116 of this title.

(2) Any amount appropriated to the Fund.

(3) Any return on investment of the assets of the Fund.

(4) Amounts paid into the Fund pursuant to section 1111(c) of this title.

(Added Pub. L. 106–398, § 1 [[div. A], title VII, § 713(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–180; amended Pub. L. 107–107, div. A, title VII, § 711(b)(2), Dec. 28, 2001, 115 Stat. 1165.)

AMENDMENTS

2001—Par. (4). Pub. L. 107–107 added par. (4).

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–107 effective as if included in the enactment of this chapter by Pub. L. 106–398, see section 711(f) of Pub. L. 107–107, set out as a note under section 1111 of this title.

§ 1113. Payments from the Fund

(a) There shall be paid from the Fund amounts payable for the costs of all uniformed service retiree health care programs for the benefit of members or former members of a participating uniformed service who are entitled to retired or retainer pay and are medicare eligible, and eligible dependents who are medicare eligible.

(b) The assets of the Fund are hereby made available for payments under subsection (a).

(c)(1) In carrying out subsection (a), the Secretary of Defense may transfer periodically from the Fund to applicable appropriations of the Department of Defense, or to applicable appropriations of other departments or agencies, such amounts as the Secretary determines necessary to cover the costs chargeable to those appropriations for uniformed service retiree health care programs for beneficiaries under those programs who are medicare-eligible. Such transfers may include amounts necessary for the administration of such programs. Amounts so transferred shall be merged with and be available for the same purposes and for the same time period as the appropriation to which transferred. Upon a determination that all or part of the funds transferred from the Fund are not necessary for the purposes for which transferred, such amounts may be transferred back to the Fund. This transfer authority is in addition to any other transfer authority that may be available to the Secretary.

(2) A transfer from the Fund under paragraph (1) may not be made to an appropriation after the end of the second fiscal year after the fiscal year that the appropriation is available for obligation. A transfer back to the Fund under paragraph (1) may not be made after the end of the second fiscal year after the fiscal year for which the appropriation to which the funds were originally transferred is available for obligation.

(d) The Secretary of Defense shall by regulation establish the method or methods for calculating amounts to be transferred under subsection (c). Such method or methods may be based (in whole or in part) on a proportionate share of the volume (measured as the Secretary determines appropriate) of health care services provided or paid for under uniformed service retiree health care programs for beneficiaries under those programs who are medicare-eligible in relation to the total volume of health care services provided or paid for under Department of Defense health care programs.

(e) The regulations prescribed by the Secretary under subsection (d) shall be provided to the Comptroller General not less than 60 days before such regulations become effective. The Comptroller General shall, not later than 30 days after receiving such regulations, report to the Secretary of Defense and Congress on the adequacy and appropriateness of the regulations.

(f) If the Secretary of Defense enters into an agreement with another administering Secretary pursuant to section 1111(c), the Secretary of Defense may take the actions described in subsections (c), (d), and (e) on behalf of the beneficiaries and programs of the other participating uniformed service.

(Added Pub. L. 106–398, § 1 [[div. A], title VII, § 713(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–180; amended Pub. L. 107–107, div. A, title VII, § 711(c), Dec. 28, 2001, 115 Stat. 1165.)

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–107, § 711(c)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''There shall be paid from the Fund amounts payable for Department of Defense retiree health care programs for medicare-eligible beneficiaries.''

Subsecs. (c) to (f). Pub. L. 107–107, § 711(c)(2), added subsecs. (c) to (f).

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–107 effective as if included in the enactment of this chapter by Pub. L. 106–398, see section 711(f) of Pub. L. 107–107, set out as a note under section 1111 of this title.

EFFECTIVE DATE

Pub. L. 106–398, § 1 [[div. A], title VII, § 713(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–184, provided that: ''Sections 1113 and 1116 of title 10, United States Code (as added by subsection (a)), shall take effect on October 1, 2002.''

§ 1114. Board of Actuaries

(a)(1) There is established in the Department of Defense a Department of Defense Medicare-Eligible Retiree Health Care Board of Actuaries (hereinafter in this chapter referred to as the ''Board''). The Board shall consist of three members who shall be appointed by the Secretary of Defense from among qualified professional actuaries who are members of the Society of Actuaries.

(2)(A) Except as provided in subparagraph (B), the members of the Board shall serve for a term of 15 years, except that a member of the Board appointed to fill a vacancy occurring before the end of the term for which his predecessor was appointed shall only serve until the end of such term. A member may serve after the end of his term until his successor has taken office. A member of the Board may be removed by the Secretary of Defense for misconduct or failure to perform functions vested in the Board, and for no other reason.

(B) Of the members of the Board who are first appointed under this paragraph, one each shall be appointed for terms ending five, ten, and 15 years, respectively, after the date of appointment, as designated by the Secretary of Defense at the time of appointment.

(3) A member of the Board who is not otherwise an employee of the United States is entitled to receive pay at the daily equivalent of the annual rate of basic pay of the highest rate of basic pay under the General Schedule of subchapter III of chapter 53 of title 5, for each day the member is engaged in the performance of duties vested in the Board, and is entitled to travel expenses, including a per diem allowance, in accordance with section 5703 of title 5.

(b) The Board shall report to the Secretary of Defense annually on the actuarial status of the Fund and shall furnish its advice and opinion on matters referred to it by the Secretary.

(c) The Board shall review valuations of the Fund under section 1115(c) of this title and shall report periodically, not less than once every four years, to the President and Congress on the status of the Fund. The Board shall include in such reports recommendations for such changes as in the Board's judgment are necessary to protect the public interest and maintain the Fund on a sound actuarial basis.

(Added Pub. L. 106–398, § 1 [[div. A], title VII, § 713(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–180; amended Pub. L. 107–107, div. A, title X, § 1048(a)(12), Dec. 28, 2001, 115 Stat. 1223.)

AMENDMENTS

2001—Subsec. (a)(1). Pub. L. 107–107 substituted ''hereinafter'' for ''hereafter''.

§ 1115. Determination of contributions to the Fund

(a) The Board shall determine the amount that is the present value (as of October 1, 2002) of future benefits payable from the Fund that are attributable to service in the participating uniformed services performed before October 1, 2002. That amount is the original unfunded liability of the Fund. The Board shall determine the period of time over which the original unfunded liability should be liquidated and shall determine an amortization schedule for the liquidation of such liability over that period. Contributions to the Fund for the liquidation of the original unfunded liability in accordance with such schedule shall be made as provided in section 1116 of this title.

(b) The Secretary of Defense shall determine, before the beginning of each fiscal year after September 30, 2005, the total amount of the Department of Defense contribution to be made to the Fund for that fiscal year for purposes of section 1116(b)(2). That amount shall be the sum of the following:

(1) The product of—

(A) the current estimate of the value of the single level dollar amount to be determined under subsection (c)(1)(A) at the time of the next actuarial valuation under subsection (c); and

(B) the expected average force strength during that fiscal year for members of the uniformed services under the jurisdiction of the Secretary of Defense on active duty and full-time National Guard duty, but excluding any member who would be excluded for active-duty end strength purposes by section 115(i) of this title.

(2) The product of—

(A) the current estimate of the value of the single level dollar amount to be determined under subsection (c)(1)(B) at the time of the next actuarial valuation under subsection (c); and

(B) the expected average force strength during that fiscal year for members of the Selected Reserve of the uniformed services under the jurisdiction of the Secretary of Defense who are not otherwise described in paragraph (1)(B).

(c)(1) Not less often than every four years, the Secretary of Defense shall carry out an actuarial valuation of the Fund. Each such actuarial valuation shall include—

(A) a determination (using the aggregate entry-age normal cost method) of a single level dollar amount for members of the participating uniformed services on active duty and full-time National Guard duty, but excluding any member who would be excluded for active-duty end strength purposes by section 115(i) of this title; and

(B) a determination (using the aggregate entry-age normal cost method) of a single level dollar amount for members of the Selected Reserve of the participating uniformed services who are not otherwise described by subparagraph (A).

Such single level dollar amounts shall be used for the purposes of subsection (b). The Secretary

of Defense may determine a separate single level dollar amount under subparagraph (A) or (B) for any participating uniformed service, if, in the judgment of the Secretary, such a determination would produce a more accurate and appropriate actuarial valuation for that uniformed service.

(2) If at the time of any such valuation there has been a change in benefits under the uniformed services retiree health care programs for medicare-eligible beneficiaries that has been made since the last such valuation and such change in benefits increases or decreases the present value of amounts payable from the Fund, the Secretary of Defense shall determine an amortization methodology and schedule for the amortization of the cumulative unfunded liability (or actuarial gain to the Fund) created by such change and any previous such changes so that the present value of the sum of the amortization payments (or reductions in payments that would otherwise be made) equals the cumulative increase (or decrease) in the present value of such amounts.

(3) If at the time of any such valuation the Secretary of Defense determines that, based upon changes in actuarial assumptions since the last valuation, there has been an actuarial gain or loss to the Fund, the Secretary shall determine an amortization methodology and schedule for the amortization of the cumulative gain or loss to the Fund created by such change in assumptions and any previous such changes in assumptions through an increase or decrease in the payments that would otherwise be made to the Fund.

(4) If at the time of any such valuation the Secretary of Defense determines that, based upon the Fund's actuarial experience (other than resulting from changes in benefits or actuarial assumptions) since the last valuation, there has been an actuarial gain or loss to the Fund, the Secretary shall determine an amortization methodology and schedule for the amortization of the cumulative gain or loss to the Fund created by such actuarial experience and any previous actuarial experience through an increase or decrease in the payments that would otherwise be made to the Fund.

(5) Contributions to the Fund in accordance with amortization schedules under paragraphs (2), (3), and (4) shall be made as provided in section 1116 of this title.

(d) All determinations under this section shall be made using methods and assumptions approved by the Board of Actuaries (including assumptions of interest rates and medical inflation) and in accordance with generally accepted actuarial principles and practices.

(e) The Secretary of Defense shall provide for the keeping of such records as are necessary for determining the actuarial status of the Fund.

(Added Pub. L. 106–398, § 1 [[div. A], title VII, § 713(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–181; amended Pub. L. 107–107, div. A, title VII, § 711(b)(3), (e)(1), Dec. 28, 2001, 115 Stat. 1165, 1166; Pub. L. 108–136, div. A, title VII, § 722(a), (c), title X, § 1045(a)(3), Nov. 24, 2003, 117 Stat. 1532, 1612; Pub. L. 108–375, div. A, title VII, § 725(c)(2)–(5), Oct. 28, 2004, 118 Stat. 1992; Pub. L. 109–364, div. A, title V, § 592(b), Oct. 17, 2006, 120 Stat. 2233.)

AMENDMENTS

2006—Subsec. (b)(1)(B). Pub. L. 109–364, § 592(b)(1)(A), substituted ''on active duty and full-time National Guard duty, but excluding any member who would be excluded for active-duty end strength purposes by section 115(i) of this title'' for ''on active duty (other than active duty for training) and full-time National Guard duty (other than full-time National Guard duty for training only)''.

Subsec. (b)(2)(B). Pub. L. 109–364, § 592(b)(1)(B), substituted ''Selected Reserve'' for ''Ready Reserve'' and struck out ''(other than members on full-time National Guard duty other than for training)'' after ''Secretary of Defense''.

Subsec. (c)(1)(A). Pub. L. 109–364, § 592(b)(2)(A), substituted ''on active duty and full-time National Guard duty, but excluding any member who would be excluded for active-duty end strength purposes by section 115(i) of this title'' for ''on active duty (other than active duty for training) or full-time National Guard duty (other than full-time National Guard duty for training only)''.

Subsec. (c)(1)(B). Pub. L. 109–364, § 592(b)(2)(B), substituted ''Selected Reserve'' for ''Ready Reserve'' and struck out ''(other than members on full-time National Guard duty other than for training)'' after ''uniformed services''.

2004—Subsec. (a). Pub. L. 108–375, § 725(c)(2), substituted ''1116'' for ''1116(c)''.

Subsec. (b). Pub. L. 108–375, § 725(c)(3), substituted ''The Secretary of Defense shall determine, before the beginning of each fiscal year after September 30, 2005, the total amount of the Department of Defense contribution to be made to the Fund for that fiscal year for purposes of section 1116(b)(2).'' for ''(1) The Secretary of Defense shall determine each year, in sufficient time for inclusion in budget requests for the following fiscal year, the total amount of Department of Defense contributions to be made to the Fund during that fiscal year under section 1116(a) of this title.'', redesignated subpar. (A) as par. (1) and cls. (i) and (ii) as subpars. (A) and (B), respectively, of par. (1), redesignated subpar. (B) as par. (2) and cls. (i) and (ii) as subpars. (A) and (B), respectively, of par. (2), substituted ''paragraph (1)(B)'' for ''subparagraph (A)(ii)'' in par. (2)(B), and struck out former par. (2) which read as follows: ''The amount determined under paragraph (1) for any fiscal year is the amount needed to be appropriated to the Department of Defense (or to the other executive department having jurisdiction over the participating uniformed service) for that fiscal year for payments to be made to the Fund during that year under section 1116(a) of this title. The President shall include not less than the full amount so determined in the budget transmitted to Congress for that fiscal year under section 1105 of title 31. The President may comment and make recommendations concerning any such amount.''

Subsec. (c)(1). Pub. L. 108–375, § 725(c)(4), struck out ''and section 1116(a) of this title'' after ''subsection (b)'' in concluding provisions.

Subsec. (c)(5). Pub. L. 108–375, § 725(c)(5), substituted ''1116'' for ''1116(c)''.

2003—Subsec. (a). Pub. L. 108–136, § 722(c), substituted ''section 1116(c) of this title'' for ''section 1116(b) of this title''.

Subsec. (c)(1). Pub. L. 108–136, § 722(a), inserted at end of concluding provisions ''The Secretary of Defense may determine a separate single level dollar amount under subparagraph (A) or (B) for any participating uniformed service, if, in the judgment of the Secretary, such a determination would produce a more accurate and appropriate actuarial valuation for that uniformed service.''

Subsec. (c)(1)(B). Pub. L. 108–136, § 1045(a)(3), substituted ''(other than members'' for ''and other than members''.

Subsec. (c)(5). Pub. L. 108–136, § 722(c), substituted ''section 1116(c) of this title'' for ''section 1116(b) of this title''.

2001—Subsec. (a). Pub. L. 107–107, § 711(b)(3)(A), inserted ''participating'' before ''uniformed services''.

Subsec. (b)(1)(A)(ii), (B)(ii). Pub. L. 107–107, § 711(b)(3)(B), inserted ''under the jurisdiction of the Secretary of Defense'' after ''uniformed services''.

Subsec. (b)(2). Pub. L. 107–107, § 711(b)(3)(C), inserted ''(or to the other executive department having jurisdiction over the participating uniformed service)'' after ''Department of Defense''.

Subsec. (c)(1)(A), (B). Pub. L. 107–107, § 711(b)(3)(D), inserted ''participating'' before ''uniformed services''.

Subsec. (c)(2). Pub. L. 107–107, § 711(e)(1), substituted ''uniformed services retiree health care programs'' for ''Department of Defense retiree health care programs''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–364 effective with respect to payments under this chapter beginning with fiscal year 2008, see section 592(c) of Pub. L. 109–364, set out as a note under section 1111 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–375 effective Oct. 1, 2005, see section 725(d) of Pub. L. 108–375, set out as a note under section 1111 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–107 effective as if included in the enactment of this chapter by Pub. L. 106–398, see section 711(f) of Pub. L. 107–107, set out as a note under section 1111 of this title.

EFFECTIVE DATE

Pub. L. 106–398, § 1 [[div. A], title VII, § 713(b)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–184, provided that: ''Section 1115 of such title (as added by such subsection) shall take effect on October 1, 2001.''

§ 1116. Payments into the Fund

(a) At the beginning of each fiscal year after September 30, 2005, the Secretary of the Treasury shall promptly pay into the Fund from the General Fund of the Treasury—

(1) the amount certified to the Secretary by the Secretary of Defense under subsection (c), which shall be the contribution to the Fund for that fiscal year required by section 1115; and

(2) the amount determined by each administering Secretary under section 1111(c) as the contribution to the Fund on behalf of the members of the uniformed services under the jurisdiction of that Secretary.

(b) At the beginning of each fiscal year, the Secretary of Defense shall determine the sum of the following:

(1) The amount of the payment for that year under the amortization schedule determined by the Board of Actuaries under section 1115(a) of this title for the amortization of the original unfunded liability of the Fund.

(2) The amount (including any negative amount) of the Department of Defense contribution for that year as determined by the Secretary of Defense under section 1115(b) of this title.

(3) The amount (including any negative amount) for that year under the most recent amortization schedule determined by the Secretary of Defense under section 1115(c)(2) of this title for the amortization of any cumulative unfunded liability (or any gain) to the Fund resulting from changes in benefits.

(4) The amount (including any negative amount) for that year under the most recent amortization schedule determined by the Secretary of Defense under section 1115(c)(3) of this title for the amortization of any cumulative actuarial gain or loss to the Fund resulting from actuarial assumption changes.

(5) The amount (including any negative amount) for that year under the most recent amortization schedule determined by the Secretary of Defense under section 1115(c)(4) of this title for the amortization of any cumulative actuarial gain or loss to the Fund resulting from actuarial experience.

(c) The Secretary of Defense shall promptly certify the amount determined under subsection (b) each year to the Secretary of the Treasury.

(d) At the same time as the Secretary of Defense makes the certification under subsection (c), the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives the information provided to the Secretary of the Treasury under that subsection.

(Added Pub. L. 106–398, § 1 [[div. A], title VII, § 713(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–182; amended Pub. L. 107–107, div. A, title VII, § 711(b)(4), (d), (e)(1), title X, § 1048(a)(13), Dec. 28, 2001, 115 Stat. 1165, 1166, 1223; Pub. L. 107–314, div. A, title VII, § 704(a), Dec. 2, 2002, 116 Stat. 2584; Pub. L. 108–136, div. A, title VII, § 722(b), Nov. 24, 2003, 117 Stat. 1532; Pub. L. 108–375, div. A, title VII, § 725(a), Oct. 28, 2004, 118 Stat. 1991.)

AMENDMENTS

2004—Pub. L. 108–375 reenacted section catchline without change and amended text generally. Prior to amendment, section related to, in subsec. (a), calculation of the Department of Defense monthly contribution to the Fund, in subsec. (b), separate calculation by a participating uniformed service, in subsec. (c), payments to the Fund at the beginning of each fiscal year by the Secretary of the Treasury, and, in subsec. (d), amounts paid into the Fund under subsec. (a) from the pay of members of the participating uniformed services.

2003—Subsec. (a). Pub. L. 108–136, § 722(b)(1), substituted ''the amount that, subject to subsection (b),'' for ''the amount that'' in introductory provisions.

Subsecs. (b) to (d). Pub. L. 108–136, § 722(b)(2), (3), added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively.

2002—Subsec. (c). Pub. L. 107–314 substituted ''pay of members'' for ''health care programs''.

2001—Subsec. (a)(1)(A). Pub. L. 107–107, § 711(e)(1), substituted ''uniformed services retiree health care programs'' for ''Department of Defense retiree health care programs''.

Subsec. (a)(1)(B). Pub. L. 107–107, § 711(b)(4), inserted ''under the jurisdiction of the Secretary of Defense'' after ''uniformed services''.

Subsec. (a)(2)(A). Pub. L. 107–107, § 711(e)(1), substituted ''uniformed services retiree health care programs'' for ''Department of Defense retiree health care programs''.

Subsec. (a)(2)(B). Pub. L. 107–107, § 1048(a)(13)(A), inserted an opening parenthesis before ''other than for training''.

Pub. L. 107–107, § 711(b)(4), (d)(1), inserted ''under the jurisdiction of the Secretary of Defense'' after ''uniformed services'' and struck out at end ''Amounts paid into the Fund under this subsection shall be paid from funds available for the Defense Health Program.''.

Subsec. (b)(2)(D). Pub. L. 107–107, § 1048(a)(13)(B), substituted ''section 1115(c)(4)'' for ''section 111(c)(4)''.

Subsec. (c). Pub. L. 107–107, §711(d)(2), added subsec. (c).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–375 effective Oct. 1, 2005, see section 725(d) of Pub. L. 108–375, set out as a note under section 1111 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 711 of Pub. L. 107–107 effective as if included in the enactment of this chapter by Pub. L. 106–398, see section 711(f) of Pub. L. 107–107, set out as a note under section 1111 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 2002, see section 1 [[div. A], title VII, §713(b)(1)] of Pub. L. 106–398, set out as a note under section 1113 of this title.

INAPPLICABILITY TO INDIAN HEALTH SERVICE

Pub. L. 108–7, div. F, title II, Feb. 20, 2003, 117 Stat. 261, provided in part: ''That heretofore and hereafter the provisions of 10 U.S.C. 1116 shall not apply to the Indian Health Service''.

FIRST YEAR CONTRIBUTIONS

Pub. L. 107–107, div. A, title VII, §711(g), Dec. 28, 2001, 115 Stat. 1167, provided that: ''With respect to contributions under section 1116(a) of title 10, United States Code, for the first year that the Department of Defense Medicare-Eligible Retiree Health Care Fund is established under chapter 56 of such title, if the Board of Actuaries is unable to execute its responsibilities with respect to such section, the Secretary of Defense may make contributions under such section using methods and assumptions developed by the Secretary.''

§1117. Investment of assets of Fund

The Secretary of the Treasury shall invest such portion of the Fund as is not in the judgment of the Secretary of Defense required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable to the needs of the Fund, as determined by the Secretary of Defense, and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities. The income on such investments shall be credited to and form a part of the Fund.

(Added Pub. L. 106–398, §1 [[div. A], title VII, §713(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–184.)

CHAPTER 57—DECORATIONS AND AWARDS

Sec.
1121. Legion of Merit: award.
1122. Medal for Merit: award.
1123. Right to wear badges of military societies.
1124. Cash awards for disclosures, suggestions, inventions, and scientific achievements.
1125. Recognition for accomplishments: award of trophies.
1126. Gold star lapel button: eligibility and distribution.
1127. Precedence of the award of the Purple Heart.
1128. Prisoner-of-war medal: issue.
1129. Purple Heart: members killed or wounded in action by friendly fire.
1130. Consideration of proposals for decorations not previously submitted in timely fashion: procedures for review.
1131. Purple Heart: limitation to members of the armed forces.
1132. Presentation of decorations: prohibition on entering correctional facilities for presentation to prisoners convicted of serious violent felonies.
1133. Bronze Star: limitation on persons eligible to receive.
1134. Medal of honor: award to individual interred in Tomb of the Unknowns as representative of casualties of a war.
1135. Replacement of military decorations.

AMENDMENTS

2011—Pub. L. 111–383, div. A, title V, §571(b), Jan. 7, 2011, 124 Stat. 4223, added item 1133 and struck out former item 1133 ''Bronze star: limitation to members receiving imminent danger pay''.

2008—Pub. L. 110–417, [div. A], title V, §571(b), Oct. 14, 2008, 122 Stat. 4472, added item 1135.

2004—Pub. L. 108–375, div. A, title V, §561(b), Oct. 28, 2004, 118 Stat. 1918, added item 1134.

2003—Pub. L. 108–136, div. A, title X, §1031(a)(10)(B), Nov. 24, 2003, 117 Stat. 1597, struck out ''and recommendation'' after ''review'' in item 1130.

2000—Pub. L. 106–398, §1 [[div. A], title V, §541(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–114, added item 1133.

1998—Pub. L. 105–261, div. A, title V, §537(b), Oct. 17, 1998, 112 Stat. 2019, added item 1132.

1997—Pub. L. 105–85, div. A, title V, §571(a)(2), Nov. 18, 1997, 111 Stat. 1756, added item 1131.

1996—Pub. L. 104–106, div. A, title V, §526(b), Feb. 10, 1996, 110 Stat. 314, added item 1130.

1993—Pub. L. 103–160, div. A, title XI, §1141(b), Nov. 30, 1993, 107 Stat. 1757, added item 1129.

1985—Pub. L. 99–145, title V, §532(a)(2), title XII, §1225(a)(2)(B), Nov. 8, 1985, 99 Stat. 634, 730, inserted ''disclosures,'' and substituted ''and'' for ''or'' in item 1124, and added item 1128.

1984—Pub. L. 98–525, title V, §553(b), Oct. 19, 1984, 98 Stat. 2532, added item 1127.

1966—Pub. L. 89–718, §9, Nov. 2, 1966, 80 Stat. 1117, redesignated item 1124, added by Pub. L. 89–534, §1(2), Aug. 11, 1966, 80 Stat. 345, as 1126.

Pub. L. 89–534, §1(2), Aug. 11, 1966, 80 Stat. 345, added item 1124, relating to eligibility for and distribution of gold star lapel button.

Pub. L. 89–529, §1(2), Aug. 11, 1966, 80 Stat. 339, added item 1125.

1965—Pub. L. 89–198, §1(2), Sept. 22, 1965, 79 Stat. 831, added item 1124, relating to payment of cash awards for members of armed forces for suggestions, inventions, or scientific achievements.

PROMOTIONAL MATERIALS AND RECOGNITION ITEMS FOR PARTICIPANTS IN OPERATION ENDURING FREEDOM OR OPERATION IRAQI FREEDOM

Pub. L. 110–116, div. A, title VIII, §8099, Nov. 13, 2007, 121 Stat. 1337, provided that: ''Hereafter, the Secretary of Defense may present promotional materials, including a United States flag, to any member of an Active or Reserve component under the Secretary's jurisdiction who, as determined by the Secretary, participates in Operation Enduring Freedom or Operation Iraqi Freedom, along with other recognition items in conjunction with any week-long national observation and day of national celebration, if established by Presidential proclamation, for any such members returning from such operations.''

REPORT ON DEPARTMENT OF DEFENSE PROCESS FOR AWARDING DECORATIONS

Pub. L. 109–364, div. A, title V, §557, Oct. 17, 2006, 120 Stat. 2219, provided that:

''(a) REVIEW.—The Secretary of Defense shall conduct a review of the policy, procedures, and processes of the military departments for awarding decorations to members of the Armed Forces.

''(b) TIME PERIODS.—As part of the review under subsection (a), the Secretary shall compare the time frames of the awards process between active duty and reserve components—

''(1) from the time a recommendation for the award of a decoration is submitted until the time the award of the decoration is approved; and

''(2) from the time the award of a decoration is approved until the time when the decoration is presented to the recipient.

''(c) RESERVE COMPONENTS.—If the Secretary, in conducting the review under subsection (a), finds that the timeliness of the awards process for members of the reserve components is not the same as, or similar to, that for members of the active components, the Secretary shall take appropriate steps to address the discrepancy.

''(d) REPORT.—Not later than August 1, 2007, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report containing the Secretary's findings as a result of the review under subsection (a), together with a plan for implementing whatever changes are determined to be appropriate to the process for awarding decorations in order to ensure that decorations are awarded in a timely manner, to the extent practicable.''

SEPARATE MILITARY CAMPAIGN MEDALS TO RECOGNIZE SERVICE IN OPERATION ENDURING FREEDOM AND SERVICE IN OPERATION IRAQI FREEDOM

Pub. L. 109–163, div. A, title V, § 576, Jan. 6, 2006, 119 Stat. 3274, provided that: ''For purposes of eligibility for the campaign medal for Operation Enduring Freedom established pursuant to Public Law 108–234 (10 U.S.C. 1121 note), the beginning date of Operation Enduring Freedom is September 11, 2001.''

Pub. L. 108–234, § 1, May 28, 2004, 118 Stat. 655, provided that:

''(a) REQUIREMENT.—The President shall establish a campaign medal specifically to recognize service by members of the uniformed services in Operation Enduring Freedom and a separate campaign medal specifically to recognize service by members of the uniformed services in Operation Iraqi Freedom.

''(b) ELIGIBILITY.—Subject to such limitations as may be prescribed by the President, eligibility for a campaign medal established pursuant to subsection (a) shall be set forth in regulations to be prescribed by the Secretary concerned (as defined in section 101 of title 10, United States Code). In the case of regulations prescribed by the Secretaries of the military departments, the regulations shall be subject to approval by the Secretary of Defense and shall be uniform throughout the Department of Defense.''

COMMENDATION OF MEMBERS OF ARMED FORCES AND GOVERNMENT CIVILIAN PERSONNEL WHO SERVED DURING COLD WAR

Pub. L. 105–85, div. A, title X, § 1084, Nov. 18, 1997, 111 Stat. 1919, provided that:

''(a) FINDINGS.—The Congress finds the following:

''(1) During the period of the Cold War, from the end of World War II until the collapse of the Soviet Union in 1991, the United States and the Soviet Union engaged in a global military rivalry.

''(2) This rivalry, potentially the most dangerous military confrontation in the history of mankind, has come to a close without a direct superpower military conflict.

''(3) Military and civilian personnel of the Department of Defense, personnel in the intelligence community, members of the foreign service, and other officers and employees of the United States faithfully performed their duties during the Cold War.

''(4) Many such personnel performed their duties while isolated from family and friends and served overseas under frequently arduous conditions in order to protect the United States and achieve a lasting peace.

''(5) The discipline and dedication of those personnel were fundamental to the prevention of a superpower military conflict.

''(b) CONGRESSIONAL COMMENDATION.—The Congress hereby commends the members of the Armed Forces and civilian personnel of the Government who contributed to the historic victory in the Cold War and expresses its gratitude and appreciation for their service and sacrifices.

''(c) CERTIFICATES OF RECOGNITION.—The Secretary of Defense shall prepare a certificate recognizing the Cold War service of qualifying members of the Armed Forces and civilian personnel of the Department of Defense and other Government agencies contributing to national security, as determined by the Secretary, and shall provide the certificate to such members and civilian personnel upon request.''

EX. ORD. NO. 11448. MERITORIOUS SERVICE MEDAL

Ex. Ord. No. 11448, Jan. 16, 1969, 34 F.R. 915, as amended by Ex. Ord. No. 12312, July 2, 1981, 46 F.R. 35251; Ex. Ord. No. 13286, § 61, Feb. 28, 2003, 68 F.R. 10629, provided:

By virtue of the authority vested in me as President of the United States and as Commander in Chief of the Armed Forces of the United States, it is ordered as follows:

SECTION 1. There is hereby established a Meritorious Service Medal, with accompanying ribbons and appurtenances, for award by the Secretary of a Military Department or the Secretary of Homeland Security with regard to the Coast Guard when not operating as a service in the Navy, or by such military commanders or other appropriate officers as the Secretary concerned may designate, to any member of the armed forces of the United States, or to any member of the armed forces of a friendly foreign nation, who has distinguished himself by outstanding meritorious achievement or service.

SEC. 2. The Meritorious Service Medal and appurtenances thereto shall be of appropriate design approved by the Secretary of Defense, and shall be awarded under such regulations as the Secretary concerned may prescribe. Such regulations shall, so far as practicable, be uniform, and those of the military departments shall be subject to the approval of the Secretary of Defense.

SEC. 3. No more than one Meritorious Service Medal shall be awarded to any one person, but for each succeeding outstanding meritorious achievement or service justifying such an award a suitable device may be awarded to be worn with the medal as prescribed by appropriate regulations.

SEC. 4. The Meritorious Service Medal or device may be awarded posthumously and, when so awarded, may be presented to such representative of the deceased as may be deemed appropriate by the Secretary of the department concerned.

EXECUTIVE ORDER NO. 11544

Ex. Ord. No. 11544, July 8, 1970, 35 F.R. 11115, which established a Vice Presidential Service Certificate and a Vice Presidential Service Badge, was superseded by Ex. Ord. No. 11926, July 19, 1976, 41 F.R. 29805, set out below.

EX. ORD. NO. 11904. DEFENSE SUPERIOR SERVICE MEDAL

Ex. Ord. No. 11904, Feb. 6, 1976, 41 F.R. 5625, provided:

By virtue of the authority vested in me as President of the United States of America, and as Commander in Chief of the Armed Forces, it is hereby ordered as follows:

SECTION 1. There is hereby established a Defense Superior Service Medal with accompanying ribbons and appurtenances for award by the Secretary of Defense to any member of the Armed Forces of the United States who has rendered superior meritorious service in a position of significant responsibility with the Office of the Secretary of Defense, the Organization of the Joint Chiefs of Staff, a specified or unified command, a Defense agency, or such other joint activity as may be designated by the Secretary of Defense.

SEC. 2. The Defense Superior Service Medal and appurtenances thereto shall be of appropriate design approved by the Secretary of Defense and shall be awarded under such regulations as he shall prescribe. These regulations shall place the Defense Superior Service Medal in an order of precedence after the Medal of

Honor, the Distinguished Service Cross, the Defense Distinguished Service Medal, the Distinguished Service Medal and the Silver Star Medal, but before the Legion of Merit.

SEC. 3. No more than one Defense Superior Service Medal shall be awarded to any one person, but for each succeeding period of superior meritorious service justifying such an award, a suitable device may be awarded to be worn with that Medal as prescribed by appropriate regulations of the Department of Defense.

SEC. 4. The Defense Superior Service Medal or device may be awarded posthumously, and when so awarded, may be presented to such representative of the deceased as may be deemed appropriate by the Secretary of Defense.

GERALD R. FORD.

EX. ORD. NO. 11926. VICE PRESIDENTIAL SERVICE BADGE

Ex. Ord. No. 11926, July 19, 1976, 41 F.R. 29805, as amended by Ex. Ord. No. 13286, §56, Feb. 28, 2003, 68 F.R. 10629; Ex. Ord. No. 13373, §1, Mar. 10, 2005, 70 F.R. 12579, provided:

By virtue of the authority vested in me as President of the United States of America, and as Commander in Chief of the Armed Forces of the United States, it is hereby ordered as follows:

SECTION 1. There is established a Vice Presidential Service Badge to be awarded in the name of the Vice President of the United States of America to members of the Army, Navy, Marine Corps, Air Force, Coast Guard, commissioned corps of the National Oceanic and Atmospheric Administration, and commissioned corps of the Public Health Service who have been assigned to duty in the Office of the Vice President for a period of at least one year subsequent to December 19, 1974, or who have been assigned to perform duties predominantly for the Vice President for a period of at least one year subsequent to January 20, 2001, in the implementation of Public Law 93–346, as amended [3 U.S.C. 111 note], or in military units and support facilities to which section 1 of Executive Order 12793 of March 20, 1992, as amended [set out below], refers.

SEC. 2. The Vice Presidential Service Badge may be awarded, upon recommendation of the Vice President's designee (with the concurrence of the Director of the White House Military Office in the case of personnel in military units or support facilities to which section 1 of Executive Order 12793, as amended, refers), by the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, or, when the Coast Guard is not operating as a service in the Navy, the Secretary of Homeland Security, to military personnel of their respective services who have been assigned to duty in the Office of the Vice President and, in the case of members of the commissioned corps of the National Oceanic and Atmospheric Administration or the commissioned corps of the Public Health Service so assigned, by the Secretary of Commerce or the Secretary of Health and Human Services, respectively.

SEC. 3. The Vice Presidential Service Badge shall be accompanied by a certificate, the design of which is attached hereto and is made a part of this Order. The Vice Presidential Service Badge shall consist of a white enameled disc surrounded by 27 gold rays radiating from the center, $1\frac{15}{16}$ inches in diameter overall. Superimposed on the white disc shall be a gold color device taken from the seal of the Vice President of the United States. The overall design of the badge shall be as shown at the top of the certificate which accompanies the Badge and which is attached to this Order.

SEC. 4. Upon award, the Vice Presidential Service Badge may be worn as a part of the uniform of an individual both during and after his assignment to duty in the Office of the Vice President.

SEC. 5. Only one Vice Presidential Service Badge shall be awarded to an individual. It may be awarded posthumously. No award shall be made to an individual under this Order based on a period of service with respect to which, in whole or in part, the individual was awarded the Presidential Service Badge.

SEC. 6. Notwithstanding the provisions of Sections 1 and 2 of this Order, any member of the Army, Navy, Air Force, Marine Corps, Coast Guard, commissioned corps of the National Oceanic and Atmospheric Administration, and commissioned corps of the Public Health Service, who has been assigned to duty in the Office of the Vice President, or who has been assigned to perform duties predominantly for the Vice President, in the implementation of Public Law 93–346, as amended, or in military units and support facilities to which section 1 of Executive Order 12793, as amended, refers,,[sic] is authorized, unless otherwise directed by the Director of the White House Military Office in the case of personnel in military units or support facilities to which section 1 of Executive Order 12793, as amended, refers, to wear the Vice Presidential Service Badge on his or her uniform commencing on the first day of such duty and thereafter while assigned to such duty.

SEC. 7. Executive Order No. 11544 of July 8, 1970, is hereby superseded; however, individuals previously awarded a Vice Presidential Service Badge under that Order are authorized to continue to wear such badge as part of their uniform.

EX. ORD. NO. 11965. HUMANITARIAN SERVICE MEDAL

Ex. Ord. No. 11965, Jan. 19, 1977, 42 F.R. 4329, as amended by Ex. Ord. No. 13286, §55, Feb. 28, 2003, 68 F.R. 10629, provided:

By virtue of the authority vested in me as President of the United States of America, and as Commander in Chief of the Armed Forces, it is hereby ordered as follows:

SECTION 1. There is hereby established a Humanitarian Service Medal with accompanying ribbons and appurtenances for award by the Secretary of Defense or the Secretary of Homeland Security with regard to the Coast Guard when not operating as a Service in the Navy. Individuals eligible for the medal are members of the Armed Forces of the United States (including Reserve Components) who, subsequent to April 1, 1975, distinguished themselves by meritorious participation in a military act or operation of a humanitarian nature. The Secretary of Defense and the Secretary of Homeland Security for the Coast Guard will determine types of acts or operations that warrant award of the medal.

SEC. 2. The Humanitarian Service Medal and ribbons and appurtenances thereto shall be of appropriate design approved by the Secretary of Defense and shall be awarded by the Secretary of Defense and the Secretary of Homeland Security for the Coast Guard under uniform regulations, as prescribed by the Secretary of Defense. The regulations shall place the Humanitarian Service Medal in an order of precedence immediately after the Vietnam Service Medal.

SEC. 3. No more than one Humanitarian Service Medal shall be awarded to any one person, but for each subsequent participation in a humanitarian act or operation justifying such an award, a suitable device may be awarded to be worn with that medal as prescribed by appropriate regulations of the Military Departments.

SEC. 4. The Humanitarian Service Medal or device may be awarded posthumously, and when so awarded, may be presented to such representative of the deceased as may be deemed appropriate by the Secretary of Defense or the Secretary of Homeland Security.

EX. ORD. NO. 12019. DEFENSE MERITORIOUS SERVICE MEDAL

Ex. Ord. No. 12019, Nov. 3, 1977, 42 F.R. 57945, provided:

By virtue of the authority vested in me as President of the United States of America, and as Commander in Chief of the Armed Forces, it is hereby ordered as follows:

SECTION 1. There is hereby established a Defense Meritorious Service Medal, with accompanying ribbons and appurtenances, for award by the Secretary of Defense to any member of the Armed Forces of the United States who has rendered outstanding non-combat meritorious achievement or service while assigned to the

Office of the Secretary of Defense, the Organization of the Joint Chiefs of Staff, a specified or unified command, a Defense agency, or other such joint activity as may be designated by the Secretary of Defense.

SEC. 2. The Defense Meritorious Service Medal, with accompanying ribbons and appurtenances, shall be of appropriate design approved by the Secretary of Defense and shall be awarded under such regulations as the Secretary of Defense may prescribe. These regulations shall place the Defense Meritorious Service Medal in an order of precedence after the Medal of Honor, the Distinguished Service Cross, the Defense Distinguished Service Medal, the Distinguished Service Medal, the Silver Star Medal, the Defense Superior Service Medal, the Legion of Merit Medal, and the Bronze Star Medal, but before the Meritorious Service Medal.

SEC. 3. No more than one Defense Meritorious Service Medal shall be awarded to any one person, but for each succeeding outstanding meritorious achievement or service justifying such an award a suitable device to be worn with that medal may be awarded under such regulations as the Secretary of Defense may prescribe.

SEC. 4. The Defense Meritorious Service Medal or device may be awarded posthumously and, when so awarded, may be presented to such representative of the deceased as may be deemed appropriate by the Secretary of Defense.

JIMMY CARTER.

EX. ORD. NO. 12793. PRESIDENTIAL SERVICE CERTIFICATE AND PRESIDENTIAL SERVICE BADGE

Ex. Ord. No. 12793, Mar. 20, 1992, 57 F.R. 10281, as amended by Ex. Ord. No. 13286, § 31, Feb. 28, 2003, 68 F.R. 10625, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and as Commander in Chief of the Armed Forces of the United States, it is ordered of follows:

SECTION 1. *Presidential Service Certificate*. The Presidential Service Certificate (''Certificate'') is hereby continued, the design of which accompanies and is hereby made a part of this order. The Certificate shall be awarded in the name of the President of the United States by the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, or, when the Coast Guard is not operating as a service in the Navy, the Secretary of Homeland Security. It shall be awarded by the appropriate Secretary to members of the Army, Navy, Marine Corps, Air Force, and Coast Guard, respectively, who have been assigned to the White House Office; to military units and support facilities under the administration of the White House Military Office; or to other direct support positions within the Executive Office of the President (''EOP''). The Certificate shall not be issued to any member who is issued a Vice Presidential Certificate, or similar EOP Certificate, for the same period of service. Such assignment must be for a period of at least one year, subsequent to January 21, 1989.

SEC. 2. *Presidential Service Badge*. The Presidential Service Badge (''Badge'') is hereby continued, the design of which accompanies and is hereby made a part of this order. The Badge shall be awarded to those members of the Armed Forces who have been granted the Certificate and shall be awarded in the same manner in which the Certificate has been given. The Badge shall be worn as a part of the uniform of those individuals under such regulations as their respective Secretaries may severally prescribe.

SEC. 3. Only one Certificate may be awarded to an individual.

SEC. 4. The Certificate and the Badge may be granted posthumously.

SEC. 5. This order shall supersede Executive Order No. 10879 of June 1, 1960, as amended.

EX. ORD. NO. 12830. MILITARY OUTSTANDING VOLUNTEER SERVICE MEDAL

Ex. Ord. No. 12830, Jan. 9, 1993, 58 F.R. 4061, as amended by Ex. Ord. No. 13286, § 28, Feb. 28, 2003, 68 F.R. 10625, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and as Commander in Chief of the Armed Forces, it is hereby ordered as follows:

SECTION 1. There is hereby established a Military Outstanding Volunteer Service Medal, with accompanying ribbons and appurtenances, for award by the Secretary of Defense or, with respect to the Coast Guard when it is not operating as a service in the Navy, the Secretary of Homeland Security. Members of the Armed Forces of the United States (including Reserve components) who perform outstanding volunteer service to the civilian community of a sustained, direct, and consequential nature are eligible for the medal.

SEC. 2. The Military Outstanding Volunteer Service Medal and ribbons and appurtenances thereto shall be of appropriate design approved by the Secretary of Defense. The Secretary of Defense shall prescribe regulations to govern the award and wear of the Military Outstanding Volunteer Service Medal. The regulations shall place the Military Outstanding Volunteer Service Medal in order of precedence immediately after the Humanitarian Service Medal.

SEC. 3. No more than one award of the Military Outstanding Volunteer Service Medal may be made to any one person, but for each subsequent act justifying such an award, a suitable device may be awarded to be worn with that medal as prescribed by appropriate regulations issued by the Secretary of Defense.

SEC. 4. The Military Outstanding Volunteer Service Medal may be awarded posthumously, and when so awarded, may be presented to such representatives of the deceased as may be deemed appropriate by the Secretary of Defense or, in the case of a member of the Coast Guard when it is not operating as a service in the Navy, the Secretary of Homeland Security.

EX. ORD. NO. 12985. ESTABLISHING ARMED FORCES SERVICE MEDAL

Ex. Ord. No. 12985, Jan. 11, 1996, 61 F.R. 1209, as amended by Ex. Ord. No. 13286, § 20, Feb. 28, 2003, 68 F.R. 10624, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including my authority as Commander in Chief of the Armed Forces of the United States, it is hereby ordered as follows:

SECTION 1. *Establishment*. There is hereby established the Armed Forces Service Medal with accompanying ribbons and appurtenances, for award to members of the Armed Forces of the United States who, on or after June 1, 1992, in the opinion of the Joint Chiefs of Staff:

(a) Participate, or have participated, as members of United States military units in a United States military operation in which personnel of any Armed Force participate that is deemed to be significant activity; and

(b) Encounter no foreign armed opposition or imminent hostile action.

SEC. 2. *Approval and Award*. The medal, with ribbons and appurtenances, shall be of an appropriate design approved by the Secretary of Defense and shall be awarded by the Secretary of Defense and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, under uniform regulations, as prescribed by the Secretary of Defense. The regulations shall place the Armed Forces Service Medal in an order of precedence immediately before the Humanitarian Service Medal.

SEC. 3. *Criteria*. The medal shall be awarded only for operations for which no other United States service medal is approved. For operations in which personnel of only one Military Department or the Coast Guard participate, the medal shall be awarded only if there is no other suitable award available to the department or the Coast Guard. No more than one medal shall be awarded to any one person, but for each succeeding operation justifying such award a suitable device may be awarded to be worn on the medal or ribbon as prescribed by appropriate regulations.

SEC. 4. *Posthumous Provision*. The medal may be awarded posthumously and, when so awarded, may be presented to such representative of the deceased as may be deemed appropriate by the Secretary of Defense or the Secretary of Transportation [sic].

EX. ORD. NO. 13306. ESTABLISHING THE BOB HOPE AMERICAN PATRIOT AWARD

Ex. Ord. No. 13306, May 28, 2003, 68 F.R. 33337, provided:

By the authority vested in me as President and as Commander in Chief by the Constitution and the laws of the United States of America, it is ordered as follows:

SECTION 1. *Establishment of the Award*. In order to encourage love of country, service to the people of the United States, and support for our Armed Forces, and in order to recognize the unique and lifelong service of Bob Hope to the United States Armed Forces and to the Nation through his unwavering patriotism and dedication to maintaining the morale of the troops he entertained for nearly six decades, and on the occasion of his 100th birthday, there is hereby established the Bob Hope American Patriot Award (Award).

SEC. 2. *Granting and Presentation of the Award*.

(a) The Award may be granted by the President, in his sole discretion, to any civilian individual who has demonstrated extraordinary love of country and devotion to the personnel of the United States Armed Forces, in the form of true patriotism. The Award may also be granted by the President to an organization that meets the same criteria.

(b) Other than in exceptional circumstances, no more than one Award may be granted in any given year.

(c) The presentation of the Award may take place at any time during the year.

(d) Subject to the provisions of this order, the Award may be conferred posthumously.

GEORGE W. BUSH.

§ 1121. Legion of Merit: award

The President, under regulations to be prescribed by him, may award a decoration called the ''Legion of Merit'', having suitable appurtenances and devices and not more than four degrees, to any member of the armed forces of the United States or of any friendly foreign nation who, after September 8, 1939, has distinguished himself by exceptionally meritorious conduct in performing outstanding services.

(Aug. 10, 1956, ch. 1041, 70A Stat. 88.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1121	10:1408b(1).	July 20, 1942, ch. 508, § 2(1), 56 Stat. 662.

The words ''Government of the Philippines'' are omitted as covered by the words ''any friendly foreign nation''. The words ''There is created'', ''rules and'', and ''the proclamation of an emergency by the President on'' are omitted as surplusage.

§ 1122. Medal for Merit: award

The President, under regulations to be prescribed by him, may award a decoration called the ''Medal for Merit'', having distinctive appurtenances and devices and only one degree, to any civilian of any nation prosecuting the war in existence on July 20, 1942, under the joint declaration of the United Nations, as then constituted, or of any other friendly foreign nation, who, after September 8, 1939, has distinguished himself by exceptionally meritorious conduct in performing outstanding services. The Medal for Merit may be awarded to a civilian of a foreign nation but only for performing an exceptionally meritorious or courageous act in the furtherance of the war efforts of the United Nations as then constituted.

(Aug. 10, 1956, ch. 1041, 70A Stat. 88.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1122	10:1408b (less (1)).	July 20, 1942, ch. 508, § 2 (less (1)), 56 Stat. 663.

The words ''in existence on July 20, 1942'' are inserted for clarity and refer to the war in existence on the date of enactment of the source statute. The words ''as then constituted'' are inserted for clarity, since the United Nations organization in existence on July 20, 1942, was not the present United Nations organization. The words ''There is created'', ''rules and'', and ''the proclamation of an emergency by the President on'' are omitted as surplusage.

EX. ORD. NO. 9637. MEDAL FOR MERIT

Ex. Ord. No. 9637, Oct. 3, 1945, 10 F.R. 12543, as amended by Ex. Ord. No. 9857A, May 27, 1947, 12 F.R. 3583, provided:

1. The decoration of the Medal for Merit shall be awarded only by the President of the United States or at his direction. Awards of the Medal for Merit may be made to such civilians of the nations prosecuting the war under the joint declaration of the United Nations and of other friendly foreign nations as have distinguished themselves by exceptionally meritorious conduct in the performance of outstanding services since the proclamation of an emergency by the President on September 8, 1939. Awards of the Medal for Merit made to civilians of foreign nations shall be for the performance of an exceptionally meritorious or courageous act or acts in furtherance of the war efforts of the United Nations.

2. There is hereby established the Medal for Merit Board, which shall be composed of three members appointed by the President, one of whom shall be designated by the President to act as Chairman of the Board.

3. The Medal for Merit Board shall receive and consider proposals for the award of the decoration of the Medal for Merit and submit to the President the recommendations of the Board with respect thereto. In the case of proposed awards to civilians of foreign nations, such recommendations shall include the recommendations of the Secretary of State.

4. The Medal for Merit Board is authorized to prescribe, with the approval of the President, such rules and regulations not inconsistent with the provisions of this order as may be necessary to accomplish its purposes.

5. Executive Order 9331 of April 19, 1943 and the Medal for Merit Board created thereby, are superseded by this order.

6. The Medal for Merit shall not be awarded for any services relating to the prosecution of World War II performed subsequent to the cessation of hostilities, as proclaimed by Proclamation No. 2714 of December 31, 1946, and no proposal for an award for such services submitted after June 30, 1947, shall be considered by the Medal for Merit Board.

§ 1123. Right to wear badges of military societies

(a) A member of the Army, Navy, Air Force, or Marine Corps who is a member of a military society originally composed of men who served in an armed force of the United States during the Revolutionary War, the War of 1812, the Mexican

War, the Civil War, the Spanish-American War, the Philippine Insurrection, or the Chinese Relief Expedition of 1900 may wear, on occasions of ceremony, the distinctive badges adopted by that society.

(b) A member of the Army, Navy, Air Force, or Marine Corps who is a member of the Army and Navy Union of the United States may wear, on public occasions of ceremony, the distinctive badges adopted by that society.

(Aug. 10, 1956, ch. 1041, 70A Stat. 88.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1123(a)	10:1427 (1st sentence). 34:371 (1st sentence).	Sept. 25, 1890, J. Res. 50, 26 Stat. 681.
1123(b)	10:1427 (less 1st sentence). 34:371 (less 1st sentence).	May 11, 1894, J. Res. 26, 28 Stat. 583. Feb. 2, 1901, ch. 192, § 41, 31 Stat. 758. Jan. 12, 1903, J. Res. 2, 32 Stat. 1229. Mar. 2, 1907, J. Res. 18, 34 Stat. 1423.

In subsection (a), the words ''an armed force'' are substituted for the words ''armies and navies''. The words ''Revolutionary War'', ''Civil War'', and ''Philippine Insurrection'' are substituted for the words ''War of the Revolution'', ''War of the Rebellion'', and ''incident insurrection in the Philippines'', respectively, to reflect present terminology. The words ''originally composed'' are substituted for the words ''in their own right'', to reflect an opinion of the Attorney General (see 23 Op. Atty. Gen. 454).

In subsections (a) and (b), the word ''member'' is substituted for the words ''officers and enlisted men''. The words ''Navy * * * or Marine Corps'' are substituted for the word ''Navy'', since the word ''Navy'' in the source statute has, by long-standing administrative interpretation, been construed to include the Marine Corps.

In subsection (b), the words ''in their own right'' are omitted as surplusage.

§ 1124. Cash awards for disclosures, suggestions, inventions, and scientific achievements

(a) The Secretary of Defense, or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, may authorize the payment of a cash award to, and incur necessary expense for the honorary recognition of, a member of the armed forces under his jurisdiction who by his disclosure, suggestion, invention, or scientific achievement contributes to the efficiency, economy, or other improvement of operations or programs relating to the armed forces.

(b) Whenever the President considers it desirable, the Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, are authorized to pay a cash award to, and incur necessary expense for the honorary recognition of, a member of the armed forces who by his disclosure, suggestion, invention, or scientific achievement contributes to the efficiency, economy, or other improvement of operations of the Government of the United States. Such award is in addition to any other award made to that member under subsection (a).

(c) An award under this section may be paid notwithstanding the member's death, separation, or retirement from the armed force concerned. However, the disclosure, suggestion, invention, or scientific achievement forming the basis for the award must have been made while the member was on active duty or in an active reserve status and not otherwise eligible for an award under chapter 45 of title 5.

(d) A cash award under this section is in addition to the pay and allowances of the recipient. The acceptance of such an award shall constitute—

(1) an agreement by the member that the use by the United States of any idea, method, or device for which the award is made may not be the basis of a claim against the United States by the member, his heirs, or assigns, or by any person whose claim is alleged to be derived through the member; and

(2) a warranty by the member that he has not at the time of acceptance transferred, assigned, or otherwise divested himself of legal or equitable title in any property right residing in the idea, method, or device for which the award is made.

(e) Awards to, and expenses for the honorary recognition of, members of the armed forces under this section may be paid from (1) the funds or appropriations available to the activity primarily benefiting; or (2) the several funds or appropriations of the various activities benefiting, as may be determined by the President for awards under subsection (b), and by the Secretary concerned for awards under subsection (a).

(f) The total amount of the award, or awards, made under this section for a disclosure, suggestion, invention, or scientific achievement may not exceed $25,000, regardless of the number of persons who may be entitled to share therein.

(g) Awards under this section shall be made under regulations to be prescribed by the Secretary of Defense, or by the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy.

(h) For the purposes of this section, a member of the Commissioned Corps of the National Oceanic and Atmospheric Administration or of the Public Health Service who is serving with an armed force shall be treated as if he were a member of that armed force.

(Added Pub. L. 89–198, § 1(1), Sept. 22, 1965, 79 Stat. 830; amended Pub. L. 89–718, § 10, Nov. 2, 1966, 80 Stat. 1117; Pub. L. 90–623, § 2(1), Oct. 22, 1968, 82 Stat. 1314; Pub. L. 96–470, title I, § 112(c), Oct. 19, 1980, 94 Stat. 2240; Pub. L. 96–513, title V, § 511(40), Dec. 12, 1980, 94 Stat. 2923; Pub. L. 96–527, title VII, § 772, Dec. 15, 1980, 94 Stat. 3093; Pub. L. 99–145, title XII, § 1225(a)(1), (2)(A), Nov. 8, 1985, 99 Stat. 730; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

CODIFICATION

Another section 1124 was renumbered 1126 of this title.

AMENDMENTS

2002—Subsecs. (a), (b), (g). Pub. L. 107–296 substituted ''Secretary of Homeland Security'' for ''Secretary of Transportation''.

1985—Pub. L. 99–145 inserted ''disclosures,'' and substituted ''and'' for ''or'' in section catchline, and in-

serted ''disclosure,'' before ''suggestion'' in subsecs. (a), (b), (c), and (f).

1980—Subsec. (c). Pub. L. 96–527 authorized payment of awards to retired members of the armed forces, required the basis for awards to have been made when in an active reserve status, and required the member to be ineligible for incentive award under chapter 45 of title 5.

Subsec. (g). Pub. L. 96–470 struck out provision requiring the Secretary of Defense and the Secretary of Transportation to annually report to the President, for transmittal to Congress, on progress of the awards program.

Subsec. (h). Pub. L. 96–513 substituted ''National Oceanic and Atmospheric Administration'' for ''Environmental Science Services Administration''.

1968—Subsecs. (a), (b), (g). Pub. L. 90–623 substituted ''Secretary of Transportation'' for ''Secretary of the Treasury''.

1966—Subsec. (g). Pub. L. 89–718 substituted ''progress report'' for ''program report''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 1225(a)(3) of Pub. L. 99–145 provided that: ''The amendments made by this subsection [amending this section] shall take effect on October 1, 1985.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90–623, set out as a note under section 5334 of Title 5, Government Organization and Employees.

TRANSFER OF FUNCTIONS

For transfer of functions of Public Health Service, see note set out under section 802 of this title.

EX. ORD. NO. 11438. PROCEDURES GOVERNING INTERDEPARTMENTAL CASH AWARDS

Ex. Ord. No. 11438, Dec. 3, 1968, 33 F.R. 18085, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055; Ex. Ord. No. 13286, § 63, Feb. 28, 2003, 68 F.R. 10629, provided:

By virtue of the authority vested in me by section 1124(b) and (e) of title 10, United States Code, and section 301 of title 3, United States Code, and as President of the United States, it is ordered as follows:

SECTION 1. Any suggestion, invention, or scientific achievement by a member of the armed forces that contributes to the efficiency, economy, or other improvement of operations of the Government of the United States through its adoption or use by an executive department or agency other than the executive department having jurisdiction over the armed force of the member concerned may be the basis for honorary recognition or a cash award by the Secretary of Homeland Security in the case of a member of the Coast Guard when it is not operating as a service in the Navy or by the Secretary of Defense in the case of any other member of the armed forces.

SEC. 2. An executive department or agency that adopts or uses the suggestion, invention, or scientific achievement of a member of the armed forces who is not under its jurisdiction may recommend to the Department of Defense or to the Department of Homeland Security, as appropriate, a cash award or honorary recognition of the member and shall justify its recommendation with appropriate documentation and explanation of how the suggestion, invention, or scientific achievement contributes to the efficiency, economy, or other improvement of the operations of the Government of the United States. Awards shall be made under regulations to be prescribed by the Secretary of Defense or the Secretary of Homeland Security, as appropriate. The regulations of the Department of Defense and Department of Homeland Security may include designations of officials to whom authority for receiving, evaluating, and making awards may be assigned.

SEC. 3. No cash awards hereunder for a single suggestion, invention, or scientific achievement may exceed $25,000 regardless of the number of agencies or departments which may adopt or use the suggestion, invention, or scientific achievement.

SEC. 4. Funds to cover the costs of cash awards to members of the armed forces shall be transferred from the account of any executive department or agency which recommends the award to the appropriate account of the Department of Homeland Security or the Department of Defense, as the case may be. When several executive departments or agencies benefit from the adoption or use of the suggestion, invention, or scientific achievement, the amount transferred from each such benefiting department or agency to the Department of Homeland Security or the Department of Defense to cover the proportionate share of the cost of the cash award shall be determined under procedures prescribed by the Office of Personnel Management in accordance with the same guidelines and standards applying to awards to civilian employees.

§ 1125. Recognition for accomplishments: award of trophies

The Secretary of Defense may—

(1) award medals, trophies, badges, and similar devices to members, units, or agencies of an armed force under his jurisdiction for excellence in accomplishments or competitions related to that armed force; and

(2) provide badges or buttons in recognition of special service, good conduct, and discharge under conditions other than dishonorable.

(Added Pub. L. 89–529, § 1(1), Aug. 11, 1966, 80 Stat. 339.)

EX. ORD. NO. 11545. DEFENSE DISTINGUISHED SERVICE MEDAL

Ex. Ord. 11545, July 9, 1970, 35 F.R. 11161, provided:

By virtue of the authority vested in me as President of the United States and as Commander in Chief of the Armed Forces of the United States, it is ordered as follows:

SECTION 1. There is hereby established a Defense Distinguished Service Medal, with accompanying ribbons and appurtenances, for award by the Secretary of Defense to a military officer who performed exceptionally meritorious service in a duty of great responsibility with the Office of the Secretary of Defense, the Organization of the Joint Chiefs of Staff, a specified or unified command, a Defense agency, or such other joint activity as may be designated by the Secretary of Defense.

SEC. 2. The Defense Distinguished Service Medal and appurtenances thereto shall be of appropriate design approved by the Secretary of Defense and shall be awarded under such regulations as he shall prescribe. These regulations shall place the Defense Distinguished Service Medal in an order of precedence after the Medals of Honor and the Distinguished Service Crosses of the Armed Forces and before the Distinguished Service Medals of the Armed Forces.

SEC. 3. No more than one Defense Distinguished Service Medal shall be awarded to any one person, but for each succeeding exceptionally meritorious period of service justifying such an award, a suitable device may

be awarded to be worn with that Medal as prescribed by appropriate regulations of the Department of Defense.

SEC. 4. The Defense Distinguished Service Medal or device may be awarded posthumously and, when so awarded, may be presented to such representative of the deceased as may be deemed appropriate by the Secretary of Defense.

RICHARD NIXON.

§ 1126. Gold star lapel button: eligibility and distribution

(a) A lapel button, to be known as the gold star lapel button, shall be designed, as approved by the Secretary of Defense, to identify widows, parents, and next of kin of members of the armed forces—

(1) who lost their lives during World War I, World War II, or during any subsequent period of armed hostilities in which the United States was engaged before July 1, 1958;

(2) who lost or lose their lives after June 30, 1958—

(A) while engaged in an action against an enemy of the United States;

(B) while engaged in military operations involving conflict with an opposing foreign force; or

(C) while serving with friendly foreign forces engaged in an armed conflict in which the United States is not a belligerent party against an opposing armed force; or

(3) who lost or lose their lives after March 28, 1973, as a result of—

(A) an international terrorist attack against the United States or a foreign nation friendly to the United States, recognized as such an attack by the Secretary of Defense; or

(B) military operations while serving outside the United States (including the commonwealths, territories, and possessions of the United States) as part of a peacekeeping force.

(b) Under regulations to be prescribed by the Secretary of Defense, the Secretary concerned, upon application to him, shall furnish one gold star lapel button without cost to the widow and to each parent and next of kin of a member who lost or loses his or her life under any circumstances prescribed in subsection (a).

(c) Not more than one gold star lapel button may be furnished to any one individual except that, when a gold star lapel button furnished under this section has been lost, destroyed, or rendered unfit for use without fault or neglect on the part of the person to whom it was furnished, the button may be replaced upon application and payment of an amount sufficient to cover the cost of manufacture and distribution.

(d) In this section:

(1) The term ''widow'' includes widower.

(2) The term ''parents'' includes mother, father, stepmother, stepfather, mother through adoption, father through adoption, and foster parents who stood in loco parentis.

(3) The term ''next of kin'' includes only children, brothers, sisters, half brothers, and half sisters.

(4) The term ''children'' includes stepchildren and children through adoption.

(5) The term ''World War I'' includes the period from April 6, 1917, to March 3, 1921.

(6) The term ''World War II'' includes the period from September 8, 1939, to July 25, 1947, at 12 o'clock noon.

(7) The term ''military operations'' includes those operations involving members of the armed forces assisting in United States Government sponsored training of military personnel of a foreign nation.

(8) The term ''peacekeeping force'' includes those personnel assigned to a force engaged in a peacekeeping operation authorized by the United Nations Security Council.

(Added Pub. L. 89–534, § 1(1), Aug. 11, 1966, 80 Stat. 345, § 1124; renumbered § 1126, Pub. L. 89–718, § 9, Nov. 2, 1966, 80 Stat. 1117; amended Pub. L. 98–94, title XII, § 1268(8), Sept. 24, 1983, 97 Stat. 706; Pub. L. 100–26, § 7(k)(5), Apr. 21, 1987, 101 Stat. 284; Pub. L. 103–160, div. A, title XI, § 1143, Nov. 30, 1993, 107 Stat. 1757.)

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–160, § 1143(a), struck out ''of the United States'' after ''armed forces'' in introductory provisions, redesignated cls. (i) to (iii) of par. (2) as subpars. (A) to (C), respectively, and added par. (3).

Subsec. (d)(7), (8). Pub. L. 103–160, § 1143(b), added pars. (7) and (8).

1987—Subsec. (d). Pub. L. 100–26 substituted colon for dash at end of introductory provisions, inserted ''The term'' in each par., and substituted periods for semicolons in pars. (1) to (4) and period for ''; and'' in par. (5).

1983—Subsec. (a)(1). Pub. L. 98–94 substituted ''who'' for ''Who''.

§ 1127. Precedence of the award of the Purple Heart

In prescribing regulations establishing the order of precedence of awards and decorations authorized to be displayed on the uniforms of members of the armed forces, the Secretary of the military department concerned shall accord the Purple Heart a position of precedence, in relation to other awards and decorations authorized to be displayed, not lower than that immediately following the bronze star.

(Added Pub. L. 98–525, title V, § 553(a), Oct. 19, 1984, 98 Stat. 2532; amended Pub. L. 99–145, title V, § 533, Nov. 8, 1985, 99 Stat. 634.)

AMENDMENTS

1985—Pub. L. 99–145 substituted ''the bronze star'' for ''the lowest position accorded any award or decoration for valor''.

§ 1128. Prisoner-of-war medal: issue

(a) The Secretary concerned shall issue a prisoner-of-war medal to any person who, while serving in any capacity with the armed forces, was taken prisoner and held captive—

(1) while engaged in an action against an enemy of the United States;

(2) while engaged in military operations involving conflict with an opposing foreign force;

(3) while serving with friendly forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party; or

(4) by foreign armed forces that are hostile to the United States, under circumstances which the Secretary concerned finds to have been comparable to those under which persons have generally been held captive by enemy armed forces during periods of armed conflict.

(b) The prisoner-of-war medal shall be of appropriate design, with ribbons and appurtenances.

(c) In prescribing regulations establishing the order of precedence of awards and decorations authorized to be displayed on the uniforms of members of the armed forces, the Secretary concerned shall accord the prisoner-of-war medal a position of precedence, in relation to other awards and decorations authorized to be displayed—

(1) immediately following decorations awarded for individual heroism, meritorious achievement, or meritorious service, and

(2) before any other service medal, campaign medal, or service ribbon authorized to be displayed.

(d) Not more than one prisoner-of-war medal may be issued to a person. However, for each succeeding service that would otherwise justify the issuance of such a medal, the Secretary concerned may issue a suitable device to be worn as the Secretary determines.

(e) For a person to be eligible for issuance of a prisoner-of-war medal, the person's conduct must have been honorable for the period of captivity which serves as the basis for the issuance.

(f) If a person dies before the issuance of a prisoner-of-war medal to which he is entitled, the medal may be issued to the person's representative, as designated by the Secretary concerned.

(g) Under regulations to be prescribed by the Secretary concerned, a prisoner-of-war medal that is lost, destroyed, or rendered unfit for use without fault or neglect on the part of the person to whom it was issued may be replaced without charge.

(h) The Secretary of Defense shall ensure that regulations prescribed by the Secretaries of the military departments under this section are uniform so far as practicable.

(Added Pub. L. 99–145, title V, § 532(a)(1), Nov. 8, 1985, 99 Stat. 633; amended Pub. L. 101–189, div. A, title V, § 516(a), Nov. 29, 1989, 103 Stat. 1441.)

AMENDMENTS

1989—Subsec. (a)(4). Pub. L. 101–189 added par. (4).

EFFECTIVE DATE OF 1989 AMENDMENT

Section 516(b) of Pub. L. 101–189 provided that: ''Paragraph (4) of section 1128(a) of title 10, United States Code, as added by subsection (a), applies with respect to periods of captivity after April 5, 1917.''

EFFECTIVE DATE

Section 532(b) of Pub. L. 99–145 provided that: ''Section 1128 of title 10, United States Code, as added by subsection (a), applies with respect to any person taken prisoner and held captive after April 5, 1917.''

§ 1129. Purple Heart: members killed or wounded in action by friendly fire

(a) For purposes of the award of the Purple Heart, the Secretary concerned shall treat a member of the armed forces described in subsection (b) in the same manner as a member who is killed or wounded in action as the result of an act of an enemy of the United States.

(b) A member described in this subsection is a member who is killed or wounded in action by weapon fire while directly engaged in armed conflict, other than as the result of an act of an enemy of the United States, unless (in the case of a wound) the wound is the result of willful misconduct of the member.

(c) This section applies to members of the armed forces who are killed or wounded on or after December 7, 1941. In the case of a member killed or wounded as described in subsection (b) on or after December 7, 1941, and before November 30, 1993, the Secretary concerned shall award the Purple Heart under subsection (a) in each case which is known to the Secretary before such date or for which an application is made to the Secretary in such manner as the Secretary requires.

(Added Pub. L. 103–160, div. A, title XI, § 1141(a), Nov. 30, 1993, 107 Stat. 1756; amended Pub. L. 105–85, div. A, title X, § 1073(a)(18), Nov. 18, 1997, 111 Stat. 1901.)

AMENDMENTS

1997—Subsec. (c). Pub. L. 105–85 substituted ''November 30, 1993,'' for ''the date of the enactment of this section,'' and ''before such date or'' for ''before the date of the enactment of this section or''.

AWARD OF PURPLE HEART TO PERSONS WOUNDED WHILE HELD AS PRISONERS OF WAR BEFORE APRIL 25, 1962

Pub. L. 104–106, div. A, title V, § 521, Feb. 10, 1996, 110 Stat. 309, as amended by Pub. L. 108–136, div. A, title V, § 544, Nov. 24, 2003, 117 Stat. 1478, provided that:

''(a) AWARD OF PURPLE HEART.—For purposes of the award of the Purple Heart, the Secretary concerned (as defined in section 101 of title 10, United States Code) shall treat a former prisoner of war who was wounded before April 25, 1962, while held as a prisoner of war (or while being taken captive) in the same manner as a former prisoner of war who is wounded on or after that date while held as a prisoner of war (or while being taken captive).

''(b) STANDARDS FOR AWARD.—An award of the Purple Heart under subsection (a) shall be made in accordance with the standards in effect on the date of the enactment of this Act [Feb. 10, 1996] for the award of the Purple Heart to persons wounded on or after April 25, 1962.

''(c) ELIGIBLE FORMER PRISONERS OF WAR.—A person shall be considered to be a former prisoner of war for purposes of this section if the person is eligible for the prisoner-of-war medal under section 1128 of title 10, United States Code.

''(d) PROCEDURES FOR AWARD.—In determining whether a former prisoner of war who submits an application for the award of the Purple Heart under subsection (a) is eligible for that award, the Secretary concerned shall apply the following procedures:

''(1) Failure of the applicant to provide any documentation as required by the Secretary shall not in itself disqualify the application from being considered.

''(2) In evaluating the application, the Secretary shall consider (A) historical information as to the prison camp or other circumstances in which the applicant was held captive, and (B) the length of time that the applicant was held captive.

''(3) To the extent that information is readily available, the Secretary shall assist the applicant in obtaining information or identifying the sources of information referred to in paragraph (2).

''(4) The Secretary shall review a completed application under this section based upon the totality of the information presented, taking into account the length of time between the period during which the applicant was held as a prisoner of war and the date of the application.''

§ 1130. Consideration of proposals for decorations not previously submitted in timely fashion: procedures for review

(a) Upon request of a Member of Congress, the Secretary concerned shall review a proposal for the award or presentation of a decoration (or the upgrading of a decoration), either for an individual or a unit, that is not otherwise authorized to be presented or awarded due to limitations established by law or policy for timely submission of a recommendation for such award or presentation. Based upon such review, the Secretary shall make a determination as to the merits of approving the award or presentation of the decoration.

(b) Upon making a determination under subsection (a) as to the merits of approving the award or presentation of the decoration, the Secretary concerned shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives and to the requesting Member of Congress a detailed discussion of the rationale supporting the determination.

(c) Determinations under this section regarding the award or presentation of a decoration shall be made in accordance with the same procedures that apply to the approval or disapproval of the award or presentation of a decoration when a recommendation for such award or presentation is submitted in a timely manner as prescribed by law or regulation.

(d) In this section:

(1) The term ''Member of Congress'' means—

(A) a Senator; or

(B) a Representative in, or a Delegate or Resident Commissioner to, Congress.

(2) The term ''decoration'' means any decoration or award that may be presented or awarded to a member or unit of the armed forces.

(Added Pub. L. 104–106, div. A, title V, § 526(a), Feb. 10, 1996, 110 Stat. 313; amended Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 108–136, div. A, title X, § 1031(a)(10), Nov. 24, 2003, 117 Stat. 1597.)

AMENDMENTS

2003—Pub. L. 108–136, § 1031(a)(10)(B), struck out ''and recommendation'' after ''review'' in section catchline.

Subsec. (a). Pub. L. 108–136, § 1031(a)(10)(A)(i), struck out ''and the other determinations necessary to comply with subsection (b)'' after ''of the decoration''.

Subsec. (b). Pub. L. 108–136, § 1031(a)(10)(A)(ii), substituted ''to the requesting Member of Congress a detailed discussion of the rationale supporting the determination.'' for ''to the requesting member of Congress notice in writing of one of the following:

''(1) The award or presentation of the decoration does not warrant approval on the merits.

''(2) The award or presentation of the decoration warrants approval and a waiver by law of time restrictions prescribed by law is recommended.

''(3) The award or presentation of the decoration warrants approval on the merits and has been approved as an exception to policy.

''(4) The award or presentation of the decoration warrants approval on the merits, but a waiver of the time restrictions prescribed by law or policy is not recommended.

A notice under paragraph (1) or (4) shall be accompanied by a statement of the reasons for the decision of the Secretary.''

1999—Subsec. (b). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security'' in introductory provisions.

ELIGIBILITY FOR ARMED FORCES EXPEDITIONARY MEDAL FOR PARTICIPATION IN OPERATION JOINT ENDEAVOR OR OPERATION JOINT GUARD

Pub. L. 105–85, div. A, title V, § 572, Nov. 18, 1997, 111 Stat. 1756, provided that:

''(a) INCLUSION OF OPERATIONS.—For the purpose of determining the eligibility of members and former members of the Armed Forces for the Armed Forces Expeditionary Medal, the Secretary of Defense shall designate participation in Operation Joint Endeavor or Operation Joint Guard in the Republic of Bosnia and Herzegovina, and in such other areas in the region as the Secretary considers appropriate, as service in an area that meets the general requirements for the award of that medal.

''(b) INDIVIDUAL DETERMINATION.—The Secretary of the military department concerned shall determine whether individual members or former members of the Armed Forces who participated in Operation Joint Endeavor or Operation Joint Guard meet the individual service requirements for award of the Armed Forces Expeditionary Medal as established in applicable regulations. A member or former member shall be considered to have participated in Operation Joint Endeavor or Operation Joint Guard if the member—

''(1) was deployed in the Republic of Bosnia and Herzegovina, or in such other area in the region as the Secretary of Defense considers appropriate, in direct support of one or both of the operations;

''(2) served on board a United States naval vessel operating in the Adriatic Sea in direct support of one or both of the operations; or

''(3) operated in airspace above the Republic of Bosnia and Herzegovina, or in such other area in the region as the Secretary of Defense considers appropriate, while the operations were in effect.

''(c) OPERATIONS DEFINED.—For purposes of this section:

''(1) The term 'Operation Joint Endeavor' means operations of the United States Armed Forces conducted in the Republic of Bosnia and Herzegovina during the period beginning on November 20, 1995, and ending on December 20, 1996, to assist in implementing the General Framework Agreement and Associated Annexes, initialed on November 21, 1995, in Dayton, Ohio.

''(2) The term 'Operation Joint Guard' means operations of the United States Armed Forces conducted in the Republic of Bosnia and Herzegovina as a successor to Operation Joint Endeavor during the period beginning on December 20, 1996, and ending on such date as the Secretary of Defense may designate.''

ELIGIBILITY OF CERTAIN WORLD WAR II MILITARY ORGANIZATIONS FOR AWARD OF UNIT DECORATIONS

Pub. L. 105–85, div. A, title V, § 576, Nov. 18, 1997, 111 Stat. 1758, authorized award of a unit decoration for any unit or other organization of the Armed Forces that had supported the planning or execution of combat operations during World War II primarily through unit personnel who had been attached to other units of the Armed Forces or of other allied armed forces, and that had not been otherwise eligible for award of the decoration by reason of not usually having been deployed as a unit in support of such operations, and required that any recommendation for such an award be submitted to

the Secretary concerned not later than two years after Nov. 18, 1997.

AUTHORITY TO AWARD DECORATIONS RECOGNIZING ACTS OF VALOR PERFORMED IN COMBAT DURING THE VIETNAM CONFLICT

Section 522 of Pub. L. 104–106 provided that:

''(a) FINDINGS.—Congress makes the following findings:

''(1) The Ia Drang Valley (Pleiku) campaign, carried out by the Armed Forces in the Ia Drang Valley of Vietnam from October 23, 1965, to November 26, 1965, is illustrative of the many battles during the Vietnam conflict which pitted forces of the United States against North Vietnamese Army regulars and Viet Cong in vicious fighting.

''(2) Accounts of those battles that have been published since the end of that conflict authoritatively document numerous and repeated acts of extraordinary heroism, sacrifice, and bravery on the part of members of the Armed Forces, many of which have never been officially recognized.

''(3) In some of those battles, United States military units suffered substantial losses, with some units sustaining casualties in excess of 50 percent.

''(4) The incidence of heavy casualties throughout the Vietnam conflict inhibited the timely collection of comprehensive and detailed information to support recommendations for awards recognizing acts of heroism, sacrifice, and bravery.

''(5) Subsequent requests to the Secretaries of the military departments for review of award recommendations for such acts have been denied because of restrictions in law and regulations that require timely filing of such recommendations and documented justification.

''(6) Acts of heroism, sacrifice, and bravery performed in combat by members of the Armed Forces deserve appropriate and timely recognition by the people of the United States.

''(7) It is appropriate to recognize acts of heroism, sacrifice, or bravery that are belatedly, but properly, documented by persons who witnessed those acts.

''(b) WAIVER OF TIME LIMITATIONS FOR RECOMMENDATIONS FOR AWARDS.—(1) Any decoration covered by paragraph (2) may be awarded, without regard to any time limit imposed by law or regulation for a recommendation for such award to any person for actions by that person in the Southeast Asia theater of operations while serving on active duty during the Vietnam era. The waiver of time limitations under this paragraph applies only in the case of awards for acts of valor for which a request for consideration is submitted under subsection (c).

''(2) Paragraph (1) applies to any decoration (including any device in lieu of a decoration) that, during or after the Vietnam era and before the date of the enactment of this Act [Feb. 10, 1996], was authorized by law or under regulations of the Department of Defense or the military department concerned to be awarded to members of the Armed Forces for acts of valor.

''(c) REVIEW OF REQUESTS FOR CONSIDERATION OF AWARDS.—(1) The Secretary of each military department shall review each request for consideration of award of a decoration described in subsection (b) that are received by the Secretary during the one-year period beginning on the date of enactment of this Act [Feb. 10, 1996].

''(2) The Secretaries shall begin the review within 30 days after the date of the enactment of this Act and shall complete the review of each request for consideration not later than one year after the date on which the request is received.

''(3) The Secretary may use the same process for carrying out the review as the Secretary uses for reviewing other recommendations for award of decorations to members of the Armed Forces under the Secretary's jurisdiction for valorous acts.

''(d) REPORT.—(1) Upon completing the review of each such request under subsection (c), the Secretary shall submit a report on the review to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives [now Committee on Armed Services of the House of Representatives].

''(2) The report shall include, with respect to each request for consideration received, the following information:

''(A) A summary of the request for consideration.

''(B) The findings resulting from the review.

''(C) The final action taken on the request for consideration.

''(e) DEFINITION.—For purposes of this section:

''(1) The term 'Vietnam era' has the meaning given that term in section 101 of title 38, United States Code.

''(2) The term 'active duty' has the meaning given that term in section 101 of title 10, United States Code.''

MILITARY INTELLIGENCE PERSONNEL PREVENTED BY SECRECY FROM BEING CONSIDERED FOR DECORATIONS AND AWARDS

Section 523 of Pub. L. 104–106, as amended by Pub. L. 105–85, div. A, title V, §575, Nov. 18, 1997, 111 Stat. 1758, provided that:

''(a) WAIVER ON RESTRICTIONS OF AWARDS.—(1) Any decoration covered by paragraph (2) may be awarded, without regard to any time limit imposed by law or regulation for a recommendation for such award, to any person for an act, achievement, or service that the person performed in carrying out military intelligence duties during the period beginning on January 1, 1940, and ending on December 31, 1990.

''(2) Paragraph (1) applies to any decoration (including any device in lieu of a decoration) that, during or after the period described in paragraph (1) and before the date of the enactment of this Act [Feb. 10, 1996], was authorized by law or under the regulations of the Department of Defense or the military department concerned to be awarded to a person for an act, achievement, or service performed by that person while serving on active duty.

''(b) REVIEW OF REQUESTS FOR CONSIDERATION OF AWARDS.—(1) The Secretary of each military department shall review each request for consideration of award of a decoration described in subsection (a) that is received by the Secretary during the period beginning on February 10, 1996, and ending on February 9, 1998.

''(2) The Secretaries shall begin the review within 30 days after the date of the enactment of this Act and shall complete the review of each request for consideration not later than one year after the date on which the request is received.

''(3) The Secretary may use the same process for carrying out the review as the Secretary uses for reviewing other recommendations for awarding decorations to members of the Armed Forces under the Secretary's jurisdiction for acts, achievements, or service.

''(c) REPORT.—(1) Upon completing the review of each such request under subsection (b), the Secretary shall submit a report on the review to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives [now Committee on Armed Services of the House of Representatives].

''(2) The report shall include, with respect to each request for consideration reviewed, the following information:

''(A) A summary of the request for consideration.

''(B) The findings resulting from the review.

''(C) The final action taken on the request for consideration.

''(D) Administrative or legislative recommendations to improve award procedures with respect to military intelligence personnel.

''(d) DEFINITION.—For purposes of this section, the term 'active duty' has the meaning given such term in section 101 of title 10, United States Code.''

ELIGIBILITY FOR ARMED FORCES EXPEDITIONARY MEDAL BASED UPON SERVICE IN EL SALVADOR

Section 525 of Pub. L. 104–106 provided that:

''(a) IN GENERAL.—For the purpose of determining eligibility of members and former members of the Armed Forces for the Armed Forces Expeditionary Medal, the country of El Salvador during the period beginning on January 1, 1981 and ending on February 1, 1992, shall be treated as having been designated as an area and a period of time in which members of the Armed Forces participated in operations in significant numbers and otherwise met the general requirements for the award of that medal.

''(b) INDIVIDUAL DETERMINATION.—The Secretary of the military department concerned shall determine whether individual members or former members of the Armed Forces who served in El Salvador during the period beginning on January 1, 1981 and ending on February 1, 1992 meet the individual service requirements for award of the Armed Forces Expeditionary Medal as established in applicable regulations. Such determinations shall be made as expeditiously as possible after the date of the enactment of this Act [Feb. 10, 1996].''

§ 1131. Purple Heart: limitation to members of the armed forces

The decoration known as the Purple Heart (authorized to be awarded pursuant to Executive Order 11016) may only be awarded to a person who is a member of the armed forces at the time the person is killed or wounded under circumstances otherwise qualifying that person for award of the Purple Heart.

(Added Pub. L. 105–85, div. A, title V, § 571(a)(1), Nov. 18, 1997, 111 Stat. 1756.)

REFERENCES IN TEXT

Executive Order 11016, referred to in text, is not classified to the Code.

EFFECTIVE DATE

Section 571(b) of Pub. L. 105–85 provided that: ''Section 1131 of title 10, United States Code, as added by subsection (a), shall apply with respect to persons who are killed or wounded after the end of the 180-day period beginning on the date of the enactment of this Act [Nov. 18, 1997].''

§ 1132. Presentation of decorations: prohibition on entering correctional facilities for presentation to prisoners convicted of serious violent felonies

(a) PROHIBITION.—A member of the armed forces may not enter a Federal, State, local, or foreign correctional facility to present a decoration to a person who is incarcerated due to conviction of a serious violent felony.

(b) DEFINITIONS.—In this section:

(1) The term ''decoration'' means any decoration or award that may be presented or awarded to a member of the armed forces.

(2) The term ''serious violent felony'' has the meaning given that term in section 3559(c)(2)(F) of title 18.

(Added Pub. L. 105–261, div. A, title V, § 537(a), Oct. 17, 1998, 112 Stat. 2019.)

§ 1133. Bronze Star: limitation on persons eligible to receive

The decoration known as the ''Bronze Star'' may only be awarded to a member of a military force who—

(1) at the time of the events for which the decoration is to be awarded, was serving in a geographic area in which special pay is authorized under section 310 or paragraph (1) or (3) of section 351(a) of title 37; or

(2) receives special pay under section 310 or paragraph (1) or (3) of section 351(a) of title 37 as a result of those events.

(Added Pub. L. 106–398, § 1 [[div. A], title V, § 541(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–114; amended Pub. L. 111–383, div. A, title V, § 571(a), Jan. 7, 2011, 124 Stat. 4222.)

AMENDMENTS

2011—Pub. L. 111–383 amended section generally. Prior to amendment, text read as follows: ''The decoration known as the 'Bronze Star' may only be awarded to a member of the armed forces who is in receipt of special pay under section 310 of title 37 at the time of the events for which the decoration is to be awarded or who receives such pay as a result of those events.''

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 111–383, div. A, title V, § 571(c), Jan. 7, 2011, 124 Stat. 4223, provided that: ''The amendment made by subsection (a) [amending this section] applies to the award of the Bronze Star after October 30, 2000.''

§ 1134. Medal of honor: award to individual interred in Tomb of the Unknowns as representative of casualties of a war

The medal of honor awarded posthumously to a deceased member of the armed forces who, as an unidentified casualty of a particular war or other armed conflict, is interred in the Tomb of the Unknowns at Arlington National Cemetery, Virginia, is awarded to the member as the representative of the members of the armed forces who died in such war or other armed conflict and whose remains have not been identified, and not to the individual personally.

(Added Pub. L. 108–375, div. A, title V, § 561(a), Oct. 28, 2004, 118 Stat. 1917.)

§ 1135. Replacement of military decorations

(a) REPLACEMENT.—In addition to other authorities available to the Secretary concerned to replace a military decoration, the Secretary concerned shall replace, on a one-time basis and without charge, a military decoration upon the request of the recipient of the military decoration or the immediate next of kin of a deceased recipient.

(b) MILITARY DECORATION DEFINED.—In this section, the term ''decoration'' means any decoration or award (other than the medal of honor) that may be presented or awarded by the President or the Secretary concerned to a member of the armed forces.

(Added Pub. L. 110–417, [div. A], title V, § 571(a), Oct. 14, 2008, 122 Stat. 4471.)

CHAPTER 58—BENEFITS AND SERVICES FOR MEMBERS BEING SEPARATED OR RECENTLY SEPARATED

Sec.
1141. Involuntary separation defined.
1142. Preseparation counseling; transmittal of medical records to Department of Veterans Affairs.

Sec.
1143. Employment assistance.
1143a. Encouragement of postseparation public and community service.
1144. Employment assistance, job training assistance, and other transitional services: Department of Labor.
1145. Health benefits.
1146. Commissary and exchange benefits.
1147. Use of military family housing.
1148. Relocation assistance for personnel overseas.
1149. Excess leave and permissive temporary duty.
1150. Affiliation with Guard and Reserve units: waiver of certain limitations.
1151. Retention of assistive technology and services provided before separation.
1152. Assistance to eligible members and former members to obtain employment with law enforcement agencies.
1153. Assistance to separated members to obtain employment with health care providers.

AMENDMENTS

2006—Pub. L. 109–364, div. A, title V, § 561(b), Oct. 17, 2006, 120 Stat. 2220, added item 1151.

1999—Pub. L. 106–65, div. A, title XVII, § 1707(a)(2), Oct. 5, 1999, 113 Stat. 823, struck out item 1151 ''Assistance to separated members to obtain certification and employment as teachers or employment as teachers' aides''.

1994—Pub. L. 103–337, div. A, title V, § 542(a)(10), title XI, § 1132(a)(2), Oct. 5, 1994, 108 Stat. 2768, 2873, struck out '': Department of Defense'' after ''assistance'' in item 1143 and after ''service'' in item 1143a and substituted ''eligible members and former members'' for ''separated members'' in item 1152.

1993—Pub. L. 103–160, div. A, title XIII, § 1332(e), Nov. 30, 1993, 107 Stat. 1797, added items 1152 and 1153.

1992—Pub. L. 102–484, div. D, title XLIV, §§ 4441(a)(2), 4462(a)(2), Oct. 23, 1992, 106 Stat. 2730, 2740, added items 1143a and 1151.

§ 1141. Involuntary separation defined

A member of the armed forces shall be considered to be involuntarily separated for purposes of this chapter if the member was on active duty or full-time National Guard duty on September 30, 1990, or after November 29, 1993, or, with respect to a member of the Coast Guard, if the member was on active duty in the Coast Guard after September 30, 1994, and—

(1) in the case of a regular officer (other than a retired officer), the officer is involuntarily discharged under other than adverse conditions, as characterized by the Secretary concerned;

(2) in the case of a reserve officer who is on the active-duty list or, if not on the active-duty list, is on full-time active duty (or in the case of a member of the National Guard, full-time National Guard duty) for the purpose of organizing, administering, recruiting, instructing, or training the reserve components, the officer is involuntarily discharged or released from active duty or full-time National Guard (other than a release from active duty or full-time National Guard duty incident to a transfer to retired status) under other than adverse conditions, as characterized by the Secretary concerned;

(3) in the case of a regular enlisted member serving on active duty, the member is (A) denied reenlistment, or (B) involuntarily discharged under other than adverse conditions, as characterized by the Secretary concerned; and

(4) in the case of a reserve enlisted member who is on full-time active duty (or in the case of a member of the National Guard, full-time National Guard duty) for the purpose of organizing, administering, recruiting, instructing, or training the reserve components, the member (A) is denied reenlistment, or (B) is involuntarily discharged or released from active duty (or full-time National Guard) under other than adverse conditions, as characterized by the Secretary concerned.

(Added Pub. L. 101–510, div. A, title V, § 502(a)(1), Nov. 5, 1990, 104 Stat. 1551; amended Pub. L. 103–160, div. A, title V, § 503, Nov. 30, 1993, 107 Stat. 1644; Pub. L. 103–337, div. A, title V, § 542(a)(1), Oct. 5, 1994, 108 Stat. 2767.)

AMENDMENTS

1994—Pub. L. 103–337, in introductory provisions, substituted ''armed forces'' for ''Army, Navy, Air Force, or Marine Corps'' and ''or after November 29, 1993, or, with respect to a member of the Coast Guard, if the member was on active duty in the Coast Guard after September 30, 1994,'' for ''or on or after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1994''.

1993—Pub. L. 103–160 inserted ''or on or after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1994'' after ''September 30, 1990,''.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 542(e) of Pub. L. 103–337 provided that: ''This section [amending this section and sections 1143, 1143a, 1145 to 1150, 1174a, and 1175 of this title and enacting provisions set out as a note under section 1293 of this title] and the amendments made by this section shall apply only to members of the Coast Guard who are separated after September 30, 1994.''

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.

§ 1142. Preseparation counseling; transmittal of medical records to Department of Veterans Affairs

(a) REQUIREMENT.—(1) Within the time periods specified in paragraph (3), the Secretary concerned shall (except as provided in paragraph (4)) provide for individual preseparation counseling of each member of the armed forces whose discharge or release from active duty is anticipated as of a specific date. A notation of the provision of such counseling with respect to each matter specified in subsection (b), signed by the member, shall be placed in the service record of each member receiving such counseling.

(2) In carrying out this section, the Secretary concerned may use the services available under section 1144 of this title.

(3)(A) In the case of an anticipated retirement, preseparation counseling shall commence as soon as possible during the 24-month period preceding the anticipated retirement date. In the case of a separation other than a retirement,

preseparation counseling shall commence as soon as possible during the 12-month period preceding the anticipated date. Except as provided in subparagraph (B), in no event shall preseparation counseling commence later than 90 days before the date of discharge or release.

(B) In the event that a retirement or other separation is unanticipated until there are 90 or fewer days before the anticipated retirement or separation date, preseparation counseling shall begin as soon as possible within the remaining period of service.

(4)(A) Subject to subparagraph (B), the Secretary concerned shall not provide preseparation counseling to a member who is being discharged or released before the completion of that member's first 180 days of active duty.

(B) Subparagraph (A) shall not apply in the case of a member who is being retired or separated for disability.

(b) MATTERS TO BE COVERED BY COUNSELING.—Counseling under this section shall include the following:

(1) A discussion of the educational assistance benefits to which the member is entitled under the Montgomery GI Bill and other educational assistance programs because of the member's service in the armed forces.

(2) A description (to be developed with the assistance of the Secretary of Veterans Affairs) of the compensation and vocational rehabilitation benefits to which the member may be entitled under laws administered by the Secretary of Veterans Affairs, if the member is being medically separated or is being retired under chapter 61 of this title.

(3) An explanation of the procedures for and advantages of affiliating with the Selected Reserve.

(4) Provision of information on civilian occupations and related assistance programs, including information concerning—

(A) certification and licensure requirements that are applicable to civilian occupations;

(B) civilian occupations that correspond to military occupational specialties; and

(C) Government and private-sector programs for job search and job placement assistance, including the public and community service jobs program carried out under section 1143a of this title, and information regarding the placement programs established under sections 1152 and 1153 of this title and the Troops-to-Teachers Program under section 2302 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6672).

(5) If the member has a spouse, job placement counseling for the spouse.

(6) Information concerning the availability of relocation assistance services and other benefits and services available to persons leaving military service, as provided under section 1144 of this title.

(7) Information concerning the availability of medical and dental coverage following separation from active duty, including the opportunity to elect into the conversion health policy provided under section 1145 of this title.

(8) Counseling (for the member and dependents) on the effect of career change on individuals and their families.

(9) Financial planning assistance.

(10) The creation of a transition plan for the member to attempt to achieve the educational, training, and employment objectives of the member and, if the member has a spouse, the spouse of the member.

(11) Information concerning the availability of mental health services and the treatment of post-traumatic stress disorder, anxiety disorders, depression, suicidal ideations, or other mental health conditions associated with service in the armed forces.

(12) Information concerning the priority of service for veterans in the receipt of employment, training, and placement services provided under qualified job training programs of the Department of Labor.

(13) Information concerning veterans small business ownership and entrepreneurship programs of the Small Business Administration and the National Veterans Business Development Corporation.

(14) Information concerning employment and reemployment rights and obligations under chapter 43 of title 38.

(15) Information concerning veterans preference in Federal employment and Federal procurement opportunities.

(16) Contact information for housing counseling assistance.

(17) A description, developed in consultation with the Secretary of Veterans Affairs, of health care and other benefits to which the member may be entitled under the laws administered by the Secretary of Veterans Affairs.

(c) TRANSMITTAL OF MEDICAL INFORMATION TO DEPARTMENT OF VETERANS AFFAIRS.—In the case of a member being medically separated or being retired under chapter 61 of this title, the Secretary concerned shall ensure (subject to the consent of the member) that a copy of the member's service medical record (including any results of a Physical Evaluation Board) is transmitted to the Secretary of Veterans Affairs within 60 days of the separation or retirement.

(Added Pub. L. 101–510, div. A, title V, § 502(a)(1), Nov. 5, 1990, 104 Stat. 1552; amended Pub. L. 102–190, div. A, title X, § 1061(a)(5), Dec. 5, 1991, 105 Stat. 1472; Pub. L. 102–484, div. D, title XLIV, §§ 4401, 4441(b), 4462(b), Oct. 23, 1992, 106 Stat. 2701, 2730, 2740; Pub. L. 103–35, title II, § 201(i)(1), May 31, 1993, 107 Stat. 100; Pub. L. 103–160, div. A, title XIII, § 1332(c), Nov. 30, 1993, 107 Stat. 1797; Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(9)], Oct. 30, 2000, 114 Stat. 1654, 1654A–290; Pub. L. 107–103, title III, § 302(a), Dec. 27, 2001, 115 Stat. 991; Pub. L. 109–163, div. A, title V, § 594, Jan. 6, 2006, 119 Stat. 3281; Pub. L. 111–84, div. A, title X, § 1073(a)(13), Oct. 28, 2009, 123 Stat. 2473.)

AMENDMENTS

2009—Subsec. (b)(4)(C). Pub. L. 111–84, § 1073(a)(13)(A), substituted "the Troops-to-Teachers Program under section 2302 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6672)" for "the Troops-to-Teachers Program Act of 1999 (20 U.S.C. 9301 et seq.)".

Subsec. (b)(15). Pub. L. 111–84, § 1073(a)(13)(B), substituted "Federal" for "federal" in two places.

2006—Subsec. (b)(4). Pub. L. 109–163, § 594(1), substituted ''Provision of information on civilian occupations and related assistance programs, including information concerning—

''(A) certification and licensure requirements that are applicable to civilian occupations;

''(B) civilian occupations that correspond to military occupational specialties; and

''(C)''

for ''Information concerning''.

Subsec. (b)(11) to (17). Pub. L. 109–163, § 594(2), added pars. (11) to (17).

2001—Subsec. (a)(1). Pub. L. 107–103, § 302(a)(1), amended first sentence generally. Prior to amendment, first sentence read as follows: ''As soon as possible before, but in no event later than 90 days before, the date of the discharge or release from active duty of a member of the armed forces, the Secretary concerned shall provide for individual preseparation counseling of the member.''

Subsec. (a)(3), (4). Pub. L. 107–103, § 302(a)(2), added pars. (3) and (4).

2000—Subsec. (b)(4). Pub. L. 106–398 substituted ''sections 1152 and 1153 of this title and the Troops-to-Teachers Program Act of 1999 (20 U.S.C. 9301 et seq.)'' for ''sections 1151, 1152, and 1153 of this title''.

1993—Subsec. (b)(4). Pub. L. 103–160 substituted ''programs established under sections 1151, 1152, and 1153 of this title'' for ''program established under section 1151 of this title to assist members to obtain employment as elementary or secondary school teachers or teachers' aides''.

Pub. L. 103–35 substituted ''job placement assistance, including the public and community service jobs program carried out under section 1143a of this title, and information regarding the placement program established under section 1151 of this title to assist members to obtain employment as elementary or secondary school teachers or teachers' aides'' for ''job placement assistance and information regarding the placement program established under section 1151 of this title to assist members obtain employment as elementary or secondary school teachers or teachers' aides., including the public and community service jobs program carried out under section 1143a of this title''.

1992—Subsec. (a)(1). Pub. L. 102–484, § 4401(a), substituted ''As soon as possible before, but in no event later than 90 days before, the date of the discharge'' for ''Upon the discharge''.

Subsec. (b)(4). Pub. L. 102–484, § 4462(b), inserted before period at end '', including the public and community service jobs program carried out under section 1143a of this title''.

Pub. L. 102–484, § 4441(b), inserted before period at end ''and information regarding the placement program established under section 1151 of this title to assist members obtain employment as elementary or secondary school teachers or teachers' aides.''

Subsec. (b)(10). Pub. L. 102–484, § 4401(b), added par. (10).

1991—Subsec. (b)(5). Pub. L. 102–190 substituted period for semicolon at end.

APPLICATION OF PRESEPARATION COUNSELING REQUIREMENTS TO COAST GUARD

Pub. L. 103–337, div. A, title V, § 543(a), Oct. 5, 1994, 108 Stat. 2769, provided that: ''As soon as possible after the date of the enactment of this Act [Oct. 5, 1994], the Secretary of Transportation shall implement the requirements of section 1142 of title 10, United States Code, for the Coast Guard.''

LIMITATION ON FUNDING TO CARRY OUT SECTION 543 OF PUB. L. 103–337

Pub. L. 103–337, div. A, title V, § 543(h), Oct. 5, 1994, 108 Stat. 2772, provided that: ''Funds appropriated or otherwise made available to the Department of Defense, the Department of Education, the Department of Labor, or the Department of Veterans Affairs may not be used to carry out subsection (a) [set out above] or the amendments made by this section [amending sections 1144 and 1151 to 1153 of this title and provisions set out as notes under section 1143 of this title].''

§ 1143. Employment assistance

(a) EMPLOYMENT SKILLS VERIFICATION.—The Secretary of Defense and the Secretary of Homeland Security with respect to the Coast Guard shall provide to members of the armed forces who are discharged or released from active duty a certification or verification of any job skills and experience acquired while on active duty that may have application to employment in the civilian sector. The preceding sentence shall be carried out in conjunction with the Secretary of Labor.

(b) EMPLOYMENT ASSISTANCE CENTERS.—The Secretary of Defense shall establish permanent employment assistance centers at appropriate military installations. The Secretary of Homeland Security shall establish permanent employment assistance centers at appropriate Coast Guard installations.

(c) INFORMATION TO CIVILIAN ENTITIES.—For the purpose of assisting members covered by subsection (a) and their spouses in locating civilian employment and training opportunities, the Secretary of Defense and the Secretary of Homeland Security shall establish and implement procedures to release to civilian employers, organizations, State employment agencies, and other appropriate entities the names (and other pertinent information) of such members and their spouses. Such names may be released for such purpose only with the consent of such members and spouses.

(d) EMPLOYMENT PREFERENCE BY NONAPPROPRIATED FUND INSTRUMENTALITIES.—The Secretary of Defense shall take such steps as necessary to provide that members of Army, Navy, Air Force, or Marine Corps who are involuntarily separated, and the dependents of such members, shall be provided a preference in hiring by nonappropriated fund instrumentalities of the Department. Such preference shall be administered in the same manner as the preference for military spouses provided under section 1784(a)(2) of this title, except that a preference under that section shall have priority over a preference under this subsection. A person may receive a preference in hiring under this subsection only once. The Secretary of Homeland Security shall provide the same preference in hiring to involuntarily separated members of the Coast Guard, and the dependents of such members, in Coast Guard nonappropriated fund instrumentalities.

(Added Pub. L. 101–510, div. A, title V, § 502(a)(1), Nov. 5, 1990, 104 Stat. 1553; amended Pub. L. 103–337, div. A, title V, § 542(a)(2), Oct. 5, 1994, 108 Stat. 2767; Pub. L. 105–85, div. A, title X, § 1073(a)(21), Nov. 18, 1997, 111 Stat. 1901; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Subsecs. (a) to (d). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1997—Subsec. (d). Pub. L. 105–85 substituted ''section 1784(a)(2) of this title'' for ''section 806(a)(2) of the Military Family Act of 1985''.

1994—Pub. L. 103–337, § 542(a)(2)(A), struck out ''; Department of Defense'' after ''assistance'' in section catchline.

Subsec. (a). Pub. L. 103–337, § 542(a)(2)(B), inserted ''and the Secretary of Transportation with respect to the Coast Guard'' after ''Secretary of Defense'' and struck out ''under the jurisdiction of the Secretary'' after ''armed forces''.

Subsec. (b). Pub. L. 103–337, § 542(a)(2)(C), inserted at end ''The Secretary of Transportation shall establish permanent employment assistance centers at appropriate Coast Guard installations.''

Subsec. (c). Pub. L. 103–337, § 542(a)(2)(D), inserted ''and the Secretary of Transportation'' after ''Secretary of Defense''.

Subsec. (d). Pub. L. 103–337, § 542(a)(2)(E), inserted at end ''The Secretary of Transportation shall provide the same preference in hiring to involuntarily separated members of the Coast Guard, and the dependents of such members, in Coast Guard nonappropriated fund instrumentalities.''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable only to members of the Coast Guard who are separated after Sept. 30, 1994, see section 542(e) of Pub. L. 103–337, set out as a note under section 1141 of this title.

DEMONSTRATION PROGRAM FOR TRAINING RECENTLY DISCHARGED VETERANS FOR EMPLOYMENT IN CONSTRUCTION AND HAZARDOUS WASTE REMEDIATION

Pub. L. 103–160, div. A, title XIII, § 1337, Nov. 30, 1993, 107 Stat. 1805, authorized the Secretary of Defense to establish a demonstration program to promote training and employment of veterans in construction and hazardous waste remediation industries and to make grants under the program to organizations that had met certain eligibility criteria, and directed the Secretary to obligate the funds to carry out the program not later than Oct. 1, 1994, and to submit to Congress interim and final reports not later than Dec. 31, 1995.

IMPROVED COORDINATION OF JOB TRAINING AND PLACEMENT PROGRAMS FOR MEMBERS OF ARMED FORCES

Pub. L. 102–484, div. D, title XLIV, § 4461, Oct. 23, 1992, 106 Stat. 2738, as amended by Pub. L. 105–277, div. A, § 101(f) [title VIII, § 405(d)(7)(B), (f)(6)(B)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–419, 2681–430; Pub. L. 105–332, § 3(b), Oct. 31, 1998, 112 Stat. 3125; Pub. L. 106–398, § 1 [[div. A], title X, § 1087(g)(7)], Oct. 30, 2000, 114 Stat. 1654, 1654A–294; Pub. L. 107–107, div. A, title X, § 1048(h)(3), Dec. 28, 2001, 115 Stat. 1229, provided that: ''The Secretary of Defense shall consult with the Secretary of Labor, the Secretary of Education, the Secretary of Veterans Affairs, and the Economic Adjustment Committee to improve the coordination of, and eliminate duplication between, the following job training and placement programs available to members of the Armed Forces who are discharged or released from active duty:

''(1) Title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.].

''(2) Sections 1143 and 1144 of title 10, United States Code.

''(3) Chapter 41 of title 38, United States Code.

''(4) The Act of August 16, 1937 (Chapter 663; 50 Stat 664; 29 U.S.C. 50 et seq.), commonly known as the National Apprenticeship Act.

''(5) The Wagner-Peyser Act (29 U.S.C. 49 et seq.).''

PARTICIPATION OF DISCHARGED MILITARY PERSONNEL IN UPWARD BOUND PROJECTS TO PREPARE FOR COLLEGE

Pub. L. 102–484, div. D, title XLIV, § 4466, Oct. 23, 1992, 106 Stat. 2748, as amended by Pub. L. 103–337, div. A, title V, § 543(f), Oct. 5, 1994, 108 Stat. 2771; Pub. L. 107–296, title XVII, § 1704(e)(4), Nov. 25, 2002, 116 Stat. 2315, provided that:

''(a) PROGRAM.—The Secretary of Defense may carry out a program to assist a member of the Armed Forces described in subsection (b) who is accepted to participate in an upward bound project assisted under section 402C of the Higher Education Act of 1965 (20 U.S.C. 1070a–13) to cover the cost of providing services through the project to the member to assist the member to prepare for and pursue a program of higher education upon separation from active duty. Assistance provided under the program may include a stipend provided under subsection (d) of such section.

''(b) ELIGIBLE MEMBERS.—A member of the Armed Forces shall be eligible for assistance under subsection (a) if the member—

''(1) was on active duty or full-time National Guard duty on September 30, 1990;

''(2) during the five-year period beginning on that date, was or is discharged or released from such duty (under other than adverse circumstances); and

''(3) submits an application to the Secretary of Defense within such time, in such form, and containing such information as the Secretary of Defense may require.

''(c) NOTIFICATION OF MEMBERS PREVIOUSLY SEPARATED.—To the extent feasible, the Secretary of Defense shall notify members of the Armed Forces who, between September 30, 1990, and the date of the enactment of this Act [Oct. 23, 1992], were discharged or released from active duty or full-time National Guard duty regarding the availability of the program under subsection (a). The Secretary may establish a time limit within which such members may apply to participate in the program.

''(d) PROVISION OF ASSISTANCE.—

''(1) DETERMINATION OF AMOUNT.—The amount of assistance provided under subsection (a) to a member of the Armed Forces shall be equal to the anticipated cost of providing services to the member through an upward bound project, subject to the limitation that such amount may not exceed the monthly basic pay to which the member is entitled at the time of the separation of the member. The Secretary of Defense may provide assistance in excess of that limitation if the Secretary determines, on a case by case basis, that such assistance is warranted by the special training needs of the member.

''(2) CONSULTATION.—The Secretary of Education may assist the Secretary of Defense in determining the amount to be provided under paragraph (1).

''(e) USE OF ASSISTANCE.—A member of the Armed Forces who is selected to participate in the program may receive services through any upward bound project assisted under section 402C of the Higher Education Act of 1965 (20 U.S.C. 1070a–13) to the same extent as other individuals eligible to receive such services. A member may not participate after the end of the two-year period beginning on the date on which the member is discharged or released from active duty, except that, in the case of a member described in subsection (b) who was discharged or released from active duty before the date of the enactment of this Act [Oct. 23, 1993], the period for participation in the program shall be two years from the date of the enactment of this Act.

''(f) REIMBURSEMENT.—Upon submission to the Secretary of Defense of a request for reimbursement of the costs to provide services to a participant, the Secretary shall reimburse the upward bound project submitting the request for the actual cost of providing services (including a stipend) to the member, not to exceed the amount provided under subsection (d)(1). Funds provided under this subsection shall be in addition to the funds otherwise provided to the project under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.) [and 42 U.S.C. 2751 et seq.]. Not more than 10 percent of the funds provided under this subsection may be used for administrative costs.

''(g) FUNDING FOR FISCAL YEAR 1993.—Of the amount authorized to be appropriated in section 301 [106 Stat.

2360] for Defense Agencies, $5,000,000 shall be available to provide assistance under this section.

''(h) APPLICATION TO COAST GUARD.—The Secretary of Homeland Security may implement the provisions of this section for the Coast Guard in the same manner and to the same extent as such section applies to the Department of Defense.''

SERVICE MEMBERS OCCUPATIONAL CONVERSION AND TRAINING

Section 543(g)(2) of Pub. L. 103–337 provided that: ''As soon as possible after the date of the enactment of this Act [Oct. 5, 1994], the Secretary of Transportation shall implement the requirements of the Service Members Occupational Conversion and Training Act of 1992 (subtitle G of title XLIV of Public Law 102–484; 10 U.S.C. 1143 note) for the Coast Guard.''

Pub. L. 102–484, div. D, title XLIV, subtitle G, Oct. 23, 1992, 106 Stat. 2757, as amended by Pub. L. 103–160, div. A, title XIII, §1338, Nov. 30, 1993, 107 Stat. 1807; Pub. L. 103–337, div. A, title V, §543(g)(1), Oct. 5, 1994, 108 Stat. 2772; Pub. L. 103–446, title VI, §610(a)(1), (2)(A), (b), (c), Nov. 2, 1994, 108 Stat. 4673; Pub. L. 105–277, div. A, §101(f) [title VIII, §405(d)(7)(D), (f)(6)(D)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–420, 2681–430, provided that:

''SEC. 4481. SHORT TITLE.

''This subtitle [subtitle G (§§4481–4497) of title XLIV of Pub. L. 102–484] may be cited as the 'Service Members Occupational Conversion and Training Act of 1992'.

''SEC. 4482. FINDINGS AND PURPOSES.

''(a) FINDINGS.—The Congress finds that—

''(1) the men and women serving in our Nation's Armed Forces are of the highest caliber—intelligent, dedicated, and disciplined—and hundreds of thousands of these service members will be separating from the Armed Forces due to the drawdown in military personnel;

''(2) these men and women will be entering the civilian workforce during a time of economic instability and uncertainty;

''(3) many of these service personnel specialized in critical skills such as combat arms which will not transfer to the civilian workforce;

''(4) as part of the Nation's obligation to these service members, the Secretary of Defense has a unique responsibility and obligation to provide them with the tools they need to be reassimilated into the civilian community and continue to be outstanding, productive citizens;

''(5) the rapid placement of separated military personnel in civilian employment and training opportunities will significantly reduce the Department of Defense's costs relative to unemployment compensation for ex-service members;

''(6) military personnel are a national resource whose skills and abilities must be absorbed by and integrated into the civilian workforce; and

''(7) providing such training will reduce the total cost of the drawdown and is important to the national defense function of the Department of Defense.

''(b) PURPOSE.—The purpose of this subtitle is to provide additional means by which the Secretary of Defense can manage the drawdown of the Armed Forces and to provide additional forms of assistance to members of the Armed Forces who are forced or induced to leave military service by reason of the drawdown of the Armed Forces, thereby facilitating the Secretary's ability to achieve end strength reductions caused by the drawdown.

''SEC. 4483. DEFINITIONS.

''For the purposes of this subtitle:

''(1) The term 'Secretary' means the Secretary of Defense with respect to the Department of Defense and the Secretary of Transportation with respect to the Coast Guard.

''(2) The terms 'veteran', 'compensation', 'service-connected', 'State', and 'active military, naval, or air service' have the meanings given such terms in paragraphs (2), (13), (16), (20), and (24), respectively, of section 101 of title 38, United States Code.

''SEC. 4484. ESTABLISHMENT OF PROGRAM.

''(a) ESTABLISHMENT.—Not later than 60 days after the date of enactment of this Act [Oct. 23, 1992], the Secretary shall carry out a program in accordance with this subtitle to assist eligible persons in obtaining employment through participation in programs of significant training for employment in stable and permanent positions. The Secretary may enter into an agreement with the Secretary of Veterans Affairs, the Secretary of Labor, or both, for the implementation of the program. The program shall be carried out through payments to employers who employ and train eligible persons in such positions. Such payments shall be made to assist such employers in defraying the costs of necessary training.

''(b) STATE AGENCIES.—(1) The implementing official may enter into contracts or agreements with State approving agencies, as designated pursuant to section 3671(a) of title 38, United States Code, or other State agencies to carry out any duty of the implementing official under this subtitle. Payment may be made to such agencies pursuant to any such contract or agreement for reasonable and necessary expenses of salary and travel incurred by employees of such agencies in carrying out such duties. Each such payment may be made only from funds available to the implementing official pursuant to section 4495(a)(3).

''(2) Each State approving agency or other State agency with which a contract or agreement is entered into under this section shall submit to the implementing official on a monthly or quarterly basis, as determined by the agency, a report containing a certification of such expenses for the period covered by the report. The report shall be submitted in the form and manner required by such official.

''(c) EXPEDITIOUS IMPLEMENTATION.—A requirement in this subtitle to issue regulations shall not be the basis for a delay in carrying out this program within the time limit established by subsection (a).

''SEC. 4485. ELIGIBILITY FOR PROGRAM; PERIOD OF TRAINING.

''(a) IN GENERAL.—(1) To be eligible for participation in a program of job training under this subtitle, an eligible person must be an eligible person described in paragraph (2) who—

''(A)(i) is unemployed at the time of applying for participation in a program under this subtitle; and

''(ii) has been unemployed for at least 8 of the 15 weeks immediately preceding the date of such eligible person's application for participation in a program under this subtitle;

''(B) separates from the active military, naval, or air service and whose primary or secondary occupational specialty in the Armed Forces is (as determined under regulations prescribed by the Secretary and in effect before the date of such separation) not readily transferable to the civilian workforce; or

''(C) served in the active military, naval, or air service and is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under the laws administered by the Secretary of Veterans Affairs for a disability rated at 30 percent or more.

''(2) For purposes of paragraph (1), an eligible person referred to in paragraph (1) is a veteran who—

''(A) was discharged on or after August 2, 1990; and

''(B)(i) served in the active military, naval, or air service for a period of more than 90 days; or

''(ii) was discharged or released from active duty because of a service-connected disability.

''(3) For purposes of paragraph (1), an eligible person shall be considered to be unemployed during any period such person is without a job and wants and is available for work. In determining whether a person is unemployed for purposes of paragraph (1), the implementing official shall not take into consideration part-time or temporary employment, as defined by such official.

''(b) APPLICATION PROCESS.—(1) An eligible person who desires to participate in a program of job training under this subtitle shall submit to the implementing official an application for participation in such a program. Such an application—

''(A) shall include a certification by the eligible person that the eligible person meets the criteria for eligibility prescribed by subparagraph (A), (B), or (C) of subsection (a)(1);

''(B) shall include an opportunity for the eligible person to request counseling under section 4493(a); and

''(C) shall be in such form and contain such additional information as such official may prescribe.

''(2)(A) Subject to subparagraph (B), an application by an eligible person for participation in a program of job training under this subtitle shall be approved unless the implementing official finds that the eligible person is not eligible to participate in a program of job training under this subtitle.

''(B) Approval of an application of an eligible person under this subtitle may be withheld if the implementing official determines that, because of limited funds available for the purpose of making payments to employers under this subtitle, it is necessary to limit the number of participants in the program carried out under this subtitle.

''(3)(A) Subject to section 4491(c), the implementing official shall certify as eligible for participation under this subtitle an eligible person whose application is approved under this subsection and shall furnish the eligible person with a certificate of that eligible person's eligibility for presentation to an employer offering a program of job training under this subtitle. Any such certificate shall expire 180 days after it is furnished to the eligible person. The date on which a certificate is furnished to an eligible person under this paragraph shall be stated on the certificate.

''(B) A certificate furnished under this paragraph may, upon the eligible person's application, be renewed in accordance with the terms and conditions of subparagraph (A).

''(c) APPEAL OF DENIAL OF CERTIFICATE.—The implementing official shall permit each eligible person who is not issued a certificate of eligibility under subsection (b) (other than an eligible person who is not issued such a certificate by reason of subsection (b)(2)(B)) to challenge in a hearing before the implementing official the decision of the implementing official not to issue the certificate. The implementing official shall prescribe procedures with respect to the initiation and conduct of hearings under this subsection.

''(d) PERIOD OF TRAINING.—An employer shall provide a period of training under a program of job training under this subtitle of not less than 6 months in a field of employment providing a reasonable probability of stable, long-term employment.

''SEC. 4486. APPROVAL OF EMPLOYER PROGRAMS.

''(a) IN GENERAL.—(1) An employer may be paid assistance under section 4487(a) on behalf of an eligible person employed by such employer and participating in a program of job training offered by that employer only if the program is approved under this section.

''(2) Except as provided in subsection (b), a proposed program of job training of an employer shall be approved unless the implementing official determines that the application does not contain a certification and other information meeting the requirements established under this subtitle or that withholding of approval is warranted under subsection (g).

''(b) INELIGIBLE PROGRAMS.—A program of job training—

''(1) for employment which consists of seasonal, intermittent, or temporary jobs;

''(2) for employment under which commissions are the primary source of income;

''(3) for employment which involves political or religious activities;

''(4) for employment with any department, agency, instrumentality, or branch of the Federal Government (including the United States Postal Service and the Postal Rate Commission); or

''(5) for employment outside of a State,

may not be approved under this subtitle.

''(c) APPLICATION.—An employer offering a program of job training that the employer desires to have approved for the purposes of this subtitle shall submit to the implementing official a written application for such approval. Such application shall be in such form as such official shall prescribe.

''(d) CERTIFICATION.—An application under subsection (c) shall include a certification by the employer of the following:

''(1) That the employer is planning that, upon an eligible person's completion of the program of job training, the employer will employ the eligible person in a position for which the eligible person has been trained and that the employer expects that such a position will be available on a stable and permanent basis to the eligible person at the end of the training period.

''(2) That the wages and benefits to be paid to an eligible person participating in the employer's program of job training will be not less than the wages and benefits normally paid to other employees participating in the same or a comparable program of job training in the community for the entire period of training of the eligible person.

''(3) That the employment of an eligible person under the program—

''(A) will not result in the displacement of currently employed workers (including partial displacement such as a reduction in the hours of nonovertime work, wages, or employment benefits); and

''(B) will not be in a job (i) while any other individual is on layoff from the same or any substantially equivalent job, or (ii) the opening for which was created as a result of the employer having terminated the employment of any regular employee or otherwise having reduced its work force with the intention of hiring an eligible person in such job under this subtitle.

''(4) That the employer will not employ in the program of job training an eligible person who is already qualified by training and experience for the job for which training is to be provided.

''(5) That the job which is the objective of the training program is one that involves significant training.

''(6) That the training content of the program is adequate, in light of the nature of the occupation for which training is to be provided and of comparable training opportunities in such occupation, to accomplish the training objective certified under paragraph (2) of subsection (e).

''(7) That each participating eligible person will be employed full time in the program of job training.

''(8) That the training period under the proposed program is not longer than the training periods that employers in the community customarily require new employees to complete in order to become competent in the occupation or job for which training is to be provided.

''(9) That there are in the training establishment or place of employment such space, equipment, instructional material, and instructor personnel as are needed to accomplish the training objective certified under subsection (e)(2).

''(10) That the employer will keep records adequate to show the progress made by each eligible person participating in the program and otherwise to demonstrate compliance with the requirements established under this subtitle.

''(11) That the employer will furnish each participating eligible person, before the eligible person's entry into training, with a copy of the employer's certification under this subsection and will obtain and retain the eligible person's signed acknowledgment of having received such certification.

''(12) That, as applicable, the employer will provide each participating eligible person with the full oppor-

tunity to participate in a personal interview pursuant to section 4493(b)(1)(B) during the eligible person's normal workday.

''(13) That the program meets such other criteria as the Secretary, in consultation with the Secretary of Veterans Affairs and the Secretary of Labor, may determine are essential for the effective implementation of the program established by this subtitle.

''(e) HOURS AND TRAINING CONTENT.—A certification under subsection (d) shall include—

''(1) a statement indicating (A) the total number of hours of participation in the program of job training to be offered an eligible person, (B) the length of the program of job training, and (C) the starting rate of wages to be paid to a participant in the program; and

''(2) a description of the training content of the program (including any agreement the employer has entered into with an educational institution under section 4489) and of the objective of the training.

''(f) STATUS OF CERTIFIED MATTERS.—(1) Except as specified in paragraph (2), each matter required to be certified to in paragraphs (1) through (11) of subsection (d) shall be considered to be a requirement established under this subtitle.

''(2)(A) For the purposes of section 4487(c), only matters required to be certified in paragraphs (1) through (10) of subsection (d) shall be so considered.

''(B) For the purposes of section 4490, a matter required to be certified under paragraph (12) of subsection (d) shall also be so considered.

''(g) WITHHOLDING APPROVAL; DISAPPROVAL.—In accordance with regulations which the Secretary shall prescribe, the implementing official may withhold approval of an employer's proposed program of job training pending the outcome of an investigation under section 4491 and, based on the outcome of such an investigation, may disapprove such program.

''(h) ON-JOB TRAINING.—For the purposes of this section, approval of a program of apprenticeship or other on-job training for the purposes of section 3687 of title 38, United States Code, shall be considered to meet all requirements established under the provisions of this subtitle (other than subsection (b) and (d)(3)) for approval of a program of job training.

''SEC. 4487. PAYMENTS TO EMPLOYERS; OVERPAYMENT.

''(a) PAYMENTS.—(1)(A) Except as provided in subsections (b) and (c) and subject to section 4485(d), the implementing official shall make payments to employers in accordance with this section. The amount payable to such an employer on behalf of an eligible person with respect to an approved program of job training under this subtitle shall be determined by such official at the beginning of such program. Except as provided in subparagraphs (B) and (C), that amount shall be equal to 50 percent of the product of (i) the starting hourly rate of wages paid to the eligible person by the employer (without regard to overtime or premium pay), and (ii) the number of hours to be worked by the eligible person during the entire program period but in no event to exceed hours equivalent to 18 months of training.

''(B) In no case may the amount determined under subparagraph (A) exceed—

''(i) $12,000 for an eligible person with a service-connected disability rated at 30 percent or more; or

''(ii) $10,000 for an eligible person not described in clause (i).

''(C) Assistance may be paid under this subtitle on behalf of an eligible person to that person's employer for training under two or more programs of job training under this subtitle if such employer has not received (or is not due) on that person's behalf assistance in an amount aggregating the applicable amount set forth in subparagraph (B).

''(b) PAYMENT PERIOD.—(1) Except as provided in paragraphs (2) and (3), the implementing official shall pay training assistance to employers under this section on a quarterly basis.

''(2) The implementing official may pay training assistance to an employer on a monthly basis if the implementing official determines (pursuant to regulations prescribed by the implementing official) that the number of employees of the employer is such that the payment of assistance on a quarterly basis would be burdensome to the employer.

''(3) The implementing official shall withhold 25 percent of each payment due under this subsection with respect to an eligible person. The total amount withheld with respect to an eligible person under this paragraph shall be paid to the employer at the end of the four month period of employment of such person under this subtitle beginning on the date of completion of training, or upon the completion of the 18th month of training under the last training program approved for the person's pursuit with that employer under this subtitle, whichever is earlier.

''(c) TOOLS AND OTHER WORK-RELATED MATERIALS.—In addition to payments under subsection (a), the implementing official shall reimburse the employer for the cost of tools and other work-related materials necessary for the eligible person's participation in the program of job training in an amount up to $500 if the employer presents to the implementing official a certification signed by the employer and eligible person that—

''(1) tools and other work-related materials are necessary for the eligible person's participation in the job training program,

''(2) the eligible person bought the tools and other work-related materials, and

''(3) the employer paid the eligible person for the cost of the tools and other work-related materials.

''(d) OVERPAYMENTS.—(1)(A) Whenever the implementing official finds that an overpayment under this subtitle has been made to an employer on behalf of an eligible person as a result of a certification, or information contained in an application, submitted by an employer which was false in any material respect, the amount of such overpayment shall constitute a liability of the employer to the United States.

''(B) Whenever such official finds that an employer has failed in any substantial respect to comply for a period of time with a requirement established under this subtitle (unless the employer's failure is the result of false or incomplete information provided by the eligible person), each amount paid to the employer on behalf of an eligible person for that period shall be considered to be an overpayment under this subtitle, and the amount of such overpayment shall constitute a liability of the employer to the United States.

''(2) Whenever such official finds that an overpayment under this subtitle has been made to an employer on behalf of an eligible person as a result of a certification by the eligible person, or as a result of information provided to an employer or contained in an application submitted by the eligible person, which was willfully or negligently false in any material respect, the amount of such overpayment shall constitute a liability of the eligible person to the United States.

''(3) Any overpayment referred to in paragraph (1) or (2) may be recovered in the same manner as any other debt due the United States. Any overpayment recovered shall be credited to funds available to make payments under this subtitle. If there are no such funds, any overpayment recovered shall be deposited into the Treasury.

''(4) Any overpayment referred to in paragraph (1) or (2) may be waived, in whole or in part, in accordance with the terms and conditions set forth in section 5302 of title 38, United States Code.

''(e) LIMITATIONS.—(1) Payment may not be made to an employer for a period of training under this subtitle on behalf of an eligible person until the implementing official has received—

''(A) from the eligible person, a certification that the eligible person was employed full time by the employer in a program of job training during such period; and

''(B) from the employer, a certification—

''(i) that the eligible person was employed by the employer during that period and that the eligible person's performance and progress during such period were satisfactory; and

''(ii) of the number of hours worked by the eligible person during that period.

With respect to the first such certification by an employer with respect to an eligible person, the certification shall indicate the date on which the employment of the eligible person began and the starting hourly rate of wages paid to the eligible person (without regard to overtime or premium pay).

''(2) Payment may not be made to an employer for a period of training under this subtitle on behalf of an eligible person for which a request for payment is made after two years after the date on which that period of training ends.

''SEC. 4488. ENTRY INTO PROGRAM OF JOB TRAINING.

''(a) IN GENERAL.—Notwithstanding any other provision of this subtitle, the implementing official shall withhold or deny approval of an eligible person's entry into an approved program of job training if such official determines that funds are not available to make payments under this subtitle on behalf of the eligible person to the employer offering that program. Before the entry of an eligible person into an approved program of job training of an employer for purposes of assistance under this subtitle, the employer shall notify such official of the employer's intention to employ that eligible person. The eligible person may begin such program of job training with the employer on the day that notice is transmitted to such official by means prescribed by such official. However, assistance under this subtitle may not be provided to the employer if such official, within two weeks after the date on which such notice is transmitted, disapproves the eligible person's entry into that program of job training in accordance with this section.

''(b) PERIOD FOR COMMENCEMENT OF PARTICIPATION UNDER CERTIFICATE.—An eligible person who is issued a certificate of eligibility for participation in a program of job training under this subtitle shall commence participation in such a program not more than 180 days after the date of the issuance of the certificate. The date on which a certificate is furnished to an eligible person shall be stated on the certificate.

''SEC. 4489. PROVISION OF TRAINING THROUGH EDUCATIONAL INSTITUTIONS.

''An employer may enter into an agreement with an educational institution that has been approved for the purposes of chapter 106 of title 10, United States Code, or any other institution offering a program of job training, as approved by the Secretary of Veterans Affairs, in order that such institution may provide a program of job training (or a portion of such a program) under this subtitle. When such an agreement has been entered into, the application of the employer under section 4486 shall so state and shall include a description of the training to be provided under the agreement.

''SEC. 4490. DISCONTINUANCE OF APPROVAL OF PARTICIPATION IN CERTAIN EMPLOYER PROGRAMS.

''(a) FAILURE TO MEET REQUIREMENTS.—If the implementing official finds at any time that a program of job training previously approved for the purposes of this subtitle thereafter fails to meet any of the requirements established under this subtitle, such official may immediately disapprove further participation by eligible persons in that program. Such official shall provide to the employer concerned, and to each eligible person participating in the employer's program, a statement of the reasons for, and an opportunity for a hearing with respect to, such disapproval. The employer and each such eligible person shall be notified of such disapproval, the reasons for such disapproval, and the opportunity for a hearing. Notification shall be by a certified or registered letter, and a return receipt shall be secured.

''(b) RATE OF COMPLETION.—(1) If the implementing official determines that the rate of eligible persons' successful completion of an employer's programs of job training previously approved for the purposes of this subtitle is disproportionately low because of deficiencies in the quality of such programs, such official shall disapprove participation in such programs on the part of eligible persons who had not begun such participation on the date that the employer is notified of the disapproval. In determining whether any such rate is disproportionately low because of such deficiencies, such official shall take into account appropriate data, including—

''(A) the quarterly data provided by the Secretary of Labor with respect to the number of eligible persons who receive counseling in connection with training under this subtitle, are referred to employers under this subtitle, participate in job training under this subtitle, and complete such training or do not complete such training, and the reasons for noncompletion; and

''(B) data compiled through the particular employer's compliance surveys.

''(2) With respect to a disapproval under paragraph (1), the implementing official shall provide to the employer concerned the kind of statement, opportunity for hearing, and notice described in subsection (a).

''(3) A disapproval under paragraph (1) shall remain in effect until such time as the implementing official determines that adequate remedial action has been taken.

''SEC. 4491. INSPECTION OF RECORDS; INVESTIGATIONS.

''(a) RECORDS.—The records and accounts of employers pertaining to eligible persons on behalf of whom assistance has been paid under this subtitle, as well as other records that the implementing official determines to be necessary to ascertain compliance with the requirements established under this subtitle, shall be available at reasonable times for examination by authorized representatives of the Federal Government.

''(b) COMPLIANCE MONITORING.—Such official may monitor employers and eligible persons participating in programs of job training under this subtitle to determine compliance with the requirements established under this subtitle.

''(c) INVESTIGATIONS.—Such official may investigate any matter such official considers necessary to determine compliance with the requirements established under this subtitle. The investigations authorized by this subsection may include examining records (including making certified copies of records), questioning employees, and entering into any premises or onto any site where any part of a program of job training is conducted under this subtitle, or where any of the records of the employer offering or providing such program are kept.

''(d) DEPARTMENT OF LABOR.—Functions may be administered under subsections (b) and (c) in accordance with an agreement between the Secretary and the Secretary of Labor providing for the administration of such subsections (or any portion of such subsections) by the Department of Labor. Under such an agreement, any entity of the Department of Labor specified in the agreement may administer such subsections.

''SEC. 4492. COORDINATION WITH OTHER PROGRAMS.

''(a) VETERANS EDUCATION PROGRAMS.—(1) Assistance may not be paid under this subtitle to an employer on behalf of an eligible person for any period of time described in paragraph (2) and to such eligible person under chapter 30, 31, 32, 35, or 36 of title 38, United States Code, or chapter 106 of title 10, United States Code, for the same period of time.

''(2) A period of time referred to in paragraph (1) is the period of time beginning on the date on which the eligible person enters into an approved program of job

training of an employer for purposes of assistance under this subtitle and ending on the last date for which such assistance is payable.

''(b) OTHER TRAINING AND EMPLOYMENT.—Assistance may not be paid under this subtitle to an employer on behalf of an eligible person for any period if the employer receives for that period any other form of assistance on account of the training or employment of the eligible person, including assistance under title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.] or a credit under section 51 of the Internal Revenue Code of 1986 [26 U.S.C. 51] (relating to credit for employment of certain new employees).

''(c) PREVIOUS COMPLETION OF PROGRAM.—Assistance may not be paid under this subtitle on behalf of an eligible person who has completed a program of job training under this subtitle.

''(d) PROMOTION.—(1) In carrying out section 3116(b) of title 38, United States Code, the Secretary of Veterans Affairs shall take all feasible steps to establish and encourage, for eligible persons who are eligible to have payments made on their behalf under such section, the development of training opportunities through programs of job training under this subtitle.

''(2) The Secretary of Veterans Affairs, in cooperation with the implementing official (unless the Secretary of Veterans Affairs is the implementing official), shall take all feasible steps to ensure that, in the cases of eligible persons who are eligible to have payments made on their behalf under both this subtitle and section 3116(b) of title 38, United States Code, the authority under such section is utilized, to the maximum extent feasible and consistent with the eligible person's best interests, to make payments to employers on behalf of such eligible persons.

''SEC. 4493. COUNSELING.

''(a) IN GENERAL.—The implementing official shall, upon request, provide, by contract or otherwise, employment counseling services to any eligible person eligible to participate under this subtitle in order to assist such eligible person in selecting a suitable program of job training under this subtitle.

''(b) CASE MANAGER.—(1) The implementing official shall provide for a program under which—

''(A) except as provided in paragraph (2), a disabled veteran's outreach program specialist appointed under section 4103A(a) of title 38, United States Code, is assigned as a case manager for each eligible person participating in a program of job training under this subtitle;

''(B) the eligible person has an in-person interview with the case manager not later than 60 days after entering into a program of training under this subtitle; and

''(C) periodic (not less frequent than monthly) contact is maintained with each such eligible person for the purpose of (i) avoiding unnecessary termination of employment, (ii) referring the eligible person to appropriate counseling, if necessary, (iii) facilitating the eligible person's successful completion of such program, and (iv) following up with the employer and the eligible person in order to determine the eligible person's progress in the program and the outcome regarding the eligible person's participation in and successful completion of the program.

''(2) No case manager shall be assigned pursuant to paragraph (1)(A)—

''(A) for an eligible person if, on the basis of a recommendation made by a disabled veterans' outreach program specialist, the implementing official determines that there is no need for a case manager for such eligible person; or

''(B) in the case of the employees of an employer, if the implementing official determines that—

''(i) the employer has an appropriate and effective employee assistance program that is available to all eligible persons participating in the employer's programs of job training under this subtitle; or

''(ii) the rate of eligible persons' successful completion of the employer's programs of job training under this subtitle, either cumulatively or during the previous program year, is 60 percent or higher.

''(3) The implementing official shall provide, to the extent feasible, a program of counseling or other services designed to resolve difficulties that may be encountered by eligible persons during their training under this subtitle. Such counseling or other services shall be similar to the counseling and other services provided under sections 1712A, 3697A, 4103A, 4104, [former] 7723, and [former] 7724 of title 38, United States Code, and section 1144 of title 10, United States Code.

''(c) CASE MANAGER REQUIRED.—Before an eligible person who voluntarily terminates from a program of job training under this subtitle or is involuntarily terminated from such program by the employer may be eligible to be provided with a further certificate, or renewal of certification, of eligibility for participation under this subtitle, such eligible person must be provided by the Secretary of Labor, after consultation with the implementing official, with a case manager.

''SEC. 4494. INFORMATION AND OUTREACH; USE OF AGENCY RESOURCES.

''(a) IN GENERAL.—(1) The Secretary, the Secretary of Veterans Affairs, and the Secretary of Labor shall jointly provide for an outreach and public information program—

''(A) to inform eligible persons about the employment and job training opportunities available under this subtitle and under other provisions of law; and

''(B) to inform private industry and business concerns (including small business concerns), public agencies and organizations, educational institutions, trade associations, and labor unions about the job training opportunities available under, and the advantages of participating in, the program established by this subtitle.

''(2) The Secretary, in consultation with the Secretary of Labor and the Secretary of Veterans Affairs, shall promote the development of employment and job training opportunities for eligible persons by encouraging potential employers to make programs of job training under this subtitle available for eligible persons, by advising other appropriate Federal departments and agencies of the program established by this subtitle, and by advising employers of applicable responsibilities under chapters 41 and 42 of title 38, United States Code, with respect to eligible persons.

''(b) COORDINATION.—The Secretary, the Secretary of Veterans Affairs, and the Secretary of Labor shall coordinate the outreach and public information program under subsection (a)(1), and job development activities under subsection (a)(2), with job counseling, placement, job development, and other services provided for under chapters 41 and 42 of title 38, United States Code, and with other similar services offered by other public agencies and organizations.

''(c) AGENCY RESOURCES.—(1) The Secretary, the Secretary of Veterans Affairs, and the Secretary of Labor shall make available such personnel as are necessary to facilitate the effective implementation of this subtitle.

''(2) In carrying out the responsibilities of the Secretary of Labor under this subtitle, the Secretary of Labor shall make maximum use of the services of Directors and Assistant Directors for Veterans' Employment and Training, disabled veterans' outreach program specialists, and employees of local offices, appointed pursuant to sections 4103, 4103A, and 4104 of title 38, United States Code. To the extent that the implementing official withholds approval of eligible persons' applications under this subtitle pursuant to section 4485(b)(2)(B), the Secretary of Labor shall take steps to assist such eligible persons in taking advantage of opportunities that may be available to them under any other program carried out with funds provided by the Secretary of Labor.

''(d) SMALL BUSINESS.—The implementing official shall request and obtain from the Administrator of the Small Business Administration a list of small business

concerns and shall, on a regular basis, update such list. Such list shall be used to identify and promote possible training and employment opportunities for eligible persons.

''(e) ASSISTANCE TO PARTICIPATE.—The Secretary, the Secretary of Veterans Affairs, and the Secretary of Labor shall assist eligible persons and employers desiring to participate under this subtitle in making application and completing necessary certifications.

''(f) COLLECTION OF CERTAIN INFORMATION.—The Secretary of Labor shall, on a not less frequent than quarterly basis, collect and compile from the heads of State employment services and Directors for Veterans' Employment and Training for each State information available to such heads and Directors, and derived from programs carried out in their respective States, with respect to the numbers of eligible persons who receive counseling services pursuant to section 4493, who are referred to employers participating under this subtitle, who participate in programs of job training under this subtitle (including a description of the nature of the training and salaries that are part of such programs), and who complete such programs, and the reasons for eligible persons' noncompletion.

''SEC. 4495. AUTHORIZATION OF APPROPRIATIONS.

''(a) IN GENERAL.—(1) Of the amounts authorized to be appropriated in section 301 [106 Stat. 2360] for Defense Agencies, $75,000,000 shall be made available for the purpose of making payments to employers under this subtitle. Of the amounts made available pursuant to section 1302(a) of the National Defense Authorization Act for Fiscal Year 1994 [Pub. L. 103–160, 107 Stat. 1783], $25,000,000 shall be made available for the purpose of making payments to employers under this subtitle. The Secretary of Veterans Affairs and the Secretary of Labor shall submit an estimate to the Secretary of the amount needed to carry out any agreement entered into under section 4484(a), including administrative costs referred to in paragraph (3). Such agreements shall include administrative procedures to ensure the prompt and timely payments to employers by the implementing official.

''(2) Amounts made available pursuant to this section for a fiscal year shall remain available until the end of the second fiscal year following the fiscal year in which such amounts were appropriated.

''(3) Of the amounts made available pursuant to this section for a fiscal year, six percent of such amounts may be used for the purpose of administering this subtitle, including reimbursing expenses incurred.

''(b) AVAILABILITY OF DEOBLIGATED FUNDS.—Notwithstanding any other provision of law, any funds made available pursuant to this section for a fiscal year which are obligated for the purpose of making payments under section 4487 on behalf of an eligible person (including funds so obligated which previously had been obligated for such purpose on behalf of another eligible person and were thereafter deobligated) and are later deobligated shall immediately upon deobligation become available to the implementing official for obligation for such purpose. The further obligation of such funds by such official for such purpose shall not be delayed, directly or indirectly, in any manner by any officer or employee in the executive branch.

''SEC. 4496. TIME PERIODS FOR APPLICATION AND INITIATION OF TRAINING.

''Assistance may not be paid to an employer under this subtitle—

''(1) on behalf of an eligible person who initially applies for a program of job training under this subtitle after September 30, 1996; or

''(2) for any such program which begins after March 31, 1997.

''SEC. 4497. TREATMENT OF CERTAIN PROVISIONS OF LAW UPON TRANSFER OF AMOUNTS PROVIDED UNDER THIS ACT.

''(a) CONTINGENT AMENDMENT.—If a transfer is made in accordance with section 4501(c) of the full amount of the amount provided under section 4495(a) for the program established under section 4484(a), then, effective as of the date of the enactment of this Act [Oct. 23, 1992], the first sentence of section 4484(a) is amended by striking 'the Secretary shall carry out' and inserting 'the Secretary may carry out'.

''(b) PUBLICATION IN THE FEDERAL REGISTER.—If the transfer described in subsection (a) is made, then the Secretary of Defense shall promptly publish in the Federal Register a notice of such transfer. Such notice shall specify the date on which such transfer occurred.''

[Section 610(a)(2)(B) of Pub. L. 103–446 provided that: ''The amendment made by subparagraph (A) [amending section 4486(d)(2) of Pub. L. 102–484, set out above] shall apply with respect to programs of training under the Service Members Occupational Conversion and Training Act of 1992 [subtitle G of title XLIV of Pub. L. 102–484, set out above] beginning after the date of the enactment of this Act [Nov. 2, 1994].'']

[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.]

§ 1143a. Encouragement of postseparation public and community service

(a) IN GENERAL.—The Secretary of Defense shall implement a program to encourage members and former members of the armed forces to enter into public and community service jobs after discharge or release from active duty.

(b) PERSONNEL REGISTRY.—The Secretary shall maintain a registry of members and former members of the armed forces discharged or released from active duty who request registration for assistance in pursuing public and community service job opportunities. The registry shall include information on the particular job skills, qualifications, and experience of the registered personnel.

(c) REGISTRY OF PUBLIC SERVICE AND COMMUNITY SERVICE ORGANIZATIONS.—The Secretary shall also maintain a registry of public service and community service organizations. The registry shall contain information regarding each organization, including its location, its size, the types of public and community service positions in the organization, points of contact, procedures for applying for such positions, and a description of each such position that is likely to be available. Any such organization may request registration under this subsection and, subject to guidelines prescribed by the Secretary, be registered.

(d) ASSISTANCE TO BE PROVIDED.—(1) The Secretary shall actively attempt to match personnel registered under subsection (b) with public and community service job opportunities and to facilitate job-seeking contacts between such personnel and the employers offering the jobs.

(2) The Secretary shall offer personnel registered under subsection (b) counselling services regarding—

(A) public service and community service organizations; and

(B) procedures and techniques for qualifying for and applying for jobs in such organizations.

(3) The Secretary may provide personnel registered under subsection (b) with access to the

interstate job bank program of the United States Employment Service if the Secretary determines that such program meets the needs of separating members of the armed forces for job placement.

(e) CONSULTATION REQUIREMENT.—In carrying out this section, the Secretary shall consult closely with the Secretary of Labor, the Secretary of Veterans Affairs, the Secretary of Education, the Director of the Office of Personnel Management, appropriate representatives of State and local governments, and appropriate representatives of businesses and nonprofit organizations in the private sector.

(f) DELEGATION.—The Secretary, with the concurrence of the Secretary of Labor, may designate the Secretary of Labor as the executive agent of the Secretary of Defense for carrying out all or part of the responsibilities provided in this section. Such a designation does not relieve the Secretary of Defense from the responsibility for the implementation of the provisions of this section.

(g) DEFINITIONS.—In this section, the term ''public service and community service organization'' includes the following organizations:

(1) Any organization that provides the following services:

(A) Elementary, secondary, or postsecondary school teaching or administration.

(B) Support of such teaching or school administration.

(C) Law enforcement.

(D) Public health care.

(E) Social services.

(F) Any other public or community service.

(2) Any nonprofit organization that coordinates the provision of services described in paragraph (1).

(h) COAST GUARD.—This section shall apply to the Coast Guard in the same manner and to the same extent as it applies to the Department of Defense. The Secretary of Homeland Security shall implement the requirements of this section for the Coast Guard.

(Added Pub. L. 102–484, div. D, title XLIV, §4462(a)(1), Oct. 23, 1992, 106 Stat. 2738; amended Pub. L. 103–337, div. A, title V, §542(a)(3), Oct. 5, 1994, 108 Stat. 2768; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Subsec. (h). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1994—Pub. L. 103–337, §542(a)(3)(A), struck out '': Department of Defense'' after ''service'' in section catchline.

Subsec. (h). Pub. L. 103–337, §542(a)(3)(B), added subsec. (h).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable only to members of the Coast Guard who are separated after Sept. 30, 1994, see section 542(e) of Pub. L. 103–337, set out as a note under section 1141 of this title.

PROGRAM OF EDUCATIONAL LEAVE RELATING TO CONTINUING PUBLIC AND COMMUNITY SERVICE

Pub. L. 102–484, div. D, title XLIV, §4463, Oct. 23, 1992, 106 Stat. 2740, as amended by Pub. L. 103–160, div. A, title V, §561(*o*), Nov. 30, 1993, 107 Stat. 1668; Pub. L. 105–261, div. A, title V, §561(g), Oct. 17, 1998, 112 Stat. 2025; Pub. L. 106–398, §1 [[div. A], title V, §571(g)], Oct. 30, 2000, 114 Stat. 1654, 1654A–134; Pub. L. 107–296, title XVII, §1704(e)(3), Nov. 25, 2002, 116 Stat. 2315, provided that under regulations prescribed by the Secretary of Defense and subject to certain eligibility requirements, the Secretary concerned could grant to an eligible member of the Armed Forces a leave of absence not to exceed one year to permit the member to pursue education or training relevant to public and community service, and provided that this authority would expire on Dec. 31, 2001.

INCREASED EARLY RETIREMENT RETIRED PAY FOR PUBLIC OR COMMUNITY SERVICE

Section 4464 of Pub. L. 102–484 provided that:

''(a) RECOMPUTATION OF RETIRED PAY.—(1) If a member or former member of the Armed Forces retired under section 4403(a) [10 U.S.C. 1293 note] or any other provision of law authorizing retirement from the Armed Forces (other than for disability) before the completion of at least 20 years of active duty service (as computed under the applicable provision of law) is employed by a public service or community service organization listed on the registry maintained under section 1143a(c) of title 10, United States Code (as added by section 4462(a)), within the period of the member's enhanced retirement qualification period, the member's or former member's retired or retainer pay shall be recomputed effective on the first day of the first month beginning after the date on which the member or former member attains 62 years of age.

''(2) For purposes of recomputing a member's or former member's retired pay—

''(A) the years of the member's or former member's employment by a public service or community service organization referred to in paragraph (1) during the member's or former member's enhanced retirement qualification period shall be treated as years of active duty service in the Armed Forces; and

''(B) in applying section 1401a of title 10, United States Code, the member's or former member's years of active duty service shall be deemed as of the date of retirement to have included the years of employment referred to in subparagraph (A).

''(3) Section 1405(b) of title 10, United States Code, shall apply in determining years of service under this subsection.

''(4) In this subsection, the term 'enhanced retirement qualification period', with respect to a member or former member retired under a provision of law referred to in paragraph (1), means the period beginning on the date of the retirement of the member or former member and ending the number of years (including any fraction of a year) after that date which when added to the number of years (including any fraction of a year) of service credited for purposes of computing the retired pay of the member or former member upon retirement equals 20 years.

''(b) SBP ANNUITIES.—(1) Effective on the first day of the first month after a member or former member of the Armed Forces retired under a provision of law referred to in subsection (a)(1) attains 62 years of age or, in the event of death before attaining that age, would have attained that age, the base amount applicable under section 1447(2) [see 1447(6)] of title 10, United States Code, to any Survivor Benefit Plan annuity provided by that member or former member shall be recomputed. For the recomputation the total years (including any fraction of a year) of the member's or former member's active service shall be treated as having included the member's or former member's years (including any fraction of a year) of employment referred to in subsection (a)(1) as of the date when the

member or former member became eligible for retired pay under this section.

''(2) In this subsection, the term 'Survivor Benefit Plan' means the plan established under subchapter II of chapter 73 of title 10, United States Code.''

§ 1144. Employment assistance, job training assistance, and other transitional services: Department of Labor

(a) IN GENERAL.—(1) The Secretary of Labor, in conjunction with the Secretary of Defense, the Secretary of Homeland Security, and the Secretary of Veterans Affairs, shall establish and maintain a program to furnish counseling, assistance in identifying employment and training opportunities, help in obtaining such employment and training, and other related information and services to members of the armed forces under the jurisdiction of the Secretary concerned who are being separated from active duty and the spouses of such members. Such services shall be provided to a member within the time periods provided under paragraph (3) of section 1142(a) of this title, except that the Secretary concerned shall not provide preseparation counseling to a member described in paragraph (4)(A) of such section.

(2) The Secretary of Defense, the Secretary of Homeland Security, and the Secretary of Veterans Affairs shall cooperate with the Secretary of Labor in establishing and maintaining the program under this section.

(3) The Secretaries referred to in paragraph (1) shall enter into a detailed agreement to carry out this section.

(b) ELEMENTS OF PROGRAM.—In establishing and carrying out a program under this section, the Secretary of Labor shall do the following:

(1) Provide information concerning employment and training assistance, including (A) labor market information, (B) civilian work place requirements and employment opportunities, (C) instruction in resumé preparation, and (D) job analysis techniques, job search techniques, and job interview techniques.

(2) In providing information under paragraph (1), use experience obtained from implementation of the pilot program established under section 408 of Public Law 101–237.

(3) Provide information concerning Federal, State, and local programs, and programs of military and veterans' service organizations, that may be of assistance to such members after separation from the armed forces, including, as appropriate, the information and services to be provided under section 1142 of this title.

(4) Inform such members that the Department of Defense and the Department of Homeland Security are required under section 1143(a) of this title to provide proper certification or verification of job skills and experience acquired while on active duty that may have application to employment in the civilian sector for use in seeking civilian employment and in obtaining job search skills.

(5) Provide information and other assistance to such members in their efforts to obtain loans and grants from the Small Business Administration and other Federal, State, and local agencies.

(6) Provide information about the geographic areas in which such members will relocate after separation from the armed forces, including, to the degree possible, information about employment opportunities, the labor market, and the cost of living in those areas (including, to the extent practicable, the cost and availability of housing, child care, education, and medical and dental care).

(7) Work with military and veterans' service organizations and other appropriate organizations in promoting and publicizing job fairs for such members.

(8) Provide information regarding the public and community service jobs program carried out under section 1143a of this title.

(c) PARTICIPATION.—The Secretary of Defense and the Secretary of Homeland Security shall encourage and otherwise promote maximum participation by members of the armed forces eligible for assistance under the program carried out under this section.

(d) USE OF PERSONNEL AND ORGANIZATIONS.—In carrying out the program established under this section, the Secretaries may—

(1) provide, as the case may be, for the use of disabled veterans outreach program specialists, local veterans' employment representatives, and other employment service personnel funded by the Department of Labor to the extent that the Secretary of Labor determines that such use will not significantly interfere with the provision of services or other benefits to eligible veterans and other eligible recipients of such services or benefits;

(2) use military and civilian personnel of the Department of Defense and the Department of Homeland Security;

(3) use personnel of the Veterans Benefits Administration of the Department of Veterans Affairs and other appropriate personnel of that Department;

(4) use representatives of military and veterans' service organizations;

(5) enter into contracts with public or private entities; and

(6) take other necessary action to develop and furnish the information and services to be provided under this section.

(Added Pub. L. 101–510, div. A, title V, § 502(a)(1), Nov. 5, 1990, 104 Stat. 1553; amended Pub. L. 102–190, div. A, title X, § 1061(a)(6), Dec. 5, 1991, 105 Stat. 1472; Pub. L. 102–484, div. D, title XLIV, §§ 4462(c), 4469, Oct. 23, 1992, 106 Stat. 2740, 2752; Pub. L. 103–337, div. A, title V, § 543(b), Oct. 5, 1994, 108 Stat. 2769; Pub. L. 107–103, title III, § 302(b), Dec. 27, 2001, 115 Stat. 992; Pub. L. 107–107, div. A, title X, § 1048(e)(1), Dec. 28, 2001, 115 Stat. 1227; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

REFERENCES IN TEXT

Section 408 of Public Law 101–237, referred to in subsec. (b)(2), is set out as a note under section 4100 of Title 38, Veterans' Benefits.

AMENDMENTS

2002—Subsecs. (a)(1), (2), (b)(4), (c), (d)(2). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

2001—Subsec. (a)(1). Pub. L. 107–103, in second sentence, substituted ''within the time periods provided

under paragraph (3) of section 1142(a) of this title, except that the Secretary concerned shall not provide preseparation counseling to a member described in paragraph (4)(A) of such section'' for ''during the 180-day period before the member is separated from active duty''.

Subsec. (a)(3). Pub. L. 107–107, § 1048(e)(1)(A), struck out at end ''The agreement shall be entered into no later than 60 days after the date of the enactment of this section.''

Subsec. (e). Pub. L. 107–107, § 1048(e)(1)(B), struck out heading and text of subsec. (e). Text read as follows:

''(1) There is authorized to be appropriated to the Department of Labor to carry out this section $11,000,000 for fiscal year 1993 and $8,000,000 for each of fiscal years 1994 and 1995.

''(2) There is authorized to be appropriated to the Department of Veterans Affairs to carry out this section $6,500,000 for each of fiscal years 1993, 1994, and 1995.''

1994—Subsec. (a)(1). Pub. L. 103–337, § 543(b)(1), inserted '', the Secretary of Transportation,'' after ''Secretary of Defense'' and substituted ''concerned'' for ''of a military department''.

Subsec. (a)(2). Pub. L. 103–337, § 543(b)(2), inserted '', the Secretary of Transportation,'' after ''Secretary of Defense''.

Subsec. (b)(4). Pub. L. 103–337, § 543(b)(3), substituted ''Department of Defense and the Department of Transportation are'' for ''Department of Defense is''.

Subsec. (c). Pub. L. 103–337, § 543(b)(4), inserted ''and the Secretary of Transportation'' after ''Secretary of Defense''.

Subsec. (d)(2). Pub. L. 103–337, § 543(b)(5), inserted ''and the Department of Transportation'' after ''Department of Defense''.

1992—Subsec. (b)(8). Pub. L. 102–484, § 4462(c), added par. (8).

Subsec. (e)(1). Pub. L. 102–484, § 4469(1), substituted ''$11,000,000 for fiscal year 1993 and $8,000,000 for each of fiscal years 1994 and 1995'' for ''$4,000,000 for fiscal year 1991 and $9,000,000 for each of fiscal years 1992 and 1993''.

Subsec. (e)(2). Pub. L. 102–484, § 4469(2), substituted ''$6,500,000 for each of fiscal years 1993, 1994, and 1995'' for ''$1,000,000 for fiscal year 1991 and $4,000,000 for each of fiscal years 1992 and 1993''.

1991—Subsec. (b)(1). Pub. L. 102–190, § 1061(a)(6)(A), substituted ''resumé'' for ''resume'' in cl. (C).

Subsec. (b)(3). Pub. L. 102–190, § 1061(a)(6)(B), substituted ''veterans' service organizations'' for ''veterans service organization'' and ''armed forces'' for ''Armed Forces''.

Subsec. (b)(6). Pub. L. 102–190, § 1061(a)(6)(C), substituted ''those areas'' for ''such area''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

IMPLEMENTATION REPORTS

Pub. L. 101–510, div. A, title V, § 502(c), Nov. 5, 1990, 104 Stat. 1557, directed the Secretary of Labor to submit to Congress a report, not later than 90 days after Nov. 5, 1990, setting forth the agreement entered into to carry out this section, and a report, not later than one year after Nov. 5, 1990, containing an evaluation of the program carried out under this section.

§ 1145. Health benefits

(a) TRANSITIONAL HEALTH CARE.—(1) For the time period described in paragraph (4), a member of the armed forces who is separated from active duty as described in paragraph (2) (and the dependents of the member) shall be entitled to receive—

(A) except as provided in paragraph (3), medical and dental care under section 1076 of this title in the same manner as a dependent described in subsection (a)(2) of such section; and

(B) health benefits contracted under the authority of section 1079(a) of this title and subject to the same rates and conditions as apply to persons covered under that section.

(2) This subsection applies to the following members of the armed forces:

(A) A member who is involuntarily separated from active duty.

(B) A member of a reserve component who is separated from active duty to which called or ordered in support of a contingency operation if the active duty is active duty for a period of more than 30 days.

(C) A member who is separated from active duty for which the member is involuntarily retained under section 12305 of this title in support of a contingency operation.

(D) A member who is separated from active duty served pursuant to a voluntary agreement of the member to remain on active duty for a period of less than one year in support of a contingency operation.

(E) A member who receives a sole survivorship discharge (as defined in section 1174(i) of this title).

(F) A member who is separated from active duty who agrees to become a member of the Selected Reserve of the Ready Reserve of a reserve component.

(3) In the case of a member described in paragraph (2)(B), the dental care to which the member is entitled under this subsection shall be the dental care to which a member of the uniformed services on active duty for more than 30 days is entitled under section 1074 of this title.

(4) Except as provided in paragraph (7), transitional health care for a member under subsection (a) shall be available for 180 days beginning on the date on which the member is separated from active duty.

(5)(A) The Secretary concerned shall require a member of the armed forces scheduled to be separated from active duty as described in paragraph (2) to undergo a physical examination immediately before that separation. The physical examination shall be conducted in accordance with regulations prescribed by the Secretary of Defense.

(B) Notwithstanding subparagraph (A), if a member of the armed forces scheduled to be separated from active duty as described in paragraph (2) has otherwise undergone a physical examination within 12 months before the scheduled date of separation from active duty, the requirement for a physical examination under subparagraph (A) may be waived in accordance with regulations prescribed under this paragraph. Such regulations shall require that such a waiver may be granted only with the consent of the member and with the concurrence of the member's unit commander.

(6)(A) The Secretary of Defense shall, in consultation with the Secretary of Veterans Affairs, ensure that appropriate actions are taken to assist a member of the armed forces who, as a result of a medical examination under paragraph (5), receives an indication for a referral for follow up treatment from the health care provider who performs the examination.

(B) Assistance provided to a member under paragraph (1) shall include the following:

(i) Information regarding, and any appropriate referral for, the care, treatment, and other services that the Secretary of Veterans Affairs may provide to such member under any other provision of law, including—

(I) clinical services, including counseling and treatment for post-traumatic stress disorder and other mental health conditions; and

(II) any other care, treatment, and services.

(ii) Information on the private sector sources of treatment that are available to the member in the member's community.

(iii) Assistance to enroll in the health care system of the Department of Veterans Affairs for health care benefits for which the member is eligible under laws administered by the Secretary of Veterans Affairs.

(7)(A) A member who has a medical condition relating to service on active duty that warrants further medical care that has been identified during the member's 180-day transition period, which condition can be resolved within 180 days as determined by a Department of Defense physician, shall be entitled to receive medical and dental care for that medical condition, and that medical condition only, as if the member were a member of the armed forces on active duty for 180 days following the diagnosis of the condition.

(B) The Secretary concerned shall ensure that the Defense Enrollment and Eligibility Reporting System (DEERS) is continually updated in order to reflect the continuing entitlement of members covered by subparagraph (A) to the medical and dental care referred to in that subparagraph.

(b) CONVERSION HEALTH POLICIES.—(1) The Secretary of Defense shall inform each member referred to in subsection (a) before the date of the member's discharge or release from active duty of the availability for purchase by the member of a conversion health policy for the member and the dependents of that member. A conversion health policy offered under this paragraph shall provide coverage for not less than an 18-month period.

(2) If a member referred to in subsection (a) purchases a conversion health policy during the period applicable to the member (or within a reasonable time after that period as prescribed by the Secretary of Defense), the Secretary shall provide health care, or pay the costs of health care provided, to the member and the dependents of the member—

(A) during the 18-month period beginning on the date on which coverage under the conversion health policy begins; and

(B) for a condition (including pregnancy) that exists on such date and for which care is not provided under the policy solely on the grounds that the condition is a preexisting condition.

(3) The Secretary of Defense may arrange for the provision of health care described in paragraph (2) through a contract with the insurer offering the conversion health policy.

(4) If the Secretary of Defense is unable, within a reasonable time, to enter into a contract with a private insurer to provide the conversion health policy required under paragraph (1) at a rate not to exceed the payment required under section 8905a(d)(1)(A) of title 5 for comparable coverage, the Secretary shall offer such a policy under the Civilian Health and Medical Program of the Uniformed Services. Subject to paragraph (5), a member purchasing a policy from the Secretary shall be required to pay into the Military Health Care Account or other appropriate account an amount equal to the sum of—

(A) the individual and Government contributions which would be required in the case of a person enrolled in a health benefits plan contracted for under section 1079 of this title; and

(B) an amount necessary for administrative expenses, but not to exceed two percent of the amount under subparagraph (A).

(5) The amount paid by a member who purchases a conversion health policy from the Secretary of Defense under paragraph (4) may not exceed the payment required under section 8905a(d)(1)(A) of title 5 for comparable coverage.

(6) In order to reduce premiums required under paragraph (4), the Secretary of Defense may offer a conversion health policy that, with respect to mental health services, offers reduced coverage and increased cost-sharing by the purchaser.

(c) HEALTH CARE FOR CERTAIN SEPARATED MEMBERS NOT OTHERWISE ELIGIBLE.—(1) Consistent with the authority of the Secretary concerned to designate certain classes of persons as eligible to receive health care at a military medical facility, the Secretary concerned should consider authorizing, on an individual basis in cases of hardship, the provision of that care for a member who is separated from the armed forces, and is ineligible for transitional health care under subsection (a) or does not obtain a conversion health policy (or a dependent of the member).

(2) The Secretary concerned shall give special consideration to requests for such care in cases in which the condition for which treatment is required was incurred or aggravated by the member or the dependent before the date of the separation of the member, particularly if the condition is a result of the particular circumstances of the service of the member.

(d) DEFINITION.—In this section, the term ''conversion health policy'' means a health insurance policy with a private insurer, developed through negotiations between the Secretary of Defense and a private insurer, that is available for purchase by or for the use of a person who is no longer a member of the armed forces or a covered beneficiary.

(e) COAST GUARD.—The Secretary of Homeland Security shall implement this section for the members of the Coast Guard and their dependents.

(Added Pub. L. 101–510, div. A, title V, § 502(a)(1), Nov. 5, 1990, 104 Stat. 1555; amended Pub. L. 102–484, div. D, title XLIV, § 4407(a), Oct. 23, 1992, 106 Stat. 2707; Pub. L. 103–160, div. A, title V, § 561(i), Nov. 30, 1993, 107 Stat. 1668; Pub. L. 103–337, div. A, title V, § 542(a)(4), Oct. 5, 1994, 108

Stat. 2768; Pub. L. 105–261, div. A, title V, §561(h), Oct. 17, 1998, 112 Stat. 2026; Pub. L. 106–398, §1 [[div. A], title V, §571(h)], Oct. 30, 2000, 114 Stat. 1654, 1654A–134; Pub. L. 107–107, div. A, title VII, §736(a), (b), Dec. 28, 2001, 115 Stat. 1172; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 107–314, div. A, title VII, §706(a), (b), Dec. 2, 2002, 116 Stat. 2585; Pub. L. 108–375, div. A, title VII, §706(a)(1), (3), (b), Oct. 28, 2004, 118 Stat. 1983; Pub. L. 109–163, div. A, title VII, §749, Jan. 6, 2006, 119 Stat. 3364; Pub. L. 110–181, div. A, title XVI, §1637, Jan. 28, 2008, 122 Stat. 464; Pub. L. 110–317, §4, Aug. 29, 2008, 122 Stat. 3528; Pub. L. 110–417, [div. A], title VII, §734(a), Oct. 14, 2008, 122 Stat. 4513; Pub. L. 111–84, div. A, title VII, §703, Oct. 28, 2009, 123 Stat. 2373.)

AMENDMENTS

2009—Subsec. (a)(1). Pub. L. 111–84, §703(1)(A), substituted ''paragraph (4)'' for ''paragraph (3)'' in introductory provisions.

Subsec. (a)(1)(A). Pub. L. 111–84, §703(1)(B), inserted ''except as provided in paragraph (3),'' before ''medical and dental care''.

Subsec. (a)(3) to (7). Pub. L. 111–84, §703(2)–(5), added par. (3), redesignated former pars. (3) to (6) as (4) to (7), respectively, in par. (4) substituted ''paragraph (7)'' for ''paragraph (6)'', and in par. (6)(A) substituted ''paragraph (5)'' for ''paragraph (4)''.

2008—Subsec. (a)(2)(E). Pub. L. 110–317 added subpar. (E).

Subsec. (a)(2)(F). Pub. L. 110–417 added subpar. (F).

Subsec. (a)(3). Pub. L. 110–181, §1637(1), substituted ''Except as provided in paragraph (6), transitional health care'' for ''Transitional health care''.

Subsec. (a)(6). Pub. L. 110–181, §1637(2), added par. (6).

2006—Subsec. (a)(5). Pub. L. 109–163 added par. (5).

2004—Subsec. (a)(1). Pub. L. 108–375, §706(a)(3), struck out ''applicable'' before ''time period'' in introductory provisions.

Subsec. (a)(3). Pub. L. 108–375, §706(a)(1), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''Transitional health care shall be available under subsection (a) for a specified time period beginning on the date on which the member is separated as follows:

''(A) For members separated with less than six years of active service, 60 days.

''(B) For members separated with six or more years of active service, 120 days.''

Subsec. (a)(4). Pub. L. 108–375, §706(b), added par. (4).

2002—Subsec. (a)(1). Pub. L. 107–314, §706(a), amended Pub. L. 107–107, §736(a)(1). See 2001 Amendment note below.

Subsec. (e). Pub. L. 107–314, §706(b), amended Pub. L. 107–107, §736(b)(2). See 2001 Amendment note below.

Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

2001—Subsec. (a)(1). Pub. L. 107–107, §736(a)(1), as amended by Pub. L. 107–314, §706(a), in introductory provisions, substituted ''paragraph (3), a member of the armed forces who is separated from active duty as described in paragraph (2) (and the dependents of the member)'' for ''paragraph (2), a member of the armed forces who is involuntarily separated from active duty during the period beginning on October 1, 1990, and ending on December 31, 2001 (and the dependents of the member),''.

Subsec. (a)(2). Pub. L. 107–107, §736(a)(3), added par. (2). Former par. (2) redesignated (3).

Subsec. (a)(3). Pub. L. 107–107, §736(a)(2), (4), redesignated par. (2) as (3) and struck out ''involuntarily'' before ''separated'' wherever appearing.

Subsec. (c)(1). Pub. L. 107–107, §736(b)(1), struck out ''during the period beginning on October 1, 1990, and ending on December 31, 2001'' after ''armed forces''.

Subsec. (e). Pub. L. 107–107, §736(b)(2), as amended by Pub. L. 107–314, §706(b), substituted ''the members of the Coast Guard and their dependents'' for ''the Coast Guard'' in second sentence and struck out first sentence which read as follows: ''The provisions of this section shall apply to members of the Coast Guard (and their dependents) involuntarily separated from active duty during the period beginning on October 1, 1994, and ending on December 31, 2001.''

2000—Subsecs. (a)(1), (c)(1), (e). Pub. L. 106–398 substituted ''December 31, 2001'' for ''September 30, 2001''.

1998—Subsecs. (a)(1), (c)(1). Pub. L. 105–261, §561(h)(1), 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''.

Subsec. (e). Pub. L. 105–261, §561(h)(2), substituted ''during the period beginning on October 1, 1994, and ending on September 30, 2001'' for ''during the five-year period beginning on October 1, 1994''.

1994—Subsec. (e). Pub. L. 103–337 added subsec. (e).

1993—Subsecs. (a)(1), (c)(1). Pub. L. 103–160 substituted ''nine-year period'' for ''five-year period''.

1992—Subsec. (b)(1). Pub. L. 102–484, §4407(a)(1), inserted at end ''A conversion health policy offered under this paragraph shall provide coverage for not less than an 18-month period.''

Subsec. (b)(2)(A). Pub. L. 102–484, §4407(a)(2), substituted ''18-month period'' for ''one-year period''.

Subsec. (b)(4) to (6). Pub. L. 102–484, §4407(a)(3), added pars. (4) to (6).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–417, [div. A], title VII, §734(b), Oct. 14, 2008, 122 Stat. 4513, provided that: ''Subparagraph (F) of section 1145(a)(2) of title 10, United States Code, as added by subsection (a), shall apply with respect to members of the Armed Forces separated from active duty after the date of the enactment of this Act [Oct. 14, 2008].''

Amendment by Pub. L. 110–317 applicable with respect to any sole survivorship discharge granted after Aug. 29, 2008, see section 10 of Pub. L. 110–317, set out as a note under section 2108 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–314, div. A, title VII, §706(c), Dec. 2, 2002, 116 Stat. 2585, provided that: ''The amendments made by this section [amending this section] shall take effect as of December 28, 2001, and as if included in the National Defense Authorization Act for Fiscal Year 2002 [Pub. L. 107–107] as enacted.''

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable only to members of the Coast Guard who are separated after Sept. 30, 1994, see section 542(e) of Pub. L. 103–337, set out as a note under section 1141 of this title.

APPLICATION OF AMENDMENTS BY PUB. L. 102–484 TO EXISTING CONTRACTS

For provisions relating to the application of the amendments by section 4407 of Pub. L. 102–484 to conversion health policies provided under subsec. (b) of this section and in effect on Oct. 23, 1992, see section 4407(c) of Pub. L. 102–484, set out as a note under section 1086a of this title.

TRANSITIONAL PROVISION

Section 4408(b) of Pub. L. 102–484 provided that: ''The Secretary of Defense shall provide a period for the enrollment for health benefits coverage under this section [enacting section 1078a of this title and provisions set out as notes under this section and section 1086a of this title] by members and former members of the Armed Services for whom the availability of transitional health care under section 1145(a) of title 10,

United States Code, expires before the October 1, 1994, implementation date of section 1078a of such title, as added by subsection (a).''

TERMINATION OF APPLICABILITY OF OTHER CONVERSION HEALTH POLICIES

For provisions prohibiting purchase of, and allowing cancellation of, conversion health policies under subsec. (b) of this section on or after Oct. 1, 1994, see section 4408(c) of Pub. L. 102–484, set out as a note under section 1086a of this title.

TEMPORARY EXTENSION OF TRANSITIONAL HEALTH CARE BENEFITS

Pub. L. 108–136, div. A, title VII, § 704, Nov. 24, 2003, 117 Stat. 1527, which provided during the period beginning on Nov. 24, 2003, and ending on Dec. 31, 2004, for the extension of transitional health care benefits to 180 days for members separated from active duty, was repealed by Pub. L. 108–375, div. A, title VII, § 706(a)(2)(A), Oct. 28, 2004, 118 Stat. 1983.

Pub. L. 108–106, title I, § 1117, Nov. 6, 2003, 117 Stat. 1218, which provided during the period beginning on Nov. 6, 2003, and ending on Sept. 30, 2004, for the extension of transitional health care benefits to 180 days for members separated from active duty, was repealed by Pub. L. 108–375, div. A, title VII, § 706(a)(2)(B), Oct. 28, 2004, 118 Stat. 1983.

§ 1146. Commissary and exchange benefits

(a) MEMBERS INVOLUNTARILY SEPARATED FROM ACTIVE DUTY.—The Secretary of Defense shall prescribe regulations to allow a member of the armed forces who is involuntarily separated from active duty during the period beginning on October 1, 2007, and ending on December 31, 2012, to continue to use commissary and exchange stores during the two-year period beginning on the date of the involuntary separation of the member in the same manner as a member on active duty. The Secretary of Transportation shall implement this provision for Coast Guard members involuntarily separated during the same period.

(b) MEMBERS INVOLUNTARILY SEPARATED FROM SELECTED RESERVE.—The Secretary of Defense shall prescribe regulations to allow a member of the Selected Reserve of the Ready Reserve who is involuntarily separated from the Selected Reserve as a result of the exercise of the force shaping authority of the Secretary concerned under section 647 of this title or other force shaping authority during the period beginning on October 1, 2007, and ending on December 31, 2012, to continue to use commissary and exchange stores during the two-year period beginning on the date of the involuntary separation of the member in the same manner as a member on active duty. The Secretary of Homeland Security shall implement this provision for Coast Guard members involuntarily separated during the same period.

(c) MEMBERS RECEIVING SOLE SURVIVORSHIP DISCHARGE.—A member of the armed forces who receives a sole survivorship discharge (as defined in section 1174(i) of this title) is entitled to continue to use commissary and exchange stores and morale, welfare, and recreational facilities in the same manner as a member on active duty during the two-year period beginning on the later of the following dates:

(1) The date of the separation of the member.

(2) The date on which the member is first notified of the member's entitlement to benefits under this section.

(Added Pub. L. 101–510, div. A, title V, § 502(a)(1), Nov. 5, 1990, 104 Stat. 1556; amended Pub. L. 103–160, div. A, title V, § 561(i), Nov. 30, 1993, 107 Stat. 1668; Pub. L. 103–337, div. A, title V, § 542(a)(5), Oct. 5, 1994, 108 Stat. 2768; Pub. L. 105–261, div. A, title V, § 561(i), Oct. 17, 1998, 112 Stat. 2026; Pub. L. 106–398, § 1 [[div. A], title V, § 571(i)], Oct. 30, 2000, 114 Stat. 1654, 1654A–135; Pub. L. 110–181, div. A, title VI, § 651, Jan. 28, 2008, 122 Stat. 162; Pub. L. 110–317, § 5, Aug. 29, 2008, 122 Stat. 3528; Pub. L. 111–383, div. A, title X, § 1075(b)(16), Jan. 7, 2011, 124 Stat. 4369.)

AMENDMENTS

2011—Subsec. (a). Pub. L. 111–383, § 1075(b)(16)(A), struck out ''(a) BENEFITS FOR MEMBERS INVOLUNTARILY SEPARATED.—'' before ''The Secretary''.

Subsec. (b). Pub. L. 111–383, § 1075(b)(16)(B), redesignated subsec. (b) relating to benefits for members receiving sole survivorship discharge as (c).

Subsec. (c). Pub. L. 111–383, § 1075(b)(16)(B), (C), redesignated subsec. (b) relating to benefits for members receiving sole survivorship discharge as (c), struck out ''Benefits for'' before ''Members'' in heading, and substituted ''armed forces'' for ''Armed Forces'' in introductory provisions and ''the member's entitlement'' for ''the members entitlement'' in par. (2).

2008—Pub. L. 110–317 substituted ''(a) BENEFITS FOR MEMBERS INVOLUNTARILY SEPARATED.—The Secretary of Defense'' for ''The Secretary of Defense'' and added subsec. (b) relating to benefits for members receiving sole survivorship discharge.

Pub. L. 110–181 inserted ''(a) MEMBERS INVOLUNTARILY SEPARATED FROM ACTIVE DUTY.—'' before ''The Secretary of Defense'', substituted ''October 1, 2007, and ending on December 31, 2012'' for ''October 1, 1990, and ending on December 31, 2001'' in first sentence and ''the same period'' for ''the period beginning on October 1, 1994, and ending on December 31, 2001'' in second sentence, and added subsec. (b) relating to members involuntarily separated from the Selected Reserve.

2000—Pub. L. 106–398 substituted ''December 31, 2001'' for ''September 30, 2001'' in two places.

1998—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'' and ''during the period beginning on October 1, 1994, and ending on September 30, 2001'' for ''during the five-year period beginning on October 1, 1994''.

1994—Pub. L. 103–337 inserted at end ''The Secretary of Transportation shall implement this provision for Coast Guard members involuntarily separated during the five-year period beginning October 1, 1994.''

1993—Pub. L. 103–160 substituted ''nine-year period'' for ''five-year period''.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–317 applicable with respect to any sole survivorship discharge granted after Sept. 11, 2001, see section 10 of Pub. L. 110–317, set out as a note under section 2108 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable only to members of the Coast Guard who are separated after Sept. 30, 1994, see section 542(e) of Pub. L. 103–337, set out as a note under section 1141 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.

§ 1147. Use of military family housing

(a) TRANSITION FOR INVOLUNTARILY SEPARATED MEMBERS.—(1) The Secretary of a military department may, pursuant to regulations prescribed by the Secretary of Defense, permit individuals who are involuntarily separated during the period beginning on October 1, 1990, and ending on December 31, 2001, to continue for not more than 180 days after the date of such separation to reside (along with other members of the individual's household) in military family housing provided or leased by the Department of Defense to such individual as a member of the armed forces.

(2) The Secretary of Transportation may prescribe regulations to permit members of the Coast Guard who are involuntarily separated during the period beginning on October 1, 1994, and ending on December 31, 2001, to continue for not more than 180 days after the date of such separation to reside (along with others of the member's household) in military family housing provided or leased by the Coast Guard to the individual as a member of the armed forces.

(b) RENTAL CHARGES.—The Secretary concerned, pursuant to such regulations, shall require a reasonable rental charge for the continued use of military family housing under subsection (a), except that such Secretary may waive all or any portion of such charge in any case of hardship.

(Added Pub. L. 101–510, div. A, title V, § 502(a)(1), Nov. 5, 1990, 104 Stat. 1556; amended Pub. L. 103–160, div. A, title V, § 561(i), Nov. 30, 1993, 107 Stat. 1668; Pub. L. 103–337, div. A, title V, § 542(a)(6), Oct. 5, 1994, 108 Stat. 2768; Pub. L. 105–261, div. A, title V, § 561(j), Oct. 17, 1998, 112 Stat. 2026; Pub. L. 106–398, § 1 [[div. A], title V, § 571(j)], Oct. 30, 2000, 114 Stat. 1654, 1654A–135.)

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–398 substituted ''December 31, 2001'' for ''September 30, 2001'' in pars. (1) and (2).

1998—Subsec. (a)(1). Pub. L. 105–261, § 561(j)(1), 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''.

Subsec. (a)(2). Pub. L. 105–261, § 561(j)(2), substituted ''during the period beginning on October 1, 1994, and ending on September 30, 2001'' for ''during the five-year period beginning on October 1, 1994''.

1994—Subsec. (a). Pub. L. 103–337 designated existing provisions as par. (1) and added par. (2).

1993—Subsec. (a). Pub. L. 103–160 substituted ''nine-year period'' for ''five-year period''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable only to members of the Coast Guard who are separated after Sept. 30, 1994, see section 542(e) of Pub. L. 103–337, set out as a note under section 1141 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.

§ 1148. Relocation assistance for personnel overseas

The Secretary of Defense and the Secretary of Homeland Security shall develop a program specifically to assist members of the armed forces stationed overseas who are preparing for discharge or release from active duty, and the dependents of such members, in readjusting to civilian life. The program shall focus on the special needs and requirements of such members and dependents due to their overseas locations and shall include, to the maximum extent possible, computerized job relocation assistance and job search information.

(Added Pub. L. 101–510, div. A, title V, § 502(a)(1), Nov. 5, 1990, 104 Stat. 1556; amended Pub. L. 103–337, div. A, title V, § 542(a)(7), Oct. 5, 1994, 108 Stat. 2768; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1994—Pub. L. 103–337 inserted ''and the Secretary of Transportation'' after ''Secretary of Defense''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable only to members of the Coast Guard who are separated after Sept. 30, 1994, see section 542(e) of Pub. L. 103–337, set out as a note under section 1141 of this title.

PILOT PROGRAM

Pub. L. 101–510, div. A, title V, § 502(d), Nov. 5, 1990, 104 Stat. 1558, required the Secretary of Defense to carry out the program required by this section during fiscal year 1991 at not less than 10 military installations located outside the United States.

§ 1149. Excess leave and permissive temporary duty

Under regulations prescribed by the Secretary of Defense or the Secretary of Homeland Security with respect to the Coast Guard, the Secretary concerned shall grant a member of the armed forces who is to be involuntarily separated such excess leave (for a period not in excess of 30 days), or such permissive temporary duty (for a period not in excess of 10 days), as the member requires in order to facilitate the member's carrying out necessary relocation activities (such as job search and residence search activities), unless to do so would interfere with military missions.

(Added Pub. L. 101–510, div. A, title V, § 502(a)(1), Nov. 5, 1990, 104 Stat. 1557; amended Pub. L. 103–337, div. A, title V, § 542(a)(8), Oct. 5, 1994, 108 Stat. 2768; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1994—Pub. L. 103–337 inserted ''or the Secretary of Transportation with respect to the Coast Guard'' after ''Secretary of Defense'' and struck out ''of the military department'' before ''concerned''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable only to members of the Coast Guard who are separated after Sept. 30, 1994, see section 542(e) of Pub. L. 103–337, set out as a note under section 1141 of this title.

§ 1150. Affiliation with Guard and Reserve units: waiver of certain limitations

(a) PREFERENCE FOR CERTAIN PERSONS.—A person who is separated from the armed forces during the period beginning on October 1, 1990, and ending on December 31, 2001, and who applies to become a member of a National Guard or Reserve unit within one year after the date of such separation shall be given preference over other equally qualified applicants for existing or projected vacancies within the unit to which the member applies.

(b) LIMITED WAIVER OF STRENGTH LIMITATIONS.—Under regulations prescribed by the Secretary of Defense, a person covered by subsection (a) who enters a National Guard or Reserve unit pursuant to an application described in such subsection may be retained in that unit for up to three years without regard to reserve-component strength limitations so long as the individual maintains good standing in that unit.

(c) COAST GUARD.—This section shall apply to the Coast Guard in the same manner and to the same extent as it applies to the Department of Defense. The Secretary of Homeland Security shall prescribe regulations to implement this section for the Coast Guard.

(Added Pub. L. 101–510, div. A, title V, § 502(a)(1), Nov. 5, 1990, 104 Stat. 1557; amended Pub. L. 102–484, div. A, title V, § 514, Oct. 23, 1992, 106 Stat. 2406; Pub. L. 103–160, div. A, title V, § 561(j), Nov. 30, 1993, 107 Stat. 1668; Pub. L. 103–337, div. A, title V, § 542(a)(9), Oct. 5, 1994, 108 Stat. 2768; Pub. L. 105–261, div. A, title V, § 561(p), Oct. 17, 1998, 112 Stat. 2027; Pub. L. 106–398, § 1 [[div. A], title V, § 571(*o*)], Oct. 30, 2000, 114 Stat. 1654, 1654A–135; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

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''.

1994—Subsec. (c). Pub. L. 103–337 added subsec. (c).

1993—Subsec. (a). Pub. L. 103–160 substituted ''nine-year period'' for ''five-year period''.

1992—Subsec. (a). Pub. L. 102–484 struck out ''involuntarily'' after ''who is''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable only to members of the Coast Guard who are separated after Sept. 30, 1994, see section 542(e) of Pub. L. 103–337, set out as a note under section 1141 of this title.

§ 1151. Retention of assistive technology and services provided before separation

(a) AUTHORITY.—A member of the armed forces who is provided an assistive technology or assistive technology device for a severe or debilitating illness or injury incurred or aggravated by such member while on active duty may, under regulations prescribed by the Secretary of Defense, be authorized to retain such assistive technology or assistive technology device upon the separation of the member from active service.

(b) DEFINITIONS.—In this section, the terms ''assistive technology'' and ''assistive technology device'' have the meaning given those terms in section 3 of the Assistive Technology Act of 1998 (29 U.S.C. 3002).

(Added Pub. L. 109–364, div. A, title V, § 561(a), Oct. 17, 2006, 120 Stat. 2219.)

PRIOR PROVISIONS

A prior section 1151, added Pub. L. 102–484, div. D, title XLIV, § 4441(a)(1), Oct. 23, 1992, 106 Stat. 2725; amended Pub. L. 103–35, title II, § 201(f)(1), May 31, 1993, 107 Stat. 99; Pub. L. 103–160, div. A, title V, § 561(k), title XIII, § 1331(a)–(c)(1), (d)–(g), Nov. 30, 1993, 107 Stat. 1668, 1791–1793; Pub. L. 103–337, div. A, title V, § 543(c), title X, § 1070(a)(7), title XI, § 1131(a), (b), Oct. 5, 1994, 108 Stat. 2769, 2855, 2871; Pub. L. 103–382, title III, § 391(b)(1), (2), Oct. 20, 1994, 108 Stat. 4021; Pub. L. 104–106, div. A, title XV, § 1503(a)(10), Feb. 10, 1996, 110 Stat. 511; Pub. L. 104–201, div. A, title V, § 576(a), Sept. 23, 1996, 110 Stat. 2535; Pub. L. 105–85, div. A, title X, § 1073(a)(19), Nov. 18, 1997, 111 Stat. 1901, related to assistance to separated members to obtain certification and employment as teachers or employment as teachers' aides, prior to repeal by Pub. L. 106–65, div. A, title XVII, § 1707(a)(1), Oct. 5, 1999, 113 Stat. 823.

§ 1152. Assistance to eligible members and former members to obtain employment with law enforcement agencies

(a) PLACEMENT PROGRAM.—The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard, may enter into an agreement with the Attorney General to establish or participate in a program to assist eligible members and former members of the armed forces to obtain employment as law enforcement officers with eligible law enforcement agencies following the discharge or release of such members or former members from active duty. Eligible law enforcement agencies shall consist of State law enforcement agencies, local law enforcement agencies, and Indian tribes that perform law enforcement functions (as determined by the Secretary of the Interior).

(b) ELIGIBLE MEMBERS.—Any individual who, during the 6-year period beginning on October 1, 1993, is a member of the armed forces and is sep-

arated with an honorable discharge or is released from service on active duty characterized as honorable by the Secretary concerned shall be eligible to participate in a program covered by an agreement referred to in subsection (a).

(c) SELECTION.—In the selection of applicants for participation in a program covered by an agreement referred to in subsection (a), preference shall be given to a member or former member who—

(1) is selected for involuntary separation, is approved for separation under section 1174a or 1175 of this title, or retires pursuant to the authority provided in section 4403 of the Defense Conversion, Reinvestment, and Transition Assistance Act of 1992 (division D of Public Law 102–484; 10 U.S.C. 1293 note); and

(2) has a military occupational specialty, training, or experience related to law enforcement (such as service as a member of the military police) or satisfies such other criteria for selection as the Secretary, the Attorney General, or a participating eligible law enforcement agency prescribed in accordance with the agreement.

(d) GRANTS TO FACILITATE EMPLOYMENT.—(1) The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard, may provide funds to the Attorney General for grants under this section to reimburse participating eligible law enforcement agencies for costs, including salary and fringe benefits, of employing members or former members pursuant to a program referred to in subsection (a).

(2) No grant with respect to an eligible member or former member may exceed a total of $50,000.

(3) Any grant with respect to an eligible member or former member shall be disbursed within 5 years after the date of the placement of a member or former member with a participating eligible law enforcement agency.

(4) Preference in awarding grants through existing law enforcement hiring programs shall be given to State or local law enforcement agencies or Indian tribes that agree to hire eligible members and former members.

(e) ADMINISTRATIVE EXPENSES.—Ten percent of the amount, if any, appropriated for a fiscal year to carry out the program established pursuant to subsection (a) may be used to administer the program.

(f) REQUIREMENT FOR APPROPRIATION.—No person may be selected to participate in the program established pursuant to subsection (a) unless a sufficient amount of appropriated funds is available at the time of the selection to satisfy the obligations to be incurred by the United States under an agreement referred to in subsection (a) that applies with respect to the person.

(g) AUTHORITY TO EXPAND PLACEMENT TO INCLUDE FIREFIGHTERS.—(1) The Secretary may expand the placement activities authorized by subsection (a) to include the placement of eligible members and former members and eligible civilian employees of the Department of Defense as firefighters or members of rescue squads or ambulance crews with public fire departments.

(2) The expansion authorized by this subsection may be made through a program covered by an agreement referred to in subsection (a), if feasible, or in such other manner as the Secretary considers appropriate.

(3) A civilian employee of the Department of Defense shall be eligible to participate in the expanded placement activities authorized under this subsection if the employee, during the six-year period beginning October 1, 1993, is terminated from such employment as a result of reductions in defense spending or the closure or realignment of a military installation, as determined by the Secretary of Defense.

(Added Pub. L. 103–160, div. A, title XIII, § 1332(a), Nov. 30, 1993, 107 Stat. 1793; amended Pub. L. 103–337, div. A, title V, § 543(d), title XI, § 1132(a)(1), Oct. 5, 1994, 108 Stat. 2771, 2872; Pub. L. 104–106, div. A, title XV, § 1503(a)(11), Feb. 10, 1996, 110 Stat. 511; Pub. L. 104–201, div. A, title V, § 575, Sept. 23, 1996, 110 Stat. 2535; Pub. L. 105–85, div. A, title X, § 1073(a)(20), Nov. 18, 1997, 111 Stat. 1901; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Subsecs. (a), (d)(1). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1997—Subsec. (g). Pub. L. 105–85 inserted ''(1)'' before ''The Secretary may''.

1996—Subsec. (g). Pub. L. 104–201, in heading, substituted ''Authority To Expand Placement To Include Firefighters'' for ''Conditional Expansion of Placement to Include Firefighters'', in par. (1), substituted ''The Secretary may'' for ''(1) Subject to paragraph (2), the Secretary may'', and in par. (2), struck out ''The Secretary may implement the expansion authorized by this subsection only if the Secretary certifies to Congress not later than April 3, 1994, that such expansion will facilitate personnel transition programs of the Department of Defense.'' after ''(2)'' and inserted ''authorized by this subsection'' after ''The expansion''.

Subsec. (g)(2). Pub. L. 104–106 substituted ''not later than April 3, 1994,'' for ''not later than 180 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1995''.

1994—Pub. L. 103–337, § 543(d), inserted '', and the Secretary of Transportation with respect to the Coast Guard,'' after ''Secretary of Defense'' in subsecs. (a) and (d).

Pub. L. 103–337, § 1132(a)(1), substituted ''eligible members and former members'' for ''separated members'' in section catchline and amended text generally, substituting subsecs. (a) to (g) for former subsecs. (a) to (f).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

§ 1153. Assistance to separated members to obtain employment with health care providers

(a) PLACEMENT PROGRAM.—The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard, may establish a program to assist eligible members of the armed forces to obtain employment with health care providers upon their discharge or release from active duty.

(b) ELIGIBLE MEMBERS.—(1) Except as provided in paragraph (2), a member shall be eligible for selection to participate in the program established under subsection (a) if the member—

(A) is selected for involuntary separation, is approved for separation under section 1174a or

1175 of this title, or retires pursuant to the authority provided in section 4403 of the Defense Conversion, Reinvestment, and Transition Assistance Act of 1992 (division D of Public Law 102–484; 10 U.S.C. 1293 note) during the six-year period beginning on October 1, 1993;

(B) has received an associate degree, baccalaureate, or advanced degree from an accredited institution of higher education or a junior or community college; and

(C) has a military occupational specialty, training, or experience related to health care, is likely to be able to obtain such training in a short period of time (as determined by the Secretary concerned), or satisfies such other criteria for selection as the Secretary concerned may prescribe.

(2) For purposes of this section, a former member of the armed forces who did not meet the minimum educational qualification criterion set forth in paragraph (1)(B) for placement assistance before discharge or release from active duty shall be considered to be a member satisfying such educational qualification criterion upon satisfying that criterion within five years after discharge or release from active duty.

(3) A member who is discharged or released from service under other than honorable conditions shall not be eligible to participate in the program.

(c) SELECTION OF PARTICIPANTS.—(1) The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard, shall select members to participate in the program established under subsection (a) on the basis of applications submitted to the Secretary concerned not later than one year after the date of the discharge or release of the members from active duty or, in the case of an applicant becoming educationally qualified for teacher placement assistance in accordance with subsection (b)(2), not later than one year after the date on which the applicant becomes educationally qualified. An application shall be in such form and contain such information as the Secretaries may require.

(2) The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard, may not select a member to participate in the program unless the Secretary concerned has sufficient appropriations for the placement program available at the time of the selection to satisfy the obligations to be incurred by the United States under subsection (d) with respect to that member.

(3)(A) The Secretaries shall provide under the program for identifying, during each fiscal year in the period referred to in subsection (b)(1)(A), noncommissioned officers who, on or before the end of such fiscal year, will have completed 10 or more years of continuous active duty, who have the potential to perform competently in employment positions with health care providers, but who do not satisfy the minimum educational qualification criterion under subsection (b)(1)(B) for placement assistance.

(B) The Secretaries shall inform noncommissioned officers identified under subparagraph (A) of the opportunity to qualify in accordance with subsection (b)(2) for placement assistance under the program.

(d) GRANTS TO FACILITATE EMPLOYMENT.—(1) The Secretary of Defense and the Secretary of Homeland Security may enter into an agreement with a health care provider to assist eligible members selected under subsection (c) to obtain suitable employment with the health care provider. Under such an agreement, a health care provider shall agree to employ a participant in the program on a full-time basis for at least five years.

(2) Under an agreement referred to in paragraph (1), the Secretary concerned shall agree to pay to the health care provider involved an amount based upon the basic salary paid by the health care provider to the participant. The rate of payment by the Secretary concerned shall be as follows:

(A) For the first year of employment, 50 percent of the basic salary, except that the payment may not exceed $25,000.

(B) For the second year of employment, 40 percent of the basic salary, except that the payment may not exceed $10,000.

(C) For the third year of employment, 30 percent of the basic salary, except that the payment may not exceed $7,500.

(D) For the fourth year of employment, 20 percent of the basic salary, except that the payment may not exceed $5,000.

(E) For the fifth year of employment, 10 percent of the basic salary, except that the payment may not exceed $2,500.

(3) Payments required under paragraph (2) may be made by the Secretary concerned in such installments as the Secretary concerned may determine.

(4) If a participant who is placed under this program leaves the employment of the health care provider before the end of the five years of required employment service, the provider shall reimburse the Secretary concerned in an amount that bears the same ratio to the total amount already paid under the agreement as the unserved portion bears to the five years of required service.

(5) The Secretary concerned may not make a grant under this subsection to a health care provider if the Secretary concerned determines that the provider terminated the employment of another employee in order to fill the vacancy so created with a participant in this program.

(e) AGREEMENTS WITH STATES.—(1) In addition to the agreements referred to in subsection (d)(1), the Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard, may enter into an agreement directly with a State to allow the State to arrange the placement of participants in the program with health care providers. Paragraphs (2) through (5) of subsection (d) shall apply with respect to any placement made through such an agreement.

(2) The Secretary concerned may reserve up to 10 percent of the funds made available to carry out the program for a fiscal year for the placement of participants through agreements entered into under paragraph (1).

(f) DEFINITIONS.—In this section, the term ''State'' includes the District of Columbia, American Samoa, the Federated States of Micronesia, Guam, the Republic of the Marshall Is-

lands, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, Palau, and the Virgin Islands.

(Added Pub. L. 103–160, div. A, title XIII, § 1332(b), Nov. 30, 1993, 107 Stat. 1795; amended Pub. L. 103–337, div. A, title V, § 543(e), Oct. 5, 1994, 108 Stat. 2771; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Subsecs. (a), (c)(1), (2), (d)(1), (e)(1). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1994—Subsec. (a). Pub. L. 103–337, § 543(e)(1), inserted '', and the Secretary of Transportation with respect to the Coast Guard,'' after ''Secretary of Defense''.

Subsec. (b)(1). Pub. L. 103–337, § 543(e)(2), struck out ''by the Secretary of Defense'' after ''selection'' in introductory provisions and inserted ''concerned'' after ''Secretary'' in two places in subpar. (C).

Subsec. (c)(1). Pub. L. 103–337, § 543(e)(3), inserted '', and the Secretary of Transportation with respect to the Coast Guard,'' after ''Secretary of Defense'' and ''concerned'' after ''to the Secretary'' and substituted ''Secretaries may'' for ''Secretary may''.

Subsec. (c)(2). Pub. L. 103–337, § 543(e)(4), inserted ''of Defense, and the Secretary of Transportation with respect to the Coast Guard,'' after ''The Secretary'' and ''concerned'' after ''unless the Secretary''.

Subsec. (c)(3). Pub. L. 103–337, § 543(e)(5), substituted ''Secretaries'' for ''Secretary'' in subpars. (A) and (B).

Subsec. (d)(1). Pub. L. 103–337, § 543(e)(6)(A), inserted ''and the Secretary of Transportation'' after ''Secretary of Defense''.

Subsec. (d)(2) to (5). Pub. L. 103–337, § 543(e)(6)(B), inserted ''concerned'' after ''Secretary'' wherever appearing.

Subsec. (e)(1). Pub. L. 103–337, § 543(e)(7)(A), inserted '', and the Secretary of Transportation with respect to the Coast Guard,'' after ''the Secretary of Defense''.

Subsec. (e)(2). Pub. L. 103–337, § 543(e)(7)(B), inserted ''concerned'' after ''The Secretary''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

CHAPTER 59—SEPARATION

Sec.
1161. Commissioned officers: limitations on dismissal.
[1162, 1163. Repealed.]
1164. Warrant officers: separation for age.
1165. Regular warrant officers: separation during three-year probationary period.
1166. Regular warrant officers: elimination for unfitness or unsatisfactory performance.
1167. Members under confinement by sentence of court-martial: separation after six months confinement.
1168. Discharge or release from active duty: limitations.
1169. Regular enlisted members: limitations on discharge.
1170. Regular enlisted members: minority discharge.
1171. Regular enlisted members: early discharge.
1172. Enlisted members: during war or emergency; discharge.
1173. Enlisted members: discharge for hardship.
1174. Separation pay upon involuntary discharge or release from active duty.
1174a. Special separation benefits programs.
1175. Voluntary separation incentive.
1175a. Voluntary separation pay and benefits.
1176. Enlisted members: retention after completion of 18 or more, but less than 20, years of service.
1177. Members diagnosed with or reasonably asserting post-traumatic stress disorder or traumatic brain injury: medical examination required before administrative separation.
1178. System and procedures for tracking separations resulting from refusal to participate in anthrax vaccine immunization program.

AMENDMENTS

2009—Pub. L. 111–84, div. A, title V, § 512(a)(2), Oct. 28, 2009, 123 Stat. 2281, added item 1177.

2006—Pub. L. 109–163, div. A, title VI, § 643(a)(2), Jan. 6, 2006, 119 Stat. 3309, added item 1175a.

2000—Pub. L. 106–398, § 1 [[div. A], title VII, § 751(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–193, added item 1178.

1996—Pub. L. 104–134, title II, § 2707(a)(2), Apr. 26, 1996, 110 Stat. 1321–330, struck out item 1177 ''Members infected with HIV–1 virus: mandatory discharge or retirement''.

Pub. L. 104–106, div. A, title V, §§ 563(a)(1)(B), 567(a)(2), Feb. 10, 1996, 110 Stat. 325, 329, added item 1167 and substituted ''Members infected with HIV–1 virus: mandatory discharge or retirement'' for ''Members who are permanently nonworldwide assignable: mandatory discharge or retirement; counseling'' in item 1177.

1994—Pub. L. 103–337, div. A, title V, § 560(a)(2), title XVI, § 1671(b)(10), Oct. 5, 1994, 108 Stat. 2778, 3013, struck out items 1162 ''Reserves: discharge'' and 1163 ''Reserve components: members; limitations on separation'' and added item 1177.

1992—Pub. L. 102–484, div. A, title V, § 541(b), Oct. 23, 1992, 106 Stat. 2413, added item 1176.

1991—Pub. L. 102–190, div. A, title VI, §§ 661(a)(2), 662(a)(2), Dec. 5, 1991, 105 Stat. 1395, 1398, added items 1174a and 1175.

1980—Pub. L. 96–513, title V, § 501(15), Dec. 12, 1980, 94 Stat. 2908, struck out item 1167 ''Regular warrant officers: severance pay'' and added item 1174.

1973—Pub. L. 93–64, title I, § 102, July 9, 1973, 87 Stat. 147, added item 1173.

1968—Pub. L. 90–235, § 3(a)(1)(B), Jan. 2, 1968, 81 Stat. 757, added items 1169 to 1172.

1962—Pub. L. 87–651, title I, § 106(c), Sept. 7, 1962, 76 Stat. 508, added item 1168.

§ 1161. Commissioned officers: limitations on dismissal

(a) No commissioned officer may be dismissed from any armed force except—

(1) by sentence of a general court-martial;

(2) in commutation of a sentence of a general court-martial; or

(3) in time of war, by order of the President.

(b) The President may drop from the rolls of any armed force any commissioned officer (1) who has been absent without authority for at least three months, (2) who may be separated under section 1167 of this title by reason of a sentence to confinement adjudged by a court-martial, or (3) who is sentenced to confinement in a Federal or State penitentiary or correctional institution after having been found guilty of an offense by a court other than a court-martial or other military court, and whose sentence has become final.

(Aug. 10, 1956, ch. 1041, 70A Stat. 89; Pub. L. 104–106, div. A, title V, § 563(b)(1), Feb. 10, 1996, 110 Stat. 325; Pub. L. 104–201, div. A, title X, § 1074(a)(5), Sept. 23, 1996, 110 Stat. 2658.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1161(a)	50:739 (words before semicolon, less applicability to Navy and Marine Corps warrant officers).	May 5, 1950, ch. 169, § 10 (less applicability to Navy and Marine Corps warrant officers), 64 Stat. 146.
1161(b)	50:739 (less words before semicolon, less applicability to Navy and Marine Corps warrant officers).	

In subsections (a) and (b), the word ''commissioned'' is inserted since, for the Army and the Air Force, the term ''officer'' is intended to have the same meaning in 50:739 as it has in the Uniform Code of Military Justice (article 4). For Navy warrant officers see section 6408 of this title.

In subsection (b), the words ''from his place of duty'' are omitted as surplusage. The words ''at least'' are substituted for the words ''or more''. The words ''by a court other than a court-martial or other military court'' are substituted for the words ''by the civil authorities''.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–201 substituted ''section 1167'' for ''section 1178'' in par. (2).

Pub. L. 104–106 struck out ''or'' after ''three months,'', added par. (2), and redesignated former par. (2) as (3).

RESTORATION OF RETIRED PAY TO OFFICERS DROPPED FROM ROLLS AFTER DECEMBER 31, 1954 AND BEFORE AUGUST 25, 1958

Pub. L. 85–754, Aug. 25, 1958, 72 Stat. 847, provided: ''That notwithstanding any other provisions of law, a former retired officer dropped from the rolls under section 10 of the Act of May 5, 1950, ch. 169 (64 Stat. 146), or section 1161 of title 10, United States Code, after December 31, 1954, and before the date of enactment of this Act [Aug. 25, 1958] shall, for the purposes of entitlement to retired or retirement pay after the date of enactment of this Act, be treated as if he had not been dropped from the rolls. Such an officer is also entitled to retroactive retired or retirement pay for the period beginning on the date he was dropped from the rolls and ending on the date of enactment of this Act, as if he had not been dropped from the rolls.

''SEC. 2. A former retired officer covered by this Act is subject to the penal, prohibitory, and restrictive provisions of law applicable to the pay and civil employment of retired officers of the Armed Forces and is not entitled to any other benefit provided by law or regulation for retired officers of the Armed Forces. After the date of enactment of this Act [Aug. 25, 1958], such a former retired officer may, in the discretion of the President, have his entitlement to retired or retirement pay under this Act terminated for any reason for which any retired officer may be dismissed from, or dropped from the rolls of, any Armed Force.

''SEC. 3. Appropriations available for the payment of retired pay to members of the Armed Forces are available for payments under this Act.''

[§§ 1162, 1163. Repealed. Pub. L. 103–337, div. A, title XVI, § 1662(i)(2), Oct. 5, 1994, 108 Stat. 2998]

Section 1162, acts Aug. 10, 1956, ch. 1041, 70A Stat. 89; Sept. 2, 1958, Pub. L. 85–861, § 1(27), 72 Stat. 1450, related to discharge of Reserves. See sections 12681 and 12682 of this title.

Section 1163, acts Aug. 10, 1956, ch. 1041, 70A Stat. 89; Sept. 7, 1962, Pub. L. 87–651, title I, § 106(a), 76 Stat. 508; Dec. 30, 1987, Pub. L. 100–224, § 4, 101 Stat. 1538, related to limitations on separation of Reserve members from their reserve components. See sections 12683 to 12686 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

§ 1164. Warrant officers: separation for age

(a) Unless retired or separated on or before the expiration of that period, each warrant officer shall be retired or separated from his armed force not later than 60 days after the date when he becomes 62 years of age, except as provided by section 8301 of title 5.

(b) The Secretary concerned may defer, for not more than four months, the separation under subsection (a) of any warrant officer if, because of unavoidable circumstances, evaluation of his physical condition and determination of his entitlement to retirement or separation for physical disability require hospitalization or medical observation that cannot be completed before the date when he would otherwise be required to be retired or separated under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 90; Pub. L. 89–718, § 3, Nov. 2, 1966, 80 Stat. 1115; Pub. L. 90–130, § 1(5), Nov. 8, 1967, 81 Stat. 374; Pub. L. 96–513, title V, § 511(41), Dec. 12, 1980, 94 Stat. 2923; Pub. L. 97–295, § 1(16), Oct. 12, 1982, 96 Stat. 1290.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1164(a)	10:600*l*(c) (as applicable to men). 10:600r(c) (as applicable to 10:600*l*(c)). 34:430(c) (as applicable to men). 34:430c (as applicable to 34:430(c)).	May 29, 1954, ch. 249, §§ 14(c), (e) (as applicable to (c)), 21(c) (as applicable to § 14(c)), 68 Stat. 163, 168.
1164(b)	10:600*l*(c) (less applicability to men). 34:430(c) (less applicability to men).	
1164(c)	10:600*l*(e) (as applicable to 10:600*l*(c)). 34:430(e) (as applicable to 34:430(c)).	

In subsections (a) and (b), the words ''Except as provided in clause (3) of subsection (b) of this section and in subsection (g) of this section'' are omitted as covered by section 46 of the bill and section 14(g) of the source statute. The words ''Unless retired or separated on or before the expiration of that period'' are inserted for clarity. The words ''becomes 62[55] years of age'' are substituted for the words ''attains the age of sixty-two * * * or the age of fifty-five''.

In subsection (c), the words ''The Secretary concerned may defer'' are substituted for the words ''may, in the discretion of the Secretary, be deferred''. The words ''not more than'' are substituted for the words ''a period not to exceed''. The words ''determination of his'' are inserted for clarity. The words ''he would otherwise be required to be separated under this section'' are substituted for the words ''separation would otherwise be required''. The words ''proper'', ''which is required'', ''possible'', and ''a period of'' are omitted as surplusage.

AMENDMENTS

1982—Pub. L. 97–295, § 1(16), substituted a colon for a semicolon after ''officers'' in section catchline.

1980—Subsec. (b). Pub. L. 96–513 redesignated former subsec. (c) as (b).

Subsec. (c). Pub. L. 96–513 redesignated former subsec. (c) as (b).

1967—Subsec. (a). Pub. L. 90–130 struck out ''male'' before ''warrant officer''.

Subsec. (b). Pub. L. 90–130 struck out subsec. (b) which made special provisions for female warrant officers.

Subsec. (c). Pub. L. 90–130 struck out reference to subsec. (b) of this section.

1966—Pub. L. 89–718 substituted ''8301'' for ''47a'' wherever appearing.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

DEFERMENT OF SEPARATION WITH COMPLETION OF 20 YEARS OF SERVICE OR AT AGE 60

Section 46 of act Aug. 10, 1956, provided that:

''(a) The separation of any person who, on November 1, 1954, was a male permanent warrant officer of a regular component of an armed force, and who upon attaining the age of 62 has completed less than 20 years of active service that could be credited to him under section 511 of the Career Compensation Act of 1949 (37 U.S.C. 311) [act Oct. 12, 1949, ch. 681, title V, §511, 63 Stat. 829, formerly set out as a note under section 580 of this title] may be deferred by the Secretary concerned until he completes 20 years of that service, but not later than that date which is 60 days after the date on which he attains the age of 64.

''(b) The separation of any person who, on November 1, 1954, was a female permanent warrant officer of a regular component of an armed force, and who upon attaining the age of 55 has completed less than 20 years of active service that could be credited to her under section 511 of the Career Compensation Act of 1949 (37 U.S.C. 311) [act Oct. 12, 1949, ch. 681, title V, §511, 63 Stat. 829, formerly set out as a note under section 580 of this title] may be deferred by the Secretary concerned until she completes 20 years of that service, but not later than that date which is 60 days after the date on which she attains the age of 60.''

§1165. Regular warrant officers: separation during three-year probationary period

The Secretary concerned may terminate the regular appointment of any permanent regular warrant officer at any time within three years after the date when the officer accepted his original permanent appointment as a warrant officer in that component. A warrant officer who is separated under this section is entitled, if eligible therefor, to separation pay under section 1174 or he may be enlisted under section 515 of this title. If such a warrant officer is enlisted under section 515 of this title, he is not entitled to separation pay.

(Aug. 10, 1956, ch. 1041, 70A Stat. 90; Pub. L. 96–513, title I, §109(b)(1), Dec. 12, 1980, 94 Stat. 2870.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1165	10:600d (less last 36 words of last sentence). 34:135d (less last 36 words of last sentence).	May 29, 1954, ch. 249, §6 (less last 36 words of last sentence), 68 Stat. 159.

The words ''in his discretion'' are omitted as surplusage. The last 10 words of the last sentence are inserted for clarity.

AMENDMENTS

1980—Pub. L. 96–513 authorized entitlement, if the regular warrant officer is eligible therefor, to separation pay under section 1174.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

§1166. Regular warrant officers: elimination for unfitness or unsatisfactory performance

(a) Under such regulations as the Secretary concerned may prescribe, and subject to the recommendations of a board of officers or a selection board under section 576 of this title, a permanent regular warrant officer who is eligible for retirement under any provision of law shall be retired under that law if his records and reports establish his unfitness or unsatisfactory performance of duty. If he is not eligible for retirement under any provision of law, but since the date when he accepted his original permanent appointment as a regular warrant officer he has at least three years of active service that could be credited to him under section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114), he shall, if eligible therefor, be separated with separation pay under section 1174 of this title or severance pay under section 286a of title 14, as appropriate. However, instead of being paid separation pay or severance pay he may be enlisted under section 515 of this title. If he does not have three years of such service, he shall be separated under section 1165 of this title.

(b) The Secretary concerned may defer, for not more than four months, the retirement or separation under subsection (a) of any warrant officer if, because of unavoidable circumstances, evaluation of his physical condition and determination of his entitlement to retirement or separation for physical disability require hospitalization or medical observation that cannot be completed before the date when he would otherwise be required to be retired or separated under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 90; Pub. L. 87–649, §6(f)(3), Sept. 7, 1962, 76 Stat. 494; Pub. L. 96–513, title I, §109(b)(2), Dec. 12, 1980, 94 Stat. 2870; Pub. L. 102–190, div. A, title XI, §1131(5), Dec. 5, 1991, 105 Stat. 1506.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1166(a)	10:600m (less last 21 words of 3d sentence). 10:600(d) (as applicable to 10:600m). 34:430a (less last 21 words of 3d sentence). 34:135(d) (as applicable to 34:430a).	May 29, 1954, ch. 249, §§2(d) (as applicable to §15), 14(e) (as applicable to §15), 15 (less last 21 words of 3d sentence), 68 Stat. 157, 163, 164.
1166(b)	10:600*l*(e) (as applicable to 10:600m). 34:430(e) (as applicable to 34:430a).	

In subsection (a), the words ''he shall be separated'' are substituted for the words ''his appointment as a permanent warrant officer of the Regular service and any other appointment which he may hold in any warrant officer or commissioned officer grade shall be terminated'' and ''his appointment shall be terminated''. The words ''at least three'' are substituted for the words ''more than three'' for clarity.

In subsection (b), the words ''The Secretary concerned may defer'' are substituted for the words ''may,

in the discretion of the Secretary, be deferred''. The words ''not more than'' are substituted for the words ''a period not to exceed''. The words ''he would otherwise be required to be retired or separated under this section'' are substituted for the words ''retirement * * * would otherwise be required''. The words ''determination of his'' are inserted for clarity. The words ''which is required'', ''possible'', ''proper'', and ''a period of'' are omitted as surplusage.

REFERENCES IN TEXT

Section 511 of the Career Compensation Act of 1949, referred to in subsec. (a), is section 511 of act Oct. 12, 1949, ch. 681, which was formerly set out as a note under section 580 of this title.

AMENDMENTS

1991—Subsec. (a). Pub. L. 102–190 substituted ''section 576'' for ''section 560''.

1980—Subsec. (a). Pub. L. 96–513 provided that officers discharged under this section are entitled, if eligible therefor, to separation pay under section 1174 or severance pay under section 286a of title 14.

1962—Subsec. (a). Pub. L. 87–649 substituted ''section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114)'' for ''section 311 of title 37.''

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.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–649 effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

§ 1167. Members under confinement by sentence of court-martial: separation after six months confinement

Except as otherwise provided in regulations prescribed by the Secretary of Defense, a member sentenced by a court-martial to a period of confinement for more than six months may be separated from the member's armed force at any time after the sentence to confinement has become final under chapter 47 of this title and the member has served in confinement for a period of six months.

(Added Pub. L. 104–106, div. A, title V, § 563(a)(1)(A), Feb. 10, 1996, 110 Stat. 325; amended Pub. L. 104–201, div. A, title X, § 1074(a)(6), Sept. 23, 1996, 110 Stat. 2659.)

PRIOR PROVISIONS

A prior section 1167, acts Aug. 10, 1956, ch. 1041, 70A Stat. 91; June 28, 1962, Pub. L. 87–509, § 4(a), 76 Stat. 121; Sept. 7, 1962, Pub. L. 87–649, § 6(f)(3), 76 Stat. 494, related to severance pay of regular warrant officers, prior to repeal by Pub. L. 96–513, title I, § 109(b)(3), title VII, § 701, Dec. 12, 1980, 94 Stat. 2870, 2955, effective Sept. 15, 1981.

AMENDMENTS

1996—Pub. L. 104–201 substituted ''member has served'' for ''person has served''.

§ 1168. Discharge or release from active duty: limitations

(a) A member of an armed force may not be discharged or released from active duty until his discharge certificate or certificate of release from active duty, respectively, and his final pay or a substantial part of that pay, are ready for delivery to him or his next of kin or legal representative.

(b) This section does not prevent the immediate transfer of a member to a facility of the Department of Veterans Affairs for necessary hospital care.

(Added Pub. L. 87–651, title I, § 106(b), Sept. 7, 1962, 76 Stat. 508; amended Pub. L. 101–189, div. A, title XVI, § 1621(a)(4), Nov. 29, 1989, 103 Stat. 1603.)

HISTORICAL AND REVISION NOTES

The new section 1168 of title 10 is transferred from section 1218(a) and (c) of title 10 as being more appropriate in the chapter on separation.

AMENDMENTS

1989—Subsec. (b). Pub. L. 101–189 substituted ''facility of the Department of Veterans Affairs'' for ''Veterans' Administration facility''.

MODIFICATION OF CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY (DD FORM 214)

Pub. L. 110–181, div. A, title V, § 596, Jan. 28, 2008, 122 Stat. 139, provided that: ''The Secretary of Defense, in consultation with the Secretary of Veterans Affairs, shall modify the Certificate of Release or Discharge from Active Duty (DD Form 214) in order to permit a member of the Armed Forces, upon discharge or release from active duty in the Armed Forces, to elect that the DD–214 issued with regard to the member be forwarded to the following:

''(1) The Central Office of the Department of Veterans Affairs in the District of Columbia.

''(2) The appropriate office of the Department of Veterans Affairs for the State or other locality in which the member will first reside after such discharge or release.''

§ 1169. Regular enlisted members: limitations on discharge

No regular enlisted member of an armed force may be discharged before his term of service expires, except—

(1) as prescribed by the Secretary concerned;

(2) by sentence of a general or special court martial; or

(3) as otherwise provided by law.

(Added Pub. L. 90–235, § 3(a)(1)(A), Jan. 2, 1968, 81 Stat. 757.)

§ 1170. Regular enlisted members: minority discharge

Upon application by the parents or guardian of a regular enlisted member of an armed force to the Secretary concerned within 90 days after the member's enlistment, the member shall be discharged for his own convenience, with the pay and form of discharge certificate to which his service entitles him, if—

(1) there is evidence satisfactory to the Secretary concerned that the member is under eighteen years of age; and

(2) the member enlisted without the written consent of his parent or guardian.

(Added Pub. L. 90–235, § 3(a)(1)(A), Jan. 2, 1968, 81 Stat. 757.)

§ 1171. Regular enlisted members: early discharge

Under regulations prescribed by the Secretary concerned and approved by the President, any regular enlisted member of an armed force may be discharged within three months before the expiration of the term of his enlistment or extended enlistment. A discharge under this section does not affect any right, privilege, or benefit that a member would have had if he completed his enlistment or extended enlistment, except that the member is not entitled to pay and allowances for the period not served.

(Added Pub. L. 90–235, § 3(a)(1)(A), Jan. 2, 1968, 81 Stat. 757.)

EX. ORD. NO. 11498. DELEGATION OF AUTHORITY TO SECRETARY OF DEFENSE

Ex. Ord. No. 11498, Dec. 1, 1969, 34 F.R. 19125, provided: By virtue of the authority vested in me by section 301 of title 3 of the United States Code, and as President of the United States, it is ordered that the Secretary of Defense is hereby designated and empowered to approve regulations issued by the Secretaries concerned under section 1171 of title 10, United States Code, effective January 2, 1968, which relate to the early discharge of regular enlisted members of the armed forces.

RICHARD NIXON.

§ 1172. Enlisted members: during war or emergency; discharge

A person enlisted under section 518 of this title may be discharged at any time by the President, or otherwise according to law.

(Added Pub. L. 90–235, § 3(a)(1)(A), Jan. 2, 1968, 81 Stat. 757.)

§ 1173. Enlisted members: discharge for hardship

Under regulations prescribed by the Secretary concerned, a regular enlisted member of an armed force who has dependents may be discharged for hardship.

(Added Pub. L. 93–64, title I, § 102, July 9, 1973, 87 Stat. 147.)

EFFECTIVE DATE

Section effective July 1, 1973, see section 206 of Pub. L. 93–64, set out as a note under section 401 of Title 37, Pay and Allowances of the Uniformed Services.

§ 1174. Separation pay upon involuntary discharge or release from active duty

(a) REGULAR OFFICERS.—(1) A regular officer who is discharged under chapter 36 of this title (except under section 630(1)(A) or 643 of such chapter) or under section 580 or 6383 of this title and who has completed six or more, but less than twenty, years of active service immediately before that discharge is entitled to separation pay computed under subsection (d)(1).

(2) A regular commissioned officer of the Army, Navy, Air Force, or Marine Corps who is discharged under section 630(1)(A), 643, or 1186 of this title, and a regular warrant officer of the Army, Navy, Air Force, or Marine Corps who is separated under section 1165 or 1166 of this title, who has completed six or more, but less than twenty, years of active service immediately before that discharge or separation is entitled to separation pay computed under subsection (d)(1) or (d)(2), as determined by the Secretary of the military department concerned, unless the Secretary concerned determines that the conditions under which the officer is discharged or separated do not warrant payment of such pay.

(3) Notwithstanding paragraphs (1) and (2), an officer discharged under any provision of chapter 36 of this title for twice failing of selection for promotion to the next higher grade is not entitled to separation pay under this section if either (or both) of those failures of selection for promotion was by the action of a selection board to which the officer submitted a request in writing 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.

(4) Notwithstanding paragraphs (1) and (2), an officer who is subject to discharge under any provision of chapter 36 of this title or under section 580 or 6383 of this title by reason of having twice failed of selection for promotion to the next higher grade is not entitled to separation pay under this section if that officer, after such second failure of selection for promotion, is selected for, and declines, continuation on active duty for a period that is equal to or more than the amount of service required to qualify the officer for retirement.

(b) REGULAR ENLISTED MEMBERS.—(1) A regular enlisted member of an armed force who is discharged involuntarily or as the result of the denial of the reenlistment of the member and who has completed six or more, but less than 20, years of active service immediately before that discharge is entitled to separation pay computed under subsection (d) unless the Secretary concerned determines that the conditions under which the member is discharged do not warrant payment of such pay.

(2) Separation pay of an enlisted member shall be computed under paragraph (1) of subsection (d), except that such pay shall be computed under paragraph (2) of such subsection in the case of a member who is discharged under criteria prescribed by the Secretary of Defense.

(c) OTHER MEMBERS.—(1) Except as provided in paragraphs (2) and (3), a member of an armed force other than a regular member who is discharged or released from active duty and who has completed six or more, but fewer than 20, years of active service immediately before that discharge or release is entitled to separation pay computed under subsection (d)(1) or (d)(2), as determined by the Secretary concerned, if—

(A) the member's discharge or release from active duty is involuntary; or

(B) the member was not accepted for an additional tour of active duty for which he volunteered.

(2) If the Secretary concerned determines that the conditions under which a member described in paragraph (1) is discharged or separated do not warrant separation pay under this section, that member is not entitled to that pay.

(3) A member described in paragraph (1) who was not on the active-duty list when discharged or separated is not entitled to separation pay

under this section unless such member had completed at least six years of continuous active duty immediately before such discharge or release. For purposes of this paragraph, a period of active duty is continuous if it is not interrupted by a break in service of more than 30 days.

(4) In the case of an officer who is subject to discharge or release from active duty under a law or regulation requiring that an officer who has failed of selection for promotion to the next higher grade for the second time be discharged or released from active duty and who, after such second failure of selection for promotion, is selected for, and declines, continuation on active duty—

(A) if the period of time for which the officer was selected for continuation on active duty is less than the amount of service that would be required to qualify the officer for retirement, the officer's discharge or release from active duty shall be considered to be involuntary for purposes of paragraph (1)(A); and

(B) if the period of time for which the officer was selected for continuation on active duty is equal to or more than the amount of service that would be required to qualify the officer for retirement, the officer's discharge or release from active duty shall not be considered to be involuntary for the purposes of paragraph (1)(A).

(d) AMOUNT OF SEPARATION PAY.—The amount of separation pay which may be paid to a member under this section is—

(1) 10 percent of the product of (A) his years of active service, and (B) 12 times the monthly basic pay to which he was entitled at the time of his discharge or release from active duty; or

(2) one-half of the amount computed under clause (1).

(e) REQUIREMENT FOR SERVICE IN READY RESERVE; EXCEPTIONS TO ELIGIBILITY.—(1)(A) As a condition of receiving separation pay under this section, a person otherwise eligible for that pay shall be required to enter into a written agreement with the Secretary concerned to serve in the Ready Reserve of a reserve component for a period of not less than three years following the person's discharge or release from active duty. If the person has a service obligation under section 651 of this title or under any other provision of law that is not completed at the time the person is discharged or released from active duty, the three-year obligation under this subsection shall begin on the day after the date on which the person completes the person's obligation under such section or other provision of law.

(B) Each person who enters into an agreement referred to in subparagraph (A) who is not already a Reserve of an armed force and who is qualified shall, upon such person's discharge or release from active duty, be enlisted or appointed, as appropriate, as a Reserve and be transferred to a reserve component.

(2) A member who is discharged or released from active duty is not eligible for separation pay under this section if the member—

(A) is discharged or released from active duty at his request;

(B) is discharged or released from active duty during an initial term of enlistment or an initial period of obligated service, unless the member is an officer discharged or released under the authority of section 647 of this title;

(C) is released from active duty for training; or

(D) upon discharge or release from active duty, is immediately eligible for retired or retainer pay based on his military service.

(f) COUNTING FRACTIONAL YEARS OF SERVICE.—In determining a member's years of active service for the purpose of computing separation pay under this section, each full month of service that is in addition to the number of full years of service creditable to the member is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded.

(g) COORDINATION WITH OTHER SEPARATION OR SEVERANCE PAY BENEFITS.—A period for which a member has previously received separation pay under this section or severance pay or readjustment pay under any other provision of law based on service in the armed forces may not be included in determining the years of service that may be counted in computing the separation pay of the member under this section.

(h) COORDINATION WITH RETIRED OR RETAINER PAY AND DISABILITY COMPENSATION.—(1) A member who has received separation pay under this section, or separation pay, severance pay, or readjustment pay under any other provision of law, based on service in the armed forces, and who later qualifies for retired or retainer pay under this title or title 14 shall have deducted from each payment of such retired or retainer pay an amount, in such schedule of monthly installments as the Secretary of Defense shall specify, taking into account the financial ability of the member to pay and avoiding the imposition of undue financial hardship on the member and member's dependents, until the total amount deducted is equal to the total amount of separation pay, severance pay, and readjustment pay so paid.

(2) A member who has received separation pay under this section, or severance pay or readjustment pay under any other provision of law, based on service in the armed forces shall not be deprived, by reason of his receipt of such separation pay, severance pay, or readjustment pay, of any disability compensation to which he is entitled under the laws administered by the Department of Veterans Affairs, but there shall be deducted from that disability compensation an amount equal to the total amount of separation pay, severance pay, and readjustment pay received, less the amount of Federal income tax withheld from such pay (such withholding being at the flat withholding rate for Federal income tax withholding, as in effect pursuant to regulations prescribed under chapter 24 of the Internal Revenue Code of 1986). Notwithstanding the preceding sentence, no deduction may be made from disability compensation for the amount of any separation pay, severance pay, or readjustment pay received because of an earlier discharge or release from a period of active duty if the disability which is the basis for that disability compensation was incurred or aggravated during a later period of active duty.

(i) SPECIAL RULE FOR MEMBERS RECEIVING SOLE SURVIVORSHIP DISCHARGE.—(1) A member

of the armed forces who receives a sole survivorship discharge shall be entitled to separation pay under this section even though the member has completed less than six years of active service immediately before that discharge. Subsection (e) shall not apply to a member who receives a sole survivorship discharge.

(2) The amount of the separation pay to be paid to a member pursuant to this subsection shall be based on the years of active service actually completed by the member before the member's sole survivorship discharge.

(3) In this subsection, the term ''sole survivorship discharge'' means the separation of a member from the armed forces, at the request of the member, pursuant to the Department of Defense policy permitting the early separation of a member who is the only surviving child in a family in which—

(A) the father or mother or one or more siblings—

(i) served in the armed forces; and

(ii) was killed, died as a result of wounds, accident, or disease, is in a captured or missing in action status, or is permanently 100 percent disabled or hospitalized on a continuing basis (and is not employed gainfully because of the disability or hospitalization); and

(B) the death, status, or disability did not result from the intentional misconduct or willful neglect of the parent or sibling and was not incurred during a period of unauthorized absence.

(j) REGULATIONS; CREDITING OF OTHER COMMISSIONED SERVICE.—(1) The Secretary of Defense shall prescribe regulations, which shall be uniform for the Army, Navy, Air Force, and Marine Corps, for the administration of this section.

(2) Active commissioned service in the National Oceanic and Atmospheric Administration or the Public Health Service shall be credited as active service in the armed forces for the purposes of this section.

(Added Pub. L. 96–513, title I, §109(c), Dec. 12, 1980, 94 Stat. 2870; amended Pub. L. 97–22, §10(b)(10)(A), July 10, 1981, 95 Stat. 137; Pub. L. 98–94, title IX, §§911(a), (b), 923(b), title X, §1007(c)(2), Sept. 24, 1983, 97 Stat. 639, 640, 643, 662; Pub. L. 98–498, title III, §320(a)(2), Oct. 19, 1984, 98 Stat. 2308; Pub. L. 101–189, div. A, title XVI, §1621(a)(1), Nov. 29, 1989, 103 Stat. 1602; Pub. L. 101–510, div. A, title V, §501(a)–(d), (g), (h), Nov. 5, 1990, 104 Stat. 1549–1551; Pub. L. 102–190, div. A, title XI, §1131(6), Dec. 5, 1991, 105 Stat. 1506; Pub. L. 103–160, div. A, title V, §501(a), Nov. 30, 1993, 107 Stat. 1644; Pub. L. 103–337, div. A, title V, §560(c), Oct. 5, 1994, 108 Stat. 2778; Pub. L. 104–201, div. A, title VI, §653(a), Sept. 23, 1996, 110 Stat. 2583; Pub. L. 105–85, div. A, title X, §1073(a)(22), Nov. 18, 1997, 111 Stat. 1901; Pub. L. 105–261, div. A, title V, §502(a), Oct. 17, 1998, 112 Stat. 2003; Pub. L. 106–398, §1 [[div. A], title V, §508(a), (b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–107; Pub. L. 108–375, div. A, title V, §501(c)(2), Oct. 28, 2004, 118 Stat. 1874; Pub. L. 110–317, §3, Aug. 29, 2008, 122 Stat. 3527; Pub. L. 111–32, title III, §318(a), June 24, 2009, 123 Stat. 1873; Pub. L. 111–383, div. A, title X, §1075(b)(17), Jan. 7, 2011, 124 Stat. 4370.)

REFERENCES IN TEXT

Chapter 24 of the Internal Revenue Code of 1986, referred to in subsec. (h)(2), is classified generally to chapter 24 (§3401 et seq.) of Title 26, Internal Revenue Code.

AMENDMENTS

2011—Subsec. (i). Pub. L. 111–383 substituted ''armed forces'' for ''Armed Forces'' wherever appearing.

2009—Subsec. (h)(1). Pub. L. 111–32 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''A member who has received separation pay under this section, or separation pay, severance pay, or readjustment pay under any other provision of law, based on service in the armed forces, and who later qualifies for retired or retainer pay under this title or title 14 shall have deducted from each payment of such retired or retainer pay so much of such pay as is based on the service for which he received separation pay under this section or separation pay, severance pay, or readjustment pay under any other provision of law until the total amount deducted is equal to the total amount of separation pay, severance pay, and readjustment pay received.''

2008—Subsecs. (i), (j). Pub. L. 110–317 added subsec. (i) and redesignated former subsec. (i) as (j).

2004—Subsec. (e)(2)(B). Pub. L. 108–375 inserted '', unless the member is an officer discharged or released under the authority of section 647 of this title'' after ''obligated service''.

2000—Subsec. (a)(4). Pub. L. 106–398, §1 [[div. A], title V, §508(a)], added par. (4).

Subsec. (c)(4). Pub. L. 106–398, §1 [[div. A], title V, §508(b)], added par. (4).

1998—Subsec. (a)(3). Pub. L. 105–261 added par. (3).

1997—Subsec. (a)(1). Pub. L. 105–85 struck out '', 1177,'' before ''or 6383 of this title''.

1996—Subsec. (h)(2). Pub. L. 104–201 inserted '', less the amount of Federal income tax withheld from such pay (such withholding being at the flat withholding rate for Federal income tax withholding, as in effect pursuant to regulations prescribed under chapter 24 of the Internal Revenue Code of 1986)'' before period at end of first sentence.

1994—Subsec. (a)(1). Pub. L. 103–337 inserted '', 1177,'' after ''section 580''.

1993—Subsec. (a)(1). Pub. L. 103–160 substituted ''six'' for ''five''.

1991—Subsec. (a)(1). Pub. L. 102–190 substituted ''section 580'' for ''section 564''.

1990—Subsec. (a). Pub. L. 101–510, §501(a)(1), inserted heading.

Subsec. (a)(1). Pub. L. 101–510, §501(g)(1), substituted ''or under section 564 or 6383 of this title'' for '', under section 564 or 6383 of this title, or under section 603 or 604 of the Defense Officer Personnel Management Act'' and struck out ''or release'' after ''that discharge''.

Subsec. (a)(2). Pub. L. 101–510, §501(b)(1), substituted ''six or more'' for ''five or more''.

Pub. L. 101–510, §501(a)(2), redesignated subsec. (b) as subsec. (a)(2).

Subsec. (b). Pub. L. 101–510, §501(a)(3), added subsec. (b). Former subsec. (b) redesignated (a)(2).

Subsec. (c). Pub. L. 101–510, §501(h)(1), inserted heading.

Subsec. (c)(1). Pub. L. 101–510, §501(g)(2), struck out ''after September 14, 1981,'' after ''member who'' in introductory provisions.

Pub. L. 101–510, §501(b)(1), substituted ''six or more'' for ''five or more'' in introductory provisions.

Subsec. (c)(3). Pub. L. 101–510, §501(b)(2), substituted ''at least six years'' for ''at least five years''.

Subsec. (d). Pub. L. 101–510, §501(h)(2), inserted heading.

Subsec. (d)(1). Pub. L. 101–510, §501(c)(1)(A), struck out ''or $30,000, whichever is less'' after ''active duty''.

Subsec. (d)(2). Pub. L. 101–510, §501(c)(1)(B), struck out '', but in no event more than $15,000'' after ''under clause (1)''.

Subsec. (e). Pub. L. 101–510, § 501(d), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''A member who—

''(1) is discharged or released from active duty at his request;

''(2) is released from active duty for training; or

''(3) upon discharge or release from active duty, is immediately eligible for retired or retainer pay based on his military service;

is not eligible for separation pay under this section.''

Subsec. (f). Pub. L. 101–510, § 501(h)(3), inserted heading.

Subsec. (g). Pub. L. 101–510, § 501(h)(4), inserted heading.

Pub. L. 101–510, § 501(c)(2), struck out ''(1)'' after ''(g)'' and struck out par. (2) which read as follows: ''The total amount that a member may receive in separation pay under this section and severance pay and readjustment pay under any other provision of law, other than section 1212 of this title, based on service in the armed forces may not exceed $30,000.''

Subsec. (h). Pub. L. 101–510, § 501(h)(5), inserted heading.

Subsec. (i). Pub. L. 101–510, § 501(h)(6), inserted heading.

1989—Subsec. (h)(2). Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1984—Subsec. (h)(1). Pub. L. 98–498 substituted ''separation pay, severance pay,'' for ''severance pay'' before ''or readjustment pay'' in two places.

1983—Subsec. (c). Pub. L. 98–94, § 911(a), amended subsec. (c) generally, designating existing provisions as par. (1) and existing pars. (1) and (2) as subpars. (A) and (B), respectively, and in provisions preceding subpar. (A) substituted ''Except as provided in paragraphs (2) and (3), a member'' for ''A member'' and ''fewer than 20, years of active service immediately before that discharge or release is entitled to separation pay'' for ''less than twenty, years of active service immediately before that discharge or release is entitled, unless the Secretary concerned determines that the conditions under which the member is discharged or separated do not warrant such pay, to separation pay'', and added pars. (2) and (3).

Subsec. (f). Pub. L. 98–94, § 923(b), amended subsec. (f) generally, substituting ''each full month of service that is in addition to the number of full years of service creditable to the member is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded'' for ''a part of a year that is six months or more is counted as a whole year and a part of a year that is less than six months is disregarded''.

Subsec. (g)(2). Pub. L. 98–94, § 911(b), inserted '', other than section 1212 of this title,'' after ''any other provision of law''.

Subsec. (i). Pub. L. 98–94, § 1007(c)(2), designated existing provisions as par. (1) and added par. (2).

1981—Subsec. (c). Pub. L. 97–22 substituted ''after September 14, 1981,'' for ''on or after the effective date of the Defense Officer Personnel Management Act''.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–32, title III, § 318(c), June 24, 2009, 123 Stat. 1874, provided that: ''The amendments made by this section [amending this section and section 1175 of this title] shall apply to any repayments of separation pay, severance pay, readjustment pay, special separation benefit, or voluntary separation incentive, that occur on or after the date of enactment [June 24, 2009], including any ongoing repayment actions that were initiated prior to this amendment.''

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–317 applicable with respect to any sole survivorship discharge granted after Sept. 11, 2001, see section 10 of Pub. L. 110–317, set out as a note under section 2108 of Title 5, Government Organization and Employees.

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 2000 AMENDMENT

Pub. L. 106–398, § 1 [[div. A], title V, § 508(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–107, provided that: ''Paragraph (4) of section 1174(a) of title 10, United States Code, as added by subsection (a), and paragraph (4) of section 1174(c) of such title, as added by subsection (b), shall apply with respect to any offer of selective continuation on active duty that is declined on or after the date of the enactment of this Act [Oct. 30, 2000].''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–261 applicable with respect to selection boards convened under section 611(a) of this title on or after Oct. 17, 1998, see section 502(c) of Pub. L. 105–261, set out as a note under section 617 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 105–178, title VIII, § 8208, June 9, 1998, 112 Stat. 495, provided that: ''The amendment made by section 653 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 110 Stat. 2583) to subsection (h)(2) of section 1174 of title 10, United States Code, shall apply to any payment of separation pay under the special separation benefits program under section 1174a of that title that was made during the period beginning on December 5, 1991, and ending on September 30, 1996.''

Section 653(b) of Pub. L. 104–201 provided that: ''The amendments made by this section [amending this section] shall take effect on October 1, 1996, and shall apply to payments of separation pay, severance pay, or readjustment pay that are made after September 30, 1996.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 501(b) of Pub. L. 103–160 provided that:

''(1) Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply with respect to any regular officer who is discharged after the date of the enactment of this Act [Nov. 30, 1993].

''(2) The amendment made by subsection (a) shall not apply with respect to an officer who on the date of the enactment of this Act has five or more, but less than six, years of active service in the Armed Forces.''

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.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 501(e) of Pub. L. 101–510 provided that:

''(1) Except as provided in paragraph (2), subsection (b) of section 1174 of title 10, United States Code, as added by subsection (a), and the amendments made by subsections (b), (c), and (d) [amending this section] shall apply with respect to a member of the Armed Forces who is discharged, or released from active duty, after the date of the enactment of this Act [Nov. 5, 1990].

''(2) The amendments made by subsection (b) [amending this section] shall not apply in the case of a member (other than a regular enlisted member) of the Armed Forces who (A) is serving on active duty on the date of the enactment of this Act, (B) is discharged, or released from active duty, after that date; and (C) on that date has five or more, but less than six, years of active service in the Armed Forces.''

EFFECTIVE DATE OF 1983 AMENDMENT

Section 911(c) of Pub. L. 98–94 provided that: ''The amendments made by this section [amending this section] shall take effect on October 1, 1983.''

Section 923(g) of Pub. L. 98–94 provided that: ''The amendments made by this section [amending this section and sections 1401, 1402, 1402a, 3991, 3992, 6151, 6328, 6330, 6404, 8991, and 8992 of this title, section 423 of Title 14, Coast Guard, section 853*o* of Title 33, Navigation and Navigable Waters, and section 212 of Title 42, The Public Health and Welfare] shall apply with respect to (1) the computation of retired or retainer pay of any individual who becomes entitled to that pay after September 30, 1983, and (2) the recomputation of retired pay under section 1402, 1402a, 3992, or 8992 of title 10, United States Code, of any individual who after September 30, 1983, becomes entitled to recompute retired pay under any such section.''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 10(b) of Pub. L. 97–22 provided that the amendment made by that section is effective Sept. 15, 1981.

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section 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.

§1174a. Special separation benefits programs

(a) REQUIREMENT FOR PROGRAMS.—The Secretary concerned shall carry out a special separation benefits program under this section. An eligible member of the armed forces may request separation under the program. The request shall be subject to the approval of the Secretary.

(b) BENEFITS.—Upon the approval of the request of an eligible member, the member shall—

(1) be released from active duty or full-time National Guard duty or discharged, as the case may be; and

(2) be entitled to—

(A) separation pay equal to 15 percent of the product of (i) the member's years of active service, and (ii) 12 times the monthly basic pay to which the member is entitled at the time of his discharge or release from active duty; and

(B) the same benefits and services as are provided under chapter 58 of this title, sections 404 and 406 of title 37, and section 503(c) of the National Defense Authorization Act for Fiscal Year 1991 (104 Stat. 1558; 37 U.S.C. 406 note) for members of the armed forces who are involuntarily separated within the meaning of section 1141 of this title.

(c) ELIGIBILITY.—Subject to subsections (d) and (e), a member of an armed force is eligible for voluntary separation under a program established for that armed force pursuant to this section if the member—

(1) has not been approved for payment of a voluntary separation incentive under section 1175 of this title;

(2) has served on active duty or full-time National Guard duty or any combination of active duty and full-time National Guard duty for more than 6 years;

(3) has served on active duty or full-time National Guard duty or any combination of active duty and full-time National Guard duty for not more than 20 years;

(4) has served at least 5 years of continuous active duty or full-time National Guard duty or any combination of active duty and full-time National Guard duty immediately preceding the date of the member's separation from active duty; and

(5) meets such other requirements as the Secretary may prescribe, which may include requirements relating to—

(A) years of service;

(B) skill or rating;

(C) grade or rank; and

(D) remaining period of obligated service.

(d) PROGRAM APPLICABILITY.—The Secretary concerned may provide for the program under this section to apply to any of the following members:

(1) A regular officer or warrant officer of an armed force.

(2) A regular enlisted member of an armed force.

(3) A member of an armed force other than a regular member.

(e) APPLICABILITY SUBJECT TO NEEDS OF THE SERVICE.—(1) Subject to paragraphs (2) and (3), the Secretary concerned may limit the applicability of a program under this section to any category of personnel defined by the Secretary in order to meet a need of the armed force under the Secretary's jurisdiction to reduce the number of members in certain grades, the number of members who have completed a certain number of years of active service, or the number of members who possess certain military skills or are serving in designated competitive categories.

(2) Any category prescribed by the Secretary concerned for regular officers, regular enlisted members, or other members pursuant to paragraph (1) shall be consistent with the categories applicable to regular officers, regular enlisted members, or other members, respectively, under the voluntary separation incentive program under section 1175 of this title or any other program established by law or by that Secretary for the involuntary separation of such members in the administration of a reduction in force.

(3) A member of the armed forces offered a voluntary separation incentive under section 1175 of this title shall also be offered the opportunity to request separation under a program established pursuant to this section. If the Secretary concerned approves a request for separation under either such section, the member shall be separated under the authority of the section selected by such member.

(f) APPLICATION REQUIREMENTS.—(1) In order to be separated under a program established pursuant to this section—

(A) a regular enlisted member eligible for separation under that program shall—

(i) submit a request for separation under the program before the expiration of the member's term of enlistment; or

(ii) upon discharge at the end of such term, enter into a written agreement (pursuant to regulations prescribed by the Secretary concerned) not to request reenlistment in a regular component; and

(B) a member referred to in subsection (d)(3) eligible for separation under that program shall submit a request for separation to the Secretary concerned before the expiration of the member's established term of active service.

(2) For purposes of this section, the entry of a member into an agreement referred to in paragraph (1)(A)(ii) under a program established pursuant to this section shall be considered a request for separation under the program.

(g) OTHER CONDITIONS, REQUIREMENTS, AND ADMINISTRATIVE PROVISIONS.—Subsections (e) through (h), other than subsection (e)(2)(A), of section 1174 of this title shall apply in the administration of programs established under this section.

(h) TERMINATION OF PROGRAM.—(1) Except as provided in paragraph (2), the Secretary concerned may not conduct a program pursuant to this section after December 31, 2001.

(2) No member of the armed forces may be separated under a program established pursuant to this section after the date of the termination of that program.

(Added Pub. L. 102–190, div. A, title VI, § 661(a)(1), Dec. 5, 1991, 105 Stat. 1394; amended Pub. L. 102–484, div. A, title X, § 1052(15), div. D, title XLIV, §§ 4405(a), 4422(a), Oct. 23, 1992, 106 Stat. 2499, 2706, 2718; Pub. L. 103–35, title II, § 202(a)(17), May 31, 1993, 107 Stat. 102; Pub. L. 103–160, div. A, title V, §§ 502, 561(g), Nov. 30, 1993, 107 Stat. 1644, 1668; Pub. L. 103–337, div. A, title V, § 542(b), Oct. 5, 1994, 108 Stat. 2768; Pub. L. 105–261, div. A, title V, § 561(b), Oct. 17, 1998, 112 Stat. 2025; Pub. L. 106–398, § 1 [[div. A], title V, § 571(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–134.)

AMENDMENTS

2000—Subsec. (h)(1). Pub. L. 106–398 substituted ''December 31, 2001'' for ''September 30, 2001''.

1998—Subsec. (h)(1). Pub. L. 105–261 substituted ''September 30, 2001'' for ''September 30, 1999''.

1994—Subsec. (a). Pub. L. 103–337, § 542(b)(1), substituted ''concerned'' for ''of each military department''.

Subsec. (d). Pub. L. 103–337, § 542(b)(2), substituted ''concerned'' for ''of a military department''.

Subsec. (e)(3). Pub. L. 103–337, § 542(b)(3), struck out ''of the military department'' after ''Secretary''.

Subsec. (h). Pub. L. 103–337, § 542(b)(4), substituted ''concerned'' for ''of a military department''.

1993—Subsec. (c)(2). Pub. L. 103–160, § 502, struck out ''before December 5, 1991'' after ''6 years''.

Subsec. (c)(3). Pub. L. 103–35, § 202(a)(17)(A), made technical amendment to directory language of Pub. L. 102–484, § 4422(a)(3). See 1992 Amendment note below.

Subsec. (c)(4). Pub. L. 103–35, § 202(a)(17)(B), made technical amendment to directory language of Pub. L. 102–484, § 4422(a)(4). See 1992 Amendment note below.

Subsec. (h)(1). Pub. L. 103–160, § 561(g), substituted ''September 30, 1999'' for ''September 30, 1995''.

1992—Subsec. (b)(1). Pub. L. 102–484, § 4422(a)(1), inserted ''or full-time National Guard duty'' after ''active duty''.

Subsec. (b)(2)(B). Pub. L. 102–484, § 4405(a), inserted '', sections 404 and 406 of title 37, and section 503(c) of the National Defense Authorization Act for Fiscal Year 1991 (104 Stat. 1558; 37 U.S.C. 406 note)'' after ''chapter 58 of this title''.

Subsec. (c)(2). Pub. L. 102–484, §§ 1052(15), 4422(a)(2), substituted ''December 5, 1991'' for ''the date of the enactment of this section'' and inserted ''or full-time National Guard duty or any combination of active duty and full-time National Guard duty'' after ''active duty''.

Subsec. (c)(3). Pub. L. 102–484, § 4422(a)(3), as amended by Pub. L. 103–35, § 202(a)(17)(A), inserted ''or full-time National Guard duty or any combination of active duty and full-time National Guard duty'' after ''active duty''.

Subsec. (c)(4). Pub. L. 102–484, § 4422(a)(4), as amended by Pub. L. 103–35, § 202(a)(17)(B), inserted ''and'' after semicolon at end and ''or full-time National Guard duty or any combination of active duty and full-time National Guard duty'' after ''active duty'' the first place it appeared.

Subsec. (c)(5), (6). Pub. L. 102–484, § 4424(a)(5), redesignated par. (6) as (5) and struck out former par. (5) which read as follows: ''if a Reserve, is on an active duty list; and''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable only to members of the Coast Guard who are separated after Sept. 30, 1994, see section 542(e) of Pub. L. 103–337, set out as a note under section 1141 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–35 applicable as if included in the enactment of Pub. L. 102–484, see section 202(b) of Pub. L. 103–35, set out as a note under section 155 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 4405(c) of Pub. L. 102–484 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1175 of this title] shall apply as if included in sections 1174a and 1175 of title 10, United States Code, as enacted on December 5, 1991, but any benefits or services payable by reason of the applicability of the provisions of those amendments during the period beginning on December 5, 1991, and ending on the date of the enactment of this Act [Oct. 23, 1992] shall be subject to the availability of appropriations.''

REMEDY FOR INEFFECTIVE COUNSELING OF OFFICERS DISCHARGED FOLLOWING SELECTION BY EARLY DISCHARGE BOARDS

Pub. L. 103–160, div. A, title V, § 507, Nov. 30, 1993, 107 Stat. 1646, as amended by Pub. L. 103–337, div. A, title X, § 1070(b)(1), Oct. 5, 1994, 108 Stat. 2856, provided that:

''(a) PROCEDURE FOR REVIEW.—(1) The Secretary of each military department shall establish a procedure for the review of the individual circumstances of an officer described in paragraph (2) who is discharged, or who the Secretary concerned approves for discharge, following the report of a selection board convened by the Secretary to select officers for separation. The procedure established by the Secretary of a military department under this section shall provide that each review under that procedure be carried out by the Board for the Correction of Military Records of that military department.

''(2) This section applies in the case of any officer (including a warrant officer) who, having been offered the opportunity to be discharged or otherwise separated from active duty through the programs provided under section 1174a and 1175 of title 10, United States Code—

''(A) elected not to accept such discharge or separation; and

''(B) submits an application under subsection (b) during the two-year period beginning on the later of the date of the enactment of this Act [Nov. 30, 1993] and the date of such discharge or separation.

''(b) APPLICATION.—A review under this section shall be conducted in any case submitted to the Secretary

concerned by application from the officer or former officer under regulations prescribed by the Secretary.

''(c) PURPOSE OF REVIEW.—(1) The review under this section shall be designed to evaluate the effectiveness of the counseling of the officer before the convening of the board to ensure that the officer was properly informed that selection for discharge or other separation from active duty was a potential result of being within the group of officers to be considered by the board and that the officer was not improperly informed that such selection in that officer's personal case was unlikely.

''(2) The Board for the Correction of Military Records of a military department shall render a decision in each case under this section not later than 60 days after receipt by the Secretary concerned of an application under subsection (b).

''(d) REMEDY.—Upon a finding of ineffective counseling under subsection (c), the Secretary shall provide the officer the opportunity to participate, at the officer's option, in any one of the following programs for which the officer meets all eligibility criteria:

''(1) The Special Separation Benefits program under section 1174a of title 10, United States Code.

''(2) The Voluntary Separation Incentive program under section 1175 of such title.

''(3) Retirement under the authority provided by section 4403 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 106 Stat. 2702; 10 U.S.C. 1293 note).

''(e) EFFECTIVE DATE.—This section shall apply with respect to officers separated after September 30, 1990.''

SEPARATION PAYMENTS; REDUCTIONS AND PROHIBITIONS

Pub. L. 103–335, title VIII, §8106A, Sept. 30, 1994, 108 Stat. 2645, as amended by Pub. L. 104–6, title I, §105(a), Apr. 10, 1995, 109 Stat. 79, which provided that members who separated after Sept. 30, 1994, from active duty or full-time National Guard duty in a military department pursuant to a Special Separation Benefits program under section 1174a of this title or a Voluntary Separation Incentive program under section 1175 of this title would have their separation payments reduced by the amount of certain bonus payments and eliminated if they are rehired within 180 days by the Department of Defense in a civilian position and that civilian Department of Defense employees would not receive voluntary separation payments if rehired by a Federal agency within 180 days of separating from the Department of Defense, was from the Department of Defense Appropriations Act, 1995, and was not repeated in subsequent appropriation acts. Similar provisions were contained in the following prior appropriation act:

Pub. L. 103–139, title VIII, §8127, Nov. 11, 1993, 107 Stat. 1469.

COMMENCEMENT OF PROGRAM

Section 661(b) of Pub. L. 102–190 provided that: ''The Secretary of each military department shall commence the program required by section 1174a of title 10, United States Code (as added by subsection (a)), not later than 60 days after the date of the enactment of this Act [Dec. 5, 1991].''

REPORT ON PROGRAMS

Section 663 of Pub. L. 102–190 directed Secretary, not later than 180 days after Dec. 5, 1991, to submit to Congress a report containing the Secretary's assessment of effectiveness of programs established under sections 1174a and 1175 of this title.

§1175. Voluntary separation incentive

(a)(1) Consistent with this section and the availability of appropriations for this purpose, the Secretary of Defense and the Secretary of Homeland Security may provide a financial incentive to members of the armed forces described in subsection (b) for voluntary appointment, enlistment, or transfer to a reserve component, requested and approved under subsection (c).

(2)(A) Except as provided in subparagraph (B), a financial incentive provided a member under this section shall be paid for the period equal to twice the number of years of service of the member, computed as provided in subsection (e)(5).

(B) If, before the expiration of the period otherwise applicable under subparagraph (A) to a member receiving a financial incentive under this section, the member is separated from a reserve component or is transferred to the Retired Reserve, the period for payment of a financial incentive to the member under this section shall terminate on the date of the separation or transfer unless—

(i) the separation or transfer is required by reason of the age or number of years of service of the member;

(ii) the separation or transfer is required by reason of the failure of selection for promotion or the medical disqualification of the member, except in a case in which the Secretary of Defense or the Secretary of Homeland Security determines that the basis for the separation or transfer is a result of a deliberate action taken by the member with the intent to avoid retention in the Ready Reserve or Standby Reserve; or

(iii) in the case of a separation, the member is separated from the reserve component for appointment or enlistment in or transfer to another reserve component of an armed force for service in the Ready Reserve or Standby Reserve of that armed force.

(b) The Secretary of Defense and the Secretary of Homeland Security may provide the incentive to a member of the armed forces if the member—

(1) has served on active duty or full-time National Guard duty or any combination of active duty and full-time National Guard duty for more than 6 but less than 20 years;

(2) has served at least 5 years of continuous active duty or full-time National Guard duty or any combination of active duty and full-time National Guard duty immediately preceding the date of separation;

(3) meets such other requirements as the Secretary may prescribe from time to time, which may include requirements relating to—

(A) years of service;

(B) skill or rating;

(C) grade or rank; and

(D) remaining period of obligated service.

(c) A member of the armed forces offered a voluntary separation incentive under this section shall be offered the opportunity to request separation under a program established pursuant to section 1174a of this title. If the Secretary concerned approves a request for separation under either such section, the member shall be separated under the authority of the section selected by such member.

(d)(1) A member of the armed forces described in subsection (b) may request voluntary appointment, enlistment, or transfer to a reserve component accompanied by this incentive, provided the member has completed 6 years of active service.

(2) The Secretary, in his discretion, may approve or disapprove a request according to the needs of the armed forces.

(3) After December 31, 2001, the Secretary may not approve a request.

(e)(1) The annual payment of the incentive shall equal 2.5 percent of the monthly basic pay the member receives on the date appointed, enlisted, or transferred to the reserve component, multiplied by twelve and multiplied again by the member's years of service.

(2) A member entitled to voluntary separation incentive payments who is also entitled to basic pay for active or reserve service, or compensation for inactive duty training, may elect to have a reduction in the voluntary separation incentive payable for the same period in an amount not to exceed the amount of the basic pay or compensation received for that period.

(3)(A) A member who has received the voluntary separation incentive and who later qualifies for retired or retainer pay under this title shall have deducted from each payment of such retired or retainer pay an amount, in such schedule of monthly installments as the Secretary of Defense shall specify, taking into account the financial ability of the member to pay and avoiding the imposition of undue financial hardship on the member and member's dependents, until the total amount deducted is equal to the total amount of voluntary separation incentive so paid. If the member elected to have a reduction in voluntary separation incentive for any period pursuant to paragraph (2), the deduction required under the preceding sentence shall be reduced as the Secretary of Defense shall specify.

(B) If a member is receiving simultaneous voluntary separation incentive payments and retired or retainer pay, the member may elect to terminate the receipt of voluntary separation incentive payments. Any such election is permanent and irrevocable. The rate of monthly recoupment from retired or retainer pay of voluntary separation incentive payments received after such an election shall be reduced by a percentage that is equal to a fraction with a denominator equal to the number of months that the voluntary separation incentive payments were scheduled to be paid and a numerator equal to the number of months that would not be paid as a result of the member's decision to terminate the voluntary separation incentive.

(4) A member who is receiving voluntary separation incentive payments shall not be deprived of this incentive by reason of entitlement to disability compensation under the laws administered by the Department of Veterans Affairs, but there shall be deducted from voluntary separation incentive payments an amount equal to the amount of any such disability compensation concurrently received. Notwithstanding the preceding sentence, no deduction may be made from voluntary separation incentive payments for any disability compensation received because of an earlier period of active duty if the voluntary separation incentive is received because of discharge or release from a later period of active duty.

(5) The years of service of a member for purposes of this section shall be computed in accordance with section 1405 of this title.

(f) The member's right to incentive payments shall not be transferable, except that the member may designate beneficiaries to receive the payments in the event of the member's death.

(g) Subject to subsection (h), payments under this provision shall be paid from appropriations available to the Department of Defense and the Department of Homeland Security for the Coast Guard.

(h)(1) There is established on the books of the Treasury a fund to be known as the ''Voluntary Separation Incentive Fund'' (hereinafter in this subsection referred to as the ''Fund''). The Fund shall be administered by the Secretary of the Treasury. The Fund shall be used for the accumulation of funds in order to finance on an actuarially sound basis the liabilities of the Department of Defense under this section.

(2) There shall be deposited in the Fund the following, which shall constitute the assets of the Fund:

(A) Amounts paid into the Fund under paragraphs (5), (6), and (7).

(B) Any amount appropriated to the Fund.

(C) Any return on investment of the assets of the Fund.

(3) All voluntary separation incentive payments made by the Secretary of Defense after December 31, 1992, under this section shall be paid out of the Fund. To the extent provided in appropriation Acts, the assets of the Fund shall be available to the Secretary to pay voluntary separation incentives under this section.

(4) The Department of Defense Board of Actuaries (hereinafter in this subsection referred to as the ''Board'') shall perform the same functions regarding the Fund, as provided in this subsection, as such Board performs regarding the Department of Defense Military Retirement Fund.

(5) Not later than January 1, 1993, the Board shall determine the amount that is the present value, as of that date, of the future benefits payable under this section in the case of persons who are separated pursuant to this section before that date. The amount so determined is the original unfunded liability of the Fund. The Board shall determine an appropriate amortization period and schedule for liquidation of the original unfunded liability. The Secretary shall make deposits to the Fund in accordance with that amortization schedule.

(6) For persons separated under this section on or after January 1, 1993, the Secretary shall deposit in the Fund during the period beginning on that date and ending on September 30, 1999—

(A) such sums as are necessary to pay the current liabilities under this section during such period; and

(B) the amount equal to the present value, as of September 30, 1999, of the future benefits payable under this section, as determined by the Board.

(7)(A) For each fiscal year after fiscal year 1999, the Board shall—

(i) carry out an actuarial valuation of the Fund and determine any unfunded liability of the Fund which deposits under paragraphs (5) and (6) do not liquidate, taking into consideration any cumulative actuarial gain or loss to the Fund;

(ii) determine the period over which that unfunded liability should be liquidated; and

(iii) determine for the following fiscal year, the total amount, and the monthly amount, of the Department of Defense contributions that must be made to the Fund during that fiscal year in order to fund the unfunded liabilities of the Fund over the applicable amortization periods.

(B) The Board shall carry out its responsibilities for each fiscal year in sufficient time for the amounts referred to in subparagraph (A)(iii) to be included in budget requests for that fiscal year.

(C) The Secretary of Defense shall pay into the Fund at the end of each month as the Department of Defense contribution to the Fund the amount necessary to liquidate unfunded liabilities of the Fund in accordance with the amortization schedules determined by the Board.

(8) Amounts paid into the Fund under this subsection shall be paid from funds available for the pay of members of the armed forces under the jurisdiction of the Secretary of each military department.

(9) The investment provisions of section 1467 of this title shall apply to the Voluntary Separation Incentive Fund.

(i) The Secretary of Defense and the Secretary of Homeland Security may issue such regulations as may be necessary to carry out this section.

(j) A member of the armed forces who is provided a voluntary separation incentive under this section shall be eligible for the same benefits and services as are provided under chapter 58 of this title, sections 404 and 406 of title 37, and section 503(c) of the National Defense Authorization Act for Fiscal Year 1991 (104 Stat. 1558; 37 U.S.C. 406 note) for members of the armed forces who are involuntarily separated within the meaning of section 1141 of this title.

(Added Pub. L. 102–190, div. A, title VI, §662(a)(1), Dec. 5, 1991, 105 Stat. 1396; amended Pub. L. 102–484, div. A, title X, §1052(16), div. D, title XLIV, §§4405(b), 4406(a), (b), 4422(b), Oct. 23, 1992, 106 Stat. 2499, 2706, 2707, 2719; Pub. L. 103–160, div. A, title V, §§502, 561(h), Nov. 30, 1993, 107 Stat. 1644, 1668; Pub. L. 103–337, div. A, title V, §542(c), Oct. 5, 1994, 108 Stat. 2769; Pub. L. 105–261, div. A, title V, §§561(b), 563(a), (b), Oct. 17, 1998, 112 Stat. 2025, 2028; Pub. L. 106–398, §1 [[div. A], title V, §§571(b), 572(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–134, 1654A–135; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 110–181, div. A, title IX, §906(c)(1), Jan. 28, 2008, 122 Stat. 277; Pub. L. 111–32, title III, §318(b), June 24, 2009, 123 Stat. 1874.)

AMENDMENTS

2009—Subsec. (e)(3)(A). Pub. L. 111–32 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''A member who has received the voluntary separation incentive and who qualifies for retired or retainer pay under this title shall have deducted from each payment of such retired or retainer pay so much of such pay as is based on the service for which he received the voluntary separation incentive until the total amount deducted equals the total amount of voluntary separation incentive received. If the member elected to have a reduction in voluntary separation incentive for any period pursuant to paragraph (2), the deduction required under the preceding sentence shall be reduced accordingly.''

2008—Subsec. (h)(4). Pub. L. 110–181 struck out ''Retirement'' before ''Board of Actuaries''.

2002—Subsecs. (a)(1), (2)(B)(ii), (b), (g), (i). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

2000—Subsec. (d)(3). Pub. L. 106–398, §1 [[div. A], title V, §571(b)], substituted ''December 31, 2001'' for ''September 30, 2001''.

Subsec. (e)(3). Pub. L. 106–398, §1 [[div. A], title V, §572(a)], designated existing provisions as subpar. (A) and added subpar. (B).

1998—Subsec. (a). Pub. L. 105–261, §563(a), designated existing provisions as par. (1), struck out '', for the period of time the member serves in a reserve component'' after ''under subsection (c)'', and added par. (2).

Subsec. (d)(3). Pub. L. 105–261, §561(b), substituted ''September 30, 2001'' for ''September 30, 1999''.

Subsec. (e)(1). Pub. L. 105–261, §563(b), struck out at end ''The annual payment will be made for a period equal to the number of years that is equal to twice the number of years of service of the member.''

1994—Subsecs. (a), (b). Pub. L. 103–337, §542(c)(1), inserted ''and the Secretary of Transportation'' after ''Secretary of Defense''.

Subsec. (c). Pub. L. 103–337, §542(c)(2), struck out ''of the military department'' after ''Secretary''.

Subsec. (g). Pub. L. 103–337, §542(c)(3), inserted ''and the Department of Transportation for the Coast Guard'' before period at end.

Subsec. (h)(3). Pub. L. 103–337, §542(c)(4), inserted ''by the Secretary of Defense'' after ''incentive payments made'' and ''to the Secretary'' after ''shall be available''.

Subsec. (i). Pub. L. 103–337, §542(c)(5), inserted ''and the Secretary of Transportation'' after ''Secretary of Defense''.

1993—Subsec. (d)(1). Pub. L. 103–160, §502, struck out ''before December 5, 1991'' after ''active service''.

Subsecs. (d)(3), (h)(6). Pub. L. 103–160, §561(h)(1), substituted ''September 30, 1999'' for ''September 30, 1995'' wherever appearing.

Subsec. (h)(7)(A). Pub. L. 103–160, §561(h)(2), substituted ''fiscal year 1999'' for ''fiscal year 1996''.

1992—Subsec. (a). Pub. L. 102–484, §1052(16)(A), substituted ''reserve component'' for ''Reserve component'' after ''transfer to a''.

Subsec. (b)(1), (2). Pub. L. 102–484, §4422(b)(1), (2), inserted ''or full-time National Guard duty or any combination of active duty and full-time National Guard duty'' after ''active duty''.

Subsec. (b)(3), (4). Pub. L. 102–484, §4424(b)(3), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: ''if a Reserve, is on the active duty list; and''.

Subsec. (d)(1). Pub. L. 102–484, §1052(16)(B), substituted ''before December 5, 1991'' for ''prior to the time this provision is enacted''.

Subsec. (e)(2). Pub. L. 102–484, §4406(a)(1), substituted ''may elect to have a reduction in the voluntary separation incentive payable for the same period in an amount not to exceed the amount of the basic pay or compensation received for that period.'' for ''shall forfeit an amount of voluntary separation incentive payable for the same period that is equal to the total amount of basic pay, or compensation, received.''

Subsec. (e)(3). Pub. L. 102–484, §4406(a)(2), inserted at end ''If the member elected to have a reduction in voluntary separation incentive for any period pursuant to paragraph (2), the deduction required under the preceding sentence shall be reduced accordingly.''

Subsec. (e)(6). Pub. L. 102–484, §4406(b), struck out par. (6) which read as follows: ''Years of service that form the basis of the payment under paragraph (5) may not be counted in computing eligibility for, or the amount of, annuities under title 5 or any other law providing annuities to Federal civilian employees.''

Subsec. (j). Pub. L. 102–484, §4405(b), added subsec. (j).

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–32 applicable to any repayments of separation pay, severance pay, readjustment pay, special separation benefit, or voluntary separation incentive, that occur on or after June 24, 2009, including any ongoing repayment actions that were initiated prior to such amendment, see section 318(c) of Pub. L. 111–32, set out as a note under section 1174 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, § 1 [[div. A], title V, § 572(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–136, provided that: ''Subparagraph (B) of section 1175(e)(3) of title 10, United States Code, as added by subsection (a), shall apply with respect to decisions by members to terminate voluntary separation incentive payments under section 1175 of title 10, United States Code, to be effective after September 30, 2000.''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–261, div. A, title V, § 563(c), Oct. 17, 1998, 112 Stat. 2028, provided that: ''The amendments made by this section [amending this section] apply with respect to any person provided a voluntary separation incentive under section 1175 of title 10, United States Code (whether before, 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 applicable only to members of the Coast Guard who are separated after Sept. 30, 1994, see section 542(e) of Pub. L. 103–337, set out as a note under section 1141 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 4405(b) of Pub. L. 102–484 applicable as if included in this section as enacted Dec. 5, 1991, with any benefits or services payable by reason of applicability of that amendment during the period beginning Dec. 5, 1991, and ending Oct. 23, 1992, to be subject to availability of appropriations, see section 4405(c) of Pub. L. 102–484, set out as a note under section 1174a of this title.

Section 4406(c) of Pub. L. 102–484 provided that: ''The amendments to section 1175 of title 10, United States Code, made by subsections (a) and (b) shall apply as if included in section 1175 of title 10, United States Code, as enacted on December 5, 1991.''

PAYMENT OF INCENTIVES FROM VOLUNTARY SEPARATION INCENTIVE FUND

Pub. L. 104–208, div. A, title I, § 101(b) [title VIII, § 8044], Sept. 30, 1996, 110 Stat. 3009–71, 3009–98, provided that: ''During the current fiscal year and hereafter, voluntary separation incentives payable under 10 U.S.C. 1175 may be paid in such amounts as are necessary from the assets of the Voluntary Separation Incentive Fund established by section 1175(h)(1).''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 104–61, title VIII, § 8054, Dec. 1, 1995, 109 Stat. 662.

Pub. L. 103–335, title VIII, § 8062, Sept. 30, 1994, 108 Stat. 2633.

Pub. L. 103–139, title VIII, § 8073, Nov. 11, 1993, 107 Stat. 1457.

Pub. L. 102–396, title IX, § 9106, Oct. 6, 1992, 106 Stat. 1927.

SEPARATION PAYMENTS; REDUCTIONS AND PROHIBITIONS

For provisions reducing, with certain exceptions, amounts received under this section by amounts received as bonus payments under chapter 5 of title 37 in case of members who separate from active duty or full-time National Guard duty in a military department and prohibiting such members from receiving Voluntary Separation Incentive program payments if rehired in DOD civilian position within 180 days of separation, see note set out under section 1174a of this title.

TAX TREATMENT OF INCENTIVE PAYMENT

Section 662(b) of Pub. L. 102–190 provided that: ''Notwithstanding the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.] and any other provision of law, any voluntary separation incentive paid to a member of the Armed Forces under section 1175 of title 10, United States Code (as added by subsection (a)), shall be includable in gross income for federal tax purposes only for the taxable year in which such incentive is paid to the participant or beneficiary of the member.''

§ 1175a. Voluntary separation pay and benefits

(a) IN GENERAL.—Under regulations approved by the Secretary of Defense, the Secretary concerned may provide voluntary separation pay and benefits in accordance with this section to eligible members of the armed forces who are voluntarily separated from active duty in the armed forces.

(b) ELIGIBLE MEMBERS.—(1) Except as provided in paragraph (2), a member of the armed forces is eligible for voluntary separation pay and benefits under this section if the member—

(A) has served on active duty for more than 6 years but not more than 20 years;

(B) has served at least 5 years of continuous active duty immediately preceding the date of the member's separation from active duty;

(C) has not been approved for payment of a voluntary separation incentive under section 1175 of this title;

(D) meets such other requirements as the Secretary concerned may prescribe, which may include requirements relating to—

(i) years of service, skill, rating, military specialty, or competitive category;

(ii) grade or rank;

(iii) remaining period of obligated service; or

(iv) any combination of these factors; and

(E) requests separation from active duty.

(2) The following members are not eligible for voluntary separation pay and benefits under this section:

(A) Members discharged with disability severance pay under section 1212 of this title.

(B) Members transferred to the temporary disability retired list under section 1202 or 1205 of this title.

(C) Members being evaluated for disability retirement under chapter 61 of this title.

(D) Members who have been previously discharged with voluntary separation pay.

(E) Members who are subject to pending disciplinary action or who are subject to administrative separation or mandatory discharge under any other provision of law or regulations.

(3) The Secretary concerned shall determine each year the number of members to be separated, and provided separation pay and benefits, under this section during the fiscal year beginning in such year.

(c) SEPARATION.—Each eligible member of the armed forces whose request for separation from active duty under subsection (b)(1)(E) is approved shall be separated from active duty.

(d) ADDITIONAL SERVICE IN READY RESERVE.—Of the number of members of the armed forces to be separated from active duty in a fiscal year, as determined under subsection (b)(3), the Secretary concerned shall determine a number of such members, in such skill and grade combinations as the Secretary concerned shall designate, who shall serve in the Ready Reserve, after separation from active duty, for a period of not less than three years, as a condition of the receipt of voluntary separation pay and benefits under this section.

(e) SEPARATION PAY AND BENEFITS.—(1) A member of the armed forces who is separated from active duty under subsection (c) shall be paid voluntary separation pay in accordance with subsection (g) in an amount determined by the Secretary concerned pursuant to subsection (f).

(2) A member who is not entitled to retired or retainer pay upon separation shall be entitled to the benefits and services provided under—

(A) chapter 58 of this title during the 180-day period beginning on the date the member is separated (notwithstanding any termination date for such benefits and services otherwise applicable under the provisions of such chapter); and

(B) sections 404 and 406 of title 37.

(f) COMPUTATION OF VOLUNTARY SEPARATION PAY.—The Secretary concerned shall specify the amount of voluntary separation pay that an individual or defined group of members of the armed forces may be paid under subsection (e)(1). No member may receive as voluntary separation pay an amount greater than four times the full amount of separation pay for a member of the same pay grade and years of service who is involuntarily separated under section 1174 of this title.

(g) PAYMENT OF VOLUNTARY SEPARATION PAY.—(1) Voluntary separation pay under this section may be paid in a single lump sum.

(2) In the case of a member of the armed forces who, at the time of separation under subsection (c), has completed at least 15 years, but less than 20 years, of active service, voluntary separation pay may be paid, at the election of the Secretary concerned, in—

(A) a single lump sum;

(B) installments over a period not to exceed 10 years; or

(C) a combination of lump sum and such installments.

(h) COORDINATION WITH RETIRED OR RETAINER PAY AND DISABILITY COMPENSATION.—(1) A member who is paid voluntary separation pay under this section and who later qualifies for retired or retainer pay under this title or title 14 shall have deducted from each payment of such retired or retainer pay an amount, in such schedule of monthly installments as the Secretary concerned shall specify, until the total amount deducted from such retired or retainer pay is equal to the total amount of voluntary separation pay so paid.

(2)(A) Except as provided in subparagraphs (B) and (C), a member who is paid voluntary separation pay under this section shall not be deprived, by reason of the member's receipt of such pay, of any disability compensation to which the member is entitled under the laws administered by the Secretary of Veterans Affairs, but there shall be deducted from such disability compensation an amount, in such schedule of monthly installments as the Secretary concerned shall specify, until the total amount deducted from such disability compensation is equal to the total amount of voluntary separation pay so paid, less the amount of Federal income tax withheld from such pay (such withholding being at the flat withholding rate for Federal income tax withholding, as in effect pursuant to regulations prescribed under chapter 24 of the Internal Revenue Code of 1986).

(B) No deduction shall be made from the disability compensation paid to an eligible disabled uniformed services retiree under section 1413, or to an eligible combat-related disabled uniformed services retiree under section 1413a of this title, who is paid voluntary separation pay under this section.

(C) No deduction may be made from the disability compensation paid to a member for the amount of voluntary separation pay received by the member because of an earlier discharge or release from a period of active duty if the disability which is the basis for that disability compensation was incurred or aggravated during a later period of active duty.

(3) The requirement under this subsection to repay voluntary separation pay following retirement from the armed forces does not apply to a member who was eligible to retire at the time the member applied and was accepted for voluntary separation pay and benefits under this section.

(4) The Secretary concerned may waive the requirement to repay voluntary separation pay under paragraphs (1) and (2) if the Secretary determines that recovery would be against equity and good conscience or would be contrary to the best interests of the United States.

(i) RETIREMENT DEFINED.—In this section, the term ''retirement'' includes a transfer to the Fleet Reserve or Fleet Marine Corps Reserve.

(j) REPAYMENT FOR MEMBERS WHO RETURN TO ACTIVE DUTY.—(1) Except as provided in paragraphs (2) and (3), a member of the armed forces who, after having received all or part of voluntary separation pay under this section, returns to active duty shall have deducted from each payment of basic pay, in such schedule of monthly installments as the Secretary concerned shall specify, until the total amount deducted from such basic pay equals the total amount of voluntary separation pay received.

(2) Members who are involuntarily recalled to active duty or full-time National Guard duty in accordance with section 12301(a), 12301(b), 12301(g), 12302, 12303, or 12304 of this title or section 502(f)(1) of title 32 shall not be subject to this subsection.

(3) Members who are recalled or perform active duty or full-time National Guard duty in accordance with section 101(d)(1), 101(d)(2), 101(d)(5), 12301(d) (insofar as the period served is

less than 180 consecutive days with the consent of the member), 12319, or 12503 of this title, or section 114, 115, or 502(f)(2) of title 32 (insofar as the period served is less than 180 consecutive days with consent of the member), shall not be subject to this subsection.

(4) The Secretary of Defense may waive, in whole or in part, repayment required under paragraph (1) if the Secretary determines that recovery would be against equity and good conscience or would be contrary to the best interests of the United States. The authority in this paragraph may be delegated only to the Undersecretary of Defense for Personnel and Readiness and the Principal Deputy Undersecretary of Defense for Personnel and Readiness.

(k) TERMINATION OF AUTHORITY.—(1) The authority to separate a member of the armed forces from active duty under subsection (c) shall terminate on December 31, 2012.

(2) A member who separates by the date specified in paragraph (1) may continue to be provided voluntary separation pay and benefits under this section until the member has received the entire amount of pay and benefits to which the member is entitled under this section.

(Added Pub. L. 109–163, div. A, title VI, § 643(a)(1), Jan. 6, 2006, 119 Stat. 3306; amended Pub. L. 109–364, div. A, title VI, § 623(a)(1), (2), Oct. 17, 2006, 120 Stat. 2256; Pub. L. 111–84, div. A, title X, § 1073(a)(14), Oct. 28, 2009, 123 Stat. 2473; Pub. L. 111–383, div. A, title X, § 1075(b)(18), Jan. 7, 2011, 124 Stat. 4370.)

REFERENCES IN TEXT

Chapter 24 of the Internal Revenue Code of 1986, referred to in subsec. (h)(2)(A), is classified generally to chapter 24 (§ 3401 et seq.) of Title 26, Internal Revenue Code.

AMENDMENTS

2011—Subsec. (j)(3). Pub. L. 111–383 substituted ''this title'' for ''title 10''.

2009—Subsec. (h)(1). Pub. L. 111–84 substituted ''qualifies'' for ''qualities''.

2006—Subsec. (f). Pub. L. 109–364, § 623(a)(1), substituted ''four'' for ''two''.

Subsec. (k)(1). Pub. L. 109–364, § 623(a)(2), substituted ''2012'' for ''2008''.

LIMITATION ON APPLICABILITY

Pub. L. 109–163, div. A, title VI, § 643(b), Jan. 6, 2006, 119 Stat. 3310, which provided that, during the period beginning on Jan. 6, 2006, and ending on Dec. 31, 2008, members eligible for separation and for voluntary separation pay and benefits under this section would be limited to officers who had met the eligibility requirements of this section, but had not completed more than 12 years of active service as of the date of separation, was repealed by Pub. L. 109–364, div. A, title VI, § 623(a)(3), Oct. 17, 2006, 120 Stat. 2256.

§ 1176. Enlisted members: retention after completion of 18 or more, but less than 20, years of service

(a) REGULAR MEMBERS.—A regular enlisted member who is selected to be involuntarily separated, or whose term of enlistment expires and who is denied reenlistment, and who on the date on which the member is to be discharged is within two years of qualifying for retirement under section 3914 or 8914 of this title, or of qualifying for transfer to the Fleet Reserve or Fleet Marine Corps Reserve under section 6330 of this title, shall be retained on active duty until the member is qualified for retirement or transfer to the Fleet Reserve or Fleet Marine Corps Reserve, as the case may be, unless the member is sooner retired or discharged under any other provision of law.

(b) RESERVE MEMBERS IN ACTIVE STATUS.—A reserve enlisted member serving in an active status who is selected to be involuntarily separated (other than for physical disability or for cause), or whose term of enlistment expires and who is denied reenlistment (other than for physical disability or for cause), and who on the date on which the member is to be discharged or transferred from an active status is entitled to be credited with at least 18 but less than 20 years of service computed under section 12732 of this title, may not be discharged, denied reenlistment, or transferred from an active status without the member's consent before the earlier of the following:

(1) If as of the date on which the member is to be discharged or transferred from an active status the member has at least 18, but less than 19, years of service computed under section 12732 of this title—

(A) the date on which the member is entitled to be credited with 20 years of service computed under section 12732 of this title; or

(B) the third anniversary of the date on which the member would otherwise be discharged or transferred from an active status.

(2) If as of the date on which the member is to be discharged or transferred from an active status the member has at least 19, but less than 20, years of service computed under section 12732 of this title—

(A) the date on which the member is entitled to be credited with 20 years of service computed under section 12732 of this title; or

(B) the second anniversary of the date on which the member would otherwise be discharged or transferred from an active status.

(Added Pub. L. 102–484, div. A, title V, § 541(a), Oct. 23, 1992, 106 Stat. 2412; amended Pub. L. 103–160, div. A, title V, § 562(a), Nov. 30, 1993, 107 Stat. 1669; Pub. L. 104–106, div. A, title XV, § 1501(c)(12), Feb. 10, 1996, 110 Stat. 499.)

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–106 substituted ''section 12732'' for ''section 1332'' wherever appearing.

1993—Subsec. (b). Pub. L. 103–160 added subsec. (b) and struck out heading and text of former subsec. (b) which provided that a reserve enlisted member serving on active duty who was selected to be involuntarily separated, or whose term of enlistment expired and who was denied reenlistment, and who on the date on which the member was to be discharged or released from active duty was entitled to be credited with at least 18 but less than 20 years of service computed under section 1332 of this title, could not be discharged or released from active duty without the member's consent before the earlier of certain dates.

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 1993 AMENDMENT

Section 562(b) of Pub. L. 103–160 provided that: ''Subsection (b) of section 1176 of title 10, United States Code, as added by subsection (a), shall take effect as of October 23, 1992.''

§ 1177. Members diagnosed with or reasonably asserting post-traumatic stress disorder or traumatic brain injury: medical examination required before administrative separation

(a) MEDICAL EXAMINATION REQUIRED.—(1) Under regulations prescribed by the Secretary of Defense, the Secretary of a military department shall ensure that a member of the armed forces under the jurisdiction of the Secretary who has been deployed overseas in support of a contingency operation during the previous 24 months, and who is diagnosed by a physician, clinical psychologist, or psychiatrist as experiencing post-traumatic stress disorder or traumatic brain injury or who otherwise reasonably alleges, based on the service of the member while deployed, the influence of such a condition, receives a medical examination to evaluate a diagnosis of post-traumatic stress disorder or traumatic brain injury.

(2) A member covered by paragraph (1) shall not be administratively separated under conditions other than honorable until the results of the medical examination have been reviewed by appropriate authorities responsible for evaluating, reviewing, and approving the separation case, as determined by the Secretary concerned.

(3) In a case involving post-traumatic stress disorder, the medical examination shall be performed by a clinical psychologist or psychiatrist. In cases involving traumatic brain injury, the medical examination may be performed by a physician, clinical psychologist, psychiatrist, or other health care professional, as appropriate.

(b) PURPOSE OF MEDICAL EXAMINATION.—The medical examination required by subsection (a) shall assess whether the effects of post-traumatic stress disorder or traumatic brain injury constitute matters in extenuation that relate to the basis for administrative separation under conditions other than honorable or the overall characterization of service of the member as other than honorable.

(c) INAPPLICABILITY TO PROCEEDINGS UNDER UNIFORM CODE OF MILITARY JUSTICE.—The medical examination and procedures required by this section do not apply to courts-martial or other proceedings conducted pursuant to the Uniform Code of Military Justice.

(Added Pub. L. 111–84, div. A, title V, § 512(a)(1), Oct. 28, 2009, 123 Stat. 2280.)

REFERENCES IN TEXT

The Uniform Code of Military Justice, referred to in subsec. (c), is classified to chapter 47 (§ 801 et seq.) of this title.

PRIOR PROVISIONS

A prior section 1177, added Pub. L. 103–337, div. A, title V, § 560(a)(1), Oct. 5, 1994, 108 Stat. 2777; amended Pub. L. 104–106, div. A, title V, § 567(a)(1), title XV, § 1503(a)(12), Feb. 10, 1996, 110 Stat. 328, 511, related to mandatory discharge or retirement of members infected with HIV–1 virus, prior to repeal by Pub. L. 104–134, title II, § 2707(a)(1), Apr. 26, 1996, 110 Stat. 1321–330.

§ 1178. System and procedures for tracking separations resulting from refusal to participate in anthrax vaccine immunization program

The Secretary of each military department shall establish a system for tracking, recording, and reporting separations of members of the armed forces under the Secretary's jurisdiction that result from procedures initiated as a result of a refusal to participate in the anthrax vaccine immunization program.

(Added Pub. L. 106–398, § 1 [[div. A], title VII, § 751(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–193; amended Pub. L. 111–383, div. A, title VII, § 721, Jan. 7, 2011, 124 Stat. 4251.)

AMENDMENTS

2011—Pub. L. 111–383 struck out subsec. (a) designation and heading before ''The Secretary'' and struck out subsec. (b). Text of subsec. (b) read as follows: ''The Secretary of Defense shall consolidate the information recorded under the system described in subsection (a) and shall submit to the Committees on Armed Services of the Senate and the House of Representatives not later than April 1 of each year a report on such information. Each such report shall include a description of—

''(1) the number of members separated, categorized by military department, grade, and active-duty or reserve status; and

''(2) any other information determined appropriate by the Secretary.''

COMPTROLLER GENERAL REPORT

Pub. L. 106–398, § 1 [[div. A], title VII, § 751(d)], Oct. 30, 2000, 114 Stat. 1654, 1654A–194, directed the Comptroller General, not later than Apr. 1, 2002, to submit to committees of Congress a report on the effect of the Department of Defense anthrax vaccine immunization program on the recruitment and retention of active duty and reserve military personnel and civilian personnel of the Department of Defense.

CHAPTER 60—SEPARATION OF REGULAR OFFICERS FOR SUBSTANDARD PERFORMANCE OF DUTY OR FOR CERTAIN OTHER REASONS

Sec.
1181. Authority to establish procedures to consider the separation of officers for substandard performance of duty and for certain other reasons.
1182. Boards of inquiry.
[1183. Repealed.]
1184. Removal of officer: action by Secretary upon recommendation of board of inquiry.
1185. Rights and procedures.
1186. Officer considered for removal: voluntary retirement or discharge.
1187. Officers eligible to serve on boards.

AMENDMENTS

1998—Pub. L. 105–261, div. A, title V, § 503(c)(2), Oct. 17, 1998, 112 Stat. 2004, struck out item 1183 ''Boards of review'' and substituted ''inquiry'' for ''review'' in item 1184.

1984—Pub. L. 98–525, title V, § 524(b)(2), Oct. 19, 1984, 98 Stat. 2524, substituted ''Authority to establish procedures to consider the separation of officers for substandard performance of duty and for certain other reasons'' for ''Authority to convene boards of officers to consider separation of officers for substandard performance of duty or for certain other reasons'' in item 1181.

§ 1181. Authority to establish procedures to consider the separation of officers for substandard performance of duty and for certain other reasons

(a) Subject to such limitations as the Secretary of Defense may prescribe, the Secretary of the military department concerned shall prescribe, by regulation, procedures for the review at any time of the record of any commissioned officer (other than a commissioned warrant officer or a retired officer) of the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps to determine whether such officer shall be required, because his performance of duty has fallen below standards prescribed by the Secretary of Defense, to show cause for his retention on active duty.

(b) Subject to such limitations as the Secretary of Defense may prescribe, the Secretary of the military department concerned shall prescribe, by regulation, procedures for the review at any time of the record of any commissioned officer (other than a commissioned warrant officer or a retired officer) of the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps to determine whether such officer should be required, because of misconduct, because of moral or professional dereliction, or because his retention is not clearly consistent with the interests of national security, to show cause for his retention on active duty.

(Added Pub. L. 96–513, title I, § 110, Dec. 12, 1980, 94 Stat. 2872; amended Pub. L. 98–525, title V, § 524(b)(1), Oct. 19, 1984, 98 Stat. 2524.)

AMENDMENTS

1984—Pub. L. 98–525 substituted ''Authority to establish procedures to consider the separation of officers for substandard performance of duty and for certain other reasons'' for ''Authority to convene boards of officers to consider separation of officers for substandard performance of duty or for certain other reasons'' in section catchline.

Subsecs. (a), (b). Pub. L. 98–525 amended subsecs. (a) and (b) generally, substituting ''Subject to such limitations as the Secretary of Defense may prescribe, the Secretary of the military department concerned shall prescribe, by regulation, procedures for the review at any time of the record'' for ''Under regulations prescribed by the Secretary of Defense, the Secretary of the military department concerned may at any time convene a board of officers to review the record''.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 524(b)(3) of Pub. L. 98–525 provided that: ''The amendments made by paragraphs (1) and (2) [amending this section and the analysis to this chapter] shall take effect on the first day of the first month that begins more than 60 days after the date of the enactment of this Act [Oct. 19, 1984], but shall not apply to any case in which, before that date, a board of officers has been ordered to convene under the provisions of section 1181 of title 10, United States Code, as in effect before that date.''

EFFECTIVE DATE

Chapter effective Sept. 15, 1981, but the authority to prescribe regulations under this chapter 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.

§ 1182. Boards of inquiry

(a) The Secretary of the military department concerned shall convene boards of inquiry at such times and places as the Secretary may prescribe to receive evidence and make findings and recommendations as to whether an officer who is required under section 1181 of this title to show cause for retention on active duty should be retained on active duty. Each board of inquiry shall be composed of not less than three officers having the qualifications prescribed by section 1187 of this title.

(b) A board of inquiry shall give a fair and impartial hearing to each officer required under section 1181 of this title to show cause for retention on active duty.

(c)(1) If a board of inquiry determines that the officer has failed to establish that he should be retained on active duty, it shall recommend to the Secretary concerned that the officer not be retained on active duty.

(2) Under regulations prescribed by the Secretary concerned, an officer as to whom a board of inquiry makes a recommendation under paragraph (1) that the officer not be retained on active duty may be required to take leave pending the completion of the officer's case under this chapter. The officer may be required to begin such leave at any time following the officer's receipt of the report of the board of inquiry, including the board's recommendation for removal from active duty, and the expiration of any period allowed for submission by the officer of a rebuttal to that report. The leave may be continued until the date on which action by the Secretary concerned on the officer's case is completed or may be terminated at any earlier time.

(d)(1) If a board of inquiry determines that the officer has established that he should be retained on active duty, the officer's case is closed.

(2) An officer who is required to show cause for retention on active duty under subsection (a) of section 1181 of this title and who is determined under paragraph (1) to have established that he should be retained on active duty may not again be required to show cause for retention on active duty under such subsection within the one-year period beginning on the date of that determination.

(3)(A) Subject to subparagraph (B), an officer who is required to show cause for retention on active duty under subsection (b) of section 1181 of this title and who is determined under paragraph (1) to have established that he should be retained on active duty may again be required to show cause for retention at any time.

(B) An officer who has been required to show cause for retention on active duty under subsection (b) of section 1181 of this title and who is thereafter retained on active duty may not again be required to show cause for retention on active duty under such subsection solely because of conduct which was the subject of the

previous proceedings, unless the findings or recommendations of the board of inquiry that considered his case are determined to have been obtained by fraud or collusion.

(Added Pub. L. 96–513, title I, §110, Dec. 12, 1980, 94 Stat. 2872; amended Pub. L. 105–261, div. A, title V, §503(b)(1), Oct. 17, 1998, 112 Stat. 2003; Pub. L. 106–398, §1 [[div. A], title X, §1087(d)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–292; Pub. L. 107–314, div. A, title V, §506(a), Dec. 2, 2002, 116 Stat. 2534.)

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–314 designated existing provisions as par. (1) and added par. (2).

2000—Subsec. (c). Pub. L. 106–398 made technical correction to directory language of Pub. L. 105–261, §503(b)(1). See 1998 Amendment note below.

1998—Subsec. (c). Pub. L. 105–261, §503(b)(1), as amended by Pub. L. 106–398, substituted ''recommend to the Secretary concerned that the officer not be retained on active duty'' for ''send the record of its proceedings to a board of review convened under section 1183 of this title''.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, §1 [[div. A], title X, §1087(d)], Oct. 30, 2000, 114 Stat. 1654, 1654A–292, provided that the amendment made by section 1 [[div. A], title X, §1087(d)(2)] is effective Oct. 17, 1998, and as if included in the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, Pub. L. 105–261, as enacted.

[§1183. Repealed. Pub. L. 105–261, div. A, title V, §503(a), Oct. 17, 1998, 112 Stat. 2003]

Section, added Pub. L. 96–513, title I, §110, Dec. 12, 1980, 94 Stat. 2873, related to convening and determinations of boards of review.

§1184. Removal of officer: action by Secretary upon recommendation of board of inquiry

The Secretary of the military department concerned may remove an officer from active duty if the removal of such officer from active duty is recommended by a board of inquiry convened under section 1182 of this title.

(Added Pub. L. 96–513, title I, §110, Dec. 12, 1980, 94 Stat. 2874; amended Pub. L. 105–261, div. A, title V, §503(b)(2), (c)(1), Oct. 17, 1998, 112 Stat. 2003.)

AMENDMENTS

1998—Pub. L. 105–261 substituted ''inquiry'' for ''review'' in section catchline and ''board of inquiry convened under section 1182 of this title'' for ''board of review convened under section 1183 of this title'' in text.

§1185. Rights and procedures

(a) Under regulations prescribed by the Secretary of Defense, each officer required under section 1181 of this title to show cause for retention on active duty—

(1) shall be notified in writing, at least 30 days before the hearing of his case by a board of inquiry, of the reasons for which he is being required to show cause for retention on active duty;

(2) shall be allowed a reasonable time, as determined by the board of inquiry, to prepare his showing of cause for his retention on active duty;

(3) shall be allowed to appear in person and to be represented by counsel at proceedings before the board of inquiry; and

(4) shall be allowed full access to, and shall be furnished copies of, records relevant to his case, except that the board of inquiry shall withhold any record that the Secretary concerned determines should be withheld in the interest of national security.

(b) When a record is withheld under subsection (a)(4), the officer whose case is under consideration shall, to the extent that the interest of national security permits, be furnished a summary of the record so withheld.

(Added Pub. L. 96–513, title I, §110, Dec. 12, 1980, 94 Stat. 2874.)

§1186. Officer considered for removal: voluntary retirement or discharge

(a) At any time during proceedings under this chapter with respect to the removal of an officer from active duty, the Secretary of the military department concerned may grant a request by the officer—

(1) for voluntary retirement, if the officer is qualified for retirement; or

(2) for discharge in accordance with subsection (b)(2).

(b) An officer removed from active duty under section 1184 of this title shall—

(1) if eligible for voluntary retirement under any provision of law on the date of such removal, be retired in the grade and with the retired pay for which he would be eligible if retired under such provision; and

(2) if ineligible for voluntary retirement under any provision of law on the date of such removal—

(A) be honorably discharged in the grade then held, in the case of an officer whose case was brought under subsection (a) of section 1181 of this title; or

(B) be discharged in the grade then held, in the case of an officer whose case was brought under subsection (b) of section 1181 of this title.

(c) An officer who is discharged under subsection (b)(2) is entitled, if eligible therefor, to separation pay under section 1174(a)(2) of this title.

(Added Pub. L. 96–513, title I, §110, Dec. 12, 1980, 94 Stat. 2874; amended Pub. L. 101–510, div. A, title V, §501(f)(1), Nov. 5, 1990, 104 Stat. 1550.)

AMENDMENTS

1990—Subsec. (c). Pub. L. 101–510 substituted ''section 1174(a)(2)'' for ''section 1174(b)''.

§1187. Officers eligible to serve on boards

(a) IN GENERAL.—Except as provided in subsection (b), each board convened under this chapter shall consist of officers appointed as follows:

(1) Each member of the board shall be an officer of the same armed force as the officer being required to show cause for retention on active duty.

(2) Each member of the board shall be in a grade above major or lieutenant commander, except that at least one member of the board shall be in a grade above lieutenant colonel or commander.

(3) Each member of the board shall be senior in grade to any officer to be considered by the board.

(b) RETIRED OFFICERS.—If qualified officers are not available in sufficient numbers to comprise a board convened under this chapter, the Secretary of the military department concerned shall complete the membership of the board by appointing to the board retired officers of the same armed force. A retired officer may be appointed to such a board only if the retired grade of that officer—

(1) is above major or lieutenant commander or, in the case of an officer to be the senior officer of the board, above lieutenant colonel or commander; and

(2) is senior to the grade of any officer to be considered by the board.

(c) INELIGIBILITY BY REASON OF PREVIOUS CONSIDERATION OF SAME OFFICER.—No person may be a member of more than one board convened under this chapter to consider the same officer.

(d) EXCLUSION FROM STRENGTH LIMITATION.—A retired general or flag officer who is on active duty for the purpose of serving on a board convened under this chapter shall not, while so serving, be counted against any limitation on the number of general and flag officers who may be on active duty.

(Added Pub. L. 96–513, title I, § 110, Dec. 12, 1980, 94 Stat. 2875; amended Pub. L. 106–65, div. A, title V, § 504(a), Oct. 5, 1999, 113 Stat. 590; Pub. L. 110–417, [div. A], title V, § 505, Oct. 14, 2008, 122 Stat. 4434.)

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–417, § 505(a)(1), (b), substituted ''In General'' for ''Active Duty Officers'' in heading, redesignated pars. (3) and (4) as (2) and (3), respectively, and struck out former par. (2) which read as follows: ''Each member of the board shall be on the active-duty list.''

Subsec. (b). Pub. L. 110–417, § 505(a)(2), struck out ''on active duty'' after ''qualified officers'' in introductory provisions.

1999—Pub. L. 106–65 amended text generally. Prior to amendment, text consisted of subsecs. (a) and (b) relating to officers eligible to serve on boards.

CHAPTER 61—RETIREMENT OR SEPARATION FOR PHYSICAL DISABILITY

Sec.
1201. Regulars and members on active duty for more than 30 days: retirement.
1202. Regulars and members on active duty for more than 30 days: temporary disability retired list.
1203. Regulars and members on active duty for more than 30 days: separation.
1204. Members on active duty for 30 days or less or on inactive-duty training: retirement.
1205. Members on active duty for 30 days or less: temporary disability retired list.
1206. Members on active duty for 30 days or less or on inactive-duty training: separation.
1206a. Reserve component members unable to perform duties when ordered to active duty: disability system processing.
1207. Disability from intentional misconduct or willful neglect: separation.
1207a. Members with over eight years of active service: eligibility for disability retirement for pre-existing conditions.
1208. Computation of service.
1209. Transfer to inactive status list instead of separation.
1210. Members on temporary disability retired list: periodic physical examination; final determination of status.
1211. Members on temporary disability retired list: return to active duty; promotion.
1212. Disability severance pay.
1213. Effect of separation on benefits and claims.
1214. Right to full and fair hearing.
1214a. Members determined fit for duty in Physical Evaluation Board evaluation: prohibition on involuntary administrative separation due to unsuitability based on medical conditions considered in evaluation.
1215. Members other than Regulars: applicability of laws.
1216. Secretaries: powers, functions, and duties.
1216a. Determinations of disability: requirements and limitations on determinations.
1217. Academy cadets and midshipmen: applicability of chapter.
1218. Discharge or release from active duty: claims for compensation, pension, or hospitalization.
1218a. Discharge or release from active duty: transition assistance for reserve component members injured while on active duty.
1219. Statement of origin of disease or injury: limitations.
[1220. Repealed.]
1221. Effective date of retirement or placement of name on temporary disability retired list.
1222. Physical evaluation boards.

AMENDMENTS

2011—Pub. L. 111–383, div. A, title V, § 534(a)(2), Jan. 7, 2011, 124 Stat. 4217, added item 1214a.

2009—Pub. L. 111–84, div. A, title VI, § 641(b), Oct. 28, 2009, 123 Stat. 2365, added item 1218a.

2008—Pub. L. 110–181, div. A, title XVI, § 1642(b), Jan. 28, 2008, 122 Stat. 465, added item 1216a.

2006—Pub. L. 109–364, div. A, title V, § 597(a)(2), Oct. 17, 2006, 120 Stat. 2237, added item 1222.

2004—Pub. L. 108–375, div. A, title V, §§ 521(b), 555(b)(2), Oct. 28, 2004, 118 Stat. 1888, 1914, added item 1206a and substituted ''Academy cadets and midshipmen: applicability of chapter'' for ''Cadets, midshipmen, and aviation cadets: chapter does not apply to'' in item 1217.

1999—Pub. L. 106–65, div. A, title VI, § 653(a)(2), Oct. 5, 1999, 113 Stat. 666, added item 1207a.

1997—Pub. L. 105–85, div. A, title V, § 513(d)(3), Nov. 18, 1997, 111 Stat. 1731, inserted ''or on inactive-duty training'' after ''Members on active duty for 30 days or less'' in items 1204 and 1206.

1986—Pub. L. 99–661, div. A, title VI, § 604(d)(4), Nov. 14, 1986, 100 Stat. 3876, struck out ''; disability from injury'' after ''30 days or less'' in items 1204, 1205, 1206.

1962—Pub. L. 87–651, title I, § 107(e), Sept. 7, 1962, 76 Stat. 509, substituted ''Discharge or release from active duty: claims for compensation, pension, or hospitalization'' for ''Explanation of rights before discharge'' in item 1218, and ''Statement of origin of disease or injury: limitations'' for ''Statement against interest void'' in item 1219, and struck out item 1220 ''Location of accredited representatives at military installations''.

1958—Pub. L. 85–861, § 1(28)(C), Sept. 2, 1958, 72 Stat. 1451, added item 1221.

1957—Pub. L. 85–56, title XXII, § 2201(31)(B), June 17, 1957, 71 Stat. 161, eff. Jan. 1, 1958, added items 1218 to 1220.

§ 1201. Regulars and members on active duty for more than 30 days: retirement

(a) RETIREMENT.—Upon a determination by the Secretary concerned that a member described in

subsection (c) is unfit to perform the duties of the member's office, grade, rank, or rating because of physical disability incurred while entitled to basic pay or while absent as described in subsection (c)(3), the Secretary may retire the member, with retired pay computed under section 1401 of this title, if the Secretary also makes the determinations with respect to the member and that disability specified in subsection (b).

(b) REQUIRED DETERMINATIONS OF DISABILITY.—Determinations referred to in subsection (a) are determinations by the Secretary that—

(1) based upon accepted medical principles, the disability is of a permanent nature and stable;

(2) the disability is not the result of the member's intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence; and

(3) either—

(A) the member has at least 20 years of service computed under section 1208 of this title; or

(B) the disability is at least 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination; and either—

(i) the disability was not noted at the time of the member's entrance on active duty (unless clear and unmistakable evidence demonstrates that the disability existed before the member's entrance on active duty and was not aggravated by active military service);

(ii) the disability is the proximate result of performing active duty;

(iii) the disability was incurred in line of duty in time of war or national emergency; or

(iv) the disability was incurred in line of duty after September 14, 1978.

(c) ELIGIBLE MEMBERS.—This section and sections 1202 and 1203 of this title apply to the following members:

(1) A member of a regular component of the armed forces entitled to basic pay.

(2) Any other member of the armed forces entitled to basic pay who has been called or ordered to active duty (other than for training under section 10148(a) of this title) for a period of more than 30 days.

(3) Any other member of the armed forces who is on active duty but is not entitled to basic pay by reason of section 502(b) of title 37 due to authorized absence (A) to participate in an educational program, or (B) for an emergency purpose, as determined by the Secretary concerned.

(Aug. 10, 1956, ch. 1041, 70A Stat. 91; Pub. L. 85–861, § 1(28)(A), Sept. 2, 1958, 72 Stat. 1451; Pub. L. 87–651, title I, § 107(a), Sept. 7, 1962, 76 Stat. 508; Pub. L. 95–377, § 3(1), Sept. 19, 1978, 92 Stat. 719; Pub. L. 96–343, § 10(c)(1), Sept. 8, 1980, 94 Stat. 1129; Pub. L. 96–513, title I, § 117, Dec. 12, 1980, 94 Stat. 2878; Pub. L. 99–145, title V, § 513(a)(1)(A), Nov. 8, 1985, 99 Stat. 627; Pub. L. 101–189, div. A, title XVI, § 1621(a)(1), Nov. 29, 1989, 103 Stat. 1602; Pub. L. 103–337, div. A, title XVI, § 1671(c)(6), Oct. 5, 1994, 108 Stat. 3014; Pub. L. 104–201, div. A, title V, § 572(a), Sept. 23, 1996, 110 Stat. 2533; Pub. L. 110–181, div. A, title XVI, § 1641(a), Jan. 28, 2008, 122 Stat. 464; Pub. L. 110–417, [div. A], title VII, § 727(a), Oct. 14, 2008, 122 Stat. 4510.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1201	37:272(a) (less clause (5), and less 2d proviso). 37:272(b) (less clause (5), and less 2d and last provisos). 37:272(f) (less applicability to 37:272(c) and (e)).	Oct. 12, 1949, ch. 681, § 402(a) (less clause (5), and less 2d proviso), (b) (less clause (5), and less 2d and last provisos), (f) (less applicability to § 402(c) and (e)), 63 Stat. 816, 817, 820.

The words ''any other member'' are substituted for the words ''a member of a Reserve component'', in 37:272(a) and (b), since the words ''Reserve component'' are defined by section 102(k) of the Career Compensation Act of 1949, 63 Stat. 805 (37 U.S.C. 231(k)), to include members appointed, enlisted, or inducted without component. The words ''active duty (other than for training)'' are substituted for the words ''extended active duty'' for clarity and to reflect the opinion of the Comptroller General in 31 Comp. Gen. 95, 99. The words ''if the Secretary also determines that'' are substituted for the words ''That if condition (5) above is met by a finding that'', in 37:272(a) and (b). The words ''of such member'', ''upon retirement'', and ''to receive'', in 37:272(a), are omitted as surplusage.

In clause (1), the words ''based upon accepted medical principles'' are inserted as a necessary implication of the rule stated in 37:272(a)(5) and (b)(5).

Clause (3)(A) is substituted for 37:272(f) (less applicability to 37:272(c) and (e)). 37:272(f) is omitted as surplusage.

In clause (3)(B), the words ''at the time of the determination'' are substituted for the word ''current'', in 37:272(a) and (b).

Clause (3)(B)(iii) is substituted for 37:272(a) (last proviso).

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1201	[No source].	[No source].

The amendment reflects the Act of April 23, 1956, ch. 209 (70 Stat 115). (See opinion of Comp. Gen., B–130269, March 18, 1957.)

1962 ACT

The changes correct typographical errors.

AMENDMENTS

2008—Subsec. (b)(3)(B)(i). Pub. L. 110–417 struck out ''the member has six months or more of active military service and'' before ''the disability was not noted'' and substituted ''(unless clear and unmistakable evidence demonstrates that the disability existed before the member's entrance on active duty and was not aggravated by active military service)'' for ''(unless compelling evidence or medical judgment is such to warrant a finding that the disability existed before the member's entrance on active duty)''.

Pub. L. 110–181 amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''the member has at least eight years of service computed under section 1208 of this title;''.

1996—Pub. L. 104–201 added subsecs. (a) and (c), designated existing provisions as subsec. (b), and substituted introductory provisions of subsec. (b) for ''Upon a determination by the Secretary concerned that a member of a regular component of the armed

forces entitled to basic pay, or any other member of the armed forces entitled to basic pay who has been called or ordered to active duty (other than for training under section 10148(a) of this title) for a period of more than 30 days, is unfit to perform the duties of his office, grade, rank, or rating because of physical disability incurred while entitled to basic pay, the Secretary may retire the member, with retired pay computed under section 1401 of this title, if the Secretary also determines that—''.

1994—Pub. L. 103–337 substituted ''10148(a)'' for ''270(b)'' in introductory provisions.

1989—Par. (3)(B). Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1985—Par. (1). Pub. L. 99–145 inserted ''and stable'' after ''permanent nature''.

1980—Par. (3)(B)(iv). Pub. L. 96–513 substituted ''after September 14, 1978'' for ''during the period beginning on September 15, 1978, and ending on September 30, 1982, except that the condition provided for in this item shall not be effective during such period unless the President determines that such condition should be effective during such period and issues an Executive order to that effect''.

Pub. L. 96–343 added cl. (iv).

1978—Par. (3)(B)(iv). Pub. L. 95–377 added cl. (iv) which provided additional condition, effective on Presidential determination, that the disability was incurred in the line of duty during Sept. 15, 1978, through Sept. 30, 1979, and which terminated on Sept. 30, 1979. See Effective and Termination Dates of 1978 Amendment note set out under this section.

1962—Pub. L. 87–651 substituted ''training under section 270(b) of this title)'' for ''training) under section 270(b) of this title''.

1958—Pub. L. 85–861 inserted ''under section 270(b) of this title'' after ''(other than for training)''.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 572(d) of Pub. L. 104–201 provided that: ''The amendments made by this section [amending this section and sections 1202 and 1203 of this title] shall take effect on the date of the enactment of this Act [Sept. 23, 1996] and shall apply with respect to physical disabilities incurred on or after such date.''

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 an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE AND TERMINATION DATES OF 1978 AMENDMENT

Section 3 of Pub. L. 95–377 provided that the amendment made by that section is effective only for the period beginning Sept. 15, 1978, and ending Sept. 30, 1979.

PUBLIC HEALTH SERVICE

Authority vested by this chapter in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to commissioned officers of Public Health Service, by Secretary of Health and Human Services or his designee, see section 213a(b) of Title 42, The Public Health and Welfare.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Authority vested by this chapter in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to commissioned officer corps of National Oceanic and Atmospheric Administration, by Secretary of Commerce or Secretary's designee, see section 3071 of Title 33, Navigation and Navigable Waters.

EXECUTIVE ORDER NO. 12239

Ex. Ord. No. 12239, Sept. 21, 1980, 45 F.R. 62967, which related to suspension of certain promotion and disability separation limitations, was revoked by Ex. Ord. No. 12396, Dec. 9, 1982, 47 F.R. 55897, set out as a note under section 301 of Title 3, The President.

§ 1202. Regulars and members on active duty for more than 30 days: temporary disability retired list

Upon a determination by the Secretary concerned that a member described in section 1201(c) of this title would be qualified for retirement under section 1201 of this title but for the fact that his disability is not determined to be of a permanent nature and stable, the Secretary shall, if he also determines that accepted medical principles indicate that the disability may be of a permanent nature, place the member's name on the temporary disability retired list, with retired pay computed under section 1401 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 92; Pub. L. 85–861, § 1(28)(A), Sept. 2, 1958, 72 Stat. 1451; Pub. L. 87–651, title I, § 107(a), Sept. 7, 1962, 76 Stat. 508; Pub. L. 99–145, title V, § 513(a)(1)(B), Nov. 8, 1985, 99 Stat. 627; Pub. L. 103–337, div. A, title XVI, § 1671(c)(6), Oct. 5, 1994, 108 Stat. 3014; Pub. L. 104–201, div. A, title V, § 572(b), Sept. 23, 1996, 110 Stat. 2533.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1202	37:272(a) (clause (5)). 37:272(b) (clause (5)).	Oct. 12, 1949, ch. 681, § 402(a) (clause (5)), (b) (clause (5)), 63 Stat. 816, 817.

The first 82 words are inserted for clarity and are based on the rule stated in section 1201 of this title, which restates that part of 37:272(a), (b), and (f) relating to retirement for physical disability. The revised section incorporates by reference those provisions which are identical for retirement and for placement on the temporary disability retired list. This is possible, since 37:272(f) applies to placement on the temporary disability retired list as well as to retirement (see opinion of the Judge Advocate General of the Army (JAGA 1953/1900, 9 Mar. 1953)).

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1202	[No source].	[No source].

The amendment reflects the Act of April 23, 1956, ch. 209 (70 Stat 115). (See opinion of Comp. Gen., B–130269, March 18, 1957.)

1962 ACT

The changes correct typographical errors.

AMENDMENTS

1996—Pub. L. 104–201 substituted ''a member described in section 1201(c) of this title'' for ''a member of a regular component of the armed forces entitled to basic pay, or any other member of the armed forces entitled

to basic pay who has been called or ordered to active duty (other than for training under section 10148(a) of this title) for a period of more than 30 days,''.

1994—Pub. L. 103–337 substituted ''10148(a)'' for ''270(b)''.

1985—Pub. L. 99–145 inserted ''and stable'' after ''determined to be of a permanent nature''.

1962—Pub. L. 87–651 substituted ''training under section 270(b) of this title)'' for ''training) under section 270(b) of this title''.

1958—Pub. L. 85–861 inserted ''under section 270(b) of this title'' after ''(other than for training)''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective Sept. 23, 1996, and applicable with respect to physical disabilities incurred on or after such date, see section 572(d) of Pub. L. 104–201, set out as a note under section 1201 of this title.

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 an Effective Date note under section 10001 of this title.

§ 1203. Regulars and members on active duty for more than 30 days: separation

(a) SEPARATION.—Upon a determination by the Secretary concerned that a member described in section 1201(c) of this title is unfit to perform the duties of the member's office, grade, rank, or rating because of physical disability incurred while entitled to basic pay or while absent as described in section 1201(c)(3) of this title, the member may be separated from the member's armed force, with severance pay computed under section 1212 of this title, if the Secretary also makes the determinations with respect to the member and that disability specified in subsection (b).

(b) REQUIRED DETERMINATIONS OF DISABILITY.—Determinations referred to in subsection (a) are determinations by the Secretary that—

(1) the member has less than 20 years of service computed under section 1208 of this title;

(2) the disability is not the result of the member's intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence;

(3) based upon accepted medical principles, the disability is or may be of a permanent nature; and

(4) either—

(A) the disability is less than 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination, and the disability was (i) the proximate result of performing active duty, (ii) incurred in line of duty in time of war or national emergency, or (iii) incurred in line of duty after September 14, 1978;

(B) the disability is less than 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination, the disability was not noted at the time of the member's entrance on active duty (unless clear and unmistakable evidence demonstrates that the disability existed before the member's entrance on active duty and was not aggravated by active military service), or

(C) the disability is at least 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination, the disability was neither (i) the proximate result of performing active duty, (ii) incurred in line of duty in time of war or national emergency, nor (iii) incurred in line of duty after September 14, 1978, and the member has less than eight years of service computed under section 1208 of this title on the date when he would otherwise be retired under section 1201 of this title or placed on the temporary disability retired list under section 1202 of this title.

However, if the member is eligible for transfer to the inactive status list under section 1209 of this title, and so elects, he shall be transferred to that list instead of being separated.

(Aug. 10, 1956, ch. 1041, 70A Stat. 92; Pub. L. 85–861, § 1(28)(A), Sept. 2, 1958, 72 Stat. 1451; Pub. L. 87–651, title I, § 107(a), Sept. 7, 1962, 76 Stat. 508; Pub. L. 95–377, § 3(2), (3), Sept. 19, 1978, 92 Stat. 719, 720; Pub. L. 96–343, § 10(c)(2), (3), Sept. 8, 1980, 94 Stat. 1129; Pub. L. 96–513, title I, § 117, Dec. 12, 1980, 94 Stat. 2878; Pub. L. 101–189, div. A, title XVI, § 1621(a)(1), Nov. 29, 1989, 103 Stat. 1602; Pub. L. 103–337, div. A, title XVI, § 1671(c)(6), Oct. 5, 1994, 108 Stat. 3014; Pub. L. 104–201, div. A, title V, § 572(c), Sept. 23, 1996, 110 Stat. 2533; Pub. L. 110–181, div. A, title XVI, § 1641(b), Jan. 28, 2008, 122 Stat. 465; Pub. L. 110–417, [div. A], title VII, § 727(b), Oct. 14, 2008, 122 Stat. 4510; Pub. L. 111–383, div. A, title X, § 1075(b)(19), (e)(12), Jan. 7, 2011, 124 Stat. 4370, 4375.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1203	37:272(a) (2d proviso). 37:272(b) (2d and last provisos).	Oct. 12, 1949, ch. 681, § 402(a) (2d proviso), (b) (2d and last provisos), 63 Stat. 816, 817.

To state fully in the revised section the rule contained in 37:272(a) (2d proviso) and 272(b) (2d and last provisos), the provisions of 37:272(a) (less clause (5), and less 1st proviso), 272(b) (less clause (5), and less 1st proviso) and 272(f) (less applicability to 37:272(c) and (e)), also contained in section 1201 of this title, are repeated. The words ''the member may be separated'' are substituted for the words ''the member concerned shall not be eligible for any disability retirement provided in this section, but may be separated for physical disability,'' in 37:272(a) (2d proviso) and 37:272(b) (2d proviso).

Clause (1) is inserted for clarity, since a member who had over 20 years of service would qualify under section 1201 or 1202 of this title.

Clause (4)(A) is substituted for 37:272(a) (1st 20 words of 2d proviso).

Clause (4)(B) is substituted for 37:272(b) (lst 20 words of 2d proviso).

Clause (4)(C) is substituted for 37:272(b) (last proviso).

The last sentence of the revised section, relating to transfer to the inactive status list, is inserted for clarity because of section 1209 of this title.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1203	[No source].	[No source].

The amendment reflects the Act of April 23, 1956, ch. 209 (70 Stat 115). (See opinion of Comp. Gen., B–130269, March 18, 1957.)

1962 ACT

The changes correct typographical errors.

AMENDMENTS

2011—Subsec. (b)(4)(B). Pub. L. 111–383, § 1075(e)(12), made technical amendment to directory language of Pub. L. 110–417, § 727(b)(2). See 2008 Amendment note below.

Pub. L. 111–383, § 1075(b)(19), substituted ''determination,'' for ''determination,,''.

2008—Subsec. (b)(4)(B). Pub. L. 110–417, § 727(b)(2), as amended by Pub. L. 111–383, § 1075(e)(12), substituted ''(unless clear and unmistakable evidence demonstrates that the disability existed before the member's entrance on active duty and was not aggravated by active military service)'' for ''(unless evidence or medical judgment is such to warrant a finding that the disability existed before the member's entrance on active duty)''.

Pub. L. 110–417, § 727(b)(1), struck out ''the member has six months or more of active military service, and'' before ''the disability was not noted''.

Pub. L. 110–181 substituted '', the member has six months or more of active military service, and the disability was not noted at the time of the member's entrance on active duty (unless evidence or medical judgment is such to warrant a finding that the disability existed before the member's entrance on active duty)'' for ''and the member has at least eight years of service computed under section 1208 of this title''.

1996—Pub. L. 104–201 added subsec. (a), designated existing provisions as subsec. (b), and substituted introductory provisions of subsec. (b) for ''Upon a determination by the Secretary concerned that a member of a regular component of the armed forces entitled to basic pay, or any other member of the armed forces entitled to basic pay who has been called or ordered to active duty (other than for training under section 10148(a) of this title) for a period of more than 30 days, is unfit to perform the duties of his office, grade, rank, or rating because of physical disability incurred while entitled to basic pay, the member may be separated from his armed force, with severance pay computed under section 1212 of this title, if the Secretary also determines that—''.

1994—Pub. L. 103–337 substituted ''10148(a)'' for ''270(b)'' in introductory provisions.

1989—Par. (4)(A) to (C). Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration'' wherever appearing.

1980—Par. (4)(A)(iii). Pub. L. 96–513 substituted ''after September 14, 1978'' for ''during the period beginning on September 15, 1978, and ending on September 30, 1982, except that the condition provided for in this item shall not be effective during such period unless the President determines that such condition should be effective during such period and issues an Executive order to that effect''.

Pub. L. 96–343, § 10(c)(2), added cl. (iii).

Par. (4)(C). Pub. L. 96–513 substituted ''after September 14, 1978'' for ''during the period beginning on September 15, 1978, and ending on September 30, 1982, except that the condition provided for in this item shall not be effective during such period unless the President determines that such condition should be effective during such period and issues an Executive order to that effect'' in cl. (iii).

Pub. L. 96–343, § 10(c)(3), substituted ''(i) the proximate result of performing active duty, (ii) incurred in line of duty in time of war or national emergency, nor (iii) incurred in line of duty during the period beginning on September 15, 1978, and ending on September 30, 1982, except that the condition provided for in this item shall not be effective during such period unless the President determines that such condition should be effective during such period and issues an Executive order to that effect'' for ''the proximate result of performing active duty nor incurred in line of duty in time of war or national emergency''.

1978—Par. (4)(A)(iii). Pub. L. 95–377, § 3(2), added cl. (iii) which provided additional conditions, effective on Presidential determination, that the disability was incurred in the line of duty during Sept. 15, 1978, through Sept. 30, 1979, and which terminated on Sept. 30, 1979. See Effective and Termination Dates of 1978 Amendment note set out under this section.

Par. (4)(C). Pub. L. 95–377, § 3(3), designated existing conditions of performing active duty and incurred in line of duty in time of war or national emergency as cls. (i) and (ii) and added cl. (iii) providing additional condition, effective on Presidential determination, that the disability was incurred in line of duty during Sept. 15, 1978, through Sept. 30, 1979, and terminated on Sept. 30, 1979. See Effective and Termination Dates of 1978 Amendment note set out under this section.

1962—Pub. L. 87–651 substituted ''training under section 270(b) of this title)'' for ''training) under section 270(b) of this title.''

1958—Pub. L. 85–861 inserted ''under section 270(b) of this title'' after ''(other than for training)''.

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 111–383, div. A, title X, § 1075(e)(12), Jan. 7, 2011, 124 Stat. 4375, provided that the amendment by section 1075(e)(12) is effective as of Oct. 14, 2008, and as if included in Pub. L. 110–417 as enacted.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective Sept. 23, 1996, and applicable with respect to physical disabilities incurred on or after such date, see section 572(d) of Pub. L. 104–201, set out as a note under section 1201 of this title.

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 an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE AND TERMINATION DATES OF 1978 AMENDMENT

Section 3 of Pub. L. 95–377 provided that the amendment made by that section is effective only for the period beginning Sept. 15, 1978, and ending Sept. 30, 1979.

SUSPENSION OF CERTAIN PROMOTION AND DISABILITY SEPARATION LIMITATIONS

For provisions relating to the suspension of certain promotion and disability separation limitations, see Ex. Ord. No. 12239, Sept. 21, 1980, 45 F.R. 62967, set out as a note under section 1201 of this title.

§ 1204. Members on active duty for 30 days or less or on inactive-duty training: retirement

Upon a determination by the Secretary concerned that a member of the armed forces not covered by section 1201, 1202, or 1203 of this title is unfit to perform the duties of his office, grade, rank, or rating because of physical disability, the Secretary may retire the member with retired pay computed under section 1401 of this title, if the Secretary also determines that—

(1) based upon accepted medical principles, the disability is of a permanent nature and stable;

(2) the disability—

(A) was incurred before September 24, 1996, as the proximate result of—

(i) performing active duty or inactive-duty training;

(ii) traveling directly to or from the place at which such duty is performed; or

(iii) an injury, illness, or disease incurred or aggravated while remaining overnight, immediately before the commencement of inactive-duty training, or while remaining overnight between successive periods of inactive-duty training, at or in the vicinity of the site of the inactive-duty training, if the site of the inactive-duty training is outside reasonable commuting distance of the member's residence;

(B) is a result of an injury, illness, or disease incurred or aggravated in line of duty after September 23, 1996—

(i) while performing active duty or inactive-duty training;

(ii) while traveling directly to or from the place at which such duty is performed; or

(iii) while remaining overnight, immediately before the commencement of inactive-duty training, or while remaining overnight between successive periods of inactive-duty training, at or in the vicinity of the site of the inactive-duty training; or

(C) is a result of an injury, illness, or disease incurred or aggravated in line of duty—

(i) while the member was serving on funeral honors duty under section 12503 of this title or section 115 of title 32;

(ii) while the member was traveling to or from the place at which the member was to so serve; or

(iii) while the member remained overnight at or in the vicinity of that place immediately before so serving, if the place is outside reasonable commuting distance from the member's residence;

(3) the disability is not the result of the member's intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence; and

(4) either—

(A) the member has at least 20 years of service computed under section 1208 of this title; or

(B) the disability is at least 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination.

(Aug. 10, 1956, ch. 1041, 70A Stat. 93; Pub. L. 99–145, title V, § 513(a)(1)(A), Nov. 8, 1985, 99 Stat. 627; Pub. L. 99–661, div. A, title VI, § 604(d)(1), (2)(A), Nov. 14, 1986, 100 Stat. 3876; Pub. L. 101–189, div. A, title XVI, § 1621(a)(1), Nov. 29, 1989, 103 Stat. 1602; Pub. L. 102–484, div. A, title V, § 516(a), Oct. 23, 1992, 106 Stat. 2407; Pub. L. 104–201, div. A, title V, § 534, Sept. 23, 1996, 110 Stat. 2521; Pub. L. 105–85, div. A, title V, § 513(c)(1), (d)(1), Nov. 18, 1997, 111 Stat. 1730, 1731; Pub. L. 106–65, div. A, title V, § 578(i)(3), Oct. 5, 1999, 113 Stat. 629; Pub. L. 107–107, div. A, title V, § 513(b), Dec. 28, 2001, 115 Stat. 1093.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1204	37:271(a). 37:272(c) (less clause (5), and less last proviso). 37:272(f) (as applicable to 37:272(c)).	Oct. 12, 1949, ch. 681, §§ 401(a), 402(c) (less clause (5), and less last proviso), 402(f) (as applicable to § 402(c)), 63 Stat. 816, 817, 820.

37:271(a) is omitted as surplusage. As it relates to retirement it is only a statement of the general coverage of the retirement sections of this chapter. As it relates to separation it is only a statement of the general coverage of the separation sections of this chapter. The words "a member * * * not covered by section 1201, 1202, or 1203 of this title" are substituted for the words "a member * * * other than those members covered in subsections (a) and (b) of this section". The words "if the Secretary also determines that" are substituted for the words "That if condition (5) above is met by a finding that", in 37:272(c). The words "of such member", "upon retirement", and "to receive", in 37:272(c), are omitted as surplusage.

In clause (1), the words "based upon accepted medical principles" are inserted as a necessary implication of the rule stated in 37:272(c)(5).

In clause (2), the word "disability" is substituted for the word "injury" to make clear, in view of 37:278, that members on active duty for 30 days or less are on the same footing as those on active duty for a longer period, with respect to the effect of misconduct or neglect.

In clause (3), the words "and was not incurred during a period of unauthorized absence" are inserted to conform to other revised sections of this chapter and because of section 1207 of this title. The words "full-time training duty, other full-time duty" are omitted as covered by the words "active duty".

Clause (4)(A) is substituted for 37:272(f) (as applicable to 37:272(c)). 37:272(f) (proviso) is omitted as surplusage.

In clause (4)(B), the words "at the time of the determination" are substituted for the word "current", in 37:272(c).

AMENDMENTS

2001—Par. (2)(B)(iii). Pub. L. 107–107, struck out ", if the site of the inactive-duty training is outside reasonable commuting distance of the member's residence" before semicolon.

1999—Par. (2)(C). Pub. L. 106–65 added subpar. (C).

1997—Pub. L. 105–85, § 513(d)(1), amended section catchline generally, inserting "or on inactive-duty training" after "30 days or less".

Par. (2). Pub. L. 105–85, § 513(c)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "the disability is the proximate result of, or was incurred in line of duty after the date of the enactment of this Act as a result of—

"(A) performing active duty or inactive-duty training;

"(B) traveling directly to or from the place at which such duty is performed; or

"(C) an injury, illness, or disease incurred or aggravated while remaining overnight, between successive periods of inactive-duty training, at or in the vicinity of the site of the inactive duty training, if the site is outside reasonable commuting distance of the member's residence;".

1996—Par. (2). Pub. L. 104–201 amended par. (2) generally. Prior to amendment, par. (2) read as follows: "the disability is the proximate result of performing active duty or inactive-duty training or of traveling directly to or from the place at which such duty is performed;".

1992—Par. (2). Pub. L. 102–484 inserted before semicolon at end "or of traveling directly to or from the place at which such duty is performed".

1989—Par. (4)(B). Pub. L. 101–189 substituted "Department of Veterans Affairs" for "Veterans' Administration".

1986—Pub. L. 99–661 struck out ''; disability from injury'' after ''30 days or less'' in section catchline and ''resulting from an injury'' after ''because of physical disability'' in provisions preceding par. (1).

1985—Par. (1). Pub. L. 99–145 inserted ''and stable'' after ''permanent nature''.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 516(b) of Pub. L. 102–484 provided that: ''The amendments made by subsection (a) [amending this section and section 1206 of this title] shall take effect with respect to disabilities incurred on or after November 14, 1986, but any benefits or services payable by reason of the applicability of those amendments during the period beginning on November 14, 1986, and ending on the date of the enactment of this Act [Oct. 23, 1992] shall be subject to the availability of appropriations.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–661 applicable with respect to persons who, after Nov. 14, 1986, incur or aggravate an injury, illness, or disease or die, see section 604(g) of Pub. L. 99–661, set out as a note under section 1074a of this title.

§ 1205. Members on active duty for 30 days or less: temporary disability retired list

Upon a determination by the Secretary concerned that a member of the armed forces not covered by section 1201, 1202, or 1203 of this title would be qualified for retirement under section 1204 of this title but for the fact that his disability is not determined to be of a permanent nature and stable, the Secretary shall, if he also determines that accepted medical principles indicate that the disability may be of a permanent nature, place the member's name on the temporary disability retired list, with retired pay computed under section 1401 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 94; Pub. L. 99–145, title V, § 513(a)(1)(B), Nov. 8, 1985, 99 Stat. 627; Pub. L. 99–661, div. A, title VI, § 604(d)(2)[(B)], Nov. 14, 1986, 100 Stat. 3876.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1205	37:272(c) (clause (5)).	Oct. 12, 1949, ch. 681, § 402(c) (clause (5)), 63 Stat. 818.

The first 52 words are inserted for clarity and are based on the rule stated in section 1204 of this title, which restates that part of 37:272(c) relating to retirement for physical disability. The revised section incorporates by reference those provisions which are identical for retirement and for placement on the temporary disability retired list. This is possible, since 37:272(f) applies to placement on the temporary disability retired list as well as to retirement (see opinion of the Judge Advocate General of the Army (JAGA 1953/1900, 9 Mar. 1953)).

AMENDMENTS

1986—Pub. L. 99–661 struck out ''; disability from injury'' after ''30 days or less'' in section catchline.

1985—Pub. L. 99–145 inserted ''and stable'' after ''determined to be of a permanent nature''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–661 applicable with respect to persons who, after Nov. 14, 1986, incur or aggravate an injury, illness, or disease or die, see section 604(g) of Pub. L. 99–661, set out as a note under section 1074a of this title.

§ 1206. Members on active duty for 30 days or less or on inactive-duty training: separation

Upon a determination by the Secretary concerned that a member of the armed forces not covered by section 1201, 1202, or 1203 of this title is unfit to perform the duties of his office, grade, rank, or rating because of physical disability, the member may be separated from his armed force, with severance pay computed under section 1212 of this title, if the Secretary also determines that—

(1) the member has less than 20 years of service computed under section 1208 of this title;

(2) the disability is a result of an injury, illness, or disease incurred or aggravated in line of duty—

(A) while—

(i) performing active duty or inactive-duty training;

(ii) traveling directly to or from the place at which such duty is performed; or

(iii) remaining overnight immediately before the commencement of inactive-duty training, or while remaining overnight between successive periods of inactive-duty training, at or in the vicinity of the site of the inactive-duty training, if the site is outside reasonable commuting distance of the member's residence; or

(B) while the member—

(i) was serving on funeral honors duty under section 12503 of this title or section 115 of title 32;

(ii) was traveling to or from the place at which the member was to so serve; or

(iii) remained overnight at or in the vicinity of that place immediately before so serving;

(3) the disability is not the result of the member's intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence;

(4) based upon accepted medical principles, the disability is or may be of a permanent nature; and

(5) the disability is less than 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination, and, in the case of a disability incurred before October 5, 1999, was the proximate result of performing active duty or inactive-duty training or of traveling directly to or from the place at which such duty is performed.

However, if the member is eligible for transfer to the inactive status list under section 1209 of this title, and so elects, he shall be transferred to that list instead of being separated.

(Aug. 10, 1956, ch. 1041, 70A Stat. 94; Pub. L. 99–661, div. A, title VI, § 604(d)(1), (3), Nov. 14, 1986, 100 Stat. 3876; Pub. L. 101–189, div. A, title XVI, § 1621(a)(1), Nov. 29, 1989, 103 Stat. 1602; Pub. L. 102–484, div. A, title V, § 516(a), Oct. 23, 1992, 106 Stat. 2407; Pub. L. 105–85, div. A, title V, § 513(c)(2), (d)(2), Nov. 18, 1997, 111 Stat. 1731; Pub. L. 106–65, div. A, title V, § 578(i)(4), title VI, § 653(c), Oct. 5, 1999, 113 Stat. 629, 667; Pub. L. 107–107, div. A, title V, § 513(b), title X, § 1048(c)(6), Dec. 28, 2001, 115 Stat. 1093, 1226.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1206	37:272(c) (last proviso).	Oct. 12, 1949, ch. 681, § 402(c) (last proviso), 63 Stat. 818.

To state fully in the revised section the rule contained in 37:272(c) (last proviso), the provisions of 37:272(c) (less clause (5), and less 1st proviso), and 272(f) (as applicable to 272(c)), also contained in section 1204 of this title, are repeated. The words ''the member may be separated'' are substituted for the words ''the member concerned shall not be eligible for any disability retirement provided in this section, but may be separated for physical disability''.

Clause (1) is inserted for clarity, since a member who had over 20 years of service would qualify under section 1204 or 1205 of this title.

The last sentence of the revised section, relating to transfer to the inactive status list, is inserted for clarity because of section 1209 of this title.

AMENDMENTS

2001—Par. (2)(B)(iii). Pub. L. 107–107, § 513(b), struck out '', if the place is outside reasonable commuting distance from the member's residence'' before semicolon at end.

Par. (5). Pub. L. 107–107, § 1048(c)(6), substituted ''October 5, 1999,'' for ''the date of the enactment of the National Defense Authorization Act for Fiscal Year 2000,''.

1999—Par. (2). Pub. L. 106–65, § 578(i)(4), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''the disability is a result of an injury, illness, or disease incurred or aggravated in line of duty while—

''(A) performing active duty or inactive-duty training;

''(B) traveling directly to or from the place at which such duty is performed; or

''(C) while remaining overnight immediately before the commencement of inactive-duty training, or while remaining overnight between successive periods of inactive-duty training, at or in the vicinity of the site of the inactive-duty training, if the site is outside reasonable commuting distance of the member's residence;''.

Par. (5). Pub. L. 106–65, § 653(c), inserted '', in the case of a disability incurred before the date of the enactment of the National Defense Authorization Act for Fiscal Year 2000,'' after ''determination, and''.

1997—Pub. L. 105–85, § 513(d)(2), amended section catchline generally, inserting ''or on inactive-duty training'' after ''30 days or less''.

Pars. (2) to (5). Pub. L. 105–85, § 513(c)(2), added par. (2) and redesignated former pars. (2) to (4) as (3) to (5), respectively.

1992—Par. (4). Pub. L. 102–484 inserted before period at end ''or of traveling directly to or from the place at which such duty is performed''.

1989—Par. (4). Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1986—Pub. L. 99–661 struck out ''; disability from injury'' after ''30 days or less'' in section catchline and ''resulting from an injury'' after ''because of physical disability'' in provisions preceding par. (1).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–484 effective with respect to disabilities incurred on or after Nov. 14, 1986, with any benefits or services payable by reason of applicability of that amendment during period beginning Nov. 14, 1986, and ending Oct. 23, 1992, subject to availability of appropriations, see section 516(b) of Pub. L. 102–484, set out as a note under section 1204 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–661 applicable with respect to persons who, after Nov. 14, 1986, incur or aggravate an injury, illness, or disease or die, see section 604(g) of Pub. L. 99–661, set out as a note under section 1074a of this title.

§ 1206a. Reserve component members unable to perform duties when ordered to active duty: disability system processing

(a) MEMBERS RELEASED FROM ACTIVE DUTY WITHIN 30 DAYS.—A member of a reserve component who is ordered to active duty for a period of more than 30 days and is released from active duty within 30 days of commencing such period of active duty for a reason stated in subsection (b) shall be considered for all purposes under this chapter to have been serving under an order to active duty for a period of 30 days or less.

(b) APPLICABLE REASONS FOR RELEASE.—Subsection (a) applies in the case of a member released from active duty because of a failure to meet—

(1) physical standards for retention due to a preexisting condition not aggravated during the period of active duty; or

(2) medical or dental standards for deployment due to a preexisting condition not aggravated during the period of active duty.

(c) SAVINGS PROVISION FOR MEDICAL CARE PROVIDED WHILE ON ACTIVE DUTY.—Notwithstanding subsection (a), any benefit under chapter 55 of this title received by a member described in subsection (a) or a dependent of such member before or during the period of active duty shall not be subject to recoupment or otherwise affected.

(Added Pub. L. 108–375, div. A, title V, § 521(a), Oct. 28, 2004, 118 Stat. 1887.)

§ 1207. Disability from intentional misconduct or willful neglect: separation

Each member of the armed forces who incurs a physical disability that, in the determination of the Secretary concerned, makes him unfit to perform the duties of his office, grade, rank, or rating, and that resulted from his intentional misconduct or willful neglect or was incurred during a period of unauthorized absence, shall be separated from his armed force without entitlement to any benefits under this chapter.

(Aug. 10, 1956, ch. 1041, 70A Stat. 94.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1207	37:278.	Oct. 12, 1949, ch. 681, § 408, 63 Stat. 823.

The words ''Each member * * * who'' are substituted for the words ''When a member * * * such member''. The words ''is determined to have'' are omitted as surplusage.

§ 1207a. Members with over eight years of active service: eligibility for disability retirement for pre-existing conditions

(a) In the case of a member described in subsection (b) who would be covered by section 1201, 1202, or 1203 of this title but for the fact that the member's disability is determined to have been incurred before the member became entitled to basic pay in the member's current period of active duty, the disability shall be deemed to have

been incurred while the member was entitled to basic pay and shall be so considered for purposes of determining whether the disability was incurred in the line of duty.

(b) A member described in subsection (a) is a member with at least eight years of active service.

(Added Pub. L. 106–65, div. A, title VI, § 653(a)(1), Oct. 5, 1999, 113 Stat. 666.)

§ 1208. Computation of service

(a) For the purposes of this chapter, a member of a regular component shall be credited with the service described in paragraph (1) or that described in paragraph (2), whichever is greater:

(1) The service that he is considered to have for the purpose of separation, discharge, or retirement for length of service.

(2) The sum of—

(A) his active service as a member of the armed forces, a nurse, a reserve nurse, a contract surgeon, a contract dental surgeon, or an acting dental surgeon;

(B) his active service as a member of the National Oceanic and Atmospheric Administration or the Public Health Service; and

(C) his service while participating in exercises or performing duties under sections 502, 503, 504, and 505 of title 32.

For the purpose of paragraph (2), active service as a member of the National Oceanic and Atmospheric Administration includes active service as a member of the Environmental Science Services Administration and of the Coast and Geodetic Survey.

(b) A member of the armed forces who is not a member of a regular component shall be credited, for the purposes of this chapter, with the number of years of service that he would count if he were computing his years of service under section 12733 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 94; Pub. L. 89–718, § 8, Nov. 2, 1966, 80 Stat. 1117; Pub. L. 96–513, title V, §§ 501(16), 511(42), Dec. 12, 1980, 94 Stat. 2908, 2923; Pub. L. 99–661, div. A, title XIII, § 1343(a)(6), Nov. 14, 1986, 100 Stat. 3992; Pub. L. 100–26, § 7(j)(3), Apr. 21, 1987, 101 Stat. 283; Pub. L. 104–106, div. A, title XV, § 1501(c)(13), Feb. 10, 1996, 110 Stat. 499.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1208(a)	37:282 (less clauses (2) and (3), less applicability to persons referred to in 37:281, and less applicability to service as a cadet before August 24, 1912, as a midshipman before March 4, 1913, as an Army field clerk, or as a field clerk, Army Quartermaster Corps).	Oct. 12, 1949, ch. 681, § 412 (less clause (3), less applicability to persons referred to in § 411, and less applicability to service as a cadet before August 24, 1912, as a midshipman before March 4, 1913, as an Army field clerk, or as a field clerk, Army Quartermaster Corps), 63 Stat. 824.
1208(b)	37:282 (clause (2), less applicability to persons referred to in 37:281, and less applicability to service as a cadet before August 24, 1912, as a midshipman before March 4, 1913, as an Army field clerk, or as a field clerk, Army Quartermaster Corps).	

In subsection (a), the words ''shall be credited with the service described in clause (1) or that described in clause (2), whichever is greater'' are substituted for the words ''shall be interpreted to mean''.

In subsection (a)(1), the words ''he is considered to have'' are substituted for the words ''such member, former member, or person has or is deemed to have pursuant to law''.

In subsection (a)(2)(A), the words ''his active service'' are substituted for the words ''while on the active list or on active duty or while participating in full-time training or other full-time duty provided for or authorized in the National Defense Act, as amended, the Naval Reserve Act of 1938, as amended, or in—other provisions of law'' because of the definitions of ''active service'' and ''active duty'' in sections 101(24) and 101(22) of this title.

In subsection (a)(2)(C), the references to 10:22–23, 24–26, and 30–36 are omitted as repealed by section 401 of the Army Organization Act of 1950, 64 Stat. 271. The reference to 32:70 is omitted as repealed by section 16 of the act of June 15, 1933, ch. 87, 48 Stat. 159. The reference to 10:23a is omitted as executed. The references to 10:38 and 32:66 and 172–175 are omitted as covered by the words ''active service''. The references to 32:144–147, 171, and 176 are omitted, since they deal with pay and do not authorize duty or training. The reference to section 502 of title 32, not contained in 37:282, is inserted, since section 92 of the National Defense Act, as amended (32:62) is referred to in section 412 of the Career Compensation Act of 1949 (37:282).

In subsection (b), the words ''any other member'' are substituted for the words ''members of the reserve components'', since the words ''reserve components'' are defined by section 102(k) of the Career Compensation Act of 1949, 63 Stat. 805 (37 U.S.C. 231(k)) to include members appointed, enlisted, or inducted without component.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–106 substituted ''section 12733'' for ''section 1333''.

1987—Subsec. (a). Pub. L. 100–26 substituted ''paragraph (1)'' and ''paragraph (2)'' for ''clause (1)'' and ''clause (2)'', respectively, in introductory provisions, and ''paragraph (2)'' for ''clause 2(B) of this subsection'' in second sentence.

1986—Subsec. (a)(2)(A). Pub. L. 99–661 struck out ''after February 2, 1901'' after ''a reserve nurse''.

1980—Subsec. (a). Pub. L. 96–513 substituted ''separation, discharge, or retirement for length of service'' for ''separation or mandatory elimination from the active list'' in par. (1), substituted ''National Oceanic and Atmospheric Administration'' for ''Environmental Science Services Administration'' in par. (2)(B), and, in provisions following par. (2)(C), substituted ''as a member of the National Oceanic and Atmospheric Administration includes active service as a member of the Environmental Science Services Administration and'' for ''as a member of the Environmental Science Services Administration includes service as a member''.

1966—Subsec. (a). Pub. L. 89–718 substituted ''Environmental Science Services Administration'' for ''Coast and Geodetic Survey'' in clause (2)(B) and inserted provision that, for purposes of clause (2)(B) of subsec. (a), active service as a member of the Environmental Science Services Administration includes active service as a member of the Coast and Geodetic Survey.

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 1980 AMENDMENT

Amendment by section 501(16) of Pub. L. 96–513 effective Sept. 15, 1981, and amendment by section 511(42) of

Pub. L. 96–513 effective Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 89–718, § 8(a), Nov. 2, 1966, 80 Stat. 1117, cited as a credit to this section, was repealed by Pub. L. 97–295, § 6(b), Oct. 12, 1982, 96 Stat. 1314.

TRANSFER OF FUNCTIONS

For transfer of functions of Public Health Service, see note set out under section 802 of this title.

ADDITIONAL SERVICE CREDITABLE TO CERTAIN REGULARS

Section 39 of act Aug. 10, 1956, provided that: ''In addition to service with which he may be credited under section 1208(a)(2) of title 10, United States Code [subsec. (a)(2) of this section], a member of a regular component of the armed forces shall be credited, for the purposes of chapter 61 of title 10, United States Code [this chapter], with all service as—

''(1) a cadet at the United States Military Academy, if appointed before August 24, 1912;

''(2) a midshipman at the United States Naval Academy, if appointed before March 4, 1913;

''(3) an Army field clerk; and

''(4) a field clerk, Army Quartermaster Corps.''

OFFICERS OF THE PUBLIC HEALTH SERVICE

Applicability of subsec. (a)(2) of this section to officers of the Reserve Corps and to officers of the Regular Corps of the Public Health Service, see section 212 of Title 42, The Public Health and Welfare.

§ 1209. Transfer to inactive status list instead of separation

Any member of the armed forces who has at least 20 years of service computed under section 12732 of this title, and who would be qualified for retirement under this chapter but for the fact that his disability is less than 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination, may elect, instead of being separated under this chapter, to be transferred to the inactive status list under section 12735 of this title and, if otherwise eligible, to receive retired pay under section 12739 of this title upon becoming 60 years of age.

(Aug. 10, 1956, ch. 1041, 70A Stat. 95; Pub. L. 101–189, div. A, title XVI, § 1621(a)(1), Nov. 29, 1989, 103 Stat. 1602; Pub. L. 104–106, div. A, title XV, § 1501(c)(14), Feb. 10, 1996, 110 Stat. 499.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1209	37:272(g).	Oct. 12, 1949, ch. 681, § 402(g), 63 Stat. 820.

The words ''Notwithstanding the foregoing provisions of this section'', ''satisfactory Federal'', and ''and receiving disability severance pay'' are omitted as surplusage. The words ''at the time of the determination'' are substituted for the word ''current''. The word ''otherwise'' is substituted for the words ''in all other respects''.

AMENDMENTS

1996—Pub. L. 104–106 substituted ''section 12732'' for ''section 1332'', ''section 12735'' for ''section 1335'', and ''section 12739'' for ''chapter 71''.

1989—Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

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.

§ 1210. Members on temporary disability retired list: periodic physical examination; final determination of status

(a) A physical examination shall be given at least once every 18 months to each member of the armed forces whose name is on the temporary disability retired list to determine whether there has been a change in the disability for which he was temporarily retired. He may be required to submit to those examinations while his name is carried on that list. If a member fails to report for an examination under this subsection, after receipt of proper notification, his disability retired pay may be terminated. However, payments to him shall be resumed if there was just cause for his failure to report. If payments are so resumed, they may be made retroactive for not more than one year.

(b) The Secretary concerned shall make a final determination of the case of each member whose name is on the temporary disability retired list upon the expiration of five years after the date when the member's name was placed on that list. If, at the time of that determination, the physical disability for which the member's name was carried on the temporary disability retired list still exists, it shall be considered to be of a permanent nature and stable.

(c) If, as a result of a periodic examination under subsection (a), or upon a final determination under subsection (b), it is determined that the member's physical disability is of a permanent nature and stable and is at least 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination, his name shall be removed from the temporary disability retired list and he shall be retired under section 1201 or 1204 of this title, whichever applies.

(d) If, as a result of a periodic examination under subsection (a), or upon a final determination under subsection (b), it is determined that the member's physical disability is of a permanent nature and stable and is less than 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination, and if he has at least 20 years of service computed under section 1208 of this title, his name shall be removed from the temporary disability retired list and he shall be retired under section 1201 or 1204 of this title, whichever applies, with retired pay computed under section 1401 of this title.

(e) If, as a result of a periodic examination under subsection (a), or upon a final determination under subsection (b), it is determined that the member's physical disability is less than 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination, and if he has less than 20 years of service computed under section 1208 of this title, his name shall be removed from the temporary disability retired list and he may be separated under section 1203 or 1206 of this title, whichever applies.

(f)(1) If, as a result of a periodic examination under subsection (a), or upon a final determination under subsection (b), it is determined that the member is physically fit to perform the duties of his office, grade, rank, or rating, the Secretary shall—

(A) treat the member as provided in section 1211 of this title; or

(B) discharge the member, retire the member, or transfer the member to the Fleet Reserve, Fleet Marine Corps Reserve, or inactive Reserve under any other law if, under that law, the member—

(i) applies for and qualifies for that retirement or transfer; or

(ii) is required to be discharged, retired, or eliminated from an active status.

(2)(A) For the purpose of paragraph (1)(B), a member shall be considered qualified for retirement or transfer to the Fleet Reserve or Fleet Marine Corps Reserve or is required to be discharged, retired, or eliminated from an active status if, were the member reappointed or reenlisted under section 1211 of this title, the member would in all other respects be qualified for or would be required to be retired, transferred to the Fleet Reserve or Fleet Marine Corps Reserve, discharged, or eliminated from an active status under any other provision of law.

(B) The grade of a member retired, transferred, discharged, or eliminated from an active status pursuant to paragraph (1)(B) shall be determined under the provisions of law under which the member is retired, transferred, discharged, or eliminated. The member's retired, retainer, severance, readjustment, or separation pay shall be computed as if the member had been reappointed or reenlisted upon removal from the temporary disability retired list and before the retirement, transfer, discharge, or elimination. Notwithstanding section 8301 of title 5, a member who is retired shall be entitled to retired pay effective on the day after the last day on which the member is entitled to disability retired pay.

(g) Any member of the armed forces whose name is on the temporary disability retired list, and who is required to travel to submit to a physical examination under subsection (a), is entitled to the travel and transportation allowances authorized for members in his retired grade traveling in connection with temporary duty while on active duty.

(h) If his name is not sooner removed, the disability retired pay of a member whose name is on the temporary disability retired list terminates upon the expiration of five years after the date when his name was placed on that list.

(Aug. 10, 1956, ch. 1041, 70A Stat. 95; Pub. L. 99–145, title V, § 513(a)(2), Nov. 8, 1985, 99 Stat. 627; Pub. L. 101–189, div. A, title XVI, § 1621(a)(1), Nov. 29, 1989, 103 Stat. 1602.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1210(a)	37:272(e) (less last sentence). 37:274(a). 37:274(b) (less 1st sentence).	Oct. 12, 1949, ch. 681, §§ 402(d) (30th through 55th words), (e) (less 1st proviso of last sentence), (f) (as applicable to § 402(e)), 404, 63 Stat. 818–821.

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1210(b)	37:272(e) (1st 37 words of last proviso of last sentence).	
1210(c)	37:272(e) (last sentence, less provisos and less clause (2)). 37:272(e) (38th through 45th words of last proviso of last sentence).	
1210(d)	37:272(f) (as applicable to 37:272(e)).	
1210(e)	37:272(e) (clause (2) of last sentence). 37:272(e) (46th word of last proviso of last sentence).	
1210(f)	37:272(e) (47th through 56th words of last proviso of last sentence).	
1210(g)	37:274(b) (1st sentence).	
1210(h)	37:272(d) (30th through 55th words).	

In subsection (a), the second sentence is substituted for 37:274(a). The word ''resumed'' is substituted for the words ''reinstated at a later date'', in 37:274(b).

In subsection (b), the last sentence is inserted for clarity to conform to an opinion of the Judge Advocate General of the Army (JAGA 1953/8438, 30 Dec. 1953) and an opinion of the Judge Advocate General of the Navy (JAG: III: 7: WBM: bg. 7 Jan. 1954).

In subsection (c), the words ''or upon a final determination under subsection (b)'' are substituted for the words ''or upon the determination of a period of five years from the date of temporary disability retirement'', in 37:272(e). The words ''at the time of the determination'' are substituted for the word ''current'', in 37:272(e). The words ''and he shall be entitled to receive disability retirement pay as prescribed in subsection (d) of this section'' are omitted as covered by sections 1201 and 1204 of this title. Reference to specific sections on permanent retirement are substituted for the word ''permanently'', before the word ''retired'', in 37:272(e).

In subsection (d), 37:272(f) (proviso) is omitted as surplusage.

In subsection (e), the words ''and if he has less than 20 years of service computed under section 1208 of this title'' are inserted to distinguish the separation requirement under this section from retirement requirements under subsection (d). 37:272(e) (last 19 words of clause (2) of last sentence) is omitted as covered by sections 1203 and 1206 of this title. The words ''at the time of determination'' are substituted for the word ''current''.

In subsection (f), the first 39 words are inserted for clarity.

In subsection (g), the words ''members in his retired grade traveling in connection with temporary duty'' are substituted for the words ''the rank, grade, or rating in which retired for temporary duty travel performed''. The words ''for travel performed'' are omitted as surplusage.

AMENDMENTS

1989—Subsecs. (c) to (e). Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration'' wherever appearing.

1985—Subsecs. (b) to (d). Pub. L. 99–145, § 513(a)(2)(A), inserted ''and stable'' after ''permanent nature''.

Subsec. (f). Pub. L. 99–145, § 513(a)(2)(B), designated existing provisions as par. (1), substituted ''or rating, the Secretary shall—'' for ''and rating, the Secretary shall treat him as provided in section 1211 of this title'', added subpars. (A) and (B), and added par. (2).

§ 1211. Members on temporary disability retired list: return to active duty; promotion

(a) With his consent, any member of the Army or the Air Force whose name is on the temporary disability retired list, and who is found

to be physically fit to perform the duties of his office, grade, or rank under section 1210(f) of this title, shall—

(1) if a commissioned officer of a regular component, be recalled to active duty and, as soon as practicable, may be reappointed by the President, by and with the advice and consent of the Senate, to the active-duty list in the regular grade held by him when his name was placed on the temporary disability retired list, or in the next higher regular grade;

(2) if a warrant officer of a regular component, be recalled to active duty and, as soon as practicable, be reappointed by the Secretary concerned in the regular grade held by him when his name was placed on the temporary disability retired list, or in the next higher regular warrant grade;

(3) if an enlisted member of a regular component, be reenlisted in the regular grade held by him when his name was placed on the temporary disability retired list or in the next higher regular enlisted grade;

(4) if a commissioned, warrant, or enlisted Reserve, be reappointed or reenlisted as a Reserve for service in his reserve component in the reserve grade held by him when his name was placed on the temporary disability retired list, or appointed or enlisted in the next higher reserve commissioned, warrant, or enlisted grade, as the case may be;

(5) if a commissioned, warrant, or enlisted member of the Army National Guard of the United States or the Air National Guard of the United States when the disability was incurred, and if he cannot be reappointed or reenlisted as a Reserve for service therein, be appointed or enlisted as a Reserve for service in the Army Reserve or the Air Force Reserve, as the case may be, in a grade corresponding to the reserve grade held by him when his name was placed on the temporary disability retired list, or in the next higher reserve commissioned, warrant, or enlisted grade, as the case may be; and

(6) if a member of the Army, or the Air Force, who has no regular or reserve grade, be reappointed or reenlisted in the Army, or the Air Force, as the case may be, in the temporary grade held by him when his name was placed on the temporary disability retired list, or appointed or enlisted in the next higher temporary grade.

(b) With his consent, any member of the naval service or of the Coast Guard whose name is on the temporary disability retired list, and who is found to be physically fit to perform the duties of his office, grade, rank, or rating under section 1210(f) of this title, shall—

(1) if he held an appointment in a commissioned grade in a regular component when his name was placed on the temporary disability retired list, be recalled to active duty and, as soon as practicable, may be reappointed by the President, by and with the advice and consent of the Senate, to his regular component in the grade permanently held by him when his name was placed on the temporary disability retired list, or in the next higher grade;

(2) if he held an appointment in the grade of warrant officer, W–1, in a regular component when his name was placed on the temporary disability retired list, be recalled to active duty and, as soon as practicable, be reappointed by the Secretary concerned in his regular component in the grade permanently held by him when his name was placed on the temporary disability retired list, or may be appointed by the President, by and with the advice and consent of the Senate, to the grade of chief warrant officer, W–2;

(3) if he held a permanent enlisted grade in a regular component when his name was placed on the temporary disability retired list, be reenlisted in his regular component in the grade permanently held by him when his name was placed on the temporary disability retired list, or in the next higher enlisted grade;

(4) if he was a member of the Fleet Reserve or the Fleet Marine Corps Reserve when his name was placed on the temporary disability retired list, resume his status in the Fleet Reserve or the Fleet Marine Corps Reserve in the grade held by him when his name was placed on the temporary disability retired list, or in the next higher enlisted grade; and

(5) if a member of a reserve component be reappointed or reenlisted in his reserve component in the grade permanently held by him when his name was placed on the temporary disability retired list or, if that permanent grade is not chief petty officer or master sergeant, in the next higher grade in that reserve component.

(c) If a member is appointed, reappointed, enlisted, or reenlisted, or resumes his status in the Fleet Reserve or the Fleet Marine Corps Reserve, under subsection (a) or (b), his status on the temporary disability retired list terminates on the date of his appointment, reappointment, enlistment, reenlistment, or resumption, as the case may be. However, if such a member does not consent to the action proposed under subsection (a) or (b), and if the member is not discharged, retired, or transferred to the Fleet Reserve or Fleet Marine Corps Reserve or inactive Reserve under section 1210 of this title, his status on the temporary disability retired list and his disability retired pay shall be terminated as soon as practicable and the member shall be discharged.

(d) Disability retired pay of a member covered by this section terminates—

(1) on the date when he is recalled to active duty under subsection (a)(1) or (2) or subsection (b)(1) or (2), for an officer of a regular component;

(2) on the date when he resumes his status in the Fleet Reserve or the Fleet Marine Corps Reserve under subsection (b)(4), for a member of the Fleet Reserve or the Fleet Marine Corps Reserve; and

(3) on the date when he is appointed, reappointed, enlisted, or reenlisted, for any other member of the armed forces.

(e) Whenever seniority in grade or years of service is a factor in determining the qualifications of a member of the armed forces for promotion, each member who has been appointed, reappointed, enlisted, or reenlisted, under subsection (a) or (b), shall, when his name is placed

on a lineal list, a promotion list, an approved all-fully-qualified-officers list, or any similar list, have the seniority in grade and be credited with the years of service authorized by the Secretary concerned. The authorized strength in any regular grade is automatically increased to the minimum extent necessary to give effect to each appointment made in that grade under this section. An authorized strength so increased is increased for no other purpose, and while he holds that grade the officer whose appointment caused the increase is counted for the purpose of determining when other appointments, not under this section, may be made in that grade.

(f) Action under this section shall be taken on a fair and equitable basis, with regard being given to the probable opportunities for advancement and promotion that the member might reasonably have had if his name had not been placed on the temporary disability retired list.

(Aug. 10, 1956, ch. 1041, 70A Stat. 96; Pub. L. 87–651, title I, § 107(b), Sept. 7, 1962, 76 Stat. 508; Pub. L. 96–513, title V, § 501(17), Dec. 12, 1980, 94 Stat. 2908; Pub. L. 99–145, title V, § 513(a)(3), Nov. 8, 1985, 99 Stat. 627; Pub. L. 107–107, div. A, title V, § 505(c)(4), Dec. 28, 2001, 115 Stat. 1088.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1211(a)	37:275(a). 37:275(b). 37:275(c) (1st sentence). 37:276(a) (less clauses (1)–(3)). 37:276(a)(1) (1st 7 words). 37:276(a)(2) (1st 10 words). 37:276(a)(3) (1st 8 words). 37:277(a).	Oct. 12, 1949, ch. 681, §§ 405, 406, 407, 63 Stat. 821.
1211(b)	37:275(a). 37:275(b). 37:275(c) (1st sentence). 37:276(a) (less clauses (1)–(3)). 37:276(a)(1) (1st 7 words). 37:276(a)(2) (1st 10 words). 37:276(a)(3) (1st 8 words). 37:277(a).	
1211(c)	37:276(a)(1) (less 1st 22 words). 37:276(a)(2) (11th through 18th words). 37:276(a)(3) (9th and 10th words). 37:276(b).	
1211(d)	37:276(a)(1) (8th through 22d words). 37:276(a)(2) (less 1st 18 words). 37:276(a)(3) (less 1st 10 words).	
1211(e)	37:275(c) (2d sentence). 37:277 (less (a)).	
1211(f)	37:275(c) (last sentence).	

In subsections (a) and (b), the words ''under section 1210(f) of this title'' are substituted for the words ''If, as a result of a periodic physical examination'', in 37:275(a) and (b), and 276(a), and the words ''and who are subsequently found to be physically fit'', in 37:277(a). The words ''subject to the provisions of section 277 of this title'', in 37:275(a), are omitted as surplusage.

In subsections (a)(2)–(6) and (b)(2)–(6), the appointment or enlistment is restricted to those already in an enlisted, warrant, or commissioned status, as the case may be, held by the member before placement of his name on the temporary disability retired list, since 37:277 (last sentence) indicates that appointment in the next higher grade for regular warrant officer is restricted to those warrant grades to which the President alone may appoint him. Similarly 37:275 (last 10 words) indicates that an enlisted member may only be reenlisted.

In subsection (a)(2) reference to the President, in 37:277(a), is omitted as inapplicable to the appointment of warrant officers of the Army and the Air Force.

Subsection (a)(5) is substituted for 37:275(b) (proviso) (as applicable to Army and Air Force).

Subsection (a)(6) is inserted, since the words ''reserve component'' are defined by section 102(k) of the source statute to include members of the Army and the Air Force who have no component status.

In subsection (b)(2), the words ''by and with the advice and consent of the Senate'' are added to make it clear that all appointments to the grade of commissioned warrant officer in the Navy, Marine Corps, and Coast Guard require Senate confirmation. Although these words do not appear in section 405 of the Career Compensation Act of 1949, there is no indication that an exception to the basic law relating to appointments in commissioned grades was intended.

Subsection (d)(3) is made applicable to members without component status, since the words ''reserve component'' are defined in section 102(k) of the source statute to include members of the Army and the Air Force who have no component status.

In subsection (e), the words ''rank'' and ''rating'' are omitted as surplusage.

1962 ACT

The changes correct typographical errors.

AMENDMENTS

2001—Subsec. (e). Pub. L. 107–107 inserted ''an approved all-fully-qualified-officers list,'' after ''a promotion list,''.

1985—Subsec. (c). Pub. L. 99–145 inserted ''and if the member is not discharged, retired, or transferred to the Fleet Reserve or Fleet Marine Corps Reserve or inactive Reserve under section 1210 of this title,'' after ''proposed under subsection (a) or (b),'' and inserted ''and the member shall be discharged'' after ''as soon as practicable''.

1980—Subsec. (a)(1). Pub. L. 96–513 substituted ''active-duty list'' for ''active list of his regular component''.

1962—Subsec. (d). Pub. L. 87–651 substituted ''subsection (b)(1) or (2)'' for ''subsection (b)(1), (2), or (3)'' in cl. (1), and ''subsection (b)(4)'' for ''subsection (b)(5)'' in cl. (2).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 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.

§ 1212. Disability severance pay

(a) Upon separation from his armed force under section 1203 or 1206 of this title, a member is entitled to disability severance pay computed by multiplying (1) the member's years of service computed under section 1208 of this title (subject to the minimum and maximum years of service provided for in subsection (c)), by (2) the highest of the following amounts:

(A) Twice the amount of monthly basic pay to which he would be entitled if serving (i) on active duty on the date when he is separated and (ii) in the grade and rank in which he was

serving on the date when his name was placed on the temporary disability retired list, or if his name was not carried on that list, on the date when he is separated.

(B) Twice the amount of monthly basic pay to which he would be entitled if serving (i) on active duty on the date when his name was placed on the temporary disability retired list or, if his name was not carried on that list, on the date when he is separated, and (ii) in any temporary grade or rank higher than that described in clause (A), in which he served satisfactorily as determined by the Secretary of the military department or the Secretary of Homeland Security, as the case may be, having jurisdiction over the armed force from which he is separated.

(C) Twice the amount of monthly basic pay to which he would be entitled if serving (i) on active duty on the date when his name was placed on the temporary disability retired list or, if his name was not carried on that list, on the date when he is separated, and (ii) in the permanent regular or reserve grade to which he would have been promoted had it not been for the physical disability for which he is separated and which was found to exist as a result of a physical examination.

(D) Twice the amount of monthly basic pay to which he would be entitled if serving (i) on active duty on the date when his name was placed on the temporary disability retired list or, if his name was not carried on that list, on the date when he is separated, and (ii) in the temporary grade or rank to which he would have been promoted had it not been for the physical disability for which he is separated and which was found to exist as a result of a physical examination, if his eligibility for promotion was required to be based on cumulative years of service or years in grade.

(b) For the purposes of subsection (a), a part of a year of active service that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded.

(c)(1) The minimum years of service of a member for purposes of subsection (a)(1) shall be as follows:

(A) Six years in the case of a member separated from the armed forces for a disability incurred in line of duty in a combat zone (as designated by the Secretary of Defense for purposes of this subsection) or incurred during the performance of duty in combat-related operations as designated by the Secretary of Defense.

(B) Three years in the case of any other member.

(2) The maximum years of service of a member for purposes of subsection (a)(1) shall be 19 years.

(d)(1) The amount of disability severance pay received under this section shall be deducted from any compensation for the same disability to which the former member of the armed forces or his dependents become entitled under any law administered by the Department of Veterans Affairs.

(2) No deduction may be made under paragraph (1) in the case of disability severance pay received by a member for a disability incurred in line of duty in a combat zone or incurred during performance of duty in combat-related operations as designated by the Secretary of Defense.

(3) No deduction may be made under paragraph (1) from any death compensation to which a member's dependents become entitled after the member's death.

(Aug. 10, 1956, ch. 1041, 70A Stat. 98; Pub. L. 96–513, title V, § 511(43), Dec. 12, 1980, 94 Stat. 2924; Pub. L. 101–189, div. A, title XVI, § 1621(a)(1), Nov. 29, 1989, 103 Stat. 1602; Pub. L. 107–107, div. A, title V, § 593(a), Dec. 28, 2001, 115 Stat. 1126; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 110–181, div. A, title XVI, § 1646(a), (b), Jan. 28, 2008, 122 Stat. 472.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1212(a)	37:273 (less 1st and last provisos).	Oct. 12, 1949, ch. 681, § 403, 63 Stat. 820.
1212(b)	37:273 (1st proviso).	
1212(c)	37:273 (last proviso).	

In subsection (a), the words ''Upon separation'' are inserted for clarity. The words ''his years of service * * * computed under section 1208 of this title'' are substituted for the words ''a number of years equal to the number of years of active service to which such member is entitled under the provisions of section 282 of this title''. The words ''but not more than 12'' are substituted for the words ''but not to exceed a total of two years' basic pay'', to simplify the necessary calculation. The substituted words produce the same result. The word ''rating'' is omitted as covered by the words ''grade'' and ''rank''.

In clause (2)(A)–(D), the words ''Twice the amount of monthly'' are substituted for the words ''An amount equal to two months' ''. The words ''if his name was not carried on that list'' are substituted for the words ''whichever is earlier'', since the member might be separated without ever being carried on the list. The word ''rating'' is omitted as surplusage.

In clause (2)(B), the words ''the Secretary of the military department, or the Secretary of the Treasury, as the case may be, having jurisdiction over the armed force from which he is separated'' are substituted for the words ''the Secretary concerned'' for clarity.

In clause (2)(C), the words ''regular or reserve'' are inserted, since they are the only ''permanent'' grades.

Clause (2)(D) is based on that part of the third proviso of 37:273 relating to promotions other than regular or reserve.

In subsection (b), the words ''and a part of a year that is less than six months is disregarded'' are inserted to reflect the legislative history of the rule (see Senate Hearings on H.R. 5007, 81st Cong., page 313). The words ''for himself or his dependents'' are omitted as surplusage.

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110–181, § 1646(a)(1), substituted ''the member's years of service computed under section 1208 of this title (subject to the minimum and maximum years of service provided for in subsection (c))'' for ''his years of service, but not more than 12, computed under section 1208 of this title''.

Subsec. (c). Pub. L. 110–181, § 1646(a)(3), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 110–181, § 1646(b), designated existing provisions as par. (1), struck out ''However, no deduction may be made from any death compensation to which his dependents become entitled after his death.'' at end, and added pars. (2) and (3).

Pub. L. 110–181, § 1646(a)(2), redesignated subsec. (c) as (d).

2002—Subsec. (a)(2)(B). Pub. L. 107–296 substituted ''Secretary of Homeland Security'' for ''Secretary of Transportation''.

2001—Subsec. (a)(2)(C), (D). Pub. L. 107–107 struck out ''for promotion'' after ''physical examination''.

1989—Subsec. (c). Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1980—Subsec. (a). Pub. L. 96–513 substituted ''Secretary of Transportation'' for ''Secretary of the Treasury''.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–181, div. A, title XVI, § 1646(d), formerly § 1646(c), Jan. 28, 2008, 122 Stat. 472, renumbered § 1646(d) by Pub. L. 110–389, title I, § 103(a)(1), Oct. 10, 2008, 122 Stat. 4148, provided that: ''The amendments made by this section [amending this section and section 1161 of Title 38, Veterans' Benefits] shall take effect on the date of the enactment of this Act [Jan. 28, 2008], and shall apply with respect to members of the Armed Forces separated from the Armed Forces under chapter 61 of title 10, United States Code, on or after that date.''

[Amendment by Pub. L. 110–389, § 103(a)(1), redesignating section 1646(c) as 1646(d) of Pub. L. 110–181, set out above, effective Jan. 28, 2008, as if included in the Wounded Warrior Act, title XVI of Pub. L. 110–181, to which such amendment relates, see section 103(b) of Pub. L. 110–389, set out as an Effective Date of 2008 Amendment note under section 1161 of Title 38, Veterans' Benefits.]

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title V, § 593(b), Dec. 28, 2001, 115 Stat. 1126, provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to members separated under section 1203 or 1206 of title 10, United States Code, on or after date of the enactment of this Act [Dec. 28, 2001].''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 1213. Effect of separation on benefits and claims

Unless a person who has received disability severance pay again becomes a member of an armed force, the National Oceanic and Atmospheric Administration, or the Public Health Service, he is not entitled to any payment from the armed force from which he was separated for, or arising out of, his service before separation, under any law administered by one of those services or for it by another of those services. However, this section does not prohibit the payment of money to a person who has received disability severance pay, if the money was due him on the date of his separation or if a claim by him is allowed under any law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 99; Pub. L. 89–718, § 8(a), Nov. 2, 1966, 80 Stat. 1117; Pub. L. 96–513, title V, § 511(44), Dec. 12, 1980, 94 Stat. 2924.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1213	37:280.	Oct. 12, 1949, ch. 681, § 410, 63 Stat. 823.

The words ''a person who has received disability severance pay'' are substituted for the words ''Any former member who has been separated for physical disability from any of the uniformed services and paid disability severance pay''. The words ''any payment * * * for'' are substituted for the words ''for any monetary obligation provided under any provision * * * on account of''. The words ''this section does not prohibit'' are substituted for the words ''shall not operate to bar''. The words ''the payment of money to * * * if the money was due him'' are substituted for the words ''from receiving or the service concerned from paying any moneys due and payable''. The words ''valid'', ''processed'', and ''pursuant to any provisions of law'' are omitted as surplusage.

AMENDMENTS

1980—Pub. L. 96–513 substituted ''National Oceanic and Atmospheric Administration'' for ''Environmental Science Services Administration''.

1966—Pub. L. 89–718 substituted ''Environmental Science Services Administration'' for ''Coast and Geodetic Survey''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 89–718, § 8(a), Nov. 2, 1966, 80 Stat. 1117, cited as a credit to this section, was repealed by Pub. L. 97–295, § 6(b), Oct. 12, 1982, 96 Stat. 1314.

TRANSFER OF FUNCTIONS

For transfer of functions of Public Health Service, see note set out under section 802 of this title.

§ 1214. Right to full and fair hearing

No member of the armed forces may be retired or separated for physical disability without a full and fair hearing if he demands it.

(Aug. 10, 1956, ch. 1041, 70A Stat. 100.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1214	37:283 (less 1st 17 words).	Oct. 12, 1949, ch. 681, § 413 (less 1st 17 words), 63 Stat. 825.

The words ''including regulations'' are omitted as covered by section 1216(a) of this title.

§ 1214a. Members determined fit for duty in Physical Evaluation Board evaluation: prohibition on involuntary administrative separation due to unsuitability based on medical conditions considered in evaluation

(a) DISPOSITION.—Except as provided in subsection (c), the Secretary of the military department concerned may not authorize the involuntary administrative separation of a member described in subsection (b) based on a determination that the member is unsuitable for deployment or worldwide assignment based on the same medical condition of the member consid-

ered by a Physical Evaluation Board during the evaluation of the member.

(b) COVERED MEMBERS.—A member covered by subsection (a) is any member of the armed forces who has been determined by a Physical Evaluation Board pursuant to a physical evaluation by the board to be fit for duty.

(c) REEVALUATION.—(1) The Secretary of the military department concerned may direct the Physical Evaluation Board to reevaluate any member described in subsection (b) if the Secretary has reason to believe that a medical condition of the member considered by the Physical Evaluation Board during the evaluation of the member described in that subsection renders the member unsuitable for continued military service based on the medical condition.

(2) A member determined pursuant to reevaluation under paragraph (1) to be unfit to perform the duties of the member's office, grade, rank, or rating may be retired or separated for physical disability under this chapter.

(3) The Secretary of Defense shall be the final approval authority for any case determined by the Secretary of a military department to warrant administrative separation based on a determination that the member is unsuitable for continued service due to the same medical condition of the member considered by a Physical Evaluation Board that found the member fit for duty.

(Added Pub. L. 111–383, div. A, title V, § 534(a)(1), Jan. 7, 2011, 124 Stat. 4216.)

EFFECTIVE DATE

Pub. L. 111–383, div. A, title V, § 534(b), Jan. 7, 2011, 124 Stat. 4217, provided that: "The amendments made by subsection (a) [enacting this section] shall take effect on the date of the enactment of this Act [Jan. 7, 2011], and shall apply with respect to members evaluated for fitness for duty by Physical Evaluation Boards on or after that date."

§ 1215. Members other than Regulars: applicability of laws

The laws and regulations that entitle any retired member of a regular component of the armed forces to pay, rights, benefits, or privileges extend the same pay, rights, benefits, or privileges to any other member of the armed forces who is not a member of a regular component and who is retired, or to whom retired pay is granted, because of physical disability.

(Aug. 10, 1956, ch. 1041, 70A Stat. 100.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1215	37:272(i).	Oct. 12, 1949, ch. 681, § 402(i), 63 Stat. 820.

The words "is retired, or to whom retired pay is granted" are substituted for the words "heretofore or hereafter retired or granted retirement pay". The words "any other member of the armed forces" are substituted for the words "all members of the reserve components", since the words "reserve components" are defined by section 102(k) of the Career Compensation Act of 1949, 63 Stat. 805 (37 U.S.C. 231(k)), to include members appointed, enlisted, or inducted without component.

§ 1216. Secretaries: powers, functions, and duties

(a) The Secretary concerned shall prescribe regulations to carry out this chapter within his department.

(b) Except as provided in subsection (d), the Secretary concerned has all powers, functions, and duties incident to the determination under this chapter of—

(1) the fitness for active duty of any member of an armed force under his jurisdiction;

(2) the percentage of disability of any such member at the time of his separation from active duty;

(3) the suitability of any member for reappointment, reenlistment, or reentry upon active duty in an armed force under his jurisdiction; and

(4) the entitlement to, and payment of, disability severance pay to any member of an armed force under his jurisdiction.

(c) The Secretary concerned or the Secretary of Veterans Affairs, as prescribed by the President, has the powers, functions, and duties under this chapter incident to hospitalization, reexaminations, and the payment of disability retired pay within his department or agency.

(d) The Secretary concerned may not, with respect to any member who is a general officer or flag officer or is a medical officer being processed for retirement under any provisions of this title by reason of age or length of service—

(1) retire such member under section 1201 of this title;

(2) place such member on the temporary disability retired list pursuant to section 1202 of this title; or

(3) separate such member from an armed force pursuant to section 1203 of this title

by reason of unfitness to perform the duties of his office, grade, rank, or rating unless the determination of the Secretary concerned with respect to unfitness is first approved by the Secretary of Defense on the recommendation of the Assistant Secretary of Defense for Health Affairs.

(Aug. 10, 1956, ch. 1041, 70A Stat. 100; Pub. L. 94–225, § 2(a), Mar. 4, 1976, 90 Stat. 202; Pub. L. 96–513, title V, § 511(45), Dec. 12, 1980, 94 Stat. 2924; Pub. L. 98–525, title XIV, § 1405(25), Oct. 19, 1984, 98 Stat. 2623; Pub. L. 99–661, div. A, title XIII, § 1343(a)(7), Nov. 14, 1986, 100 Stat. 3992; Pub. L. 101–189, div. A, title XVI, § 1621(a)(2), Nov. 29, 1989, 103 Stat. 1603; Pub. L. 104–106, div. A, title IX, § 903(f)(2), Feb. 10, 1996, 110 Stat. 402; Pub. L. 104–201, div. A, title IX, § 901, Sept. 23, 1996, 110 Stat. 2617.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1216(a)	37:283 (1st 17 words).	Oct. 12, 1949, ch. 681, §§ 413 (1st 17 words), 414, 63 Stat. 824, 825.
1216(b)	37:284(a).	
1216(c)	37:284 (less (a)).	

In subsection (b), the words "of any member for reappointment, reenlistment" are inserted for clarity, since they are implied in the words "reentry into active service".

In subsections (b) and (c), the words "under this chapter" are inserted for clarity.

In subsection (c), the words ''as prescribed by the President'' are substituted for the words ''under regulations promulgated by the President''.

AMENDMENTS

1996—Subsec. (d). Pub. L. 104–106, § 903(a), (f)(2), which directed amendment of subsec. (d), eff. Jan. 31, 1997, by substituting ''official in the Department of Defense with principal responsibility for health affairs'' for ''Assistant Secretary of Defense for Health Affairs'', was repealed by Pub. L. 104–201.

1989—Subsec. (c). Pub. L. 101–189 substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs''.

1986—Subsec. (d). Pub. L. 99–661 substituted ''who is a general officer or flag officer or is a medical officer'' for ''who is in pay grade O–7 or higher or is a Medical Corps officer or medical officer of the Air Force'' in provisions preceding par. (1).

1984—Subsec. (b). Pub. L. 98–525 struck out ''of this section'' after ''subsection (d)'' in provisions preceding par. (1).

1980—Subsec. (d). Pub. L. 96–513 substituted ''Affairs'' for ''and Environment''.

1976—Subsec. (b). Pub. L. 94–225, § 2(a)(1), substituted ''Except as provided in subsection (d) of this section, the Secretary'' for ''The Secretary''.

Subsec. (d). Pub. L. 94–225, § 2(a)(2), added subsec. (d).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 2(b) of Pub. L. 94–225 provided that: ''The amendments made by subsection (a) of this section [amending this section] shall apply with respect to unfitness determinations made on or after the date of the enactment of this Act [Mar. 4, 1976] by the Secretaries of the military departments concerned for purposes of sections 1201, 1202, and 1203 of title 10, United States Code.''

EX. ORD. NO. 10122. REGULATIONS GOVERNING DISABILITY PAY, HOSPITALIZATION AND REEXAMINATION

Ex. Ord. No. 10122, Apr. 14, 1950, 15 F.R. 2173, as amended by Ex. Ord. 10400, Sept. 27, 1952, 17 F.R. 8648; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Ex. Ord. No. 11733, July 30, 1973, 38 F.R. 20431 provided:

By virtue of and pursuant to the authority vested in me by section 414(b) of the Career Compensation Act of 1949, approved October 12, 1949 (Public Law 351, 81st Congress [former section 284(b) of Title 37, now covered by subsecs. (b) and (c) of this section], and as President of the United States and Commander in Chief of the armed forces of the United States, I hereby prescribe the following regulations governing payment of disability retirement pay, hospitalization, and re-examination of members and former members of the uniformed services:

SECTION 1. The terms ''uniformed services'' and ''Secretary'' as used in these regulations shall have the meaning prescribed therefor by subsections (a) and (f), respectively, of section 102 of the Career Compensation Act of 1949 [section 101(3) and (5) of Title 37, Pay and Allowances of the Uniformed Services].

SEC. 2. (a) Effective as of October 1, 1949, all duties, powers, and functions incident to the payment of disability retirement pay of members or former members of the uniformed services retired for physical disability or receiving disability retirement pay shall, except as provided in subsection (b) of this section, be vested in the Secretary concerned.

(b) Effective July 1, 1950, all duties, powers, and functions exercised by the Veterans' Administration pursuant to Executive Order No. 8099 of April 28, 1939, as amended by Executive Order No. 8461 of June 28, 1940, relative to the administration of the retirement-pay provisions of section 1 of the act of August 30, 1935, as amended by section 5 of the act of April 3, 1939, 53 Stat. 557 [former section 369a of this title], and amendments thereof, shall, as to cases within their respective jurisdictions, be vested in the Secretary of the Army and the Secretary of the Air Force, and thereafter the Veterans' Administration shall not be charged in any case with any further responsibility in the administration of the said retirement-pay provisions. The said Executive Order No. 8099 as amended by the said Executive Order No. 8461 is hereby amended accordingly.

SEC. 3. All duties, powers, and functions incident to the hospitalization, except as provided in section 5 of this order, and re-examination of members of the uniformed services placed on the temporary disability retired list under the provisions of the Career Compensation Act of 1949 shall be vested in the Secretary concerned.

SEC. 4. Effective May 1, 1950, all duties, powers, and functions incident to the hospitalization of members or former members of the uniformed services permanently retired for physical disability or receiving disability retirement pay shall, except as provided in section 5 of this order, be vested in the Secretary concerned: *Provided*, that all the duties, powers, and functions incident to hospitalization which such members or former members are entitled to and elect to receive in facilities of the Veterans' Administration, other than hospitals under the jurisdiction of the uniformed services, shall be vested in the Administrator of Veterans' Affairs.

SEC. 5. All duties, powers, and functions incident to the hospitalization of members or former members of the uniformed services placed on the temporary disability retired list or permanently retired for physical disability or receiving disability retirement pay who require hospitalization for chronic diseases shall be vested in the Administrator of Veterans' Affairs: *Provided*, that all the duties, powers, and functions incident to hospitalization for such members or former members who elect to receive hospitalization in uniformed services facilities shall, subject to the availability of space and facilities and the capabilities of the medical and dental staff, be vested in the Secretary concerned: *And provided further*, that for the purpose of this order, the term ''chronic disease'' shall be construed to include arthritis, malignancy, psychiatric or neuropsychiatric disorder, neurological disabilities, poliomyelitis with disability residuals and degenerative diseases of the nervous system, severe injuries to the nervous system including quadriplegics, hemiplegics, and paraplegics, tuberculosis, blindness and deafness requiring definitive rehabilitation, major amputees, and such other diseases as may be so defined jointly by the Secretary of Defense, the Administrator of Veterans' Affairs, and the Federal Security Administrator and so described in appropriate regulations of the respective departments and agencies concerned. Executive Order No. 9703 of March 12, 1946, prescribing regulations relating to the medical care of certain personnel of the Coast Guard, National Oceanic and Atmospheric Administration (formerly Coast and Geodetic Survey), Public Health Service, and the former Lighthouse Service, is hereby amended to the extent necessary to conform to the provisions of this section.

SEC. 6. Except as provided in section 5 hereof with respect to hospitalization for chronic diseases, nothing in this order shall be construed to affect the duties, powers, and functions of the Public Health Service with respect to hospitalization and medical examination of members and former members of the Coast Guard and the National Oceanic and Atmospheric Administration (formerly Coast and Geodetic Survey) under the Public Health Service Act, approved July 1, 1944 (58 Stat. 682), as amended [section 201 et seq. of Title 42, The Public Health and Welfare], and the regulations prescribed by the said Executive Order No. 9703 of March 12, 1946.

SEC. 7. Nothing in this order shall be construed to affect the duties, powers, and functions vested in the Ad-

ministrator of Veterans' Affairs pursuant to the provisions of the act of May 24, 1928, entitled ''An Act making eligible for retirement, under certain conditions, officers and former officers of the Army, Navy, and Marine Corps of the United States, other than officers of the Regular Army, Navy, or Marine Corps, who incurred physical disability in line of duty while in the service of the United States during the World War'' (45 Stat. 735, as amended) [section 581 of former Title 38], or by or pursuant to the act of September 26, 1941, entitled ''An Act to provide retirement pay and hospital benefits to certain Reserve officers, Army of the United States, disabled while on active duty'' (55 Stat. 733) [former section 456a of this title].

§ 1216a. Determinations of disability: requirements and limitations on determinations

(a) UTILIZATION OF VA SCHEDULE FOR RATING DISABILITIES IN DETERMINATIONS OF DISABILITY.—(1) In making a determination of disability of a member of the armed forces for purposes of this chapter, the Secretary concerned—

(A) shall, to the extent feasible, utilize the schedule for rating disabilities in use by the Department of Veterans Affairs, including any applicable interpretation of the schedule by the United States Court of Appeals for Veterans Claims; and

(B) except as provided in paragraph (2), may not deviate from the schedule or any such interpretation of the schedule.

(2) In making a determination described in paragraph (1), the Secretary concerned may utilize in lieu of the schedule described in that paragraph such criteria as the Secretary of Defense and the Secretary of Veterans Affairs may jointly prescribe for purposes of this subsection if the utilization of such criteria will result in a determination of a greater percentage of disability than would be otherwise determined through the utilization of the schedule.

(b) CONSIDERATION OF ALL MEDICAL CONDITIONS.—In making a determination of the rating of disability of a member of the armed forces for purposes of this chapter, the Secretary concerned shall take into account all medical conditions, whether individually or collectively, that render the member unfit to perform the duties of the member's office, grade, rank, or rating.

(Added Pub. L. 110–181, div. A, title XVI, § 1642(a), Jan. 28, 2008, 122 Stat. 465.)

§ 1217. Academy cadets and midshipmen: applicability of chapter

(a) This chapter applies to cadets at the United States Military Academy, the United States Air Force Academy, and the United States Coast Guard Academy and midshipmen of the United States Naval Academy, but only with respect to physical disabilities incurred after October 28, 2004.

(b) Monthly cadet pay and monthly midshipman pay under section 203(c) of title 37 shall be considered to be basic pay for purposes of this chapter and the computation of retired pay and severance and separation pay to which entitlement is established under this chapter.

(Aug. 10, 1956, ch. 1041, 70A Stat. 100; Pub. L. 85–861, § 33(a)(7), Sept. 2, 1958, 72 Stat. 1564; Pub. L. 108–375, div. A, title V, § 555(b)(1), Oct. 28, 2004, 118 Stat. 1914; Pub. L. 109–364, div. A, title X, § 1071(a)(6), Oct. 17, 2006, 120 Stat. 2398.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1217	[No source].	[No source].

The revised section is inserted to reflect the limited definition of the word ''member'' in section 102(b) of the Career Compensation Act of 1949 (37 U.S.C. 231(b)).

1958 ACT

Aviation cadets were omitted from chapter 61 because Title IV of the Career Compensation Act of 1949 (formerly 37 U.S.C. 271 et seq.), which was the source law for this chapter, covered only members entitled to basic pay and it was believed that aviation cadets were not so entitled. However, the Comptroller General has ruled that aviation cadets are entitled to basic pay (30 Comp. Gen. 431). Accordingly, aviation cadets were covered by Title IV and should not be excepted from chapter 61.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–364 substituted ''October 28, 2004'' for ''the date of the enactment of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005''.

2004—Pub. L. 108–375 amended section catchline and text generally. Prior to amendment, text read as follows: ''This chapter does not apply to cadets at the United States Military Academy, the United States Air Force Academy, or the Coast Guard Academy, or to midshipmen of the Navy.''

1958—Pub. L. 85–861 struck out provisions which made chapter inapplicable to aviation cadets.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85–861, set out as a note under section 101 of this title.

§ 1218. Discharge or release from active duty: claims for compensation, pension, or hospitalization

(a) A member of an armed force may not be discharged or released from active duty because of physical disability until he—

(1) has made a claim for compensation, pension, or hospitalization, to be filed with the Department of Veterans Affairs, or has refused to make such a claim; or

(2) has signed a statement that his right to make such a claim has been explained to him, or has refused to sign such a statement.

(b) A right that a member may assert after failing or refusing to sign a claim, as provided in subsection (a), is not affected by that failure or refusal.

(c) This section does not prevent the immediate transfer of a member to a facility of the Department of Veterans Affairs for necessary hospital care.

(d)(1) The Secretary of a military department shall ensure that each member of a reserve component under the jurisdiction of the Secretary who is determined, after a mobilization and deployment to an area in which imminent danger pay is authorized under section 310 of title 37, to require evaluation for a physical or mental disability which could result in separation or re-

tirement for disability under this chapter or placement on the temporary disability retired list or inactive status list under this chapter is retained on active duty during the disability evaluation process until such time as such member is—

(A) cleared by appropriate authorities for continuation on active duty; or

(B) separated, retired, or placed on the temporary disability retired list or inactive status list.

(2)(A) A member described in paragraph (1) may request termination of active duty under such paragraph at any time during the demobilization or disability evaluation process of such member.

(B) Upon a request under subparagraph (A), a member described in paragraph (1) shall only be released from active duty after the member receives counseling about the consequences of termination of active duty.

(C) Each release from active duty under subparagraph (B) shall be thoroughly documented.

(3) The requirements in paragraph (1) shall expire on the date that is five years after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2010.

(Added Pub. L. 85–56, title XXII, § 2201(31)(A), June 17, 1957, 71 Stat. 160; amended Pub. L. 87–651, title I, § 107(c), Sept. 7, 1962, 76 Stat. 508; Pub. L. 101–189, div. A, title XVI, § 1621(a)(1), (4), Nov. 29, 1989, 103 Stat. 1602, 1603; Pub. L. 111–84, div. A, title V, § 511, Oct. 28, 2009, 123 Stat. 2280.)

HISTORICAL AND REVISION NOTES

1962 ACT

Sections 1218 and 1219 are restated, without substantive change, to conform to the style adopted for title 10.

REFERENCES IN TEXT

The date of the enactment of the National Defense Authorization Act for Fiscal Year 2010, referred to in subsec. (d)(3), is the date of enactment of Pub. L. 111–84, which was approved Oct. 28, 2009.

AMENDMENTS

2009—Subsec. (d). Pub. L. 111–84 added subsec. (d).

1989—Subsec. (a)(1). Pub. L. 101–189, § 1621(a)(1), substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

Subsec. (c). Pub. L. 101–189, § 1621(a)(4), substituted ''facility of the Department of Veterans Affairs'' for ''Veterans' Administration facility''.

1962—Pub. L. 87–651 amended section generally, and among other changes, substituted ''Discharge or release from active duty: claims for compensation, pension, or hospitalization'' for ''Explanation of rights before discharge'' in section catchline, and struck out provisions which prohibited a person from being discharged or released from active duty until his certificate of discharge or release from active duty and his final pay (or a substantial portion of his final pay) are ready for delivery to him or to his next of kin or legal representative.

EFFECTIVE DATE

Section effective Jan. 1, 1958, see section 2301 of Pub. L. 85–56, 71 Stat. 172.

§ 1218a. Discharge or release from active duty: transition assistance for reserve component members injured while on active duty

(a) PROVISION OF CERTAIN INFORMATION.—Before a member of a reserve component described in subsection (b) is demobilized or separated from the armed forces, the Secretary of the military department concerned shall provide to the member the following information:

(1) Information on the availability of care and administrative processing through community based warrior transition units.

(2) Information on the location of the community based warrior transition unit located nearest to the permanent place of residence of the member.

(b) COVERED MEMBERS.—Subsection (a) applies to members of a reserve component who are injured while on active duty in the armed forces.

(Added Pub. L. 111–84, div. A, title VI, § 641(a), Oct. 28, 2009, 123 Stat. 2364.)

§ 1219. Statement of origin of disease or injury: limitations

A member of an armed force may not be required to sign a statement relating to the origin, incurrence, or aggravation of a disease or injury that he has. Any such statement against his interests, signed by a member, is invalid.

(Added Pub. L. 85–56, title XXII, § 2201(31)(A), June 17, 1957, 71 Stat. 160; amended Pub. L. 87–651, title I, § 107(c), Sept. 7, 1962, 76 Stat. 509.)

HISTORICAL AND REVISION NOTES

1962 ACT

Sections 1218 and 1219 are restated, without substantive change, to conform to the style adopted for title 10.

AMENDMENTS

1962—Pub. L. 87–651 substituted ''Statement of origin of disease or injury: limitation'' for ''Statement against interest void'' in section catchline, and ''A member of an armed force may not be required to sign a statement relating to the origin, incurrence, or aggravation of a disease or injury that he has. Any such statement against his interests, signed by a member, is invalid'' for ''No person in the Armed Forces may be required to sign a statement of any nature relating to the origin, incurrence, or aggravation of any disease or injury he may have. Any such statement against his own interest, whenever signed, is of no force and effect.''

EFFECTIVE DATE

Section effective Jan. 1, 1958, see section 2301 of Pub. L. 85–56, 71 Stat. 172.

[§ 1220. Repealed. Pub. L. 87–651, title I, § 107(d), Sept. 7, 1962, 76 Stat. 509]

Section, added Pub. L. 85–56, title XXII, § 2201(31)(A), June 17, 1957, 71 Stat. 161, related to location of accredited representatives at military installations.

§ 1221. Effective date of retirement or placement of name on temporary disability retired list

Notwithstanding section 8301 of title 5, the Secretary concerned may specify an effective date for the retirement of any member of the armed forces under this chapter, or for the placement of his name on the temporary disability retired list, that is earlier than the date provided for in that section.

(Added Pub. L. 85–861, § 1(28)(B), Sept. 2, 1958, 72 Stat. 1451; amended Pub. L. 89–718, § 3, Nov. 2, 1966, 80 Stat. 1115.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1221	5:47a(b).	Aug. 2, 1956, ch. 876, 70 Stat. 933.

Clause (2)(A) is omitted as unnecessary since the revised section applies to the armed forces, and the revised section is made applicable to the other uniformed services by sections 3 and 4 of the act enacting this revised section. Clause (2)(B) is omitted as covered by section 101(8) of this title and sections 3 and 4 of the act enacting this revised section.

AMENDMENTS

1966—Pub. L. 89–718 substituted ''8301'' for ''47a''.

§ 1222. Physical evaluation boards

(a) RESPONSE TO APPLICATIONS AND APPEALS.—The Secretary of each military department shall ensure, in the case of any member of the armed forces appearing before a physical evaluation board under that Secretary's supervision, that documents announcing a decision of the board in the case convey the findings and conclusions of the board in an orderly and itemized fashion with specific attention to each issue presented by the member in regard to that member's case. The requirement under the preceding sentence applies to a case both during initial consideration and upon subsequent consideration due to appeal by the member or other circumstance.

(b) LIAISON OFFICER (PEBLO) REQUIREMENTS AND TRAINING.—(1) The Secretary of Defense shall prescribe regulations establishing—

(A) a requirement for the Secretary of each military department to make available to members of the armed forces appearing before physical evaluation boards operated by that Secretary employees, designated as physical evaluation board liaison officers, to provide advice, counsel, and general information to such members on the operation of physical evaluation boards operated by that Secretary; and

(B) standards and guidelines concerning the training of such physical evaluation board liaison officers.

(2) The Secretary shall ensure compliance by the Secretary of each military department with physical evaluation board liaison officer requirements and training standards and guidelines at least once every three years.

(c) STANDARDIZED STAFF TRAINING AND OPERATIONS.—(1) The Secretary of Defense shall prescribe regulations on standards and guidelines concerning the physical evaluation board operated by each of the Secretaries of the military departments with regard to—

(A) assignment and training of staff;

(B) operating procedures; and

(C) timeliness of board decisions.

(2) The Secretary shall ensure compliance with standards and guidelines prescribed under paragraph (1) by each physical evaluation board at least once every three years.

(Added Pub. L. 109–364, div. A, title V, § 597(a)(1), Oct. 17, 2006, 120 Stat. 2236.)

EFFECTIVE DATE

Pub. L. 109–364, div. A, title V, § 597(b), Oct. 17, 2006, 120 Stat. 2237, provided that: ''Section 1222 of title 10, United States Code, as added by subsection (a), shall apply with respect to decisions rendered on cases commenced more than 120 days after the date of the enactment of this Act [Oct. 17, 2006].''

CHAPTER 63—RETIREMENT FOR AGE

Sec.
1251. Age 62: regular commissioned officers in grades below general and flag officer grades; exceptions.
1252. Age 64: permanent professors at academies.
1253. Age 64: regular commissioned officers in general and flag officer grades; exception.
[1255. Repealed.]
1263. Age 62: warrant officers.
1275. Computation of retired pay: law applicable.

AMENDMENTS

2006—Pub. L. 109–364, div. A, title V, § 502(c), Oct. 17, 2006, 120 Stat. 2177, inserted ''in grades below general and flag officer grades'' after ''officers'' in item 1251 and added item 1253.

Pub. L. 109–163, div. A, title V, § 509(c)(2), Jan. 6, 2006, 119 Stat. 3231, added item 1252.

1980—Pub. L. 96–513, title V, § 501(18), Dec. 12, 1980, 94 Stat. 2908, added item 1251.

1967—Pub. L. 90–130, § 1(6), Nov. 8, 1967, 81 Stat. 374, struck out item 1255 ''Age 55: female regular warrant officers''.

§ 1251. Age 62: regular commissioned officers in grades below general and flag officer grades; exceptions

(a) GENERAL RULE.—Unless retired or separated earlier, each regular commissioned officer of the Army, Navy, Air Force, or Marine Corps (other than an officer covered by section 1252 of this title or a commissioned warrant officer) serving in a grade below brigadier general or rear admiral (lower half), in the case of an officer in the Navy, shall be retired on the first day of the month following the month in which the officer becomes 62 years of age.

(b) DEFERRED RETIREMENT OF HEALTH PROFESSIONS OFFICERS.—(1) The Secretary of the military department concerned may, subject to subsection (d), defer the retirement under subsection (a) of a health professions officer if during the period of the deferment the officer—

(A) will be performing duties consisting primarily of providing patient care or performing other clinical duties; or

(B) is in a category of officers designated under subparagraph (D) of paragraph (2) whose duties will consist primarily of the duties described in clause (i), (ii), or (iii) of such subparagraph.

(2) For purposes of this subsection, a health professions officer is—

(A) a medical officer;

(B) a dental officer;

(C) an officer in the Army Nurse Corps, an officer in the Navy Nurse Corps, or an officer in the Air Force designated as a nurse; or

(D) an officer in a category of officers designated by the Secretary of the military department concerned for the purposes of this paragraph as consisting of officers whose duties consist primarily of—

(i) providing health care;

(ii) performing other clinical care; or

(iii) performing health care-related administrative duties.

(c) DEFERRED RETIREMENT OF CHAPLAINS.—The Secretary of the military department concerned may, subject to subsection (d), defer the retirement under subsection (a) of an officer who is appointed or designated as a chaplain if the Secretary determines that such deferral is in the best interest of the military department concerned.

(d) LIMITATION ON DEFERMENT OF RETIREMENTS.—(1) Except as provided in paragraph (2), a deferment under subsection (b) or (c) may not extend beyond the first day of the month following the month in which the officer becomes 68 years of age.

(2) The Secretary of the military department concerned may extend a deferment under subsection (b) or (c) beyond the day referred to in paragraph (1) if the Secretary determines that extension of the deferment is necessary for the needs of the military department concerned. Such an extension shall be made on a case-by-case basis and shall be for such period as the Secretary considers appropriate.

(Added Pub. L. 96–513, title I, § 111, Dec. 12, 1980, 94 Stat. 2875; amended Pub. L. 100–180, div. A, title VII, § 719, Dec. 4, 1987, 101 Stat. 1115; Pub. L. 101–189, div. A, title VII, § 709, Nov. 29, 1989, 103 Stat. 1476; Pub. L. 105–85, div. A, title V, § 504(a), (b), Nov. 18, 1997, 111 Stat. 1725; Pub. L. 109–163, div. A, title V, § 509(c)(3), Jan. 6, 2006, 119 Stat. 3231; Pub. L. 109–364, div. A, title V, § 502(b), Oct. 17, 2006, 120 Stat. 2176; Pub. L. 111–383, div. A, title V, § 501(b), Jan. 7, 2011, 124 Stat. 4206.)

AMENDMENTS

2011—Subsec. (b)(1). Pub. L. 111–383, § 501(b)(2), substituted ''the officer—'' for ''the officer will be performing duties consisting primarily of providing patient care or performing other clinical duties.'' and added subpars. (A) and (B).

Subsec. (b)(2)(D). Pub. L. 111–383, § 501(b)(1), added subpar. (D).

2006—Pub. L. 109–364 amended section catchline and text generally, substituting provisions relating to retirement at age 62 of regular commissioned officers in grades below general and flag officer grades for provisions relating to retirement at age 62 of all regular commissioned officers.

Subsec. (a). Pub. L. 109–163 inserted '', a permanent professor at the United States Naval Academy,'' after ''Air Force Academy'' in first sentence and struck out last sentence which read as follows: ''An officer who is a permanent professor at the United States Military Academy or United States Air Force Academy, the director of admissions at the United States Military Academy, or the registrar of the United States Air Force Academy shall be retired on the first day of the month following the month in which he becomes 64 years of age.''

1997—Subsec. (c)(2) to (4). Pub. L. 105–85, § 504(a), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

Subsec. (d). Pub. L. 105–85, § 504(b), added subsec. (d).

1989—Subsec. (c)(2). Pub. L. 101–189 designated existing provisions as subpar. (A), substituted ''Except as provided in subparagraph (B), a deferment'' for ''A deferment'' and ''68 years of age'' for ''67 years of age'', and added subpar. (B).

1987—Subsec. (c). Pub. L. 100–180 added subsec. (c).

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section 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.

DEFERRAL OF RETIREMENT DATE FOR CHAIRMAN OF THE JOINT CHIEFS OF STAFF

Pub. L. 100–456, div. A, title VII, § 704, Sept. 29, 1988, 102 Stat. 1996, provided that the President could defer until Oct. 1, 1989, the retirement of the officer serving as Chairman of the Joint Chiefs of Staff for the term which began on October 1, 1987, notwithstanding the limitation contained in former section 1251(b) of this title.

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provision that this section not apply to any officer who on the effective date of this Act [Sept. 15, 1981] was on active duty in a grade above general, see section 632 of Pub. L. 96–513, set out as a note under section 611 of this title.

§ 1252. Age 64: permanent professors at academies

(a) MANDATORY RETIREMENT FOR AGE.—Unless retired or separated earlier, each regular commissioned officer of the Army, Navy, Air Force, or Marine Corps covered by subsection (b) shall be retired on the first day of the month following the month in which the officer becomes 64 years of age.

(b) COVERED OFFICERS.—This section applies to the following officers:

(1) An officer who is a permanent professor or the director of admissions of the United States Military Academy.

(2) An officer who is a permanent professor at the United States Naval Academy.

(3) An officer who is a permanent professor or the registrar of the United States Air Force Academy.

(Added Pub. L. 109–163, div. A, title V, § 509(c)(1), Jan. 6, 2006, 119 Stat. 3230.)

§ 1253. Age 64: regular commissioned officers in general and flag officer grades; exception

(a) GENERAL RULE.—Unless retired or separated earlier, each regular commissioned officer of the Army, Navy, Air Force, or Marine Corps serving in a general or flag officer grade shall be retired on the first day of the month following the month in which the officer becomes 64 years of age.

(b) EXCEPTION FOR OFFICERS SERVING IN O–9 AND O–10 POSITIONS.—In the case of an officer serving in a position that carries a grade above major general or rear admiral, the retirement under subsection (a) of that officer may be deferred—

(1) by the President, but such a deferment may not extend beyond the first day of the month following the month in which the officer becomes 68 years of age; or

(2) by the Secretary of Defense, but such a deferment may not extend beyond the first day of the month following the month in which the officer becomes 66 years of age.

(Added Pub. L. 109–364, div. A, title V, § 502(a), Oct. 17, 2006, 120 Stat. 2176.)

[§ 1255. Repealed. Pub. L. 90–130, § 1(6), Nov. 8, 1967, 81 Stat. 374]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 100; Nov. 2, 1966, Pub. L. 89–718, § 3, 80 Stat. 1115, covered the re-

tirement of female permanent regular warrant officers with 20 years of active service upon attaining age 55.

§ 1263. Age 62: warrant officers

(a) Unless retired under section 1305 of this title, a permanent regular warrant officer who has at least 20 years of active service that could be credited to him under section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114; 10 U.S.C. 580 note), and who is at least 62 years of age, shall be retired 60 days after he becomes that age, except as provided by section 8301 of title 5.

(b) The Secretary concerned may defer, for not more than four months, the retirement under subsection (a) of any warrant officer if, because of unavoidable circumstances, evaluation of his physical condition and determination of his entitlement to retirement or separation for physical disability require hospitalization or medical observation that cannot be completed before the date when he would otherwise be required to retire under this section.

(Aug. 10, 1956 ch. 1041, 70A Stat. 101; Pub. L. 89–718, § 3, Nov. 2, 1966, 80 Stat. 1115; Pub. L. 90–130, § 1(6), Nov. 8, 1967, 81 Stat. 374; Pub. L. 96–513, title V, § 511(46), Dec. 12, 1980, 94 Stat. 2924; Pub. L. 102–484, div. A, title X, § 1052(17), Oct. 23, 1992, 106 Stat. 2500.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1263(a)	10:600(d) (as applicable to 10:600*l*(b) (less (1)–(3))). 10:600*l*(b) (less (1)–(3)). 10:600r(c) (as applicable to 10:600*l*(b) (less (1)–(3))). 34:135(d) (as applicable to 34:430(b) (less (1)–(3))). 34:430(b) (less (1)–(3)). 34:430c (as applicable to 34:430(b) (less (1)–(3))).	May 29, 1954, ch. 249, §§ 2(d) (as applicable to § 14(b) (less (1)–(3))), 14(b) (less (1)–(3)), 14(e) (as applicable to (b) (less (1)–(3))), 21(c) (as applicable to 14(b) (less (1)–(3))), 68 Stat. 157, 162, 163, 168.
1263(b)	10:600*l*(e) (as applicable to 10:600*l*(b) (less (1)–(3))). 34:430(e) (as applicable to 34:430(b) (less (1)–(3))).	

In subsection (a), the words ''has at least'' are substituted for the words ''has attained''. The words ''has at least'' are substituted for the words ''having completed not less than''. The words ''on that date which'' are omitted as surplusage. 10:600*l*(b) (15 words before (1)) and 34:430(b) (15 words before (1)) are omitted as covered by section 1275 of this title.

In subsection (b), the words ''The Secretary concerned may defer'' are substituted for the words ''may, in the discretion of the Secretary, be deferred''. The words ''determination of his'' are inserted for clarity. The words ''not more than'' are substituted for the words ''a period not to exceed''. The words ''he would otherwise be required to retire under this section'' are substituted for the words ''retirement * * * would otherwise be required''. The words ''which is required'', ''possible'', ''proper'', and ''a period of'' are omitted as surplusage.

REFERENCES IN TEXT

Section 511 of the Career Compensation Act of 1949, referred to in subsec. (a), is section 511 of act Oct. 12, 1949, ch. 681, which was formerly set out as a note under section 580 of this title.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–484 substituted ''580 note'' for ''564 note''.

1980—Subsec. (a). Pub. L. 96–513 substituted ''511 of the Career Compensation Act of 1949, as amended (70 Stat. 114; 10 U.S.C. 564 note)'' for ''311 of title 37''.

1967—Subsec. (a). Pub. L. 90–130 struck out reference to section 1255 of this title.

1966—Subsec. (a). Pub. L. 89–718 substituted ''8301'' for ''47a''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 1275. Computation of retired pay: law applicable

A member of the armed forces retired under this chapter is entitled to retired pay computed under chapter 71 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 101.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1275	[No source].	[No source].

The revised section is based on the various retirement provisions in this chapter and is inserted to make explicit the entitlement to retired pay upon retirement.

CHAPTER 65—RETIREMENT OF WARRANT OFFICERS FOR LENGTH OF SERVICE

Sec.
1293. Twenty years or more: warrant officers.
1305. Thirty years or more: regular warrant officers.
1315. Computation of retired pay: law applicable.

AMENDMENTS

1980—Pub. L. 96–513, title V, § 501(19), Dec. 12, 1980, 94 Stat. 2908, substituted ''RETIREMENT OF WARRANT OFFICERS FOR LENGTH OF SERVICE'' for ''RETIREMENT FOR LENGTH OF SERVICE'' as chapter heading.

§ 1293. Twenty years or more: warrant officers

The Secretary concerned may, upon the warrant officer's request, retire a warrant officer of any armed force under his jurisdiction who has at least 20 years of active service that could be credited to him under section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114).

(Aug. 10, 1956, ch. 1041, 70A Stat. 101; Pub. L. 87–649, § 6(f)(3), Sept. 7, 1962, 76 Stat. 494.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1293	10:600(d) (as applicable to 10:600*l*(a)). 10:600*l*(a). 34:135(d) (as applicable to 34:430(a)). 34:430(a).	May 29, 1954, ch. 249, §§ 2(d) (as applicable to § 14(a)), 14(a), 68 Stat. 157, 162.

The words, ''The Secretary concerned may * * * retire'' are substituted for the words ''may * * * and in the discretion of the Secretary, be retired''. 10:600*l*(a) (last 14 words) and 34:430(a) (last 14 words) are omitted as covered by section 1315 of this title.

REFERENCES IN TEXT

Section 511 of the Career Compensation Act of 1949, referred to in text, is section 511 of act Oct. 12, 1949, ch.

681, which was formerly set out as a note under section 580 of this title.

AMENDMENTS

1962—Pub. L. 87–649 substituted ''section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114)'' for ''section 311 of title 37.''

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–649 effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

TEMPORARY EARLY RETIREMENT AUTHORITY

Pub. L. 104–208, div. A, title I, § 101(b) [title VIII, § 8053], Sept. 30, 1996, 110 Stat. 3009–71, 3009–99, provided that: ''During the current fiscal year and hereafter, appropriations available for the pay and allowances of active duty members of the Armed Forces shall be available to pay the retired pay which is payable pursuant to section 4403 of Public Law 102–484 (10 U.S.C. 1293 note) under the terms and conditions provided in section 4403.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 104–61, title VIII, § 8066, Dec. 1, 1995, 109 Stat. 664.

Pub. L. 103–335, title VIII, § 8077, Sept. 30, 1994, 108 Stat. 2636.

Pub. L. 103–139, title VIII, § 8095, Nov. 11, 1993, 107 Stat. 1461.

Pub. L. 104–106, div. A, title V, § 566(c), Feb. 10, 1996, 110 Stat. 328, as amended by Pub. L. 107–372, title II, § 272(b), Dec. 19, 2002, 116 Stat. 3094, provided that: ''Section 4403 (other than subsection (f)) of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 106 Stat. 2702; 10 U.S.C. 1293 note) shall apply to the commissioned officer corps of the National Oceanic and Atmospheric Administration in the same manner and to the same extent as that section applies to the Department of Defense. The Secretary of Commerce shall implement the provisions of that section with respect to such commissioned officer corps and shall apply the provisions of that section to the provisions of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 [33 U.S.C. 3001 et seq.] relating to the retirement of members of such commissioned officer corps.''

[Pub. L. 104–106, div. A, title V, § 566(d), Feb. 10, 1996, 110 Stat. 328, provided that: ''This section [amending former section 857a of Title 33, Navigation and Navigable Waters, and enacting provisions set out as a note above] shall apply only to members of the commissioned officer corps of the National Oceanic and Atmospheric Administration who are separated after September 30, 1995.'']

Pub. L. 103–337, div. A, title V, § 542(d), Oct. 5, 1994, 108 Stat. 2769, as amended by Pub. L. 107–296, title XVII, § 1704(e)(5), Nov. 25, 2002, 116 Stat. 2315, provided that: ''Section 4403 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 106 Stat. 2702; 10 U.S.C. 1293 note) shall apply to the Coast Guard in the same manner and to the same extent as that provision applies to the Department of Defense. The Secretary of Homeland Security shall implement the provisions of that section with respect to the Coast Guard and apply the applicable provisions of title 14, United States Code, relating to retirement of Coast Guard personnel.''

Pub. L. 102–484, div. D, title XLIV, § 4403, Oct. 23, 1992, 106 Stat. 2702, as amended by Pub. L. 103–160, div. A, title V, § 561(a), Nov. 30, 1993, 107 Stat. 1667; Pub. L. 104–106, div. A, title XV, § 1504(c)(3), Feb. 10, 1996, 110 Stat. 514; Pub. L. 105–261, div. A, title V, § 561(a), Oct. 17, 1998, 112 Stat. 2025; Pub. L. 106–398, § 1 [[div. A], title V, § 571(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–134; Pub. L. 107–314, div. A, title V, § 554, Dec. 2, 2002, 116 Stat. 2553, provided that:

''(a) PURPOSE.—The purpose of this section is to provide the Secretary of Defense a temporary additional force management tool with which to effect the drawdown of military forces during the active force drawdown period.

''(b) RETIREMENT FOR 15 TO 20 YEARS OF SERVICE.—(1) During the active force drawdown period, the Secretary of the Army may—

''(A) apply the provisions of section 3911 of title 10, United States Code, to a regular or reserve commissioned officer with at least 15 but less than 20 years of service by substituting 'at least 15 years' for 'at least 20 years' in subsection (a) of that section;

''(B) apply the provisions of section 3914 of such title to an enlisted member with at least 15 but less than 20 years of service by substituting 'at least 15' for 'at least 20'; and

''(C) apply the provisions of section 1293 of such title to a warrant officer with at least 15 but less than 20 years of service by substituting 'at least 15 years' for 'at least 20 years'.

''(2) During the active force drawdown period, the Secretary of the Navy may—

''(A) apply the provisions of section 6323 of title 10, United States Code, to an officer with at least 15 but less than 20 years of service by substituting 'at least 15 years' for 'at least 20 years' in subsection (a) of that section;

''(B) apply the provisions of section 6330 of such title to an enlisted member of the Navy or Marine Corps with at least 15 but less than 20 years of service by substituting '15 or more years' for '20 or more years' in the first sentence of subsection (a)[(b)], in the case of an enlisted member of the Navy, and in the second sentence of subsection (b), in the case of an enlisted member of the Marine Corps; and

''(C) apply the provisions of section 1293 of such title to a warrant officer with at least 15 but less than 20 years of service by substituting 'at least 15 years' for 'at least 20 years'.

''(3) During the active force drawdown period, the Secretary of the Air Force may—

''(A) apply the provisions of section 8911 of title 10, United States Code, to a regular or reserve commissioned officer with at least 15 but less than 20 years of service by substituting 'at least 15 years' for 'at least 20 years' in subsection (a) of that section; and

''(B) apply the provisions of section 8914 of such title to an enlisted member with at least 15 but less than 20 years of service by substituting 'at least 15' for 'at least 20'.

''(c) ADDITIONAL ELIGIBILITY REQUIREMENT.—In order to be eligible for retirement by reason of the authority provided in subsection (b), a member of the Armed Forces shall—

''(1) register on the registry maintained under section 1143a(b) of title 10, United States Code (as added by section 4462(a)); and

''(2) receive information regarding public and community service job opportunities from the Secretary of Defense or another source approved by the Secretary and be afforded, on request, counseling on such job opportunities.

''(d) REGULATIONS.—The Secretary of each military department may prescribe regulations and policies regarding the criteria for eligibility for early retirement by reason of eligibility pursuant to this section and for the approval of applications for such retirement. Such criteria may include factors such as grade, years of service, and skill.

''(e) COMPUTATION OF RETIRED PAY.—Retired or retainer pay of a member retired (or transferred to the Fleet Reserve or Fleet Marine Corps Reserve) under a provision of title 10, United States Code, by reason of eligibility pursuant to subsection (b) shall be reduced by 1/12th of 1 percent for each full month by which the number of months of active service of the member are less than 240 as of the date of the member's retirement (or transfer to the Fleet Reserve or Fleet Marine Corps Reserve).

''(f) FUNDING.—(1) Notwithstanding section 1463 of title 10, United States Code, and subject to the availability of appropriations for this purpose, the Secretary of each military department shall provide in accordance with this section for the payment of retired pay payable during the fiscal years covered by the other provisions of this subsection to members of the Armed Forces under the jurisdiction of that Secretary who are being retired under the authority of this section.

''(2) In each fiscal year in which the Secretary of a military department retires a member of the Armed Forces under the authority of this section, the Secretary shall credit to a subaccount (which the Secretary shall establish) within the appropriation account for that fiscal year for pay and allowances of active duty members of the Armed Forces under the jurisdiction of that Secretary such amount as is necessary to pay the retired pay payable to such member for the entire initial period (determined under paragraph (3)) of the entitlement of that member to receive retired pay.

''(3) The initial period applicable under paragraph (2) in the case of a retired member referred to in that paragraph is the number of years (and any fraction of a year) that is equal to the difference between 20 years and the number of years (and any fraction of a year) of service that were completed by the member (as computed under the provision of law used for determining the member's years of service for eligibility to retirement) before being retired under the authority of this section.

''(4) The Secretary shall pay the member's retired pay for such initial period out of amounts credited to the subaccount under paragraph (2). The amounts so credited with respect to that member shall remain available for payment for that period.

''(5) For purposes of this subsection—

''(A) the transfer of an enlisted member of the Navy or Marine Corps to the Fleet Reserve or Fleet Marine Corps Reserve shall be treated as a retirement; and

''(B) the term 'retired pay' shall be treated as including retainer pay.

''(g) COORDINATION WITH OTHER SEPARATION PROVISIONS.—(1) A member of the Armed Forces retired under the authority of this section is not entitled to benefits under section 1174, 1174a, or 1175 of title 10, United States Code.

''(2) [Amended section 638a(b)(4)(C) of this title.]

''(h) MEMBERS RECEIVING SSB OR VSI.—The Secretary of a military department may retire (or transfer to the Fleet Reserve or Fleet Marine Corps Reserve) pursuant to the authority provided by this section a member of a reserve component who before the date of the enactment of this Act [Oct. 23, 1992] was separated from active duty pursuant to an agreement entered into under section 1174a or 1175 of title 10, United States Code. The retired or retainer pay of any such member so retired (or transferred) by reason of the authority provided in this section shall be reduced by the amount of any payment to such member before the date of such retirement under the provisions of such agreement under section 1174a or 1175 of title 10, United States Code.

''(i) ACTIVE FORCE DRAWDOWN PERIOD.—For purposes of this section, the active force drawdown period is the period beginning on the date of the enactment of this Act and ending on September 1, 2002.''

[Pub. L. 107–314, div. A, title V, § 554, Dec. 2, 2002, 116 Stat. 2553, provided that the amendment made by that section to section 4403 of Pub. L. 102–484, set out above, is effective Jan. 1, 2002.]

§ 1305. Thirty years or more: regular warrant officers

(a)(1) A regular warrant officer (other than a regular Army warrant officer) who has at least 30 years of active service that could be credited to the officer under section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114) shall be retired 60 days after the date on which he completes that service, except as provided by section 8301 of title 5.

(2) In the case of a regular Army warrant officer, the calculation of years of active service under paragraph (1) shall include only years of active service as a warrant officer.

(b) The Secretary concerned may defer, for not more than four months, the retirement under subsection (a) of any warrant officer if, because of unavoidable circumstances, evaluation of his physical condition and determination of his entitlement to retirement or separation for physical disability require hospitalization or medical observation that cannot be completed before the date when he would otherwise be required to retire under this section.

(c) Under such regulations as he may prescribe, the Secretary concerned may defer the retirement under subsection (a) of any warrant officer upon the recommendation of a board of officers and with the consent of the warrant officer, but not later than 60 days after he becomes 62 years of age.

(Aug. 10, 1956, ch. 1041, 70A Stat. 101; Pub. L. 87–649, § 6(f)(3), Sept. 7, 1962, 76 Stat. 494; Pub. L. 89–718, § 3, Nov. 2, 1966, 80 Stat. 1115; Pub. L. 102–190, div. A, title XI, § 1116, Dec. 5, 1991, 105 Stat. 1503; Pub. L. 109–364, div. A, title V, § 505(c), Oct. 17, 2006, 120 Stat. 2179; Pub. L. 110–417, [div. A], title V, § 501, Oct. 14, 2008, 122 Stat. 4432.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1305(a)	10:600(d) (as applicable to 10:600*l*(b)(2)). 10:600*l*(b)(2) (last sentence). 10:600r(c) (as applicable to 10:600*l*(b)(2)). 34:135(d) (as applicable to 34:430(b)(2)). 34:430(b)(2) (last sentence). 34:430c (as applicable to 34:430(b)(2)).	May 29, 1954, ch. 249, §§ 2(d) (as applicable to § 14(b)(2)), 14(b)(2), (e) (as applicable to (b)(2)), 21(c) (as applicable to § 14(b)(2)), 68 Stat. 157, 163, 168.
1305(b)	10:600*l*(e) (as applicable to 10:600*l*(b)(2)). 34:430(e) (as applicable to 34:430(b)(2)).	
1305(c)	10:600*l*(b)(2) (less last sentence). 34:430(b)(2) (less last sentence).	

In subsection (a), the words ''has at least'' are substituted for the words ''has completed''. The words ''and is not so continued on active service'' and ''on that date which'' are omitted as surplusage. 10:600*l*(b)(2) (last 16 words of last sentence) and 34:430(b)(2) (last 16 words of last sentence) are omitted as covered by section 1315 of this title.

In subsection (b), the words ''The Secretary concerned may defer'' are substituted for the words ''may, in the discretion of the Secretary, be deferred''. The words ''determination of his'' are inserted for clarity. The words ''not more than'' are substituted for the words ''a period not to exceed''. The words ''he would otherwise be required to retire under this section'' are substituted for the words ''retirement * * * would otherwise be required''. The words ''which is required'', ''possible'', ''proper'', and ''a period of'' are omitted as surplusage.

In subsection (c), the words ''the Secretary concerned may defer the retirement'' are substituted for the words ''in the discretion of the Secretary * * * be continued on active service''. The words ''but not later than'' are substituted for the words ''but not beyond that date which is''.

REFERENCES IN TEXT

Section 511 of the Career Compensation Act of 1949, referred to in subsec. (a)(1), is section 511 of act Oct. 12, 1949, ch. 681, which was formerly set out as a note under section 580 of this title.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–417 designated existing provisions as par. (1), substituted ''A regular warrant officer (other than a regular Army warrant officer) who has at least 30 years of active service that could be credited to the officer'' for ''A regular warrant officer who has at least 30 years of active service as a warrant officer that could be credited to him'', and added par. (2).

2006—Subsec. (a). Pub. L. 109–364 substituted ''A regular warrant officer'' for ''(1) Except as provided in paragraph (2), a regular warrant officer (other than a regular Army warrant officer in the grade of chief warrant officer, W–5)'', inserted ''as a warrant officer'' after ''years of active service'' and ''the date on which'' after ''60 days after'', and struck out par. (2) which read as follows:

''(2)(A) A regular Army warrant officer in the grade of chief warrant officer, W–5, who has at least 30 years of active service as a warrant officer that could be credited to him under section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114), shall be retired 60 days after the date on which he completes that service, except as provided by section 8301 of title 5.

''(B) A regular Army warrant officer in a warrant officer grade below the grade of chief warrant officer, W–5, who completes 24 years of active service as a warrant officer before he is required to be retired under paragraph (1) shall be retired 60 days after the date on which he completes 24 years of active service as a warrant officer, except as provided by section 8301 of title 5.''

1991—Subsec. (a). Pub. L. 102–190 designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), a regular warrant officer (other than a regular Army warrant officer in the grade of chief warrant officer, W–5)'' for ''A permanent regular warrant officer'', and added par. (2).

1966—Subsec. (a). Pub. L. 89–718 substituted ''8301'' for ''47a''.

1962—Subsec. (a). Pub. L. 87–649 substituted ''section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114)'' for ''section 311 of title 37.''

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.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–649 effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

§ 1315. Computation of retired pay: law applicable

A member of the armed forces retired under this chapter is entitled to retired pay computed under chapter 71 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 101.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1315	[No source].	[No source].

The revised section is based on the various retirement provisions in this chapter and is inserted to make explicit the entitlement to retired pay upon retirement.

CHAPTER 67—RETIRED PAY FOR NONREGULAR SERVICE

Sec.
1331. Reference to chapter 1223.

PRIOR PROVISIONS

A prior chapter 67 was transferred to part II of subtitle E of this title and renumbered chapter 1223.

AMENDMENTS

1996—Pub. L. 104–106, div. A, title XV, § 1503(a)(13), Feb. 10, 1996, 110 Stat. 511, substituted ''NON-REGULAR'' for ''NONREGULAR'' in chapter heading.

§ 1331. Reference to chapter 1223

Provisions of law relating to retired pay for nonregular service are set forth in chapter 1223 of this title (beginning with section 12731).

(Added Pub. L. 103–337, div. A, title XVI, § 1662(j)(7), Oct. 5, 1994, 108 Stat. 3005.)

PRIOR PROVISIONS

Prior sections 1331 to 1338 were renumbered sections 12731 to 12738 of this title, respectively.

CHAPTER 69—RETIRED GRADE

Sec.
1370. Commissioned officers: general rule; exceptions.
1371. Warrant officers: general rule.
1372. Grade on retirement for physical disability: members of armed forces.
1373. Higher grade for later physical disability: retired officers recalled to active duty.
[1374. Repealed.]
1375. Entitlement to commission: commissioned officers advanced on retired list.
1376. Temporary disability retired lists.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title XVI, § 1671(b)(11), Oct. 5, 1994, 108 Stat. 3013, struck out item 1374 ''Reserve commissioned officers: grade on retirement or transfer to Retired Reserve'' and substituted ''Temporary disability retired lists'' for ''Retired lists'' in item 1376.

1980—Pub. L. 96–513, title V, § 501(20), Dec. 12, 1980, 94 Stat. 2908, added item 1370.

1958—Pub. L. 85–861, § 1(30), Sept. 2, 1958, 72 Stat. 1451, added item 1374.

§ 1370. Commissioned officers: general rule; exceptions

(a) RULE FOR RETIREMENT IN HIGHEST GRADE HELD SATISFACTORILY.—(1) Unless entitled to a higher retired grade under some other provision of law, a commissioned officer (other than a commissioned warrant officer) of the Army, Navy, Air Force, or Marine Corps who retires under any provision of law other than chapter 61 or chapter 1223 of this title shall, except as provided in paragraph (2), be retired in the highest grade in which he served on active duty satisfactorily, as determined by the Secretary of the military department concerned, for not less than six months.

(2)(A) In order to be eligible for voluntary retirement under any provision of this title in a grade above major or lieutenant commander, a commissioned officer of the Army, Navy, Air

Force, or Marine Corps must have served on active duty in that grade for not less than three years, except that the Secretary of Defense may authorize the Secretary of a military department to reduce such period to a period not less than two years.

(B) In the case of an officer to be retired in a general or flag officer grade, authority provided by the Secretary of Defense to the Secretary of a military department under subparagraph (A) may be exercised with respect to that officer only if approved by the Secretary of Defense or another civilian official in the Office of the Secretary of Defense appointed by the President, by and with the advice and consent of the Senate.

(C) Authority provided by the Secretary of Defense to the Secretary of a military department under subparagraph (A) may be delegated within that military department only to a civilian official of that military department appointed by the President, by and with the advice and consent of the Senate.

(D) The President may waive subparagraph (A) in individual cases involving extreme hardship or exceptional or unusual circumstances. The authority of the President under the preceding sentence may not be delegated.

(E) In the case of a grade below the grade of lieutenant general or vice admiral, the number of members of one of the armed forces in that grade for whom a reduction is made during any fiscal year in the period of service-in-grade otherwise required under this paragraph may not exceed the number equal to two percent of the authorized active-duty strength for that fiscal year for officers of that armed force in that grade.

(F) Notwithstanding subparagraph (E), during the period ending on December 31, 2007, the number of lieutenant colonels and colonels of the Air Force, and the number of commanders and captains of the Navy, for whom a reduction is made under this section during any fiscal year in the period of service-in-grade otherwise required under this paragraph may not exceed four percent of the authorized active-duty strength for that fiscal year for officers of that armed force in that grade.

(3) A reserve or temporary officer who is notified that he will be released from active duty without his consent and thereafter requests retirement under section 3911, 6323, or 8911 of this title and is retired pursuant to that request is considered for purposes of this section, to have been retired involuntarily. An officer retired pursuant to section 1186(b)(1) of this title is considered for purposes of this section to have been retired voluntarily.

(b) RETIREMENT IN NEXT LOWER GRADE.—An officer whose length of service in the highest grade he held while on active duty does not meet the service in grade requirements specified in subsection (a) shall be retired in the next lower grade in which he served on active duty satisfactorily, as determined by the Secretary of the military department concerned, for not less than six months.

(c) OFFICERS IN O–9 AND O–10 GRADES.—(1) An officer who is serving in or has served in the grade of general or admiral or lieutenant general or vice admiral may be retired in that grade under subsection (a) only after the Secretary of Defense certifies in writing to the President and Congress that the officer served on active duty satisfactorily in that grade.

(2) In the case of an officer covered by paragraph (1), the three-year service-in-grade requirement in paragraph (2)(A) of subsection (a) may not be reduced or waived under that subsection—

(A) while the officer is under investigation for alleged misconduct; or

(B) while there is pending the disposition of an adverse personnel action against the officer for alleged misconduct.

(3)(A) The Secretary of Defense may delegate authority to make a certification with respect to an officer under paragraph (1) only to the Under Secretary of Defense for Personnel and Readiness or the Deputy Under Secretary of Defense for Personnel and Readiness.

(B) If authority is delegated under subparagraph (A) and, in the course of consideration of an officer for a certification under paragraph (1), the Under Secretary or (if such authority is delegated to both the Under and Deputy Under Secretary) the Deputy Under Secretary makes a determination described in subparagraph (C) with respect to that officer, the Under Secretary or Deputy Under Secretary, as the case may be, may not exercise the delegated authority in that case, but shall refer the matter to the Secretary of Defense, who shall personally determine whether to issue a certification under paragraph (1) with respect to that officer.

(C) A determination referred to in subparagraph (B) is a determination that there is potentially adverse information concerning an officer and that such information has not previously been submitted to the Senate in connection with the consideration by the Senate of a nomination of that officer for an appointment for which the advice and consent of the Senate is required.

(d) RESERVE OFFICERS.—(1) Unless entitled to a higher grade, or to credit for satisfactory service in a higher grade, under some other provision of law, a person who is entitled to retired pay under chapter 1223 of this title shall, upon application under section 12731 of this title, be credited with satisfactory service in the highest grade in which that person served satisfactorily at any time in the armed forces, as determined by the Secretary concerned in accordance with this subsection.

(2) In order to be credited with satisfactory service in an officer grade (other than a warrant officer grade) below the grade of lieutenant colonel or commander, a person covered by paragraph (1) must have served satisfactorily in that grade (as determined by the Secretary of the military department concerned) as a reserve commissioned officer in an active status, or in a retired status on active duty, for not less than six months.

(3)(A) In order to be credited with satisfactory service in an officer grade above major or lieutenant commander, a person covered by paragraph (1) must have served satisfactorily in that grade (as determined by the Secretary of the military department concerned) as a reserve commissioned officer in an active status, or in a retired status on active duty, for not less than three years.

(B) A person covered by subparagraph (A) who has completed at least six months of satisfactory service in grade may be credited with satisfactory service in the grade in which serving at the time of transfer or discharge, notwithstanding failure of the person to complete three years of service in that grade, if that person is transferred from an active status or discharged as a reserve commissioned officer—

(i) solely due to the requirements of a nondiscretionary provision of law requiring that transfer or discharge due to the person's age or years of service; or

(ii) because the person no longer meets the qualifications for membership in the Ready Reserve solely because of a physical disability, as determined, at a minimum, by a medical evaluation board and at the time of such transfer or discharge such person (pursuant to section 12731b of this title or otherwise) meets the service requirements established by section 12731(a) of this title for eligibility for retired pay under chapter 1223 of this title, unless the disability is described in section 12731b of this title.

(C) If a person covered by subparagraph (A) has completed at least six months of satisfactory service in grade, the person was serving in that grade while serving in a position of adjutant general required under section 314 of title 32 or while serving in a position of assistant adjutant general subordinate to such a position of adjutant general, and the person has failed to complete three years of service in that grade solely because the person's appointment to such position has been terminated or vacated as described in section 324(b) of such title, then such person may be credited with satisfactory service in that grade, notwithstanding the failure to complete three years of service in that grade.

(D) To the extent authorized by the Secretary of the military department concerned, a person who, after having been recommended for promotion in a report of a promotion board but before being promoted to the recommended grade, served in a position for which that grade is the minimum authorized grade may be credited for purposes of subparagraph (A) as having served in that grade for the period for which the person served in that position while in the next lower grade. The period credited may not include any period before the date on which the Senate provides advice and consent for the appointment of that person in the recommended grade.

(E) To the extent authorized by the Secretary of the military department concerned, a person who, after having been found qualified for Federal recognition in a higher grade by a board under section 307 of title 32, serves in a position for which that grade is the minimum authorized grade and is appointed as a reserve officer in that grade may be credited for the purposes of subparagraph (A) as having served in that grade. The period of the service for which credit is afforded under the preceding sentence may only be the period for which the person served in the position after the Senate provides advice and consent for the appointment.

(F) A person covered by subparagraph (A) who has completed at least six months of satisfactory service in a grade above colonel or (in the case of the Navy) captain and, while serving in an active status in such grade, is involuntarily transferred (other than for cause) from active status may be credited with satisfactory service in the grade in which serving at the time of such transfer, notwithstanding failure of the person to complete three years of service in that grade.

(4) A person whose length of service in the highest grade held does not meet the service in grade requirements specified in this subsection shall be credited with satisfactory service in the next lower grade in which that person served satisfactorily (as determined by the Secretary of the military department concerned) for not less than six months.

(5)(A) The Secretary of Defense may authorize the Secretary of a military department to reduce the 3-year period required by paragraph (3)(A) to a period not less than two years.

(B) In the case of a person who, upon transfer to the Retired Reserve or discharge, is to be credited with satisfactory service in a general or flag officer grade under paragraph (1), authority provided by the Secretary of Defense to the Secretary of a military department under subparagraph (A) may be exercised with respect to that person only if approved by the Secretary of Defense or another civilian official in the Office of the Secretary of Defense appointed by the President, by and with the advice and consent of the Senate.

(C) Authority provided by the Secretary of Defense to the Secretary of a military department under subparagraph (A) may be delegated within that military department only to a civilian official of that military department appointed by the President, by and with the advice and consent of the Senate.

(6) The number of reserve commissioned officers of an armed force in the same grade for whom a reduction is made during any fiscal year in the period of service-in-grade otherwise required under paragraph (5) may not exceed the number equal to 2 percent of the strength authorized for that fiscal year for reserve commissioned officers of that armed force in an active status in that grade.

(e) ADVANCE NOTICE TO CONGRESSIONAL COMMITTEES.—(1) In the case of an officer to be retired in a grade that is a general or flag officer grade who is eligible to retire in that grade only by reason of an exercise of authority under paragraph (2) of subsection (a) to reduce the three-year service-in-grade requirement otherwise applicable under that paragraph, the Secretary of Defense, before the officer is retired in that grade, shall notify the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives of the exercise of authority under that paragraph with respect to that officer.

(2) In the case of a person to be credited under subsection (d) with satisfactory service in a grade that is a general or flag officer grade who is eligible to be credited with such service in that grade only by reason of an exercise of authority under paragraph (5) of that subsection to reduce the three-year service-in-grade requirement otherwise applicable under paragraph (3)(A) of that subsection, the Secretary of Defense, before the person is credited with such

satisfactory service in that grade, shall notify the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives of the exercise of authority under paragraph (5) of that subsection with respect to that officer.

(3) In the case of an officer to whom subsection (c) applies, the requirement for notification under paragraph (1) is satisfied if the notification is included in the certification submitted with respect to that officer under paragraph (1) of such subsection.

(Added Pub. L. 96–513, title I, § 112, Dec. 12, 1980, 94 Stat. 2876; amended Pub. L. 101–510, div. A, title V, § 522, Nov. 5, 1990, 104 Stat. 1561; Pub. L. 103–160, div. A, title V, § 561(d), Nov. 30, 1993, 107 Stat. 1667; Pub. L. 103–337, div. A, title XVI, §§ 1641, 1671(c)(7)(B), Oct. 5, 1994, 108 Stat. 2968, 3014; Pub. L. 104–106, div. A, title V, § 502(a), (b), (f), (g), Feb. 10, 1996, 110 Stat. 292, 293; Pub. L. 104–201, div. A, title V, § 544(a), Sept. 23, 1996, 110 Stat. 2522; Pub. L. 105–261, div. A, title V, §§ 512(a), 513(a), 561(d), (*o*), Oct. 17, 1998, 112 Stat. 2007, 2025, 2026; Pub. L. 106–65, div. A, title X, § 1066(a)(9), (b)(3), Oct. 5, 1999, 113 Stat. 770, 772; Pub. L. 106–398, § 1 [[div. A], title V, § 571(d)], Oct. 30, 2000, 114 Stat. 1654, 1654A–134; Pub. L. 107–107, div. A, title V, §§ 502, 514, Dec. 28, 2001, 115 Stat. 1080, 1093; Pub. L. 107–314, div. A, title V, § 505, Dec. 2, 2002, 116 Stat. 2533; Pub. L. 108–136, div. A, title V, § 506, Nov. 24, 2003, 117 Stat. 1457; Pub. L. 109–163, div. A, title V, § 501, Jan. 6, 2006, 119 Stat. 3225.)

AMENDMENTS

2006—Subsec. (a)(2)(F). Pub. L. 109–163 added subpar. (F).

2003—Subsec. (a)(2)(A). Pub. L. 108–136, § 506(a), struck out ''in the case of retirements effective during the period beginning on October 1, 2002, and ending on December 31, 2003'' after ''two years''.

Subsec. (d)(5)(A). Pub. L. 108–136, § 506(b), substituted ''two years'' for ''2 years in the case of transfers to the Retired Reserve and discharges of retirement-qualified officers effective during the period beginning on October 1, 2002, and ending on December 31, 2003''.

2002—Subsec. (a)(2)(A). Pub. L. 107–314, § 505(a)(1), substituted ''during the period beginning on October 1, 2002, and ending on December 31, 2003'' for ''during the period beginning on October 1, 1990, and ending on December 31, 2001''.

Subsec. (a)(2)(B) to (E). Pub. L. 107–314, § 505(a)(2), (3), added subpars. (B) and (C) and redesignated former subpars. (B) and (C) as (D) and (E), respectively.

Subsec. (d)(5), (6). Pub. L. 107–314, § 505(b), designated first sentence as subpar. (A), substituted ''in the case of transfers to the Retired Reserve and discharges of retirement-qualified officers effective during the period beginning on October 1, 2002, and ending on December 31, 2003'' for ''in the case of retirements effective during the period beginning on October 17, 1998, and ending on December 31, 2001'', and added subpars. (B) and (C), and designated second sentence as (6) and substituted ''paragraph (5)'' for ''this paragraph''.

Subsec. (e). Pub. L. 107–314, § 505(c), added subsec. (e).

2001—Subsec. (c)(3). Pub. L. 107–107, § 502, added par. (3).

Subsec. (d)(3)(B). Pub. L. 107–107, § 514, amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''A person covered by subparagraph (A) who has completed at least six months of satisfactory service in grade and is transferred from an active status or discharged as a reserve commissioned officer solely due to the requirements of a nondiscretionary provision of law requiring that transfer or discharge due to the person's age or years of service may be credited with satisfactory service in the grade in which serving at the time of such transfer or discharge, notwithstanding failure of the person to complete three years of service in that grade.''

2000—Subsecs. (a)(2)(A), (d)(5). Pub. L. 106–398 substituted ''December 31, 2001'' for ''September 30, 2001''.

1999—Subsec. (d)(1). Pub. L. 106–65, § 1066(a)(9)(A), substituted ''chapter 1223'' for ''chapter 1225''.

Subsec. (d)(3)(F). Pub. L. 106–65, § 1066(b)(3), made technical amendment to Pub. L. 105–261, § 513(a). See 1998 Amendment note below.

Subsec. (d)(5). Pub. L. 106–65, § 1066(a)(9)(B), substituted ''October 17, 1998,'' for ''the date of the enactment of this paragraph''.

1998—Subsec. (a)(2)(A). Pub. L. 105–261, § 561(d), 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''.

Subsec. (d)(3)(E). Pub. L. 105–261, § 512(a), amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: ''To the extent authorized by the Secretary of the military department concerned, a person who, after having been extended temporary Federal recognition as a reserve officer of the Army National Guard in a particular grade under section 308 of title 32 or temporary Federal recognition as a reserve officer of the Air National Guard in a particular grade under such section, served in a position for which that grade is the minimum authorized grade may be credited for purposes of subparagraph (A) as having served in that grade for the period for which the person served in that position while extended the temporary Federal recognition, but only if the person was subsequently extended permanent Federal recognition as a reserve officer in that grade and also served in that position after being extended the permanent Federal recognition.''

Subsec. (d)(3)(F). Pub. L. 105–261, § 513(a), as amended by Pub. L. 106–65, § 1066(b)(3), added subpar. (F).

Subsec. (d)(5). Pub. L. 105–261, § 561(*o*), added par. (5).

1996—Subsec. (a). Pub. L. 104–106, § 502(g)(1), inserted heading.

Subsec. (a)(2)(A). Pub. L. 104–106, § 502(a)(1), struck out ''and below lieutenant general or vice admiral'' after ''commander''.

Subsec. (a)(2)(C). Pub. L. 104–106, § 502(f), substituted ''In the case of a grade below the grade of lieutenant general or vice admiral, the number of members of one of the armed forces in that grade'' for ''The number of officers in an armed force in a grade''.

Subsec. (b). Pub. L. 104–106, § 502(g)(2), inserted heading.

Subsec. (c). Pub. L. 104–106, § 502(b), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''Upon retirement an officer of the Army, Navy, Air Force, or Marine Corps who is serving in or has served in a position of importance and responsibility designated by the President to carry the grade of general or admiral or lieutenant general or vice admiral under section 601 of this title may, in the discretion of the President, be retired, by and with the advice and consent of the Senate, in the highest grade held by him while serving on active duty.''

Subsec. (d). Pub. L. 104–106, § 502(g)(3), inserted heading.

Subsec. (d)(2). Pub. L. 104–201, § 544(a)(2), redesignated subpar. (A) as entire par. (2). Former subpar. (B) redesignated subsec. (d)(3).

Subsec. (d)(2)(B). Pub. L. 104–106, § 502(a)(2), struck out ''and below lieutenant general or vice admiral'' after ''commander'' in first sentence.

Subsec. (d)(3). Pub. L. 104–201, § 544(a)(3), (4), redesignated subsec. (d)(2)(B) as par. (3), designated first and second sentences as subpars. (A) and (B), respectively, in subpar. (B), substituted ''subparagraph (A)'' for ''the preceding sentence'', and added subpars. (C) to (E). Former par. (3) redesignated (4).

Subsec. (d)(4). Pub. L. 104–201, § 544(a)(1), redesignated par. (3) as (4).

1994—Subsec. (a)(1). Pub. L. 103–337, § 1671(c)(7)(B), substituted ''chapter 1223'' for ''chapter 67''.

Subsec. (d). Pub. L. 103–337, § 1641, added subsec. (d).

1993—Subsec. (a)(2)(A). Pub. L. 103–160 substituted ''nine-year period'' for ''five-year period''.

1990—Subsec. (a)(2). Pub. L. 101–510 inserted ''(A)'' after ''(2)'', inserted before period at end of first sentence '', except that the Secretary of Defense may authorize the Secretary of a military department to reduce such period to a period not less than two years in the case of retirements effective during the five-year period beginning on October 1, 1990'', designated second and third sentences as subpar. (B), substituted ''subparagraph (A)'' for ''the preceding sentence'', and added subpar. (C).

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–65, div. A, title X, § 1066(b), Oct. 5, 1999, 113 Stat. 772, provided that the amendment made by section 1066(b) is effective Oct. 17, 1998, and as if included in the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, Pub. L. 105–261, as enacted.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–261, div. A, title V, § 512(b), Oct. 17, 1998, 112 Stat. 2007, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Oct. 17, 1998] and shall apply with respect to appointments to higher grades that take effect after that date.''

Pub. L. 105–261, div. A, title V, § 513(b), Oct. 17, 1998, 112 Stat. 2008, provided that: ''Subparagraph (F) of such section [subsec. (d)(3)(F) of this section], as added by subsection (a), shall take effect on the date of the enactment of this Act [Oct. 17, 1998] and shall apply with respect to transfers referred to in such subparagraph that are made on or after that date.''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 502(e) of Pub. L. 104–106 provided that: ''The amendment made by subsection (a)(2) [amending this section] shall take effect on October 1, 1996, immediately after subsection (d) of section 1370 of title 10, United States Code, takes effect under section 1691(b)(1) of the Reserve Officer Personnel Management Act (108 Stat. 3026) [Pub. L. 103–337, set out as a note under section 10001 of this title].''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 1671(c)(7)(B) of Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, and amendment by section 1641 of Pub. L. 103–337 effective Oct. 1, 1996, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section 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 relating to the time-in-grade requirement for voluntary retirement of officers not subsequently promoted, see section 629 of Pub. L. 96–513, set out as a note under section 611 of this title.

§ 1371. Warrant officers: general rule

Unless entitled to a higher retired grade under some other provision of law, a warrant officer retires, as determined by the Secretary concerned, in the permanent regular or reserve warrant officer grade, if any, that he held on the day before the date of his retirement, or in any higher warrant officer grade in which he served on active duty satisfactorily, as determined by the Secretary, for a period of more than 30 days.

(Aug. 10, 1956, ch. 1041, 70A Stat. 104.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1371	10:600*l*(d) (1st sentence). 10:600*l*(f) (1st sentence, as applicable to retired grade). 34:430(d) (1st sentence). 34:430(f) (1st sentence, as applicable to retired grade).	May 29, 1954, ch. 249, § 14(d) (1st sentence), (f) (1st sentence, as applicable to retired grade), 68 Stat. 163, 164.

The first 13 words are substituted for 10:600*l*(f) (1st sentence, as applicable to retired grade) and 34:430 (1st sentence, as applicable to retired grade). The words ''for a period of more than 30 days'' are substituted for the words ''under * * * orders specifying that the period of such duty shall be for a period in excess of thirty days or for an indefinite period'', to conform to the definition of those words in section 101(23) of this title. The words ''any full time duty'' are omitted, since the duty specified would necessarily be full time duty. The words ''under this section'' and ''competent'' are omitted as surplusage.

PUBLIC HEALTH SERVICE

Authority vested by this chapter in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to commissioned officers of Public Health Service, by Secretary of Health and Human Services or his designee, see section 213a of Title 42, The Public Health and Welfare.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Authority vested by this chapter in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to commissioned officer corps of National Oceanic and Atmospheric Administration, by Secretary of Commerce or Secretary's designee, see section 3071 of Title 33, Navigation and Navigable Waters.

§ 1372. Grade on retirement for physical disability: members of armed forces

Unless entitled to a higher retired grade under some other provision of law, any member of an armed force who is retired for physical disability under section 1201 or 1204 of this title, or whose name is placed on the temporary disability retired list under section 1202 or 1205 of this title, is entitled to the grade equivalent to the highest of the following:

(1) The grade or rank in which he is serving on the date when his name is placed on the temporary disability retired list or, if his name was not carried on that list, on the date when he is retired.

(2) The highest temporary grade or rank in which he served satisfactorily, as determined by the Secretary of the armed force from which he is retired.

(3) The permanent regular or reserve grade to which he would have been promoted had it not been for the physical disability for which he is retired and which was found to exist as a result of a physical examination.

(4) The temporary grade to which he would have been promoted had it not been for the physical disability for which he is retired, if eligibility for that promotion was required to be based on cumulative years of service or

years of service in grade and the disability was discovered as a result of a physical examination.

(Aug. 10, 1956, ch. 1041, 70A Stat. 105; Pub. L. 104–201, div. A, title V, § 577, Sept. 23, 1996, 110 Stat. 2536.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1372	37:272(d) (104th through 128th words, as applicable to retired grade; and 2d and 5th provisos). 37:279 (less applicability to 37:272(d) (last proviso)).	Oct. 12, 1949, ch. 681, §§ 402(d) (104th through 128th words, as applicable to retired grade; and 2d and 5th provisos), 409 (less applicability to § 402(d) (last proviso)), 63 Stat. 818, 823.

Clause (1) is substituted for 37:272(d) (104th through 128th words, as applicable to retired grade). The words ''if his name was not carried on that list'' are substituted for the words ''whichever is earlier''.

AMENDMENTS

1996—Pars. (3), (4). Pub. L. 104–201 substituted ''a physical examination'' for ''his physical examination for promotion''.

§ 1373. Higher grade for later physical disability: retired officers recalled to active duty

Unless entitled to a higher retired grade under some other provision of law, a member of an armed force whose retired pay is computed under section 1402(d) or 1402a(d) of this title is entitled, upon his release from active duty, to the grade equivalent to the grade or rank upon which his retired pay is based under that section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 105; Pub. L. 96–342, title VIII, § 813(b)(3)(C), Sept. 8, 1980, 94 Stat. 1104.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1373	37:272(d) (last proviso, as applicable to retired grade). 37:279 (as applicable to 37:272(d) (last proviso)).	Oct. 12, 1949, ch. 681, §§ 402(d) (last proviso, as applicable to retired grade), 409 (as applicable to § 402(d) (last proviso)), 63 Stat. 819, 823.

The applicability of the rule stated in 37:279 to all members whose retired pay is computed under 37:272(d) (last proviso) is based on an opinion of the Judge Advocate General of the Army (JAGA 1953/3305, 24 Apr. 1953).

AMENDMENTS

1980—Pub. L. 96–342 inserted reference to section 1402a(d) of this title.

[§ 1374. Repealed. Pub. L. 103–337, div. A, title XVI, § 1662(k)(2), Oct. 5, 1994, 108 Stat. 3006]

Section, added Pub. L. 85–861, § 1(29), Sept. 2, 1958, 72 Stat. 1451; amended Pub. L. 86–559, § 1(4), June 30, 1960, 74 Stat. 265; Pub. L. 99–661, div. A, title V, § 508(d)(2), Nov. 14, 1986, 100 Stat. 3867, related to reserve commissioned officers' grade on retirement or transfer to Retired Reserve. See sections 12771 to 12773 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

§ 1375. Entitlement to commission: commissioned officers advanced on retired list

A commissioned officer of the Army, Navy, Air Force, or Marine Corps who is advanced on a retired list is entitled to a commission in the grade to which he is advanced.

(Aug. 10, 1956, ch. 1041, 70A Stat. 105.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1375	10:1014. 34:394.	Mar. 4, 1911, ch. 266, 36 Stat. 1354.

The words ''has been or shall hereafter'', ''by operation of or in accordance with law'', and ''and shall receive'' are omitted as surplusage. The words ''in the grade to which he is advanced'' are substituted for the words ''in accordance with such advanced rank''.

§ 1376. Temporary disability retired lists

The Secretary concerned shall maintain a temporary disability retired list containing the names of members of the armed forces under his jurisdiction placed thereon under sections 1202 and 1205 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 105; Pub. L. 85–861, § 1(31), Sept. 2, 1958, 72 Stat. 1451; Pub. L. 103–337, div. A, title XVI, § 1662(k)(3), Oct. 5, 1994, 108 Stat. 3006.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1376(a)	50:927(a) (less 1st 11 words). 50:927(b) (less last 7 words of 1st sentence).	Oct. 12, 1949, ch. 681, § 401 (less (a)), 63 Stat. 816. July 9, 1952, ch. 608, § 207(a) (less 1st 11 words), (b) (less last 7 words of 1st sentence), 66 Stat. 483.
1376(b)	37:271 (less (a)).	

In subsection (a), the word ''maintained'' is substituted for the word ''established'', and in subsection (b), the word ''maintain'' is substituted for the word ''established'', since the lists have been established and are published annually.

In subsection (a), the words ''who are in the Retired Reserve'' are substituted for 50:927(a) (last 11 words), since section 271 of this title prescribes the conditions for being placed in the Retired Reserve. 50:927(b) (last sentence) is omitted, since the revised section provides that both lists be maintained.

In subsection (b), the words ''containing the names placed thereon under section 1202 or 1205 of this title'' are substituted for the words ''upon which shall be placed the names of all members of his service entitled to such placement pursuant to the provisions of this subchapter''.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1376	[Uncodified].	July 24, 1956, ch. 677, § 2 (less clauses (a)–(i), as applicable to 10:1376), 70 Stat. 623.

AMENDMENTS

1994—Pub. L. 103–337 substituted ''Temporary disability retired lists'' for ''Retired lists'' as section catchline, struck out ''(b)'' before ''The Secretary concerned'', and struck out subsec. (a) which read as follows: ''Under regulations prescribed by the Secretary

concerned, there shall be maintained retired lists containing the names of the Reserves of the armed forces under his jurisdiction who are in the Retired Reserve.'' See section 12774 of this title.

1958—Subsec. (b). Pub. L. 85–861 struck out provisions requiring publication of the temporary disability retired list annually in the official register or other official publication of the armed force concerned.

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 an Effective Date note under section 10001 of this title.

CHAPTER 71—COMPUTATION OF RETIRED PAY

Sec.
1401. Computation of retired pay.
1401a. Adjustment of retired pay and retainer pay to reflect changes in Consumer Price Index.
1402. Recomputation of retired or retainer pay to reflect later active duty of members who first became members before September 8, 1980.
1402a. Recomputation of retired or retainer pay to reflect later active duty of members who first became members after September 7, 1980.
1403. Disability retired pay: treatment under Internal Revenue Code of 1986.
1404. Applicability of section 8301 of title 5.
1405. Years of service.
1406. Retired pay base for members who first became members before September 8, 1980: final basic pay.
1407. Retired pay base for members who first became members after September 7, 1980: high-36 month average.
1407a. Retired pay base: officers retired in general or flag officer grades.
1408. Payment of retired or retainer pay in compliance with court orders.
1409. Retired pay multiplier.
1410. Restoral of full retirement amount at age 62 for certain members entering on or after August 1, 1986.
1411. Rules of construction.
1412. Administrative provisions.
[1413. Repealed.]
1413a. Combat-related special compensation.
1414. Members eligible for retired pay who are also eligible for veterans' disability compensation for disabilities rated 50 percent or higher: concurrent payment of retired pay and veterans' disability compensation.

AMENDMENTS

2011—Pub. L. 111–383, div. A, title VI, § 632(b)(2), Jan. 7, 2011, 124 Stat. 4240, added item 1412 and struck out former item 1412 ''Rounding to next lower dollar''.

2006—Pub. L. 109–364, div. A, title VI, § 641(b), Oct. 17, 2006, 120 Stat. 2259, added item 1407a.

2003—Pub. L. 108–136, div. A, title VI, § 641(d), (e)(2), Nov. 24, 2003, 117 Stat. 1516, 1517, struck out item 1413 ''Special compensation for certain severely disabled uniformed services retirees'', and substituted ''Combat-related special compensation'' for ''Special compensation for certain combat-related disabled uniformed services retirees'' in item 1413a and ''Members eligible for retired pay who are also eligible for veterans' disability compensation for disabilities rated 50 percent or higher: concurrent payment of retired pay and veterans' disability compensation'' for ''Members eligible for retired pay who have service-connected disabilities: payment of retired pay and veterans' disability compensation; contingent authority'' in item 1414.

2002—Pub. L. 107–314, div. A, title VI, § 636(a)(3), Dec. 2, 2002, 116 Stat. 2576, added item 1413a.

2001—Pub. L. 107–107, div. A, title VI, § 641(c), Dec. 28, 2001, 115 Stat. 1150, added item 1414.

1999—Pub. L. 106–65, div. A, title VI, §§ 643(b)(3)(B), 658(a)(2), Oct. 5, 1999, 113 Stat. 664, 669, inserted ''certain'' before ''members'' in item 1410 and added item 1413.

1987—Pub. L. 100–26, § 7(h)(2)(B), Apr. 21, 1987, 101 Stat. 282, substituted colon for semicolon and ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'' in item 1403.

1986—Pub. L. 99–348, title III, § 304(b)(2), July 1, 1986, 100 Stat. 703, inserted ''of members who first became members before September 8, 1980'' in item 1402, substituted ''Retired pay base for members who first became members before September 8, 1980: final basic pay'' for ''Limitations on revocation of retired pay'' in item 1406 and ''Retired pay base for members who first became members after September 7, 1980: high-36 month average'' for ''Retired pay base'' in item 1407, and added items 1409 to 1412.

1982—Pub. L. 97–252, title X, § 1002(b), Sept. 8, 1982, 96 Stat. 735, added item 1408.

1980—Pub. L. 96–513, title V, § 511(51)(C), (52)(C), Dec. 12, 1980, 94 Stat. 2924, 2925, substituted ''of members who first became members after September 7, 1980'' for ''in case of members who first became members after the enactment of the Department of Defense Authorization Act, 1981'' in item 1402a, and substituted ''Internal Revenue Code of 1954'' for ''title 26'' in item 1403.

Pub. L. 96–342, title VIII, § 813(a)(2), (b)(3)(B), 94 Stat. 1101, 1104, added items 1402a and 1407.

1966—Pub. L. 89–718, § 3, Nov. 2, 1966, 80 Stat. 1115, substituted ''8301'' for ''47a'' in item 1404.

Pub. L. 89–652, § 2(2), Oct. 14, 1966, 80 Stat. 902, added item 1406.

1963—Pub. L. 88–132, § 5(g)(2), Oct. 2, 1963, 77 Stat. 214, added item 1401a.

1958—Pub. L. 85–422, § 11(a)(1)(B), May 20, 1958, 72 Stat. 131, added item 1405.

§ 1401. Computation of retired pay

(a) DISABILITY, NON-REGULAR SERVICE, WARRANT OFFICER, AND DOPMA RETIREMENT.—The monthly retired pay of a person entitled thereto under this subtitle is computed according to the following table. For each case covered by a section of this title named in the column headed ''For sections'', retired pay is computed by taking, in order, the steps prescribed opposite it in columns 1, 2, 3, and 4,[1] as modified by the applicable footnotes.

Formula No.	For sections	Column 1 Take	Column 2 Multiply by	Column 3 Add
1	1201 1204	Retired pay base as computed under section 1406(b) or 1407.	As member elects— (1) 2½% of years of service credited to him under section 1208;[1] or (2) the percentage of disability, not to exceed 75%, on date when retired.	

[1] So in original. Column 4 has been struck out.

Formula No.	For sections	Column 1 Take	Column 2 Multiply by	Column 3 Add
2	1202 1205	Retired pay base as computed under section 1406(b) or 1407.	As member elects— (1) 2½% of years of service credited to him under section 1208;[1] or (2) the percentage of disability, not to exceed 75%, on date when his name was placed on temporary disability retired list.	Amount necessary to increase product of columns 1 and 2 to 50% of retired pay base upon which computation is based.
4	580 1263 1293 1305	Retired pay base as computed under section 1406(b) or 1407.	The retired pay multiplier prescribed in section 1409(a) for the years of service credited to him under section 1405.	
5	633 634 635 636 1251 1252 1253	Retired pay base as computed under section 1406(b) or 1407.	The retired pay multiplier prescribed in section 1409(a) for the years of service credited to him under section 1405.	

[1] Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month.

(b) USE OF MOST FAVORABLE FORMULA.—If a person would otherwise be entitled to retired pay computed under more than one formula of the table in subsection (a) or of any other provision of law, the person is entitled to be paid under the applicable formula that is most favorable to him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 106; Pub. L. 85–422, §§ 6(7), 11(a)(2), May 20, 1958, 72 Stat. 129, 131; Pub. L. 88–132, § 5(h)(1), Oct. 2, 1963, 77 Stat. 214; Pub. L. 89–132, § 6, Aug. 21, 1965, 79 Stat. 547; Pub. L. 90–207, § 3(1), Dec. 16, 1967, 81 Stat. 653; Pub. L. 92–455, § 1, Oct. 2, 1972, 86 Stat. 761; Pub. L. 96–342, title VIII, § 813(b)(1), Sept. 8, 1980, 94 Stat. 1102; Pub. L. 96–513, title I, § 113(a), title V, § 511(49), Dec. 12, 1980, 94 Stat. 2876, 2924; Pub. L. 98–94, title IX, §§ 922(a)(1), 923(a)(1), (2)(A), Sept. 24, 1983, 97 Stat. 641, 642; Pub. L. 98–557, § 35(b), Oct. 30, 1984, 98 Stat. 2877; Pub. L. 99–348, title II, § 201(a), July 1, 1986, 100 Stat. 691; Pub. L. 102–484, div. A, title X, § 1052(18), Oct. 23, 1992, 106 Stat. 2500; Pub. L. 103–337, div. A, title XVI, § 1662(j)(2), Oct. 5, 1994, 108 Stat. 3004; Pub. L. 109–163, div. A, title V, § 509(d)(1)(A), Jan. 6, 2006, 119 Stat. 3231; Pub. L. 109–364, div. A, title V, § 502(d)(1), Oct. 17, 2006, 120 Stat. 2177; Pub. L. 111–383, div. A, title VI, § 631(a), Jan. 7, 2011, 124 Stat. 4239.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1401 Introductory clause.	10:600*l*(f) (1st sentence, less applicability to retired grade). 34:430(f) (1st sentence, less applicability to retired grade).	June 29, 1948, ch. 708, § 303 (1st 91 words and 1st proviso), 62 Stat. 1088. Oct. 12, 1949, ch. 681, §§ 402(d) (less 30th through 55th words; less 104th through 128th words, as applicable to retired grade; and less 2d, 5th, and last provisos), 402(e) (1st proviso of last sentence), 63 Stat. 818, 819.
1401(1)	37:272(d) (less 1st 55 words; less 104th through 128th words, as applicable to retired grade; and less 1st, 2d, 4th, 5th, and last provisos). 37:272(e) (1st proviso of last sentence).	
1401(2)	37:272(d) (1st 29, and 51st through 55th, words, and 4th proviso).	May 29, 1954, ch. 249, § 14(d) (less 1st sentence), (f) (1st sentence, less applicability to retired grade; and last sentence), 68 Stat. 163, 164.
1401(3)	10:1036b (1st 91 words and 1st proviso). 34:440j (1st 91 words and 1st proviso).	
1401(4)	10:600*l*(d) (2d sentence). 10:600*l*(f) (last sentence). 34:430(d) (2d sentence). 34:430(f) (last sentence).	
1401, footnote 1.	[No source].	
1401, footnote 2.	[No source].	

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1401, footnote 3.	37:272(d) (1st proviso); 10:600*l*(d) (less 1st and 2d sentences). 34:430(d) (less 1st and 2d sentences).	

In the introductory paragraph, the applicability of the rule stated in the third sentence to situations not expressly covered by the laws named in the source statutes above is a practical construction that the rule must be reciprocally applied in all cases.

In formula No. 1, the words ''whichever is earlier'', in 37:272(d) (clause (2)), are omitted, since they are contrary to the rule stated in 37:272(e) (1st proviso of last sentence).

In formula No. 3, the computation is based on monthly pay instead of annual pay to conform to the other formulas of the revised section. The words ''basic pay'' are substituted for the words ''base and longevity pay'' to conform to the terminology of the Career Compensation Act of 1949 (37 U.S.C. 231 et seq.). The words ''which he would receive if serving, at the time granted such pay, on active duty'' are omitted as surplusage and to conform to the other formulas of the revised section, since the effect of these words is covered by footnote 1. The words ''at any time'' are substituted for the words ''during his entire period of service''.

Footnotes 1 and 2 reflect the long-standing construction of those provisions dealing with computation of retired pay which do not specifically provide that the member is entitled to compute his retired pay on the basis of the monthly basic pay to which he would be entitled if he were on active duty in his retired grade. The pertinent basic computation provisions for such retirement either provide for computation of retired pay on the same basis as the provisions dealing with higher retired grade, or the basic retirement provisions were enacted after the provisions authorizing higher retired grade. The words ''at rates applicable on date of retirement * * * and adjust to reflect later changes in permanent rates'', in footnote 1; and all of footnote 2; are based on the source statutes incorporated in the formulas to which footnotes 1 and 2 apply, as interpreted in an opinion of the Judge Advocate General of the Army (1953/4120, 14 May 1953).

In footnote 3, the words ''and disregard a part of a year that is less than six months'' are made applicable to formulas Nos. 1 and 2. The legislative history of the Career Compensation Act of 1949 (Hearings before the Committee on Armed Services of the Senate on H.R. 5007, 81st Congress, First Session, page 313, July 6, 1949) indicates that the provisions, upon which formulas Nos. 1 and 2 are based, should be construed to require that a fraction of less than one-half of a year be disregarded. It also indicates that other retirement laws that are also silent on this point should be similarly construed.

AMENDMENTS

2011—Subsec. (a). Pub. L. 111–383 in column 2 of table inserted ", not to exceed 75%," after "percentage of disability" in two places and struck out column 4 of table which directed subtraction of excess over 75 percent of retired pay base upon which computation is based in formulas 1 and 2.

2006—Subsec. (a). Pub. L. 109–364 in table inserted "1253" after "1252" in column under heading "For sections".

Pub. L. 109–163 in table inserted "1252" after "1251" in column under heading "For sections".

1994—Subsec. (a). Pub. L. 103–337 in table struck out formula number 3 which provided formula for computing retired pay under former section 1331 of this title.

1992—Subsec. (a). Pub. L. 102–484 substituted "580" for "564" in column in table under heading "For sections".

1986—Subsec. (a). Pub. L. 99–348, § 201(a)(1), (2), designated existing provision as subsec. (a), added heading, and struck out third, fourth, and fifth sentences which read as follows: "The amount computed, if not a multiple of $1, shall be rounded to the next lower multiple of $1. However, if a person would otherwise be entitled to retired pay computed under more than one pay formula of this table or of any other provision of law, he is entitled to be paid under the applicable formula that is most favorable to him. Section references below are to sections of this title."

Pub. L. 99–348, § 201(a)(3), amended column 1 of table generally by substituting provisions that retired pay be computed by taking the retired pay base as computed under section 1406(b) or 1407 of this title for provisions that retired pay be computed for a person who first became a member of a uniformed service, as defined in section 1407(a)(2) of this title, after Sept. 7, 1980, by taking the monthly retired pay base as computed under section 1407(b) of this title, and for all others, by taking the monthly basic pay to which the member was entitled under various circumstances.

Pub. L. 99–348, § 201(a)(4), substituted in column 2 of table a multiplier of the retired pay multiplier prescribed in section 1409(a) for the years of service credited to him under section 1405 for a multiplier of 2½% of years of service credited under section 1405 for formulas 4 and 5 and struck out "Excess over 75% of pay upon which computation is based." in column 4 of table for formulas 4 and 5.

Pub. L. 99–348, § 201(a)(5), in columns 3 and 4 substituted "retired pay base" for "pay" wherever appearing.

Pub. L. 99–348, § 201(a)(6), redesignated footnote 3 as 1, and struck out former footnote 1 which provided computation at rates applicable on date of retirement or date when the member's name was placed on temporary disability retired list, as the case may be, footnote 2 which provided computation at rates applicable on the date when retired pay is granted, footnote 4 which provided computation at the highest rates of basic pay applicable to an officer who served as Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, while so serving in that office and computation at the highest rate of basic pay applicable to an enlisted person who has served as sergeant major of the Army, master chief petty officer of the Navy, chief master sergeant of the Air Force, sergeant major of the Marine Corps, or master chief petty officer of the Coast Guard, while he served if that rate is higher than the rate authorized by the table, and footnote 5 which provided for purposes of this section that an officer's retired grade be determined as if sections 3962(b) and 8962(b) did not apply.

Pub. L. 99–348, § 201(a)(7), in column 2 of table substituted footnote 1 designation for footnote 3 designation wherever appearing.

Subsec. (b). Pub. L. 99–348, § 201(a)(8), added subsec. (b).

1984—Pub. L. 98–557 inserted reference to Commandant of the Coast Guard in footnote 4 of table.

1983—Pub. L. 98–94, § 922(a)(1), inserted "The amount computed, if not a multiple of $1, shall be rounded to the next lower multiple of $1."

Pub. L. 98–94, § 923(a)(1), (2)(A), in footnote 3 of table, substituted "Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month" for "Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months".

1980—Pub. L. 96–513, § 113(a), inserted formula 5 in table of formulae set out in the section and added footnote 5.

Pub. L. 96–513, § 511(49), in formula 4 table of sections struck out reference to section 1255, in heading for Column 1 substituted reference to Sept. 7, 1980, for reference to date of enactment of Department of Defense Authorization Act, 1981, and in footnote 4 substituted reference to master chief petty officer of the Navy, for reference to senior enlisted advisor of the Navy.

Pub. L. 96–342 in heading for column 1 of table inserted provisions respecting applicability to persons becoming members after the date of the enactment of the Department of Defense Authorization Act, 1981.

1972—Pub. L. 92–455 substituted in second sentence of footnote 4 of table "chief master sergeant of the Air Force, sergeant major of the Marine Corps, or master chief petty officer of the Coast Guard," for "chief master sergeant of the Air Force, or sergeant major of the Marine Corps,".

1967—Pub. L. 90–207 inserted sentence to footnote 4 of table requiring the computation of retired pay for an enlisted person who has served as senior noncommissioned officer of his service at the highest rate of basic pay applicable to him while he so served, if that rate is higher than the rate authorized by the table.

1965—Pub. L. 89–132 struck out "increased, for members credited with two or less years of service for basic pay purposes, by 6%" from column 1 of formula 1 and column 1 of formula 2.

1963—Pub. L. 88–132 struck out from footnote 1 of table ", and adjust to reflect later changes in applicable permanent rates" after "as the case may be."

1958—Pub. L. 85–422, § 6(7)(A), inserted provisions in Column 1 of formulas 1 and 2 permitting the taking of the monthly basic pay to which a member was entitled on the day before retirement or placement on temporary disability retired list, increased, for members credited with two or less years of service for basic pay purposes, by 6 percent.

Pub. L. 85–422, § 11(a)(2), substituted "under section 1405 of this title" for "in computing basic pay" in column 2 of formula 4.

Pub. L. 85–422, § 6(7)(B), added footnote 4.

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 111–383, div. A, title VI, § 631(d), Jan. 7, 2011, 124 Stat. 4240, provided that: "The tables in sections 1401(a), 1402(d), and 1402a(d) of title 10, United States Code, as in effect on the day before the date of the enactment of this Act [Jan. 7, 2011], shall continue to apply to the computation or recomputation of retired or retainer pay for persons who first became entitled to retired or retainer pay under subtitle A of such title on or before the date of the enactment of this Act. The amendments made by this section [amending this section and sections 1402 and 1402a of this title] shall apply only with respect to persons who first become entitled to retired or retainer pay under such subtitle after that date."

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 an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 35(c) of Pub. L. 98–557 provided that: "The amendments made by this section [amending this sec-

tion and provisions set out as a note under section 1009 of Title 37, Pay and Allowances of the Uniformed Services] shall become effective on October 1, 1984''.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 922(e) of Pub. L. 98–94 provided that: ''The amendments made by this section [enacting section 6333 of this title and amending this section, sections 1401a, 1402, 1402a, 1437, 1451, 3991, 3992, 6151, 6383, 8991, and 8992 of this title, section 423 of Title 14, Coast Guard, section 853*o* of Title 33, Navigation and Navigable Waters, section 212 of Title 42, The Public Health and Welfare] shall take effect on October 1, 1983.''

Amendment by section 923 of Pub. L. 98–94 applicable with respect to the computation of retired or retainer pay of any individual who becomes entitled to that pay after Sept. 30, 1983, see section 923(g) of Pub. L. 98–94, set out as a note under section 1174 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 113(a) of Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, and amendment by section 511(49) of Pub. L. 96–513 effective Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–207 effective Oct. 1, 1967, see section 7 of Pub. L. 90–207, set out as a note under section 203 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–132 effective Sept. 1, 1965, see section 10 of Pub. L. 89–132, set out as a note under section 203 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment by Pub. L. 88–132 effective Oct. 1, 1963, see section 14 of Pub. L. 88–132, set out as a note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–422 effective June 1, 1958, see section 9 of Pub. L. 85–422.

SHORT TITLE OF 1986 AMENDMENT

Section 1(a) of Pub. L. 99–348 provided that: ''This Act [enacting sections 134a, 1406, 1407, and 1409 to 1412 of this title, redesignating former section 1406 of this title as section 1338 [now 12738] of this title, amending this section, sections 101, 135, 136a, 716, 1040, 1338 [now 12738], 1401a, 1402, 1402a, 1405, 1447, 1451, 1452, 2830, 3925, 3991, 3992, 5083, 5201, 6151, 6322, 6323, 6325, 6326, 6330, 6333, 6383, 8925, 8991, and 8992 of this title, sections 5313 and 5314 of Title 5, Government Organization and Employees, sections 46, 47, 51, 288, 291 to 293, 327, 334, 353 to 355, 357, 362, and 421 to 424 of Title 14, Coast Guard, section 853*o* of Title 33, Navigation and Navigable Waters, and sections 211 and 212 of Title 42, The Public Health and Welfare, repealing former section 1407 and section 6328 of this title, enacting provisions set out as notes under this section and sections 135 and 12731 of this title, and repealing provisions set out as notes under this section and section 6330 of this title] may be cited as the 'Military Retirement Reform Act of 1986'.''

SHORT TITLE OF 1982 AMENDMENT

Pub. L. 97–252, title X, §1001, Sept. 8, 1982, 96 Stat. 730, provided that: ''This title [enacting section 1408 of this title, amending sections 1072, 1076, 1086, 1447, 1448, and 1450 of this title, and enacting provisions set out as notes under sections 1408 and 2208 of this title] may be cited as the 'Uniformed Services Former Spouses' Protection Act'.''

TREATMENT AS ACTIVE SERVICE FOR RETIRED PAY PURPOSES OF SERVICE AS MEMBER OF ALASKA TERRITORIAL GUARD DURING WORLD WAR II

Pub. L. 111–84, div. A, title VI, §645, Oct. 28, 2009, 123 Stat. 2368, provided that:

''(a) IN GENERAL.—Service as a member of the Alaska Territorial Guard during World War II of any individual who was honorably discharged therefrom under section 8147 of the Department of Defense Appropriations Act, 2001 (Public Law 106–259; 114 Stat. 705) [amending section 106 of Title 38, Veterans' Benefits, and enacting provisions set out as a note under section 106 of Title 38] shall be treated as active service for purposes of the computation under chapter 61, 71, 371, 571, 871, or 1223 of title 10, United States Code, as applicable, of the retired pay to which such individual may be entitled under title 10, United States Code.

''(b) APPLICABILITY.—Subsection (a) shall apply with respect to amounts of retired pay payable under title 10, United States Code, for months beginning on or after the date of the enactment of this Act [Oct. 28, 2009]. No retired pay shall be paid to any individual by reason of subsection (a) for any period before that date.

''(c) WORLD WAR II DEFINED.—In this section, the term 'World War II' has the meaning given that term in section 101(8) of title 38, United States Code.''

Similar provisions were contained in the following appropriation act:

Pub. L. 111–118, div. A, title VIII, §8055, Dec. 19, 2009, 123 Stat. 3441.

RECOMPUTATION OF RETIRED PAY FOR CERTAIN RECENTLY RETIRED OFFICERS

Pub. L. 106–65, div. A, title VI, §601(e), Oct. 5, 1999, 113 Stat. 648, provided that: ''In the case of a commissioned officer of the uniformed services who retired during the period beginning on April 30, 1999, through December 31, 1999, and who, at the time of retirement, was in pay grade O–7, O–8, O–9, or O–10, the retired pay of that officer shall be recomputed, effective as of January 1, 2000, using the rate of basic pay that would have been applicable to the computation of that officer's retired pay if the provisions of paragraph (2) of section 203(a) of title 37, United States Code, as added by subsection (d), had taken effect on April 30, 1999.''

SIX-MONTH ROUNDING RULE

Section 305(b) of Pub. L. 99–348 provided that:

''(1) GENERAL RULE.—Retired pay or retainer pay may not be paid to a covered member of the Armed Forces (as defined in paragraph (3)) for any month in an amount that is greater than the amount otherwise determined to be payable after such reductions as may be necessary to reflect adjusting the computation of retired pay or retainer pay that includes credit for a part of a year of service to permit credit for a part of a year of service only for such month or months actually served.

''(2) EXCEPTIONS.—The limitation in paragraph (1) does not apply to a member who before January 1, 1982—

''(A) applied for retirement or transfer to the Fleet Reserve or Fleet Marine Corps Reserve;

''(B) was being processed for retirement under the provisions of chapter 61 of title 10, United States Code, or who was on the temporary disability retired list and thereafter retired under the provisions of section 1210(c) or 1210(d) of such title; or

''(C) was retired or in an inactive status and would have been eligible for retired pay under the provisions of chapter 67 [now 1223] of such title, but for the fact that the person was under 60 years of age.

''(3) DEFINITION OF COVERED MEMBER.—For the purposes of this subsection, the term 'covered member of the Armed Forces' means a member of the Armed Forces who became entitled to retired or retainer pay

during the period beginning on January 1, 1982, and ending on September 30, 1983.

''(4) REPEAL OF SOURCE LAW.—Section 8054 of the Department of Defense Appropriations Act, 1985 (as contained in section 101(h) of Public Law 98–473) [formerly set out as a note below], is repealed.

''(5) CROSS REFERENCE.—For the effective date of October 1, 1983, for provisions making permanent programmatic changes in law to accomplish the policy provided in such section 8054 (and prior provisions of law), see section 923(h) of the Department of Defense Authorization Act, 1984 (Public Law 98–94) [probably means section 923(g) of Pub. L. 98–94, set out as an Effective Date of 1983 Amendment note under section 1174 of this title].''

LIMITATION ON PAYMENT OF RETIRED OR RETAINER PAY TO REFLECT FRACTIONAL YEAR ADJUSTMENTS

Pub. L. 98–473, title I, §101(h)[title VIII, §8054], Oct. 12, 1984, 98 Stat. 1904, 1933, prohibited, with certain exceptions, payment of retired pay or retainer pay of a member of the Armed Forces for any month who, on or after January 1, 1982, became entitled to retired or retainer pay, in an amount greater than the amount otherwise determined payable after reductions necessary to reflect adjusting the computation of retired pay or retainer pay that includes credit for part of a year of service to permit credit for a part of a year of service only for such month or months actually served, prior to repeal by Pub. L. 99–348, title III, §305(b)(4), July 1, 1986, 100 Stat. 705.

INCREASE IN PAY AND ALLOWANCES OF CERTAIN PERSONS WHO SERVED AS GENERALS OF THE ARMY, FLEET ADMIRALS OF THE NAVY, GENERAL OF THE MARINE CORPS, OR ADMIRAL IN THE COAST GUARD

Section 5 of Pub. L. 90–207 provided that: ''Notwithstanding any other provision of law, a member of an armed force who is entitled to pay and allowances under any of the following provisions of law on September 30, 1967, shall continue to receive the pay and allowances to which he was entitled on that day plus an increase of 4.5 per centum in the total of his pay and allowances:

''(1) The Act of March 23, 1946, chapter 112 (60 Stat. 59).

''(2) The Act of June 26, 1948, chapter 677 (62 Stat. 1052).

''(3) The Act of September 18, 1950, chapter 952 (64 Stat. A224).''

INCREASE IN RETIRED OR RETAINER PAY OF MEMBERS ENTITLED THERETO ON OR AFTER OCTOBER 1, 1967

Section 6 of Pub. L. 90–207 provided that: ''Notwithstanding any other provision of law, a member or former member of a uniformed service who initially becomes entitled to retired pay or retainer pay on or after October 1, 1967, shall be entitled to have that pay computed using the rates of basic pay prescribed by the first section of this Act [amending section 203(a) of Title 37].''

INCREASES IN RETIRED OR RETAINER PAY

Pub. L. 89–501, title III, §303, July 13, 1966, 80 Stat. 278, provided that: ''Notwithstanding any other provision of law, a member or former member of a uniformed service who initially becomes entitled to retired pay or retainer pay on the effective date of this title shall be entitled to have that pay computed using the rates of basic pay prescribed by the first section of this title [amending section 203(a) of Title 37].''

Effective date of section 303 of Pub. L. 89–501 as the first day of the first pay period which begins on or after July 1, 1966, see section 304 of Pub. L. 89–501, set out as Effective Date of 1966 Amendments note under section 203 of Title 37, Pay and Allowances of the Uniformed Services.

Section 5(a) of Pub. L. 89–132 provided that: ''The retired pay or retainer pay of a member or former member of a uniformed service who is entitled to that pay computed under rates of basic pay in effect before the effective date of this Act [Sept. 1, 1965] shall be increased, effective that date, by the per centum (adjusted to the nearest one-tenth of 1 per centum) that the Consumer Price Index (all items—United States city average), published by the Bureau of Labor Statistics, for the calendar month immediately preceding the effective date of this Act has increased over the average monthly index for calendar year 1962.''

CONTINUATION OF PAY AND ALLOWANCES OF CERTAIN PERSONS WHO SERVED AS GENERALS OF THE ARMY, FLEET ADMIRALS OF THE NAVY, GENERAL OF THE MARINE CORPS, OR ADMIRAL IN THE COAST GUARD

Section 7 of Pub. L. 89–132 provided that: ''Notwithstanding any other provision of law, a member of an armed force who was entitled to pay and allowances under any of the following provisions of law on the day before the effective date of this Act [Sept. 1, 1965] shall continue to receive the pay and allowances to which he was entitled on that day:

''(1) The Act of March 23, 1946, chapter 112 (60 Stat. 59).

''(2) The Act of June 26, 1948, chapter 677 (62 Stat. 1052).

''(3) The Act of September 18, 1950, chapter 952 (64 Stat. A224).''

INCREASE IN RETIRED PAY TO PERSONS RETIRED BEFORE JUNE 1, 1958

Section 4 of Pub. L. 85–422, as amended by Pub. L. 85–855, §1(a), Aug. 28, 1958, 72 Stat. 1104, provided that:

''(a) Except for members covered by section 7 of this Act, members and former members of the uniformed services who are entitled to retired pay, retirement pay, retainer pay, or equivalent pay, on the day before the effective date of this Act [June 1, 1958], shall be entitled to an increase of 6 per centum of that pay to which they were entitled on that date.

''(b) Notwithstanding any other provision of law, a member of a uniformed service retired under any provision of law, or transferred to the Fleet Reserve or Fleet Marine Corps Reserve, on the effective date of this Act [June 1, 1958] shall have his retired pay or retainer pay computed on the basis of the rates of basic pay set forth in the Career Compensation Act of 1949, as amended by this Act, or on the rates of basic pay set forth in the Career Compensation Act of 1949 on the day before the effective date of this Act, plus 6 per centum of that pay, whichever is greater.

''(c) Section 5 of the Career Incentive Act of 1955 (69 Stat. 22) does not apply to any person who is retired, or to whom retired pay, retirement pay, retainer pay, or equivalent pay (including temporary disability retired pay) is granted, on or after the effective date of this Act [June 1, 1958]''.

Section 1(b) of Pub. L. 85–855 provided that the amendment of section 4(a) of Pub. L. 85–422, which eliminated the words ''and persons with two or less years of service for basic pay purposes who were retired for physical disability or placed on the temporary disability retired list'' preceding ''members and former members'' should be effective June 1, 1958.

PUBLIC HEALTH SERVICE

Authority vested by this chapter in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to commissioned officers of Public Health Service, by Secretary of Health and Human Services or his designee, see section 213a of Title 42, The Public Health and Welfare.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Authority vested by this chapter in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to commissioned officer corps of National Oceanic and Atmospheric Administration, by Secretary of Commerce or

Secretary's designee, see section 3071 of Title 33, Navigation and Navigable Waters.

§1401a. Adjustment of retired pay and retainer pay to reflect changes in Consumer Price Index

(a) PROHIBITION ON RECOMPUTATION TO REFLECT INCREASES IN BASIC PAY.—Unless otherwise specifically provided by law, the retired pay of a member or former member of an armed force may not be recomputed to reflect any increase in the rates of basic pay for members of the armed forces.

(b) COST-OF-LIVING ADJUSTMENTS BASED ON CPI INCREASES.—

(1) INCREASE REQUIRED.—Effective on December 1 of each year, the Secretary of Defense shall increase the retired pay of members and former members entitled to that pay in accordance with paragraphs (2) and (3).

(2) PERCENTAGE INCREASE.—Except as otherwise provided in this subsection, the Secretary shall increase the retired pay of each member and former member by the percent (adjusted to the nearest one-tenth of 1 percent) by which—

(A) the price index for the base quarter of that year, exceeds

(B) the base index.

(3) REDUCED PERCENTAGE FOR CERTAIN POST-AUGUST 1, 1986 MEMBERS.—If the percent determined under paragraph (2) is greater than 1 percent, the Secretary shall increase the retired pay of each member and former member who first became a member on or after August 1, 1986, and has elected to receive a bonus under section 322 (as in effect before the enactment of the National Defense Authorization Act for Fiscal Year 2008) or section 354 of title 37, by the difference between—

(A) the percent determined under paragraph (2); and

(B) 1 percent.

(4) SPECIAL RULE FOR PARAGRAPH (3).—If in any case in which an increase in retired pay that would otherwise be made under paragraph (3) is not made by reason of law (other than any provision of this section), then (unless otherwise provided by law) when the next increase in retired pay is made under this subsection, the increase under paragraph (3) shall be carried out so as to achieve the same net increase in retired pay under that paragraph that would have been the case if that law had not been enacted.

(5) REGULATIONS.—Any increase in retired pay under this subsection shall be made in accordance with regulations prescribed by the Secretary of Defense.

(c) FIRST COLA ADJUSTMENT FOR MEMBERS WITH RETIRED PAY COMPUTED USING FINAL BASIC PAY.—

(1) FIRST ADJUSTMENT WITH INTERVENING INCREASE IN BASIC PAY.—Notwithstanding subsection (b) but subject to subsection (f)(2), if a person described in paragraph (3) becomes entitled to retired pay based on rates of monthly basic pay that became effective after the last day of the calendar quarter of the base index, the retired pay of the member or former member shall be increased on the effective date of the next adjustment of retired pay under subsection (b) only by the percent (adjusted to the nearest one-tenth of 1 percent) by which—

(A) the price index for the base quarter of that year, exceeds

(B) the price index for the calendar quarter immediately before the calendar quarter in which the rates of monthly basic pay on which the retired pay is based became effective.

(2) FIRST ADJUSTMENT WITH NO INTERVENING INCREASE IN BASIC PAY.—If a person described in paragraph (3) becomes entitled to retired pay on or after the effective date of an adjustment in retired pay under subsection (b) but before the effective date of the next increase in the rates of monthly basic pay, the retired pay of the member or former member shall be increased (subject to subsection (f)(2) as applied to other members whose retired pay is computed on the current rates of basic pay in the most recent adjustment under this section), effective on the date the member becomes entitled to that pay, by the percent (adjusted to the nearest one-tenth of 1 percent) by which—

(A) the base index, exceeds

(B) the price index for the calendar quarter immediately before the calendar quarter in which the rates of monthly basic pay on which the retired pay is based became effective.

(3) MEMBERS COVERED.—Paragraphs (1) and (2) apply to a member or former member of an armed force who first became a member of a uniformed service before August 1, 1986, and whose retired pay base is determined under section 1406 of this title.

(d) FIRST COLA ADJUSTMENT FOR MEMBERS WITH RETIRED PAY COMPUTED USING HIGH-THREE.—Notwithstanding subsection (b) but subject to subsection (f)(2), the retired pay of a member or former member of an armed force who first became a member of a uniformed service before August 1, 1986, or on or after August 1, 1986, if the member or former member did not elect to receive a bonus under section 322 (as in effect before the enactment of the National Defense Authorization Act for Fiscal Year 2008) or section 354 of title 37 and whose retired pay base is determined under section 1407 of this title shall be increased on the effective date of the first adjustment of retired pay under subsection (b) after the member or former member becomes entitled to retired pay by the percent (adjusted to the nearest one-tenth of 1 percent) equal to the difference between the percent by which—

(1) the price index for the base quarter of that year, exceeds

(2) the price index for the calendar quarter immediately before the calendar quarter during which the member became entitled to retired pay.

(e) PRO RATING OF INITIAL ADJUSTMENT.—Notwithstanding subsection (b) but subject to subsection (f)(2), the retired pay of a member or former member of an armed force who first became a member of a uniformed service on or

after August 1, 1986, and elected to receive a bonus under section 322 (as in effect before the enactment of the National Defense Authorization Act for Fiscal Year 2008) or section 354 of title 37 shall be increased on the effective date of the first adjustment of retired pay under subsection (b) after the member or former member becomes entitled to retired pay by the percent (adjusted to the nearest one-tenth of 1 percent) equal to the difference between—

(1) the percent by which—

(A) the price index for the base quarter of that year, exceeds

(B) the price index for the calendar quarter immediately before the calendar quarter during which the member became entitled to retired pay; and

(2) one-fourth of 1 percent for each calendar quarter from the quarter described in paragraph (1)(B) to the quarter described in paragraph (1)(A).

If in any case the percent described in paragraph (2) exceeds the percent determined under paragraph (1), such an increase shall not be made.

(f) PREVENTION OF PAY INVERSIONS.—

(1) PREVENTION OF RETIRED PAY INVERSIONS.—Notwithstanding any other provision of law, the monthly retired pay of a member or a former member of an armed force who initially became entitled to that pay on or after January 1, 1971, may not be less than the monthly retired pay to which he would be entitled if he had become entitled to retired pay at an earlier date based on the grade in which the member is retired, adjusted to reflect any applicable increases in such pay under this section. In computing the amount of retired pay to which such a member or former member would have been entitled on that earlier date, the computation shall be based on his grade, length of service, and the rate of basic pay applicable to him at that time, except that such computation may not be based on a rate of basic pay for a grade higher than the grade in which the member is retired. This subsection does not authorize any increase in the monthly retired pay to which a member was entitled for any period before October 7, 1975.

(2) PREVENTION OF COLA INVERSIONS.—The percentage of the first adjustment under this section in the retired pay of any person, as determined under subsection (c)(1), (c)(2), (d), or (e), may not exceed the percentage increase in retired pay determined under subsection (b)(2) that is effective on the same date as the effective date of such first adjustment.

(g) DEFINITIONS.—In this section:

(1) The term ''price index'' means the Consumer Price Index (all items, United States city average) published by the Bureau of Labor Statistics.

(2) The term ''base quarter'' means the calendar quarter ending on September 30 of each year.

(3) The term ''base index'' means the price index for the base quarter for the most recent adjustment under subsection (b).

(4) The term ''retired pay'' includes retainer pay.

(h) PRICE INDEX FOR A QUARTER.—For purposes of this section, the price index for a calendar quarter is the arithmetical mean of the price index for the three months comprising that quarter.

(Added Pub. L. 88–132, § 5(g)(1), Oct. 2, 1963, 77 Stat. 213; amended Pub. L. 89–132, § 5(b), Aug. 21, 1965, 79 Stat. 547; Pub. L. 90–207, § 2(a)(1), Dec. 16, 1967, 81 Stat. 652; Pub. L. 91–179, § 1, Dec. 30, 1969, 83 Stat. 837; Pub. L. 94–106, title VIII, § 806, Oct. 7, 1975, 89 Stat. 538; Pub. L. 94–361, title VIII, § 801(a), July 14, 1976, 90 Stat. 929; Pub. L. 94–440, title XIII, § 1306(d)(1), Oct. 1, 1976, 90 Stat. 1462; Pub. L. 96–342, title VIII, § 812(b)(1), Sept. 8, 1980, 94 Stat. 1098; Pub. L. 98–94, title IX, §§ 921(a)(1), (b), 922(a)(2), Sept. 24, 1983, 97 Stat. 640, 641; Pub. L. 98–525, title XIV, § 1405(26), Oct. 19, 1984, 98 Stat. 2623; Pub. L. 99–348, title I, § 102, July 1, 1986, 100 Stat. 683; Pub. L. 100–180, div. A, title XII, § 1231(21), Dec. 4, 1987, 101 Stat. 1161; Pub. L. 100–224, § 1, Dec. 30, 1987, 101 Stat. 1536; Pub. L. 100–456, div. A, title VI, § 622(a), Sept. 29, 1988, 102 Stat. 1983; Pub. L. 101–189, div. A, title VI, § 651(b)(1), Nov. 29, 1989, 103 Stat. 1460; Pub. L. 103–66, title II, § 2001, Aug. 10, 1993, 107 Stat. 335; Pub. L. 103–160, div. A, title XI, § 1182(e), Nov. 30, 1993, 107 Stat. 1773; Pub. L. 103–335, title VIII, § 8114A(b)(1), Sept. 30, 1994, 108 Stat. 2648; Pub. L. 103–337, div. A, title VI, § 633(a), Oct. 5, 1994, 108 Stat. 2787; Pub. L. 104–106, div. A, title VI, § 631(a), (c), Feb. 10, 1996, 110 Stat. 364, 365; Pub. L. 104–201, div. A, title VI, §§ 631(a), 632(a), Sept. 23, 1996, 110 Stat. 2549; Pub. L. 106–65, div. A, title VI, §§ 641(b), 643(b)(1), title X, § 1066(a)(10), Oct. 5, 1999, 113 Stat. 662, 663, 771; Pub. L. 107–314, div. A, title VI, § 633, Dec. 2, 2002, 116 Stat. 2572; Pub. L. 110–181, div. A, title VI, § 661(b)(3), Jan. 28, 2008, 122 Stat. 178.)

REFERENCES IN TEXT

Section 322 of title 37 (as in effect before the enactment of the National Defense Authorization Act for Fiscal Year 2008), referred to in subsecs. (b)(3), (d), and (e), means section 322 of title 37 as in effect before enactment of Pub. L. 110–181. Section 322 of title 37 was renumbered as section 354 of title 37 and amended by Pub. L. 110–181, div. A, title VI, § 661(b)(1), (2), Jan. 28, 2008, 122 Stat. 178.

AMENDMENTS

2008—Subsecs. (b)(3), (d), (e). Pub. L. 110–181, in introductory provisions, substituted ''section 322 (as in effect before the enactment of the National Defense Authorization Act for Fiscal Year 2008) or section 354'' for ''section 322''.

2002—Subsec. (c)(1). Pub. L. 107–314, § 633(a)(1), inserted ''but subject to subsection (f)(2)'' after ''Notwithstanding subsection (b)'' in introductory provisions.

Subsec. (c)(2). Pub. L. 107–314, § 633(a)(2), inserted ''(subject to subsection (f)(2) as applied to other members whose retired pay is computed on the current rates of basic pay in the most recent adjustment under this section)'' after ''shall be increased'' in introductory provisions.

Subsec. (d). Pub. L. 107–314, § 633(a)(1), (b)(1), in introductory provisions, inserted ''but subject to subsection (f)(2)'' after ''Notwithstanding subsection (b)'' and ''or on or after August 1, 1986, if the member or former member did not elect to receive a bonus under section 322 of title 37'' after ''August 1, 1986,''.

Subsec. (e). Pub. L. 107–314, § 633(a)(1), (b)(2), in introductory provisions, inserted ''but subject to subsection (f)(2)'' after ''Notwithstanding subsection (b)'' and ''and

elected to receive a bonus under section 322 of title 37'' after ''August 1, 1986,''.

Subsec. (f). Pub. L. 107–314, §633(a)(3), designated existing provisions as par. (1), inserted par. heading, realigned margins, and added par. (2).

1999—Subsec. (b)(1). Pub. L. 106–65, §643(b)(1)(A), substituted ''INCREASE REQUIRED'' for ''IN GENERAL'' in heading.

Subsec. (b)(2). Pub. L. 106–65, §1066(a)(10), struck out subpar. (A) designation and heading ''GENERAL RULE'', redesignated cls. (i) and (ii) as subpars. (A) and (B), respectively, and realigned their margins, and struck out former subpars. (B) and (C) which read as follows:

''(B) SPECIAL RULE FOR FISCAL YEAR 1996.—In the case of the increase in retired pay that, pursuant to paragraph (1), becomes effective on December 1, 1995, the initial month for which such increase is payable as part of such retired pay shall (notwithstanding such December 1 effective date) be March 1996.

''(C) INAPPLICABILITY TO DISABILITY RETIREES.—Subparagraph (B) does not apply with respect to the retired pay of a member retired under chapter 61 of this title.''

Pub. L. 106–65, §643(b)(1)(B), substituted ''PERCENTAGE INCREASE'' for ''PRE-AUGUST 1, 1986 MEMBERS'' in heading.

Pub. L. 106–65, §641(b)(1), substituted ''Except as otherwise provided in this subsection, the Secretary shall increase the retired pay of each member and former member'' for ''The Secretary shall increase the retired pay of each member and former member who first became a member of a uniformed service before August 1, 1986,''.

Subsec. (b)(3). Pub. L. 106–65, §643(b)(1)(C), substituted ''REDUCED PERCENTAGE FOR CERTAIN POST-AUGUST 1, 1986 MEMBERS'' for ''POST-AUGUST 1, 1986 MEMBERS'' in heading.

Pub. L. 106–65, §641(b)(2), inserted ''and has elected to receive a bonus under section 322 of title 37,'' after ''August 1, 1986,''.

1996—Subsec. (b)(2)(B). Pub. L. 104–201, §631(a), substituted ''SPECIAL RULE FOR FISCAL YEAR 1996'' for ''SPECIAL RULES FOR FISCAL YEARS 1996 AND 1998'' as subpar. heading, struck out cl. (i) designation and heading ''FISCAL YEAR 1996'' before ''In the case of'', and struck out cl. (ii) which read as follows: ''FISCAL YEAR 1998.—In the case of the increase in retired pay that, pursuant to paragraph (1), becomes effective on December 1, 1997, the initial month for which such increase is payable as part of such retired pay shall (notwithstanding such December 1 effective date) be September 1998.''

Pub. L. 104–106, §631(c), repealed Pub. L. 103–335, §8114A(b)(1). See 1994 Amendment note below.

Pub. L. 104–106, §631(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''SPECIAL RULES FOR FISCAL YEARS 1994 THROUGH 1998.—

''(i) FISCAL YEAR 1994.—In the case of an increase in retired pay that, pursuant to paragraph (1), becomes effective on December 1, 1993, the initial month for which such increase is payable as part of such retired pay shall (notwithstanding such December 1 effective date) be March 1994.

''(ii) FISCAL YEARS 1995 THROUGH 1998.—In the case of an increase in retired pay that, pursuant to paragraph (1), becomes effective on December 1 of 1994, 1995, 1996, or 1997, the initial month for which such increase is payable as part of such retired pay shall (notwithstanding such December 1 effective date) be September of the following year.''

Subsec. (c). Pub. L. 104–201, §632(a), added subsec. (c) and struck out former subsec. (c) which read as follows: ''RULE FOR FIRST ADJUSTMENT AFTER RETIREMENT WITH INTERVENING INCREASE IN BASIC PAY.—Notwithstanding subsection (b), if a member or former member of an armed force who first became a member of a uniformed service before August 1, 1986, becomes entitled to retired pay based on rates of monthly basic pay that became effective after the last day of the calendar quarter of the base index, the retired pay of the member or former member shall be increased on the effective date of the next adjustment of retired pay under subsection (b) only by the percent (adjusted to the nearest one-tenth of 1 percent) by which—

''(1) the price index for the base quarter of that year, exceeds

''(2) the price index for the calendar quarter immediately before the calendar quarter in which the rates of monthly basic pay on which the retired pay is based became effective.''

Subsec. (d). Pub. L. 104–201, §632(a), added subsec. (d) and struck out former subsec. (d) which read as follows: ''RULE FOR FIRST ADJUSTMENT AFTER RETIREMENT WITH NO INTERVENING INCREASE IN BASIC PAY.—If a member or former member of an armed force who first became a member of a uniformed service before August 1, 1986, becomes entitled to retired pay on or after the effective date of an adjustment in retired pay under subsection (b) but before the effective date of the next increase in the rates of monthly basic pay, the retired pay of the member or former member shall be increased, effective on the date the member becomes entitled to that pay, by the percent (adjusted to the nearest one-tenth of 1 percent) by which—

''(1) the base index, exceeds

''(2) the price index for the calendar quarter immediately before the calendar quarter in which the rates of monthly basic pay on which the retired pay is based became effective.''

1994—Subsec. (b)(2)(B). Pub. L. 103–335, §8114A(b)(1), which directed substituting, in heading, ''through 1996'' for ''through 1998'' and substituting, in cl. (ii), ''and 1996'' for ''through 1998'', ''of 1994 or 1995'' for ''of 1994, 1995, 1996, or 1997'', and ''March'' for ''September'', was repealed by Pub. L. 104–106, §631(c).

Subsec. (f). Pub. L. 103–337 inserted ''based on the grade in which the member is retired'' after ''at an earlier date'' in first sentence and '', except that such computation may not be based on a rate of basic pay for a grade higher than the grade in which the member is retired'' before period at end of second sentence and struck out after second sentence ''However, in the case of a member who, after initially becoming eligible for retired pay, is reduced in grade pursuant to a sentence of a court-martial, such computation may not be based on a grade higher than the grade in which the member is retired.''

1993—Subsec. (b)(2). Pub. L. 103–160, §1182(e)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Except as provided in paragraph (6), the Secretary shall increase the retired pay of each member and former member who first became a member of a uniformed service before August 1, 1986, by the percent (adjusted to the nearest one-tenth of 1 percent) by which—

''(A) the price index for the base quarter of that year, exceeds

''(B) the base index.''

Pub. L. 103–66, §2001(1), substituted ''Except as provided in paragraph (6), the Secretary'' for ''The Secretary''.

Subsec. (b)(6). Pub. L. 103–160, §1182(e)(2), struck out par. (6) which read as follows: ''SPECIAL RULES FOR PARAGRAPH (2) FOR FISCAL YEARS 1994 THROUGH 1998.—

''(A) FISCAL YEAR 1994.—In the case of an increase in the retired pay of a member or former member referred to in paragraph (2) that, pursuant to paragraph (1), becomes effective on December 1, 1993, the initial month for which such increase is payable as part of such retired pay shall (notwithstanding such December 1 effective date) be March 1994.

''(B) FISCAL YEARS 1995 THROUGH 1998.—In the case of an increase in retired pay of a member or former member referred to in paragraph (2) that, pursuant to paragraph (1), becomes effective on December 1 of 1994, 1995, 1996, or 1997, the initial month for which such increase is payable as part of such retired pay shall (notwithstanding such December 1 effective date) be September of the following year.

''(C) INAPPLICABILITY TO DISABILITY RETIREES.—Subparagraphs (A) and (B) do not apply with respect to the retired pay of a member retired under chapter 61 of this title.''

Pub. L. 103–66, §2001(2), added par. (6).

1989—Subsec. (b)(3). Pub. L. 101–189, § 651(b)(1)(A), inserted ''and former member'' after first reference to ''member''.

Subsec. (e). Pub. L. 101–189, § 651(b)(1)(B), inserted ''or former member'' after first and third reference to ''member''.

Subsec. (f). Pub. L. 101–189, § 651(b)(1)(C), inserted ''or former member'' after ''member'' in second sentence.

1988—Subsec. (f). Pub. L. 100–456 inserted after second sentence ''However, in the case of a member who, after initially becoming eligible for retired pay, is reduced in grade pursuant to a sentence of a court-martial, such computation may not be based on a grade higher than the grade in which the member is retired.''

1987—Subsec. (a). Pub. L. 100–180 struck out ''pay'' after ''the retired pay''.

Subsec. (b)(4), (5). Pub. L. 100–224, § 1(a), added par. (4) and redesignated former par. (4) as (5).

Subsec. (e). Pub. L. 100–224, § 1(b), substituted ''by the percent (adjusted to the nearest one-tenth of 1 percent) equal to the difference between—

''(1) the percent by which—

''(A) the price index for the base quarter of that year, exceeds

''(B) the price index for the calendar quarter immediately before the calendar quarter during which the member became entitled to retired pay; and

''(2) one-fourth of 1 percent for each calendar quarter from the quarter described in paragraph (1)(B) to the quarter described in paragraph (1)(A).

If in any case the percent described in paragraph (2) exceeds the percent determined under paragraph (1), such an increase shall not be made.'' for ''only by the percent (adjusted to the nearest one-tenth of 1 percent) by which—

''(1) the price index for the base quarter of that year, exceeds

''(2) the price index for the calendar quarter immediately before the calendar quarter in which the member became entitled to retired pay.''

1986—Subsec. (a). Pub. L. 99–348, § 102(b)(1), (c)(1), inserted heading, struck out ''or retainer'' after ''retired pay'', and struck out sentence defining ''Index'' in this section as meaning the Consumer Price Index (all items, United States city average) published by the Bureau of Labor Statistics.

Subsecs. (b) to (d). Pub. L. 99–348, § 102(a), added subsecs. (b) to (d) and struck out former subsecs. (b) to (d) which read as follows:

''(b) Each time that an increase is made under section 8340(b) of title 5 in annuities paid under subchapter III of chapter 83 of such title, the Secretary of Defense shall at the same time increase the retired and retainer pay of members and former members of the armed forces by the same percent as the percentage by which annuities are increased under such section.

''(c) Notwithstanding subsection (b), if a member or former member of an armed force becomes entitled to retired pay or retainer pay based on rates of monthly basic pay prescribed by section 203 of title 37 that became effective after the last day of the month of the base index, his retired pay or retainer pay shall be increased on the effective date of the next adjustment of retired pay and retainer pay under subsection (b) only by the percent (adjusted to the nearest one-tenth of 1 percent) that the new base index exceeds the index for the calendar month immediately before that in which the rates of monthly basic pay on which his retired pay or retainer pay is based became effective.

''(d) If a member or former member of an armed force becomes entitled to retired pay or retainer pay on or after the effective date of an adjustment of retired pay and retainer pay under subsection (b) but before the effective date of the next increase in the rates of monthly basic pay prescribed by section 203 of title 37, his retired pay or retainer pay shall be increased, effective on the date he becomes entitled to that pay, by the percent (adjusted to the nearest one-tenth of 1 percent) that the base index exceeds the index for the calendar month immediately before that in which the rates of monthly basic pay on which his retired pay or retainer pay is based became effective.''

Subsec. (e). Pub. L. 99–348, § 102(a), added subsec. (e).

Subsec. (f). Pub. L. 99–348, § 102(c)(2), inserted heading and struck out ''or retainer'' after ''retired'' wherever appearing.

Subsecs. (g), (h). Pub. L. 99–348, § 102(b)(2), added subsecs. (g) and (h) and struck out former subsec. (g) which provided that the retired or retainer pay of a member or former member of an armed force as adjusted under this section, if not a multiple of $1, would be rounded to the next lower multiple of $1.

1984—Subsec. (f). Pub. L. 98–525 substituted ''before October 7, 1975'' for ''prior to the effective date of this subsection''.

1983—Subsec. (e). Pub. L. 98–94, § 921(a)(1), struck out subsec. (e) which provided that: ''Notwithstanding subsections (c) and (d), the adjusted retired pay or retainer pay of a member or former member of an armed force retired on or after October 1, 1967, may not be less than it would have been had he become entitled to retired pay or retainer pay based on the same pay grade, years of service for pay, years of service for retired or retainer pay purposes, and percent of disability, if any, on the day before the effective date of the rates of monthly basic pay on which his retired pay or retainer pay is based.''

Subsec. (f). Pub. L. 98–94, § 921(b), struck out '', subject to subsection (e) of this section,'' after ''the computation shall''.

Subsec. (g). Pub. L. 98–94, § 922(a)(2), added subsec. (g).

1980—Subsec. (b). Pub. L. 96–342 substituted provisions directing the Secretary of Defense to increase the retired and retainer pay of members and former members of the armed forces each time that an increase is made under section 8340(b) of title 5 in annuities paid under subchapter III of chapter 83 of title 5, with such increase to be by the same percent as the percentage by which the annuities are increased for provisions under which the Secretary of Defense had been authorized and directed to increase the retired pay and retainer pay of members and former members of the armed forces on March 1 and September 1 depending upon determinations which the Secretary was directed to make on January 1 and July 1 of each year with regards to the percentage change in the index published for June or December of the previous year.

1976—Subsec. (b). Pub. L. 94–440 substituted provisions that Secretary of Defense shall determine the percent change in the index on Jan. 1 and July 1 of each year and effective Mar. 1 and Sept. 1, retired and retainer pay shall be increased by the computed percent change adjusted to the nearest 1/10 of 1 percent, for provisions that the Secretary of Defense shall determine on a monthly basis the percent by which the index has increased over that used as a basis for the most recent adjustment of retired and retainer pay and if Secretary determines for 3 consecutive months that the amount of increase is at least 3 percent over the base index, retired and retainer pay shall be increased by adding 1 percent and the highest percent increase in the index during those months adjusted to the nearest 1/10 of 1 percent.

Pub. L. 94–361 struck out ''the per centum obtained by adding 1 per centum and'' before ''the highest per centum of increase in the index''.

1975—Subsec. (f). Pub. L. 94–106 added subsec. (f).

1969—Subsec. (b). Pub. L. 91–179 provided for a 1 percent addition in computing increases in retired and retainer pay of present and former members of the armed forces, whenever the Secretary made such adjustments to effect increases in the consumer index over the base index.

1967—Subsec. (a). Pub. L. 90–207 substituted ''may not be recomputed'' for ''shall not be recomputed'', struck out ''if that increase becomes effective after the effective date of this section'' after ''armed forces'' and inserted sentence defining ''Index''.

Subsec. (b). Pub. L. 90–207 revised subsec. (b) generally and, among other changes, substituted provisions

requiring the Secretary of Defense to determine monthly the percent by which the index has increased over that used as the basis for the most recent adjustment of retired and retainer pay under this subsection for provisions which required the Secretary of Defense to determine the per centum that the index for each calendar month after the calendar month immediately preceding the effective date of Pub. L. 89–132 has increased over the base index (that for the calendar month immediately preceding the effective date of Pub. L. 89–132 or, if later, that used as the basis for the most recent adjustment of retired and retainer pay under this subsection).

Subsecs. (c) to (e). Pub. L. 90–207 added subsecs. (c) to (e).

1965—Subsec. (b). Pub. L. 89–132 substituted provisions requiring the Secretary of Defense to determine the per centum for each calendar month that the Consumer Price Index has increased over the base Consumer Price Index, and if the index has shown an increase of at least 3 per centum over the base index for three consecutive calendar months to increase the retired or retainer pay by the highest per centum of increase in the index, for provisions which required a determination of the increase over the preceding calendar year and permitted an increase in the retired or retainer pay if the index advanced 3 per centum or more for a full calendar year.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–65, div. A, title VI, §644, Oct. 5, 1999, 113 Stat. 664, provided that: ''The amendments made by sections 641, 642, and 643 [enacting section 322 of Title 37, Pay and Allowances of the Uniformed Services, and amending this section and sections 1409, 1410, 1451, and 1452 of this title] shall take effect on October 1, 1999.''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 632(b) of Pub. L. 104–201 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only to adjustments of retired and retainer pay effective after the date of the enactment of this Act [Sept. 23, 1996].''

EFFECTIVE DATE OF 1994 AMENDMENT

Section 633(b) of Pub. L. 103–337 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to the computation of the retired pay of a member of the Armed Forces who retires on or after the date of the enactment of this Act [Oct. 5, 1994].''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 622(b) of Pub. L. 100–456 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the first day of the first month that begins after the date of the enactment of this Act [Sept. 29, 1988] and shall apply to the computation of the retired or retainer pay of members who initially become entitled to such pay on or after such effective date.''

EFFECTIVE DATE OF 1983 AMENDMENT

Section 921(a)(2) of Pub. L. 98–94 provided that:

''(A) Notwithstanding the repeal of such subsection [subsec. (e) of this section], the provisions of such subsection shall apply in the case of any member or former member of the Armed Forces eligible to retire on the date of the enactment of this Act [Sept. 24, 1983] for a period of three years after such date in the same manner such provisions would have applied had they not been repealed.

''(B) The amount of retired or retainer pay of any member or former member of the Armed Forces who was eligible to retire on the date of the enactment of this Act [Sept. 24, 1983] and who becomes entitled to such pay at any time after the end of the three-year period beginning on the date of the enactment of this Act may not be less than it would have been had he become entitled to retired or retainer pay on the day before the end of such three-year period.''

Amendment by section 922 of Pub. L. 98–94 effective Oct. 1, 1983, see section 922(e) of Pub. L. 98–94, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 812(b)(1) of Pub. L. 96–342, set out below, provided that the amendment made by that section is effective Aug. 31, 1981, but subject to certain conditions.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1306(d)(2) of Pub. L. 94–440 provided that: ''The amendment made by subsection (1) [amending this section] shall apply to any increase in retired pay or retainer pay after the date of enactment of this Act [Oct. 1, 1976], except that with respect to the first date after the date of enactment of this Act on which the Secretary of Defense is to determine a percent change, such percent change shall be determined by computing the change in the index published for the month immediately preceding such first date over the index for the last month preceding the date of enactment of this Act used as the basis for the most recent adjustment of retired pay and retainer pay under section 1401a(b) of title 10, United States Code [subsec. (b) of this section], as in effect immediately prior to the date of enactment of this Act [Oct. 1, 1976].''

EFFECTIVE DATE OF 1969 AMENDMENT

Section 2 of Pub. L. 91–179 provided that: ''The provisions of this Act [amending this section] become effective on October 31, 1969.''

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–207 effective Oct. 1, 1967, see section 7 of Pub. L. 90–207, set out as a note under section 203 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–132 effective Sept. 1, 1965, see section 10 of Pub. L. 89–132, set out as a note under section 203 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE

Section effective Oct. 1, 1963, see section 14 of Pub. L. 88–132, set out as an Effective Date of 1963 Amendment note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

CONTINGENT ALTERNATIVE DATE FOR FISCAL YEAR 1998

Section 631(b) of Pub. L. 104–106 provided that if a civil service retiree COLA that becomes effective during fiscal year 1998 becomes effective on a date other than the date on which a military retiree COLA during that fiscal year is specified to become effective under subsec. (b)(2)(B) of this section, then the increase in military retired and retainer pay would become payable as part of such retired and retainer pay effective on the same date on which such civil service retiree COLA was to become effective, prior to repeal by Pub. L. 104–201, div. A, title VI, §631(b), Sept. 23, 1996, 110 Stat. 2549.

ELIMINATION OF DISPARITY BETWEEN EFFECTIVE DATES FOR MILITARY AND CIVILIAN RETIREE COST-OF-LIVING ADJUSTMENTS FOR FISCAL YEAR 1995

Section 631 of Pub. L. 103–337 provided that:

''(a) IN GENERAL.—The fiscal year 1995 increase in military retired pay shall (notwithstanding subparagraph (B) of section 1401a(b)(2) of title 10, United States Code) first be payable as part of such retired pay for the month of March 1995.

''(b) DEFINITIONS.—For the purposes of subsection (a):

''(1) The term 'fiscal year 1995 increase in military retired pay' means the increase in retired pay that,

pursuant to paragraph (1) of section 1401a(b) of title 10, United States Code, becomes effective on December 1, 1994.

''(2) The term 'retired pay' includes retainer pay.

''(c) LIMITATION.—Subsection (a) shall be effective only if there is appropriated to the Department of Defense Military Retirement Fund (in an Act making appropriations for the Department of Defense for fiscal year 1995 that is enacted before March 1, 1995) such amount as is necessary to offset increased outlays to be made from that fund during fiscal year 1995 by reason of the provisions of subsection (a).

''(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for fiscal year 1995 to the Department of Defense Military Retirement Fund the sum of $376,000,000 to offset increased outlays to be made from that fund during fiscal year 1995 by reason of the provisions of subsection (a).''

SENSE OF CONGRESS ON EQUAL TREATMENT OF EFFECTIVE DATES FOR FUTURE COST-OF-LIVING ADJUSTMENTS FOR MILITARY AND CIVILIAN RETIREES

Section 632 of Pub. L. 103–337 provided that:

''(a) FINDINGS.—Congress makes the following findings:

''(1) Congress, in the Omnibus Budget Reconciliation Act of 1993 [Pub. L. 103–66, see Tables for classification], changed the effective dates for future cost-of-living adjustments for military retired pay and for Federal civilian retirement annuities, which (before that Act) were provided by law to be made effective on December 1 each year.

''(2) The timing, and the percentage of increase, of military and Federal civilian retirees' cost-of-living adjustments have been linked for decades.

''(3) The effect of the enactment of the Omnibus Budget Reconciliation Act of 1993 was to abandon the longstanding congressional practice of treating military and Federal civilian retirees identically in matters related to cost-of-living adjustments.

''(b) SENSE OF CONGRESS.—In light of the findings in subsection (a), it is the sense of Congress that—

''(1) as a matter of simple equity and fairness, it is imperative that cost-of-living adjustments in retirement benefits for military and Federal civilian retirees be returned to an identical schedule as soon as possible, but not later than January 1, 1999;

''(2) if after October 1, 1998, there is, by law, a difference between the date on which a cost-of-living adjustment for Federal civilian retirees takes effect and the date on which a cost-of-living adjustment for military retirees takes effect, then the difference in those effective dates should be eliminated by requiring that cost-of-living adjustments for both classes of retirees become effective on the earlier of the two dates; and

''(3) if after October 1, 1998, there is, by law, a difference between the first month for which a cost-of-living adjustment for civilian retirees is payable and the first month for which a cost-of-living adjustment for military retirees is payable, then the difference in the months for which those adjustments are first payable should be eliminated by requiring that the cost-of-living adjustments for both classes of retirees first become payable for the earlier of the two months.''

WAIVER OF ADMINISTRATIVE TIME-IN-GRADE REQUIREMENTS TO PREVENT PAY INVERSIONS IN RETIRED PAY OF CERTAIN MILITARY RETIREES

Section 634 of Pub. L. 103–337 provided that:

''(a) AUTHORITY.—The Secretary concerned may, for purposes of the computation under section 1401a(f) of title 10, United States Code, of the retired pay of military retirees described in subsection (b), waive any administrative time-in-grade regulation (as described in subsection (d)) that would otherwise apply to such computation. Any such waiver may be made retroactive, in the case of any such retiree, to the date on which that retiree initially became entitled to retired pay.

''(b) COVERED RETIREES.—This section applies to any military retiree—

''(1) who initially became entitled to retired pay on or after January 1, 1971, and before the date of the enactment of this Act [Oct. 5, 1994];

''(2) whose retired pay, by reason of the provisions of section 1401a(f) of title 10, United States Code (the so-called 'Tower amendment'), was initially computed as an amount greater than would have been the case but for that section; and

''(3) who, as of the earlier computation date applicable to that retiree—

''(A) in the case of an individual retired in an enlisted grade, had served in the grade in which the retiree retired for a period that was less than the period prescribed by the applicable administrative time-in-grade requirement described in subsection (d); and

''(B) in the case of an individual retired in an officer grade—

''(i) was subject to an administrative time-in-grade requirement described in subsection (d) that established a time-in-grade requirement that was longer than the statutory time-in-grade requirement applicable to that member; and

''(ii) had served in the grade in which the retiree retired for a period that was less than the period prescribed by such administrative time-in-grade requirement but not less than the statutory time-in-grade requirement applicable to that member.

''(c) EARLIER COMPUTATION DATE.—For purposes of subsection (b)(3), the earlier computation date applicable to a military retiree is the date that (under such section 1401a(f) as in effect on the date of the member's retirement) was the 'earlier date' that was used as the basis for the computation of the retiree's retired pay.

''(d) REGULATIONS SUBJECT TO WAIVER.—A regulation that may be waived under subsection (a) is any regulation (not required by law) that establishes a minimum period of time that a member of the Armed Forces must have served in a grade on active duty in order to be eligible to retire in that grade.

''(e) SCOPE OF WAIVER AUTHORITY.—The Secretary concerned may exercise the authority provided in subsection (a) in the case of an individual military retiree or for any group of military retirees.

''(f) MILITARY RETIREE DEFINED.—For purposes of this section, the term 'military retiree' means a member or former member of the Armed Forces who is entitled to retired pay.

''(g) SECRETARY CONCERNED.—For purposes of this section, the term 'Secretary concerned' has the meaning given such term in section 101 of title 10, United States Code.''

FISCAL YEAR 1995 COST-OF-LIVING ADJUSTMENTS FOR MILITARY RETIREES

Pub. L. 103–335, title VIII, § 8114A, Sept. 30, 1994, 108 Stat. 2648, as amended by Pub. L. 104–106, div. A, title VI, § 631(c), Feb. 10, 1996, 110 Stat. 365, provided that:

''(a) FISCAL YEAR 1995 COST-OF-LIVING ADJUSTMENT FOR MILITARY RETIREES.—(1) The fiscal year 1995 increase in military retired pay shall (notwithstanding subparagraph (B) of section 1401a(b)(2) of title 10, United States Code) first be payable as part of such retired pay for the month of March 1995.

''(2) For the purposes of subsection (a):

''(A) The term 'fiscal year 1995 increase in military retired pay' means the increase in retired pay that, pursuant to paragraph (1) of section 1401a(b) of title 10, United States Code, becomes effective on December 1, 1994.

''(B) The term 'retired pay' includes retainer pay.

''(b) [Repealed. Pub. L. 104–106, div. A, title VI, § 631(c), Feb. 10, 1996, 110 Stat. 365.]''

CONTINGENT ONCE-A-YEAR ADJUSTMENT OF RETIRED AND RETAINER PAY

Pub. L. 96–342, title VIII, § 812, Sept. 8, 1980, 94 Stat. 1098, as amended by Pub. L. 97–35, title II, § 211(b), Aug. 13, 1981, 95 Stat. 383, provided that:

''(a)(1) The increase in the retired and retainer pay of members and former members of the uniformed services which but for this section would be made effective September 1, 1980, under the provisions of paragraph (2)(B) of section 1401a(b) of title 10, United States Code, shall not be made.

''(2)(A) In making the determination required by the provisions of paragraph (1)(A) of section 1401a(b) of title 10, United States Code, to be made on January 1, 1981, or within a reasonable time thereafter, the Secretary of Defense shall determine the percent change in the index (as such term is defined in section 1401a(a) of title 10, United States Code) published for December 1980 over the index published for December 1979 (rather than over the index published for June 1980).

''(B) The increase in the retired and retainer pay of members and former members of the uniformed services to be made effective March 1, 1981, under the provisions of paragraph (2)(A) of such section shall, in lieu of the increase prescribed by such paragraph, be the percent change computed under subparagraph (A), adjusted to the nearest 1/10 of one percent.

''(3) The President shall by Executive order provide for only one cost-of-living adjustment in the annuities paid under the Central Intelligence Agency [Retirement] Act of 1964 for Certain Employees (50 U.S.C. 403 note) during the period beginning on September 1, 1980, and ending on August 31, 1981. Such adjustment shall be effective March 1, 1981, and shall be made in the same manner and percentage as the adjustment provided for in paragraphs (1) and (2) for the retired and retainer pay of members and former members of the uniformed services.

''(4) Paragraphs (1), (2), and (3) shall not take effect unless similar legislation is enacted which provides for only one cost-of-living increase in annuities paid under subchapter III of chapter 83 of title 5, United States Code, during the period beginning on September 1, 1980, and ending on August 31, 1981.

''(b)(1) Effective August 31, 1981, but subject to paragraph (2), section 1401a(b), of title 10, United States Code, relating to adjustment of retired pay and retainer pay to reflect changes in the Consumer Price Index, is amended to read as follows:

'' '(b) Each time that an increase is made under section 8340(b) of title 5 in annuities paid under subchapter III of chapter 83 of such title, the Secretary of Defense shall at the same time increase the retired and retainer pay of members and former members of the armed forces by the same percent as the percentage by which annuities are increased under such section.'.

''(2) The amendment made by paragraph (1) shall not take effect unless legislation is enacted which provides for the adjustment of annuities paid under subchapter III of chapter 83 of title 5, United States Code, on a once-a-year basis. In the event such legislation is enacted, such amendment shall become effective with respect to adjustments in the retired pay and retainer pay of members and former members of the uniformed services at the same time that the legislation providing for such a once-a-year adjustment of annuities paid under subchapter III of chapter 83 of title 5, United States Code, becomes effective.

''(3) If legislation described in paragraph (2) is enacted to provide for the adjustment of annuities paid under subchapter III of chapter 83 of title 5, United States Code, on a once-a-year basis, the President shall exercise the authority vested in him under section 292 of the Central Intelligence Agency [Retirement] Act of 1964 for Certain Employees (50 U.S.C. 403 note) to provide for cost-of-living adjustments in the annuities paid under such Act on an identical basis.

''(4) If at the time the first adjustment in retired and retainer pay is made under section 1401a(b) of title 10, United States Code, as amended by paragraph (1) of this subsection, the period upon which the most recent adjustment in such retired and retainer pay was computed is not identical to the period upon which the most recent adjustment in annuities under subchapter III of chapter 83 of title 5, United States Code, was computed, then the percentage increase to be made under such section 1401a(b) at the time of the first such adjustment shall be computed in the same manner as the percentage increase made at the same time in annuities under subchapter III of chapter 83 of title 5, United States Code, is computed, but shall be based on the period beginning on the last day of the period upon which the most recent adjustment in such retired and retainer pay was computed and ending on the last day of the period upon which the adjustment being made at the same time in annuities under such subchapter III is computed. The President shall by Executive order provide for a similar computation of the adjustment in annuities paid under the Central Intelligence Agency [Retirement] Act of 1964 for Certain Employees (50 U.S.C. 403 note) which is made at the same time as the increase in retired and retainer pay to which the preceeding [preceding] sentence is applicable.

''(c) For the purposes of this section, the term 'uniformed services' means—

''(1) the Armed Forces; and

''(2) the commissioned corps of the National Oceanic and Atmospheric Administration and of the Public Health Service.''

COMPUTATION OF RETIRED PAY OF SERGEANT MAJORS OF MARINE CORPS WHO COMPLETED SERVICE PRIOR TO DECEMBER 16, 1967

Pub. L. 95–581, Nov. 2, 1978, 92 Stat. 2478, provided: ''That (a) the retired pay of any individual who served as sergeant major of the Marine Corps and who completed such service before December 16, 1967, shall be computed based upon a rate of basic pay of the sum of (1) the highest rate of basic pay to which such individual was entitled while so serving, and (2) $150.

''(b) For the purpose of computing any adjustment under section 1401a of title 10, United States Code, in the retired pay of any individual whose retired pay is affected by subsection (a), the rate of basic pay provided under such subsection for the purpose of computing the retired pay of such individual shall be considered to have been the rate of basic pay applicable to such individual at the time of his retirement, and any adjustment under such section 1401a in the retired pay of such individual before September 30, 1978, shall be readjusted to reflect such rate of basic pay.

''SEC. 2. (a) Any change in the retired pay of any individual by reason of the enactment of this Act shall be effective for months beginning after September 30, 1978.

''(b) The enactment of this Act shall not reduce the retired pay of any individual.''

[The Central Intelligence Agency Retirement Act of 1964 for Certain Employees, referred to in Pub. L. 96–342, set out above, is Pub. L. 88–643, Oct. 13, 1964, 78 Stat. 1043, which was revised generally by Pub. L. 102–496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3196, is known as the Central Intelligence Agency Retirement Act and is classified generally to chapter 38 (§2001 et seq.) of Title 50, War and National Defense.]

COST-OF-LIVING ADJUSTMENT OF RETIRED PAY OR RETAINER PAY OF MEMBERS AND FORMER MEMBERS OF ARMED FORCES AND COMMISSIONED OFFICERS OF NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION AND PUBLIC HEALTH SERVICE; EFFECTIVE DATE OF 1976 AMENDMENT

Section 801(c) of Pub. L. 94–361 provided that:

''(1) The amendments made by subsections (a) [to subsec. (b) of this section] and (b) [to provisions formerly set out as a note under section 403 of title 50] shall not become effective unless legislation is enacted repealing the so-called 1 per centum add-on provision applicable to the cost-of-living adjustment of annuities paid under chapter 83 of title 5, United States Code. In the event such legislation is enacted, such amendments shall become effective with respect to the cost-of-living adjustment of the retired pay and retainer pay of members and former members of the Armed Forces and the cost-

of-living adjustment of annuities paid under the Central Intelligence Agency [Retirement] Act of 1964 for Certain Employees at the same time the repeal of such 1 per centum add-on provision becomes effective with respect to such cost-of-living adjustment of annuities paid under such chapter 83.

''(2) If any change other than the repeal of the so-called 1 per centum add-on provision referred to in paragraph (1) is made in the method of computing the cost-of-living adjustment of annuities paid under chapter 83 of title 5, United States Code, the President shall make the same change in the cost-of-living adjustment of retired pay and retainer pay of members and former members of the Armed Forces and the cost-of-living adjustment of annuities paid under the Central Intelligence Agency [Retirement] Act of 1964 for Certain Employees. Any change made under this paragraph shall have the same effective date as the effective date applicable to such change made in annuities under chapter 83 of title 5, United States Code.

''(3) The provisions of paragraphs (1) and (2) relating to any change in the method of computing the cost-of-living adjustment of the retired pay or retainer pay of members and former members of the Armed Forces shall be applicable to the computation of cost-of-living adjustments of the retired pay of commissioned officers of the National Oceanic and Atmospheric Administration and the retired pay of commissioned officers of the Public Health Service.''

[The Central Intelligence Agency Retirement Act of 1964 for Certain Employees, referred to in Pub. L. 94–361, set out above, is Pub. L. 88–643, Oct. 13, 1964, 78 Stat. 1043, which was revised generally by Pub. L. 102–496, title VIII, § 802, Oct. 24, 1992, 106 Stat. 3196, is known as the Central Intelligence Agency Retirement Act and is classified generally to chapter 38 (§ 2001 et seq.) of Title 50, War and National Defense.]

INCREASE IN CERTAIN ARMED FORCE MEMBERS' PAY AND ALLOWANCES NOT OTHERWISE TIED TO CONSUMER PRICE INDEX

Pub. L. 93–210, § 2, Dec. 28, 1973, 87 Stat. 908, provided that:

''(a) Notwithstanding any other provision of law, effective on the date of enactment of this Act [Dec. 28, 1973], the pay and allowances of members of the Armed Forces to whom this Act applies shall be increased to amounts equal to the amounts such pay and allowances would have been increased if the pay and allowances of such members had been increased, under section 1401a(b) of title 10, United States Code, by the same percentage rates, consecutively compounded, that the retired pay or retainer pay of members and former members of the Armed Forces entitled to retired pay or retainer pay since October 1, 1967, has been increased, and such member shall, on and after the date of enactment of this Act [Dec. 28, 1973], have his pay and allowances increased effective the same day and by the same percentage rate that the retired pay or retainer pay of members and former members of the Armed Forces is increased under such section 1401a(b).

''(b) This section applies to members of the Armed Forces entitled to pay and allowances under either of the following provisions of law:

''(1) The Act of June 26, 1948, chapter 677 (62 Stat. 1052) [which authorized the appointment of one officer in the Regular Army in the permanent grade of general, one officer in the Regular Air Force in the permanent grade of general, and one officer in the Regular Navy in the permanent grade of admiral].

''(2) The Act of September 18, 1950, chapter 952 (64 Stat. A224) [which authorized the appointment of Omar N. Bradley to the permanent grade of General of the Army].

''(c) No amounts shall be paid, as the result of the enactment of this section, for any period prior to the date of enactment of this section [Dec. 28, 1973].''

RETROACTIVE ADJUSTMENT OF RETIRED OR RETAINER PAY OF PERSONS ENTITLED THERETO AFTER NOVEMBER 30, 1966, BUT PRIOR TO EFFECTIVE DATE OF NEXT INCREASE AFTER JULY 1, 1966

Section 2(b) of Pub. L. 90–207 provided that: ''Notwithstanding section 1401a(d) of title 10, United States Code, a person who is a member or former member of an armed force on the date of enactment of this Act [Dec. 16, 1967] and who initially became, or hereafter initially becomes, entitled to retired pay or retainer pay after November 30, 1966, but before the effective date of the next increase after July 1, 1966, in the rates of monthly basic pay prescribed by section 203 of title 37, United States Code, is entitled to have his retired pay or retainer pay increased by 3.7 percent, effective as of the date of his entitlement to that pay.''

§ 1402. Recomputation of retired or retainer pay to reflect later active duty of members who first became members before September 8, 1980

(a) A member of an armed force who first became a member of a uniformed service before September 8, 1980, and who has become entitled to retired pay or retainer pay, and who thereafter serves on active duty (other than for training), is entitled to recompute his retired pay or retainer pay upon his release from that duty according to the following table.

Column 1 Take	Column 2 Multiply by
Monthly basic pay[1] of the grade in which he would be eligible— (1) to retire if he were retiring upon that release from active duty; or (2) to transfer to the Fleet Reserve or Fleet Marine Corps Reserve if he were transferring to either upon that release from active duty.	2½ percent of the sum of— (1) the years of service that may be credited to him in computing retired pay or retainer pay; and (2) his years of active service after becoming entitled to retired pay or retainer pay.[2]

[1] For a member who has been entitled, for continuous period of at least two years, to basic pay under the rates of basic pay in effect upon that release from active duty, compute under those rates. For a member who has been entitled to basic pay for a continuous period of at least two years upon that release from active duty, but who is not covered by the preceding sentence, compute under the rates of basic pay replaced by those in effect upon that release from active duty. For any other member, compute under the rates of basic pay under which the member's retired pay or retainer pay was computed when he entered on that active duty.

[2] Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month.

However, an officer who was ordered to active duty (other than for training) in the grade that he holds on the retired list under former section 6150 of this title, or under any other law that authorized advancement on the retired list based upon a special commendation for the performance of duty in actual combat, may have his retired pay recomputed under this subsection on the basis of the rate of basic pay applicable to that grade upon his release from that active duty only if he has been entitled, for a continuous period of at least three years, to basic pay at that rate. If, upon his release from that active duty, he has been entitled to the basic pay of that grade for a continuous period of at least three years, but he does not qualify under the preceding sentence, he may have his retired pay

recomputed under this subsection on the basis of the rate of basic pay prescribed for that grade by the rates of basic pay replaced by those in effect upon his release from that duty.

(b) A member of an armed force who first became a member of a uniformed service before September 8, 1980, and who has been retired other than for physical disability, and who while on active duty incurs a physical disability of at least 30 percent for which he would otherwise be eligible for retired pay under chapter 61 of this title, is entitled, upon his release from active duty, to retired pay under subsection (d).

(c) A member of an armed force who first became a member of a uniformed service before September 8, 1980, and who—

(1) was retired for physical disability under section 1201 or 1204 of this title or any other law or whose name is on the temporary disability retired list;

(2) incurs, while on active duty after retirement or after his name was placed on that list, a physical disability that is in addition to or that aggravates the physical disability for which he was retired or for which his name was placed on the temporary disability retired list; and

(3) is qualified under section 1201, 1202, 1204, or 1205 of this title;

is entitled, upon his release from active duty, to retired pay under subsection (d).

(d) A member of an armed force covered by subsection (b) or (c) may elect to receive either (1) the retired pay to which he became entitled when he retired, increased by any applicable adjustments in that pay under section 1401a of this title after he initially became entitled to that pay, or (2) retired pay computed according to the following table.

Column 1 Take	Column 2 Multiply by	Column 3 Add
Highest monthly basic pay that member received while on active duty after retirement or after date when his name was placed on temporary disability retired list, as the case may be.	As member elects— (1) 2½% of years of service credited under section 1208 of this title;[1] or (2) the highest percentage of disability, not to exceed 75%, attained while on active duty after retirement or after the date when his name was placed on temporary disability retired list, as the case may be.[1]	Add amount necessary to increase product of columns 1 and 2 to 50% of pay upon which computation is based, if member is on temporary disability retired list.

[1] Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month.

If, while on active duty after retirement or after his name was placed on the temporary disability retired list, a member covered by this subsection was promoted to a higher grade in which he served satisfactorily, as determined by the Secretary concerned, he is entitled to retired pay based on the monthly basic pay to which he would be entitled if he were on active duty in that higher grade.

(e) Notwithstanding subsection (a), a member covered by that subsection may elect, upon his release from active duty, to have his retired pay or retainer pay—

(1) computed according to the formula set forth in subsection (a) but using the rate of basic pay under which his retired pay or retainer pay was computed when he entered on active duty; and

(2) increased by any applicable adjustments in that pay under section 1401a of this title after he initially became entitled to that pay.

(f)(1) In the case of a member who is entitled to recompute retired pay under this section upon release from active duty served after retiring under section 3914 or 8914 of this title, the member's retired pay as recomputed under another provision of this section shall be increased by 10 percent of the amount so recomputed if the member has been credited by the Secretary concerned with extraordinary heroism in the line of duty during any period of active duty service in the armed forces.

(2) The amount of the retired pay as recomputed under another provision of this section and as increased under paragraph (1) may not exceed the amount equal to 75 percent of the monthly rate of basic pay upon which the recomputation of such retired pay is based.

(3) The determination of the Secretary concerned as to extraordinary heroism is conclusive for all purposes.

(Aug. 10, 1956, ch. 1041, 70A Stat. 107; Pub. L. 86–559, § 1(5), June 30, 1960, 74 Stat. 265; Pub. L. 88–132, § 5(*l*)(1), Oct. 2, 1963, 77 Stat. 214; Pub. L. 90–207, § 2(a)(2), Dec. 16, 1967, 81 Stat. 653; Pub. L. 96–342, title VIII, § 813(b)(2), Sept. 8, 1980, 94 Stat. 1102; Pub. L. 96–513, title V, § 511(50), Dec. 12, 1980, 94 Stat. 2924; Pub. L. 98–94, title IX, §§ 922(a)(3), (4), 923(a)(1), (2)(B), (C), Sept. 24, 1983, 97 Stat. 641, 642; Pub. L. 99–348, title II, § 201(b)(3), title III, § 304(a)(3), (b)(3), July 1, 1986, 100 Stat. 694, 703; Pub. L. 102–484, div. A, title VI, § 642(a), Oct. 23, 1992, 106 Stat. 2424; Pub. L. 110–181, div. A, title VI, § 646(b), Jan. 28, 2008, 122 Stat. 160; Pub. L. 111–383, div. A, title VI, § 631(b), Jan. 7, 2011, 124 Stat. 4239.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1402(a)	37:316.	Oct. 12, 1949, ch. 681, §§ 402(d) (last proviso, less applicability to retired grade), 516, 63 Stat. 819, 832.
1402(b), (c).	37:272(d) (1st 128 words of last proviso, less applicability to retired grade).	
1402(d)	37:272(d) (last proviso, less 1st 128 words, and less applicability to retired grade).	

In subsection (a), columns 1 and 2 of the table are based on 37:316 (1st proviso). Column 4 is based on 37:316 (last proviso). Footnote 1 is based on 37:316 (2d proviso). 37:316 (3d proviso) is omitted as operationally obsolete.

In subsections (a) and (d), the words ''and disregard a part of a year that is less than six months'' are added to footnote 1 to conform to footnote 3 of section 1401 of this title.

In subsection (b), the words ''for which he would otherwise be eligible for retired pay under chapter 61 of

this title'' are substituted for the words ''in accordance with the standard schedule of rating disabilities in current use by the Veterans' Administration'' and ''if qualified''.

In subsection (c), the requirement that the physical disability incurred be 30 percent or more is omitted as surplusage, since it is also required that the member be qualified for physical disability retirement under section 1201 or 1204 of this title.

In subsection (d), the rules stated in 37:316 (2d and last provisos) are repeated in column 4 of the table and the footnote to the table, since they apply to all cases of increased pay for active duty performed after retirement.

CODIFICATION

Another section 304(b)(3) of Pub. L. 99–348 amended the table of sections at the beginning of chapter 571 of this title.

AMENDMENTS

2011—Subsec. (d). Pub. L. 111–383, in column 2 of table, inserted '', not to exceed 75%,'' after ''percentage of disability'' and struck out column 4 of table which related to subtraction of excess over 75 percent of pay upon which computation is based.

2008—Subsec. (a). Pub. L. 110–181 struck out column 3 of the table, which related to subtraction of excess over 75 percent of pay upon which computation is based.

1992—Subsec. (f). Pub. L. 102–484 added subsec. (f).

1986—Pub. L. 99–348, § 304(b)(3), inserted ''of members who first became members before September 8, 1980'' in section catchline.

Subsec. (a). Pub. L. 99–348, §§ 201(b)(3), 304(a)(3), struck out ''(as defined in section 1407(a)(2) of this title)'' after ''uniformed service'' and struck out provision that if the amount recomputed is not a multiple of $1, it be rounded to the next lower multiple of $1. See section 1412 of this title.

Subsecs. (b), (c). Pub. L. 99–348, § 304(a)(3), struck out ''(as defined in section 1407(a)(2) of this title)'' after ''uniformed service''.

Subsec. (d). Pub. L. 99–348, § 201(b)(3), struck out provision that if the amount recomputed is not a multiple of $1, it be rounded to the next lower multiple of $1. See section 1412 of this title.

1983—Subsec. (a). Pub. L. 98–94, § 922(a)(3), substituted ''according to the following table. The amount recomputed, if not a multiple of $1, shall be rounded to the next lower multiple of $1.'' for ''as follows:''.

Pub. L. 98–94, § 923(a)(1), (2)(B), in footnote 2 of table, substituted ''Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month'' for ''Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months''.

Subsec. (d). Pub. L. 98–94, § 922(a)(4), substituted ''according to the following table. The amount computed, if not a multiple of $1, shall be rounded to the next lower multiple of $1.'' for ''as follows:''.

Pub. L. 98–94, § 923(a)(1), (2)(C), in footnote 1 of table, substituted ''Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month'' for ''Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months''.

1980—Subsecs. (a) to (c). Pub. L. 96–513 substituted ''a uniformed service (as defined in section 1407(a)(2) of this title) before September 8, 1980'' for ''the armed forces before the date of the enactment of the Department of Defense Appropriation Act, 1981'' wherever appearing.

Pub. L. 96–342 inserted ''who first became a member of the armed forces before the date of the enactment of the Department of Defense Authorization Act, 1981, and'' after ''of an armed force'' wherever appearing.

1967—Subsec. (d). Pub. L. 90–207, § 2(a)(2)(A), inserted ''increased by any applicable adjustments in that pay under section 1401a of this title after he initially became entitled to that pay'' after ''retired,''.

Subsec. (e). Pub. L. 90–207, § 2(a)(2)(B), added subsec. (e).

1963—Subsec. (a). Pub. L. 88–132 substituted in introductory clause ''who has become entitled to retired pay or retainer pay'' for ''who has been retired or has become entitled to retainer pay'' and ''to recompute his retired pay or retainer pay upon his release from that duty'' for '', upon release from that duty, to recompute his retired or retainer pay'' and inserted in such clause ''(other than for training)'' after ''active duty''; substituted in column 1 of table ''Monthly basic pay'' for ''Monthly basic pay or base and longevity pay, as the case may be,'', designated existing provisions as (1) and added (2); substituted in (1) of column 2 of the table ''retired pay or retainer pay'' for ''retired or retainer pay'' and in (2) of such column 2 ''after becoming entitled to retired pay or retainer pay'' for ''after retirement or becoming entitled to retainer pay'', struck out column 3 relating to addition and redesignated column 4 as 3; added footnote 1 to the table and redesignated former footnote 1 as 2; and inserted provisions for recomputation of retired pay upon release from active duty of officers ordered to active duty in a higher grade based upon special commendation for performance of duty in actual combat.

1960—Subsec. (a). Pub. L. 86–559 prohibited recomputation of retired pay under subsec. (a) on the basis of any period of active duty that was of less than six consecutive months' duration or on the basis of any active duty for training for a reserve officer who is or has been retired under section 3911, 6323, or 8911 of this title or under section 232 of title 14.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 111–383 applicable to persons who first become entitled to retired or retainer pay under subtitle A of this title after Jan. 7, 2011, and table in subsec. (d) of this section, in effect on the day before Jan. 7, 2011, applicable to the computation or recomputation of retired or retainer pay for persons who first became entitled to retired or retainer pay under subtitle A on or before Jan. 7, 2011, see section 631(d) of Pub. L. 111–383, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–181, div. A, title VI, § 646(c), Jan. 28, 2008, 122 Stat. 160, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 6333 of this title] shall take effect as of January 1, 2007, and shall apply with respect to retired pay and retainer pay payable on or after that date.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 922 of Pub. L. 98–94 effective Oct. 1, 1983, see section 922(e) of Pub. L. 98–94, set out as a note under section 1401 of this title.

Amendment by section 923 of Pub. L. 98–94 applicable with respect to (1) the computation of retired or retainer pay of any individual who becomes entitled to that pay after Sept. 30, 1983, and (2) the recomputation of retired pay under this section, of any individual who after Sept. 30, 1983, becomes entitled to recompute retired pay under this section, see section 923(g) of Pub. L. 98–94, set out as a note under section 1174 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–207 effective Oct. 1, 1967, see section 7 of Pub. L. 90–207, set out as a note under

section 203 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment by Pub. L. 88–132 effective Oct. 1, 1963, see section 14 of Pub. L. 88–132, set out as a note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

ACCRUAL OF BENEFITS; PROSPECTIVE APPLICABILITY

Section 642(c) of Pub. L. 102–484 provided that: ''No benefits shall accrue for months beginning before the date of the enactment of this Act [Oct. 23, 1992] by reason of the amendments made by this section [amending this section and section 1402a of this title].''

RECOMPUTATION OF RETIRED PAY OF CERTAIN RECALLED RETIREES

Pub. L. 98–525, title VI, §655, Oct. 19, 1984, 98 Stat. 2552, provided that:

''(a) Notwithstanding the second sentence of footnote 1 of the table contained in section 1402(a) of title 10, United States Code (relating to recomputation of retired pay to reflect later active duty), in the case of a member of the Armed Forces who—

''(1) was voluntarily called or ordered to active duty during the period beginning on October 1, 1963, and ending on September 30, 1971;

''(2) was at the time of such call or order entitled to retired pay or retainer pay;

''(3) served on such active duty under such call or order for a continuous period of at least two years; and

''(4) was released from such active duty before October 1, 1973,

the retired or retainer pay of such member shall be recomputed, as provided in subsection (b), under the rates of basic pay in effect at the time of that release from active duty.

''(b) The retired or retainer pay of a member of the Armed Forces described in subsection (a) shall be the amount determined under section 1402(a) of title 10, United States Code (as modified with respect to such member by subsection (a)), and increased by the amount by which the member's retired or retainer pay would have been increased during the period beginning on the date of the member's release from active duty referred to in subsection (a)(4) and ending on the day before the day on which this section becomes effective had subsection (a) applied in the case of the member at the time of that release from active duty.

''(c) This section shall apply only with respect to retired pay and retainer pay payable for months beginning after September 30, 1984, or on or after the date of the enactment of this Act [Oct. 19, 1984], whichever is later.''

RETIRED PAY AND RETAINER PAY; PROHIBITION AGAINST RECOMPUTATION UNDER 1963 PAY RATES; EXCEPTIONS; INCREMENTS BASED ON THE GREATER OF A 5 PERCENT INCREASE OR RECOMPUTATION UNDER 1958 PAY RATES FOR MEMBERS RETIRED PRIOR TO OCTOBER 1949 FOR REASONS OTHER THAN PHYSICAL DISABILITY, MEMBERS RECEIVING RETIRED PAY UNDER CAREER COMPENSATION ACT OF 1949 AND FORMER CHIEFS OF STAFF; ADDITIONAL 5 PERCENT INCREASE FOR OTHER RETIRED MEMBERS; EXCLUSION FROM INCREASE OF OFFICERS RETIRED UNDER CERTAIN PROVISIONS

Section 5(a)–(f) of Pub. L. 88–132 provided that:

''(a) Except as provided in section 1402 of title 10, United States Code, the changes made by this Act [see Short Title note under section 201 of Title 37] in the rates of basic pay of members of the uniformed services do not increase the retired pay or retainer pay to which a member or former member of the uniformed services was entitled on the day before the effective date of this Act [Oct. 1, 1963]. However, except for a member covered by section 6331 of title 10, United States Code who became entitled to retainer pay before April 1, 1963, and subject to subsection (j) of this section [set out as a note below], a member or former member of a uniformed service who became entitled to retired pay or retainer pay after March 31, 1963, but before the effective date of this Act [Oct. 1, 1963], is entitled—

''(1) to have the retired pay or retainer pay to which he was entitled on the day before the effective date of this Act [Oct. 1, 1963] recomputed under the rates of basic pay prescribed by section 2 of this Act [amending section 203 of Title 37]; or

''(2) to continue to have that pay computed under the rates of basic pay that were in effect under section 203 of title 37, United States Code, on the day before the effective date of this Act [Oct. 1, 1963], plus the percentage increase provided by subsection (e) of this section;

whichever pay is the greater. For the purposes of the preceding sentence, a member or former member who became entitled to retired pay on April 1, 1963, by virtue of section 1 of the Act of April 23, 1930, ch. 209, as amended (5 U.S.C. 47a) [section 8301 of Title 5], shall be considered as having become entitled to that pay before April 1, 1963.

''(b) A member or former member of a uniformed service who was retired other than for physical disability and who, in accordance with section 511 of the Career Compensation Act of 1949 (63 Stat. 829) [act Oct. 12, 1949, former 10 U.S.C. 580 note], is entitled to retired pay or retainer pay computed by 'method' (a) of that section using rates of basic pay that were in effect before October 1, 1949, is entitled—

''(1) to have pay recomputed by 'method' (b) of that section using the rates of basic pay that were in effect under that Act on the day before the effective date of this Act [Oct. 1, 1963]; or

''(2) to an increase of 5 percent in the retired pay or retainer pay to which he was entitled on the day before the effective date of this Act [Oct. 1, 1963];

whichever pay is the greater.

''(c) A member or former member of a uniformed service who is entitled to retired pay or retainer pay computed under the rates of basic pay that were in effect under the Career Compensation Act of 1949 before June 1, 1958, including a member or former member who is entitled to retired pay under section 7 (b) or (c) of the Act of May 20, 1958, Public Law 85–422 (72 Stat. 130), is entitled—

''(1) to have that pay recomputed under the rates of basic pay that were in effect under that Act on the day before the effective date of this Act [Oct. 1, 1963]; or

''(2) to an increase of 5 percent in the retired pay or retainer pay to which he was entitled on the day before the effective date of this Act [Oct. 1, 1963];

whichever pay is the greater.

''(d) A member or former member of a uniformed service who was entitled to retired pay on the day before the effective date of this Act [Oct. 1, 1963] and who served as Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, or Commandant of the Marine Corps is entitled—

''(1) to have his retired pay recomputed under the formula for computing retired pay applicable to him—

''(A) when he retired; or

''(B) if he served on active duty after he retired and his retired pay was recomputed by reason of that service, when his retired pay was so recomputed;

using as his rate of basic pay the rate of basic pay prescribed for officers serving on active duty in those positions on June 1, 1958, by footnote 1 to table for commissioned officers in section 201(a) of the Career Compensation Act of 1949, as amended (72 Stat. 122) [see section 203 of Title 37]; or

''(2) to an increase of 5 percent in the retired pay to which he was entitled on the day before the effective date of this Act [Oct. 1, 1963];

whichever pay is the greater.

''(e) A member or former member of a uniformed service who was entitled to retired pay or retainer pay on the day before the effective date of this Act [Oct. 1, 1963], other than a member or former member who is covered by subsection (b), (c), or (d) of this section, is entitled to an increase of 5 percent in the retired or retainer pay to which he was entitled on the day before the effective date of this Act [Oct. 1, 1963].

''(f) Notwithstanding any other provision of law, a member of an armed force who was entitled to pay and allowances under any of the following provisions of law on the day before the effective date of this Act [Oct. 1, 1963] shall continue to receive the pay and allowances to which he was entitled on that day:

''(1) The Act of March 23, 1946, chapter 112 (60 Stat. 59).

''(2) The Act of June 26, 1948, chapter 677 (62 Stat. 1052).

''(3) The Act of September 18, 1950, chapter 952 (64 Stat. A224).''

RETIRED PAY AND RETAINER PAY; RETROACTIVE EFFECT

Section 5(j) of Pub. L. 88–132 provided that: ''A member or former member of a uniformed service is not entitled to an increase in his retired pay or retainer pay because of the enactment of this Act [see Short Title note set out under section 201 of Title 37] for any period before the effective date of this Act [Oct. 1, 1963].''

SAVINGS PROVISION

Section 5(*l*)(2) of Pub. L. 88–132 provided that: ''Notwithstanding paragraph (1) of this subsection [amending this section], and unless otherwise entitled to higher retired pay or retainer pay, a member of a uniformed service who is on active duty (other than for training) on the effective date of this Act [Oct. 1, 1963], who was entitled to retired pay or retainer pay before he entered on that duty, and who is released from that duty on or after the effective date of this Act after having served on that duty for a continuous period of at least one year shall, upon that release from active duty, be entitled to recompute his retired pay or retainer pay under the table in section 1402 of title 10, United States Code [this section], subject to section 6483(c) of title 10, as that table and that section were in effect on the day before the effective date of this Act, using rates of basic pay prescribed by this Act [section 203 of Title 37].''

§ 1402a. Recomputation of retired or retainer pay to reflect later active duty of members who first became members after September 7, 1980

(a) IN GENERAL.—A member of an armed force—

(1) who first became a member of a uniformed service after September 7, 1980;

(2) who has become entitled to retired pay or retainer pay; and

(3) who thereafter serves on active duty (other than for training),

is entitled to recompute his retired pay or retainer pay upon release from that duty according to the following table.

Column 1 Take	Column 2 Multiply by
Retired pay base or retainer pay base under section 1407 which he would be entitled to use if— (1) he were retiring upon release from that active duty; or (2) he were transferring to the Fleet Reserve or Fleet Marine Corps Reserve upon that release from active duty.	The retired pay multiplier or retainer pay multiplier prescribed in section 1409 for the sum of— (1) the years of service that may be credited to him in computing retired pay or retainer pay; and (2) his years of active service after becoming entitled to retired pay or retainer pay.

(b) NEW DISABILITY INCURRED DURING LATER ACTIVE DUTY.—A member of an armed force who first became a member of a uniformed service after September 7, 1980, who has been retired other than for physical disability and who while on active duty incurs a physical disability of at least 30 percent for which he would otherwise be eligible for retired pay under chapter 61 of this title, is entitled, upon his release from active duty, to retired pay under subsection (d).

(c) ADDITIONAL OR AGGRAVATED DISABILITY INCURRED DURING LATER ACTIVE DUTY.—A member of an armed force who first became a member of a uniformed service after September 7, 1980, and who—

(1) was retired for physical disability under section 1201 or 1204 of this title or any other law or whose name is on the temporary disability retired list;

(2) incurs, while on active duty after retirement or after his name was placed on the temporary disability retired list, a physical disability that is in addition to or that aggravates the physical disability for which he was retired or for which his name was placed on that list; and

(3) is qualified under section 1201, 1202, 1204, or 1205 of this title;

is entitled, upon his release from active duty, to retired pay under subsection (d).

(d) COMPUTATION FOR LATER DISABILITY.—A member of an armed force covered by subsection (b) or (c) may elect to receive either (1) the retired pay to which he became entitled when he retired, increased by any applicable adjustments in that pay under section 1401a of this title after he initially became entitled to that pay, or (2) retired pay computed according to the following table.

Column 1 Take	Column 2 Multiply by	Column 3 Add
The retired pay base computed under section 1407(b) of this title.	As member elects— (1) 2½ percent of years of service credited under section 1208 of this title;[1] or (2) the highest percentage of disability, not to exceed 75 percent, attained while on active duty after retirement or after the date when his name was placed on temporary disability retired list, as the case may be.	Amount necessary to increase product of columns 1 and 2 to 50 percent of pay upon which computation is based, if member is on temporary disability retired list.

[1] Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month.

(e) ALTERNATIVE RECOMPUTATION TO SUBSECTION (a) FORMULA.—Notwithstanding subsection (a), a member covered by that subsection may elect, upon his release from that active duty, to have his retired pay or retainer pay—

(1) computed according to the formula set forth in subsection (a) but using the monthly retired pay base under which his retired pay or retainer pay was computed when he entered on that active duty; and

(2) increased by any applicable adjustments in that pay under section 1401a of this title after he initially became entitled to that pay.

(f) ADDITIONAL 10 PERCENT FOR CERTAIN ENLISTED MEMBERS CREDITED WITH EXTRAORDINARY HEROISM.—(1) In the case of a member who is entitled to recompute retired pay under this section upon release from active duty served after retiring under section 3914 or 8914 of this title, the member's retired pay as recomputed under another provision of this section shall be increased by 10 percent of the amount so recomputed if the member has been credited by the Secretary concerned with extraordinary heroism in the line of duty during any period of active duty service in the armed forces.

(2) The amount of the retired pay as recomputed under another provision of this section and as increased under paragraph (1) may not exceed the amount equal to 75 percent of the retired pay base upon which the recomputation of such retired pay is based.

(3) The determination of the Secretary concerned as to extraordinary heroism is conclusive for all purposes.

(Added Pub. L. 96–342, title VIII, §813(b)(3)(A), Sept. 8, 1980, 94 Stat. 1102; amended Pub. L. 96–513, title V, §511(51)(A), (B), Dec. 12, 1980, 94 Stat. 2924; Pub. L. 98–94, title IX, §§922(a)(5), (6), 923(a)(1), (2)(D), (E), Sept. 24, 1983, 97 Stat. 641, 642; Pub. L. 99–348, title II, §201(b)(1), (2), July 1, 1986, 100 Stat. 693; Pub. L. 102–484, div. A, title VI, §642(b), Oct. 23, 1992, 106 Stat. 2425; Pub. L. 111–383, div. A, title VI, §631(c), Jan. 7, 2011, 124 Stat. 4239.)

AMENDMENTS

2011—Subsec. (d). Pub. L. 111–383, in column 2 of table, inserted ", not to exceed 75%," after "percentage of disability" and struck out column 4 of table which related to subtraction of excess over 75 percent of retired or retainer pay base upon which computation is based.

1992—Subsec. (f). Pub. L. 102–484 added subsec. (f).

1986—Subsec. (a). Pub. L. 99–348, §201(b)(1), amended subsec. (a) generally. Prior to the amendment, subsec. (a) read as follows: "A member of an armed force who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) after September 7, 1980, who has become entitled to retired pay or retainer pay, and who thereafter serves on active duty (other than for training), is entitled to recompute his retired pay or retainer pay upon his release from that duty according to the following table. The amount recomputed, if not a multiple of $1, shall be rounded to the next lower multiple of $1."

Subsec. (b). Pub. L. 99–348, §201(b)(2)(A), inserted heading.

Subsec. (c). Pub. L. 99–348, §201(b)(2)(B), inserted heading.

Subsec. (d). Pub. L. 99–348, §201(b)(2)(C), inserted heading, struck out provision that if the amount recomputed is not a multiple of $1, it be rounded to the next lower multiple of $1, and in column 1 of table struck out "monthly" before "retired pay" and in column 4 of table struck out "monthly" before "retired or".

Subsec. (e). Pub. L. 99–348, §201(b)(2)(D), inserted heading.

1983—Subsec. (a). Pub. L. 98–94, §922(a)(5), substituted "according to the following table. The amount recomputed, if not a multiple of $1, shall be rounded to the next lower multiple of $1." for "as follows:".

Pub. L. 98–94, §923(a)(1), (2)(D), in footnote 1 of table, substituted "Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month" for "Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months".

Subsec. (d). Pub. L. 98–94, §922(a)(6), substituted "according to the following table. The amount computed, if not a multiple of $1, shall be rounded to the next lower multiple of $1." for "as follows:".

Pub. L. 98–94, §923(a)(1), (2)(E), in footnote 1 of table, substituted "Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month" for "Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months".

1980—Pub. L. 96–513, §511(51)(B), substituted "of members who first became members after September 7, 1980" for "in case of members who first became members after the enactment of the Department of Defense Authorization Act, 1981" in section catchline.

Subsecs. (a) to (c). Pub. L. 96–513, §511(51)(A), substituted "after September 7, 1980" for "on or after the date of the enactment of the Department of Defense Authorization Act, 1981" wherever appearing.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 111–383 applicable to persons who first become entitled to retired or retainer pay under subtitle A of this title after Jan. 7, 2011, and table in subsec. (d) of this section, in effect on the day before Jan. 7, 2011, applicable to the computation or recomputation of retired or retainer pay for persons who first became entitled to retired or retainer pay under subtitle A on or before Jan. 7, 2011, see section 631(d) of Pub. L. 111–383, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 922 of Pub. L. 98–94 effective Oct. 1, 1983, see section 922(e) of Pub. L. 98–94, set out as a note under section 1401 of this title.

Amendment by section 923 of Pub. L. 98–94 applicable with respect to (1) the computation of retired or retainer pay of any individual who becomes entitled to that pay after Sept. 30, 1983, and (2) the recomputation of retired pay under this section, of any individual who after Sept. 30, 1983, becomes entitled to recompute retired pay under this section, see section 923(g) of Pub. L. 98–94, set out as a note under section 1174 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

ACCRUAL OF BENEFITS; PROSPECTIVE APPLICABILITY

No benefits to accrue for months beginning before Oct. 23, 1992, by reason of the amendment by Pub. L. 102–484, see section 642(c) of Pub. L. 102–484, set out as a note under section 1402 of this title.

§ 1403. Disability retired pay: treatment under Internal Revenue Code of 1986

That part of the retired pay of a member of an armed force, computed under formula No. 1 or 2 of section 1401, or under section 1402(d) or 1402a(d) of this title on the basis of years of service, which exceeds the retired pay that he would receive if it were computed on the basis of percentage of disability is not considered as a pension, annuity, or similar allowance for personal injury, or sickness, resulting from active service in the armed forces, under section 104(a) of the Internal Revenue Code of 1986.

(Aug. 10, 1956, ch. 1041, 70A Stat. 108; Pub. L. 96–342, title VIII, § 813(b)(3)(C), Sept. 8, 1980, 94 Stat. 1104; Pub. L. 96–513, title V, § 511(52)(A), (B), Dec. 12, 1980, 94 Stat. 2925; Pub. L. 100–26, § 7(h)(1), (2)(A), Apr. 21, 1987, 101 Stat. 282.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1403	37:272(h).	Oct. 12, 1949, ch. 681, § 402(h), 63 Stat. 820.

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in text, is set out in Title 26, Internal Revenue Code.

AMENDMENTS

1987—Pub. L. 100–26 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'' in section catchline and text.

1980—Pub. L. 96–513 substituted ''the Internal Revenue Code of 1954'' for ''title 26'' in section catchline and text.

Pub. L. 96–342 inserted reference to section 1402a(d) of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 1404. Applicability of section 8301 of title 5

The retirement provisions of this title are subject to section 8301 of title 5.

(Aug. 10, 1956, ch. 1041, 70A Stat. 108; Pub. L. 89–718, § 3, Nov. 2, 1966, 80 Stat. 1115.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1404	[No source].	[No source].

The effect of the act of April 23, 1930 (5 U.S.C. 47a), in temporarily deferring retirement dates otherwise specifically fixed by law is reflected in the sections of the proposed text that name those dates. This section is inserted to make clear that under that act such deferments have no effect on the applicability of the specific rates that are to be used in computing retired pay.

AMENDMENTS

1966—Pub. L. 89–718 substituted ''8301'' for ''47a'' in section catchline and text.

§ 1405. Years of service

(a) IN GENERAL.—For the purposes of the computation of the years of service of a member of the armed forces under a provision of this title providing for such computation to be made under this section, the years of service of the member are computed by adding—

(1) his years of active service;

(2) the years of service, not included in clause (1), with which he was entitled to be credited on May 31, 1958, in computing his basic pay; and

(3) the years of service, not included in clause (1) or (2), with which he would be entitled to be credited under section 12733 of this title if he were entitled to retired pay under section 12731 of this title.

(b) FRACTIONAL YEARS OF SERVICE.—In determining a member's years of service under subsection (a)—

(1) each full month of service that is in addition to the number of full years of service creditable to the member shall be credited as 1/12 of a year; and

(2) any remaining fractional part of a month shall be disregarded.

(c) EXCLUSION OF TIME REQUIRED TO BE MADE UP OR EXCLUDED.—(1) Time required to be made up by an enlisted member of the Army or Air Force under section 972(a) of this title, or required to be made up by an enlisted member of the Navy, Marine Corps, or Coast Guard under that section with respect to a period of time after October 5, 1994, may not be counted in determining years of service under subsection (a).

(2) Section 972(b) of this title excludes from computation of an officer's years of service for purposes of this section any time identified with respect to that officer under that section.

(Added Pub. L. 85–422, § 11(a)(1)(A), May 20, 1958, 72 Stat. 130; amended Pub. L. 85–861, § 1(31A), Sept. 2, 1958, 72 Stat. 1451; Pub. L. 87–649, § 6(f)(4), Sept. 7, 1962, 76 Stat. 494; Pub. L. 87–651, title I, § 109, Sept. 7, 1962, 76 Stat. 509; Pub. L. 90–130, § 1(7), Nov. 8, 1967, 81 Stat. 374; Pub. L. 96–513, title I, § 113(b), Dec. 12, 1980, 94 Stat. 2877; Pub. L. 97–295, § 1(17), Oct. 12, 1982, 96 Stat. 1290; Pub. L. 99–348, title I, § 106, July 1, 1986, 100 Stat. 691; Pub. L. 103–337, div. A, title VI, § 635(d), title XVI, § 1662(j)(3), Oct. 5, 1994, 108 Stat. 2789, 3004; Pub. L. 104–106, div. A, title V, § 561(d)(1), Feb. 10, 1996, 110 Stat. 322; Pub. L. 104–201, div. A, title X, § 1074(b)(1), Sept. 23, 1996, 110 Stat. 2660; Pub. L. 107–107, div. A, title X, § 1048(c)(7), Dec. 28, 2001, 115 Stat. 1226.)

HISTORICAL AND REVISION NOTES

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1405	[No source].	[No source].

The amendment reflects section 11 of the Act of May 20, 1958, Pub. L. 85–422 (72 Stat. 130).

1962 ACT

The change corrects a typographical error.

1982 ACT

This amends 10:1405 to correct an inadvertent error in the codification of title 10 in 1956 relating to retirement pay of warrant officers advanced on the retired list. Under provisions of law first enacted in 1948 through the codification of title 10 in 1956 and until 1965, warrant officers advanced on the retired list received cred-

it for inactive service in the computation of retirement pay. The Comptroller General in 1965 (B–156576) held in effect that computation of such retirement pay was governed by the wording of new title 10 that based the computation on years of active service only even though this had the result of making a substantive change. The Armed Services Committee of the House of Representatives concurs that an error was made in the codification of title 10 and has indicated that corrective legislative action is properly a responsibility of the House Judiciary Committee. See, also, the amendments to 10:3992 and 8992 made by sections 1(40) and 1(52), respectively.

AMENDMENTS

2001—Subsec. (c)(1). Pub. L. 107–107 substituted ''October 5, 1994,'' for ''the date of the enactment of the National Defense Authorization Act for Fiscal Year 1995,''.

1996—Subsec. (c). Pub. L. 104–106, as amended by Pub. L. 104–201, substituted ''Made Up or Excluded'' for ''Made Up'' in heading, designated existing provisions as par. (1), substituted ''section 972(a) of this title, or required to be made up by an enlisted member of the Navy, Marine Corps, or Coast Guard under that section with respect to a period of time after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1995,'' for ''section 972 of this title'', and added par. (2).

1994—Subsec. (a)(3). Pub. L. 103–337, § 1662(j)(3), substituted ''12733'' for ''1333'' and ''12731'' for ''1331''.

Subsec. (c). Pub. L. 103–337, § 635(d), added subsec. (c).

1986—Pub. L. 99–348 designated existing provision as subsec. (a), inserted heading, and in provision preceding par. (1) substituted ''the computation of the years of service of a member of the armed forces under a provision of this title providing for such computation to be made under this section, the years of service of the member'' for ''section 1401 (formulas 4 and 5), 3991 (formula A), 3992 (formula B), 6151(b), 6323(e), 6325(a)(2) and (b)(2), 6383(c)(2), 8991 (formula A), or 8992 (formula B) of this title, the years of service of a member of the armed forces'', and added subsec. (b).

1982—Pub. L. 97–295, § 1(17), substituted ''3991 (formula A), 3992 (formula B)'' for ''3991 (formula B)'', struck out ''or'' first time appearing, and substituted ''8991 (formula A), or 8992 (formula B)'' for ''8991 (formula B)''.

1980—Pub. L. 96–513 struck out provisions that permitted the crediting of certain periods of constructive service in computing the retired pay of medical and dental officers and provided that members would compute their years of service for retirement pay by adding (1) years of active service, (2) years of service not otherwise counted with which the member was entitled to be credited on May 31, 1958, and (3) years of service not otherwise counted with which he would be credited under section 1333 if he were entitled to retired pay under section 1331.

1967—Pub. L. 90–130 struck out references to section 6399(c)(2) of this title.

1962—Pub. L. 87–651 struck out references to sections 6391(h) and 6394(g)(2) of this title and inserted a reference to section 6394(h) of this title.

Pub. L. 87–649 substituted ''section 205(a)(7) and (8) of title 37'' for ''section 233(a)(7) of title 37'' in cl. (2).

1958—Pub. L. 85–861 inserted references to sections 6323(e) and 6391(h) of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective Feb. 10, 1996, and applicable to any period of time covered by section 972 of this title that occurs after that date, see section 561(e) of Pub. L. 104–106, set out as a note under section 972 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 635(e) of Pub. L. 103–337 provided that: ''This section [amending this section and sections 3925, 3991, 3992, 6333, 8925, 8991, and 8992 of this title] shall apply to—

''(1) the computation of the retired pay of any enlisted member who retires on or after the date of the enactment of this Act [Oct. 5, 1994];

''(2) the computation of the retainer pay of any enlisted member who is transferred to the Fleet Reserve or the Fleet Marine Corps Reserve on or after the date of the enactment of this Act; and

''(3) the recomputation of the retired pay of any enlisted member who is advanced on the retired list on or after the date of the enactment of this Act.''

Amendment by section 1662(j)(3) of Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–649 effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE

Section effective June 1, 1958, see section 9 of Pub. L. 85–422.

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

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.

§ 1406. Retired pay base for members who first became members before September 8, 1980: final basic pay

(a) USE OF RETIRED PAY BASE IN COMPUTING RETIRED PAY.—

(1) GENERAL RULE.—The retired pay or retainer pay of any person entitled to that pay who first became a member of a uniformed service before September 8, 1980, is computed using the retired pay base or retainer pay base determined under this section.

(2) EXCEPTION FOR RECOMPUTATION.—Recomputation of retired or retainer pay to reflect later active duty is provided for under section 1402 of this title without reference to a retired pay base or retainer pay base.

(b) RETIREMENT UNDER SUBTITLE A OR E.—

(1) DISABILITY, WARRANT OFFICER, AND DOPMA RETIREMENT.—In the case of a person whose retired pay is computed under this subtitle, the retired pay base is determined in accordance with the following table.

For a member entitled to retired pay under section:	The retired pay base is:
1201 1202 1204 1205	Monthly basic pay[1] of grade to which member is entitled under section 1372 or to which he was entitled on day before retirement or placement on temporary disability retired list, whichever is higher.
580 1263 1293 1305	Monthly basic pay to which member would have been entitled if he had served on active duty in his retired grade on day before retirement, or if the pay of that grade is less than the pay of any warrant grade satisfactorily held by him on active duty, the monthly basic pay of that warrant officer grade.
633 634 635 636 1251 1252 1253	Monthly basic pay[2] of member's retired grade.[3]

[1] Compute at rates applicable on date of retirement or date when member's name was placed on temporary disability retired list, as the case may be.
[2] Compute at rates applicable on date of retirement.
[3] For the purposes of this subsection, determine member's retired grade as if sections 3962 and 8962 did not apply.

(2) NON-REGULAR SERVICE RETIREMENT.—In the case of a person who is entitled to retired pay under section 12731 of this title, the retired pay base is the monthly basic pay, determined at the rates applicable on the date when retired pay is granted (or, in the case of a person entitled to retired pay by reason of an election under section 12741(a) of this title, at rates applicable on the date the person completes the service required under such section 12741(a)), of the highest grade held satisfactorily by the person at any time in the armed forces. For purposes of the preceding sentence, the highest grade in which a person served satisfactorily as an officer shall be determined in accordance with section 1370(d) of this title.

(c) VOLUNTARY RETIREMENT FOR MEMBERS OF THE ARMY.—

(1) IN GENERAL.—In the case of a member whose retired pay is computed under section 3991 of this title or who is entitled to retired pay computed under section 3992 of this title, the retired pay base is determined in accordance with the following table.

For a member entitled to retired pay under section:	The retired pay base is:
3911 3918 3920 3924	Monthly basic pay of member's retired grade.[1]
3914 3917	Monthly basic pay to which member was entitled on day before he retired.
3992	Monthly basic pay of grade to which member is advanced on retired list.

[1] For the purposes of this subsection, determine member's retired grade as if section 3962 did not apply.

(2) RATE OF BASIC PAY TO BE USED.—The rate of basic pay to be used under paragraph (1) is the rate applicable on the date of the member's retirement.

(d) RETIREMENT FOR MEMBERS OF THE NAVY AND MARINE CORPS.—In the case of a member whose retired pay is computed under section 6333 of this title, who is advanced on the retired list under section 6151 or 6334 of this title, or who is entitled to retainer pay under section 6330 of this title, the retired pay base or retainer pay base is determined in accordance with the following table.

For a member entitled to retired or retainer pay under section:	The retired pay base or retainer pay base is:
6323 6325(a) 6383	Basic pay of the grade in which the member retired.[1]
6325(b)	Basic pay of the grade the officer would hold if he had not received an appointment described in section 6325(b).
6326	Basic pay of the pay grade in which the member was serving on the day before retirement.
6330	Basic pay that the member received at the time of transfer to the Fleet Reserve or Fleet Marine Corps Reserve.
6151	Basic pay of the grade to which the member is advanced under section 6151.
6334	Basic pay of the grade to which the member is advanced under section 6334.

[1] If the rate specified is less than the pay of any warrant officer grade satisfactorily held by the member on active duty, use the monthly basic pay of that warrant officer grade.

(e) VOLUNTARY RETIREMENT FOR MEMBERS OF THE AIR FORCE.—

(1) IN GENERAL.—In the case of a member whose retired pay is computed under section 8991 of this title or who is entitled to retired pay computed under section 8992 of this title, the retired pay base is determined in accordance with the following table.

For a member entitled to retired pay under section:	The retired pay base is:
8911 8918 8920 8924	Monthly basic pay of member's retired grade.[1]
8914 8917	Monthly basic pay to which member was entitled on day before he retired.
8992	Monthly basic pay of grade to which member is advanced on retired list.

[1] For the purposes of this subsection, determine member's retired grade as if section 8962 did not apply.

(2) RATE OF BASIC PAY TO BE USED.—The rate of basic pay to be used under paragraph (1) is the rate applicable on the date of the member's retirement.

(f) COAST GUARD.—In the case of a member who is retired under any section of title 14, the

member's retired pay is computed under section 423(a) of title 14 in the manner provided in that section.

(g) COMMISSIONED CORPS OF NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION.—In the case of an officer whose retired pay is computed under section 245 of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 (33 U.S.C. 3045), the retired pay base is the basic pay of the rank with which the officer retired.

(h) COMMISSIONED CORPS OF PUBLIC HEALTH SERVICE.—In the case of an officer who is retired under section 210(g) or 211(a) of the Public Health Service Act (42 U.S.C. 211(g), 212(a)), the retired pay base is determined as follows:

(1) MANDATORY RETIREMENT.—If the officer is retired under section 210(g) of such Act, the retired pay base is the basic pay of the permanent grade held by the officer at the time of retirement.

(2) VOLUNTARY RETIREMENT.—If the officer is retired under section 211(a) of such Act, the retired pay base is the basic pay of the highest grade held by the officer and in which, in the case of a temporary promotion to such grade, the officer has performed active duty for not less than six months.

(i) SPECIAL RULE FOR FORMER CHAIRMEN AND VICE CHAIRMEN OF THE JCS, CHIEFS OF SERVICE, COMMANDERS OF COMBATANT COMMANDS, AND SENIOR ENLISTED MEMBERS.—

(1) IN GENERAL.—For the purposes of subsections (b) through (e), in determining the rate of basic pay to apply in the determination of the retired pay base of a member who has served as Chairman or Vice Chairman of the Joint Chiefs of Staff, as a Chief of Service, as a commander of a unified or specified combatant command (as defined in section 161(c) of this title), or as the senior enlisted member of an armed force, the highest rate of basic pay applicable to the member while serving in that position shall be used, if that rate is higher than the rate otherwise authorized by this section.

(2) EXCEPTION FOR MEMBERS REDUCED IN GRADE OR WHO DO NOT SERVE SATISFACTORILY.—Paragraph (1) does not apply in the case of a member who, while or after serving in a position specified in that paragraph and by reason of conduct occurring after October 16, 1998—

(A) in the case of an enlisted member, is reduced in grade as the result of a court-martial sentence, nonjudicial punishment, or other administrative process; or

(B) in the case an officer, is not certified by the Secretary of Defense under section 1370(c) of this title as having served on active duty satisfactorily in the grade of general or admiral, as the case may be, while serving in that position.

(3) DEFINITIONS.—In this subsection:

(A) The term ''Chief of Service'' means any of the following:

(i) Chief of Staff of the Army.

(ii) Chief of Naval Operations.

(iii) Chief of Staff of the Air Force.

(iv) Commandant of the Marine Corps.

(v) Commandant of the Coast Guard.

(B) The term ''senior enlisted member'' means any of the following:

(i) Sergeant Major of the Army.

(ii) Master Chief Petty Officer of the Navy.

(iii) Chief Master Sergeant of the Air Force.

(iv) Sergeant Major of the Marine Corps.

(v) Master Chief Petty Officer of the Coast Guard.

(vi) Senior Enlisted Advisor to the Chairman of the Joint Chiefs of Staff.

(Added Pub. L. 99–348, title I, §104(b), July 1, 1986, 100 Stat. 686; amended Pub. L. 100–180, div. A, title V, §512(d)(2), title XIII, §1314(b)(6), Dec. 4, 1987, 101 Stat. 1090, 1175; Pub. L. 100–456, div. A, title XII, §1233(c), Sept. 29, 1988, 102 Stat. 2057; Pub. L. 102–190, div. A, title XI, §1131(7), Dec. 5, 1991, 105 Stat. 1506; Pub. L. 103–337, div. A, title XVI, §1662(j)(4), Oct. 5, 1994, 108 Stat. 3004; Pub. L. 105–85, div. A, title X, §1073(a)(23), Nov. 18, 1997, 111 Stat. 1901; Pub. L. 105–261, div. A, title VI, §646, Oct. 17, 1998, 112 Stat. 2050; Pub. L. 106–65, div. A, title X, §1066(a)(11), Oct. 5, 1999, 113 Stat. 771; Pub. L. 107–372, title II, §272(a), Dec. 19, 2002, 116 Stat. 3094; Pub. L. 108–136, div. A, title VI, §643(a), (b), Nov. 24, 2003, 117 Stat. 1517; Pub. L. 108–375, div. A, title X, §1084(d)(9), Oct. 28, 2004, 118 Stat. 2061; Pub. L. 109–163, div. A, title V, §509(d)(1)(B), title VI, §685(d), Jan. 6, 2006, 119 Stat. 3231, 3325; Pub. L. 109–364, div. A, title V, §502(d)(2), title X, §1071(a)(7), Oct. 17, 2006, 120 Stat. 2178, 2398; Pub. L. 111–84, div. A, title VI, §643(d)(1), Oct. 28, 2009, 123 Stat. 2367.)

PRIOR PROVISIONS

A prior section 1406 was renumbered section 12738 of this title.

AMENDMENTS

2009—Subsec. (b)(2). Pub. L. 111–84 inserted ''(or, in the case of a person entitled to retired pay by reason of an election under section 12741(a) of this title, at rates applicable on the date the person completes the service required under such section 12741(a))'' after ''when retired pay is granted''.

2006—Subsec. (b)(1). Pub. L. 109–364, §502(d)(2), in table inserted ''1253'' at end of column under heading ''For a member entitled to retired pay under section:''.

Pub. L. 109–163, §509(d)(1)(B), in table inserted ''1252'' at end of column under heading ''For a member entitled to retired pay under section:''.

Subsec. (i)(3)(B)(vi). Pub. L. 109–364, §1071(a)(7), substituted ''to'' for ''for''.

Pub. L. 109–163, §685(d), added cl. (vi).

2004—Subsec. (g). Pub. L. 108–375 substituted ''section 245'' for ''section 305'' and ''Officer Corps Act of 2002 (33 U.S.C. 3045)'' for ''Officers Act of 2002''.

2003—Subsec. (i). Pub. L. 108–136 inserted ''Commanders of Combatant Commands,'' after ''Chiefs of Service,'' in heading and ''as a commander of a unified or specified combatant command (as defined in section 161(c) of this title),'' after ''Chief of Service,'' in par. (1).

2002—Subsec. (g). Pub. L. 107–372 substituted ''section 305 of the National Oceanic and Atmospheric Administration Commissioned Officers Act of 2002'' for ''section 16 of the Coast and Geodetic Survey Commissioned Officers' Act of 1948 (33 U.S.C. 853*o*)''

1999—Subsec. (i)(2). Pub. L. 106–65 substituted ''after October 16, 1998'' for ''on or after the date of the enactment of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999'' in introductory provisions.

1998—Subsec. (i)(2), (3). Pub. L. 105–261 added par. (2) and redesignated former par. (2) as (3).

1997—Subsec. (b)(1). Pub. L. 105–85 substituted ''3962 and 8962'' for ''3962(b) and 8962(b)'' in footnote 3 in table.

Subsec. (c)(1). Pub. L. 105–85, § 1073(a)(23)(A), substituted ''3962'' for ''3962(b)'' in footnote 1 in table.

Subsec. (e)(1). Pub. L. 105–85, § 1073(a)(23)(B), substituted ''8962'' for ''8962(b)'' in footnote 1 in table.

1994—Subsec. (b). Pub. L. 103–337 substituted ''Subtitle A or E'' for ''Subtitle A'' in subsec. heading, designated existing provisions as par. (1), inserted par. (1) heading, in table struck out item for section 1331 which related to monthly basic pay of highest grade held satisfactorily by person at any time in armed forces, renumbered footnotes 3 and 4 as 2 and 3, respectively, and struck out former footnote 2 which provided for computations at rates applicable on date when retired pay is granted, and added par. (2).

1991—Subsec. (b). Pub. L. 102–190 substituted ''580'' for ''564'' in table.

1988—Subsec. (b). Pub. L. 100–456 substituted ''satisfactorily by person'' for ''satisfactory by person'' in item relating to section 1331 in table.

1987—Subsec. (d). Pub. L. 100–180, § 512(d)(2), inserted ''or 6334'' after ''6151'' in text, and inserted item relating to section 6334 at end of table.

Subsec. (i). Pub. L. 100–180, § 1314(b)(6), inserted ''and Vice Chairmen'' after ''Chairmen'' in heading and inserted ''or Vice Chairman'' after ''Chairman'' in par. (1).

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–136, div. A, title VI, § 643(c), Nov. 24, 2003, 117 Stat. 1517, provided that: ''The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Nov. 24, 2003] and shall apply with respect to officers who first become entitled to retired pay under title 10, United States Code, on or after such date.''

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 an Effective Date note under section 10001 of this title.

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.

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.

GRADE ON TRANSFER TO RETIRED RESERVE

Section 1688 of title XVI of Pub. L. 103–337 provided that: ''In determining the highest grade held satisfactorily by a person at any time in the Armed Forces for the purposes of paragraph (2) of section 1406(b) of title 10, United States Code, as added by this title, the requirement for satisfactory service on the reserve active-status list contained in section 1370(d) of title 10, United States Code, as added by this title, shall apply only to reserve commissioned officers who are promoted to a higher grade as a result of selection for promotion under chapter 36 of that title or under chapter 1405 of that title, as added by this title, or having been found qualified for Federal recognition in a higher grade under chapter 3 of title 32, United States Code, after the effective date of this title [see Effective Date note set out under section 10001 of this title].''

§ 1407. Retired pay base for members who first became members after September 7, 1980: high-36 month average

(a) USE OF RETIRED PAY BASE IN COMPUTING RETIRED PAY.—The retired pay or retainer pay of any person entitled to that pay who first became a member of a uniformed service after September 7, 1980, is computed using the retired pay base or retainer pay base determined under this section.

(b) HIGH-THREE AVERAGE.—Except as provided in subsection (f), the retired pay base or retainer pay base of a person under this section is the person's high-three average determined under subsection (c) or (d).

(c) COMPUTATION OF HIGH-THREE AVERAGE FOR MEMBERS ENTITLED TO RETIRED OR RETAINER PAY FOR REGULAR SERVICE.—

(1) GENERAL RULE.—The high-three average of a member entitled to retired or retainer pay under any provision of law other than section 1204 or 1205 or section 12731 of this title is the amount equal to—

(A) the total amount of monthly basic pay to which the member was entitled for the 36 months (whether or not consecutive) out of all the months of active service of the member for which the monthly basic pay to which the member was entitled was the highest, divided by

(B) 36.

(2) SPECIAL RULE FOR SHORT-TERM DISABILITY RETIREES.—In the case of a member who is entitled to retired pay under section 1201 or 1202 of this title and who has completed less than 36 months of active service, the member's high-three average (notwithstanding paragraph (1)) is the amount equal to—

(A) the total amount of basic pay to which the member was entitled during the period of the member's active service, divided by

(B) the number of months (including any fraction thereof) of the member's active service.

(3) SPECIAL RULE FOR RESERVE COMPONENT MEMBERS.—In the case of a member of a reserve component who is entitled to retired pay under section 1201 or 1202 of this title, the member's high-three average (notwithstanding paragraphs (1) and (2)) is computed in the same manner as prescribed in paragraphs (2) and (3) of subsection (d) for a member entitled to retired pay under section 1204 or 1205 of this title.

(d) COMPUTATION OF HIGH-THREE AVERAGE FOR MEMBERS AND FORMER MEMBERS ENTITLED TO RETIRED PAY FOR NONREGULAR SERVICE.—

(1) RETIRED PAY UNDER CHAPTER 1223.—The high-three average of a member or former member entitled to retired pay under section 12731 of this title is the amount equal to—

(A) the total amount of monthly basic pay to which the member or former member was entitled during the member or former member's high-36 months (or to which the member or former member would have been entitled if the member or former member had served on active duty during the entire period of the member or former member's high-36 months), divided by

(B) 36.

(2) NONREGULAR SERVICE DISABILITY RETIRED PAY.—The high-three average of a member entitled to retired pay under section 1204 or 1205 of this title is the amount equal to—

(A) the total amount of monthly basic pay to which the member was entitled during the member's high-36 months (or to which the member would have been entitled if the member had served on active duty during the entire period of the member's high-36 months), divided by

(B) 36.

(3) SPECIAL RULE FOR SHORT-TERM DISABILITY RETIREES.—In the case of a member who is entitled to retired pay under section 1204 or 1205 of this title and who was a member for less than 36 months before being retired under that section, the member's high-three average (notwithstanding paragraph (2)) is the amount equal to—

(A) the total amount of basic pay to which the member was entitled during the entire period the member was a member of a uniformed service before being so retired (or to which the member would have been entitled if the member had served on active duty during the entire period the member was a member of a uniformed service before being so retired), divided by

(B) the number of months (including any fraction thereof) which the member was a member before being so retired.

(4) HIGH-36 MONTHS.—The high-36 months of a member or former member whose retired pay is covered by paragraph (1) or (2) are the 36 months (whether or not consecutive) out of all the months before the member or former member became entitled to retired pay or, in the case of a member or former member entitled to retired pay by reason of an election under section 12741(a) of this title, before the member or former member completes the service required under such section 12741(a), for which the monthly basic pay to which the member or former member was entitled (or would have been entitled if serving on active duty during those months) was the highest. In the case of a former member, only months during which the former member was a member of a uniformed service may be used for purposes of the preceding sentence.

(e) LIMITATION FOR ENLISTED MEMBERS RETIRING WITH LESS THAN 30 YEARS' SERVICE.—In the case of a member who is retired under section 3914 or 8914 of this title or who is transferred to the Fleet Reserve or Fleet Marine Corps Reserve under section 6330 of this title, the member's high-36 average shall be computed using only rates of basic pay applicable to months of active duty of the member as an enlisted member.

(f) EXCEPTION FOR ENLISTED MEMBERS REDUCED IN GRADE AND OFFICERS WHO DO NOT SERVE SATISFACTORILY IN HIGHEST GRADE HELD.—

(1) COMPUTATION BASED ON PRE-HIGH-THREE RULES.—In the case of a member or former member described in paragraph (2), the retired pay base or retainer pay base is determined under section 1406 of this title in the same manner as if the member or former member first became a member of a uniformed service before September 8, 1980.

(2) AFFECTED MEMBERS.—A member or former member referred to in paragraph (1) is a member or former member who by reason of conduct occurring after October 30, 2000—

(A) in the case of a member retired in an enlisted grade or transferred to the Fleet Reserve or Fleet Marine Corps Reserve, was at any time reduced in grade as the result of a court-martial sentence, nonjudicial punishment, or an administrative action, unless the member was subsequently promoted to a higher enlisted grade or appointed to a commissioned or warrant grade; and

(B) in the case of an officer, is retired in a grade lower than the highest grade in which served by reason of denial of a determination or certification under section 1370 of this title that the officer served on active duty satisfactorily in that grade.

(3) SPECIAL RULE FOR ENLISTED MEMBERS.—In the case of a member who retires within three years after having been reduced in grade as described in paragraph (2)(A), who retires in an enlisted grade that is lower than the grade from which reduced, and who would be subject to paragraph (1) but for a subsequent promotion to a higher enlisted grade or a subsequent appointment to a warrant or commissioned grade, the rates of basic pay used in the computation of the member's high-36 average for the period of the member's service in a grade higher than the grade in which retired shall be the rates of pay that would apply if the member had been serving for that period in the grade in which retired.

(Added Pub. L. 99–348, title I, §104(b), July 1, 1986, 100 Stat. 689; amended Pub. L. 101–189, div. A, title VI, §651(a), (b)(2), Nov. 29, 1989, 103 Stat. 1459, 1460; Pub. L. 103–337, div. A, title XVI, §1662(j)(5), Oct. 5, 1994, 108 Stat. 3004; Pub. L. 104–106, div. A, title XV, §1501(c)(15), Feb. 10, 1996, 110 Stat. 499; Pub. L. 106–398, §1 [[div. A], title VI, §651], Oct. 30, 2000, 114 Stat. 1654, 1654A–163; Pub. L. 107–107, div. A, title X, §1048(c)(8), Dec. 28, 2001, 115 Stat. 1226; Pub. L. 108–375, div. A, title VI, §641(a), Oct. 28, 2004, 118 Stat. 1957; Pub. L. 111–84, div. A, title VI, §643(d)(2), Oct. 28, 2009, 123 Stat. 2367.)

PRIOR PROVISIONS

A prior section 1407, added Pub. L. 96–342, title VIII, §813(a)(1), Sept. 8, 1980, 94 Stat. 1100; amended Pub. L. 96–513, title I, §113(c), title V, §§501(21), 511(53), Dec. 12, 1980, 94 Stat. 2877, 2908, 2925, related to determination of retired base pay, prior to repeal by Pub. L. 99–348, §104(b).

AMENDMENTS

2009—Subsec. (d)(4). Pub. L. 111–84 inserted "or, in the case of a member or former member entitled to retired pay by reason of an election under section 12741(a) of this title, before the member or former member completes the service required under such section 12741(a)," after "became entitled to retired pay".

2004—Subsec. (c)(3). Pub. L. 108–375 added par. (3).

2001—Subsec. (f)(2). Pub. L. 107–107 substituted "October 30, 2000—" for "the date of the enactment of this subsection—" in introductory provisions.

2000—Subsec. (b). Pub. L. 106–398, §1 [[div. A], title VI, §651(1)], substituted "Except as provided in subsection (f), the retired pay base" for "The retired pay base".

Subsec. (f). Pub. L. 106–398, § 1 [[div. A], title VI, § 651(2)], added subsec. (f).

1996—Subsec. (c)(1). Pub. L. 104–106, § 1501(c)(15)(A), substituted ''section 12731'' for ''section 1331''.

Subsec. (d)(1). Pub. L. 104–106 substituted in heading ''CHAPTER 1223'' for ''CHAPTER 67'' and in text ''section 12731'' for ''section 1331''.

1994—Subsec. (c)(2)(B). Pub. L. 103–337, § 1662(j)(5)(A), which directed substitution of ''chapter 1223'' for ''chapter 67'', could not be executed because the words ''chapter 67'' did not appear subsequent to amendment by Pub. L. 101–189, § 651(a)(2), (4). See 1989 Amendment note below.

Subsec. (f)(2). Pub. L. 103–337, § 1662(j)(5)(B), which directed amendment of subsec. (f)(2) by substituting ''Chapter 1223'' for ''Chapter 67'' in heading and ''section 12731'' for ''section 1331'' in text, could not be executed because of previous repeal of subsec. (f) by Pub. L. 101–189, § 651(a)(2). See 1989 Amendment note below.

1989—Subsec. (b). Pub. L. 101–189, § 651(a)(1), (b)(2), substituted ''person'' for ''member'', ''person's'' for ''member's'', and ''subsection (c) or (d)'' for ''subsection (c)''.

Subsec. (c). Pub. L. 101–189, § 651(a)(2), (4), added subsec. (c) and struck out former subsec. (c) which related to computation of high-three average.

Subsec. (d). Pub. L. 101–189, § 651(a)(4), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 101–189, § 651(a)(2), (3), redesignated subsec. (d) as (e) and struck out former subsec. (e) which related to special rules for short-term disability retirees.

Subsecs. (f), (g). Pub. L. 101–189, § 651(a)(2), struck out subsec. (f) which related to special rule for members retiring with non-regular service, and subsec. (g) which defined the term ''years of creditable service''.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–375, div. A, title VI, § 641(b), Oct. 28, 2004, 118 Stat. 1957, provided that: ''Paragraph (3) of section 1407(c) of title 10, United States Code, as added by subsection (a), shall take effect—

''(1) for purposes of determining an annuity under subchapter II or III of chapter 73 of that title, with respect to deaths on active duty on or after September 10, 2001; and

''(2) for purposes of determining the amount of retired pay of a member of a reserve component entitled to retired pay under section 1201 or 1202 of such title, with respect to such entitlement that becomes effective on or after the date of the enactment of this Act [Oct. 28, 2004].''

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 an Effective Date note under section 10001 of this title.

§ 1407a. Retired pay base: officers retired in general or flag officer grades

(a) RATES OF BASIC PAY TO BE USED IN DETERMINATION.—In a case in which the determination under section 1406 or 1407 of this title of the retired pay base applicable to the computation of the retired pay of a covered general or flag officer involves a rate of basic pay payable to that officer for any period that was subject to a reduction under section 203(a)(2) of title 37 for such period, such retired-pay-base determination shall be made using the rate of basic pay for such period provided by law, rather than such rate as so reduced.

(b) COVERED GENERAL AND FLAG OFFICERS.—In this section, the term ''covered general or flag officer'' means a member or former member who after September 30, 2006, is retired in a general officer grade or flag officer grade.

(Added Pub. L. 109–364, div. A, title VI, § 641(a), Oct. 17, 2006, 120 Stat. 2258.)

§ 1408. Payment of retired or retainer pay in compliance with court orders

(a) DEFINITIONS.—In this section:

(1) The term ''court'' means—

(A) any court of competent jurisdiction of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands;

(B) any court of the United States (as defined in section 451 of title 28) having competent jurisdiction;

(C) any court of competent jurisdiction of a foreign country with which the United States has an agreement requiring the United States to honor any court order of such country; and

(D) any administrative or judicial tribunal of a State competent to enter orders for support or maintenance (including a State agency administering a program under a State plan approved under part D of title IV of the Social Security Act), and, for purposes of this subparagraph, the term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(2) The term ''court order'' means a final decree of divorce, dissolution, annulment, or legal separation issued by a court, or a court ordered, ratified, or approved property settlement incident to such a decree (including a final decree modifying the terms of a previously issued decree of divorce, dissolution, annulment, or legal separation, or a court ordered, ratified, or approved property settlement incident to such previously issued decree), or a support order, as defined in section 453(p) of the Social Security Act (42 U.S.C. 653(p)), which—

(A) is issued in accordance with the laws of the jurisdiction of that court;

(B) provides for—

(i) payment of child support (as defined in section 459(i)(2) of the Social Security Act (42 U.S.C. 659(i)(2)));

(ii) payment of alimony (as defined in section 459(i)(3) of the Social Security Act (42 U.S.C. 659(i)(3))); or

(iii) division of property (including a division of community property); and

(C) in the case of a division of property, specifically provides for the payment of an amount, expressed in dollars or as a percentage of disposable retired pay, from the disposable retired pay of a member to the spouse or former spouse of that member.

(3) The term ''final decree'' means a decree from which no appeal may be taken or from which no appeal has been taken within the time allowed for taking such appeals under the laws applicable to such appeals, or a decree from which timely appeal has been taken and such appeal has been finally decided under the laws applicable to such appeals.

(4) The term ''disposable retired pay'' means the total monthly retired pay to which a member is entitled less amounts which—

(A) are owed by that member to the United States for previous overpayments of retired pay and for recoupments required by law resulting from entitlement to retired pay;

(B) are deducted from the retired pay of such member as a result of forfeitures of retired pay ordered by a court-martial or as a result of a waiver of retired pay required by law in order to receive compensation under title 5 or title 38;

(C) in the case of a member entitled to retired pay under chapter 61 of this title, are equal to the amount of retired pay of the member under that chapter computed using the percentage of the member's disability on the date when the member was retired (or the date on which the member's name was placed on the temporary disability retired list); or

(D) are deducted because of an election under chapter 73 of this title to provide an annuity to a spouse or former spouse to whom payment of a portion of such member's retired pay is being made pursuant to a court order under this section.

(5) The term ''member'' includes a former member entitled to retired pay under section 12731 of this title.

(6) The term ''spouse or former spouse'' means the husband or wife, or former husband or wife, respectively, of a member who, on or before the date of a court order, was married to that member.

(7) The term ''retired pay'' includes retainer pay.

(b) EFFECTIVE SERVICE OF PROCESS.—For the purposes of this section—

(1) service of a court order is effective if—

(A) an appropriate agent of the Secretary concerned designated for receipt of service of court orders under regulations prescribed pursuant to subsection (i) or, if no agent has been so designated, the Secretary concerned, is personally served or is served by facsimile or electronic transmission or by mail;

(B) the court order is regular on its face;

(C) the court order or other documents served with the court order identify the member concerned and include, if possible, the social security number of such member; and

(D) the court order or other documents served with the court order certify that the rights of the member under the Servicemembers Civil Relief Act (50 U.S.C. App. 501 et seq.) were observed; and

(2) a court order is regular on its face if the order—

(A) is issued by a court of competent jurisdiction;

(B) is legal in form; and

(C) includes nothing on its face that provides reasonable notice that it is issued without authority of law.

(c) AUTHORITY FOR COURT TO TREAT RETIRED PAY AS PROPERTY OF THE MEMBER AND SPOUSE.—(1) Subject to the limitations of this section, a court may treat disposable retired pay payable to a member for pay periods beginning after June 25, 1981, either as property solely of the member or as property of the member and his spouse in accordance with the law of the jurisdiction of such court. A court may not treat retired pay as property in any proceeding to divide or partition any amount of retired pay of a member as the property of the member and the member's spouse or former spouse if a final decree of divorce, dissolution, annulment, or legal separation (including a court ordered, ratified, or approved property settlement incident to such decree) affecting the member and the member's spouse or former spouse (A) was issued before June 25, 1981, and (B) did not treat (or reserve jurisdiction to treat) any amount of retired pay of the member as property of the member and the member's spouse or former spouse.

(2) Notwithstanding any other provision of law, this section does not create any right, title, or interest which can be sold, assigned, transferred, or otherwise disposed of (including by inheritance) by a spouse or former spouse. Payments by the Secretary concerned under subsection (d) to a spouse or former spouse with respect to a division of retired pay as the property of a member and the member's spouse under this subsection may not be treated as amounts received as retired pay for service in the uniformed services.

(3) This section does not authorize any court to order a member to apply for retirement or retire at a particular time in order to effectuate any payment under this section.

(4) A court may not treat the disposable retired pay of a member in the manner described in paragraph (1) unless the court has jurisdiction over the member by reason of (A) his residence, other than because of military assignment, in the territorial jurisdiction of the court, (B) his domicile in the territorial jurisdiction of the court, or (C) his consent to the jurisdiction of the court.

(d) PAYMENTS BY SECRETARY CONCERNED TO (OR FOR BENEFIT OF) SPOUSE OR FORMER SPOUSE.—(1) After effective service on the Secretary concerned of a court order providing for the payment of child support or alimony or, with respect to a division of property, specifically providing for the payment of an amount of the disposable retired pay from a member to the spouse or a former spouse of the member, the Secretary shall make payments (subject to the limitations of this section) from the disposable retired pay of the member to the spouse or former spouse (or for the benefit of such spouse or former spouse to a State disbursement unit established pursuant to section 454B of the Social Security Act or other public payee designated by a State, in accordance with part D of title IV of the Social Security Act, as directed by court order, or as otherwise directed in accordance with such part D) in an amount sufficient to satisfy the

amount of child support and alimony set forth in the court order and, with respect to a division of property, in the amount of disposable retired pay specifically provided for in the court order. In the case of a spouse or former spouse who, pursuant to section 408(a)(3) of the Social Security Act (42 U.S.C. 608(a)(4)),[1] assigns to a State the rights of the spouse or former spouse to receive support, the Secretary concerned may make the child support payments referred to in the preceding sentence to that State in amounts consistent with that assignment of rights. In the case of a member entitled to receive retired pay on the date of the effective service of the court order, such payments shall begin not later than 90 days after the date of effective service. In the case of a member not entitled to receive retired pay on the date of the effective service of the court order, such payments shall begin not later than 90 days after the date on which the member first becomes entitled to receive retired pay.

(2) If the spouse or former spouse to whom payments are to be made under this section was not married to the member for a period of 10 years or more during which the member performed at least 10 years of service creditable in determining the member's eligibility for retired pay, payments may not be made under this section to the extent that they include an amount resulting from the treatment by the court under subsection (c) of disposable retired pay of the member as property of the member or property of the member and his spouse.

(3) Payments under this section shall not be made more frequently than once each month, and the Secretary concerned shall not be required to vary normal pay and disbursement cycles for retired pay in order to comply with a court order.

(4) Payments from the disposable retired pay of a member pursuant to this section shall terminate in accordance with the terms of the applicable court order, but not later than the date of the death of the member or the date of the death of the spouse or former spouse to whom payments are being made, whichever occurs first.

(5) If a court order described in paragraph (1) provides for a division of property (including a division of community property) in addition to an amount of child support or alimony or the payment of an amount of disposable retired pay as the result of the court's treatment of such pay under subsection (c) as property of the member and his spouse, the Secretary concerned shall pay (subject to the limitations of this section) from the disposable retired pay of the member to the spouse or former spouse of the member, any part of the amount payable to the spouse or former spouse under the division of property upon effective service of a final court order of garnishment of such amount from such retired pay.

(6) In the case of a court order for which effective service is made on the Secretary concerned on or after August 22, 1996, and which provides for payments from the disposable retired pay of a member to satisfy the amount of child support set forth in the order, the authority provided in paragraph (1) to make payments from the disposable retired pay of a member to satisfy the amount of child support set forth in a court order shall apply to payment of any amount of child support arrearages set forth in that order as well as to amounts of child support that currently become due.

(7)(A) The Secretary concerned may not accept service of a court order that is an out-of-State modification, or comply with the provisions of such a court order, unless the court issuing that order has jurisdiction in the manner specified in subsection (c)(4) over both the member and the spouse or former spouse involved.

(B) A court order shall be considered to be an out-of-State modification for purposes of this paragraph if the order—

(i) modifies a previous court order under this section upon which payments under this subsection are based; and

(ii) is issued by a court of a State other than the State of the court that issued the previous court order.

(e) LIMITATIONS.—(1) The total amount of the disposable retired pay of a member payable under all court orders pursuant to subsection (c) may not exceed 50 percent of such disposable retired pay.

(2) In the event of effective service of more than one court order which provide for payment to a spouse and one or more former spouses or to more than one former spouse, the disposable retired pay of the member shall be used to satisfy (subject to the limitations of paragraph (1)) such court orders on a first-come, first-served basis. Such court orders shall be satisfied (subject to the limitations of paragraph (1)) out of that amount of disposable retired pay which remains after the satisfaction of all court orders which have been previously served.

(3)(A) In the event of effective service of conflicting court orders under this section which assert to direct that different amounts be paid during a month to the same spouse or former spouse of the same member, the Secretary concerned shall—

(i) pay to that spouse from the member's disposable retired pay the least amount directed to be paid during that month by any such conflicting court order, but not more than the amount of disposable retired pay which remains available for payment of such court orders based on when such court orders were effectively served and the limitations of paragraph (1) and subparagraph (B) of paragraph (4);

(ii) retain an amount of disposable retired pay that is equal to the lesser of—

(I) the difference between the largest amount required by any conflicting court order to be paid to the spouse or former spouse and the amount payable to the spouse or former spouse under clause (i); and

(II) the amount of disposable retired pay which remains available for payment of any conflicting court order based on when such court order was effectively served and the limitations of paragraph (1) and subparagraph (B) of paragraph (4); and

(iii) pay to that member the amount which is equal to the amount of that member's dis-

[1] See References in Text note below.

posable retired pay (less any amount paid during such month pursuant to legal process served under section 459 of the Social Security Act (42 U.S.C. 659) and any amount paid during such month pursuant to court orders effectively served under this section, other than such conflicting court orders) minus—

(I) the amount of disposable retired pay paid under clause (i); and

(II) the amount of disposable retired pay retained under clause (ii).

(B) The Secretary concerned shall hold the amount retained under clause (ii) of subparagraph (A) until such time as that Secretary is provided with a court order which has been certified by the member and the spouse or former spouse to be valid and applicable to the retained amount. Upon being provided with such an order, the Secretary shall pay the retained amount in accordance with the order.

(4)(A) In the event of effective service of a court order under this section and the service of legal process pursuant to section 459 of the Social Security Act (42 U.S.C. 659), both of which provide for payments during a month from the same member, satisfaction of such court orders and legal process from the retired pay of the member shall be on a first-come, first-served basis. Such court orders and legal process shall be satisfied out of moneys which are subject to such orders and legal process and which remain available in accordance with the limitations of paragraph (1) and subparagraph (B) of this paragraph during such month after the satisfaction of all court orders or legal process which have been previously served.

(B) Notwithstanding any other provision of law, the total amount of the disposable retired pay of a member payable by the Secretary concerned under all court orders pursuant to this section and all legal processes pursuant to section 459 of the Social Security Act (42 U.S.C. 659) with respect to a member may not exceed 65 percent of the amount of the retired pay payable to such member that is considered under section 462 of the Social Security Act (42 U.S.C. 662) to be remuneration for employment that is payable by the United States.

(5) A court order which itself or because of previously served court orders provides for the payment of an amount which exceeds the amount of disposable retired pay available for payment because of the limit set forth in paragraph (1), or which, because of previously served court orders or legal process previously served under section 459 of the Social Security Act (42 U.S.C. 659), provides for payment of an amount that exceeds the maximum amount permitted under paragraph (1) or subparagraph (B) of paragraph (4), shall not be considered to be irregular on its face solely for that reason. However, such order shall be considered to be fully satisfied for purposes of this section by the payment to the spouse or former spouse of the maximum amount of disposable retired pay permitted under paragraph (1) and subparagraph (B) of paragraph (4).

(6) Nothing in this section shall be construed to relieve a member of liability for the payment of alimony, child support, or other payments required by a court order on the grounds that payments made out of disposable retired pay under this section have been made in the maximum amount permitted under paragraph (1) or subparagraph (B) of paragraph (4). Any such unsatisfied obligation of a member may be enforced by any means available under law other than the means provided under this section in any case in which the maximum amount permitted under paragraph (1) has been paid and under section 459 of the Social Security Act (42 U.S.C. 659) in any case in which the maximum amount permitted under subparagraph (B) of paragraph (4) has been paid.

(f) IMMUNITY OF OFFICERS AND EMPLOYEES OF UNITED STATES.—(1) The United States and any officer or employee of the United States shall not be liable with respect to any payment made from retired pay to any member, spouse, or former spouse pursuant to a court order that is regular on its face if such payment is made in accordance with this section and the regulations prescribed pursuant to subsection (i).

(2) An officer or employee of the United States who, under regulations prescribed pursuant to subsection (i), has the duty to respond to interrogatories shall not be subject under any law to any disciplinary action or civil or criminal liability or penalty for, or because of, any disclosure of information made by him in carrying out any of his duties which directly or indirectly pertain to answering such interrogatories.

(g) NOTICE TO MEMBER OF SERVICE OF COURT ORDER ON SECRETARY CONCERNED.—A person receiving effective service of a court order under this section shall, as soon as possible, but not later than 30 days after the date on which effective service is made, send a written notice of such court order (together with a copy of such order) to the member affected by the court order at his last known address.

(h) BENEFITS FOR DEPENDENTS WHO ARE VICTIMS OF ABUSE BY MEMBERS LOSING RIGHT TO RETIRED PAY.—(1)(A) If, in the case of a member or former member of the armed forces referred to in paragraph (2)(A), a court order provides (in the manner applicable to a division of property) for the payment of an amount from the disposable retired pay of that member or former member (as certified under paragraph (4)) to an eligible spouse or former spouse of that member or former member, the Secretary concerned, beginning upon effective service of such court order, shall pay that amount in accordance with this subsection to such spouse or former spouse.

(B) If, in the case of a member or former member of the armed forces referred to in paragraph (2)(A), a court order provides for the payment as child support of an amount from the disposable retired pay of that member or former member (as certified under paragraph (4)) to an eligible dependent child of the member or former member, the Secretary concerned, beginning upon effective service of such court order, shall pay that amount in accordance with this subsection to such dependent child.

(2) A spouse or former spouse, or a dependent child, of a member or former member of the armed forces is eligible to receive payment under this subsection if—

(A) the member or former member, while a member of the armed forces and after becom-

ing eligible to be retired from the armed forces on the basis of years of service, has eligibility to receive retired pay terminated as a result of misconduct while a member involving abuse of a spouse or dependent child (as defined in regulations prescribed by the Secretary of Defense or, for the Coast Guard when it is not operating as a service in the Navy, by the Secretary of Homeland Security);

(B) in the case of eligibility of a spouse or former spouse under paragraph (1)(A), the spouse or former spouse—

(i) was the victim of the abuse and was married to the member or former member at the time of that abuse; or

(ii) is a natural or adopted parent of a dependent child of the member or former member who was the victim of the abuse; and

(C) in the case of eligibility of a dependent child under paragraph (1)(B), the other parent of the child died as a result of the misconduct that resulted in the termination of retired pay.

(3) The amount certified by the Secretary concerned under paragraph (4) with respect to a member or former member of the armed forces referred to in paragraph (2)(A) shall be deemed to be the disposable retired pay of that member or former member for the purposes of this subsection.

(4) Upon the request of a court or an eligible spouse or former spouse, or an eligible dependent child, of a member or former member of the armed forces referred to in paragraph (2)(A) in connection with a civil action for the issuance of a court order in the case of that member or former member, the Secretary concerned shall determine and certify the amount of the monthly retired pay that the member or former member would have been entitled to receive as of the date of the certification—

(A) if the member or former member's eligibility for retired pay had not been terminated as described in paragraph (2)(A); and

(B) if, in the case of a member or former member not in receipt of retired pay immediately before that termination of eligibility for retired pay, the member or former member had retired on the effective date of that termination of eligibility.

(5) A court order under this subsection may provide that whenever retired pay is increased under section 1401a of this title (or any other provision of law), the amount payable under the court order to the spouse or former spouse, or the dependent child, of a member or former member described in paragraph (2)(A) shall be increased at the same time by the percent by which the retired pay of the member or former member would have been increased if the member or former member were receiving retired pay.

(6) Notwithstanding any other provision of law, a member or former member of the armed forces referred to in paragraph (2)(A) shall have no ownership interest in, or claim against, any amount payable under this section to a spouse or former spouse, or to a dependent child, of the member or former member.

(7)(A) If a former spouse receiving payments under this subsection with respect to a member or former member referred to in paragraph (2)(A) marries again after such payments begin, the eligibility of the former spouse to receive further payments under this subsection shall terminate on the date of such marriage.

(B) A person's eligibility to receive payments under this subsection that is terminated under subparagraph (A) by reason of remarriage shall be resumed in the event of the termination of that marriage by the death of that person's spouse or by annulment or divorce. The resumption of payments shall begin as of the first day of the month in which that marriage is so terminated. The monthly amount of the payments shall be the amount that would have been paid if the continuity of the payments had not been interrupted by the marriage.

(8) Payments in accordance with this subsection shall be made out of funds in the Department of Defense Military Retirement Fund established by section 1461 of this title or, in the case of the Coast Guard, out of funds appropriated to the Department of Homeland Security for payment of retired pay for the Coast Guard.

(9)(A) A spouse or former spouse of a member or former member of the armed forces referred to in paragraph (2)(A), while receiving payments in accordance with this subsection, shall be entitled to receive medical and dental care, to use commissary and exchange stores, and to receive any other benefit that a spouse or a former spouse of a retired member of the armed forces is entitled to receive on the basis of being a spouse or former spouse, as the case may be, of a retired member of the armed forces in the same manner as if the member or former member referred to in paragraph (2)(A) was entitled to retired pay.

(B) A dependent child of a member or former member referred to in paragraph (2)(A) who was a member of the household of the member or former member at the time of the misconduct described in paragraph (2)(A) shall be entitled to receive medical and dental care, to use commissary and exchange stores, and to have other benefits provided to dependents of retired members of the armed forces in the same manner as if the member or former member referred to in paragraph (2)(A) was entitled to retired pay.

(C) If a spouse or former spouse or a dependent child eligible or entitled to receive a particular benefit under this paragraph is eligible or entitled to receive that benefit under another provision of law, the eligibility or entitlement of that spouse or former spouse or dependent child to such benefit shall be determined under such other provision of law instead of this paragraph.

(10)(A) For purposes of this subsection, in the case of a member of the armed forces who has been sentenced by a court-martial to receive a punishment that will terminate the eligibility of that member to receive retired pay if executed, the eligibility of that member to receive retired pay may, as determined by the Secretary concerned, be considered terminated effective upon the approval of that sentence by the person acting under section 860(c) of this title (article 60(c) of the Uniform Code of Military Justice).

(B) If each form of the punishment that would result in the termination of eligibility to re-

ceive retired pay is later remitted, set aside, or mitigated to a punishment that does not result in the termination of that eligibility, a payment of benefits to the eligible recipient under this subsection that is based on the punishment so vacated, set aside, or mitigated shall cease. The cessation of payments shall be effective as of the first day of the first month following the month in which the Secretary concerned notifies the recipient of such benefits in writing that payment of the benefits will cease. The recipient may not be required to repay the benefits received before that effective date (except to the extent necessary to recoup any amount that was erroneous when paid).

(11) In this subsection, the term ''dependent child'', with respect to a member or former member of the armed forces referred to in paragraph (2)(A), means an unmarried legitimate child, including an adopted child or a stepchild of the member or former member, who—

(A) is under 18 years of age;

(B) is incapable of self-support because of a mental or physical incapacity that existed before becoming 18 years of age and is dependent on the member or former member for over one-half of the child's support; or

(C) if enrolled in a full-time course of study in an institution of higher education recognized by the Secretary of Defense for the purposes of this subparagraph, is under 23 years of age and is dependent on the member or former member for over one-half of the child's support.

(i) CERTIFICATION DATE.—It is not necessary that the date of a certification of the authenticity or completeness of a copy of a court order for child support received by the Secretary concerned for the purposes of this section be recent in relation to the date of receipt by the Secretary.

(j) REGULATIONS.—The Secretaries concerned shall prescribe uniform regulations for the administration of this section.

(k) RELATIONSHIP TO OTHER LAWS.—In any case involving an order providing for payment of child support (as defined in section 459(i)(2) of the Social Security Act) by a member who has never been married to the other parent of the child, the provisions of this section shall not apply, and the case shall be subject to the provisions of section 459 of such Act.

(Added Pub. L. 97–252, title X, §1002(a), Sept. 8, 1982, 96 Stat. 730; amended Pub. L. 98–525, title VI, §643(a)–(d), Oct. 19, 1984, 98 Stat. 2547; Pub. L. 99–661, div. A, title VI, §644(a), Nov. 14, 1986, 100 Stat. 3887; Pub. L. 100–26, §§3(3), 7(h)(1), Apr. 21, 1987, 101 Stat. 273, 282; Pub. L. 101–189, div. A, title VI, §653(a)(5), title XVI, §1622(e)(6), Nov. 29, 1989, 103 Stat. 1462, 1605; Pub. L. 101–510, div. A, title V, §555(a)–(d), (f), (g), Nov. 5, 1990, 104 Stat. 1569, 1570; Pub. L. 102–190, div. A, title X, §1061(a)(7), Dec. 5, 1991, 105 Stat. 1472; Pub. L. 102–484, div. A, title VI, §653(a), Oct. 23, 1992, 106 Stat. 2426; Pub. L. 103–160, div. A, title V, §555(a), (b), title XI, §1182(a)(2), Nov. 30, 1993, 107 Stat. 1666, 1771; Pub. L. 104–106, div. A, title XV, §1501(c)(16), Feb. 10, 1996, 110 Stat. 499; Pub. L. 104–193, title III, §§362(c), 363(c)(1)–(3), Aug. 22, 1996, 110 Stat. 2246, 2249; Pub. L. 104–201, div. A, title VI, §636, Sept. 23, 1996, 110 Stat. 2579; Pub. L. 105–85, div. A, title X, §1073(a)(24), (25), Nov. 18, 1997, 111 Stat. 1901; Pub. L. 107–107, div. A, title X, §1048(c)(9), Dec. 28, 2001, 115 Stat. 1226; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 108–189, §2(c), Dec. 19, 2003, 117 Stat. 2866; Pub. L. 109–163, div. A, title VI, §665(a), Jan. 6, 2006, 119 Stat. 3317; Pub. L. 111–84, div. A, title X, §1073(a)(15), Oct. 28, 2009, 123 Stat. 2473.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a)(1)(D) and (d)(1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Part D of title IV of the Act is classified generally to part D (§651 et seq.) of subchapter IV of chapter 7 of Title 42, The Public Health and Welfare. Section 454B of the Act is classified to section 654b of Title 42. Section 408(a)(3) of the Act is classified to section 608(a)(3) of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Servicemembers Civil Relief Act, referred to in subsec. (b)(1)(D), is act Oct. 17, 1940, ch. 888, 54 Stat. 1178, as amended, which is classified to section 501 et seq. of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see section 501 of Title 50, Appendix and Tables.

AMENDMENTS

2009—Subsec. (h)(2)(A). Pub. L. 111–84 struck out ''and'' at end.

2006—Subsec. (h)(1). Pub. L. 109–163, §665(a)(1), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (h)(2). Pub. L. 109–163, §665(a)(2)(A), inserted '', or a dependent child,'' after ''former spouse'' in introductory provisions.

Subsec. (h)(2)(B). Pub. L. 109–163, §665(a)(2)(B)(i), inserted ''in the case of eligibility of a spouse or former spouse under paragraph (1)(A),'' after ''(B)''.

Subsec. (h)(2)(C). Pub. L. 109–163, §665(a)(2)(B)(ii), (C), added subpar. (C).

Subsec. (h)(4). Pub. L. 109–163, §665(a)(3), inserted '', or an eligible dependent child,'' after ''former spouse'' in introductory provisions.

Subsec. (h)(5). Pub. L. 109–163, §665(a)(4), inserted '', or the dependent child,'' after ''former spouse''.

Subsec. (h)(6). Pub. L. 109–163, §665(a)(5), inserted '', or to a dependent child,'' after ''former spouse''.

2003—Subsec. (b)(1)(D). Pub. L. 108–189 substituted ''Servicemembers Civil Relief Act'' for ''Soldiers' and Sailors' Civil Relief Act of 1940''.

2002—Subsec. (h)(2)(A), (8). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

2001—Subsec. (d)(6). Pub. L. 107–107 substituted ''August 22, 1996,'' for ''the date of the enactment of this paragraph''.

1997—Subsec. (d). Pub. L. 105–85, §1073(a)(24)(A), substituted ''to'' for ''To'' in heading.

Subsec. (d)(6). Pub. L. 105–85, §1073(a)(24)(B), redesignated par. (6), relating to court order which is out-of-State modification, as (7).

Subsec. (d)(7). Pub. L. 105–85, §1073(a)(24)(B), redesignated par. (6), relating to court order which is out-of-State modification, as (7).

Subsec. (d)(7)(A). Pub. L. 105–85, §1073(a)(24)(C), substituted ''out-of-State'' for ''out-of State''.

Subsec. (g). Pub. L. 105–85, §1073(a)(25), in heading, substituted ''to'' for ''To'' and ''on'' for ''On''.

1996—Subsec. (a)(1)(D). Pub. L. 104–193, §362(c)(1), added subpar. (D).

Subsec. (a)(2). Pub. L. 104–193, §362(c)(2)(A), inserted ''or a support order, as defined in section 453(p) of the Social Security Act (42 U.S.C. 653(p)),'' before ''which—''.

Subsec. (a)(2)(B)(i). Pub. L. 104–193, §362(c)(2)(B), substituted ''(as defined in section 459(i)(2) of the Social Security Act (42 U.S.C. 659(i)(2)))'' for ''(as defined in

section 462(b) of the Social Security Act (42 U.S.C. 662(b)))''.

Subsec. (a)(2)(B)(ii). Pub. L. 104–193, § 362(c)(2)(C), substituted ''(as defined in section 459(i)(3) of the Social Security Act (42 U.S.C. 659(i)(3)))'' for ''(as defined in section 462(c) of the Social Security Act (42 U.S.C. 662(c)))''.

Subsec. (a)(5). Pub. L. 104–106 substituted ''section 12731'' for ''section 1331''.

Subsec. (b)(1)(A). Pub. L. 104–201, § 636(a), substituted ''facsimile or electronic transmission or by mail'' for ''certified or registered mail, return receipt requested''.

Subsec. (d). Pub. L. 104–193, § 362(c)(3)(A), inserted ''(or for benefit of)'' before ''Spouse or'' in heading.

Subsec. (d)(1). Pub. L. 104–193, § 363(c)(2), inserted after first sentence ''In the case of a spouse or former spouse who, pursuant to section 408(a)(3) of the Social Security Act (42 U.S.C. 608(a)(4)), assigns to a State the rights of the spouse or former spouse to receive support, the Secretary concerned may make the child support payments referred to in the preceding sentence to that State in amounts consistent with that assignment of rights.''

Pub. L. 104–193, § 362(c)(3)(B), in first sentence, inserted ''(or for the benefit of such spouse or former spouse to a State disbursement unit established pursuant to section 454B of the Social Security Act or other public payee designated by a State, in accordance with part D of title IV of the Social Security Act, as directed by court order, or as otherwise directed in accordance with such part D)'' before ''in an amount sufficient''.

Subsec. (d)(6). Pub. L. 104–201, § 636(b), added par. (6) relating to court order which is out-of-State modification.

Pub. L. 104–193, § 363(c)(3), added par. (6) relating to use of disposable retired pay of member to satisfy amount of child support set forth in court order.

Subsec. (i). Pub. L. 104–193, § 363(c)(1), added subsec. (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 104–193, § 363(c)(1), redesignated subsec. (j) as (k).

Pub. L. 104–193, § 362(c)(4), added subsec. (j).

Subsec. (k). Pub. L. 104–193, § 363(c)(1), redesignated subsec. (j) as (k).

1993—Subsecs. (b)(1)(A), (f)(1), (2). Pub. L. 103–160, § 1182(a)(2)(A), substituted ''subsection (i)'' for ''subsection (h)''.

Subsec. (h)(2)(A). Pub. L. 103–160, § 555(b)(1), inserted ''or, for the Coast Guard when it is not operating as a service in the Navy, by the Secretary of Transportation'' after ''Secretary of Defense''.

Subsec. (h)(4)(B). Pub. L. 103–160, § 1182(a)(2)(B), inserted ''of'' after ''of that termination''.

Subsec. (h)(8). Pub. L. 103–160, § 555(b)(2), inserted before period at end ''or, in the case of the Coast Guard, out of funds appropriated to the Department of Transportation for payment of retired pay for the Coast Guard''.

Subsec. (h)(10), (11). Pub. L. 103–160, § 555(a), added par. (10) and redesignated former par. (10) as (11).

1992—Subsecs. (h), (i). Pub. L. 102–484 added subsec. (h) and redesignated former subsec. (h) as (i).

1991—Pub. L. 102–190 inserted ''or retainer'' after ''retired'' in section catchline.

1990—Pub. L. 101–510, § 555(f)(2), substituted ''retired pay'' for ''retired or retainer pay'' in section catchline.

Subsec. (a). Pub. L. 101–510, § 555(g)(1), inserted heading.

Subsec. (a)(2)(C). Pub. L. 101–510, § 555(f)(2), substituted ''retired pay'' for ''retired or retainer pay'' wherever appearing.

Subsec. (a)(4). Pub. L. 101–510, § 555(f)(2), substituted ''retired pay'' for ''retired or retainer pay'' wherever appearing in introductory provisions and in subpar. (D).

Subsec. (a)(4)(A). Pub. L. 101–510, § 555(b)(1), inserted before semicolon at end ''for previous overpayments of retired pay and for recoupments required by law resulting from entitlement to retired pay''.

Subsec. (a)(4)(B). Pub. L. 101–510, § 555(b)(2), added subpar. (B) and struck out former subpar. (B) which read as follows: ''are required by law to be and are deducted from the retired or retainer pay of such member, including fines and forfeitures ordered by courts-martial, Federal employment taxes, and amounts waived in order to receive compensation under title 5 or title 38;''.

Subsec. (a)(4)(C) to (F). Pub. L. 101–510, § 555(b)(3), (4), redesignated subpars. (E) and (F) as (C) and (D), respectively, and struck out former subpars. (C) and (D) which read as follows:

''(C) are properly withheld for Federal, State, or local income tax purposes, if the withholding of such amounts is authorized or required by law and to the extent such amounts withheld are not greater than would be authorized if such member claimed all dependents to which he was entitled;

''(D) are withheld under section 3402(i) of the Internal Revenue Code of 1986 if such member presents evidence of a tax obligation which supports such withholding;''.

Subsec. (a)(7). Pub. L. 101–510, § 555(f)(1), added par. (7).

Subsec. (b). Pub. L. 101–510, § 555(g)(2), inserted heading.

Subsec. (c). Pub. L. 101–510, § 555(g)(3), inserted heading.

Subsec. (c)(1). Pub. L. 101–510, § 555(f)(2), substituted ''retired pay'' for ''retired or retainer pay''.

Pub. L. 101–510, § 555(a), inserted at end ''A court may not treat retired pay as property in any proceeding to divide or partition any amount of retired pay of a member as the property of the member and the member's spouse or former spouse if a final decree of divorce, dissolution, annulment, or legal separation (including a court ordered, ratified, or approved property settlement incident to such decree) affecting the member and the member's spouse or former spouse (A) was issued before June 25, 1981, and (B) did not treat (or reserve jurisdiction to treat) any amount of retired pay of the member as property of the member and the member's spouse or former spouse.''

Subsec. (c)(2). Pub. L. 101–510, § 555(c), inserted at end ''Payments by the Secretary concerned under subsection (d) to a spouse or former spouse with respect to a division of retired pay as the property of a member and the member's spouse under this subsection may not be treated as amounts received as retired pay for service in the uniformed services.''

Subsec. (c)(4). Pub. L. 101–510, § 555(f)(2), substituted ''retired pay'' for ''retired or retainer pay''.

Subsec. (d). Pub. L. 101–510, § 555(g)(4), inserted heading.

Pub. L. 101–510, § 555(f)(2), substituted ''retired pay'' for ''retired or retainer pay'' wherever appearing.

Subsec. (e). Pub. L. 101–510, § 555(g)(5), inserted heading.

Pub. L. 101–510, § 555(f)(2), substituted ''retired pay'' for ''retired or retainer pay'' wherever appearing.

Subsec. (e)(1). Pub. L. 101–510, § 555(d)(1), substituted ''payable under all court orders pursuant to subsection (c)'' for ''payable under subsection (d)''.

Subsec. (e)(4)(B). Pub. L. 101–510, § 555(d)(2), substituted ''the amount of the retired pay payable to such member that is considered under section 462 of the Social Security Act (42 U.S.C. 662) to be remuneration for employment that is payable by the United States'' for ''the disposable retired or retainer pay payable to such member''.

Subsec. (f). Pub. L. 101–510, § 555(g)(6), inserted heading.

Subsec. (f)(1). Pub. L. 101–510, § 555(f)(2), substituted ''retired pay'' for ''retired or retainer pay''.

Subsec. (g). Pub. L. 101–510, § 555(g)(7), inserted heading.

Subsec. (h). Pub. L. 101–510, § 555(g)(8), inserted heading.

1989—Subsec. (a)(1), (2). Pub. L. 101–189, § 1622(e)(6), substituted ''The term 'court'' for '' 'Court'' in introductory provisions.

Subsec. (a)(3). Pub. L. 101–189, § 1622(e)(6), substituted ''The term 'final'' for '' 'Final''.

Subsec. (a)(4). Pub. L. 101–189, §1622(e)(6), substituted ''The term 'disposable'' for '' 'Disposable'' in introductory provisions.

Subsec. (a)(4)(D). Pub. L. 101–189, §653(a)(5)(A), struck out ''(26 U.S.C. 3402(i))'' after ''Code of 1986''.

Subsec. (a)(5). Pub. L. 101–189, §§653(a)(5)(B), 1622(e)(6), substituted ''The term 'member'' for '' 'Member'' and inserted ''entitled to retired pay under section 1331 of this title'' after ''a former member''.

Subsec. (a)(6). Pub. L. 101–189, §1622(e)(6), substituted ''The term 'spouse'' for '' 'Spouse''.

1987—Subsec. (a)(4). Pub. L. 100–26, §3(3), made technical amendment to directory language of Pub. L. 99–661, §644(a). See 1986 Amendment note below.

Subsec. (a)(4)(D). Pub. L. 100–26, §7(h)(1), substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

1986—Subsec. (a)(4). Pub. L. 99–661, §644(a), as amended by Pub. L. 100–26, §3(3), struck out ''(other than the retired pay of a member retired for disability under chapter 61 of this title)'' before ''less amounts'' in introductory text, added subpar. (E), and struck out former subpar. (E) which read as follows: ''are deducted as Government life insurance premiums (not including amounts deducted for supplemental coverage); or''.

1984—Subsec. (a)(2)(C). Pub. L. 98–525, §643(a), inserted ''in the case of a division of property,''.

Subsec. (b)(1)(C). Pub. L. 98–525, §643(b), inserted '', if possible,''.

Subsec. (d)(1). Pub. L. 98–525, §643(c)(1), substituted ''After effective service on the Secretary concerned of a court order providing for the payment of child support or alimony or, with respect to a division of property, specifically providing for the payment of an amount of the disposable retired or retainer pay from a member to the spouse or a former spouse of the member, the Secretary shall make payments (subject to the limitations of this section) from the disposable retired or retainer pay of the member to the spouse or former spouse in an amount sufficient to satisfy the amount of child support and alimony set forth in the court order and, with respect to a division of property, in the amount of disposable retired or retainer pay specifically provided for in the court order'' for ''After effective service on the Secretary concerned of a court order with respect to the payment of a portion of the retired or retainer pay of a member to the spouse or a former spouse of the member, the Secretary shall, subject to the limitations of this section, make payments to the spouse or former spouse in the amount of the disposable retired or retainer pay of the member specifically provided for in the court order''.

Subsec. (d)(5). Pub. L. 98–525, §643(c)(2), substituted ''child support or alimony or the payment of an amount of disposable retired or retainer pay as the result of the court's treatment of such pay under subsection (c) as property of the member and his spouse, the Secretary concerned shall pay (subject to the limitations of this section) from the disposable retired or retainer pay of the member to the spouse or former spouse of the member, any part'' for ''disposable retired or retainer pay, the Secretary concerned shall, subject to the limitations of this section, pay to the spouse or former spouse of the member, from the disposable retired or retainer pay of the member, any part''.

Subsec. (e)(2). Pub. L. 98–525, §643(d)(1), substituted '', the disposable retired or retainer pay of the member'' for ''from the disposable retired or retainer pay of a member, such pay'' before ''shall be used to satisfy''.

Subsec. (e)(3)(A). Pub. L. 98–525, §643(d)(2)(A), struck out ''from the disposable retired or retainer pay'' before ''of the same member''.

Subsec. (e)(3)(A)(i). Pub. L. 98–525, §643(d)(2)(B), substituted ''from the member's disposable retired or retainer pay the least amount'' for ''the least amount of disposable retired or retainer pay'' before ''directed to be paid''.

Subsec. (e)(2)(A)(ii)(I). Pub. L. 98–525, §643(d)(2)(C), struck out ''of retired or retainer pay'' before ''required by any conflicting''.

Subsec. (e)(4)(A). Pub. L. 98–525, §643(d)(3), struck out ''the retired or retainer pay of'' before ''the same member'' and substituted ''satisfaction of such court orders and legal process from the retired or retainer pay of the members shall be'' for ''such court orders and legal process shall be satisfied''.

Subsec. (e)(5). Pub. L. 98–525, §643(d)(4), struck out ''of disposable retired or retainer pay'' after ''payment of an amount'' in two places and substituted ''disposable retired or retainer pay'' for ''such pay'' before ''available for payment''.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–163, div. A, title VI, §665(b), Jan. 6, 2006, 119 Stat. 3318, provided that: ''A court order authorized by the amendments made by this section [amending this section] may not provide for a payment attributable to any period before the date of the enactment of this Act [Jan. 6, 2006], or the date of the court order, whichever is later.''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by section 362(c) of Pub. L. 104–193 effective six months after Aug. 22, 1996, see section 362(d) of Pub. L. 104–193, set out as a note under section 659 of Title 42, The Public Health and Welfare.

For effective date of amendment by section 363(c)(1)–(3) of Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as a note under section 654 of Title 42.

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 1993 AMENDMENT

Section 555(c) of Pub. L. 103–160 provided that: ''The amendments made by this section [amending this section] shall take effect as of October 23, 1992, and shall apply as if the provisions of the paragraph (10) of section 1408(h) of title 10, United States Code, added by such subsection were included in the amendment made by section 653(a)(2) of Public Law 102–484 (106 Stat. 2426) [amending this section].''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 555(e) of Pub. L. 101–510, as amended by Pub. L. 102–190, div. A, title X, §1062(a)(1), Dec. 5, 1991, 105 Stat. 1475, provided that:

''(1) The amendment made by subsection (a) [amending this section] shall apply with respect to judgments issued before, on, or after the date of the enactment of this Act [Nov. 5, 1990]. In the case of a judgment issued before the date of the enactment of this Act, such amendment shall not relieve any obligation, otherwise valid, to make a payment that is due to be made before the end of the two-year period beginning on the date of the enactment of this Act.

''(2) The amendments made by subsections (b), (c), and (d) [amending this section] apply with only respect to divorces, dissolutions of marriage, annulments, and legal separations that become effective after the end of the 90-day period beginning on the date of the enactment of this Act.''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 3(3) of Pub. L. 100–26 applicable as if included in Pub. L. 99–661 when enacted on Nov. 14, 1986, see section 12(a) of Pub. L. 100–26, set out as a note under section 776 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 644(b) of Pub. L. 99–661 provided that: ''The amendments made by subsection (a) [amending this

section] shall apply with respect to court orders issued after the date of the enactment of this Act [Nov. 14, 1986].''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 643(e) of Pub. L. 98–525 provided that: ''The amendments made by this section [amending this section] shall apply with respect to court orders for which effective service (as described in section 1408(b)(1) of title 10, United States Code, as amended by subsection (b) of this section) is made on or after the date of the enactment of this Act [Oct. 19, 1984].''

EFFECTIVE DATE; TRANSITION PROVISIONS

Section 1006 of title X of Pub. L. 97–252, as amended by Pub. L. 98–94, title IX, § 941(c)(4), Sept. 24, 1983, 97 Stat. 654; Pub. L. 98–525, title VI, § 645(b), Oct. 19, 1984, 98 Stat. 2549, provided that:

''(a) The amendments made by this title [amending this section and sections 1072, 1076, 1086, 1447, 1448, and 1450 of this title and enacting provisions set out as notes under this section and section 1401 of this title] shall take effect on the first day of the first month [February 1983] which begins more than one hundred and twenty days after the date of the enactment of this title [Sept. 8, 1982].

''(b) Subsection (d) of section 1408 of title 10, United States Code, as added by section 1002(a), shall apply only with respect to payments of retired or retainer pay for periods beginning on or after the effective date of this title [Feb. 1, 1983, provided in subsec. (a)], but without regard to the date of any court order. However, in the case of a court order that became final before June 26, 1981, payments under such subsection may only be made in accordance with such order as in effect on such date and without regard to any subsequent modifications.

''(c) The amendments made by section 1003 of this title [amending sections 1447, 1448, and 1450 of this title] shall apply to persons who become eligible to participate in the Survivor Benefit Plan provided for in subchapter II of chapter 73 of title 10, United States Code [section 1447 et seq. of this title], before, on, or after the effective date of such amendments.

''(d) The amendments made by section 1004 of this title [amending sections 1072, 1076, and 1086 of this title] and the provisions of section 1005 of this title [formerly set out as a note under this section] shall apply in the case of any former spouse of a member or former member of the uniformed services whether the final decree of divorce, dissolution, or annulment of the marriage of the former spouse and such member or former member is dated before, on, or after February 1, 1983.

''(e) For the purposes of this section—

''(1) the term 'court order' has the same meaning as provided in section 1408(a)(2) of title 10, United States Code (as added by section 1002 of this title);

''(2) the term 'former spouse' has the same meaning as provided in section 1408(a)(6) of such title (as added by section 1002 of this title); and

''(3) the term 'uniformed services' has the same meaning as provided in section 1072 of title 10, United States Code.''

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

REVIEW OF FEDERAL FORMER SPOUSE PROTECTION LAWS

Pub. L. 105–85, div. A, title VI, § 643, Nov. 18, 1997, 111 Stat. 1799, directed the Secretary of Defense to carry out a comprehensive review of the protections, benefits, and treatment afforded under Federal law to members and former members of the uniformed services and former spouses of such persons and to employees and former employees of the Government and former spouses of such persons and to submit to committees of Congress a report on the results of such review not later than Sept. 30, 1999.

PAYROLL DEDUCTIONS FOR ENFORCEMENT OF CHILD SUPPORT OBLIGATIONS

Section 363(c)(4) of Pub. L. 104–193 provided that: ''The Secretary of Defense shall begin payroll deductions within 30 days after receiving notice of withholding, or for the first pay period that begins after such 30-day period.''

ACCRUAL OF PAYMENTS; PROSPECTIVE APPLICABILITY

Section 653(c) of Pub. L. 102–484 provided that: ''No payments under subsection (h) of section 1408 of title 10, United States Code (as added by subsection (a)), shall accrue for periods before the date of the enactment of this Act [Oct. 23, 1992].''

STUDY CONCERNING BENEFITS FOR DEPENDENTS WHO ARE VICTIMS OF ABUSE

Pub L. 102–484, div. A, title VI, § 653(e), Oct. 23, 1992, 106 Stat. 2429, directed the Secretary of Defense to conduct a study in order to estimate the number of persons who would become eligible to receive payments under subsec. (h) of this section during each of fiscal years 1993 through 2000 and the number of members of the Armed Forces who would be approved in each of fiscal years 1993 through 2000 for separation from the Armed Forces as a result of having abused a spouse or dependent child, and to submit to Congress a report on the results of such study not later than one year after Oct. 23, 1992.

COMMISSARY AND EXCHANGE PRIVILEGES

Section 1005 of Pub. L. 97–252, which directed Secretary of Defense to prescribe regulations to provide that an unremarried former spouse described in 10 U.S.C. 1072(2)(F)(i) is entitled to commissary and post exchange privileges to the same extent and on the same basis as the surviving spouse of a retired member of the uniformed services, was repealed and restated in section 1062 of this title by Pub. L. 100–370, § 1(c)(1), (5).

§ 1409. Retired pay multiplier

(a) RETIRED PAY MULTIPLIER FOR REGULAR-SERVICE NONDISABILITY RETIREMENT.—In computing—

(1) the retired pay of a member of a uniformed service who is entitled to that pay under any provision of law other than—

(A) chapter 61 of this title (relating to retirement or separation for physical disability); or

(B) chapter 1223 of this title (relating to retirement for non-regular service); or

(2) the retainer pay of a member who is transferred to the Fleet Reserve or the Fleet Marine Corps Reserve under section 6330 of this title,

the retired pay multiplier (or retainer pay multiplier) is the percentage determined under subsection (b).

(b) PERCENTAGE.—

(1) GENERAL RULE.—Subject to paragraphs (2) and (3), the percentage to be used under subsection (a) is the product (stated as a percentage) of—

(A) 2½, and

(B) the member's years of creditable service (as defined in subsection (c)).

(2) REDUCTION APPLICABLE TO CERTAIN NEW-RETIREMENT MEMBERS WITH LESS THAN 30 YEARS

OF SERVICE.—In the case of a member who first became a member of a uniformed service after July 31, 1986, has elected to receive a bonus under section 322 (as in effect before the enactment of the National Defense Authorization Act for Fiscal Year 2008) or section 354 of title 37, has less than 30 years of creditable service, and is under the age of 62 at the time of retirement, the percentage determined under paragraph (1) shall be reduced by—

(A) 1 percentage point for each full year that the member's years of creditable service are less than 30; and

(B) 1/12 of 1 percentage point for each month by which the member's years of creditable service (after counting all full years of such service) are less than a full year.

(3) 30 YEARS OF SERVICE.—

(A) RETIREMENT BEFORE JANUARY 1, 2007.—In the case of a member who retires before January 1, 2007, with more than 30 years of creditable service, the percentage to be used under subsection (a) is 75 percent.

(B) RETIREMENT AFTER DECEMBER 31, 2006.—In the case of a member who retires after December 31, 2006, with more than 30 years of creditable service, the percentage to be used under subsection (a) is the sum of—

(i) 75 percent; and

(ii) the product (stated as a percentage) of—

(I) 2½; and

(II) the member's years of creditable service (as defined in subsection (c)) in excess of 30 years of creditable service, under conditions authorized for purposes of this subparagraph during a period designated by the Secretary of Defense for purposes of this subparagraph.

(c) YEARS OF CREDITABLE SERVICE DEFINED.—In this section, the term ''years of creditable service'' means the number of years of service creditable to a member in computing the member's retired or retainer pay (including 1/12 of a year for each full month of service that is in addition to the number of full years of service of the member).

(Added Pub. L. 99–348, title I, § 101, July 1, 1986, 100 Stat. 683; amended Pub. L. 101–189, div. A, title VI, § 651(b)(3), Nov. 29, 1989, 103 Stat. 1460; Pub. L. 103–337, div. A, title XVI, § 1662(j)(6), Oct. 5, 1994, 108 Stat. 3005; Pub. L. 106–65, div. A, title VI, §§ 641(a), 643(b)(2), Oct. 5, 1999, 113 Stat. 662, 664; Pub. L. 109–364, div. A, title VI, § 642(a), Oct. 17, 2006, 120 Stat. 2259; Pub. L. 110–181, div. A, title VI, § 661(b)(3), Jan. 28, 2008, 122 Stat. 178.)

REFERENCES IN TEXT

Section 322 of title 37 (as in effect before the enactment of the National Defense Authorization Act for Fiscal Year 2008), referred to in subsec. (b)(2), means section 322 of title 37 as in effect before enactment of Pub. L. 110–181. Section 322 of title 37 was renumbered as section 354 of title 37 and amended by Pub. L. 110–181, div. A, title VI, § 661(b)(1), (2), Jan. 28, 2008, 122 Stat. 178.

AMENDMENTS

2008—Subsec. (b)(2). Pub. L. 110–181, in introductory provisions, substituted ''section 322 (as in effect before the enactment of the National Defense Authorization Act for Fiscal Year 2008) or section 354'' for ''section 322''.

2006—Subsec. (b)(3). Pub. L. 109–364 amended heading and text of par. (3) generally. Prior to amendment, text read as follows: ''In the case of a member with more than 30 years of creditable service, the percentage to be used under subsection (a) is 75 percent.''

1999—Subsec. (b)(2). Pub. L. 106–65 inserted ''certain'' after ''Reduction applicable to'' in heading and ''has elected to receive a bonus under section 322 of title 37,'' after ''July 31, 1986,'' in introductory provisions.

1994—Subsec. (a)(1)(B). Pub. L. 103–337 substituted ''chapter 1223'' for ''chapter 67''.

1989—Subsec. (a)(1). Pub. L. 101–189 substituted ''who is entitled to that pay'' for ''who is retired'' in introductory provisions.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–65 effective Oct. 1, 1999, see section 644 of Pub. L. 106–65, set out as a note under section 1401a of this title.

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 an Effective Date note under section 10001 of this title.

§ 1410. Restoral of full retirement amount at age 62 for certain members entering on or after August 1, 1986

In the case of a member or former member who first became a member of a uniformed service on or after August 1, 1986, who has elected to receive a bonus under section 322 (as in effect before the enactment of the National Defense Authorization Act for Fiscal Year 2008) or section 354 of title 37, and who becomes entitled to retired pay before the age of 62, the retired pay of such member or former member shall be recomputed, effective on the first day of the first month beginning after the member or former member attains 62 years of age, so as to be the amount equal to the amount of retired pay to which the member or former member would be entitled on that date if—

(1) increases in the retired pay of the member or former member under section 1401a(b) of this title had been computed as provided in paragraph (2) of that section (rather than under paragraph (3) of that section); and

(2) in the case of a member whose retired pay was subject to section 1409(b)(2) of this title, no reduction in the member's retired pay had been made under that section.

(Added Pub. L. 99–348, title I, § 103, July 1, 1986, 100 Stat. 685; amended Pub. L. 100–224, § 2, Dec. 30, 1987, 101 Stat. 1536; Pub. L. 101–189, div. A, title VI, § 651(b)(4), Nov. 29, 1989, 103 Stat. 1460; Pub. L. 106–65, div. A, title VI, §§ 641(c), 643(b)(3)(A), Oct. 5, 1999, 113 Stat. 662, 664; Pub. L. 110–181, div. A, title VI, § 661(b)(3), Jan. 28, 2008, 122 Stat. 178.)

REFERENCES IN TEXT

Section 322 of title 37 (as in effect before the enactment of the National Defense Authorization Act for Fiscal Year 2008), referred to in text, means section 322 of title 37 as in effect before enactment of Pub. L. 110–181. Section 322 of title 37 was renumbered as section 354 of title 37 and amended by Pub. L. 110–181, div. A, title VI, § 661(b)(1), (2), Jan. 28, 2008, 122 Stat. 178.

AMENDMENTS

2008—Pub. L. 110–181, in introductory provisions, substituted ''section 322 (as in effect before the enactment

of the National Defense Authorization Act for Fiscal Year 2008) or section 354'' for ''section 322''.

1999—Pub. L. 106–65 inserted ''certain'' before ''members'' in section catchline and ''who has elected to receive a bonus under section 322 of title 37,'' after ''August 1, 1986,'' in introductory provisions.

1989—Pub. L. 101–189, § 651(b)(4), in introductory provisions, inserted ''or former member'' after ''In the case of a member'', ''the retired pay of such member'', ''after the member'', and ''to which the member'', and in par. (1), substituted ''retired pay of the member or former member'' for ''member's retired pay''.

1987—Pub. L. 100–224 struck out heading ''(a) General rule'', substituted provisions that the amount equal to the amount of retired pay to which the member would be entitled on that date if (1) increases in the member's retired pay under section 1401a(b) of this title had been computed as provided in paragraph (2) of that section (rather than under paragraph (3) of that section); and (2) in the case of a member whose retired pay was subject to section 1409(b)(2) of this title, no reduction in the member's retired pay had been made under that section, for provisions that the amount equal to (1) the amount of the member's initial unreduced retired pay, increased by (2) the percent (adjusted to the nearest one-tenth of 1 percent) by which (A) the price index for the most recent base quarter ending more than 31 days before the date the member attains 62 years of age, exceeds (B) the price index for the calendar quarter immediately before the date the member first became entitled to retired pay, and struck out subsec. (b) which had directed that, in this section, the term ''initial unreduced retired pay'' meant the amount of retired pay (A) to which the member was entitled when the member first became entitled to retired pay; or (B) in the case of a member whose retired pay was subject to section 1409(b)(2) of this title, to which the member would have been entitled on the date of the member's retirement without regard to that section, and that the definitions in subsection (g), and the provisions of subsection (h), of section 1401a of this title applied to this section.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–65 effective Oct. 1, 1999, see section 644 of Pub. L. 106–65, set out as a note under section 1401a of this title.

§ 1411. Rules of construction

(a) CONSTRUCTION OF ''FIRST BECAME A MEMBER''.—For purposes of this chapter and other provisions of law providing for computation of retired or retainer pay of members of the uniformed services, a person shall be considered to first become a member of a uniformed service on the date the person is first enlisted, inducted, or appointed in a uniformed service.

(b) REFERENCES IN TABLES.—Section references in tables in this chapter are to sections of this title.

(Added Pub. L. 99–348, title I, § 105, July 1, 1986, 100 Stat. 691.)

§ 1412. Administrative provisions

(a) ROUNDING.—Amounts computed under this chapter, if not a multiple of $1, shall be rounded to the next lower multiple of $1.

(b) PAYMENT DATE.—Amounts of retired pay and retainer pay due a retired member of the uniformed services shall be paid on the first day of each month beginning after the month in which the right to such pay accrues.

(Added Pub. L. 99–348, title I, § 105, July 1, 1986, 100 Stat. 691; amended Pub. L. 111–383, div. A, title VI, § 632(a), (b)(1), Jan. 7, 2011, 124 Stat. 4240.)

AMENDMENTS

2011—Pub. L. 111–383, § 632(b)(1), substituted ''Administrative provisions'' for ''Rounding to next lower dollar'' in section catchline.

Pub. L. 111–383, § 632(a), designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 111–383, div. A, title VI, § 632(c), Jan. 7, 2011, 124 Stat. 4240, provided that: ''Subsection (b) of section 1412 of title 10, United States Code, as added by subsection (a), shall apply beginning with the first month that begins more than 30 days after the date of the enactment of this Act [Jan. 7, 2011].''

[§ 1413. Repealed. Pub. L. 108–136, div. A, title VI, § 641(b), Nov. 24, 2003, 117 Stat. 1514]

Section, added Pub. L. 106–65, div. A, title VI, § 658(a)(1), Oct. 5, 1999, 113 Stat. 668; amended Pub. L. 106–398, § 1 [[div. A], title VI, § 657(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–166; Pub. L. 107–107, div. A, title VI, § 641(b), (e)(1), (2), Dec. 28, 2001, 115 Stat. 1150, 1151; Pub. L. 107–314, div. A, title VI, § 636(b), Dec. 2, 2002, 116 Stat. 2576; Pub. L. 108–136, div. A, title VI, § 641(c)(1), Nov. 24, 2003, 117 Stat. 1514, related to special compensation for certain severely disabled uniformed services retirees.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2004, and applicable to payments for months beginning on or after that date, see section 641(e) of Pub. L. 108–136, set out as an Effective Date of 2003 Amendment note under section 1414 of this title.

§ 1413a. Combat-related special compensation

(a) AUTHORITY.—The Secretary concerned shall pay to each eligible combat-related disabled uniformed services retiree who elects benefits under this section a monthly amount for the combat-related disability of the retiree determined under subsection (b).

(b) AMOUNT.—

(1) DETERMINATION OF MONTHLY AMOUNT.—Subject to paragraphs (2) and (3), the monthly amount to be paid an eligible combat-related disabled uniformed services retiree under subsection (a) for any month is the amount of compensation to which the retiree is entitled under title 38 for that month, determined without regard to any disability of the retiree that is not a combat-related disability.

(2) MAXIMUM AMOUNT.—The amount paid to an eligible combat-related disabled uniformed services retiree for any month under paragraph (1) may not exceed the amount of the reduction in retired pay that is applicable to the retiree for that month under sections 5304 and 5305 of title 38.

(3) SPECIAL RULES FOR CHAPTER 61 DISABILITY RETIREES.—

(A) GENERAL RULE.—In the case of an eligible combat-related disabled uniformed services retiree who is retired under chapter 61 of this title, the amount of the payment under paragraph (1) for any month shall be reduced by the amount (if any) by which the amount of the member's retired pay under chapter 61 of this title exceeds the amount of retired pay to which the member would have been entitled under any other provision

of law based upon the member's service in the uniformed services if the member had not been retired under chapter 61 of this title.

(B) SPECIAL RULE FOR RETIREES WITH FEWER THAN 20 YEARS OF SERVICE.—In the case of an eligible combat-related disabled uniformed services retiree who is retired under chapter 61 of this title with fewer than 20 years of creditable service, the amount of the payment under paragraph (1) for any month shall be reduced by the amount (if any) by which the amount of the member's retired pay under chapter 61 of this title exceeds the amount equal to 2½ percent of the member's years of creditable service multiplied by the member's retired pay base under section 1406(b)(1) or 1407 of this title, whichever is applicable to the member.

(c) ELIGIBLE RETIREES.—For purposes of this section, an eligible combat-related disabled uniformed services retiree referred to in subsection (a) is a member of the uniformed services who—

(1) is entitled to retired pay (other than by reason of section 12731b of this title); and

(2) has a combat-related disability.

(d) PROCEDURES.—The Secretary of Defense shall prescribe procedures and criteria under which a disabled uniformed services retiree may apply to the Secretary of a military department to be considered to be an eligible combat-related disabled uniformed services retiree. Such procedures shall apply uniformly throughout the Department of Defense.

(e) COMBAT-RELATED DISABILITY.—In this section, the term ''combat-related disability'' means a disability that is compensable under the laws administered by the Secretary of Veterans Affairs and that—

(1) is attributable to an injury for which the member was awarded the Purple Heart; or

(2) was incurred (as determined under criteria prescribed by the Secretary of Defense)—

(A) as a direct result of armed conflict;

(B) while engaged in hazardous service;

(C) in the performance of duty under conditions simulating war; or

(D) through an instrumentality of war.

(f) COORDINATION WITH CONCURRENT RECEIPT PROVISION.—Subsection (d) of section 1414 of this title provides for coordination between benefits under that section and under this section.

(g) STATUS OF PAYMENTS.—Payments under this section are not retired pay.

(h) SOURCE OF PAYMENTS.—Payments under this section for a member of the Army, Navy, Air Force, or Marine Corps shall be paid from the Department of Defense Military Retirement Fund. Payments under this section for any other member for any fiscal year shall be paid out of funds appropriated for pay and allowances payable by the Secretary concerned for that fiscal year.

(i) OTHER DEFINITIONS.—In this section:

(1) The term ''service-connected'' has the meaning given such term in section 101 of title 38.

(2) The term ''retired pay'' includes retainer pay, emergency officers' retirement pay, and naval pension.

(Added Pub. L. 107–314, div. A, title VI, §636(a)(1), Dec. 2, 2002, 116 Stat. 2574; amended Pub. L. 108–136, div. A, title VI, §§641(c)(1), 642(a)–(e)(1), Nov. 24, 2003, 117 Stat. 1514, 1516, 1517; Pub. L. 110–181, div. A, title VI, §641(a), (b), Jan. 28, 2008, 122 Stat. 156.)

AMENDMENTS

2008—Subsec. (b)(3). Pub. L. 110–181, §641(b), designated existing text as subpar. (A), inserted heading, and added subpar. (B).

Subsec. (c). Pub. L. 110–181, §641(a), substituted ''who—'' for ''entitled to retired pay who—'' in introductory provisions, added pars. (1) and (2), and struck out former pars. (1) and (2) which read as follows:

''(1) has completed at least 20 years of service in the uniformed services that are creditable for purposes of computing the amount of retired pay to which the member is entitled or is entitled to retired pay under section 12731 of this title (other than by reason of section 12731b of this title); and

''(2) has a combat-related disability.''

2003—Pub. L. 108–136, §642(e)(1), substituted ''Combat-related special compensation'' for ''Special compensation for certain combat-related disabled uniformed services retirees'' in section catchline.

Subsec. (b)(1). Pub. L. 108–136, §642(c), substituted ''under subsection (a) for any month is the amount of compensation to which the retiree is entitled under title 38 for that month, determined without regard to any disability of the retiree that is not a combat-related disability.'' for ''for a combat-related disability under subsection (a) is the monthly amount of compensation to which the retiree would be entitled solely for the combat-related disability consistent with chapter 11 of title 38.''

Subsec. (c)(1). Pub. L. 108–136, §642(b), inserted before semicolon at end ''or is entitled to retired pay under section 12731 of this title (other than by reason of section 12731b of this title)''.

Subsec. (c)(2). Pub. L. 108–136, §642(a)(2), struck out ''qualifying'' before ''combat-related disability''.

Subsec. (e). Pub. L. 108–136, §642(a)(1), amended heading and text of subsec. (e) generally. Prior to amendment, subsec. (e) defined term ''qualifying combat-related disability''.

Subsec. (f). Pub. L. 108–136, §642(d), amended heading and text of subsec. (f) generally. Prior to amendment, text read as follows:

''(1) SINGLE SOURCE OF COMPENSATION.—An individual who is paid special compensation under this section may not receive special compensation under section 1413 of this title.

''(2) ELECTION OF SOURCE.—An individual who is eligible for special compensation under this section and special compensation under section 1413 of this title shall elect which special compensation to receive.

''(3) REGULATIONS.—The Secretary of Defense shall prescribe in regulations the manner and form of an election under this subsection.''

Subsec. (h). Pub. L. 108–136, §641(c)(1), inserted first sentence and inserted ''for any other member'' before ''for any fiscal year''.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–181, div. A, title VI, §641(c), Jan. 28, 2008, 122 Stat. 156, provided that: ''The amendments made by this section [amending this section] shall take effect on January 1, 2008, and shall apply to payments for months beginning on or after that date.''

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–136, div. A, title VI, §641(c)(6), Nov. 24, 2003, 117 Stat. 1516, provided that: ''The amendments made by this subsection [amending this section and sections 1413, 1463, 1465, and 1466 of this title] shall take effect as of October 1, 2003. The Secretary of Defense shall provide for such administrative adjustments as

necessary to provide for payments made for any period during fiscal year 2004 before the date of the enactment of this Act [Nov. 24, 2003] to be treated as having been made in accordance with such amendments and for the provisions of such amendments to be implemented as if enacted as of September 30, 2003.''

Pub. L. 108–136, div. A, title VI, § 642(f), Nov. 24, 2003, 117 Stat. 1517, provided that: ''The amendments made by subsections (a), (b), and (c) [amending this section] shall apply to payments under section 1413a of title 10, United States Code, for months beginning on or after January 1, 2004. The amendment made by subsection (d) [amending this section] shall take effect on January 1, 2004.''

EFFECTIVE DATE

Pub. L. 107–314, div. A, title VI, § 636(a)(2), Dec. 2, 2002, 116 Stat. 2576, provided that: ''Section 1413a of title 10, United States Code, as added by paragraph (1), shall take effect not later than 180 days after the date of the enactment of this Act [Dec. 2, 2002].''

§ 1414. Members eligible for retired pay who are also eligible for veterans' disability compensation for disabilities rated 50 percent or higher: concurrent payment of retired pay and veterans' disability compensation

(a) PAYMENT OF BOTH RETIRED PAY AND COMPENSATION.—

(1) IN GENERAL.—Subject to subsection (b), a member or former member of the uniformed services who is entitled for any month to retired pay and who is also entitled for that month to veterans' disability compensation for a qualifying service-connected disability (hereinafter in this section referred to as a ''qualified retiree'') is entitled to be paid both for that month without regard to sections 5304 and 5305 of title 38. During the period beginning on January 1, 2004, and ending on December 31, 2013, payment of retired pay to such a qualified retiree is subject to subsection (c), except that payment of retired pay is subject to subsection (c) only during the period beginning on January 1, 2004, and ending on December 31, 2004, in the case of the following:

(A) A qualified retiree receiving veterans' disability compensation for a disability rated as 100 percent.

(B) A qualified retiree receiving veterans' disability compensation at the rate payable for a 100 percent disability by reason of a determination of individual unemployability.

(2) QUALIFYING SERVICE-CONNECTED DISABILITY.—In this section, the term ''qualifying service-connected disability'' means a service-connected disability or combination of service-connected disabilities that is rated as not less than 50 percent disabling by the Secretary of Veterans Affairs.

(b) SPECIAL RULES FOR CHAPTER 61 DISABILITY RETIREES.—

(1) CAREER RETIREES.—The retired pay of a member retired under chapter 61 of this title with 20 years or more of service otherwise creditable under section 1405 of this title, or at least 20 years of service computed under section 12732 of this title, at the time of the member's retirement is subject to reduction under sections 5304 and 5305 of title 38, but only to the extent that the amount of the member's retired pay under chapter 61 of this title exceeds the amount of retired pay to which the member would have been entitled under any other provision of law based upon the member's service in the uniformed services if the member had not been retired under chapter 61 of this title.

(2) DISABILITY RETIREES WITH LESS THAN 20 YEARS OF SERVICE.—Subsection (a) does not apply to a member retired under chapter 61 of this title with less than 20 years of service otherwise creditable under section 1405 of this title, or with less than 20 years of service computed under section 12732 of this title, at the time of the member's retirement.

(c) PHASE-IN OF FULL CONCURRENT RECEIPT.—During the period beginning on January 1, 2004, and ending on December 31, 2013, retired pay payable to a qualified retiree that pursuant to the second sentence of subsection (a)(1) is subject to this subsection shall be determined as follows:

(1) CALENDAR YEAR 2004.—For a month during 2004, the amount of retired pay payable to a qualified retiree is the amount (if any) of retired pay in excess of the current baseline offset plus the following:

(A) For a month for which the retiree receives veterans' disability compensation for a disability rated as total, $750.

(B) For a month for which the retiree receives veterans' disability compensation for a disability rated as 90 percent, $500.

(C) For a month for which the retiree receives veterans' disability compensation for a disability rated as 80 percent, $350.

(D) For a month for which the retiree receives veterans' disability compensation for a disability rated as 70 percent, $250.

(E) For a month for which the retiree receives veterans' disability compensation for a disability rated as 60 percent, $125.

(F) For a month for which the retiree receives veterans' disability compensation for a disability rated as 50 percent, $100.

(2) CALENDAR YEAR 2005.—For a month during 2005, the amount of retired pay payable to a qualified retiree is the sum of—

(A) the amount specified in paragraph (1) for that qualified retiree; and

(B) 10 percent of the difference between (i) the current baseline offset, and (ii) the amount specified in paragraph (1) for that member's disability.

(3) CALENDAR YEAR 2006.—For a month during 2006, the amount of retired pay payable to a qualified retiree is the sum of—

(A) the amount determined under paragraph (2) for that qualified retiree; and

(B) 20 percent of the difference between (i) the current baseline offset, and (ii) the amount determined under paragraph (2) for that qualified retiree.

(4) CALENDAR YEAR 2007.—For a month during 2007, the amount of retired pay payable to a qualified retiree is the sum of—

(A) the amount determined under paragraph (3) for that qualified retiree; and

(B) 30 percent of the difference between (i) the current baseline offset, and (ii) the

amount determined under paragraph (3) for that qualified retiree.

(5) CALENDAR YEAR 2008.—For a month during 2008, the amount of retired pay payable to a qualified retiree is the sum of—

(A) the amount determined under paragraph (4) for that qualified retiree; and

(B) 40 percent of the difference between (i) the current baseline offset, and (ii) the amount determined under paragraph (4) for that qualified retiree.

(6) CALENDAR YEAR 2009.—For a month during 2009, the amount of retired pay payable to a qualified retiree is the sum of—

(A) the amount determined under paragraph (5) for that qualified retiree; and

(B) 50 percent of the difference between (i) the current baseline offset, and (ii) the amount determined under paragraph (5) for that qualified retiree.

(7) CALENDAR YEAR 2010.—For a month during 2010, the amount of retired pay payable to a qualified retiree is the sum of—

(A) the amount determined under paragraph (6) for that qualified retiree; and

(B) 60 percent of the difference between (i) the current baseline offset, and (ii) the amount determined under paragraph (6) for that qualified retiree.

(8) CALENDAR YEAR 2011.—For a month during 2011, the amount of retired pay payable to a qualified retiree is the sum of—

(A) the amount determined under paragraph (7) for that qualified retiree; and

(B) 70 percent of the difference between (i) the current baseline offset, and (ii) the amount determined under paragraph (7) for that qualified retiree.

(9) CALENDAR YEAR 2012.—For a month during 2012, the amount of retired pay payable to a qualified retiree is the sum of—

(A) the amount determined under paragraph (8) for that qualified retiree; and

(B) 80 percent of the difference between (i) the current baseline offset, and (ii) the amount determined under paragraph (8) for that qualified retiree.

(10) CALENDAR YEAR 2013.—For a month during 2013, the amount of retired pay payable to a qualified retiree is the sum of—

(A) the amount determined under paragraph (9) for that qualified retiree; and

(B) 90 percent of the difference between (i) the current baseline offset, and (ii) the amount determined under paragraph (9) for that qualified retiree.

(11) GENERAL LIMITATION.—Retired pay determined under this subsection for a qualified retiree, if greater than the amount of retired pay otherwise applicable to that qualified retiree, shall be reduced to the amount of retired pay otherwise applicable to that qualified retiree.

(d) COORDINATION WITH COMBAT-RELATED SPECIAL COMPENSATION PROGRAM.—

(1) IN GENERAL.—A person who is a qualified retiree under this section and is also an eligible combat-related disabled uniformed services retiree under section 1413a of this title may receive special compensation in accordance with that section or retired pay in accordance with this section, but not both.

(2) ANNUAL OPEN SEASON.—The Secretary concerned shall provide for an annual period (referred to as an ''open season'') during which a person described in paragraph (1) shall have the right to make an election to change from receipt of special compensation in accordance with section 1413a of this title to receipt of retired pay in accordance with this section, or the reverse, as the case may be. Any such election shall be made under regulations prescribed by the Secretary concerned. Such regulations shall provide for the form and manner for making such an election and shall provide for the date as of when such an election shall become effective. In the case of the Secretary of a military department, such regulations shall be subject to approval by the Secretary of Defense.

(e) DEFINITIONS.—In this section:

(1) RETIRED PAY.—The term ''retired pay'' includes retainer pay, emergency officers' retirement pay, and naval pension.

(2) VETERANS' DISABILITY COMPENSATION.—The term ''veterans' disability compensation'' has the meaning given the term ''compensation'' in section 101(13) of title 38.

(3) DISABILITY RATED AS TOTAL.—The term ''disability rated as total'' means—

(A) a disability, or combination of disabilities, that is rated as total under the standard schedule of rating disabilities in use by the Department of Veterans Affairs; or

(B) a disability, or combination of disabilities, for which the scheduled rating is less than total but for which a rating of total is assigned by reason of inability of the disabled person concerned to secure or follow a substantially gainful occupation as a result of disabilities for which veterans' disability compensation may be paid.

(4) CURRENT BASELINE OFFSET.—

(A) IN GENERAL.—The term ''current baseline offset'' for any qualified retiree means the amount for any month that is the lesser of—

(i) the amount of the applicable monthly retired pay of the qualified retiree for that month; and

(ii) the amount of monthly veterans' disability compensation to which the qualified retiree is entitled for that month.

(B) APPLICABLE RETIRED PAY.—In subparagraph (A), the term ''applicable retired pay'' for a qualified retiree means the amount of monthly retired pay to which the qualified retiree is entitled, determined without regard to this section or sections 5304 and 5305 of title 38, except that in the case of such a retiree who was retired under chapter 61 of this title, such amount is the amount of retired pay to which the member would have been entitled under any other provision of law based upon the member's service in the uniformed services if the member had not been retired under chapter 61 of this title.

(Added Pub. L. 107–107, div. A, title VI, § 641(a), Dec. 28, 2001, 115 Stat. 1149; amended Pub. L. 108–136, div. A, title VI, § 641(a), Nov. 24, 2003, 117 Stat. 1511; Pub. L. 108–375, div. A, title VI, § 642, Oct. 28, 2004, 118 Stat. 1957; Pub. L. 109–163, div. A, title VI, § 663, Jan. 6, 2006, 119 Stat. 3316; Pub. L. 110–181, div. A, title VI, § 642(a), Jan. 28, 2008, 122 Stat. 157.)

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110–181 substituted ''except that payment of retired pay is subject to subsection (c) only during the period beginning on January 1, 2004, and ending on December 31, 2004, in the case of the following:'' for ''except that in the case of a qualified retiree receiving veterans' disability compensation for a disability rated as 100 percent, payment of retired pay to such veteran is subject to subsection (c) only during the period beginning on January 1, 2004, and ending on December 31, 2004, and in the case of a qualified retiree receiving veterans' disability compensation at the rate payable for a 100 percent disability by reason of a determination of individual unemployability, payment of retired pay to such veteran is subject to subsection (c) only during the period beginning on January 1, 2004, and ending on September 30, 2009.'' and added subpars. (A) and (B).

2006—Subsec. (a)(1). Pub. L. 109–163 inserted '', and in the case of a qualified retiree receiving veterans' disability compensation at the rate payable for a 100 percent disability by reason of a determination of individual unemployability, payment of retired pay to such veteran is subject to subsection (c) only during the period beginning on January 1, 2004, and ending on September 30, 2009'' before period at end.

2004—Subsec. (a)(1). Pub. L. 108–375, § 642(a), inserted before period at end '', except that in the case of a qualified retiree receiving veterans' disability compensation for a disability rated as 100 percent, payment of retired pay to such veteran is subject to subsection (c) only during the period beginning on January 1, 2004, and ending on December 31, 2004''.

Subsec. (c). Pub. L. 108–375, § 642(b), inserted ''that pursuant to the second sentence of subsection (a)(1) is subject to this subsection'' after ''a qualified retiree'' in introductory provisions.

2003—Pub. L. 108–136 amended section generally. Prior to amendment, section related to members eligible for retired pay who had service-connected disabilities: payment of retired pay and veterans' disability compensation; and contingent effectiveness based on enactment of offsetting legislation.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–181, div. A, title VI, § 642(b), Jan. 28, 2008, 122 Stat. 157, provided that:

''(1) IN GENERAL.—Subject to paragraph (2), the amendment made by subsection (a) [amending this section] shall take effect as of December 31, 2004.

''(2) TIMING OF PAYMENT OF RETROACTIVE BENEFITS.—Any amount payable for a period before October 1, 2008, by reason of the amendment made by subsection (a) shall not be paid until after that date.''

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–136, div. A, title VI, § 641(e), Nov. 24, 2003, 117 Stat. 1516, provided that: ''The amendments made by subsections (a) and (b) [amending this section and repealing section 1413 of this title] shall take effect on January 1, 2004, and shall apply to payments for months beginning on or after that date.''

PROHIBITION OF RETROACTIVE BENEFITS

Pub. L. 107–107, div. A, title VI, § 641(d), Dec. 28, 2001, 115 Stat. 1150, provided that: ''If the provisions of subsection (a) of section 1414 of title 10, United States Code, becomes [sic] effective in accordance with subsection (f) of that section, no benefit may be paid to any person by reason of those provisions for any period before the effective date specified in subsection (e) of that section.''

CHAPTER 73—ANNUITIES BASED ON RETIRED OR RETAINER PAY

Subchapter		Sec.
I.	Retired Serviceman's Family Protection Plan	1431
II.	Survivor Benefit Plan	1447
[III.	Repealed]	

AMENDMENTS

2004—Pub. L. 108–375, div. A, title VI, § 644(b)(2), Oct. 28, 2004, 118 Stat. 1961, struck out item for subchapter III ''Supplemental Survivor Benefit Plan'', effective Apr. 1, 2008.

1990—Pub. L. 101–510, div. A, title VI, § 631(1), title XIV, § 1484(*l*)(4)(A), Nov. 5, 1990, 104 Stat. 1580, 1719, amended Pub. L. 101–189, § 1404(a)(2), see 1989 Amendment note below.

1989—Pub. L. 101–189, div. A, title XIV, § 1404(a)(2), Nov. 29, 1989, 103 Stat. 1586, as amended by Pub. L. 101–510, div. A, title VI, § 631(1), title XIV, § 1484(*l*)(4)(A), Nov. 5, 1990, 104 Stat. 1580, 1719, added item for subchapter III, effective Apr. 1, 1992.

1980—Pub. L. 96–513, title V, § 511(54)(A), Dec. 12, 1980, 94 Stat. 2925, amended chapter heading to read: ''ANNUITIES BASED ON RETIRED OR RETAINER PAY''.

1972—Pub. L. 92–425, § 1(1), Sept. 21, 1972, 86 Stat. 706, added subchapter analysis and amended chapter heading by inserting ''; SURVIVOR BENEFIT PLAN'' after ''PAY'' which could not be executed as directed in view of amendment by Pub. L. 87–381.

1961—Pub. L. 87–381, § 1(1), Oct. 4, 1961, 75 Stat. 810, substituted ''RETIRED SERVICEMAN'S FAMILY PROTECTION PLAN'' for ''ANNUITIES BASED ON RETIRED OR RETAINER PAY'' in chapter heading.

SUBCHAPTER I—RETIRED SERVICEMAN'S FAMILY PROTECTION PLAN

Sec.	
1431.	Election of annuity: members of armed forces.
1432.	Election of annuity: former members of armed forces.
1433.	Mental incompetency of member.
1434.	Kinds of annuities that may be elected.
1435.	Eligible beneficiaries.
1436.	Computation of reduction in retired pay; withdrawal for severe financial hardship.
1436a.	Coverage paid up at 30 years and age 70.
1437.	Payment of annuity.
1438.	Deposits for amounts not deducted.
1439.	Refund of amounts deducted from retired pay.
1440.	Annuities not subject to legal process.
1441.	Annuities in addition to other payments.
1442.	Recovery of annuity erroneously paid.
[1443.	Repealed.]
1444.	Regulations; determinations.
1444a.	Regulations regarding payment of annuity to a representative payee.
1445.	Correction of administrative deficiencies.
1446.	Restriction on participation.

AMENDMENTS

1999—Pub. L. 106–65, div. A, title VI, § 655(b), Oct. 5, 1999, 113 Stat. 667, added item 1436a.

1991—Pub. L. 102–190, div. A, title VI, § 654(b)(2), Dec. 5, 1991, 105 Stat. 1390, added item 1444a.

1972—Pub. L. 92–425, § 1(2)(B), (C), Sept. 21, 1972, 86 Stat. 706, struck out item 1443 ''Board of Actuaries'', and struck out ''reports to Congress'' from item 1444.

1961—Pub. L. 87–381, § 6(2), (3), Oct. 4, 1961, 75 Stat. 812, inserted ''; withdrawal for severe financial hardship'' in item 1436, and added items 1445 and 1446.

§ 1431. Election of annuity: members of armed forces

(a) This section applies to all members of the armed forces except—

(1) members whose names are on a retired list other than a list maintained under section 12774(a) of this title;

(2) cadets at the United States Military Academy, the United States Air Force Academy, or the Coast Guard Academy; and

(3) midshipmen.

(b) To provide an annuity under section 1434 of this title, a person covered by subsection (a) may elect to receive a reduced amount of the retired pay or retainer pay to which he may become entitled as a result of service in his armed force. Except as otherwise provided in this section, unless it is made before he completes nineteen years of service for which he is entitled to credit in the computation of his basic pay, the election must be made at least two years before the first day for which retired pay or retainer pay is granted. However, if, because of military operations, a member is assigned to an isolated station or is missing, interned in a neutral country, captured by a hostile force, or beleaguered or besieged, and for that reason is unable to make an election before completing nineteen years of that service, he may make the election, to become effective immediately, within one year after he ceases to be assigned to that station or returns to the jurisdiction of his armed force, as the case may be. A member to whom retired pay or retainer pay is granted retroactively, and who is otherwise eligible to make an election, may make the election within ninety days after receiving notice that such pay has been granted to him. An election made after August 13, 1968, is not effective if—

(1) the elector dies during the first thirty-day period he is entitled to retired pay as a result of a physical condition which led to his being granted retired pay under chapter 61 of title 10 with a disability of 100 per centum under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination of the per centum of his disability;

(2) the disability was not the result of injury or disease received in line of duty as a direct result of armed conflict; and

(3) his surviving spouse or children are entitled to dependency and indemnity compensation under chapter 13 of title 38 based upon his death.

(c) An election may be changed or revoked by the elector before the first day for which retired or retainer pay is granted. Unless it is made on the basis of restored mental competency under section 1433 of this title, or unless it is made before the elector completes nineteen years of service for which he is entitled to credit in the computation of his basic pay (in which case only the latest change or revocation shall be effective), the change or revocation is not effective if it is made less than two years before the first day for which retired or retainer pay is granted. The elector may, however, before the first day for which retired or retainer pay is granted, change or revoke his election (provided the change does not increase the amount of the annuity elected) to reflect a change in the marital or dependency status of the member or his family that is caused by death, divorce, annulment, remarriage, or acquisition of a child, if such change or revocation of election is made within two years of such change in marital or dependency status.

(d) If an election made under this section is found to be void for any reason except fraud or willful intent of the member making the election, he may make a corrected election at any time within 90 days after he is notified in writing that the election is void. A corrected election made under this subsection is effective as of the date of the voided election it replaces.

(Aug. 10, 1956, ch. 1041, 70A Stat. 108; Pub. L. 85–861, § 33(a)(11), Sept. 2, 1958, 72 Stat. 1565; Pub. L. 87–381, § 2, Oct. 4, 1961, 75 Stat. 810; Pub. L. 90–485, § 1(1), (2), Aug. 13, 1968, 82 Stat. 751; Pub. L. 96–513, title V, § 511(55), Dec. 12, 1980, 94 Stat. 2925; Pub. L. 99–145, title XIII, § 1301(a)(2), Nov. 8, 1985, 99 Stat. 735; Pub. L. 101–189, div. A, title XVI, § 1621(a)(1), Nov. 29, 1989, 103 Stat. 1602; Pub. L. 104–106, div. A, title XV, § 1501(c)(17), Feb. 10, 1996, 110 Stat. 499.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1431(a)	37:371 (less (e) and (f)). 37:372(a) (2d sentence).	Aug. 8, 1953, ch. 393, §§ 2 (less (e) and (f)), 3(a) (less 5th sentence), (b), 67 Stat. 501, 502; Apr. 29, 1954, ch. 176, 68 Stat. 64.
1431(b)	37:372(a) (less 2d, 5th, 6th, and last sentences). 37:372(b) (less last sentence).	
1431(c)	37:372(a) (6th and last sentences).	
1431(d)	37:372(b) (last sentence).	

In subsection (a), the language of the revised subsection is substituted for 37:371(b) and (c), to make clear that the section was intended to include enlisted members and members of the Army, or the Air Force, without component. The words ''the United States Air Force Academy'' are inserted to reflect its establishment by the Air Force Academy Act (68 Stat. 47). The words ''retirement pay'' are omitted as covered by the words ''retired pay''. The words ''equivalent pay'' are omitted as surplusage. 37:371(c) (less 1st 21 words) is omitted as executed, since the persons described must have completed 18 years of the required service on the effective date of the source statute and exercised the option by 180 days after that date. 37:371(a) is omitted, since the revised chapter applies only to the armed forces. 37:371(d) is omitted, since the words ''person entitled to retired or retainer pay'', or their equivalent, are used throughout the revised chapter. 37:371(g) is omitted, since the words ''retired or retainer pay'' are used throughout the revised chapter. 37:371(h) is omitted as unnecessary in view of the definitions contained in section 101(5), (7), and (8). 37:372(a) (2d sentence) is omitted as surplusage.

In subsection (b), 37:372(a) (last 28 words of 1st sentence) is omitted as covered by section 1434 of this title. The words ''or naval'' are omitted as covered by the word ''military''. The last sentence is substituted for 37:372(a) (4th sentence, less 61st through 81st words). 37:372(a) (3d sentence, and 61st through 85th words of 4th sentence) and 37:372(b) (less last sentence) are omitted as executed.

In subsection (c), the words ''is retired or becomes entitled to retired or retainer pay'' are substituted for the words ''his retirement'' and ''he retires'' since, under sections 1331–1333 of this title, a person may be granted retired pay without having been retired. The last eight words are substituted for 37:372(a) (7th through 17th words of last sentence). 37:372(a) (last sentence, less 1st 17 words) is omitted as surplusage.

1958 ACT

The change makes clear that section 1431 applies to a person who, because of military operations, is missing under any circumstances.

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–106 substituted ''section 12774(a)'' for ''section 1376(a)''.

1989—Subsec. (b)(1). Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1985—Subsec. (b)(3). Pub. L. 99–145 substituted ''surviving spouse'' for ''widow''.

1980—Subsec. (b). Pub. L. 96–513 substituted ''August 13, 1968,'' for ''the date of enactment of this amendment''.

1968—Subsec. (b). Pub. L. 90–485, § 1(1), increased from eighteen to nineteen the number of years of service the annuitant must complete, decreased from three to two years before eligibility the time required to make an election, and inserted provisions that an election made after Aug. 13, 1968 will not be effective if the conditions of cls. (1) to (3) are satisfied.

Subsec. (c). Pub. L. 90–485, § 1(2), decreased from three to two years before the first day for which retired or retainer pay is granted the time required to change or revoke an election when the ground of restored mental competency is not present, inserted provision that any change or revocation in an election after the completion of 19 years of service is effective if made before the first day for which retired or retainer pay is granted, and provided for a change or revocation in an election before the first day for which retired or retainer pay is granted when there is a change in marital or dependency status, if such change or revocation of election is made within two years of such change in marital or dependency status.

1961—Subsec. (a). Pub. L. 87–381 substituted ''other than a list maintained under section 1376(a) of this title'' for ''or who are in the Retired Reserve'', redesignated pars. (4) and (5) as (2) and (3), and struck out former pars. (2) and (3) which related to reserves on an inactive status list, and members assigned to the inactive National Guard, respectively.

Subsec. (b). Pub. L. 87–381 required that unless the election is made before 18 years of service, it must be made at least three years before the first day for which retired or retainer pay is granted, inserted assignment to an isolated station among the reasons permitting a delayed election, changed the period within which to make such delayed election from within six months after return to the jurisdiction of his armed force, to within one year after he ceases to be assigned to the isolated station or his return to the jurisdiction of his armed force, and if the member is retroactively granted retired or retainer pay, and is eligible for an election, he may elect within 90 days after notice of such grant.

Subsec. (c). Pub. L. 87–381 substituted ''the first day for which retired or retainer pay is granted'' for ''his retirement or before he becomes entitled to retired or retainer pay'', the requirement that the change or revocation is not effective if made less than 3 years before the first day for which retired or retainer pay is granted, for a required period of five years after change or revocation before retirement or becoming entitled to retired or retainer pay, and deleted ''If he revokes the election, he may not change or withdraw the revocation.''

Subsec. (d). Pub. L. 87–381 substituted permission to make a corrected election within 90 days after notice that the election is void for any reason, except fraud or willful intent of the member making election, with such election effective as of the date of the election it replaces, for provisions which denied the ability to revoke any election by a person retired or granted retired or retainer pay before Nov. 1, 1953, and who elected within 180 days after that date to receive reduced pay to provide for an annuity.

1958—Subsec. (b). Pub. L. 85–861 struck out ''in action'' after ''he is missing''.

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 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 6 of Pub. L. 90–485 provided in part that: ''Clause (1) and clause (6) of section 1 [amending this section and section 1436 of this title], and sections 2, 3, and 4 of this Act [amending section 1331 [now 12731] of this title and enacting material set out as notes under this section] are effective on the date of enactment [Aug. 13, 1968]. Remaining provisions of this Act [amending this section and sections 1434, 1435, 1437, and 1446 of this title, and enacting provisions set out as a note under this section] are effective on the first day of the third calendar month following the date of enactment.''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85–861, set out as a note under section 101 of this title.

SHORT TITLE OF 1978 AMENDMENT

Section 1 of Pub. L. 95–397, Sept. 30, 1978, 92 Stat. 843, provided: ''That this Act [amending sections 1076, 1331 [now 12731], 1434, and 1447 to 1452 of this title and enacting provisions set out as notes under sections 1076, 1434, 1447, and 1448 of this title] may be cited as the 'Uniformed Services Survivors' Benefits Amendments of 1978'.''

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.

PROVISIONS EFFECTIVE FOR CERTAIN MEMBERS ON AUGUST 13, 1968

Section 3 of Pub. L. 90–485 provided that: ''For members to whom section 1431 of title 10, United States Code [this section], applies on the date of enactment of this Act [Aug. 13, 1968], the provisions of section 1434(c) of that title, as amended by this Act [section 1(3) of Pub. L. 90–485] are effective immediately and automatically''.

ELECTION OF ANNUITY MADE PRIOR TO AUGUST 13, 1968

Section 4 of Pub. L. 90–485 provided that: ''A retired member who elected an annuity under chapter 73 of title 10, United States Code [this chapter], before the date of enactment of this Act [Aug. 13, 1968], but did not make the election that was then provided by section 1434(c) of that title, may, before the first day of the thirteenth calendar month beginning after the date of enactment of this Act, make that election. That election becomes effective on the first day of the month following the month in which the election is made. Under regulations prescribed under section 1444(a) of this title, on or before the effective date the retired member must pay the total additional amount that would otherwise have been deducted from his retired or retainer pay to reflect such an election, had it been effective when he retired, plus the interest which

would have accrued on that additional amount up to the effective date, except that if an undue hardship or financial burden would otherwise result payment may be made in from two to twelve monthly installments when the monthly amounts involved are $25, or less, or in from two to thirty-six monthly installments when the monthly amounts involved exceed $25. No amounts by which a member's retired or retainer pay was reduced may be refunded to, or credited on behalf of, the retired member by virtue of an application made by him under this section. A retired member described in the first sentence of this section, who does not make the election provided under this section, will not be allowed under section 1436(b) of title 10, to reduce an annuity or withdraw from participation in an annuity program under that title.''

ELECTIONS SUBJECT TO COST TABLES APPLICABLE ON DATE OF RETIREMENT; ANNUITIES PAYABLE TO BENEFICIARIES ELIGIBLE UNDER LAW IN EFFECT THE DAY PRIOR TO AUGUST 13, 1968

Section 5 of Pub. L. 90–485 provided, effective on the first day of the third calendar month following Aug. 13, 1968, that: ''Notwithstanding any other provision of this Act [see Effective Date of 1968 Amendment note set out above], elections in effect on the date of enactment [Aug. 13, 1968] will remain under the cost tables applicable on the date of retirement, and the annuities provided thereunder shall be payable to those eligible beneficiaries prescribed under the law in effect on the day prior to the date of enactment of this Act.''

APPLICABILITY OF PROVISIONS IN EFFECT ON THE DAY PRIOR TO AUGUST 13, 1968

Section 6 of Pub. L. 90–485 provided in part that: ''Notwithstanding any other provision of this Act [see Effective Date of 1968 Amendment note set out above], any member to whom section 1431 of title 10, United States Code [this section], applies on the date of enactment of this Act [Aug. 13, 1968] may, before the first day of the thirteenth calendar month beginning after the date of enactment of this Act, submit a written application to the Secretary concerned requesting that an election or a change or revocation of election made by such member prior to the date of enactment of this Act shall continue to be governed by the provisions of section 1431(b) or (c) of title 10, United States Code [subsec. (b) or (c) of this section] as in effect on the day before the date of enactment of this Act.''

INTERIM AUTHORITY FOR SELECTION OF COMMANDERS AND CAPTAINS FOR CONTINUATION ON ACTIVE DUTY

Section 3(q) of Pub. L. 88–130 rendered election, change, or revocation of election under this section effective if made prior to the convening date of the board which considers Coast Guard commanders and captains for continuation.

CHANGE OR REVOCATION OF AN ELECTION FILED PRIOR TO OCTOBER 4, 1961

Section 7 of Pub. L. 87–381 provided that: ''Any person who, before the date of enactment of this Act [Oct. 4, 1961], has filed a change or revocation, subject to section 1431(c) of title 10, United States Code [subsec. (c) of this section], of an election made under section 1431(b) of that title [subsec. (b) of this section], which change or revocation would be ineffective if the first day for which retired or retainer pay is granted were to be the date of enactment of this Act [Oct. 4, 1961], shall have that change or revocation become effective on that date, or three years after the date upon which it was filed, whichever is later.''

PROVISIONS APPLICABLE TO CERTAIN PERSONS RETIRING AFTER OCTOBER 4, 1961, FOR DISABILITY

Section 8 of Pub. L. 87–381 provided that: ''Any person who—

''(1) made an election before the date of enactment of this Act [Oct. 4, 1961], which would be effective if he retired on the day before such date; and

''(2) hereafter retires for physical disability before completing 18 years of service for which he is entitled to credit in the computation of his basic pay—

shall be considered as having applicable to him all of the provisions of chapter 73 of title 10, United States Code [this chapter], existing on the date preceding the date of enactment of this Act [Oct. 4, 1961], except that any revocation or change of an election is not effective until three years after the date of filing such revocation or change, or the date of enactment of this Act [Oct. 4, 1961], whichever is later.''

CHANGE OR REVOCATION OF ELECTION BY CERTAIN COLONELS AND LIEUTENANT COLONELS

Pub. L. 86–616, § 11, July 12, 1960, 74 Stat. 396, provided that: ''Notwithstanding section 1431 of title 10, United States Code [this section], a change or revocation of an election made under that section by an officer who is retired under section 10 of this Act [set out as a note under section 3297 of this title] is effective if made at such a time that it would have been effective had he been retired on the earliest date prescribed for an officer of his kind by section 3916, 3921, 8916, or 8921 of title 10, as appropriate.''

CHANGE OR REVOCATION OF ELECTION BY CERTAIN OFFICERS OF REGULAR NAVY AND REGULAR MARINE CORPS

Pub. L. 86–616, § 13, July 12, 1960, 74 Stat. 396, provided that: ''An officer who has been considered but not recommended for continuation on the active list under section 1 of the Act of August 11, 1959. Public Law 86–155 (73 Stat. 333) [set out as a note under section 5701 of this title], and who retired or retires voluntarily before the second day of the month following the month in which this Act is enacted [July 1960], may, within six months following the enactment of this Act [July 12, 1960], affirm a change or revocation of an election made under section 1431 of title 10, United States Code [this section], before his retirement, if the change or revocation would have been effective under section 3 of the Act of August 11, 1959, Public Law 86–155, as amended by this Act [set out as a note under section 5701 of this title], but for his voluntary retirement. If an officer takes no action under this section, his currently valid election under section 1431 of title 10, United States Code [this section], shall remain unchanged. The computation of the revised reduction in retired pay in the case of an officer who affirms a change of election under this section shall be in accordance with section 1436 of title 10, United States Code, and according to the conditions that existed on the day the officer became eligible for retired pay. An affirmation or revocation made under this section is effective on the first day of the month in which made. No refund may be made and no additional payment may be required with respect to any period before that date.''

ELECTION OF ANNUITY BY CERTAIN PERSONNEL

Pub. L. 86–197, § 4, Aug. 25, 1959, 73 Stat. 426, provided that: ''Any person who, on the effective date of this Act [August 25, 1959], would not have completed 18 years of service for which he is entitled to credit in the computation of his basic pay under the laws in effect prior to the effective date of this Act, and who, as a result of the enactment of this Act [amending sections 1332 [now 12732], 3683, 3926, 6324, 8683 and 8926 of this title, and enacting provisions set out as notes under sections 3441 and 12732 of this title], is credited with more than 17 years of such service, shall be allowed twelve months from the effective date of this Act to make the election provided by section 1431(b) of title 10, United States Code [subsection (b) of this section], notwithstanding the requirement of the second sentence of that section.''

CHANGE OR REVOCATION OF ELECTION BY CERTAIN OFFICERS

Effective date of change or revocation of election by certain officers, see section 3 of Pub. L. 86–155, Aug. 11,

1959, 73 Stat. 336, set out as a note under section 5701 of this title.

PUBLIC HEALTH SERVICE

Authority vested by this chapter in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to commissioned officers of Public Health Service, by Secretary of Health and Human Services or his designee, see section 213a of Title 42, The Public Health and Welfare.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Authority vested by this chapter in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to commissioned officer corps of National Oceanic and Atmospheric Administration, by Secretary of Commerce or Secretary's designee, see section 3071 of Title 33, Navigation and Navigable Waters.

§ 1432. Election of annuity: former members of armed forces

A person who was a former member of an armed force on November 1, 1953, and who is granted retired or retainer pay after that date, may, at the time he is granted that pay, make an election as provided in section 1431 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 109.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1432	37:372(a) (5th sentence).	Aug. 8, 1953, ch. 393, § 3(a) (5th sentence), 67 Stat. 502.

§ 1433. Mental incompetency of member

If a person who would be entitled to make an election under section 1431 or 1432 of this title is determined to be mentally incompetent by medical officers of the armed force concerned or of the Department of Veterans Affairs, or by a court of competent jurisdiction, and for that reason cannot make the election within the prescribed time, the Secretary concerned may make an election for that person upon the request of his spouse or, if there is no spouse, of his children who would be eligible to be made beneficiaries under section 1435 of this title. If the person for whom the Secretary has made an election is later determined to be mentally competent by medical officers of the Department of Veterans Affairs or by a court of competent jurisdiction, he may, within 180 days after that determination, change or revoke that election. However, deductions made from his retired or retainer pay before that date may not be refunded.

(Aug. 10, 1956, ch. 1041, 70A Stat. 109; Pub. L. 101–189, div. A, title XVI, § 1621(a)(1), Nov. 29, 1989, 103 Stat. 1602.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1433	37:372 (less (a) and (b)).	Aug. 8, 1953, ch. 393, § 3 (less (a) and (b)), 67 Stat. 502.

The first 19 words are substituted for 37:372(c) (1st 9 words). The words ''who would be eligible to be made beneficiaries under section 1435 of this title'' are inserted to reflect the limitations in 37:371(f). The words ''for that reason cannot'' are substituted for the words ''because of such mental incompetency is incapable of''. The words ''or is adjudged mentally incompetent'', ''provided for in this section'', and ''where appropriate is subsequently adjudged mentally competent'' are omitted as surplusage. The last sentence is substituted for 37:372(c) (last sentence).

AMENDMENTS

1989—Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration'' in two places.

§ 1434. Kinds of annuities that may be elected

(a) The annuity that a person is entitled to elect under section 1431 or 1432 of this title shall, in conformance with actuarial tables selected by the Board of Actuaries under section 1436(a) of this title, be the amount specified by the elector at the time of the election, but not more than 50 percent nor less than 12½ percent of his retired or retainer pay, in no case less than $25. He may make the annuity payable—

(1) to, or on behalf of, the surviving spouse, ending when the spouse dies or, if the spouse remarries before age 60, when the spouse remarries;

(2) in equal shares to, or on behalf of, the surviving children eligible for the annuity at the time each payment is due, ending when there is no surviving eligible child; or

(3) to, or on behalf of, the surviving spouse, and after the death of that spouse or the remarriage of that spouse before age 60, in equal shares to, or on behalf of, the surviving eligible children, ending when there is no surviving eligible child.

(b) A person may elect to provide both the annuity provided in clause (1) of subsection (a) and that provided in clause (2) of subsection (a), but the combined amount of the annuities may not be more than 50 percent nor less than 12½ percent of his retired or retainer pay but in no case less than $25.

(c) An election of any annuity under clause (1) or (2) of subsection (a), or any combination of annuities under subsection (b), shall provide that no deduction may be made from the elector's retired or retainer pay after the last day of the month in which there is no beneficiary who would be eligible for the annuity if the elector died. For the purposes of the preceding sentence, a child (other than a child who is incapable of supporting himself because of a mental defect or physical incapacity existing before his eighteenth birthday) who is at least eighteen, but under twenty-three years of age, and who is not pursuing a course of study or training defined in section 1435 of this title, shall be considered an eligible beneficiary unless the Secretary concerned approves an application submitted by the member under section 1436(b)(4) of this title. An election of an annuity under clause (3) of subsection (a) shall provide that no deduction may be made from the elector's retired or retainer pay after the last day of the month in which there is no eligible spouse because of death or divorce.

(d) Under regulations prescribed under section 1444(a) of this title, a person may, before or after

the first day for which retired or retainer pay is granted, provided for allocating, during the period of the surviving spouse's eligibility, a part of the annuity under subsection (a)(3) for payment to those of his surviving children who are not children of that spouse.

(e) Whenever there is an increase in retired and retainer pay under section 1401a of this title, each annuity that is payable under this subchapter on the day before the effective date of that increase to a spouse or child of a member who died on or before March 20, 1974, shall be increased by the same percentage as the percentage of that increase, effective on the effective date of that increase.

(Aug. 10, 1956, ch. 1041, 70A Stat. 109; Pub. L. 87–381, § 3, Oct. 4, 1961, 75 Stat. 811; Pub. L. 90–485, § 1(3), Aug. 13, 1968, 82 Stat. 751; Pub. L. 95–397, title I, § 101(a), Sept. 30, 1978, 92 Stat. 843; Pub. L. 96–513, title V, § 511(56), Dec. 12, 1980, 94 Stat. 2925.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1434(a)	37:373(a) (less 4th par.).	Aug. 8, 1953, ch. 393, § 4 (less (c) and (d)), 67 Stat. 502.
1434(b)	37:373(b).	
1434(c)	37:373(a)(4th par.).	

In subsection (a), the first 17 words are substituted for 37:373(a) (1st 26 words of 1st sentence). The words "may be 50, 25, or 12½ percent" are substituted for the words "in such amount, expressed as a percentage of the reduced amount of his retired pay * * * in amounts equal to one-half, one-quarter or one-eighth". 37:373(a) (last 53 words of 1st sentence of 2d par., and last 53 words of 1st sentence of 3d par.) is omitted as covered by section 1435(2) of this title. Clause (1) is substituted for 37:373(a)(1). Clause (2) is substituted for 37:373(a)(2) (less last 53 words of 1st sentence). Clause (3) is substituted for 37:373(a)(3) (less last 53 words of 1st sentence). The word "eligible" is inserted in clauses (2) and (3) to reflect the limitations in 37:371(f).

In subsection (c), the first 11 words are substituted for 37:373(a)(4) (1st 24 words). The words "the annuity" are substituted for the words "an annuity payable under the election made by him".

AMENDMENTS

1980—Subsecs. (a), (b). Pub. L. 96–513 substituted "percent" for "per centum" wherever appearing.

1978—Subsec. (a)(1). Pub. L. 95–397, § 101(a)(1), substituted "or, if the spouse remarries before age 60, when the spouse remarries" for "or remarries".

Subsec. (a)(3). Pub. L. 95–397, § 101(a)(2), substituted "of that spouse or the remarriage of that spouse before age 60" for "or remarriage of that spouse".

Subsec. (e). Pub. L. 95–397, § 101(a)(3), added subsec. (e).

1968—Subsec. (a). Pub. L. 90–485 substituted provisions allowing election of an annuity amount, in conformance with the selected actuarial tables, of not more than 50 percent nor less than 12½ percent of retired or retired or retainer pay, but in no case less than $25, for provisions allowing election of an annuity amount of 50, 25, or 12½ percent of reduced retired or retainer pay.

Subsec. (b). Pub. L. 90–485 substituted provisions that the combined amount of annuities may not be more than 50 percent nor less than 12½ percent of retired or retainer pay, but in no case less than $25, for provisions that the combined amount of annuities may be only 25 or 12½ percent of reduced retired or retainer pay and provisions that the reduction in retired or retainer pay on account of each annuity, and the amount of each annuity, be determined in the same manner that it would be determined if the other annuity had not been elected.

Subsec. (c). Pub. L. 90–485 made mandatory the provisions that an election of any annuity under cls. (1) or (2) of subsec. (a), or any combination of annuities under subsec. (b), and the provision that an election of an annuity under cl. (3) of subsec. (a) shall provide that no deduction may be made from the elector's retired or retainer pay after the last day of the month in which there is no beneficiary who would be eligible for the annuity if the elector died or there is no eligible spouse because of death or divorce, respectively, and inserted provision determining what constitutes an eligible beneficiary.

Subsec. (d). Pub. L. 90–485 reenacted subsec. (d) without change.

1961—Subsec. (b). Pub. L. 87–381, § 3(1), substituted permission to elect only 25 or 12½ percent of the member's reduced retired or retainer pay for each annuity for provisions limiting the combined amount of the annuities to not more than 50 percent or the reduced pay, and added that the reduction in pay on account of each annuity, and the amount of each annuity, shall be determined as if the other annuity had not been elected.

Subsec. (d). Pub. L. 87–381, § 3(2), added subsec. (d).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 101(b) of Pub. L. 95–397 provided that: "No benefits shall accrue to any person by virtue of the amendments made by subsection (a) [amending this section] for any period prior to the first day of the first calendar month following the month in which this Act is enacted [Sept. 1978] or October 1, 1978, whichever is later."

EFFECTIVE DATE OF 1968 AMENDMENT

For effective date of amendment by Pub. L. 90–485, see section 6 of Pub. L. 90–485, set out as a note under section 1431 of this title.

INCREASE IN AMOUNT OF ANNUITY PAYABLE UNDER RETIRED SERVICEMAN'S FAMILY PROTECTION PLAN

Section 102 of Pub. L. 95–397 provided that: "Each annuity that is payable under subchapter I of chapter 73 of title 10, United States Code, on the day before the date of the enactment of this Act [Sept. 30, 1978] to a spouse or child of a member of the uniformed services who died on or before March 20, 1974, shall be increased effective as of the first day of the first calendar month following the month in which this Act [See Short Title note set out under section 1431 of this title] is enacted [September 1978], or as of October 1, 1978, whichever is later, by the percentage increase in retired and retainer pay under section 1401a of that title since September 21, 1972."

PROVISIONS EFFECTIVE FOR CERTAIN MEMBERS ON AUGUST 13, 1968

Provisions of this section as amended by Pub. L. 90–485 effective immediately and automatically for members to whom section 1431 of this title applies on Aug. 13, 1968, see section 3 of Pub. L. 90–485, set out as a note under section 1431 of this title.

§ 1435. Eligible beneficiaries

Only the following persons are eligible to be made the beneficiaries of, or to receive payments under, an annuity elected under this subchapter by a member of the armed forces:

(1) The spouse of the member on the date when the member is retired or becomes entitled to retired or retainer pay or, if the mem-

ber was already retired or entitled to retired or retainer pay on November 1, 1953, the spouse on that date.

(2) The children of the member who are—

(A) unmarried;

(B) under eighteen years of age, or incapable of supporting themselves because of a mental defect or physical incapacity existing before their eighteenth birthday, or at least eighteen, but under twenty-three, years of age and pursuing a full-time course of study or training in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution;

(C) legitimate or adopted children of, or stepchildren in fact dependent for their support upon, the member;

(D) living on the date when the member is retired or becomes entitled to retired or retainer pay or, if the member was already retired or entitled to retired or retainer pay on November 1, 1953, living on that date; and

(E) born on or before the date prescribed in clause (D).

For the purposes of clause (2)(B), a child is considered to be pursuing a full-time course of study or training during an interval between school years that does not exceed one hundred and fifty days if he has demonstrated to the satisfaction of the Secretary concerned that he has a bonafide intention of commencing, resuming, or continuing to pursue a full-time course of study or training in a recognized educational institution immediately after that interval.

(Aug. 10, 1956, ch. 1041, 70A Stat. 110; Pub. L. 90–485, § 1(4), (5), Aug. 13, 1968, 82 Stat. 752; Pub. L. 92–425, § 1(2)(A), Sept. 21, 1972, 86 Stat. 706.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1435(1)	37:371(e).	Aug. 8, 1953, ch. 393,
1435(2)	37:371(f).	§ 2(e), (f), 67 Stat. 501.

In clauses (1) and (2), the words ''is retired or becomes entitled to retired or retainer pay'' are substituted for the words ''retired member'', since the words ''retired member'', as defined in the source statute, included former members who have been awarded that pay.

In clause (1), the words '' 'widow' includes a widower'' are omitted as covered by the definition of ''spouse'' in section 101(32) of this title.

AMENDMENTS

1972—Pub. L. 92–425 substituted ''subchapter'' for ''chapter''.

1968—Pub. L. 90–485 inserted provisions in cl. (2)(B) concerning children of the member who are at least 18, but under 23 and pursuing a full-time course of study or training and inserted text following cl. (2)(E) relating to children considered to be pursuing a full-time course of study or training.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–485 effective on first day of third calendar month following Aug. 13, 1968, see section 6 of Pub. L. 90–485, set out as a note under section 1431 of this title.

§ 1436. Computation of reduction in retired pay; withdrawal for severe financial hardship

(a) The reduction in the retired or retainer pay of any person who elects an annuity under this subchapter shall be computed by the armed force concerned as of the date when the person becomes eligible for that pay but without regard to any increase in that pay to reflect changes in the Consumer Price Index. It shall be computed under an actuarial equivalent method based on (1) appropriate actuarial tables selected by the Board of Actuaries, and (2) an interest rate of 3 percent a year, or such other rate as the Secretary of the Treasury, after considering the average yield on outstanding marketable long-term obligations of the United States during the preceding six months, may specify by August 1 of any year for the following year. The method and tables shall be those in effect on the date as of which the computation is made.

(b) Under regulations prescribed under section 1444(a) of this title, the Secretary concerned may, upon application by the retired member, allow the member—

(1) to reduce the amount of the annuity specified by him under section 1434(a) and 1434(b) of this title but to not less than the prescribed minimum; or

(2) to withdraw from participation in an annuity program under this title; or

(3) to elect the annuity provided under clause (1) of section 1434(a) of this title in place of the annuity provided under clause (3) of such section, if on the first day for which retired or retainer pay is granted the member had in effect a valid election under clause (3) of such section, and he does not have a child beneficiary who would be eligible for the annuity provided under clause (3) of such section. For this purpose, a child (other than a child who is incapable of supporting himself because of a mental defect or physical incapacity existing before his eighteenth birthday) who is at least eighteen, but under twenty-three years of age shall not be considered an eligible beneficiary; or

(4) to elect that a child (other than a child who is incapable of supporting himself because of a mental defect or physical incapacity existing before his eighteenth birthday) who is at least eighteen, but under twenty-three years of age shall not be considered eligible for the annuity provided under clause (2) of section 1434(a) of this title, or for an annuity provided under section 1434(b) of this title, if on the first day for which retired or retainer pay is granted the member had in effect a valid election under clause (2) of section 1434(a) of this title, or under section 1434(b) of this title.

A retired member may not reduce an annuity under clause (1) of this subsection, or withdraw under clause (2) of this subsection, earlier than the first day of the seventh calendar month beginning after he applies for reduction or withdrawal. A change of election under clause (3) of this subsection shall be effective on the first day of the month following the month in which application is made. An election under clause (4) of this subsection shall be effective on the first day of the month following the month in which application is made and, if on the effective date there is no surviving child who would be eligible for an annuity provided under clause (2) of section 1434(a), or under section 1434(b), of this title if the elector died, no deduction shall be made

for such an annuity to, or on behalf of, a child from the elector's retired or retainer pay for that month or any subsequent month. No amounts by which a member's retired or retainer pay is reduced prior to the effective date of a reduction of annuity, withdrawal, change of election, or election under this subsection may be refunded to, or credited on behalf of, the member by virtue of an application made by him under this subsection.

(Aug. 10, 1956, ch. 1041, 70A Stat. 110; Pub. L. 87–381, § 4, Oct. 4, 1961, 75 Stat. 811; Pub. L. 90–207, § 2(a)(3), Dec. 16, 1967, 81 Stat. 653; Pub. L. 90–485, § 1(6), Aug. 13, 1968, 82 Stat. 753; Pub. L. 92–425, § 1(2)(A), Sept. 21, 1972, 86 Stat. 706; Pub. L. 104–106, div. A, title XV, § 1505(c), Feb. 10, 1996, 110 Stat. 514.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1436	37:373(c).	Aug. 8, 1953, ch. 393, § 4(c), 67 Stat. 503.

The words ''of any person who elects an annuity'' are substituted for the words ''of an active or retired member who has made an election''. The words ''in each individual case'' and ''designated in section 8'' are omitted as surplusage. The words ''and as of the date of election in the case of a retired member'' are omitted as executed. 37:373(c) (1st 23 words of last sentence) is omitted as otherwise covered by the language of the revised section.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–106 made technical correction to directory language of Pub. L. 90–485, § 1(6). See 1968 Amendment note below.

1972—Subsec. (a). Pub. L. 92–425 substituted ''subchapter'' for ''chapter''.

1968—Subsec. (b). Pub. L. 90–485, as amended by Pub. L. 104–106, substituted provisions authorizing the Secretary to allow the member to reduce the amount of the annuity, allow the member to withdraw from participation in an annuity program, allow the member to elect the annuity provided in section 1434(a)(1) in place of the annuity provided in section 1434(a)(3) under the specified conditions, and allow the member to elect that a child at least 18, but under 23, not be eligible for the specified annuities, setting forth the times when such reduction, withdrawal, or change of election may take place, and disallowing the refunding or crediting of any amount previously withheld, for provisions authorizing the Secretary to allow the member to withdraw from participation in an annuity program whenever the Secretary considers it necessary because of the member's severe financial hardship, the absence of an eligible beneficiary not of itself to be a basis for such action.

1967—Subsec. (a). Pub. L. 90–207 inserted ''but without regard to any increase in that pay to reflect changes in the Consumer Price Index'' after ''that pay''.

1961—Pub. L. 87–381 designated existing provisions as subsec. (a), added subsec. (b), and inserted ''; withdrawal for severe financial hardship'' in section catchline.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1505(c) of Pub. L. 104–106 provided that the amendment made by that section is effective Aug. 13, 1968, and as if included in Pub. L. 90–485 as originally enacted.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–485 effective Aug. 13, 1968, see section 6 of Pub. L. 90–485, set out as a note under section 1431 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–207 effective Oct. 1, 1967, see section 7 of Pub. L. 90–207, set out as a note under section 203 of Title 37, Pay and Allowances of the Uniformed Services.

§ 1436a. Coverage paid up at 30 years and age 70

Effective October 1, 2008, a reduction under this subchapter in the retired or retainer pay of a person electing an annuity under this subchapter may not be made for any month after the later of—

(1) the month that is the 360th month for which that person's retired or retainer pay is reduced pursuant to such an election; and

(2) the month during which that person attains 70 years of age.

(Added Pub. L. 106–65, div. A, title VI, § 655(a), Oct. 5, 1999, 113 Stat. 667.)

§ 1437. Payment of annuity

(a) Except as provided in subsections (b) and (c), each annuity payable under this subchapter accrues as of the first day of the month in which the person upon whose pay the annuity is based dies. Payments shall be made in equal installments and not later than the fifteenth day of each month following that month. However, no annuity accrues for the month in which entitlement thereto ends. The monthly amount of an annuity payable under this subchapter, if not a multiple of $1, shall be rounded to the next lower multiple of $1.

(b) Each annuity payable to or on behalf of an eligible child (other than a child who is incapable of supporting himself because of a mental defect or physical incapacity existing before his eighteenth birthday) as defined in section 1435(2)(B) of this title who is at least eighteen years of age and pursuing a full-time course of study or training at a recognized educational institution, accrues—

(1) as of the first day of the month in which the member upon whose pay the annuity is based dies, if the eligible child's eighteenth birthday occurs in the same or a preceding month.

(2) as of the first day of the month in which the eighteenth birthday of an eligible child occurs, if the member upon whose pay the annuity is based died in a preceding month.

(3) as of the first day of the month in which a child first becomes or again becomes eligible, if that eligible child's eighteenth birthday and the death of the member upon whose pay the annuity is based both occurred in a preceding month or months.

However, no such annuity is payable or accrues for any month before November 1, 1968.

(c)(1) Upon application of the beneficiary of a member entitled to retired or retainer pay whose retired or retainer pay has been suspended because the member has been determined to be missing, the Secretary concerned may determine for purposes of this subchapter that the member is presumed dead. Any such determination shall be made in accordance with regulations prescribed under section 1444(a) of this title. The Secretary concerned may not make a determination for purposes of this subchapter

that a member is presumed dead unless he finds—

(A) that the member has been missing for at least 30 days; and

(B) that the circumstances under which the member is missing would lead a reasonably prudent person to conclude that the member is dead.

(2) Upon a determination under paragraph (1) with respect to a member, an annuity otherwise payable under this subchapter shall be paid as if the member died on the date as of which the retired or retainer pay of the member was suspended.

(3)(A) If, after a determination under paragraph (1), the Secretary concerned determines that the member is alive, any annuity being paid under this subchapter by reason of this subsection shall be promptly terminated and the total amount of any annuity payments made by reason of this subsection shall constitute a debt to the United States which may be collected or offset—

(i) from any retired or retainer pay otherwise payable to the member;

(ii) if the member is entitled to compensation under chapter 11 of title 38, from that compensation; or

(iii) if the member is entitled to any other payment from the United States, from that payment.

(B) If the member dies before the full recovery of the amount of annuity payments described in subparagraph (A) has been made by the United States, the remaining amount of such annuity payments may be collected from the member's beneficiary under this subchapter if that beneficiary was the recipient of the annuity payments made by reason of this subsection.

(Aug. 10, 1956, ch. 1041, 70A Stat. 110; Pub. L. 90–485, § 1(7), Aug. 13, 1968, 82 Stat. 753; Pub. L. 92–425, § 1(2)(A), Sept. 21, 1972, 86 Stat. 706; Pub. L. 96–513, title V, § 511(57), Dec. 12, 1980, 94 Stat. 2925; Pub. L. 98–94, title IX, § 922(a)(14)(A), Sept. 24, 1983, 97 Stat. 642; Pub. L. 98–525, title VI, § 642(a)(1), Oct. 19, 1984, 98 Stat. 2545; Pub. L. 99–145, title XIII, § 1303(a)(9), Nov. 8, 1985, 99 Stat. 739.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1437	37:379.	Aug. 8, 1953, ch. 393, § 10, 67 Stat. 504.

The words ''the person upon whose reduced pay the annuity is based'' are substituted for the words ''the retired member'' since persons other than retired members may elect an annuity. The words ''due and'' and ''or be paid'' are omitted as surplusage.

AMENDMENTS

1985—Subsec. (c)(3)(A). Pub. L. 99–145 struck out ''(notwithstanding section 144 of this title)'' after ''which''.

1984—Subsec. (a). Pub. L. 98–525, § 642(a)(1)(A), substituted ''subsections (b) and (c),'' for ''subsection (b)''.

Subsec. (c). Pub. L. 98–525, § 642(a)(1)(B), added subsec. (c).

1983—Subsec. (a). Pub. L. 98–94 inserted ''The monthly amount of an annuity payable under this subchapter, if not a multiple of $1, shall be rounded to the next lower multiple of $1.''

1980—Subsec. (b). Pub. L. 96–513 substituted ''before November 1, 1968'' for ''prior to the effective date of this subsection''.

1972—Subsec. (a). Pub. L. 92–425 substituted ''subchapter'' for ''chapter''.

1968—Pub. L. 90–485 designated existing provisions as subsec. (a), inserted ''Except as provided in subsection (b)'', substituted ''whose pay'' for ''whose reduced pay'', and added subsec. (b).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–94 effective Oct. 1, 1983, see section 922(e) of Pub. L. 98–94, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

For effective date of amendment by Pub. L. 90–485, see section 6 of Pub. L. 90–485, set out as a note under section 1431 of this title.

§ 1438. Deposits for amounts not deducted

If, for any period, a person who has been retired or has become entitled to retired or retainer pay, and who has elected an annuity under this subchapter, is not entitled to retired or retainer pay, he must deposit in the Treasury the amount that would otherwise have been deducted from his pay for that period to provide the annuity.

(Aug. 10, 1956, ch. 1041, 70A Stat. 110; Pub. L. 92–425, § 1(2)(A), Sept. 21, 1972, 86 Stat. 706.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1438	37:374.	Aug. 8, 1953, ch. 393, § 5, 67 Stat. 504.

The words ''a person who has been retired or has become entitled to retired or retainer pay, and who has elected an annuity under this chapter'' are substituted for the words ''a retired member of a uniformed service who has made the election specified in section 372 of this title'', since the revised chapter applies to persons who are receiving retired pay as well as retired members. The word ''otherwise'' is substituted for the words ''had he been receiving that pay''. The words ''to provide the annuity'' are inserted for clarity.

AMENDMENTS

1972—Pub. L. 92–425 substituted ''subchapter'' for ''chapter''.

§ 1439. Refund of amounts deducted from retired pay

If a person whose name is on the temporary disability retired list of an armed force, and who has elected an annuity under this subchapter, has his name removed from that list for any reason other than retirement or grant of retired pay, he is entitled to a refund of the difference between the amount by which his retired pay was reduced to provide the annuity and the cost of an amount of term insurance equal to the protection provided for his dependents during the period that he was on that list.

(Aug. 10, 1956, ch. 1041, 70A Stat. 111; Pub. L. 92–425, § 1(2)(A), Sept. 21, 1972, 86 Stat. 706.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1439	37:373(d).	Aug. 8, 1953, ch. 393, § 4(d), 67 Stat. 503.

The words ''person whose name is on'' are substituted for the words ''Any active member or former member on the''. The words ''is entitled to a refund'' are substituted for the words ''shall have refunded to him''. The words ''permanent'', ''a sum which represents'', and ''in accordance with his election under section 372 of this title'' are omitted as surplusage. The words ''retirement or grant of retired pay'' are substituted for the words ''permanent retirement'', since under chapter 67 of this title a member of the Army or Air Force may be granted retired pay without being retired.

AMENDMENTS

1972—Pub. L. 92–425 substituted ''subchapter'' for ''chapter''.

§ 1440. Annuities not subject to legal process

Except as provided in section 1437(c)(3)(B) of this title, no annuity payable under this subchapter is assignable or subject to execution, levy, attachment, garnishment, or other legal process.

(Aug. 10, 1956, ch. 1041, 70A Stat. 111; Pub. L. 92–425, § 1(2)(A), Sept. 21, 1972, 86 Stat. 706; Pub. L. 98–525, title VI, § 642(a)(2), Oct. 19, 1984, 98 Stat. 2546; Pub. L. 99–145, title XIII, § 1303(a)(10), Nov. 8, 1985, 99 Stat. 739.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1440	37:378.	Aug. 8, 1953, ch. 393, § 9, 67 Stat. 504.

The words ''either in law or equity'' are omitted as surplusage.

AMENDMENTS

1985—Pub. L. 99–145 substituted ''1437(c)(3)(B)'' for ''1437(c)(3)''.

1984—Pub. L. 98–525 substituted ''Except as provided in section 1437(c)(3) of this title, no'' for ''No''.

1972—Pub. L. 92–425 substituted ''subchapter'' for ''chapter''.

§ 1441. Annuities in addition to other payments

An annuity under this subchapter is in addition to any pension or other payment to which the beneficiary is entitled under any other provision of law, and may not be considered as income under any law administered by the Department of Veterans Affairs.

(Aug. 10, 1956, ch. 1041, 70A Stat. 111; Pub. L. 85–857, § 13(v)(1), Sept. 2, 1958, 72 Stat. 1266; Pub. L. 85–861, § 1(31B), Sept. 2, 1958, 72 Stat. 1452; Pub. L. 86–211, § 8(a), Aug. 29, 1959, 73 Stat. 436; Pub. L. 91–588, § 8(b), Dec. 24, 1970, 84 Stat. 1584; Pub. L. 92–425, § 1(2)(A), Sept. 21, 1972, 86 Stat. 706; Pub. L. 101–189, div. A, title XVI, § 1621(a)(1), Nov. 29, 1989, 103 Stat. 1602.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1441	37:380.	Aug. 8, 1953, ch. 393, § 11, 67 Stat. 504.

The word ''is'' is substituted for the words ''may now or hereafter be''.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1441	37:380.	Aug. 1, 1956, ch. 837, § 501(1), 70 Stat. 884.

The change is made to reflect the amendment made by section 501(1) of the Servicemen's and Veterans' Survivor Benefits Act (70 Stat. 884) to section 11 of the Uniform Services Contingency Option Act of 1953 (restated in section 1441 of title 10).

AMENDMENTS

1989—Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1972—Pub. L. 92–425 substituted ''subchapter'' for ''chapter''.

1970—Pub. L. 91–588 struck out ''except section 415(g) and chapter 15 of title 38'' after ''Veterans' Administration''.

1959—Pub. L. 86–211 inserted reference to chapter 15 of title 38.

1958—Pub. L. 85–861 inserted ''except section 1115 of title 38'' after ''Administration''.

Pub. L. 85–857 substituted ''section 415(g) of title 38'' for ''section 1115 of title 38''.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–588 effective Jan. 1, 1971, see section 10 of Pub. L. 91–588, set out as a note under section 1521 of Title 38, Veterans' Benefits.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–211 effective July 1, 1960, see section 10 of Pub. L. 86–211, set out as a note under section 1506 of Title 38, Veterans' Benefits.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–857 effective Jan. 1, 1959, see section 2 of Pub. L. 85–857, set out as a note preceding Part I of Title 38, Veterans' Benefits.

§ 1442. Recovery of annuity erroneously paid

In addition to other methods of recovery provided by law, the Secretary concerned may authorize the recovery, by deduction from later payments to a person, of any amount erroneously paid to him under this subchapter. However, recovery is not required if, in the judgment of the Secretary concerned, there has been no fault by the person to whom the amount was erroneously paid and recovery would be contrary to the purposes of this subchapter or against equity and good conscience.

(Aug. 10, 1956, ch. 1041, 70A Stat. 111; Pub. L. 92–425, § 1(2)(A), Sept. 21, 1972, 86 Stat. 706; Pub. L. 104–316, title I, § 105(a), Oct. 19, 1996, 110 Stat. 3830.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1442	37:376.	Aug. 8, 1953, ch. 393, § 7, 67 Stat. 504.

The words ''In addition to other methods of recovery provided by law, the Secretary concerned may'' are substituted for 37:376(a) (1st 15 words of 1st sentence). The words ''from later payments to an annuitant'' are substituted for 37:376(a) (2d sentence).

AMENDMENTS

1996—Pub. L. 104–316 struck out ''and the Comptroller General'' after ''judgment of the Secretary concerned''.

1972—Pub. L. 92–425 substituted ''subchapter'' for ''chapter''.

[§ 1443. Repealed. Pub. L. 92–425, § 1(2)(B), Sept. 21, 1972, 86 Stat. 706]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 111, related to Board of Actuaries, composed of Government Actuary, Chief Actuary of Social Security Administration, and an actuary who was a member of Society of Actuaries.

§ 1444. Regulations; determinations

(a) The President shall prescribe regulations to carry out this subchapter. Those regulations shall, so far as practicable, be uniform for the armed forces, the National Oceanic and Atmospheric Administration, and the Public Health Service.

(b) Determinations and certifications of eligibility for, and payments of, annuities and other payments or refunds under this subchapter shall be made by the department concerned. However, in the case of a department other than a military department, payments shall be made through the disbursing facilities of the Department of the Treasury.

(Aug. 10, 1956, ch. 1041, 70A Stat. 111; Pub. L. 87–381, § 5, Oct. 4, 1961, 75 Stat. 811; Pub. L. 89–718, § 8(a), Nov. 2, 1966, 80 Stat. 1117; Pub. L. 92–425, § 1(2)(A), (C), Sept. 21, 1972, 86 Stat. 706; Pub. L. 96–513, title V, § 511(58), Dec. 12, 1980, 94 Stat. 2925.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1444(a)	37:377 (1st sentence).	Aug. 8, 1953, ch. 393, §§ 6, 8 (1st and 2d sentences), 67 Stat. 504.
1444(b)	37:377 (2d sentence).	
1444(c)	37:375.	

AMENDMENTS

1980—Subsec. (a). Pub. L. 96–513, § 511(58)(A), substituted ''National Oceanic and Atmospheric Administration'' for ''Environmental Science Services Administration''.

Subsecs. (b), (c). Pub. L. 96–513, § 511(58)(B), redesignated subsec. (c) as (b).

1972—Pub. L. 92–425, § 1(2)(C), struck out ''reports to Congress'' in section catchline.

Subsec. (a). Pub. L. 92–425, § 1(2)(A), substituted ''subchapter'' for ''chapter''.

Subsec. (b). Pub. L. 92–425, § 1(2)(C), struck out subsec. (b) which required President to submit annual reports to Congress on administration of this chapter.

Subsec. (c). Pub. L. 92–425, § 1(2)(A), substituted ''subchapter'' for ''chapter''.

1966—Subsec. (a). Pub. L. 89–718 substituted ''Environmental Science Services Administration'' for ''Coast and Geodetic Survey''.

1961—Subsec. (b). Pub. L. 87–381 required report to contain a detailed account, including an actuarial analysis, of cases in which relief is granted under sections 1436(b) and 1552 of this title, or any other statutory or administrative procedure.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 89–718, § 8(a), Nov. 2, 1966, 80 Stat. 1117, cited as a credit to this section, was repealed by Pub. L. 97–295, § 6(b), Oct. 12, 1982, 96 Stat. 1314.

TRANSFER OF FUNCTIONS

For transfer of functions of Public Health Service, see note under section 802 of this title.

§ 1444a. Regulations regarding payment of annuity to a representative payee

(a) The regulations prescribed pursuant to section 1444(a) of this title shall provide procedures for the payment of an annuity under this subchapter in the case of—

(1) a person for whom a guardian or other fiduciary has been appointed; and

(2) a minor, mentally incompetent, or otherwise legally disabled person for whom a guardian or other fiduciary has not been appointed.

(b) Those regulations may include the provisions set out in section 1455(d)(2) of this title.

(c) An annuity paid to a person on behalf of an annuitant in accordance with the regulations prescribed pursuant to subsection (a) discharges the obligation of the United States for payment to the annuitant of the amount of the annuity so paid.

(Added Pub. L. 102–190, div. A, title VI, § 654(b)(1), Dec. 5, 1991, 105 Stat. 1390; amended Pub. L. 105–85, div. A, title X, § 1073(a)(26), Nov. 18, 1997, 111 Stat. 1901.)

AMENDMENTS

1997—Subsec. (b). Pub. L. 105–85 substituted ''section 1455(d)(2)'' for ''section 1455(c)''.

§ 1445. Correction of administrative deficiencies

Whenever he considers it necessary, the Secretary concerned may, under regulations prescribed under section 1444(a) of this title, correct any election, or any change or revocation of an election, under this subchapter when he considers it necessary to correct an administrative error. Except when procured by fraud, a correction under this section is final and conclusive on all officers of the United States.

(Added Pub. L. 87–381, § 6(1), Oct. 4, 1961, 75 Stat. 811; amended Pub. L. 92–425, § 1(2)(A), Sept. 21, 1972, 86 Stat. 706.)

AMENDMENTS

1972—Pub. L. 92–425 substituted ''subchapter'' for ''chapter''.

§ 1446. Restriction on participation

(a) Notwithstanding section 1441 of this title, if a person—

(1) has made an election under this subchapter; and

(2) is retired for physical disability before he completes 19 years of service for which he is entitled to credit in the computation of his basic pay;

and thereafter dies, his beneficiaries are not entitled to the annuities provided under this subchapter until they give proof to the department concerned that they are not eligible for benefits under chapter 11 or 13 of title 38. If the beneficiaries are not eligible for benefits under chapter 11 or 13 of title 38, the annuity shall begin on the first day of the month in which the death occurs.

(b) Whenever the beneficiaries on whose behalf the election was made are restricted, under sub-

section (a), from participating in the annuities provided under this subchapter, the amount withheld from the elector's retired or retainer pay as a result of an election under this subchapter shall be refunded to the beneficiaries, less the amount of any annuities paid under this subchapter, and in either case without interest.

(Added Pub. L. 87–381, § 6(1), Oct. 4, 1961, 75 Stat. 811; amended Pub. L. 90–485, § 1(8), Aug. 13, 1968, 82 Stat. 754; Pub. L. 92–425, § 1(2)(A), Sept. 21, 1972, 86 Stat. 706.)

AMENDMENTS

1972—Pub. L. 92–425 substituted ''subchapter'' for ''chapter'' wherever appearing.

1968—Subsec. (a)(2). Pub. L. 90–485 substituted ''19'' for ''18''.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–485 effective on first day of third calendar month following Aug. 13, 1968, see section 6 of Pub. L. 90–485, set out as a note under section 1431 of this title.

SUBCHAPTER II—SURVIVOR BENEFIT PLAN

Sec.
1447. Definitions.
1448. Application of Plan.
1448a. Election to discontinue participation: one-year opportunity after second anniversary of commencement of payment of retired pay.
1449. Mental incompetency of member.
1450. Payment of annuity: beneficiaries.
1451. Amount of annuity.
1452. Reduction in retired pay.
1453. Recovery of amounts erroneously paid.
1454. Correction of administrative errors.
1455. Regulations.

AMENDMENTS

1997—Pub. L. 105–85, div. A, title VI, § 641(a)(2), Nov. 18, 1997, 111 Stat. 1798, added item 1448a.

1996—Pub. L. 104–201, div. A, title VI, § 634, Sept. 23, 1996, 110 Stat. 2551, amended analysis generally, reenacting items 1447 to 1452, 1454, and 1455 without change and substituting ''Recovery of amounts'' for ''Recovery of annuity'' in item 1453.

1989—Pub. L. 101–189, div. A, title XIV, § 1407(a)(10)(B), Nov. 29, 1989, 103 Stat. 1589, substituted ''errors'' for ''deficiencies'' in item 1454.

1985—Pub. L. 99–145, title VII, § 719(8)(B), Nov. 8, 1985, 99 Stat. 676, struck out ''or retainer'' after ''retired'' in item 1452.

1972—Pub. L. 92–424, § 1(3), Sept. 21, 1972, 86 Stat. 706, added subchapter II heading and items 1447 to 1455.

§ 1447. Definitions

In this subchapter:

(1) PLAN.—The term ''Plan'' means the Survivor Benefit Plan established by this subchapter.

(2) STANDARD ANNUITY.—The term ''standard annuity'' means an annuity provided by virtue of eligibility under section 1448(a)(1)(A) of this title.

(3) RESERVE-COMPONENT ANNUITY.—The term ''reserve-component annuity'' means an annuity provided by virtue of eligibility under section 1448(a)(1)(B) of this title.

(4) RETIRED PAY.—The term ''retired pay'' includes retainer pay paid under section 6330 of this title.

(5) RESERVE-COMPONENT RETIRED PAY.—The term ''reserve-component retired pay'' means retired pay under chapter 1223 of this title (or under chapter 67 of this title as in effect before the effective date of the Reserve Officer Personnel Management Act).

(6) BASE AMOUNT.—The term ''base amount'' means the following:

(A) FULL AMOUNT UNDER STANDARD ANNUITY.—In the case of a person who dies after becoming entitled to retired pay, such term means the amount of monthly retired pay (determined without regard to any reduction under section 1409(b)(2) of this title) to which the person—

(i) was entitled when he became eligible for that pay; or

(ii) later became entitled by being advanced on the retired list, performing active duty, or being transferred from the temporary disability retired list to the permanent disability retired list.

(B) FULL AMOUNT UNDER RESERVE-COMPONENT ANNUITY.—In the case of a person who would have become eligible for reserve-component retired pay but for the fact that he died before becoming 60 years of age, such term means the amount of monthly retired pay for which the person would have been eligible—

(i) if he had been 60 years of age on the date of his death, for purposes of an annuity to become effective on the day after his death in accordance with a designation made under section 1448(e) of this title; or

(ii) upon becoming 60 years of age (if he had lived to that age), for purposes of an annuity to become effective on the 60th anniversary of his birth in accordance with a designation made under section 1448(e) of this title.

(C) REDUCED AMOUNT.—Such term means any amount less than the amount otherwise applicable under subparagraph (A) or (B) with respect to an annuity provided under the Plan but which is not less than $300 and which is designated by the person (with the concurrence of the person's spouse, if required under section 1448(a)(3) of this title) providing the annuity on or before—

(i) the first day for which he becomes eligible for retired pay, in the case of a person providing a standard annuity, or

(ii) the end of the 90-day period beginning on the date on which he receives the notification required by section 12731(d) of this title that he has completed the years of service required for eligibility for reserve-component retired pay, in the case of a person providing a reserve-component annuity.

(7) WIDOW.—The term ''widow'' means the surviving wife of a person who, if not married to the person at the time he became eligible for retired pay—

(A) was married to him for at least one year immediately before his death; or

(B) is the mother of issue by that marriage.

(8) WIDOWER.—The term ''widower'' means the surviving husband of a person who, if not

married to the person at the time she became eligible for retired pay—

(A) was married to her for at least one year immediately before her death; or

(B) is the father of issue by that marriage.

(9) SURVIVING SPOUSE.—The term ''surviving spouse'' means a widow or widower.

(10) FORMER SPOUSE.—The term ''former spouse'' means the surviving former husband or wife of a person who is eligible to participate in the Plan.

(11) DEPENDENT CHILD.—

(A) IN GENERAL.—The term ''dependent child'' means a person who—

(i) is unmarried;

(ii) is (I) under 18 years of age, (II) at least 18, but under 22, years of age and pursuing a full-time course of study or training in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution, or (III) incapable of self support because of a mental or physical incapacity existing before the person's eighteenth birthday or incurred on or after that birthday, but before the person's twenty-second birthday, while pursuing such a full-time course of study or training; and

(iii) is the child of a person to whom the Plan applies, including (I) an adopted child, and (II) a stepchild, foster child, or recognized natural child who lived with that person in a regular parent-child relationship.

(B) SPECIAL RULES FOR COLLEGE STUDENTS.—For the purpose of subparagraph (A), a child whose twenty-second birthday occurs before July 1 or after August 31 of a calendar year, and while regularly pursuing such a course of study or training, is considered to have become 22 years of age on the first day of July after that birthday. A child who is a student is considered not to have ceased to be a student during an interim between school years if the interim is not more than 150 days and if the child shows to the satisfaction of the Secretary of Defense that the child has a bona fide intention of continuing to pursue a course of study or training in the same or a different school during the school semester (or other period into which the school year is divided) immediately after the interim.

(C) FOSTER CHILDREN.—A foster child, to qualify under this paragraph as the dependent child of a person to whom the Plan applies, must, at the time of the death of that person, also reside with, and receive over one-half of his support from, that person, and not be cared for under a social agency contract. The temporary absence of a foster child from the residence of that person, while a student as described in this paragraph, shall not be considered to affect the residence of such a foster child.

(12) COURT.—The term ''court'' has the meaning given that term by section 1408(a)(1) of this title.

(13) COURT ORDER.—

(A) IN GENERAL.—The term ''court order'' means a court's final decree of divorce, dissolution, or annulment or a court ordered, ratified, or approved property settlement incident to such a decree (including a final decree modifying the terms of a previously issued decree of divorce, dissolution, annulment, or legal separation, or of a court ordered, ratified, or approved property settlement agreement incident to such previously issued decree).

(B) FINAL DECREE.—The term ''final decree'' means a decree from which no appeal may be taken or from which no appeal has been taken within the time allowed for the taking of such appeals under the laws applicable to such appeals, or a decree from which timely appeal has been taken and such appeal has been finally decided under the laws applicable to such appeals.

(C) REGULAR ON ITS FACE.—The term ''regular on its face'', when used in connection with a court order, means a court order that meets the conditions prescribed in section 1408(b)(2) of this title.

(Added Pub. L. 92–425, §1(3), Sept. 21, 1972, 86 Stat. 706; amended Pub. L. 94–496, §1(1), Oct. 14, 1976, 90 Stat. 2375; Pub. L. 95–397, title II, §201, Sept. 30, 1978, 92 Stat. 843; Pub. L. 96–402, §2, Oct. 9, 1980, 94 Stat. 1705; Pub. L. 97–252, title X, §1003(a), Sept. 8, 1982, 96 Stat. 735; Pub. L. 98–94, title IX, §941(c)(1), Sept. 24, 1983, 97 Stat. 653; Pub. L. 99–145, title VII, §§719(1), (2), 721(b), Nov. 8, 1985, 99 Stat. 675, 676; Pub. L. 99–348, title III, §301(a)(1), July 1, 1986, 100 Stat. 702; Pub. L. 99–661, div. A, title XIII, §1343(a)(8)(A), Nov. 14, 1986, 100 Stat. 3992; Pub. L. 100–180, div. A, title XII, §1231(17), Dec. 4, 1987, 101 Stat. 1161; Pub. L. 101–189, div. A, title XIV, §1407(a)(1)–(3), Nov. 29, 1989, 103 Stat. 1588; Pub. L. 101–510, div. A, title XIV, §1484(*l*)(4)(C)(i), Nov. 5, 1990, 104 Stat. 1720; Pub. L. 103–337, div. A, title XVI, §1671(d), Oct. 5, 1994, 108 Stat. 3014; Pub. L. 104–201, div. A, title VI, §634, Sept. 23, 1996, 110 Stat. 2551.)

REFERENCES IN TEXT

Chapter 67 of this title as in effect before the effective date of the Reserve Officer Personnel Management Act, referred to in par. (5), means chapter 67 (§1331 et seq.) of this title prior to its transfer to part II of subtitle E of this title, its renumbering as chapter 1223, and its general revision by section 1662(j)(1) of Pub. L. 103–337. A new chapter 67 (§1331) of this title was added by section 1662(j)(7) of Pub. L. 103–337. For effective date of the Reserve Officer Personnel Management Act (Pub. L. 103–337, title XVI), see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

AMENDMENTS

1996—Pub. L. 104–201 amended section generally, making changes in the order, style, and substance of definitions of terms used in this subchapter and adding definition of ''surviving spouse''.

1994—Par. (2)(C). Pub. L. 103–337, §1671(d)(2), substituted ''12731(d)'' for ''1331(d)''.

Par. (14). Pub. L. 103–337, §1671(d)(1), substituted ''chapter 1223 of this title (or under chapter 67 of this title as in effect before the effective date of the Reserve Officer Personnel Management Act)'' for ''chapter 67 of this title''.

1990—Par. (5). Pub. L. 101–510 made technical correction to directory language of Pub. L. 101–189, §1407(a)(1)(A), see 1989 Amendment note below.

1989—Par. (2)(B). Pub. L. 101–189, §1407(a)(2), substituted ''reserve-component retired pay'' for ''retired pay under chapter 67 of this title''.

Par. (2)(C)(i). Pub. L. 101–189, §1407(a)(3), struck out ''or retainer'' after ''eligible for retired''.

Par. (2)(C)(ii). Pub. L. 101–189, §1407(a)(2), substituted ''reserve-component retired pay'' for ''retired pay under chapter 67 of this title''.

Pars. (3), (4). Pub. L. 101–189, §1407(a)(3), struck out ''or retainer'' after ''eligible for retired''.

Par. (5). Pub. L. 101–189, §1407(a)(1)(A), as amended by Pub. L. 101–510, substituted ''this paragraph'' for ''this clause'' in three places in concluding provisions.

Par. (11). Pub. L. 101–189, §1407(a)(1)(B), inserted ''paid under section 6330 of this title'' after ''retainer pay''.

Par. (14). Pub. L. 101–189, §1407(a)(1)(C), added par. (14).

1987—Pub. L. 100–180 inserted ''The term'' after each par. designation and revised first word in quotes in pars. (2) to (13) to make initial letter of such word lowercase.

1986—Par. (2)(A). Pub. L. 99–661 substituted ''retired pay'' for ''retired or retainer pay'' in two places in provisions preceding cl. (i).

Pub. L. 99–348 inserted ''(determined without regard to any reduction under section 1409(b)(2) of this title)''.

1985—Par. (2)(C). Pub. L. 99–145, §721(b), inserted ''(with the concurrence of the person's spouse, if required under section 1448(a)(3) of this title)'' after ''designated by the person''.

Par. (2)(C)(i). Pub. L. 99–145, §719(2)(A), substituted ''a standard annuity'' for ''an annuity by virtue of eligibility under section 1448(a)(1)(A) of this title''.

Par. (2)(C)(ii). Pub. L. 99–145, §719(2)(B), substituted ''a reserve-component annuity'' for ''an annuity by virtue of eligibility under section 1448(a)(1)(B) of this title''.

Pars. (11) to (13). Pub. L. 99–145, §719(1), added pars. (11) to (13).

1983—Par. (8). Pub. L. 98–94 substituted ''or annulment'' for ''annulment, or legal separation,'' in two places.

1982—Pars. (6) to (10). Pub. L. 97–252 added pars. (6) to (10).

1980—Par. (2). Pub. L. 96–402 inserted in subpar. (C) ''but which is not less than $300'' after ''under the Plan'', substituted a period at end of subpar. (C) for '', but not less than $300;'', and struck out following subpar. (C) ''as increased from time to time under section 1401a of this title.''

1978—Par. (2). Pub. L. 95–397 inserted ''in the case of a person who dies after becoming entitled to retired or retainer pay'' before ''the amount'' and substituted ''pay to which the person'' for ''pay to which a person'' in subpar. (A), substituted ''in the case of a person who would have become eligible for retired pay under chapter 67 of this title but for the fact that he died before becoming 60 years of age, the amount of monthly retired pay for which the person would have been eligible—'' for ''any amount less than that described by clause (A) designated by that person on or before the first day for which he became eligible for retired or retainer pay, but not less than $300'' in subpar. (B), and added subpars. (B)(i), (ii) and (C).

1976—Pars. (3)(A), (4)(A). Pub. L. 94–496 substituted ''one year'' for ''two years''.

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 an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 1484(*l*)(4)(C) of Pub. L. 101–510 provided that the amendment made by that section is effective Nov. 29, 1989.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 731 of title VII of Pub. L. 99–145 provided that:

''(a) EFFECTIVE DATE.—Except as otherwise provided in this title, the amendments made by this title [see Short Title of 1985 Amendment note below] shall take effect on the first day of the first month beginning more than 90 days after the date of the enactment of this Act [Nov. 8, 1985].

''(b) PROSPECTIVE BENEFITS ONLY.—No benefit shall accrue to any person by reason of the enactment of this title for any period before the effective date under subsection (a).''

EFFECTIVE DATE OF 1982 AMENDMENT; TRANSITION PROVISIONS

Amendment by Pub. L. 97–252 effective Feb. 1, 1983, and applicable to persons becoming eligible to participate in Survivor Benefit Plan provided for in this subchapter before, on, or after Feb. 1, 1983, see section 1006 of Pub. L. 97–252, set out as an Effective Date; Transition Provisions note under section 1408 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 7 of Pub. L. 96–402 provided that: ''The amendments made by sections 2, 3, and 4 of this Act [amending this section and sections 1451 and 1452 of this title] and the provisions of section 5 of this Act [set out as a note under section 1448 of this title] shall be effective on the first day of the second calendar month following the month in which this Act is enacted [October 1980] and shall apply to annuities payable by virtue of such amendments and provisions for months beginning on or after such date. No benefits shall accrue to any person by virtue of the enactment of this Act [Pub. L. 96–402] for any period before the date of the enactment of this Act [Oct. 9, 1980].''

EFFECTIVE DATE OF 1978 AMENDMENT

Section 210 of title II of Pub. L. 95–397 provided that:

''(a) Except as provided in subsection (b), the provisions of this title [amending this section and sections 1331 [now 12731] and 1448 to 1452 of this title and enacting provisions set out as notes under this section and section 1448 of this title] and the amendments made by this title shall take effect on October 1, 1978, or on the date of the enactment of this Act [Sept. 30, 1978], whichever is later, and shall apply to annuities payable by virtue of such amendments for months beginning on or after such date.

''(b) The amendment made by section 206 [amending section 1331 [now 12731] of this title] shall apply to notifications under section 1331(d) [now 12731(d)] of title 10, United States Code, after the date of the enactment of this Act [Sept. 30, 1978].''

EFFECTIVE DATE OF 1976 AMENDMENT

Section 3 of Pub. L. 94–496 provided that: ''This Act [amending this section and sections 1448, 1450, 1451, and 1452 of this title, and amending provisions set out as a note under section 1448 of this title] shall be effective as of September 21, 1972. No pay shall accrue to any person by virtue of the enactment of this Act for any period prior to October 1, 1976.''

SHORT TITLE OF 1989 AMENDMENT

Section 1401 of title XIV of Pub. L. 101–189 provided that: ''This title [enacting subchapter III of this chapter, amending this section and sections 1331 [now 12731], 1448 to 1452, and 1454 of this title and section 3101 [now 5301] of Title 38, Veterans' Benefits, and enacting provisions set out as notes under sections 1448, 1451, 1452, 1456, and 12731 of this title] may be cited as the 'Military Survivor Benefits Improvement Act of 1989'.''

SHORT TITLE OF 1985 AMENDMENT

Section 701 of title VII of Pub. L. 99–145 provided that: ''This title [amending this section and sections 1448, 1450 to 1452, and 1455 of this title, enacting provisions set out as notes under this section and sections 1448 and 1452 of this title, and repealing a provision set out as a

note under section 1451 of this title] may be cited as the 'Survivor Benefit Plan Amendments of 1985'.''

SHORT TITLE OF 1980 AMENDMENT

Section 1 of Pub. L. 96–402 provided: ''That this Act [amending this section and sections 1451 and 1452 of this title, enacting provisions set out as notes under this section and section 1448 of this title, and amending provisions set out as a note under section 1448 of this title] may be cited as the 'Uniformed Services Survivor Benefits Amendments of 1980'.''

END OF 90-DAY PERIOD WITH RESPECT TO CERTAIN INDIVIDUALS

Section 208 of Pub. L. 95–397, as amended by Pub. L. 96–107, title VIII, § 816, Nov. 9, 1979, 93 Stat. 818, provided that the 90-day period referred to in former sections 1447(2)(C) and 1448(a)(2) and (4)(B) of this title was to be considered to end on Mar. 31, 1980, for an individual who would have been eligible for retired pay under former chapter 67 of this title on the effective date of title II of Pub. L. 95–397 (see Effective Date of 1978 Amendment note above), but for the fact such individual was under 60 years of age, or for an individual who received before Jan. 1, 1980, a notification that such individual had completed the years of service required for eligibility for such retired pay.

§ 1448. Application of Plan

(a) GENERAL RULES FOR PARTICIPATION IN THE PLAN.—

(1) NAME OF PLAN; ELIGIBLE PARTICIPANTS.—The program established by this subchapter shall be known as the Survivor Benefit Plan. The following persons are eligible to participate in the Plan:

(A) Persons entitled to retired pay.

(B) Persons who would be eligible for reserve-component retired pay but for the fact that they are under 60 years of age.

(2) PARTICIPANTS IN THE PLAN.—The Plan applies to the following persons, who shall be participants in the Plan:

(A) STANDARD ANNUITY PARTICIPANTS.—A person who is eligible to participate in the Plan under paragraph (1)(A) and who is married or has a dependent child when he becomes entitled to retired pay, unless he elects (with his spouse's concurrence, if required under paragraph (3)) not to participate in the Plan before the first day for which he is eligible for that pay.

(B) RESERVE-COMPONENT ANNUITY PARTICIPANTS.—A person who (i) is eligible to participate in the Plan under paragraph (1)(B), and (ii) is married or has a dependent child when he is notified under section 12731(d) of this title that he has completed the years of service required for eligibility for reserve-component retired pay, unless the person elects (with his spouse's concurrence, if required under paragraph (3)) not to participate in the Plan before the end of the 90-day period beginning on the date on which he receives that notification.

A person who elects under subparagraph (B) not to participate in the Plan remains eligible, upon reaching 60 years of age and otherwise becoming entitled to retired pay, to participate in the Plan in accordance with eligibility under paragraph (1)(A).

(3) ELECTIONS.—

(A) SPOUSAL CONSENT FOR CERTAIN ELECTIONS RESPECTING STANDARD ANNUITY.—A married person who is eligible to provide a standard annuity may not without the concurrence of the person's spouse elect—

(i) not to participate in the Plan;

(ii) to provide an annuity for the person's spouse at less than the maximum level; or

(iii) to provide an annuity for a dependent child but not for the person's spouse.

(B) SPOUSAL CONSENT FOR CERTAIN ELECTIONS RESPECTING RESERVE-COMPONENT ANNUITY.—A married person who is eligible to provide a reserve-component annuity may not without the concurrence of the person's spouse elect—

(i) not to participate in the Plan;

(ii) to designate under subsection (e)(2) the effective date for commencement of annuity payments under the Plan in the event that the member dies before becoming 60 years of age to be the 60th anniversary of the member's birth (rather than the day after the date of the member's death);

(iii) to provide an annuity for the person's spouse at less than the maximum level; or

(iv) to provide an annuity for a dependent child but not for the person's spouse.

(C) EXCEPTION WHEN SPOUSE UNAVAILABLE.—A person may make an election described in subparagraph (A) or (B) without the concurrence of the person's spouse if the person establishes to the satisfaction of the Secretary concerned—

(i) that the spouse's whereabouts cannot be determined; or

(ii) that, due to exceptional circumstances, requiring the person to seek the spouse's consent would otherwise be inappropriate.

(D) CONSTRUCTION WITH FORMER SPOUSE ELECTION PROVISIONS.—This paragraph does not affect any right or obligation to elect to provide an annuity for a former spouse (or for a former spouse and dependent child) under subsection (b)(2).

(E) NOTICE TO SPOUSE OF ELECTION TO PROVIDE FORMER SPOUSE ANNUITY.—If a married person who is eligible to provide a standard annuity elects to provide an annuity for a former spouse (or for a former spouse and dependent child) under subsection (b)(2), that person's spouse shall be notified of that election.

(4) IRREVOCABILITY OF ELECTIONS.—

(A) STANDARD ANNUITY.—An election under paragraph (2)(A) is irrevocable if not revoked before the date on which the person first becomes entitled to retired pay.

(B) RESERVE-COMPONENT ANNUITY.—An election under paragraph (2)(B) is irrevocable if not revoked before the end of the 90-day period referred to in that paragraph.

(5) PARTICIPATION BY PERSON MARRYING AFTER RETIREMENT, ETC.—

(A) ELECTION TO PARTICIPATE IN PLAN.—A person who is not married and has no de-

pendent child upon becoming eligible to participate in the Plan but who later marries or acquires a dependent child may elect to participate in the Plan.

(B) MANNER AND TIME OF ELECTION.—Such an election must be written, signed by the person making the election, and received by the Secretary concerned within one year after the date on which that person marries or acquires that dependent child.

(C) LIMITATION ON REVOCATION OF ELECTION.—Such an election may not be revoked except in accordance with subsection (b)(3).

(D) EFFECTIVE DATE OF ELECTION.—The election is effective as of the first day of the first calendar month following the month in which the election is received by the Secretary concerned.

(E) DESIGNATION IF RCSBP ELECTION.—In the case of a person providing a reserve-component annuity, such an election shall include a designation under subsection (e).

(6) ELECTION OUT OF PLAN BY PERSON WITH SPOUSE COVERAGE WHO REMARRIES.—

(A) GENERAL RULE.—A person—

(i) who is a participant in the Plan and is providing coverage under the Plan for a spouse (or a spouse and child);

(ii) who does not have an eligible spouse beneficiary under the Plan; and

(iii) who remarries,

may elect not to provide coverage under the Plan for the person's spouse.

(B) EFFECT OF ELECTION ON RETIRED PAY.—If such an election is made, reductions in the retired pay of that person under section 1452 of this title shall not be made.

(C) TERMS AND CONDITIONS OF ELECTION.—An election under this paragraph—

(i) is irrevocable;

(ii) shall be made within one year after the person's remarriage; and

(iii) shall be made in such form and manner as may be prescribed in regulations under section 1455 of this title.

(D) NOTICE TO SPOUSE.—If a person makes an election under this paragraph—

(i) not to participate in the Plan;

(ii) to provide an annuity for the person's spouse at less than the maximum level; or

(iii) to provide an annuity for a dependent child but not for the person's spouse,

the person's spouse shall be notified of that election.

(E) CONSTRUCTION WITH FORMER SPOUSE ELECTION PROVISIONS.—This paragraph does not affect any right or obligation to elect to provide an annuity to a former spouse under subsection (b).

(b) INSURABLE INTEREST AND FORMER SPOUSE COVERAGE.—

(1) COVERAGE FOR PERSON WITH INSURABLE INTEREST.—

(A) GENERAL RULE.—A person who is not married and does not have a dependent child upon becoming eligible to participate in the Plan may elect to provide an annuity under the Plan to a natural person with an insurable interest in that person. In the case of a person providing a reserve-component annuity, such an election shall include a designation under subsection (e).

(B) TERMINATION OF COVERAGE.—An election under subparagraph (A) for a beneficiary who is not the former spouse of the person providing the annuity may be terminated. Any such termination shall be made by a participant by the submission to the Secretary concerned of a request to discontinue participation in the Plan, and such participation in the Plan shall be discontinued effective on the first day of the first month following the month in which the request is received by the Secretary concerned. Effective on such date, the Secretary concerned shall discontinue the reduction being made in such person's retired pay on account of participation in the Plan or, in the case of a person who has been required to make deposits in the Treasury on account of participation in the Plan, such person may discontinue making such deposits effective on such date.

(C) FORM FOR DISCONTINUATION.—A request under subparagraph (B) to discontinue participation in the Plan shall be in such form and shall contain such information as may be required under regulations prescribed by the Secretary of Defense.

(D) WITHDRAWAL OF REQUEST FOR DISCONTINUATION.—The Secretary concerned shall furnish promptly to each person who submits a request under subparagraph (B) to discontinue participation in the Plan a written statement of the advantages and disadvantages of participating in the Plan and the possible disadvantages of discontinuing participation. A person may withdraw the request to discontinue participation if withdrawn within 30 days after having been submitted to the Secretary concerned.

(E) CONSEQUENCES OF DISCONTINUATION.—Once participation is discontinued, benefits may not be paid in conjunction with the earlier participation in the Plan and premiums paid may not be refunded. Participation in the Plan may not later be resumed except through a qualified election under paragraph (5) of subsection (a) or under subparagraph (G) of this paragraph.

(F) VITIATION OF ELECTION BY DISABILITY RETIREE WHO DIES OF DISABILITY-RELATED CAUSE.—If a member retired after November 23, 2003, under chapter 61 of this title dies within one year after the date on which the member is so retired and the cause of death is related to a disability for which the member was retired under that chapter (as determined under regulations prescribed by the Secretary of Defense)—

(i) an election made by the member under paragraph (1) to provide an annuity under the Plan to any person other than a dependent of that member (as defined in section 1072(2) of this title) is vitiated; and

(ii) the amounts by which the member's retired pay was reduced under section 1452 of this title shall be refunded and paid to the person to whom the annuity under the

Plan would have been paid pursuant to such election.

(G) ELECTION OF NEW BENEFICIARY UPON DEATH OF PREVIOUS BENEFICIARY.—

(i) AUTHORITY FOR ELECTION.—If the reason for discontinuation in the Plan is the death of the beneficiary, the participant in the Plan may elect a new beneficiary. Any such beneficiary must be a natural person with an insurable interest in the participant. Such an election may be made only during the 180-day period beginning on the date of the death of the previous beneficiary.

(ii) PROCEDURES.—Such an election shall be in writing, signed by the participant, and made in such form and manner as the Secretary concerned may prescribe. Such an election shall be effective the first day of the first month following the month in which the election is received by the Secretary.

(iii) VITIATION OF ELECTION BY PARTICIPANT WHO DIES WITHIN TWO YEARS OF ELECTION.—If a person providing an annuity under a election under clause (i) dies before the end of the two-year period beginning on the effective date of the election—

(I) the election is vitiated; and

(II) the amount by which the person's retired pay was reduced under section 1452 of this title that is attributable to the election shall be paid in a lump sum to the person who would have been the deceased person's beneficiary under the vitiated election if the deceased person had died after the end of such two-year period.

(2) FORMER SPOUSE COVERAGE UPON BECOMING A PARTICIPANT IN THE PLAN.—

(A) GENERAL RULE.—A person who has a former spouse upon becoming eligible to participate in the Plan may elect to provide an annuity to that former spouse.

(B) EFFECT OF FORMER SPOUSE ELECTION ON SPOUSE OR DEPENDENT CHILD.—In the case of a person with a spouse or a dependent child, such an election prevents payment of an annuity to that spouse or child (other than a child who is a beneficiary under an election under paragraph (4)), including payment under subsection (d).

(C) DESIGNATION IF MORE THAN ONE FORMER SPOUSE.—If there is more than one former spouse, the person shall designate which former spouse is to be provided the annuity.

(D) DESIGNATION IF RCSBP ELECTION.—In the case of a person providing a reserve-component annuity, such an election shall include a designation under subsection (e).

(3) FORMER SPOUSE COVERAGE BY PERSONS ALREADY PARTICIPATING IN PLAN.—

(A) ELECTION OF COVERAGE.—

(i) AUTHORITY FOR ELECTION.—A person—

(I) who is a participant in the Plan and is providing coverage for a spouse or a spouse and child (even though there is no beneficiary currently eligible for such coverage), and

(II) who has a former spouse who was not that person's former spouse when that person became eligible to participate in the Plan,

may (subject to subparagraph (B)) elect to provide an annuity to that former spouse.

(ii) TERMINATION OF PREVIOUS COVERAGE.—Any such election terminates any previous coverage under the Plan.

(iii) MANNER AND TIME OF ELECTION.—Any such election must be written, signed by the person making the election, and received by the Secretary concerned within one year after the date of the decree of divorce, dissolution, or annulment.

(B) LIMITATION ON ELECTION.—A person may not make an election under subparagraph (A) to provide an annuity to a former spouse who that person married after becoming eligible for retired pay unless—

(i) the person was married to that former spouse for at least one year, or

(ii) that former spouse is the parent of issue by that marriage.

(C) IRREVOCABILITY, ETC.—An election under this paragraph may not be revoked except in accordance with section 1450(f) of this title. This paragraph does not provide the authority to change a designation previously made under subsection (e).

(D) NOTICE TO SPOUSE.—If a person who is married makes an election to provide an annuity to a former spouse under this paragraph, that person's spouse shall be notified of the election.

(E) EFFECTIVE DATE OF ELECTION.—An election under this paragraph is effective as of—

(i) the first day of the first month following the month in which the election is received by the Secretary concerned; or

(ii) in the case of a person required (as described in section 1450(f)(3)(B) of this title) to make the election by reason of a court order or filing the date of which is after October 16, 1998, the first day of the first month which begins after the date of that court order or filing.

(4) FORMER SPOUSE AND CHILD COVERAGE.—A person who elects to provide an annuity for a former spouse under paragraph (2) or (3) may, at the time of the election, elect to provide coverage under that annuity for both the former spouse and a dependent child, if the child resulted from the person's marriage to that former spouse.

(5) DISCLOSURE OF WHETHER ELECTION OF FORMER SPOUSE COVERAGE IS REQUIRED.—A person who elects to provide an annuity to a former spouse under paragraph (2) or (3) shall, at the time of making the election, provide the Secretary concerned with a written statement (in a form to be prescribed by that Secretary and signed by such person and the former spouse) setting forth—

(A) whether the election is being made pursuant to the requirements of a court order; or

(B) whether the election is being made pursuant to a written agreement previously entered into voluntarily by such person as a part of, or incident to, a proceeding of di-

vorce, dissolution, or annulment and (if so) whether such voluntary written agreement has been incorporated in, or ratified or approved by, a court order.

(c) PERSONS ON TEMPORARY DISABILITY RETIRED LIST.—The application of the Plan to a person whose name is on the temporary disability retired list terminates when his name is removed from that list and he is no longer entitled to disability retired pay.

(d) COVERAGE FOR SURVIVORS OF MEMBERS WHO DIE ON ACTIVE DUTY.—

(1) SURVIVING SPOUSE ANNUITY.—Except as provided in paragraph (2)(B), the Secretary concerned shall pay an annuity under this subchapter to the surviving spouse of—

(A) a member who dies while on active duty after—

(i) becoming eligible to receive retired pay;

(ii) qualifying for retired pay except that the member has not applied for or been granted that pay; or

(iii) completing 20 years of active service but before the member is eligible to retire as a commissioned officer because the member has not completed 10 years of active commissioned service; or

(B) a member not described in subparagraph (A) who dies in line of duty while on active duty.

(2) DEPENDENT CHILDREN.—

(A) ANNUITY WHEN NO ELIGIBLE SURVIVING SPOUSE.—In the case of a member described in paragraph (1), the Secretary concerned shall pay an annuity under this subchapter to the member's dependent children under section 1450(a)(2) of this title as applicable.

(B) OPTIONAL ANNUITY WHEN THERE IS AN ELIGIBLE SURVIVING SPOUSE.—In the case of a member described in paragraph (1) who dies after October 7, 2001, and for whom there is a surviving spouse eligible for an annuity under paragraph (1), the Secretary may pay an annuity under this subchapter to the member's dependent children under section 1450(a)(3) of this title, if applicable, instead of paying an annuity to the surviving spouse under paragraph (1), if the Secretary concerned, in consultation with the surviving spouse, determines it appropriate to provide an annuity for the dependent children under this paragraph instead of an annuity for the surviving spouse under paragraph (1).

(3) MANDATORY FORMER SPOUSE ANNUITY.—If a member described in paragraph (1) is required under a court order or spousal agreement to provide an annuity to a former spouse upon becoming eligible to be a participant in the Plan or has made an election under subsection (b) to provide an annuity to a former spouse, the Secretary—

(A) may not pay an annuity under paragraph (1) or (2); but

(B) shall pay an annuity to that former spouse as if the member had been a participant in the Plan and had made an election under subsection (b) to provide an annuity to the former spouse, or in accordance with that election, as the case may be, if the Secretary receives a written request from the former spouse concerned that the election be deemed to have been made in the same manner as provided in section 1450(f)(3) of this title.

(4) PRIORITY.—An annuity that may be provided under this subsection shall be provided in preference to an annuity that may be provided under any other provision of this subchapter on account of service of the same member.

(5) COMPUTATION.—The amount of an annuity under this subsection is computed under section 1451(c) of this title.

(6) DEEMED ELECTION.—

(A) ANNUITY FOR DEPENDENT.—In the case of a member described in paragraph (1) who dies after November 23, 2003, the Secretary concerned may, if no other annuity is payable on behalf of the member under this subchapter, pay an annuity to a natural person who has an insurable interest in such member as if the annuity were elected by the member under subsection (b)(1). The Secretary concerned may pay such an annuity under this paragraph only in the case of a person who is a dependent of that member (as defined in section 1072(2) of this title).

(B) COMPUTATION OF ANNUITY.—An annuity under this subparagraph shall be computed under section 1451(b) of this title as if the member had retired for total disability on the date of death with reductions as specified under section 1452(c) of this title, as applicable to the ages of the member and the natural person with an insurable interest.

(e) DESIGNATION FOR COMMENCEMENT OF RESERVE-COMPONENT ANNUITY.—In any case in which a person is required to make a designation under this subsection, the person shall designate whether, in the event he dies before becoming 60 years of age, the annuity provided shall become effective on—

(1) the day after the date of his death; or

(2) the 60th anniversary of his birth.

(f) COVERAGE OF SURVIVORS OF PERSONS DYING WHEN OR BEFORE ELIGIBLE TO ELECT RESERVE-COMPONENT ANNUITY.—

(1) SURVIVING SPOUSE ANNUITY.—The Secretary concerned shall pay an annuity under this subchapter to the surviving spouse of a person who—

(A) is eligible to provide a reserve-component annuity and dies—

(i) before being notified under section 12731(d) of this title that he has completed the years of service required for eligibility for reserve-component retired pay; or

(ii) during the 90-day period beginning on the date he receives notification under section 12731(d) of this title that he has completed the years of service required for eligibility for reserve-component retired pay if he had not made an election under subsection (a)(2)(B) to participate in the Plan; or

(B) is a member of a reserve component not described in subparagraph (A) and dies

from an injury or illness incurred or aggravated in the line of duty during inactive-duty training.

(2) DEPENDENT CHILD ANNUITY.—The Secretary concerned shall pay an annuity under this subchapter to the dependent child of a person described in paragraph (1) if there is no surviving spouse or if the person's surviving spouse subsequently dies.

(3) MANDATORY FORMER SPOUSE ANNUITY.—If a person described in paragraph (1) is required under a court order or spousal agreement to provide an annuity to a former spouse upon becoming eligible to be a participant in the Plan or has made an election under subsection (b) to provide an annuity to a former spouse, the Secretary—

(A) may not pay an annuity under paragraph (1) or (2); but

(B) shall pay an annuity to that former spouse as if the person had been a participant in the Plan and had made an election under subsection (b) to provide an annuity to the former spouse, or in accordance with that election, as the case may be, if the Secretary receives a written request from the former spouse concerned that the election be deemed to have been made in the same manner as provided in section 1450(f)(3) of this title.

(4) COMPUTATION.—The amount of an annuity under this subsection is computed under section 1451(c) of this title.

(g) ELECTION TO INCREASE COVERAGE UPON REMARRIAGE.—

(1) ELECTION.—A person—

(A) who is a participant in the Plan and is providing coverage under subsection (a) for a spouse or a spouse and child, but at less than the maximum level; and

(B) who remarries,

may elect, within one year of such remarriage, to increase the level of coverage provided under the Plan to a level not in excess of the current retired pay of that person.

(2) PAYMENT REQUIRED.—Such an election shall be contingent on the person paying to the United States the amount determined under paragraph (3) plus interest on such amount at a rate determined under regulations prescribed by the Secretary of Defense.

(3) AMOUNT TO BE PAID.—The amount referred to in paragraph (2) is the amount equal to the difference between—

(A) the amount that would have been withheld from such person's retired pay under section 1452 of this title if the higher level of coverage had been in effect from the time the person became a participant in the Plan; and

(B) the amount of such person's retired pay actually withheld.

(4) MANNER OF MAKING ELECTION.—An election under paragraph (1) shall be made in such manner as the Secretary shall prescribe and shall become effective upon receipt of the payment required by paragraph (2).

(5) DISPOSITION OF PAYMENTS.—A payment received under this subsection by the Secretary of Defense shall be deposited into the Department of Defense Military Retirement Fund. Any other payment received under this subsection shall be deposited in the Treasury as miscellaneous receipts.

(Added Pub. L. 92–425, § 1(3), Sept. 21, 1972, 86 Stat. 707; amended Pub. L. 94–496, § 1(2), Oct. 14, 1976, 90 Stat. 2375; Pub. L. 95–397, title II, § 202, Sept. 30, 1978, 92 Stat. 844; Pub. L. 97–252, title X, § 1003(b), Sept. 8, 1982, 96 Stat. 735; Pub. L. 97–295, § 1(18), Oct. 12, 1982, 96 Stat. 1290; Pub. L. 98–94, title IX, § 941(a)(1), (2), (c)(2), Sept. 24, 1983, 97 Stat. 652, 653; Pub. L. 99–145, title V, § 513(b), title VII, §§ 712(a), 713(a), 715, 716(a), 719(3), (8)(A), 721(a), Nov. 8, 1985, 99 Stat. 628, 670, 671, 673–676; Pub. L. 99–661, div. A, title VI, §§ 641(b)(1), 642(a), title XIII, § 1343(a)(8)(B), Nov. 14, 1986, 100 Stat. 3885, 3886, 3992; Pub. L. 101–189, div. A, title XIV, § 1407(a)(2), (3), Nov. 29, 1989, 103 Stat. 1588; Pub. L. 103–337, div. A, title VI, § 638, title XVI, § 1671(d)(2), Oct. 5, 1994, 108 Stat. 2791, 3015; Pub. L. 104–201, div. A, title VI, § 634, Sept. 23, 1996, 110 Stat. 2553; Pub. L. 105–85, div. A, title X, § 1073(a)(27), Nov. 18, 1997, 111 Stat. 1901; Pub. L. 105–261, div. A, title VI, § 643(a), Oct. 17, 1998, 112 Stat. 2047; Pub. L. 106–65, div. A, title X, § 1066(a)(12), Oct. 5, 1999, 113 Stat. 771; Pub. L. 106–398, § 1 [[div. A], title VI, § 655(a)–(c)(3), title X, § 1087(a)(10)], Oct. 30, 2000, 114 Stat. 1654, 1654A–165, 1654A–166, 1654A–290; Pub. L. 107–107, div. A, title VI, § 642(a), (c)(1), Dec. 28, 2001, 115 Stat. 1151, 1152; Pub. L. 108–136, div. A, title VI, §§ 644(a), (b), 645(a), (b)(1), (c), Nov. 24, 2003, 117 Stat. 1517–1519; Pub. L. 108–375, div. A, title X, § 1084(d)(10), Oct. 28, 2004, 118 Stat. 2061; Pub. L. 109–364, div. A, title VI, §§ 643(a), 644(a), title X, § 1071(a)(8), Oct. 17, 2006, 120 Stat. 2260, 2261, 2398.)

AMENDMENTS

2006—Subsec. (b)(1)(E). Pub. L. 109–364, § 643(a)(1), inserted "or under subparagraph (G) of this paragraph" before period at end.

Subsec. (b)(1)(G). Pub. L. 109–364, § 643(a)(2), added subpar. (G).

Subsec. (d)(2)(B). Pub. L. 109–364, § 644(a), substituted "October 7, 2001" for "November 23, 2003".

Subsec. (d)(6)(A). Pub. L. 109–364, § 1071(a)(8), struck out second comma after "November 23, 2003".

2004—Subsecs. (b)(1)(F), (d)(2)(B), (6)(A). Pub. L. 108–375 substituted "after November 23, 2003," for "on or after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2004".

2003—Subsec. (b)(1)(F). Pub. L. 108–136, § 645(b)(1), added subpar. (F).

Subsec. (d)(1). Pub. L. 108–136, § 645(a)(2), substituted "Except as provided in paragraph (2)(B), the Secretary concerned" for "The Secretary concerned" in introductory provisions.

Subsec. (d)(2). Pub. L. 108–136, § 645(a)(1), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: "The Secretary concerned shall pay an annuity under this subchapter to the dependent child of a member described in paragraph (1) if there is no surviving spouse or if the member's surviving spouse subsequently dies."

Subsec. (d)(6). Pub. L. 108–136, § 645(c), added par. (6).

Subsec. (f). Pub. L. 108–136, § 644(b), inserted "or Before" after "Dying When" in heading.

Subsec. (f)(1). Pub. L. 108–136, § 644(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "The Secretary concerned shall pay an annuity under this subchapter to the surviving spouse of a person who is eligible to provide a reserve-component annuity and who dies—

''(A) before being notified under section 12731(d) of this title that he has completed the years of service required for eligibility for reserve-component retired pay; or

''(B) during the 90-day period beginning on the date he receives notification under section 12731(d) of this title that he has completed the years of service required for eligibility for reserve-component retired pay if he had not made an election under subsection (a)(2)(B) to participate in the Plan.''

2001—Subsec. (d). Pub. L. 107–107 struck out ''Retirement-Eligible'' before ''Members'' in heading and amended par. (1) generally. Prior to amendment, par. (1) read as follows:

''(1) SURVIVING SPOUSE ANNUITY.—The Secretary concerned shall pay an annuity under this subchapter to the surviving spouse of a member who dies on active duty after—

''(A) becoming eligible to receive retired pay;

''(B) qualifying for retired pay except that he has not applied for or been granted that pay; or

''(C) completing 20 years of active service but before he is eligible to retire as a commissioned officer because he has not completed 10 years of active commissioned service.''

2000—Subsec. (a)(2). Pub. L. 106–398, §1 [[div. A], title VI, §655(c)(1)], substituted ''who elects under subparagraph (B) not to participate in the Plan'' for ''described in clauses (i) and (ii) of subparagraph (B) who does not elect to participate in the Plan before the end of the 90-day period referred to in that clause'' in concluding provisions.

Subsec. (a)(2)(B). Pub. L. 106–398, §1 [[div. A], title VI, §655(a)], amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: ''A person who (i) is eligible to participate in the Plan under paragraph (1)(B), (ii) is married or has a dependent child when he is notified under section 12731(d) of this title that he has completed the years of service required for eligibility for reserve-component retired pay, and (iii) elects to participate in the Plan (and makes a designation under subsection (e)) before the end of the 90-day period beginning on the date he receives such notification.''

Subsec. (a)(3)(B). Pub. L. 106–398, §1 [[div. A], title VI, §655(b)], substituted ''who is eligible to provide'' for ''who elects to provide'' in introductory provisions, added cls. (i) and (ii), and redesignated former cls. (i) and (ii) as (iii) and (iv), respectively.

Subsec. (a)(4)(A). Pub. L. 106–398, §1 [[div. A], title VI, §655(c)(2)(A)], struck out ''not to participate in the Plan'' after ''election under paragraph (2)(A)''.

Subsec. (a)(4)(B). Pub. L. 106–398, §1 [[div. A], title VI, §655(c)(2)(B)], struck out ''to participate in the Plan'' after ''under paragraph (2)(B)''.

Subsec. (b)(3)(E)(ii). Pub. L. 106–398, §1 [[div. A], title X, §1087(a)(10)], struck out second comma after ''October 16, 1998''.

Subsec. (e). Pub. L. 106–398, §1 [[div. A], title VI, §655(c)(3)], substituted ''a person is required to make a designation under this subsection, the person'' for ''a person electing to participate in the Plan is required to make a designation under this subsection, the person making such election'' in introductory provisions.

1999—Subsec. (b)(3)(E)(ii). Pub. L. 106–65 substituted ''after October 16, 1998,'' for ''on or after the date of the enactment of the subparagraph''.

1998—Subsec. (b)(3)(C). Pub. L. 105–261, §643(a)(1), struck out ''EFFECTIVE DATE,'' after ''IRREVOCABILITY,'' in heading and ''Such an election is effective as of the first day of the first calendar month following the month in which it is received by the Secretary concerned.'' after ''section 1450(f) of this title.'' in text.

Subsec. (b)(3)(E). Pub. L. 105–261, §643(a)(2), added subpar. (E).

1997—Pub. L. 105–85 substituted ''Plan'' for ''plan'' in section catchline.

1996—Pub. L. 104–201 amended section generally, revising and restating provisions relating to application of the Plan and inserting subsec., par., and subpar. headings.

1994—Subsec. (a)(2)(B). Pub. L. 103–337, §1671(d)(2), substituted ''12731(d)'' for ''1331(d)''.

Subsec. (b)(1). Pub. L. 103–337, §638, designated existing provisions as subpar. (A) and added subpars. (B) to (E).

Subsec. (f)(1). Pub. L. 103–337, §1671(d)(2), substituted ''12731(d)'' for ''1331(d)'' in subpars. (A) and (B).

1989—Subsec. (a)(1)(B), (2)(B). Pub. L. 101–189, §1407(a)(2), substituted ''reserve-component retired pay'' for ''retired pay under chapter 67 of this title''.

Subsec. (a)(4)(A). Pub. L. 101–189, §1407(a)(3), struck out ''or retainer'' after ''entitled to retired''.

Subsec. (f)(1)(A), (B). Pub. L. 101–189, §1407(a)(2), substituted ''reserve-component retired pay'' for ''retired pay under chapter 67 of this title''.

1986—Subsec. (a)(5). Pub. L. 99–661, §1343(a)(8)(B), substituted ''a reserve-component annuity'' for ''an annuity by virtue of eligibility under paragraph (1)(B)''.

Subsec. (b)(5). Pub. L. 99–661, §641(b)(1), inserted ''(A) whether the election is being made pursuant to the requirements of a court order, or (B)''.

Subsec. (d)(2). Pub. L. 99–661, §642(a)(1), substituted ''if there is no surviving spouse or if the member's surviving spouse subsequently dies'' for ''if the member and the member's spouse die as a result of a common accident''.

Subsec. (f)(2). Pub. L. 99–661, §642(a)(2), substituted ''if there is no surviving spouse or if the person's surviving spouse subsequently dies'' for ''if the person and the person's spouse die as a result of a common accident''.

1985—Subsec. (a)(1)(A). Pub. L. 99–145, §719(8)(A), substituted ''retired pay'' for ''retired or retainer pay''.

Subsec. (a)(2)(A). Pub. L. 99–145, §721(a)(1), inserted ''(with his spouse's concurrence, if required under paragraph (3))'' after ''unless he elects''.

Pub. L. 99–145, §719(8)(A), substituted ''retired pay'' for ''retired or retainer pay''.

Subsec. (a)(3). Pub. L. 99–145, §721(a)(2), amended par. (3) generally. Prior to amendment, par. (3) read as follows:

''(A) If a person who is eligible under paragraph (1)(A) to participate in the Plan and who is married elects not to participate in the Plan at the maximum level, or elects to provide an annuity for a dependent child but not for his spouse, or elects to provide an annuity for a former spouse under subsection (b)(2), that person's spouse shall be notified of that election.

''(B) If a person who is eligible under paragraph (1)(B) to participate in the Plan and who is married does not elect to participate in the Plan at the maximum level, or elects to provide an annuity for a dependent child but not for his spouse, or elects to provide an annuity for a former spouse under subsection (b)(2), that person's spouse shall be notified of that action.''

Subsec. (a)(6). Pub. L. 99–149, §715(a), added par. (6).

Subsec. (b)(1). Pub. L. 99–145, §719(3), substituted ''a reserve-component annuity'' for ''an annuity under this paragraph by virtue of eligibility under subsection (a)(1)(B)''.

Subsec. (b)(2). Pub. L. 99–145, §719(3), substituted ''a reserve-component annuity'' for ''an annuity under this paragraph by virtue of eligibility under subsection (a)(1)(B)''.

Pub. L. 99–145, §716(a)(1), inserted ''(other than a child who is a beneficiary under an election under paragraph (4))'' after ''that spouse or child'' in second sentence.

Subsec. (b)(3)(B). Pub. L. 99–145, §719(8)(A), substituted ''retired pay'' for ''retired or retainer pay''.

Subsec. (b)(4), (5). Pub. L. 99–145, §716(a)(2), (3), added par. (4) and redesignated former par. (4) as (5).

Subsec. (c). Pub. L. 99–145, §513(b), inserted ''disability'' before ''retired pay''.

Subsec. (d). Pub. L. 99–145, §712(a), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''If a member of an armed force dies on active duty after he has become entitled to retired or retainer pay, or after he has qualified for that pay except that he has not applied for or been granted that pay, and his spouse is eligible for dependency and indemnity compensation under section 411(a) of title 38 in an amount

that is less than the annuity the spouse would have received under this subchapter if it had applied to the member when he died, the Secretary concerned shall pay to the spouse an annuity equal to the difference between that amount of compensation and 55 percent of the retired or retainer pay to which the otherwise eligible spouse described in section 1450(a)(1) of this title would have been entitled if the member had been entitled to that pay based upon his years of active service when he died.''

Subsec. (f). Pub. L. 99–145, § 713(a), added subsec. (f).

Subsec. (g). Pub. L. 99–145, § 715(b), added subsec. (g).

1983—Subsec. (a)(3). Pub. L. 98–94, § 941(c)(2), substituted ''provide an annuity for a former spouse under subsection (b)(2),'' for ''provide an annuity under subsection (b)(2) of this section,'' in subpars. (A) and (B).

Subsec. (a)(5). Pub. L. 98–94, § 941(a)(1), inserted ''except in accordance with subsection (b)(3)''.

Subsec. (b). Pub. L. 98–94, § 941(a)(2), amended subsec. (b) generally. Prior to amendment subsec. (b) read as follows:

''(1) A person who is not married and does not have a dependent child when he becomes eligible to participate in the Plan may elect to provide an annuity to a natural person with an insurable interest in that person or to provide an annuity to a former spouse.

''(2) A person who is married, or has a dependent child may elect to provide an annuity to a former spouse instead of providing an annuity to a spouse or dependent child if the election is made in order to carry out the terms of a written agreement entered into voluntarily with the former spouse (without regard to whether such agreement is included in or approved by a court order).

''(3) In the case of a person electing to provide an annuity under paragraph (1) or (2) of this subsection by virtue of eligibility under subsection (a)(1)(B), the election shall include a designation under subsection (e).

''(4) Any person who elects under paragraph (1) or (2) to provide an annuity to a former spouse shall, at the time of making such election, provide the Secretary concerned with a written statement, in a form to be prescribed by that Secretary, signed by such person and the former spouse setting forth whether the election is being made pursuant to a voluntary written agreement previously entered into by such person as a part of or incident to a proceeding of divorce, dissolution, annulment, or legal separation, and if so, whether such voluntary written agreement has been incorporated in or ratified or approved by a court order.''

1982—Pub. L. 97–295, § 1(18), substituted ''Plan'' for ''plan'' in section catchline.

Subsec. (a)(3). Pub. L. 97–252, § 1003(b)(1), inserted in subpars. (A) and (B) identical text ''or elects to provide an annuity under subsection (b)(2) of this section,'' after ''for his spouse,''.

Subsec. (b). Pub. L. 97–252, § 1003(b)(2), designated existing first sentence as par. (1), authorized an election to provide an annuity to a former spouse, added pars. (2) and (4), designated existing second sentence as par. (3), and substituted ''person electing to provide an annuity under paragraph (1) or (2) of this subsection'' for ''person providing an annuity under this subsection'' and ''the election'' for ''such an election''.

1978—Subsec. (a). Pub. L. 95–397, § 202(a), amended subsec. (a) generally, primarily inserting provision that this subchapter shall be known as the Survivor Benefit Plan and provisions of pars. (1)(B), (2)(B) and concluding sentence, (3)(B), (4)(B), and last sentence of (5).

Subsec. (b). Pub. L. 95–397, § 202(b), substituted ''entitled to retired or retainer pay'' for ''eligible to participate in the Plan'' and inserted provisions relating to the inclusion in an election a designation under subsection (e) by persons providing an annuity under this subsection by virtue of eligibility under subsection (a)(1)(B).

Subsec. (e). Pub. L. 95–397, § 202(c), added subsec. (e).

1976—Subsec. (a). Pub. L. 94–496 inserted ''or elects to provide an annuity for a dependent child but not for his spouse'' after ''maximum level''.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–364, div. A, title VI, § 644(b), Oct. 17, 2006, 120 Stat. 2261, provided that: ''Any annuity payable to a dependent child under subchapter II of chapter 73 of title 10, United States Code, by reason of the amendment made by subsection (a) [amending this section] shall be payable only for months beginning on or after the date of the enactment of this Act [Oct. 17, 2006].''

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–136, div. A, title VI, § 644(c), Nov. 24, 2003, 117 Stat. 1518, provided that: ''Subparagraph (B) of section 1448(f)(1) of title 10, United States Code, as added by subsection (a), shall take effect as of September 10, 2001, and shall apply with respect to performance of inactive-duty training (as defined in section 101(d) of title 10, United States Code) on or after that date.''

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title VI, § 642(d), Dec. 28, 2001, 115 Stat. 1152, provided that: ''The amendments made by this section [amending this section and section 1451 of this title] shall take effect as of September 10, 2001, and shall apply with respect to deaths of members of the Armed Forces occurring on or after that date.''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, § 1 [[div. A], title VI, § 655(d)], Oct. 30, 2000, 114 Stat. 1654, 1654A–166, provided that: ''The amendments made by this section [amending this section and section 1450 of this title] apply only with respect to a notification under section 12731(d) of title 10, United States Code, made after January 1, 2001, that a member of a reserve component has completed the years of service required for eligibility for reserve-component retired pay.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 1671(d)(2) of Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 641 of Pub. L. 99–661 applicable to court orders issued on or after Nov. 14, 1986, see section 641(c) of Pub. L. 99–661, set out as a note under section 1450 of this title.

Section 642(c) of Pub. L. 99–661 provided that: ''The amendments made by subsection (a) [amending this section] shall apply only to claims arising on or after March 1, 1986. The amendments made by subsection (b) [amending section 1451 of this title] shall apply to payments for periods after February 28, 1986.''

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by title VII of Pub. L. 99–145 effective Mar. 1, 1986, with prohibition against accrual of benefits to any person by reason of the enactment of such title VII for any period before Mar. 1, 1986, see section 731 of Pub. L. 99–145, set out as a note under section 1447 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 941(b) of Pub. L. 98–94 provided that: ''In the case of a person who on the date of the enactment of this Act [Sept. 24, 1983] is a person described in subparagraph (A) of subsection (b)(3) of section 1448 of title 10, United States Code (as amended by subsection (a)(2)), such subsection shall apply to that person as if the one-year period provided for in subparagraph (A) of such subsection began on the date of the enactment of this Act.''

EFFECTIVE DATE OF 1982 AMENDMENT; TRANSITION PROVISIONS

Amendment by Pub. L. 97–252 effective Feb. 1, 1983, and applicable to persons becoming eligible to partici-

pate in Survivor Benefit Plan provided for in this subchapter before, on, or after Feb. 1, 1983, see section 1006 of Pub. L. 97–252, set out as an Effective Date; Transition Provisions note under section 1408 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–397 effective Oct. 1, 1978, and applicable to annuities payable by virtue of amendment for months beginning on or after such date, see section 210 of Pub. L. 95–397, set out as a note under section 1447 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–496 effective Sept. 21, 1972, see section 3 of Pub. L. 94–496, set out as a note under section 1447 of this title.

EFFECTIVE DATE OF 1997 AMENDMENTS BY SECTION 645 OF PUB. L. 105–85

Section 645(c) of Pub. L. 105–85 provided that: ''The amendments made by this section [amending section 4(e)(1) of Pub. L. 92–425 and section 653(d) of Pub. L. 100–456, set out below] take effect on the first day of the first month beginning after the date of the enactment of this Act [Nov. 18, 1997] and shall apply with respect to payments of benefits for months beginning on or after that date, except that the Secretary of Veterans Affairs may provide, if necessary for administrative implementation, that such amendments shall apply beginning with a later month, not later than the first month beginning more than 180 days after the date of the enactment of this Act.''

TRANSITION

Pub. L. 109–364, div. A, title VI, §643(c), Oct. 17, 2006, 120 Stat. 2261, provided that:

''(1) TRANSITION PERIOD.—In the case of a participant in the Survivor Benefit Plan who made a covered insurable-interest election (as defined in paragraph (2)) and whose designated beneficiary under that election dies before the date of the enactment of this Act [Oct. 17, 2006] or during the 18-month period beginning on such date, the time period applicable for purposes of the limitation in the third sentence of subparagraph (G)(i) of section 1448(b)(1) of title 10, United States Code, as added by subsection (a), shall be the two-year period beginning on the date of the enactment of this Act (rather than the 180-day period specified in that sentence).

''(2) COVERED INSURABLE-INTEREST ELECTIONS.—For purposes of paragraph (1), a covered insurable-interest election is an election under section 1448(b)(1) of title 10, United States Code, made before the date of the enactment of this Act [Oct. 17, 2006], or during the 18-month period beginning on such date, by a participant in the Survivor Benefit Plan to provide an annuity under that plan to a natural person with an insurable interest in that person.

''(3) SURVIVOR BENEFIT PLAN.—For purposes of this subsection, the term 'Survivor Benefit Plan' means the program under subchapter II of chapter 73 of title 10, United States Code.''

ONE-YEAR OPEN ENROLLMENT PERIOD FOR SURVIVOR BENEFIT PLAN COMMENCING OCTOBER 1, 2005

Pub. L. 108–375, div. A, title VI, §645, Oct. 28, 2004, 118 Stat. 1962, as amended by Pub. L. 109–364, div. A, title X, §1071(g)(5), Oct. 17, 2006, 120 Stat. 2402, provided that:

''(a) PERSONS NOT CURRENTLY PARTICIPATING IN SURVIVOR BENEFIT PLAN.—

''(1) ELECTION OF SBP COVERAGE.—An eligible retired or former member may elect to participate in the Survivor Benefit Plan during the open enrollment period specified in subsection (f).

''(2) ELECTION OF SUPPLEMENTAL ANNUITY COVERAGE.—An eligible retired or former member who elects under paragraph (1) to participate in the Survivor Benefit Plan at the maximum level may also elect during the open enrollment period to participate in the Supplemental Survivor Benefit Plan.

''(3) ELIGIBLE RETIRED OR FORMER MEMBER.—For purposes of paragraphs (1) and (2), an eligible retired or former member is a member or former member of the uniformed services who on the day before the first day of the open enrollment period is not a participant in the Survivor Benefit Plan and—

''(A) is entitled to retired pay; or

''(B) would be entitled to retired pay under chapter 1223 of title 10, United States Code, but for the fact that such member or former member is under 60 years of age.

''(4) STATUS UNDER SBP OF PERSONS MAKING ELECTIONS.—

''(A) STANDARD ANNUITY.—A person making an election under paragraph (1) by reason of eligibility under paragraph (3)(A) shall be treated for all purposes as providing a standard annuity under the Survivor Benefit Plan.

''(B) RESERVE-COMPONENT ANNUITY.—A person making an election under paragraph (1) by reason of eligibility under paragraph (3)(B) shall be treated for all purposes as providing a reserve-component annuity under the Survivor Benefit Plan.

''(b) ELECTION TO INCREASE COVERAGE UNDER SBP.—A person who on the day before the first day of the open enrollment period is a participant in the Survivor Benefit Plan but is not participating at the maximum base amount or is providing coverage under the Plan for a dependent child and not for the person's spouse or former spouse may, during the open enrollment period, elect to—

''(1) participate in the Plan at a higher base amount (not in excess of the participant's retired pay); or

''(2) provide annuity coverage under the Plan for the person's spouse or former spouse at a base amount not less than the base amount provided for the dependent child.

''(c) ELECTION FOR CURRENT SBP PARTICIPANTS TO PARTICIPATE IN SUPPLEMENTAL SBP.—

''(1) ELECTION.—A person who is eligible to make an election under this paragraph may elect during the open enrollment period to participate in the Supplemental Survivor Benefit Plan.

''(2) PERSONS ELIGIBLE.—Except as provided in paragraph (3), a person is eligible to make an election under paragraph (1) if on the day before the first day of the open enrollment period the person is a participant in the Survivor Benefit Plan at the maximum level, or during the open enrollment period the person increases the level of such participation to the maximum level under subsection (b) of this section, and under that Plan is providing annuity coverage for the person's spouse or a former spouse.

''(3) LIMITATION ON ELIGIBILITY FOR CERTAIN SBP PARTICIPANTS NOT AFFECTED BY TWO-TIER ANNUITY COMPUTATION.—A person is not eligible to make an election under paragraph (1) if (as determined by the Secretary concerned) the annuity of a spouse or former spouse beneficiary of that person under the Survivor Benefit Plan is to be computed under section 1451(e) of title 10, United States Code. However, such a person may during the open enrollment period waive the right to have that annuity computed under such section 1451(e). Any such election is irrevocable. A person making such a waiver may make an election under paragraph (1) as in the case of any other participant in the Survivor Benefit Plan.

''(d) MANNER OF MAKING ELECTIONS.—An election under this section shall be made in writing, signed by the person making the election, and received by the Secretary concerned before the end of the open enrollment period. Any such election shall be made subject to the same conditions, and with the same opportunities for designation of beneficiaries and specification of base amount, that apply under the Survivor Benefit Plan or the Supplemental Survivor Benefit Plan, as the case may be. A person making an election under subsection (a) to provide a reserve-component annuity shall make a designation described in section 1448(e) of title 10, United States Code.

''(e) EFFECTIVE DATE FOR ELECTIONS.—Any such election shall be effective as of the first day of the first calendar month following the month in which the election is received by the Secretary concerned.

''(f) OPEN ENROLLMENT PERIOD.—The open enrollment period under this section is the one-year period beginning on October 1, 2005.

''(g) EFFECT OF DEATH OF PERSON MAKING ELECTION WITHIN TWO YEARS OF MAKING ELECTION.—If a person making an election under this section dies before the end of the two-year period beginning on the effective date of the election, the election is void and the amount of any reduction in retired pay of the person that is attributable to the election shall be paid in a lump sum to the person who would have been the deceased person's beneficiary under the voided election if the deceased person had died after the end of such two-year period.

''(h) APPLICABILITY OF CERTAIN PROVISIONS OF LAW.—The provisions of sections 1449, 1453, and 1454 of title 10, United States Code, are applicable to a person making an election, and to an election, under this section in the same manner as if the election were made under the Survivor Benefit Plan or the Supplemental Survivor Benefit Plan, as the case may be.

''(i) PREMIUM FOR OPEN ENROLLMENT ELECTION.—

''(1) PREMIUMS TO BE CHARGED.—The Secretary of Defense shall prescribe in regulations premiums which a person electing under this section shall be required to pay for participating in the Survivor Benefit Plan pursuant to the election. The total amount of the premiums to be paid by a person under the regulations shall be equal to the sum of—

''(A) the total amount by which the retired pay of the person would have been reduced before the effective date of the election if the person had elected to participate in the Survivor Benefit Plan (for the same base amount specified in the election) at the first opportunity that was afforded the member to participate under chapter 73 of title 10, United States Code;

''(B) interest on the amounts by which the retired pay of the person would have been so reduced, computed from the dates on which the retired pay would have been so reduced at such rate or rates and according to such methodology as the Secretary of Defense determines reasonable; and

''(C) any additional amount that the Secretary determines necessary to protect the actuarial soundness of the Department of Defense Military Retirement Fund against any increased risk for the fund that is associated with the election.

''(2) PREMIUMS TO BE CREDITED TO RETIREMENT FUND.—Premiums paid under the regulations under paragraph (1) shall be credited to the Department of Defense Military Retirement Fund.

''(j) DEFINITIONS.—In this section:

''(1) The term 'Survivor Benefit Plan' means the program established under subchapter II of chapter 73 of title 10, United States Code.

''(2) The term 'Supplemental Survivor Benefit Plan' means the program established under subchapter III of chapter 73 of title 10, United States Code.

''(3) The term 'retired pay' includes retainer pay paid under section 6330 of title 10, United States Code.

''(4) The terms 'uniformed services' and 'Secretary concerned' have the meanings given those terms in section 101 of title 37, United States Code.

''(5) The term 'Department of Defense Military Retirement Fund' means the Department of Defense Military Retirement Fund established under section 1461(a) of title 10, United States Code.''

OPEN ENROLLMENT PERIOD FOR SURVIVOR BENEFIT PLAN COMMENCING MARCH 1, 1999

Pub. L. 105–261, div. A, title VI, § 642, Oct. 17, 1998, 112 Stat. 2045, as amended by Pub. L. 106–65, div. A, title VI, § 654, Oct. 5, 1999, 113 Stat. 667, provided for a one-year open enrollment period beginning on Mar. 1, 1999, during which an eligible retired or former member who was not participating in the Survivor Benefit Plan could elect to participate in the Plan and also elect to participate in the Supplemental Survivor Benefit Plan.

ANNUITIES FOR CERTAIN MILITARY SURVIVING SPOUSES

Pub. L. 105–85, div. A, title VI, § 644, Nov. 18, 1997, 111 Stat. 1800, as amended by Pub. L. 106–65, div. A, title VI, § 656(a), (b), title X, § 1066(c)(3), Oct. 5, 1999, 113 Stat. 668, 773; Pub. L. 107–314, div. A, title VI, § 634, Dec. 2, 202, 116 Stat. 2573, provided that:

''(a) SURVIVOR ANNUITY.—(1) The Secretary concerned shall pay an annuity to the qualified surviving spouse of each member of the uniformed services who—

''(A) became entitled to retired or retainer pay before September 21, 1972, died before March 21, 1974, and was entitled to retired or retainer pay on the date of death; or

''(B) died before October 1, 1978, and at the time of his death would have been entitled to retired pay under chapter 67 [now 1223] of title 10, United States Code (as in effect before December 1, 1994), but for the fact that he was under 60 years of age.

''(2) A qualified surviving spouse for purposes of this section is a surviving spouse who has not remarried.

''(b) AMOUNT OF ANNUITY.—(1) An annuity under this section shall be paid at the rate of $185.58 per month, as adjusted from time to time under paragraph (3).

''(2) The amount of an annuity to which a surviving spouse is entitled under this section for any period shall be reduced (but not below zero) by any amount paid to that surviving spouse for the same period under any of the following provisions of law:

''(A) Section 1311(a) of title 38, United States Code (relating to dependency and indemnity compensation payable by the Secretary of Veterans Affairs).

''(B) Chapter 73 of title 10, United States Code.

''(C) Section 4 of Public Law 92–425 (10 U.S.C. 1448 note).

''(3) Whenever after May 1, 2002, retired or retainer pay is increased under section 1401a(b)(2) of title 10, United States Code, each annuity that is payable under this section shall be increased at the same time and by the same total percent.

''(c) APPLICATION REQUIRED.—No benefit shall be paid to any person under this section unless an application for such benefit is filed with the Secretary concerned by or on behalf of such person.

''(d) DEFINITIONS.—For purposes of this section:

''(1) The terms 'uniformed services' and 'Secretary concerned' have the meanings given such terms in section 101 of title 37, United States Code.

''(2) The term 'surviving spouse' has the meaning given such term in paragraph (9) of section 1447 of title 10, United States Code.

''(e) PROSPECTIVE APPLICABILITY.—(1) Annuities under this section shall be paid for months beginning after November 1997.

''(2) No benefit shall accrue to any person by reason of the enactment of this section for any period before December 1997.''

[Pub. L. 106–65, div. A, title VI, § 656(c), Oct. 5, 1999, 113 Stat. 668, provided that: ''The amendment made by subsection (a) [amending section 644 of Pub. L. 105–85, set out above] shall apply with respect to annuities payable for months beginning after September 30, 1999.'']

AUTHORITY FOR RELIEF FROM PREVIOUS OVERPAYMENTS UNDER MINIMUM INCOME WIDOWS PROGRAM

Pub. L. 104–106, div. A, title VI, § 635, Feb. 10, 1996, 110 Stat. 366, authorized the Secretary of Defense to waive recovery by the United States of any overpayment by the United States that had been made before Feb. 10, 1996, under section 4 of Public Law 92–425, set out below, and that was attributable to failure by the Department of Defense to apply the eligibility provisions of subsection (a) of such section in the case of the person to whom the overpayment had been made.

OPEN ENROLLMENT PERIOD FOR SURVIVOR BENEFIT PLAN COMMENCING APRIL 1, 1992

Pub. L. 101–189, div. A, title XIV, § 1405, Nov. 29, 1989, 103 Stat. 1586, as amended by Pub. L. 101–510, div. A,

title VI, §631(2), title XIV, §1484(*l*)(4)(B), Nov. 5, 1990, 104 Stat. 1580, 1720; Pub. L. 102–190, div. A, title VI, §653(a)(1), (c)(2), Dec. 5, 1991, 105 Stat. 1388, 1389; Pub. L. 102–484, div. A, title VI, §643, Oct. 23, 1992, 106 Stat. 2425, provided for a one-year open enrollment period beginning on Apr. 1, 1992, during which: (1) an eligible retired or former member who was not participating in the Survivor Benefit Plan could elect to participate in the Plan and also elect to participate in the Supplemental Survivor Benefit Plan, (2) a current participant in the Survivor Benefit Plan who was not participating at the maximum base amount could elect to participate in the Plan at a higher base amount or provide coverage for a previously uncovered spouse or former spouse, and (3) a participant in the Survivor Benefit Plan at the maximum level who was providing annuity coverage for a spouse or former spouse could elect to participate in the Supplemental Survivor Benefit Plan, and directed the Secretary of Defense to submit to committees of Congress a report on the open season not later than June 1, 1990.

DEFINITIONS FOR 1989 AMENDMENTS

Section 1406 of title XIV of div. A of Pub. L. 101–189, as amended by Pub. L. 102–190, div. A, title VI, §653(a)(2), Dec. 5, 1991, 105 Stat. 1388, provided that: ''For the purpose of this title [see Short Title of 1989 Amendment note set out under section 1447 of this title]:

''(1) The term 'Survivor Benefit Plan' means the program established under subchapter II of chapter 73 of title 10, United States Code.

''(2) The term 'retired pay' includes retainer pay paid under section 6330 of title 10, United States Code.

''(3) The terms 'uniformed services' and 'Secretary concerned' have the meanings given those terms in section 101 of title 37, United States Code.

''(4) The term 'SBP premium' means the reduction in retired pay required as a condition of providing an annuity under the Survivor Benefit Plan.

''(5) The term 'base amount' has the meaning given that term in section 1447(2) [see 1447(6)] of title 10, United States Code.''

ANNUITY FOR SURVIVING SPOUSES OF MEMBERS WHO DIED BEFORE NOVEMBER 1, 1953, AND WHO WERE ENTITLED TO RETIRED OR RETAINER PAY ON DATE OF DEATH

Pub. L. 100–456, div. A, title VI, §653, Sept. 29, 1988, 102 Stat. 1991, as amended by Pub. L. 103–337, div. A, title X, §1070(d)(3), Oct. 5, 1994, 108 Stat. 2858; Pub. L. 105–85, div. A, title VI, §645(a), Nov. 18, 1997, 111 Stat. 1801, provided that:

''(a) ANNUITY.—(1) The Secretary concerned shall pay an annuity to the qualified surviving spouse of each member of the uniformed services who—

''(A) died before November 1, 1953; and

''(B) was entitled to retired or retainer pay on the date of death.

''(2) A qualified surviving spouse for purposes of this section is a surviving spouse who has not remarried and who is eligible for an annuity under section 4 of Public Law 92–425 (10 U.S.C. 1448 note).

''(b) AMOUNT OF ANNUITY.—(1) An annuity payable under this section shall be paid at the rate of $165 per month, as adjusted from time to time under subsection (c).

''(2) An annuity paid to a surviving spouse under this section shall be reduced by the amount of dependency and indemnity compensation (DIC) to which the surviving spouse is entitled under section 1311(a) of title 38, United States Code.

''(c) COST-OF-LIVING INCREASES.—Whenever retired or retainer pay is increased under section 1401a(b)(2) of title 10, United States Code, each annuity that is payable under this section shall be increased at the same time and by the same total percent. The amount of the increase shall be based on the monthly annuity payable before any reduction under this section.

''(d) RELATIONSHIP TO OTHER PROGRAMS.—(1) An annuity paid to a surviving spouse under this section is in addition to any pension to which the surviving spouse is entitled under subchapter III of chapter 15 of title 38, United States Code, or section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978 (38 U.S.C. 1521 note), and any payment made under the provisions of section 4 of Public Law 92–425. An annuity paid under this section shall not be considered as income for the purposes of eligibility for any such pension.

''(2) Payment of annuities under this section shall be made by the Secretary of Veterans Affairs. In making such payments, the Secretary shall combine the payment under this section with the payment of any amount due the same person under section 4 of Public Law 92–425 (10 U.S.C. 1448 note), as provided in subsection (e)(1) of that section. The Secretary concerned shall transfer amounts for payments under this section to the Secretary of Veterans Affairs in the same manner as is provided under subsection (e)(2) of section 4 of Public Law 92–425 for payments under that section.

''(e) DEFINITIONS.—For purposes of this section:

''(1) The terms 'uniformed services' and 'Secretary concerned' have the meanings given those terms in section 101 of title 37, United States Code.

''(2) The term 'surviving spouse' has the meaning given the terms 'widow' and 'widower' in paragraphs (3) and (4), respectively, of section 1447 [see 1447(7), (8)] of title 10, United States Code.

''(f) EFFECTIVE DATE.—Annuities under this section shall be paid for months beginning after the month in which this Act is enacted [September 1988]. No benefit shall accrue to any person by reason of the enactment of this section for any period before the first month referred to in the preceding sentence. No benefit shall be paid to any person under this section unless an application for such benefit has been filed with the Secretary concerned by or on behalf of such person.''

AUTHORITY FOR CERTAIN REMARRIED SURVIVOR BENEFIT PLAN PARTICIPANTS TO WITHDRAW FROM PLAN

Pub. L. 100–180, div. A, title VI, §631, Dec. 4, 1987, 101 Stat. 1104, provided that:

''(a) AUTHORITY TO WITHDRAW.—(1) An individual who is a participant in the Survivor Benefit Plan under subchapter II of chapter 73 of title 10, United States Code, and is described in paragraph (2) may, with the consent of such individual's spouse, withdraw from participation in the Plan.

''(2) An individual referred to in paragraph (1) is an individual who—

''(A) is providing coverage for a spouse or for a spouse and child under the Plan; and

''(B) remarried before March 1, 1986, and at a time when such individual was a participant in the Plan but did not have an eligible spouse beneficiary under the Plan.

''(b) APPLICABLE PROVISIONS.—An election under subsection (a) shall be subject to subparagraphs (B) and (D) [see (E)] of section 1448(a)(6) of title 10, United States Code, except that in applying such subparagraph (B) to subsection (a), the one-year period referred to in clause (ii) of such subparagraph shall extend until the end of the one-year period beginning 90 days after the date of the enactment of this Act [Dec. 4, 1987].

''(c) TREATMENT OF PRIOR CONTRIBUTIONS.—No refund of amounts by which the retired pay of a participant in the Survivor Benefit Plan has been reduced by reason of section 1452 of title 10, United States Code, may be made to an individual who withdraws from the Survivor Benefit Plan under subsection (a).''

OPTION FOR CERTAIN PARTICIPANTS TO WITHDRAW FROM SURVIVOR BENEFIT PLAN

Section 711(c) of Pub. L. 99–145 provided that person who during period Oct. 19, 1984, to Nov. 8, 1985, became participant in Survivor Benefit Plan under this subchapter could withdraw from Plan before end of one-year period beginning on Nov. 8, 1985, and receive refund of contributions plus interest.

PERSONS COVERED UNDER SUBSECTIONS (d) AND (f)

Section 712(b) of Pub. L. 99–145 provided that:

''(1) Section 1448(d) of title 10, United States Code, as amended by subsection (a), applies to the surviving spouse and dependent children of a person who dies on active duty after September 20, 1972, and the former spouse of a person who dies after September 7, 1982.

''(2) In the case of the surviving spouse and children of a person who dies during the period beginning on September 21, 1972, and ending on October 1, 1985, the Secretary concerned shall take appropriate steps to locate persons eligible for an annuity under section 1448(d) of title 10, United States Code, as amended by subsection (a). Any such person must submit an application to the Secretary for such an annuity before October 1, 1988, to be eligible to receive such annuity. Any such annuity shall be effective only for months after the month in which the Secretary receives such application.''

Section 713(c) of Pub. L. 99–145 provided that:

''(1) Section 1448(f) of title 10, United States Code, as added by subsection (a), shall apply to the surviving spouse and dependent children of any person who dies after September 30, 1978, and the former spouse of a person who dies after September 7, 1982.

''(2) In the case of the surviving spouse and dependents of a person who dies during the period beginning on September 30, 1978, and ending on October 1, 1985, the Secretary concerned shall take appropriate steps to locate persons eligible for an annuity under section 1448(f) of title 10, United States Code, as added by subsection (a). Any such person must submit an application to the Secretary for such an annuity before October 1, 1988, to be eligible to receive such annuity. Any such annuity shall be effective only for months after the month in which the Secretary receives such application.''

REVISION FOR FORMER SPOUSE COVERAGE ALREADY IN EFFECT

Section 716(b) of Pub. L. 99–145, as amended by Pub. L. 99–661, div. A, title VI, § 645, Nov. 14, 1986, 100 Stat. 3887, provided that person who before Mar. 1, 1986, made election under subsec. (b) of this section to provide annuity for former spouse could change that election to provide annuity for former spouse and dependent children, even though former spouse had died, but such election had to be made not later than Mar. 1, 1987, in case of person who made election before Nov. 8, 1985, and not later than end of one-year period beginning on Nov. 14, 1986, in case of person who made election during period of Nov. 8, 1985, to Feb. 28, 1986.

ONE-YEAR OPEN PERIOD TO SWITCH COMPUTATION OF SBP ANNUITY

Section 723(c) of Pub. L. 99–145 provided that person who, before effective date of title VII of Pub. L. 99–145 (see Effective Date of 1985 Amendment note set out under section 1447 of this title) participated in Survivor Benefit Plan under this subchapter, and had elected to provide annuity to former spouse could, with concurrence of such former spouse, elect to terminate such annuity and provide annuity to such former spouse under section 1450(a)(1) of this title, and any such election was to be made before end of 12-month period beginning on Nov. 8, 1985.

ONE-YEAR OPEN PERIOD FOR NEW FORMER SPOUSE COVERAGE

Section 723(d) of Pub. L. 99–145 provided that person who before effective date of part B of title VII of Pub. L. 99–145 (see Effective Date of 1985 Amendment note set out under section 1447 of this title) was participant in Survivor Benefit Plan and did not elect to provide annuity to former spouse could elect to provide annuity to former spouse under Plan, and that any such election was to be made before end of 12-month period beginning on Nov. 8, 1985.

OPEN ENROLLMENT PERIOD FOR SURVIVOR BENEFIT PLAN

Pub. L. 97–35, title II, § 212, Aug. 13, 1981, 95 Stat. 383, as amended by Pub. L. 97–252, title XI, § 1119, Sept. 8, 1982, 96 Stat. 753, provided that certain members or former members of the uniformed services who, on Aug. 13, 1981, were not participants in the Survivor Benefit Plan established under this subchapter or were not participants in the Plan at the maximum level, could elect to participate in the Plan or to participate in the Plan at a higher level, during an open enrollment period beginning Oct. 1, 1981, and ending Sept. 30, 1982, for members and former members entitled to retired or retainer pay on Aug. 13, 1981, or beginning on Oct. 1, 1982, and ending on Sept. 30, 1983, for members or former members who on Aug. 13, 1981, would have been entitled to retired pay, but for the fact they were under 60 years of age on that date.

SURVIVING SPOUSE; ANNUITY PAYMENT AND REDUCTION PROVISIONS; ELECTION OF ANNUITY; DEFINITIONS; EFFECTIVE DATE

Pub. L. 96–402, § 5, Oct. 9, 1980, 94 Stat. 1707, provided that:

''(a)(1) The Secretary concerned shall pay an annuity to any individual who is the surviving spouse of a member of the uniformed services who—

''(A) died before September 21, 1972;

''(B) was serving on active duty in the uniformed services at the time of his death and had served on active duty for a period of not less than 20 years; and

''(C) was at the time of his death entitled to retired or retainer pay or would have been entitled to that pay except that he had not applied for or been granted that pay.

''(2) An annuity under paragraph (1) shall be paid under the provisions of subchapter II of chapter 73 of title 10, United States Code, in the same manner as if such member had died on or after September 21, 1972.

''(b)(1) The amount of retired or retainer pay to be used as the basis for the computation of an annuity under subsection (a) is the amount of the retired or retainer pay to which the member would have been entitled if the member had been entitled to that pay based upon his years of active service when he died, adjusted by the overall percentage increase in retired and retainer pay under section 1401a of title 10, United States Code (or any prior comparable provision of law), during the period beginning on the date of the member's death and ending on the day before the effective date of this section.

''(2) In addition to any reduction required under the provisions of subchapter II of chapter 73 of title 10, United States Code, the annuity paid to any surviving spouse under this section shall be reduced by any amount such surviving spouse is entitled to receive as an annuity under subchapter I of such chapter.

''(c) If an individual entitled to an annuity under this section is also entitled to an annuity under subchapter II of chapter 73 of title 10, United States Code, based upon a subsequent marriage, the individual may not receive both annuities but must elect which to receive.

''(d) As used in this section:

''(1) The term 'uniformed services' means the Armed Forces and the commissioned corps of the Public Health Service and of the National Oceanic and Atmospheric Administration.

''(2) The term 'surviving spouse' has the meaning given the terms 'widow' and 'widower' in section 1447 of title 10, United States Code.

''(3) The term 'Secretary concerned' has the meaning given such term in section 101(8) of title 10, United States Code, and includes the Secretary of Commerce, with respect to matters concerning the National Oceanic and Atmospheric Administration, and the Secretary of Health and Human Services, with respect to matters concerning the Public Health Service.''

Provision effective Dec. 1, 1980, applicable to annuities payable for months beginning on or after such

date, and prohibiting accrual of benefits for any period before Oct. 9, 1980, see section 7 of Pub. L. 96–402, set out as a note under section 1447 of this title.

ELECTION TO PARTICIPATE IN THE SURVIVOR BENEFIT PLAN AND WITHDRAW FROM THE RETIRED SERVICEMAN'S FAMILY PROTECTION PLAN

Section 3 of Pub. L. 92–425, as amended by Pub. L. 93–155, title VIII, §804, Nov. 16, 1973, 87 Stat. 615, provided that:

''(a) The Survivor Benefit Plan established pursuant to clause (3) of the first section of this Act [this subchapter] applies to any person who initially becomes entitled to retired or retainer pay on or after the effective date of this Act [Sept. 21, 1972]. An election made before that date by such a person under section 1431 of title 10, United States Code, is canceled. However, a person who initially becomes entitled to retired or retainer pay within 180 days after the effective date of this Act [Sept. 21, 1972] may, within 180 days after becoming so entitled, elect—

''(1) not to participate in such Survivor Benefit Plan if he is married or has a dependent child; or

''(2) to participate in that Plan, if he is a person covered by section 1448(b) of title 10, United States Code.

''(b) Any person who is entitled to retired or retainer pay on the effective date of this Act [Sept. 21, 1972] may elect to participate in the Survivor Benefit Plan established pursuant to clause (3) of the first section of this Act [this subchapter] at any time within eighteen months after such date. However, such a person who is receiving retired or retainer pay reduced under section 1436(a) of title 10, United States Code, or who is depositing amounts under section 1438 of that title, may elect at any time within eighteen months after the effective date of this Act [Sept. 21, 1972]—

''(1) to participate in the Plan and continue his participation under chapter 73 of that title [this chapter] as in effect on the day before the effective date of this Act [Sept. 21, 1972], except that the total of the annuities elected may not exceed 100 percent of his retired or retainer pay; or

''(2) to participate in the Plan and, notwithstanding section 1436(b) of that title, terminate his participation under chapter 73 of that title [this chapter] as in effect on the day before the effective date of this Act [Sept. 21, 1972].

A person who elects under clause (2) of this subsection is not entitled to a refund of amounts previously deducted from his retired or retainer pay under chapter 73 of title 10, United States Code [this chapter], as in effect on the day before the effective date of this Act [Sept. 21, 1972], or any payments made thereunder on his behalf. A person who is not married or does not have a dependent child on the first anniversary of the effective date of this Act [Sept. 21, 1972], but who later marries or acquires a dependent child, may elect to participate in the Plan under the fourth sentence of section 1448(a) of that title [former subsec. (a) of this section].

''(c) Notwithstanding the provisions of the Survivor Benefit Plan established pursuant to clause (3) of the first section of this Act [this subchapter], and except as otherwise provided in this section, subchapter I of chapter 73 of title 10, United States Code [subchapter I of this chapter] (other than the last two sentences of section 1436(a), section 1443, and section 1444(b)), as in effect on the day before the effective date of this Act [Sept. 21, 1972], shall continue to apply in the case of persons, and their beneficiaries, who have elected annuities under section 1431 or 1432 of that title and who have not elected under subsection (b)(2) of this section to participate in that Plan.

''(d) In this section, 'base amount' means—

''(1) the monthly retired or retainer pay to which a person—

''(A) is entitled on the effective date of this Act [Sept. 21, 1972]; or

''(B) later becomes entitled by being advanced on the retired list, performing active duty, or being transferred from the temporary disability retired list to the permanent disability retired list; or

''(2) any amount less than that described in clause (1) designated by that person at the time he makes an election under subsection (a)(2) or (b) of this section, but not less than $300;

as increased from time to time under section 1401a of title 10, United States Code.

''(e) An election made under subsection (a) or (b) of this section is effective on the date it is received by the Secretary concerned, as defined in section 101(5) of title 37, United States Code.

''(f) Sections 1449, 1453, and 1454 of title 10, United States Code, as added by clause (3) of the first section of this Act [as part of this subchapter], are applicable to persons covered by this section.''

INCOME SUPPLEMENT FOR CERTAIN WIDOWS OF RETIRED MEMBERS OF THE UNIFORMED FORCES; SPECIAL ANNUITY FOR WIDOWS OF COMMISSIONED PERSONNEL OF THE PUBLIC HEALTH SERVICE AND NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION IN LIEU OF VA PENSION

Section 4 of Pub. L. 92–425, as amended by Pub. L. 94–496, §2, Oct. 14, 1976, 90 Stat. 2375; Pub. L. 95–397, title II, §209, Sept. 30, 1978, 92 Stat. 848; Pub. L. 96–402, §6, Oct. 9, 1980, 94 Stat. 1708; Pub. L. 98–94, title IX, §942(a), Sept. 24, 1983, 97 Stat. 654; Pub. L. 102–40, title IV, §402(d)(2), May 7, 1991, 105 Stat. 239; Pub. L. 103–337, div. A, title X, §1070(d)(4), Oct. 5, 1994, 108 Stat. 2858; Pub. L. 104–201, div. A, title VI, §638(a)–(c), Sept. 23, 1996, 110 Stat. 2581; Pub. L. 105–85, div. A, title VI, §645(b), Nov. 18, 1997, 111 Stat. 1801, provided that:

''(a) A person—

''(1) who, on September 21, 1972, was, or during the period beginning on September 22, 1972, and ending on March 20, 1974, became, a widow of a person who was entitled to retired or retainer pay when he died;

''(2) who is eligible for a pension under subchapter III of chapter 15 of title 38, United States Code, or section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978 [set out as note under section 1521 of Title 38]; and

''(3) whose annual income, as determined in establishing that eligibility, is less than the maximum annual rate of pension in effect under section 1541(b) of title 38, United States Code;

shall be paid an annuity by the Secretary concerned unless she is eligible to receive an annuity under the Survivor Benefit Plan established pursuant to clause (3) of the first section of this Act [this subchapter]. However, such a person who is the widow of a retired officer of the Public Health Service or the National Oceanic and Atmospheric Administration, and who would otherwise be eligible for an annuity under this section except that she does not qualify for the pension described in clause (2) of this subsection because the service of her deceased spouse is not considered active duty under section 101(21) of title 38, United States Code, is entitled to an annuity under this section.

''(b) The annuity under subsection (a) of this section shall be in an amount which when added to the widow's income determined under subsection (a)(3) of this section, plus the amount of any annuity being received under sections 1431–1436 of title 10, United States Code, but exclusive of a pension described in subsection (a)(2) of this section, equals the maximum annual rate of pension in effect under section 1541(b) of title 38, United States Code. In addition, the Secretary concerned shall pay to the widow, described in the last sentence of subsection (a) of this section, an amount equal to the pension she would otherwise have been eligible to receive under subchapter III of chapter 15 of title 38, United States Code, if the service of her deceased spouse was considered active duty under section 101(21) of that title.

''(c) The amount of an annuity payable under this section, although counted as income in determining the amount of any pension described in subsection (a)(2) of this section, shall not be considered to affect the

eligiblity [sic] of the recipient of such annuity for such pension, even though, as a result of including the amount of the annuity as income, no amount of such pension is due.

''(d) Subsection 1450(i) and section 1453 as added to title 10, United States Code, by clause 3 of the first section of this Act, are applicable to persons covered by this section.

''(e)(1) Payment of annuities under this section shall be made by the Secretary of Veterans Affairs. In making such payments, the Secretary shall combine with the payment under this section payment of any amount due the same person under section 653(d) of the National Defense Authorization Act, Fiscal Year 1989 [Pub. L. 100–456] (10 U.S.C. 1448 note). If appropriate for administrative convenience (or otherwise determined appropriate by the Secretary of Veterans Affairs), that Secretary may combine a payment to any person for any month under this section (and, if applicable, under section 653(d) of the National Defense Authorization Act, Fiscal Year 1989) with any other payment for that month under laws administered by the Secretary so as to provide that person with a single payment for that month.

''(2) The Secretary concerned shall annually transfer to the Secretary of Veterans Affairs such amounts as may be necessary for payments by the Secretary of Veterans Affairs under this section and for costs of the Secretary of Veterans Affairs in administering this section. Such transfers shall be made from amounts that would otherwise be used for payment of annuities by the Secretary concerned under this section. The authority to make such a transfer is in addition to any other authority of the Secretary concerned to transfer funds for a purpose other than the purpose for which the funds were originally made available. In the case of a transfer by the Secretary of a military department, the provisions of section 2215 of title 10, United States Code, do not apply.

''(3) The Secretary concerned shall promptly notify the Secretary of Veterans Affairs of any change in beneficiaries under this section.''

[Section 638(d) of Pub. L. 104–201 provided that: ''The amendments made by this section [amending section 4 of Pub. L. 92–425, set out above] take effect on July 1, 1997, and apply with respect to payments of benefits for any month after June 1997.'']

[Section 942(b) of Pub. L. 98–94 provided that: ''Any annuity payable by reason of subsection (a) [amending section 4(a)(1) of Pub. L. 92–425, set out above] shall be payable only for months after September 1983.'']

END OF 90-DAY PERIOD WITH RESPECT TO CERTAIN INDIVIDUALS

The 90-day period, referred to in subsec. (a)(2), (4)(B), with respect to certain individuals shall be considered to end on Mar. 31, 1980, see section 208 of Pub. L. 95–397, set out as a note under section 1447 of this title.

§ 1448a. Election to discontinue participation: one-year opportunity after second anniversary of commencement of payment of retired pay

(a) AUTHORITY.—A participant in the Plan may, subject to the provisions of this section, elect to discontinue participation in the Plan at any time during the one-year period beginning on the second anniversary of the date on which payment of retired pay to the participant commences.

(b) CONCURRENCE OF SPOUSE.—

(1) CONCURRENCE REQUIRED.—A married participant may not (except as provided in paragraph (2)) make an election under subsection (a) without the concurrence of the participant's spouse.

(2) EXCEPTIONS.—A participant may make such an election without the concurrence of the participant's spouse by establishing to the satisfaction of the Secretary concerned that one of the conditions specified in section 1448(a)(3)(C) of this title exists.

(3) FORM OF CONCURRENCE.—The concurrence of a spouse under paragraph (1) shall be made in such written form and shall contain such information as may be required under regulations prescribed by the Secretary of Defense.

(c) LIMITATION ON ELECTION WHEN FORMER SPOUSE COVERAGE IN EFFECT.—The limitation set forth in section 1450(f)(2) of this title applies to an election to discontinue participation in the Plan under subsection (a).

(d) WITHDRAWAL OF ELECTION TO DISCONTINUE.—Section 1448(b)(1)(D) of this title applies to an election under subsection (a).

(e) CONSEQUENCES OF DISCONTINUATION.—Section 1448(b)(1)(E) of this title applies to an election under subsection (a).

(f) NOTICE TO AFFECTED BENEFICIARIES.—The Secretary concerned shall notify any former spouse or other natural person previously designated under section 1448(b) of this title of an election to discontinue participation under subsection (a).

(g) EFFECTIVE DATE OF ELECTION.—An election under subsection (a) is effective as of the first day of the first calendar month following the month in which the election is received by the Secretary concerned.

(h) INAPPLICABILITY OF IRREVOCABILITY PROVISIONS.—Paragraphs (4)(B) and (5)(C) of section 1448(a) of this title do not apply to prevent an election under subsection (a).

(Added Pub. L. 105–85, div. A, title VI, § 641(a)(1), Nov. 18, 1997, 111 Stat. 1797.)

EFFECTIVE DATE

Section 641(c) of Pub. L. 105–85 provided that: ''Section 1448a of title 10, United States Code, as added by subsection (a), shall take effect 180 days after the date of the enactment of this Act [Nov. 18, 1997].''

TRANSITION PROVISION FOR CURRENT PARTICIPANTS

Section 641(b) of Pub. L. 105–85 provided that: ''Notwithstanding the limitation on the time for making an election under section 1448a of title 10, United States Code (as added by subsection (a)), that is specified in subsection (a) of such section, a participant in the Survivor Benefit Plan under subchapter II of chapter 73 of such title may make an election in accordance with that section within one year after the effective date of that section under subsection (c) [set out as an Effective Date note above] if the second anniversary of the commencement of payment of retired pay to the participant precedes that effective date.''

§ 1449. Mental incompetency of member

(a) ELECTION BY SECRETARY CONCERNED ON BEHALF OF MENTALLY INCOMPETENT MEMBER.—If a person to whom section 1448 of this title applies is determined to be mentally incompetent by medical officers of the armed force concerned or of the Department of Veterans Affairs, or by a court of competent jurisdiction, an election described in subsection (a)(2) or (b) of section 1448 of this title may be made on behalf of that person by the Secretary concerned.

(b) REVOCATION OF ELECTION BY MEMBER.—

(1) AUTHORITY UPON SUBSEQUENT DETERMINATION OF MENTAL COMPETENCE.—If a person for

whom the Secretary has made an election under subsection (a) is later determined to be mentally competent by an authority named in that subsection, that person may, within 180 days after that determination, revoke that election.

(2) DEDUCTIONS FROM RETIRED PAY NOT TO BE REFUNDED.—Any deduction made from retired pay by reason of such an election may not be refunded.

(Added Pub. L. 92–425, § 1(3), Sept. 21, 1972, 86 Stat. 708; amended Pub. L. 95–397, title II, § 207(a), Sept. 30, 1978, 92 Stat. 848; Pub. L. 101–189, div. A, title XIV, § 1407(a)(3), title XVI, § 1621(a)(1), Nov. 29, 1989, 103 Stat. 1588, 1602; Pub. L. 104–201, div. A, title VI, § 634, Sept. 23, 1996, 110 Stat. 2560.)

AMENDMENTS

1996—Pub. L. 104–201 amended section generally. Prior to amendment, section read as follows: ''If a person to whom section 1448 of this title applies is determined to be mentally incompetent by medical officers of the armed force concerned or of the Department of Veterans Affairs, or by a court of competent jurisdiction, any election described in subsection (a)(2) or (b) of section 1448 of this title may be made on behalf of that person by the Secretary concerned. If the person for whom the Secretary has made an election is later determined to be mentally competent by an authority named in the first sentence, he may, within 180 days after that determination revoke that election. Any deductions made from retired pay by reason of such an election will not be refunded.''

1989—Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration'' and struck out ''or retainer'' after ''made from retired''.

1978—Pub. L. 95–397 substituted ''subsection (a)(2) or (b)'' for ''the first sentence of subsection (a), or subsection (b)''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–397 effective Oct. 1, 1978, and applicable to annuities payable by virtue of amendment for months beginning on or after such date, see section 210 of Pub. L. 95–397, set out as a note under section 1447 of this title.

§ 1450. Payment of annuity: beneficiaries

(a) IN GENERAL.—Effective as of the first day after the death of a person to whom section 1448 of this title applies (or on such other day as that person may provide under subsection (j)), a monthly annuity under section 1451 of this title shall be paid to the person's beneficiaries under the Plan, as follows:

(1) SURVIVING SPOUSE OR FORMER SPOUSE.—The eligible surviving spouse or the eligible former spouse.

(2) SURVIVING CHILDREN.—The surviving dependent children in equal shares, if the eligible surviving spouse or the eligible former spouse is dead, dies, or otherwise becomes ineligible under this section.

(3) DEPENDENT CHILDREN.—The dependent children in equal shares if the person to whom section 1448 of this title applies (with the concurrence of the person's spouse, if required under section 1448(a)(3) of this title) elected to provide an annuity for dependent children but not for the spouse or former spouse.

(4) NATURAL PERSON DESIGNATED UNDER ''INSURABLE INTEREST'' COVERAGE.—The natural person designated under section 1448(b)(1) of this title, unless the election to provide an annuity to the natural person has been changed as provided in subsection (f).

(b) TERMINATION OF ANNUITY FOR DEATH, REMARRIAGE BEFORE AGE 55, ETC.—

(1) GENERAL RULE.—An annuity payable to the beneficiary terminates effective as of the first day of the month in which eligibility is lost.

(2) TERMINATION OF SPOUSE ANNUITY UPON DEATH OR REMARRIAGE BEFORE AGE 55.—An annuity for a surviving spouse or former spouse shall be paid to the surviving spouse or former spouse while the surviving spouse or former spouse is living or, if the surviving spouse or former spouse remarries before reaching age 55, until the surviving spouse or former spouse remarries.

(3) EFFECT OF TERMINATION OF SUBSEQUENT MARRIAGE BEFORE AGE 55.—If the surviving spouse or former spouse remarries before reaching age 55 and that marriage is terminated by death, annulment, or divorce, payment of the annuity shall be resumed effective as of the first day of the month in which the marriage is so terminated. However, if the surviving spouse or former spouse is also entitled to an annuity under the Plan based upon the marriage so terminated, the surviving spouse or former spouse may not receive both annuities but must elect which to receive.

(c) OFFSET FOR AMOUNT OF DEPENDENCY AND INDEMNITY COMPENSATION.—

(1) REQUIRED OFFSET.—If, upon the death of a person to whom section 1448 of this title applies, the surviving spouse or former spouse of that person is also entitled to dependency and indemnity compensation under section 1311(a) of title 38, the surviving spouse or former spouse may be paid an annuity under this section, but only in the amount that the annuity otherwise payable under this section would exceed that compensation.

(2) EFFECTIVE DATE OF OFFSET.—A reduction in an annuity under this section required by paragraph (1) shall be effective on the date of the commencement of the period of payment of such dependency and indemnity compensation under title 38.

(3) LIMITATION ON RECOUPMENT OF OFFSET AMOUNT.—Any amount subject to offset under this subsection that was previously paid to the surviving spouse or former spouse shall be recouped only to the extent that the amount paid exceeds any amount to be refunded under subsection (e). In notifying a surviving spouse or former spouse of the recoupment requirement, the Secretary shall provide the spouse or former spouse—

(A) a single notice of the net amount to be recouped or the net amount to be refunded, as applicable, under this subsection or subsection (e);

(B) a written explanation of the statutory requirements for recoupment of the offset amount and for refund of any applicable amount deducted from retired pay;

(C) a detailed accounting of how the offset amount being recouped and retired pay de-

duction amount being refunded were calculated; and

(D) contact information for a person who can provide information about the offset recoupment and retired pay deduction refund processes and answer questions the surviving spouse or former spouse may have about the requirements, processes, or amounts.

(d) LIMITATION ON PAYMENT OF ANNUITIES WHEN COVERAGE UNDER CIVIL SERVICE RETIREMENT ELECTED.—If, upon the death of a person to whom section 1448 of this title applies, that person had in effect a waiver of that person's retired pay for the purposes of subchapter III of chapter 83 of title 5, an annuity under this section shall not be payable unless, in accordance with section 8339(j) of title 5, that person notified the Office of Personnel Management that he did not desire any spouse surviving him to receive an annuity under section 8341(b) of that title.

(e) REFUND OF AMOUNTS DEDUCTED FROM RETIRED PAY WHEN DIC OFFSET IS APPLICABLE.—

(1) FULL REFUND WHEN DIC GREATER THAN SBP ANNUITY.—If an annuity under this section is not payable because of subsection (c), any amount deducted from the retired pay of the deceased under section 1452 of this title shall be refunded to the surviving spouse or former spouse.

(2) PARTIAL REFUND WHEN SBP ANNUITY REDUCED BY DIC.—If, because of subsection (c), the annuity payable is less than the amount established under section 1451 of this title, the annuity payable shall be recalculated under that section. The amount of the reduction in the retired pay required to provide that recalculated annuity shall be computed under section 1452 of this title, and the difference between the amount deducted before the computation of that recalculated annuity and the amount that would have been deducted on the basis of that recalculated annuity shall be refunded to the surviving spouse or former spouse.

(f) CHANGE IN ELECTION OF INSURABLE INTEREST OR FORMER SPOUSE BENEFICIARY.—

(1) AUTHORIZED CHANGES.—

(A) ELECTION IN FAVOR OF SPOUSE OR CHILD.—A person who elects to provide an annuity to a person designated by him under section 1448(b) of this title may, subject to paragraph (2), change that election and provide an annuity to his spouse or dependent child.

(B) NOTICE.—The Secretary concerned shall notify the former spouse or other natural person previously designated under section 1448(b) of this title of any change of election under subparagraph (A).

(C) PROCEDURES, EFFECTIVE DATE, ETC.—Any such change of election is subject to the same rules with respect to execution, revocation, and effectiveness as are set forth in section 1448(a)(5) of this title (without regard to the eligibility of the person making the change of election to make such an election under that section). Notwithstanding the preceding sentence, a change of election under this subsection to provide an annuity to a spouse instead of a former spouse may (subject to paragraph (2)) be made at any time after the person providing the annuity remarries without regard to the time limitation in section 1448(a)(5)(B) of this title.

(2) LIMITATION ON CHANGE IN BENEFICIARY WHEN FORMER SPOUSE COVERAGE IN EFFECT.—A person who, incident to a proceeding of divorce, dissolution, or annulment, is required by a court order to elect under section 1448(b) of this title to provide an annuity to a former spouse (or to both a former spouse and child), or who enters into a written agreement (whether voluntary or required by a court order) to make such an election, and who makes an election pursuant to such order or agreement, may not change that election under paragraph (1) unless, of the following requirements, whichever are applicable in a particular case are satisfied:

(A) In a case in which the election is required by a court order, or in which an agreement to make the election has been incorporated in or ratified or approved by a court order, the person—

(i) furnishes to the Secretary concerned a certified copy of a court order which is regular on its face and which modifies the provisions of all previous court orders relating to such election, or the agreement to make such election, so as to permit the person to change the election; and

(ii) certifies to the Secretary concerned that the court order is valid and in effect.

(B) In a case of a written agreement that has not been incorporated in or ratified or approved by a court order, the person—

(i) furnishes to the Secretary concerned a statement, in such form as the Secretary concerned may prescribe, signed by the former spouse and evidencing the former spouse's agreement to a change in the election under paragraph (1); and

(ii) certifies to the Secretary concerned that the statement is current and in effect.

(3) REQUIRED FORMER SPOUSE ELECTION TO BE DEEMED TO HAVE BEEN MADE.—

(A) DEEMED ELECTION UPON REQUEST BY FORMER SPOUSE.—If a person described in paragraph (2) or (3) of section 1448(b) of this title is required (as described in subparagraph (B)) to elect under section 1448(b) of this title to provide an annuity to a former spouse and such person then fails or refuses to make such an election, such person shall be deemed to have made such an election if the Secretary concerned receives the following:

(i) REQUEST FROM FORMER SPOUSE.—A written request, in such manner as the Secretary shall prescribe, from the former spouse concerned requesting that such an election be deemed to have been made.

(ii) COPY OF COURT ORDER OR OTHER OFFICIAL STATEMENT.—Either—

(I) a copy of the court order, regular on its face, which requires such election or incorporates, ratifies, or approves the written agreement of such person; or

(II) a statement from the clerk of the court (or other appropriate official) that such agreement has been filed with the court in accordance with applicable State law.

(B) PERSONS REQUIRED TO MAKE ELECTION.—A person shall be considered for purposes of subparagraph (A) to be required to elect under section 1448(b) of this title to provide an annuity to a former spouse if—

(i) the person enters, incident to a proceeding of divorce, dissolution, or annulment, into a written agreement to make such an election and the agreement (I) has been incorporated in or ratified or approved by a court order, or (II) has been filed with the court of appropriate jurisdiction in accordance with applicable State law; or

(ii) the person is required by a court order to make such an election.

(C) TIME LIMIT FOR REQUEST BY FORMER SPOUSE.—An election may not be deemed to have been made under subparagraph (A) in the case of any person unless the Secretary concerned receives a request from the former spouse of the person within one year of the date of the court order or filing involved.

(D) EFFECTIVE DATE OF DEEMED ELECTION.—An election deemed to have been made under subparagraph (A) shall become effective on the day referred to in section 1448(b)(3)(E)(ii) of this title.

(4) FORMER SPOUSE COVERAGE MAY BE REQUIRED BY COURT ORDER.—A court order may require a person to elect (or to enter into an agreement to elect) under section 1448(b) of this title to provide an annuity to a former spouse (or to both a former spouse and child).

(g) LIMITATION ON CHANGING OR REVOKING ELECTIONS.—

(1) IN GENERAL.—An election under this section may not be changed or revoked.

(2) EXCEPTIONS.—Paragraph (1) does not apply to—

(A) a revocation of an election under section 1449(b) of this title; or

(B) a change in an election under subsection (f).

(h) TREATMENT OF ANNUITIES UNDER OTHER LAWS.—Except as provided in section 1451 of this title, an annuity under this section is in addition to any other payment to which a person is entitled under any other provision of law. Such annuity shall be considered as income under laws administered by the Secretary of Veterans Affairs.

(i) ANNUITIES EXEMPT FROM CERTAIN LEGAL PROCESS.—Except as provided in subsection (*l*)(3)(B), an annuity under this section is not assignable or subject to execution, levy, attachment, garnishment, or other legal process.

(j) EFFECTIVE DATE OF RESERVE-COMPONENT ANNUITIES.—

(1) PERSONS MAKING SECTION 1448(e) DESIGNATION.—A reserve-component annuity shall be effective in accordance with the designation made under section 1448(e) of this title by the person providing the annuity.

(2) PERSONS DYING BEFORE MAKING SECTION 1448(e) DESIGNATION.—An annuity payable under section 1448(f) of this title shall be effective on the day after the date of the death of the person upon whose service the right to the annuity is based.

(k) ADJUSTMENT OF SPOUSE OR FORMER SPOUSE ANNUITY UPON LOSS OF DEPENDENCY AND INDEMNITY COMPENSATION.—

(1) READJUSTMENT IF BENEFICIARY 55 YEARS OF AGE OR MORE.—If a surviving spouse or former spouse whose annuity has been adjusted under subsection (c) subsequently loses entitlement to dependency and indemnity compensation under section 1311(a) of title 38 because of the remarriage of the surviving spouse, or former spouse, and if at the time of such remarriage the surviving spouse or former spouse is 55 years of age or more, the amount of the annuity of the surviving spouse or former spouse shall be readjusted, effective on the effective date of such loss of dependency and indemnity compensation, to the amount of the annuity which would be in effect with respect to the surviving spouse or former spouse if the adjustment under subsection (c) had never been made.

(2) REPAYMENT OF AMOUNTS PREVIOUSLY REFUNDED.—

(A) GENERAL RULE.—A surviving spouse or former spouse whose annuity is readjusted under paragraph (1) shall repay any amount refunded under subsection (e) by reason of the adjustment under subsection (c).

(B) INTEREST REQUIRED IF REPAYMENT NOT A LUMP SUM.—If the repayment is not made in a lump sum, the surviving spouse or former spouse shall pay interest on the amount to be repaid. Such interest shall commence on the date on which the first such payment is due and shall be applied over the period during which any part of the repayment remains to be paid.

(C) MANNER OF REPAYMENT; RATE OF INTEREST.—The manner in which such repayment shall be made, and the rate of any such interest, shall be prescribed in regulations under section 1455 of this title.

(D) DEPOSIT OF AMOUNTS REPAID.—An amount repaid under this paragraph (including any such interest) received by the Secretary of Defense shall be deposited into the Department of Defense Military Retirement Fund. Any other amount repaid under this paragraph shall be deposited into the Treasury as miscellaneous receipts.

(*l*) PARTICIPANTS IN THE PLAN WHO ARE MISSING.—

(1) AUTHORITY TO PRESUME DEATH OF MISSING PARTICIPANT.—

(A) IN GENERAL.—Upon application of the beneficiary of a participant in the Plan who is missing, the Secretary concerned may determine for purposes of this subchapter that the participant is presumed dead.

(B) PARTICIPANT WHO IS MISSING.—A participant in the Plan is considered to be missing for purposes of this subsection if—

(i) the retired pay of the participant has been suspended on the basis that the participant is missing; or

(ii) in the case of a participant in the Plan who would be eligible for reserve-component retired pay but for the fact that he is under 60 years of age, his retired pay, if he were entitled to retired pay, would be suspended on the basis that he is missing.

(C) REQUIREMENTS APPLICABLE TO PRESUMPTION OF DEATH.—Any such determination shall be made in accordance with regulations prescribed under section 1455 of this title. The Secretary concerned may not make a determination for purposes of this subchapter that a participant who is missing is presumed dead unless the Secretary finds that—

(i) the participant has been missing for at least 30 days; and

(ii) the circumstances under which the participant is missing would lead a reasonably prudent person to conclude that the participant is dead.

(2) COMMENCEMENT OF ANNUITY.—Upon a determination under paragraph (1) with respect to a participant in the Plan, an annuity otherwise payable under this subchapter shall be paid as if the participant died on the date as of which the retired pay of the participant was suspended.

(3) EFFECT OF PERSON NOT BEING DEAD.—

(A) TERMINATION OF ANNUITY.—If, after a determination under paragraph (1), the Secretary concerned determines that the participant is alive—

(i) any annuity being paid under this subchapter by reason of this subsection shall be terminated; and

(ii) the total amount of any annuity payments made by reason of this subsection shall constitute a debt to the United States.

(B) COLLECTION FROM PARTICIPANT OF ANNUITY AMOUNTS ERRONEOUSLY PAID.—A debt under subparagraph (A)(ii) may be collected or offset—

(i) from any retired pay otherwise payable to the participant;

(ii) if the participant is entitled to compensation under chapter 11 of title 38, from that compensation; or

(iii) if the participant is entitled to any other payment from the United States, from that payment.

(C) COLLECTION FROM BENEFICIARY.—If the participant dies before the full recovery of the amount of annuity payments described in subparagraph (A)(ii) has been made by the United States, the remaining amount of such annuity payments may be collected from the participant's beneficiary under the Plan if that beneficiary was the recipient of the annuity payments made by reason of this subsection.

(m) SPECIAL SURVIVOR INDEMNITY ALLOWANCE.—

(1) PROVISION OF ALLOWANCE.—The Secretary concerned shall pay a monthly special survivor indemnity allowance under this subsection to the surviving spouse or former spouse of a member of the uniformed services to whom section 1448 of this title applies if—

(A) the surviving spouse or former spouse is entitled to dependency and indemnity compensation under section 1311(a) of title 38;

(B) except for subsection (c) of this section, the surviving spouse or former spouse is eligible for an annuity by reason of a participant in the Plan under subsection (a)(1) of section 1448 of this title or by reason of coverage under subsection (d) of such section; and

(C) the eligibility of the surviving spouse or former spouse for an annuity as described in subparagraph (B) is affected by subsection (c) of this section.

(2) AMOUNT OF PAYMENT.—Subject to paragraph (3), the amount of the allowance paid to an eligible survivor under paragraph (1) for a month shall be equal to—

(A) for months during fiscal year 2009, $50;

(B) for months during fiscal year 2010, $60;

(C) for months during fiscal year 2011, $70;

(D) for months during fiscal year 2012, $80;

(E) for months during fiscal year 2013, $90;

(F) for months during fiscal year 2014, $150;

(G) for months during fiscal year 2015, $200;

(H) for months during fiscal year 2016, $275; and

(I) for months during fiscal year 2017, $310.

(3) LIMITATION.—The amount of the allowance paid to an eligible survivor under paragraph (1) for any month may not exceed the amount of the annuity for that month that is subject to offset under subsection (c).

(4) STATUS OF PAYMENTS.—An allowance paid under this subsection does not constitute an annuity, and amounts so paid are not subject to adjustment under any other provision of law.

(5) SOURCE OF FUNDS.—The special survivor indemnity allowance shall be paid from amounts in the Department of Defense Military Retirement Fund established under section 1461 of this title.

(6) EFFECTIVE DATE AND DURATION.—This subsection shall only apply with respect to the month beginning on October 1, 2008, and subsequent months through the month ending on September 30, 2017. Effective on October 1, 2017, the authority provided by this subsection shall terminate. No special survivor indemnity allowance may be paid to any person by reason of this subsection for any period before October 1, 2008, or beginning on or after October 1, 2017.

(Added Pub. L. 92–425, § 1(3), Sept. 21, 1972, 86 Stat. 708; amended Pub. L. 94–496, § 1(3), (4), Oct. 14, 1976, 90 Stat. 2375; Pub. L. 95–397, title II, §§ 203, 207(b), (c), Sept. 30, 1978, 92 Stat. 845, 848; Pub. L. 97–22, § 11(a)(3), July 10, 1981, 95 Stat. 137; Pub. L. 97–252, title X, § 1003(c), (d), Sept. 8, 1982, 96 Stat. 736; Pub. L. 98–94, title IX, § 941(a)(3), (c)(3), Sept. 24, 1983, 97 Stat. 653; Pub. L. 98–525, title VI, §§ 642(b), 644, Oct. 19, 1984, 98 Stat. 2546, 2548; Pub. L. 99–145, title VII, §§ 713(b), 717, 718, 719(4)–(6), (8)(A), 722, 723(a), (b)(1), title XIII, § 1303(a)(11), Nov. 8, 1985, 99 Stat. 672, 674–677, 739; Pub. L. 99–661, div. A, title VI, §§ 641(a), (b)(2), (3),

643(a), title XIII, § 1343(a)(8)(C), Nov. 14, 1986, 100 Stat. 3885, 3886, 3992; Pub. L. 100–26, § 3(3), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–180, div. A, title VI, § 636(a), Dec. 4, 1987, 101 Stat. 1106; Pub. L. 100–224, § 5(b)(1), Dec. 30, 1987, 101 Stat. 1538; Pub. L. 101–189, div. A, title XIV, § 1407(a)(2)–(4), title XVI, § 1621(a)(1), Nov. 29, 1989, 103 Stat. 1588, 1602; Pub. L. 103–337, div. A, title X, § 1070(e)(3), Oct. 5, 1994, 108 Stat. 2859; Pub. L. 104–201, div. A, title VI, § 634, Sept. 23, 1996, 110 Stat. 2561; Pub. L. 105–85, div. A, title VI, § 642(a), Nov. 18, 1997, 111 Stat. 1799; Pub. L. 105–261, div. A, title VI, § 643(b), Oct. 17, 1998, 112 Stat. 2048; Pub. L. 106–398, § 1 [[div. A], title VI, § 655(c)(4)], Oct. 30, 2000, 114 Stat. 1654, 1654A–166; Pub. L. 110–181, div. A, title VI, §§ 643(a), 644, Jan. 28, 2008, 122 Stat. 157, 158; Pub. L. 110–417, [div. A], title VI, § 631(a), Oct. 14, 2008, 122 Stat. 4492; Pub. L. 111–31, div. B, title II, § 201, June 22, 2009, 123 Stat. 1857.)

AMENDMENTS

2009—Subsec. (m)(2)(F) to (I). Pub. L. 111–31, § 201(a), added subpars. (F) to (I) and struck out former subpar. (F) which read as follows: ''for months after fiscal year 2013, $100.''

Subsec. (m)(6). Pub. L. 111–31, § 201(b), substituted ''September 30, 2017'' for ''February 28, 2016'' and substituted ''October 1, 2017'' for ''March 1, 2016'' in two places.

2008—Subsec. (c)(3). Pub. L. 110–181, § 643(a), added par. (3).

Subsec. (m). Pub. L. 110–181, § 644, added subsec. (m).

Subsec. (m)(1)(B). Pub. L. 110–417 substituted ''subsection (a)(1) of section 1448 of this title or by reason of coverage under subsection (d) of such section'' for ''section 1448(a)(1) of this title''.

2000—Subsec. (j)(1). Pub. L. 106–398 substituted ''A reserve-component annuity shall be effective in accordance with the designation made under section 1448(e) of this title by the person providing the annuity.'' for ''An annuity elected by a person providing a reserve-component annuity shall be effective in accordance with the designation made by such person under section 1448(e) of this title.''

1998—Subsec. (f)(3)(D). Pub. L. 105–261 substituted ''the day referred to in section 1448(b)(3)(E)(ii) of this title'' for ''the first day of the first month which begins after the date of the court order or filing involved''.

1997—Subsec. (f)(1)(C). Pub. L. 105–85 inserted at end ''Notwithstanding the preceding sentence, a change of election under this subsection to provide an annuity to a spouse instead of a former spouse may (subject to paragraph (2)) be made at any time after the person providing the annuity remarries without regard to the time limitation in section 1448(a)(5)(B) of this title.''

1996—Pub. L. 104–201 amended section generally, revising and restating provisions relating to payment of annuities and beneficiaries and inserting subsec., par., and subpar. headings.

1994—Subsecs. (c), (k)(1). Pub. L. 103–337 substituted ''section 1311(a) of title 38'' for ''section 411(a) of title 38''.

1989—Subsec. (f)(3)(B). Pub. L. 101–189, § 1407(a)(4), substituted ''within one year of the date of the court order or filing involved'' for ''before October 1, 1985, or within one year of the date of the court order or filing involved, whichever is later''.

Subsec. (h). Pub. L. 101–189, § 1621(a)(1), substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

Subsec. (*l*)(1). Pub. L. 101–189, § 1407(a)(2), substituted ''reserve-component retired pay'' for ''retired pay under chapter 67 of this title''.

Subsec. (*l*)(2). Pub. L. 101–189, § 1407(a)(3), struck out ''or retainer'' after ''of which the retired''.

1987—Subsec. (b). Pub. L. 100–26, § 3(3), made technical amendment to directory language of Pub. L. 99–661, § 643(a). See 1986 Amendment note below.

Subsec. (f)(3)(A). Pub. L. 100–224 struck out second of two commas after ''required by a court order to make such an election''.

Subsec. (k)(1). Pub. L. 100–180 substituted ''55 years of age'' for ''60 years of age''.

1986—Subsec. (b). Pub. L. 99–661, § 643(a), as amended by Pub. L. 100–26, § 3(3), substituted ''age 55'' for ''age 60'' in two places.

Subsec. (c). Pub. L. 99–661, § 1343(a)(8)(C), substituted ''entitled to dependency and indemnity compensation'' for ''entitled to compensation''.

Subsec. (f)(2). Pub. L. 99–661, § 641(b)(2)(A), substituted ''is required by a court order to elect under section 1448(b) of this title to provide an annuity to a former spouse (or to both a former spouse and child), or who enters into a written agreement (whether voluntary or required by a court order) to make such an election, and who makes an election pursuant to such order or agreement,'' for ''enters into a voluntary written agreement to elect under section 1448(b) of this title to provide an annuity to a former spouse and who makes an election pursuant to such agreement''.

Subsec. (f)(2)(A). Pub. L. 99–661, § 641(b)(2)(B), substituted ''in a case in which the election is required by a court order, or in which an agreement to make the election'' for ''in a case in which such agreement''.

Subsec. (f)(2)(A)(i). Pub. L. 99–661, § 641(b)(2)(C), substituted ''relating to such election, or the agreement to make such election,'' for ''relating to the agreement to make such election''.

Subsec. (f)(2)(B). Pub. L. 99–661, § 641(b)(2)(D), substituted ''of a written agreement that'' for ''in which such agreement''.

Subsec. (f)(3)(A). Pub. L. 99–661, § 641(b)(3), struck out ''voluntary'' before ''written agreement'' in two places, inserted ''or if such person is required by a court order to make such an election,'' after ''applicable'' and inserted ''requires such election or'' after ''on its face, which''.

Subsec. (f)(4). Pub. L. 99–661, § 641(a), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''Nothing in this chapter authorizes any court to order any person to elect under section 1448(b) of this title to provide an annuity to a former spouse unless such person has voluntarily agreed in writing to make such election.''

1985—Subsec. (a)(1), (2). Pub. L. 99–145, § 723(a)(1), inserted ''or the eligible former spouse'' after ''widow or widower''.

Subsec. (a)(3). Pub. L. 99–145, § 723(a)(2), inserted ''(with the concurrence of the person's spouse, if required under section 1448(a)(3) of this title)'' after ''title applies'', and ''or former spouse'' after ''the spouse''.

Subsec. (a)(4). Pub. L. 99–145, § 723(a)(3), struck out ''former spouse or other'' before ''natural person'' in two places.

Subsec. (b). Pub. L. 99–145, § 723(b)(1), substituted ''widow, widower, or former spouse'' for ''widow or widower'' in eight places.

Pub. L. 99–145, § 719(4), substituted ''under the Plan'' for ''under this section''.

Subsec. (c). Pub. L. 99–145, § 723(b)(1), substituted ''widow, widower, or former spouse'' for ''widow or widower'' in two places.

Pub. L. 99–145, § 718, inserted provision respecting the effective date of the dependency and indemnity compensation offset.

Subsec. (d). Pub. L. 99–145, § 719(8)(A), substituted ''retired pay'' for ''retired or retainer pay''.

Subsec. (e). Pub. L. 99–145, § 719(8)(A), substituted ''retired pay'' for ''retired or retainer pay'' in two places.

Pub. L. 99–145, § 723(b)(1), substituted ''widow, widower, or former spouse'' for ''widow or widower'' in two places.

Subsec. (f)(3)(A). Pub. L. 99–145, § 722(1), inserted ''or has been filed with the court of appropriate jurisdiction in accordance with applicable State law'' after ''by a court order'' and ''or receives a statement from the clerk of the court (or other appropriate official) that such agreement has been filed with the court in accord-

ance with applicable State law'' after ''voluntary written agreement of such person''.

Subsec. (f)(3)(B), (C). Pub. L. 99–145, § 722(2), inserted ''or filing'' after ''court order''.

Subsec. (i). Pub. L. 99–145, § 1303(a)(11)(A), substituted ''subsection (*l*)(3)(B)'' for ''subsection (*l*)''.

Subsec. (j). Pub. L. 99–145, § 719(5), substituted ''a person providing a reserve-component annuity'' for ''any person providing an annuity by virtue of eligibility under section 1448(a)(1)(B) of this title''.

Pub. L. 99–145, § 713(b), inserted provision respecting the effective date of an annuity payable under section 1448(f) of this title.

Subsec. (k). Pub. L. 99–145, § 723(b)(1), substituted ''widow, widower, or former spouse'' for ''widow or widower'' wherever appearing.

Subsec. (k)(1). Pub. L. 99–145, § 717(1), (2), designated existing provisions as par. (1) and substituted ''had never been made.'' for ''had never been made, but such readjustment may not be made until the widow or widower repays any amount refunded under subsection (e) by reason of the adjustment under subsection (c).''

Subsec. (k)(2). Pub. L. 99–145, § 717(3), added par. (2).

Subsec. (*l*)(1). Pub. L. 99–145, § 719(6)(A), (8)(A), substituted in first sentence ''the Plan'' for ''the plan'' in two places, and substituted ''retired pay'' for ''retired or retainer pay'' before ''has been suspended''.

Subsec. (*l*)(2). Pub. L. 99–145, § 719(6)(B), struck out ''the provision of'' before ''this subchapter''.

Subsec. (*l*)(3)(A). Pub. L. 99–145, § 1303(a)(11)(B), struck out ''(notwithstanding subsection (h))'' before ''may be collected''.

Subsec. (*l*)(3)(A)(i). Pub. L. 99–145, § 719(8)(A), substituted ''retired pay'' for ''retried or retainer pay''.

1984—Subsec. (f)(3), (4). Pub. L. 98–525, § 644, added par. (3) and redesignated former par. (3) as (4).

Subsec. (i). Pub. L. 98–525, § 642(b)(1), substituted ''Except as provided in subsection (*l*), an'' for ''An''.

Subsec. (*l*). Pub. L. 98–525, § 642(b)(2), added subsec. (*l*).

1983—Subsec. (a)(4). Pub. L. 98–94, § 941(a)(3)(A), struck out ''at the time the person to whom section 1448 applies became entitled to retired or retainer pay'' after ''section 1448(b) of this title''.

Subsec. (f)(1). Pub. L. 98–94, § 941(a)(3)(B), inserted ''(without regard to the eligibility of the person making the change of election to make an election under such section)'' after ''section 1448(a)(5) of this title''.

Pub. L. 98–94, § 941(c)(3)(A), struck out ''of this subsection'' after ''subject to paragraph (2)''.

Subsec. (f)(2). Pub. L. 98–94, § 941(c)(3)(B), substituted ''or annulment,'' for ''annulment, or legal separation,''.

1982—Subsec. (a)(4). Pub. L. 97–252, § 1003(c), substituted ''former spouse or other natural person'' for ''natural person'' and ''unless the election to provide an annuity to the former spouse or other natural person has been changed as provided in subsection (f)'' for ''if there is no eligible beneficiary under clause (1) or clause (2)''.

Subsec. (f). Pub. L. 97–252, § 1003(d), designated existing provisions as par. (1), substituted ''A person who elects to provide an annuity to a person designated by him under section 1448(b) of this title may, subject to paragraph (2) of this subsection,'' for ''An unmarried person who elects to provide an annuity to a person designated by him under subsection (a)(4), but who later marries or acquires a dependent child,'', inserted provision that the Secretary concerned notify the former spouse or such other natural person previously designated under section 1448(b) of any such change in election, and added pars. (2) and (3).

1981—Subsec. (d). Pub. L. 97–22 substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

1978—Subsec. (a). Pub. L. 95–397, § 203(1), inserted ''(or on such other day as he may provide under subsection (j))'' after ''death of a person to whom section 1448 of this title applies''.

Subsec. (d). Pub. L. 95–397, § 207(b), substituted ''section 8339(j)'' for ''section 8339(i)''.

Subsec. (f). Pub. L. 95–397, § 207(c), substituted ''section 1448(a)(5)'' for ''the last three sentences of section 1448(a)''.

Subsecs. (j), (k). Pub. L. 95–397, § 203(2), added subsecs. (j) and (k).

1976—Subsec. (a)(3), (4). Pub. L. 94–496, § 1(3), added par. (3) and redesignated former par. (3) as (4).

Subsec. (f). Pub. L. 94–496, § 1(4), substituted ''(a)(4)'' for ''(a)(3)''.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–417, [div. A], title VI, § 631(b), Oct. 14, 2008, 122 Stat. 4492, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to the month beginning on October 1, 2008, and subsequent months as provided by paragraph (6) of subsection (m) of section 1450 of title 10, United States Code, as added by section 644 of the National Defense Authorization Act for Fiscal Year 2008 [Pub. L. 110–181].''

Pub. L. 110–181, div. A, title VI, § 643(b), Jan. 28, 2008, 122 Stat. 157, provided that: ''Paragraph (3) of subsection (c) of section 1450 of title 10, United States Code, as added by subsection (a), shall apply with respect to the recoupment on or after April 1, 2008, of amounts subject to offset under such subsection.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 642(b) of Pub. L. 105–85 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to marriages occurring before, on, or after the date of the enactment of this Act [Nov. 18, 1997].''

EFFECTIVE DATE OF 1987 AMENDMENTS

Section 636(b) of Pub. L. 100–180 provided that: ''The amendment made by subsection (a) [amending this section] shall apply as if included in the amendments made by section 643(a) of the National Defense Authorization Act for Fiscal Year 1987 (Public Law 99–661; 100 Stat. 3886) [amending this section].''

Amendment by Pub. L. 100–26 applicable as if included in Pub. L. 99–661 when enacted on Nov. 14, 1986, see section 12(a) of Pub. L. 100–26, set out as a note under section 776 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 641(c) of Pub. L. 99–661 provided that: ''The amendments made by this section [amending this section and section 1448 of this title] apply to court orders issued on or after the date of the enactment of this Act [Nov. 14, 1986].''

Section 643(b) of Pub. L. 99–661 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to remarriages that occur on or after the date of the enactment of this Act [Nov. 14, 1986], but only with respect to payments for periods after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by title VII of Pub. L. 99–145 effective Mar. 1, 1986, with prohibition against accrual of benefits to any person by reason of the enactment of such title VII for any period before Mar. 1, 1986, see section 731 of Pub. L. 99–145, set out as a note under section 1447 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT; TRANSITION PROVISIONS

Amendment by Pub. L. 97–252 effective Feb. 1, 1983, and applicable to persons becoming eligible to participate in Survivor Benefit Plan provided for in this subchapter before, on, or after Feb. 1, 1983, see section 1006 of Pub. L. 97–252, set out as an Effective Date; Transition Provisions note under section 1408 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–397 effective Oct. 1, 1978, and applicable to annuities payable by virtue of amendment for months beginning on or after such date, see section 210 of Pub. L. 95–397, set out as a note under section 1447 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–496 effective Sept. 21, 1972, see section 3 of Pub. L. 94–496, set out as a note under section 1447 of this title.

RECOMPUTATION OF ANNUITIES

Pub. L. 108–375, div. A, title VI, § 644(c), Oct. 28, 2004, 118 Stat. 1961, as amended by Pub. L. 110–417, [div. A], title VI, § 632, Oct. 14, 2008, 122 Stat. 4493, provided that:

''(1) PERIODIC RECOMPUTATION REQUIRED.—Effective on the first day of each month specified in paragraph (2)—

''(A) each annuity under section 1450 of title 10, United States Code, that commenced before that month, is computed under a provision of section 1451 of that title amended by subsection (a), and is payable for that month shall be recomputed so as to be equal to the amount that would be in effect if the percent applicable for that month under that provision, as so amended, had been used for the initial computation of the annuity; and

''(B) each supplemental survivor annuity under [former] section 1457 of such title that commenced before that month and is payable for that month shall be recomputed so as to be equal to the amount that would be in effect if the percent applicable for that month under that section, as amended by this section, had been used for the initial computation of the supplemental survivor annuity.

''(2) TIME FOR RECOMPUTATION.—The requirement under paragraph (1) for recomputation of certain annuities applies with respect to the following months:

''(A) October 2005.

''(B) April 2006.

''(C) April 2007.

''(D) April 2008.

''(3) SAVINGS PROVISION.—If, as a result of the recomputation of annuities under section 1450 of title 10, United States Code, and supplemental survivor annuities under [former] section 1457 of such title, as required by paragraph (1), the total amount of both annuities to be paid to an annuitant for a month would be less (because of the offset required by section 1450(c) of such title for dependency and indemnity compensation) than the amount that would be paid to the annuitant in the absence of recomputation, the Secretary of Defense shall take such actions as are necessary to adjust the annuity amounts to eliminate the reduction.''

[Pub. L. 110–417, [div. A], title VI, § 632, Oct. 14, 2008, 122 Stat. 4493, provided that the amendment made by that section to section 644(c) of Pub. L. 108–375, set out above, is effective as of Oct. 28, 2004, and as if included in section 644(c) of Pub. L. 108–375 as enacted.]

EFFECTUATION OF INTENDED SBP ANNUITY FOR FORMER SPOUSE WHEN NOT ELECTED BY REASON OF UNTIMELY DEATH OF RETIREE

Pub. L. 106–65, div. A, title VI, § 657, Oct. 5, 1999, 113 Stat. 668, as amended by Pub. L. 106–398, § 1 [[div. A], title X, § 1087(c)(1)(D)], Oct. 30, 2000, 114 Stat. 1654, 1654A–292, provided that:

''(a) CASES NOT COVERED BY EXISTING AUTHORITY.—Paragraph (3) of section 1450(f) of title 10, United States Code, as in effect on the date of the enactment of this Act [Oct. 5, 1999], shall apply in the case of a former spouse of any person referred to in that paragraph who—

''(1) incident to a proceeding of divorce, dissolution, or annulment—

''(A) entered into a written agreement on or after August 19, 1983, to make an election under section 1448(b) of such title to provide an annuity to the former spouse (the agreement thereafter having been incorporated in or ratified or approved by a court order or filed with the court of appropriate jurisdiction in accordance with applicable State law); or

''(B) was required by a court order dated on or after such date to make such an election for the former spouse; and

''(2) before making the election, died within 21 days after the date of the agreement referred to in paragraph (1)(A) or the court order referred to in paragraph (1)(B), as the case may be.

''(b) ADJUSTED TIME LIMIT FOR REQUEST BY FORMER SPOUSE.—For the purposes of paragraph (3)(C) of section 1450(f) of title 10, United States Code, a court order or filing referred to in subsection (a)(1) of this section that is dated before October 19, 1984, shall be deemed to be dated on the date of the enactment of this Act [Oct. 5, 1999].''

[Pub. L. 106–398, § 1 [[div. A], title X, § 1087(c)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–292, provided that: ''In the case of any former spouse to whom paragraph (3) of section 1450(f) of title 10, United States Code, applies by reason of the amendment made by paragraph (1)(D) [amending section 657 of Pub. L. 106–65, set out above], the provisions of subsection (b) of section 657 of the National Defense Authorization Act for Fiscal Year 2000 [Pub. L. 106–65, set out above] shall be applied by using the date of the enactment of this Act [Oct. 30, 2000], rather than the date of the enactment of that Act [Oct. 5, 1999].'']

§ 1451. Amount of annuity

(a) COMPUTATION OF ANNUITY FOR A SPOUSE, FORMER SPOUSE, OR CHILD.—

(1) STANDARD ANNUITY.—In the case of a standard annuity provided to a beneficiary under section 1450(a) of this title (other than under section 1450(a)(4)), the monthly annuity payable to the beneficiary shall be determined as follows:

(A) BENEFICIARY UNDER 62 YEARS OF AGE.—If the beneficiary is under 62 years of age or is a dependent child when becoming entitled to the annuity, the monthly annuity shall be the amount equal to 55 percent of the base amount.

(B) BENEFICIARY 62 YEARS OF AGE OR OLDER.—

(i) GENERAL RULE.—If the beneficiary (other than a dependent child) is 62 years of age or older when becoming entitled to the annuity, the monthly annuity shall be the amount equal to the product of the base amount and the percent applicable to the month, as follows:

(I) For a month before October 2005, the applicable percent is 35 percent.

(II) For months after September 2005 and before April 2006, the applicable percent is 40 percent.

(III) For months after March 2006 and before April 2007, the applicable percent is 45 percent.

(IV) For months after March 2007 and before April 2008, the applicable percent is 50 percent.

(V) For months after March 2008, the applicable percent is 55 percent.

(ii) RULE IF BENEFICIARY ELIGIBLE FOR SOCIAL SECURITY OFFSET COMPUTATION.—If the beneficiary is eligible to have the annuity computed under subsection (e) and if computation of the annuity under that subsection is more favorable to the beneficiary than computation under clause (i), the annuity shall be computed under that subsection rather than under clause (i).

(2) RESERVE-COMPONENT ANNUITY.—In the case of a reserve-component annuity provided

to a beneficiary under section 1450(a) of this title (other than under section 1450(a)(4)), the monthly annuity payable to the beneficiary shall be determined as follows:

(A) BENEFICIARY UNDER 62 YEARS OF AGE.—If the beneficiary is under 62 years of age or is a dependent child when becoming entitled to the annuity, the monthly annuity shall be the amount equal to a percentage of the base amount that—

(i) is less than 55 percent; and

(ii) is determined under subsection (f).

(B) BENEFICIARY 62 YEARS OF AGE OR OLDER.—

(i) GENERAL RULE.—If the beneficiary (other than a dependent child) is 62 years of age or older when becoming entitled to the annuity, the monthly annuity shall be the amount equal to a percentage of the base amount that—

(I) is less than the percent specified under subsection (a)(1)(B)(i) as being applicable for the month; and

(II) is determined under subsection (f).

(ii) RULE IF BENEFICIARY ELIGIBLE FOR SOCIAL SECURITY OFFSET COMPUTATION.—If the beneficiary is eligible to have the annuity computed under subsection (e) and if, at the time the beneficiary becomes entitled to the annuity, computation of the annuity under that subsection is more favorable to the beneficiary than computation under clause (i), the annuity shall be computed under that subsection rather than under clause (i).

(b) INSURABLE INTEREST BENEFICIARY.—

(1) STANDARD ANNUITY.—In the case of a standard annuity provided to a beneficiary under section 1450(a)(4) of this title, the monthly annuity payable to the beneficiary shall be the amount equal to 55 percent of the retired pay of the person who elected to provide the annuity after the reduction in that pay in accordance with section 1452(c) of this title.

(2) RESERVE-COMPONENT ANNUITY.—In the case of a reserve-component annuity provided to a beneficiary under section 1450(a)(4) of this title, the monthly annuity payable to the beneficiary shall be the amount equal to a percentage of the retired pay of the person who elected to provide the annuity after the reduction in such pay in accordance with section 1452(c) of this title that—

(A) is less than 55 percent; and

(B) is determined under subsection (f).

(3) COMPUTATION OF RESERVE-COMPONENT ANNUITY WHEN PARTICIPANT DIES BEFORE AGE 60.—For the purposes of paragraph (2), a person—

(A) who provides an annuity that is determined in accordance with that paragraph;

(B) who dies before becoming 60 years of age; and

(C) who at the time of death is otherwise entitled to retired pay,

shall be considered to have been entitled to retired pay at the time of death. The retired pay of such person for the purposes of such paragraph shall be computed on the basis of the rates of basic pay in effect on the date on which the annuity provided by such person is to become effective in accordance with the designation of such person under section 1448(e) of this title.

(c) ANNUITIES FOR SURVIVORS OF CERTAIN PERSONS DYING DURING A PERIOD OF SPECIAL ELIGIBILITY FOR SBP.—

(1) IN GENERAL.—In the case of an annuity provided under section 1448(d) or 1448(f) of this title, the amount of the annuity shall be determined as follows:

(A) BENEFICIARY UNDER 62 YEARS OF AGE.—If the person receiving the annuity is under 62 years of age or is a dependent child when the member or former member dies, the monthly annuity shall be the amount equal to 55 percent of the retired pay to which the member or former member would have been entitled if the member or former member had been entitled to that pay when he died determined as follows:

(i) In the case of an annuity provided under section 1448(d) of this title (other than in a case covered by clause (ii)), such retired pay shall be computed as if the member had been retired under section 1201 of this title on the date of the member's death with a disability rated as total.

(ii) In the case of an annuity provided under section 1448(d)(1)(A) of this title by reason of the death of a member not in line of duty, such retired pay shall be computed based upon the member's years of active service when he died.

(iii) In the case of an annuity provided under section 1448(f) of this title, such retired pay shall be computed based upon the member or former member's years of active service when he died computed under section 12733 of this title.

(B) BENEFICIARY 62 YEARS OF AGE OR OLDER.—

(i) GENERAL RULE.—If the person receiving the annuity (other than a dependent child) is 62 years of age or older when the member or former member dies, the monthly annuity shall be the amount equal to the applicable percent of the retired pay to which the member or former member would have been entitled as determined under subparagraph (A). The percent applicable for a month under the preceding sentence is the percent specified under subsection (a)(1)(B)(i) as being applicable for that month.

(ii) RULE IF BENEFICIARY ELIGIBLE FOR SOCIAL SECURITY OFFSET COMPUTATION.—If the beneficiary is eligible to have the annuity computed under subsection (e) and if computation of the annuity under that subsection is more favorable to the beneficiary than computation under clause (i), the annuity shall be computed under that subsection rather than under clause (i).

(2) DIC OFFSET.—An annuity computed under paragraph (1) that is paid to a surviving spouse shall be reduced by the amount of dependency and indemnity compensation to which the surviving spouse is entitled under section 1311(a)

of title 38. Any such reduction shall be effective on the date of the commencement of the period of payment of such compensation under title 38.

(3) SERVICEMEMBERS NOT YET GRANTED RETIRED PAY.—In the case of an annuity provided by reason of the service of a member described in clause (ii) or (iii) of section 1448(d)(1)(A) of this title who first became a member of a uniformed service before September 8, 1980, the retired pay to which the member would have been entitled when he died shall be determined for purposes of paragraph (1) based upon the rate of basic pay in effect at the time of death for the grade in which the member was serving at the time of death, unless (as determined by the Secretary concerned) the member would have been entitled to be retired in a higher grade.

(4) RATE OF PAY TO BE USED IN COMPUTING ANNUITY.—In the case of an annuity paid under section 1448(f) of this title by reason of the service of a person who first became a member of a uniformed service before September 8, 1980, the retired pay of the person providing the annuity shall for the purposes of paragraph (1) be computed on the basis of the rates of basic pay in effect on the effective date of the annuity.

(d) REDUCTION OF ANNUITIES AT AGE 62.—

(1) REDUCTION REQUIRED.—The annuity of a person whose annuity is computed under subparagraph (A) of subsection (a)(1), (a)(2), or (c)(1) shall be reduced on the first day of the month after the month in which the person becomes 62 years of age.

(2) AMOUNT OF ANNUITY AS REDUCED.—

(A) COMPUTATION OF ANNUITY.—Except as provided in subparagraph (B), the reduced amount of the annuity shall be the amount of the annuity that the person would be receiving on that date if the annuity had initially been computed under subparagraph (B) of that subsection.

(B) SAVINGS PROVISION FOR BENEFICIARIES ELIGIBLE FOR SOCIAL SECURITY OFFSET COMPUTATION.—In the case of a person eligible to have an annuity computed under subsection (e) and for whom, at the time the person becomes 62 years of age, the annuity computed with a reduction under subsection (e)(3) is more favorable than the annuity with a reduction described in subparagraph (A), the reduction in the annuity shall be computed in the same manner as a reduction under subsection (e)(3).

(e) SAVINGS PROVISION FOR CERTAIN BENEFICIARIES.—

(1) PERSONS COVERED.—The following beneficiaries under the Plan are eligible to have an annuity under the Plan computed under this subsection:

(A) A beneficiary receiving an annuity under the Plan on October 1, 1985, as the surviving spouse or former spouse of the person providing the annuity.

(B) A spouse or former spouse beneficiary of a person who on October 1, 1985—

(i) was a participant in the Plan;

(ii) was entitled to retired pay or was qualified for that pay except that he had not applied for and been granted that pay; or

(iii) would have been eligible for reserve-component retired pay but for the fact that he was under 60 years of age.

(2) AMOUNT OF ANNUITY.—Subject to paragraph (3), an annuity computed under this subsection is determined as follows:

(A) STANDARD ANNUITY.—In the case of the beneficiary of a standard annuity, the annuity shall be the amount equal to 55 percent of the base amount.

(B) RESERVE-COMPONENT ANNUITY.—In the case of the beneficiary of a reserve-component annuity, the annuity shall be the percentage of the base amount that—

(i) is less than 55 percent; and

(ii) is determined under subsection (f).

(C) BENEFICIARIES OF PERSONS DYING DURING A PERIOD OF SPECIAL ELIGIBILITY FOR SBP.—In the case of the beneficiary of an annuity under section 1448(d) or 1448(f) of this title, the annuity shall be the amount equal to 55 percent of the retired pay of the person providing the annuity (as that pay is determined under subsection (c)).

(3) SOCIAL SECURITY OFFSET.—An annuity computed under this subsection shall be reduced by the lesser of the following:

(A) SOCIAL SECURITY COMPUTATION.—The amount of the survivor benefit, if any, to which the surviving spouse (or the former spouse, in the case of a former spouse beneficiary who became a former spouse under a divorce that became final after November 29, 1989) would be entitled under title II of the Social Security Act (42 U.S.C. 401 et seq.) based solely upon service by the person concerned as described in section 210(*l*)(1) of such Act (42 U.S.C. 410(*l*)(1)) and calculated assuming that the person concerned lives to age 65.

(B) MAXIMUM AMOUNT OF REDUCTION.—40 percent of the amount of the monthly annuity as determined under paragraph (2).

(4) SPECIAL RULES FOR SOCIAL SECURITY OFFSET COMPUTATION.—

(A) TREATMENT OF DEDUCTIONS MADE ON ACCOUNT OF WORK.—For the purpose of paragraph (3), a surviving spouse (or a former spouse, in the case of a person who becomes a former spouse under a divorce that becomes final after November 29, 1989) shall not be considered as entitled to a benefit under title II of the Social Security Act (42 U.S.C. 401 et seq.) to the extent that such benefit has been offset by deductions under section 203 of such Act (42 U.S.C. 403) on account of work.

(B) TREATMENT OF CERTAIN PERIODS FOR WHICH SOCIAL SECURITY REFUNDS ARE MADE.—In the computation of any reduction made under paragraph (3), there shall be excluded any period of service described in section 210(*l*)(1) of the Social Security Act (42 U.S.C. 410(*l*)(1))—

(i) which was performed after December 1, 1980; and

(ii) which involved periods of service of less than 30 continuous days for which the

person concerned is entitled to receive a refund under section 6413(c) of the Internal Revenue Code of 1986 of the social security tax which the person had paid.

(f) DETERMINATION OF PERCENTAGES APPLICABLE TO COMPUTATION OF RESERVE-COMPONENT ANNUITIES.—The percentage to be applied in determining the amount of an annuity computed under subsection (a)(2), (b)(2), or (e)(2)(B) shall be determined under regulations prescribed by the Secretary of Defense. Such regulations shall be prescribed taking into consideration the following:

(1) The age of the person electing to provide the annuity at the time of such election.

(2) The difference in age between such person and the beneficiary of the annuity.

(3) Whether such person provided for the annuity to become effective (in the event he died before becoming 60 years of age) on the day after his death or on the 60th anniversary of his birth.

(4) Appropriate group annuity tables.

(5) Such other factors as the Secretary considers relevant.

(g) ADJUSTMENTS TO ANNUITIES.—

(1) PERIODIC ADJUSTMENTS FOR COST-OF-LIVING.—

(A) INCREASES IN ANNUITIES WHEN RETIRED PAY INCREASED.—Whenever retired pay is increased under section 1401a of this title (or any other provision of law), each annuity that is payable under the Plan shall be increased at the same time.

(B) PERCENTAGE OF INCREASE.—The increase shall, in the case of any annuity, be by the same percent as the percent by which the retired pay of the person providing the annuity would have been increased at such time if the person were alive (and otherwise entitled to such pay).

(C) CERTAIN REDUCTIONS TO BE DISREGARDED.—The amount of the increase shall be based on the monthly annuity payable before any reduction under section 1450(c) of this title or under subsection (c)(2).

(2) ROUNDING DOWN.—The monthly amount of an annuity payable under this subchapter, if not a multiple of $1, shall be rounded to the next lower multiple of $1.

(h) ADJUSTMENTS TO BASE AMOUNT.—

(1) PERIODIC ADJUSTMENTS FOR COST-OF-LIVING.—

(A) INCREASES IN BASE AMOUNT WHEN RETIRED PAY INCREASED.—Whenever retired pay is increased under section 1401a of this title (or any other provision of law), the base amount applicable to each participant in the Plan shall be increased at the same time.

(B) PERCENTAGE OF INCREASE.—The increase shall be by the same percent as the percent by which the retired pay of the participant is so increased.

(2) RECOMPUTATION AT AGE 62.—When the retired pay of a person who first became a member of a uniformed service on or after August 1, 1986, and who is a participant in the Plan is recomputed under section 1410 of this title upon the person's becoming 62 years of age, the base amount applicable to that person shall be recomputed (effective on the effective date of the recomputation of such retired pay under section 1410 of this title) so as to be the amount equal to the amount of the base amount that would be in effect on that date if increases in such base amount under paragraph (1) had been computed as provided in paragraph (2) of section 1401a(b) of this title (rather than under paragraph (3) of that section).

(3) DISREGARDING OF RETIRED PAY REDUCTIONS FOR RETIREMENT OF CERTAIN MEMBERS BEFORE 30 YEARS OF SERVICE.—Computation of a member's retired pay for purposes of this section shall be made without regard to any reduction under section 1409(b)(2) of this title.

(i) RECOMPUTATION OF ANNUITY FOR CERTAIN BENEFICIARIES.—In the case of an annuity under the Plan which is computed on the basis of the retired pay of a person who would have been entitled to have that retired pay recomputed under section 1410 of this title upon attaining 62 years of age, but who dies before attaining that age, the annuity shall be recomputed, effective on the first day of the first month beginning after the date on which the member or former member would have attained 62 years of age, so as to be the amount equal to the amount of the annuity that would be in effect on that date if increases under subsection (h)(1) in the base amount applicable to that annuity to the time of the death of the member or former member, and increases in such annuity under subsection (g)(1), had been computed as provided in paragraph (2) of section 1401a(b) of this title (rather than under paragraph (3) of that section).

(Added Pub. L. 92–425, § 1(3), Sept. 21, 1972, 86 Stat. 709; amended Pub. L. 94–496, § 1(4), Oct. 14, 1976, 90 Stat. 2375; Pub. L. 95–397, title II, § 204, Sept. 30, 1978, 92 Stat. 846; Pub. L. 96–402, § 3, Oct. 9, 1980, 94 Stat. 1705; Pub. L. 97–22, § 11(a)(4), July 10, 1981, 95 Stat. 137; Pub. L. 98–94, title IX, § 922(a)(14)(B), Sept. 24, 1983, 97 Stat. 642; Pub. L. 98–525, title VI, § 641(a), Oct. 19, 1984, 98 Stat. 2545; Pub. L. 99–145, title VII, § 711(a), (b), Nov. 8, 1985, 99 Stat. 666, 670; Pub. L. 99–348, title III, § 301(a)(2), (b), (c), July 1, 1986, 100 Stat. 702; Pub. L. 99–661, div. A, title VI, § 642(b), title XIII, § 1343(a)(8)(D), Nov. 14, 1986, 100 Stat. 3886, 3992; Pub. L. 100–26, § 7(h)(1), Apr. 21, 1987, 101 Stat. 282; Pub. L. 100–224, § 3(a), (c), Dec. 30, 1987, 101 Stat. 1537; Pub. L. 100–456, div. A, title VI, § 652(a), Sept. 29, 1988, 102 Stat. 1991; Pub. L. 101–189, div. A, title XIV, §§ 1403(a), 1407(a)(5)–(8), (b)(1), Nov. 29, 1989, 103 Stat. 1579, 1588, 1589; Pub. L. 103–337, div. A, title X, § 1070(e)(4), Oct. 5, 1994, 108 Stat. 2859; Pub. L. 104–201, div. A, title VI, § 634, Sept. 23, 1996, 110 Stat. 2566; Pub. L. 105–85, div. A, title X, § 1073(a)(28), Nov. 18, 1997, 111 Stat. 1901; Pub. L. 106–65, div. A, title VI, § 643(a)(1), Oct. 5, 1999, 113 Stat. 663; Pub. L. 107–107, div. A, title VI, § 642(b), (c)(2), Dec. 28, 2001, 115 Stat. 1152; Pub. L. 107–314, div. A, title X, § 1062(a)(6), Dec. 2, 2002, 116 Stat. 2650; Pub. L. 108–375, div. A, title VI, § 644(a), Oct. 28, 2004, 118 Stat. 1960.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (e)(3)(A), (4)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620,

as amended. Title II of the Social Security Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 6413(c) of the Internal Revenue Code of 1986, referred to in subsec. (e)(4)(B)(ii), is classified to section 6413(c) of Title 26, Internal Revenue Code.

AMENDMENTS

2004—Subsec. (a)(1)(B)(i). Pub. L. 108–375, §644(a)(1)(A), substituted ''the product of the base amount and the percent applicable to the month, as follows:'' and subcls. (I) to (V) for ''35 percent of the base amount.''

Subsec. (a)(1)(B)(ii). Pub. L. 108–375, §644(a)(1)(B), struck out '', at the time the beneficiary becomes entitled to the annuity,'' after ''subsection (e) and if''.

Subsec. (a)(2)(B)(i)(I). Pub. L. 108–375, §644(a)(2), substituted ''the percent specified under subsection (a)(1)(B)(i) as being applicable for the month'' for ''35 percent''.

Subsec. (c)(1)(B)(i). Pub. L. 108–375, §644(a)(3)(A), substituted ''the applicable percent'' for ''35 percent'' and inserted at end ''The percent applicable for a month under the preceding sentence is the percent specified under subsection (a)(1)(B)(i) as being applicable for that month.''

Subsec. (c)(1)(B)(ii). Pub. L. 108–375, §644(a)(3)(B), struck out '', at the time the beneficiary becomes entitled to the annuity,'' after ''subsection (e) and if''.

Subsec. (d)(2)(A). Pub. L. 108–375, §644(a)(4), substituted ''Computation of annuity'' for ''35 percent annuity'' in heading.

2002—Subsec. (c)(3). Pub. L. 107–314 struck out ''section'' before ''clause (ii)''.

2001—Subsec. (c)(1)(A). Pub. L. 107–107, §642(b)(1), substituted ''when he died determined as follows:'' and cls. (i) to (iii) for ''based upon his years of active service when he died.''

Subsec. (c)(1)(B)(i). Pub. L. 107–107, §642(b)(2), substituted ''as determined under subparagraph (A)'' for ''if the member or former member had been entitled to that pay based upon his years of active service when he died''.

Subsec. (c)(3). Pub. L. 107–107, §642(c)(2), substituted ''clause (ii) or (iii) of section 1448(d)(1)(A)'' for ''1448(d)(1)(B) or 1448(d)(1)(C)''.

1999—Subsec. (h)(3). Pub. L. 106–65 inserted ''OF CERTAIN MEMBERS'' after ''RETIREMENT'' in heading.

1997—Subsec. (a)(2). Pub. L. 105–85 substituted ''ANNUITY.—'' for ''ANNUITY—'' in heading.

1996—Pub. L. 104–201 amended section generally, revising and restating provisions relating to amounts of annuities and inserting subsec., par., and subpar. headings.

1994—Subsec. (c)(2). Pub. L. 103–337 substituted ''section 1311(a) of title 38'' for ''section 411(a) of title 38''.

1989—Subsec. (c)(3). Pub. L. 101–189, §1403(a), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''In the case of an annuity provided by a member described in section 1448(d)(1)(C) of this title, the retired pay to which the member would have been entitled when he died shall be determined based upon the rate of basic pay in effect at the time of death for the highest grade other than a commissioned officer grade in which the member served on active duty satisfactorily, as determined by the Secretary concerned.''

Subsec. (c)(4). Pub. L. 101–189, §1407(a)(5), inserted ''by reason of the service of a person who first became a member of a uniformed service before September 8, 1980''.

Subsec. (e)(1). Pub. L. 101–189, §1407(a)(6), substituted ''beneficiaries under the Plan'' for ''beneficiaries under the plan'' in introductory provisions.

Subsec. (e)(1)(B). Pub. L. 101–189, §1407(a)(7), in cl. (i), substituted ''was'' for ''is'', in cl. (ii), substituted ''was'' for ''is'' in two places and ''had'' for ''has'', and in cl. (iii), substituted ''would have been'' for ''would be'' and ''was'' for ''is''.

Subsec. (e)(2)(A), (B). Pub. L. 101–189, §1407(a)(8), struck out ''(as the base amount is adjusted from time to time under section 1401a of this title)'' after ''base amount''.

Subsec. (e)(3)(A), (4)(A). Pub. L. 101–189, §1407(b)(1), inserted ''or former spouse'' after ''widow or widower''.

1988—Subsec. (e)(1). Pub. L. 100–456 substituted ''widow, widower, or former spouse'' for ''widow or widower'' in subpar. (A), and inserted ''or former spouse'' after ''A spouse'' in subpar. (B).

1987—Subsec. (a)(1)(A), (B), (2)(A), (B). Pub. L. 100–224, §3(a)(2), struck out ''(as the base amount is adjusted from time to time under section 1401a of this title)'' after ''base amount''.

Subsec. (e)(4)(B)(ii). Pub. L. 100–26 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (h). Pub. L. 100–224, §3(a)(1), designated existing provisions of subsec. (h) as par. (3) and added pars. (1) and (2).

Subsec. (i). Pub. L. 100–224, §3(c), substituted ''so as to be the amount equal to the amount of the annuity that would be in effect on that date if increases under subsection (h)(1) in the base amount applicable to that annuity to the time of the death of the member or former member, and increases in such annuity under subsection (g)(1), had been computed as provided in paragraph (2) of section 1401a(b) of this title (rather than under paragraph (3) of that section)'' for ''on the basis of the amount of retired pay to which the member or former member would have been entitled upon recomputation of such pay effective on such date under section 1410 of this title, had the member or former member attained such age''.

1986—Subsec. (a)(1)(A). Pub. L. 99–661, §1343(a)(8)(D), substituted ''section'' for ''subsection'' before ''1401a of this title''.

Pub. L. 99–661, §642(b)(1)(A), inserted ''or is a dependent child''.

Subsec. (a)(1)(B). Pub. L. 99–661, §642(b)(1)(B), inserted ''(other than a dependent child)''.

Subsec. (a)(2)(A). Pub. L. 99–661, §642(b)(1)(A), inserted ''or is a dependent child''.

Subsec. (a)(2)(B). Pub. L. 99–661, §642(b)(1)(B), inserted ''(other than a dependent child)''.

Subsec. (c)(1)(A). Pub. L. 99–661, §642(b)(2)(A), inserted ''or is a dependent child''.

Subsec. (c)(1)(B). Pub. L. 99–661, §642(b)(2)(B), inserted ''(other than a dependent child)''.

Subsec. (g)(1). Pub. L. 99–348, §301(b), struck out ''by the same total percent'' after ''same time'' in first sentence, and inserted provision that the increase, in the case of any annuity, be by the same percent as the percent by which the retired pay of the person providing the annuity would have been increased at such time if the person were alive, and otherwise entitled to such pay.

Subsecs. (h), (i). Pub. L. 99–348, §301(a)(2), (c), added subsecs. (h) and (i).

1985—Pub. L. 99–145, §711(a), amended section generally, eliminating the social security offset to the Plan and establishing a two-tier system under which the beneficiary would receive 55 percent of retired pay before age 62 and 35 percent thereafter in recognition of the entitlement to social security based on military service, and providing benefits to certain beneficiaries under either the old social security offset system or the new two-tier system, whichever is higher.

Subsec. (a)(3). Pub. L. 99–145, §711(b), repealed Pub. L. 98–525, §641(a), effective Sept. 1, 1985. See 1984 Amendment note below.

1984—Subsec. (a)(3). Pub. L. 98–525, §641(a), which substituted ''is entitled'' for ''would be entitled'' after ''widow or widower'' in first sentence and inserted ''or to the extent that the benefit to which the beneficiary is entitled is based on the beneficiary's own earnings or self-employment'' at end of second sentence, was repealed effective Sept. 1, 1985, by Pub. L. 99–145, §711(b). See Effective Date of 1984 Amendment note below.

1983—Subsec. (e). Pub. L. 98–94 added subsec. (e).

1981—Subsec. (a)(4). Pub. L. 97–22 substituted ''December 1, 1980'' for ''the effective date of the Uniformed Services Survivor Benefits Amendments of 1980''.

1980—Subsec. (a). Pub. L. 96–402, § 3(a), in revising subsec. (a), designated as par. (1)(A) and (B) existing first sentence containing cls. (1) and (2) and provided in subpar. (A) for adjustment of the annuity from time to time under section 1401a of this title and in subpar. (B) for a similar adjustment after the date the person becomes entitled to retired pay under chapter 67 of this title; designated as par. (2) existing second sentence but provided for reduction of the annuity by the lesser of amounts indicated in subpar. (A) or (B), previously limited to reduction by amount prescribed in predecessor of subpar. (A) provision; designated existing third and fourth sentences as par. (3) and inserted annuity reduction provision described for par. (2); and added par. (4).

Subsec. (c). Pub. L. 96–402, § 3(b), substituted in first sentence ''this section or under section 1448(d) of this title'' for ''this section, or section 1448(d) of this title, on the day before the effective day of that increase'' and in second sentence ''title or under'' for ''title, or'' before ''subsection (a)''.

Subsec. (d). Pub. L. 96–402, § 3(c), substituted reference to ''subsection (a)(1)(B)'' for ''subsection (a)(2)''.

1978—Subsec. (a). Pub. L. 95–397, § 204(a), (b), substituted ''The monthly annuity payable to a widow, widower, or dependent child who is entitled under section 1450(a) of this title to an annuity shall be—'' for ''If the widow or widower is under age 62 or there is a dependent child, the monthly annuity payable to the widow, widower, or dependent child, under section 1450 of this title shall be equal to 55 percent of the base amount.'', and added pars. (1) and (2), and substituted ''For the purpose of the preceding sentence, a widow or widower shall not be considered as entitled to a benefit under subchapter II of chapter 7 of title 42 to the extent that such benefit has been offset by deductions under section 403 of title 42 on account of work'' for ''For the purpose of the preceding sentence, a widow or widower shall be considered as entitled to a benefit under subchapter II of chapter 7 of title 42 even though that benefit has been offset by deductions under section 403 of title 42 on account of work''.

Subsec. (b). Pub. L. 95–397, § 204(c), substituted ''The monthly annuity payable under section 1450(a)(4) of this title shall be—'' for ''The monthly annuity payable under section 1450(a)(4) of this title shall be 55 percent of the retired or retainer pay of the person who elected to provide that annuity after the reduction in that retired or retainer pay in accordance with section 1452(c) of this title.'', added pars. (1) and (2) and provision following par. (2) relating to the entitlement to retirement pay, and computation thereof, by a person who provided an annuity and who dies before becoming 60 years of age.

Subsec. (d). Pub. L. 95–397, § 204(d), added subsec. (d).

1976—Subsec. (b). Pub. L. 94–496 substituted ''(a)(4)'' for ''(a)(3)''.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–107 effective Sept. 10, 2001, and applicable with respect to deaths of members of the Armed Forces occurring on or after that date, see section 642(d) of Pub. L. 107–107, set out as a note under section 1448 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–65 effective Oct. 1, 1999, see section 644 of Pub. L. 106–65, set out as a note under section 1401a of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 1407(b)(2) of Pub. L. 101–189 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply only with respect to the computation of an annuity for a person who becomes a former spouse under a divorce that becomes final after the date of the enactment of this Act [Nov. 29, 1989].''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 652(b) of Pub. L. 100–456 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to payments under the Survivor Benefit Plan established under subchapter II of chapter 73 of title 10, United States Code, for periods after February 28, 1986.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 642(b) of Pub. L. 99–661 applicable to payments for periods after Feb. 28, 1986, see section 642(c) of Pub. L. 99–661, set out as a note under section 1448 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by section 711(a) of Pub. L. 99–145 effective Mar. 1, 1986, with prohibition against accrual of benefits to any person by reason of the enactment of such title VII for any period before Mar. 1, 1986, see section 731 of Pub. L. 99–145, set out as a note under section 1447 of this title.

Section 711(b) of Pub. L. 99–145 provided that the repeal of section 641 of Pub. L. 98–525 [amending this section and enacting provision set out below] is effective Sept. 1, 1985.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 641(b) of Pub. L. 98–525, which provided that the amendments made by subsection (a), amending this section, was applicable only in the case of payments of annuities payable for periods that began on or after Sept. 30, 1985, was repealed effective Sept. 1, 1985, by section 711(b) of Pub. L. 99–145.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–94 effective Oct. 1, 1983, see section 922(e) of Pub. L. 98–94, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–402 effective Dec. 1, 1980, applicable to annuities payable for months beginning on or after such date, and prohibiting accrual of benefits for any period before Oct. 9, 1980, see section 7 of Pub. L. 96–402, set out as a note under section 1447 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–397 effective Oct. 1, 1978, and applicable to annuities payable by virtue of amendment for months beginning on or after such date, see section 210 of Pub. L. 95–397, set out as a note under section 1447 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–496 effective Sept. 11, 1972, see section 3 of Pub. L. 94–496, set out as a note under section 1447 of this title.

ADJUSTMENT OF ANNUITIES FOR SURVIVORS OF CERTAIN MEMBERS WHO DIED WHILE ON ACTIVE DUTY BETWEEN SEPTEMBER 21, 1972 AND NOVEMBER 29, 1990

Section 1403(b)–(d) of Pub. L. 101–189 provided that:

''(b) ADJUSTMENT OF ANNUITIES ALREADY IN EFFECT.—

''(1) RECOMPUTATION.—The Secretary concerned shall recompute the annuity of any person who on the effective date specified in subsection (d) is entitled to an annuity under the Survivor Benefit Plan by reason of eligibility described in section 1448(d)(1)(B) or 1448(d)(1)(C) of title 10, United States Code, and who is further described in subsection (c).

''(2) AMOUNT OF RECOMPUTED ANNUITIES.—The amount of the annuity as so recomputed shall be the amount that would be in effect for that annuity on the effective date specified in subsection (d) if the annuity had originally been computed subject to the provisions of paragraph (3) of section 1451(c) of title 10, United States Code, as amended by subsection (a).

''(c) PERSONS ELIGIBLE FOR RECOMPUTATION.—A person is eligible to have an annuity under the Survivor Benefit Plan recomputed under subsection (b) if—

''(1) the annuity is based upon the service of a member of the uniformed services who died on active duty during the period beginning on September 21, 1972, and ending on the effective date specified in subsection (d); and

''(2) the retired pay of that member for the purposes of determining the amount of the annuity under the Survivor Benefit Plan was computed using a rate of basic pay lower than the rate of basic pay in effect at the time of death for the grade in which the member was serving at the time of death.

''(d) EFFECTIVE DATE.—An annuity recomputed under subsection (b) shall take effect as so recomputed on March 1, 1990.''

§ 1452. Reduction in retired pay

(a) SPOUSE AND FORMER SPOUSE ANNUITIES.—

(1) REQUIRED REDUCTION IN RETIRED PAY.—Except as provided in subsection (b), the retired pay of a participant in the Plan who is providing spouse coverage (as described in paragraph (5)) shall be reduced as follows:

(A) STANDARD ANNUITY.—If the annuity coverage being provided is a standard annuity, the reduction shall be as follows:

(i) DISABILITY AND NONREGULAR SERVICE RETIREES.—In the case of a person who is entitled to retired pay under chapter 61 or chapter 1223 of this title, the reduction shall be in whichever of the alternative reduction amounts is more favorable to that person.

(ii) MEMBERS AS OF ENACTMENT OF FLAT-RATE REDUCTION.—In the case of a person who first became a member of a uniformed service before March 1, 1990, the reduction shall be in whichever of the alternative reduction amounts is more favorable to that person.

(iii) NEW ENTRANTS AFTER ENACTMENT OF FLAT-RATE REDUCTION.—In the case of a person who first becomes a member of a uniformed service on or after March 1, 1990, and who is entitled to retired pay under a provision of law other than chapter 61 or chapter 1223 of this title, the reduction shall be in an amount equal to 6½ percent of the base amount.

(iv) ALTERNATIVE REDUCTION AMOUNTS.—For purposes of clauses (i) and (ii), the alternative reduction amounts are the following:

(I) FLAT-RATE REDUCTION.—An amount equal to 6½ percent of the base amount.

(II) AMOUNT UNDER PRE-FLAT-RATE REDUCTION.—An amount equal to 2½ percent of the first $337 (as adjusted after November 1, 1989, under paragraph (4)) of the base amount plus 10 percent of the remainder of the base amount.

(B) RESERVE-COMPONENT ANNUITY.—If the annuity coverage being provided is a reserve-component annuity, the reduction shall be in whichever of the following amounts is more favorable to that person:

(i) FLAT-RATE REDUCTION.—An amount equal to 6½ percent of the base amount plus an amount determined in accordance with regulations prescribed by the Secretary of Defense as a premium for the additional coverage provided through reserve-component annuity coverage under the Plan.

(ii) AMOUNT UNDER PRE-FLAT-RATE REDUCTION.—An amount equal to 2½ percent of the first $337 (as adjusted after November 1, 1989, under paragraph (4)) of the base amount plus 10 percent of the remainder of the base amount plus an amount determined in accordance with regulations prescribed by the Secretary of Defense as a premium for the additional coverage provided through reserve-component annuity coverage under the Plan.

(2) ADDITIONAL REDUCTION FOR CHILD COVERAGE.—If there is a dependent child as well as a spouse or former spouse, the amount prescribed under paragraph (1) shall be increased by an amount prescribed under regulations of the Secretary of Defense.

(3) NO REDUCTION WHEN NO BENEFICIARY.—The reduction in retired pay prescribed by paragraph (1) shall not be applicable during any month in which there is no eligible spouse or former spouse beneficiary.

(4) PERIODIC ADJUSTMENTS.—

(A) ADJUSTMENTS FOR INCREASES IN RATES OF BASIC PAY.—Whenever there is an increase in the rates of basic pay of members of the uniformed services effective on or after October 1, 1985, the amounts under paragraph (1) with respect to which the percentage factor of 2½ is applied shall be increased by the overall percentage of such increase in the rates of basic pay. The increase under the preceding sentence shall apply only with respect to persons whose retired pay is computed based on the rates of basic pay in effect on or after the date of such increase in rates of basic pay.

(B) ADJUSTMENTS FOR RETIRED PAY COLAS.—In addition to the increase under subparagraph (A), the amounts under paragraph (1) with respect to which the percentage factor of 2½ is applied shall be further increased at the same time and by the same percentage as an increase in retired pay under section 1401a of this title effective on or after October 1, 1985. Such increase under the preceding sentence shall apply only with respect to a person who initially participates in the Plan on a date which is after both the effective date of such increase under section 1401a and the effective date of the rates of basic pay upon which that person's retired pay is computed.

(5) SPOUSE COVERAGE DESCRIBED.—For the purposes of paragraph (1), a participant in the Plan who is providing spouse coverage is a participant who—

(A) has (i) a spouse or former spouse, or (ii) a spouse or former spouse and a dependent child; and

(B) has not elected to provide an annuity to a person designated by him under section 1448(b)(1) of this title or, having made such an election, has changed his election in favor of his spouse under section 1450(f) of this title.

(b) CHILD-ONLY ANNUITIES.—

(1) REQUIRED REDUCTION IN RETIRED PAY.—The retired pay of a participant in the Plan who is providing child-only coverage (as de-

scribed in paragraph (4)) shall be reduced by an amount prescribed under regulations by the Secretary of Defense.

(2) NO REDUCTION WHEN NO CHILD.—There shall be no reduction in retired pay under paragraph (1) for any month during which the participant has no eligible dependent child.

(3) SPECIAL RULE FOR CERTAIN RCSBP PARTICIPANTS.—In the case of a participant in the Plan who is participating in the Plan under an election under section 1448(a)(2)(B) of this title and who provided child-only coverage during a period before the participant becomes entitled to receive retired pay, the retired pay of the participant shall be reduced by an amount prescribed under regulations by the Secretary of Defense to reflect the coverage provided under the Plan during the period before the participant became entitled to receive retired pay. A reduction under this paragraph is in addition to any reduction under paragraph (1) and is made without regard to whether there is an eligible dependent child during a month for which the reduction is made.

(4) CHILD-ONLY COVERAGE DEFINED.—For the purposes of this subsection, a participant in the Plan who is providing child-only coverage is a participant who has a dependent child and who—

(A) does not have an eligible spouse or former spouse; or

(B) has a spouse or former spouse but has elected to provide an annuity for dependent children only.

(c) REDUCTION FOR INSURABLE INTEREST COVERAGE.—

(1) REQUIRED REDUCTION IN RETIRED PAY.—The retired pay of a person who has elected to provide an annuity to a person designated by him under section 1450(a)(4) of this title shall be reduced as follows:

(A) STANDARD ANNUITY.—In the case of a person providing a standard annuity, the reduction shall be by 10 percent plus 5 percent for each full five years the individual designated is younger than that person.

(B) RESERVE COMPONENT ANNUITY.—In the case of a person providing a reserve-component annuity, the reduction shall be by an amount prescribed under regulations of the Secretary of Defense.

(2) LIMITATION ON TOTAL REDUCTION.—The total reduction under paragraph (1) may not exceed 40 percent.

(3) DURATION OF REDUCTION.—The reduction in retired pay prescribed by this subsection shall continue during the lifetime of the person designated under section 1450(a)(4) of this title or until the person receiving retired pay changes his election under section 1450(f) of this title.

(4) RULE FOR COMPUTATION.—Computation of a member's retired pay for purposes of this subsection shall be made without regard to any reduction under section 1409(b)(2) of this title.

(5) RULE FOR DESIGNATION OF NEW INSURABLE INTEREST BENEFICIARY FOLLOWING DEATH OF ORIGINAL BENEFICIARY.—The Secretary of Defense shall prescribe in regulations premiums which a participant making an election under section 1448(b)(1)(G) of this title shall be required to pay for participating in the Plan pursuant to that election. The total amount of the premiums to be paid by a participant under the regulations shall be equal to the sum of the following:

(A) The total additional amount by which the retired pay of the participant would have been reduced before the effective date of the election if the original beneficiary (i) had not died and had been covered under the Plan through the date of the election, and (ii) had been the same number of years younger than the participant (if any) as the new beneficiary designated under the election.

(B) Interest on the amounts by which the retired pay of the participant would have been so reduced, computed from the dates on which the retired pay would have been so reduced at such rate or rates and according to such methodology as the Secretary of Defense determines reasonable.

(C) Any additional amount that the Secretary determines necessary to protect the actuarial soundness of the Department of Defense Military Retirement Fund against any increased risk for the fund that is associated with the election.

(d) DEPOSITS TO COVER PERIODS WHEN RETIRED PAY NOT PAID.—

(1) REQUIRED DEPOSITS.—If a person who has elected to participate in the Plan has been awarded retired pay and is not entitled to that pay for any period, that person must deposit in the Treasury the amount that would otherwise have been deducted from his pay for that period.

(2) DEPOSITS NOT REQUIRED WHEN PARTICIPANT ON ACTIVE DUTY.—Paragraph (1) does not apply to a person with respect to any period when that person is on active duty under a call or order to active duty for a period of more than 30 days.

(e) DEPOSITS NOT REQUIRED FOR CERTAIN PARTICIPANTS IN CSRS.—When a person who has elected to participate in the Plan waives that person's retired pay for the purposes of subchapter III of chapter 83 of title 5, that person shall not be required to make the deposit otherwise required by subsection (d) as long as that waiver is in effect unless, in accordance with section 8339(j) of title 5, that person has notified the Office of Personnel Management that he does not desire a spouse surviving him to receive an annuity under section 8341(b) of title 5.

(f) REFUNDS OF DEDUCTIONS NOT ALLOWED.—

(1) GENERAL RULE.—A person is not entitled to refund of any amount deducted from retired pay under this section.

(2) EXCEPTIONS.—Paragraph (1) does not apply—

(A) in the case of a refund authorized by section 1450(e) of this title; or

(B) in case of a deduction made through administrative error.

(g) DISCONTINUATION OF PARTICIPATION BY PARTICIPANTS WHOSE SURVIVING SPOUSES WILL BE ENTITLED TO DIC.—

(1) DISCONTINUATION.—

(A) CONDITIONS.—Notwithstanding any other provision of this subchapter but subject to paragraphs (2) and (3), a person who has elected to participate in the Plan and who is suffering from a service-connected disability rated by the Secretary of Veterans Affairs as totally disabling and has suffered from such disability while so rated for a continuous period of 10 or more years (or, if so rated for a lesser period, has suffered from such disability while so rated for a continuous period of not less than 5 years from the date of such person's last discharge or release from active duty) may discontinue participation in the Plan by submitting to the Secretary concerned a request to discontinue participation in the Plan.

(B) EFFECTIVE DATE.—Participation in the Plan of a person who submits a request under subparagraph (A) shall be discontinued effective on the first day of the first month following the month in which the request under subparagraph (A) is received by the Secretary concerned. Effective on such date, the Secretary concerned shall discontinue the reduction being made in such person's retired pay on account of participation in the Plan or, in the case of a person who has been required to make deposits in the Treasury on account of participation in the Plan, such person may discontinue making such deposits effective on such date.

(C) FORM FOR REQUEST FOR DISCONTINUATION.—Any request under this paragraph to discontinue participation in the Plan shall be in such form and shall contain such information as the Secretary concerned may require by regulation.

(2) CONSENT OF BENEFICIARIES REQUIRED.—A person described in paragraph (1) may not discontinue participation in the Plan under such paragraph without the written consent of the beneficiary or beneficiaries of such person under the Plan.

(3) INFORMATION ON PLAN TO BE PROVIDED BY SECRETARY CONCERNED.—

(A) INFORMATION TO BE PROVIDED PROMPTLY TO PARTICIPANT.—The Secretary concerned shall furnish promptly to each person who files a request under paragraph (1) to discontinue participation in the Plan a written statement of the advantages of participating in the Plan and the possible disadvantages of discontinuing participation.

(B) RIGHT TO WITHDRAW DISCONTINUATION REQUEST.—A person may withdraw a request made under paragraph (1) if it is withdrawn within 30 days after having been submitted to the Secretary concerned.

(4) REFUND OF DEDUCTIONS FROM RETIRED PAY.—Upon the death of a person described in paragraph (1) who discontinued participation in the Plan in accordance with this subsection, any amount deducted from the retired pay of that person under this section shall be refunded to the person's surviving spouse.

(5) RESUMPTION OF PARTICIPATION IN PLAN.—

(A) CONDITIONS FOR RESUMPTION.—A person described in paragraph (1) who discontinued participation in the Plan may elect to participate again in the Plan if—

(i) after having discontinued participation in the Plan the Secretary of Veterans Affairs reduces that person's service-connected disability rating to a rating of less than total; and

(ii) that person applies to the Secretary concerned, within such period of time after the reduction in such person's service-connected disability rating has been made as the Secretary concerned may prescribe, to again participate in the Plan and includes in such application such information as the Secretary concerned may require.

(B) EFFECTIVE DATE OF RESUMED COVERAGE.—Such person's participation in the Plan under this paragraph is effective beginning on the first day of the month after the month in which the Secretary concerned receives the application for resumption of participation in the Plan.

(C) RESUMPTION OF CONTRIBUTIONS.—When a person elects to participate in the Plan under this paragraph, the Secretary concerned shall begin making reductions in that person's retired pay, or require such person to make deposits in the Treasury under subsection (d), as appropriate, effective on the effective date of such participation under subparagraph (B).

(h) INCREASES IN REDUCTION WITH INCREASES IN RETIRED PAY.—

(1) GENERAL RULE.—Whenever retired pay is increased under section 1401a of this title (or any other provision of law), the amount of the reduction to be made under subsection (a) or (b) in the retired pay of any person shall be increased at the same time and by the same percentage as such retired pay is so increased.

(2) COORDINATION WHEN PAYMENT OF INCREASE IN RETIRED PAY IS DELAYED BY LAW.—

(A) IN GENERAL.—Notwithstanding paragraph (1), when the initial payment of an increase in retired pay under section 1401a of this title (or any other provision of law) to a person is for a month that begins later than the effective date of that increase by reason of the application of subsection (b)(2)(B) of such section (or section 631(b) of Public Law 104–106 (110 Stat. 364)), then the amount of the reduction in the person's retired pay shall be effective on the date of that initial payment of the increase in retired pay rather than the effective date of the increase in retired pay.

(B) DELAY NOT TO AFFECT COMPUTATION OF ANNUITY.—Subparagraph (A) may not be construed as delaying, for purposes of determining the amount of a monthly annuity under section 1451 of this title, the effective date of an increase in a base amount under subsection (h) of such section from the effective date of an increase in retired pay under section 1401a of this title to the date on which the initial payment of that increase in retired pay is made in accordance with subsection (b)(2)(B) of such section.

(i) RECOMPUTATION OF REDUCTION UPON RECOMPUTATION OF RETIRED PAY.—Whenever the

retired pay of a person who first became a member of a uniformed service on or after August 1, 1986, and who is a participant in the Plan is recomputed under section 1410 of this title upon the person's becoming 62 years of age, the amount of the reduction in such retired pay under this section shall be recomputed (effective on the effective date of the recomputation of such retired pay under section 1410 of this title) so as to be the amount equal to the amount of such reduction that would be in effect on that date if increases in such retired pay under section 1401a(b) of this title, and increases in reductions in such retired pay under subsection (h), had been computed as provided in paragraph (2) of section 1401a(b) of this title (rather than under paragraph (3) of that section).

(j) COVERAGE PAID UP AT 30 YEARS AND AGE 70.—Effective October 1, 2008, no reduction may be made under this section in the retired pay of a participant in the Plan for any month after the later of—

(1) the 360th month for which the participant's retired pay is reduced under this section; and

(2) the month during which the participant attains 70 years of age.

(Added Pub. L. 92–425, §1(3), Sept. 21, 1972, 86 Stat. 710; amended Pub. L. 94–496, §1(4), (5), Oct. 14, 1976, 90 Stat. 2375; Pub. L. 95–397, title II, §205, Sept. 30, 1978, 92 Stat. 847; Pub. L. 96–402, §4, Oct. 9, 1980, 94 Stat. 1706; Pub. L. 97–22, §11(a)(3), (5), July 10, 1981, 95 Stat. 137; Pub. L. 99–145, title VII, §§714(a), 719(7), (8), 723(b)(2), Nov. 8, 1985, 99 Stat. 672, 675–677; Pub. L. 99–348, title III, §301(a)(3), July 1, 1986, 100 Stat. 702; Pub. L. 99–661, div. A, title XIII, §1343(a)(8)(E), Nov. 14, 1986, 100 Stat. 3992; Pub. L. 100–224, §3(b), Dec. 30, 1987, 101 Stat. 1537; Pub. L. 101–189, div. A, title XIV, §§1402(a)–(c), 1407(a)(9), title XVI, §1621(a)(1), Nov. 29, 1989, 103 Stat. 1577, 1578, 1589, 1602; Pub. L. 101–510, div. A, title XIV, §1484(*l*)(4)(C)(ii), Nov. 5, 1990, 104 Stat. 1720; Pub. L. 103–337, div. A, title VI, §637(a), Oct. 5, 1994, 108 Stat. 2790; Pub. L. 104–201, div. A, title VI, §§634, 635(a), Sept. 23, 1996, 110 Stat. 2572, 2579; Pub. L. 105–85, div. A, title X, §1073(a)(29), Nov. 18, 1997, 111 Stat. 1901; Pub. L. 105–261, div. A, title VI, §641, Oct. 17, 1998, 112 Stat. 2045; Pub. L. 106–65, div. A, title VI, §643(a)(2), Oct. 5, 1999, 113 Stat. 663; Pub. L. 109–364, div. A, title VI, §643(b), Oct. 17, 2006, 120 Stat. 2260.)

REFERENCES IN TEXT

Section 631(b) of Public Law 104–106 (110 Stat. 364), referred to in subsec. (h)(2)(A), was set out as a note under section 1401a of this title prior to repeal by Pub. L. 104–201, div. A, title VI, §631(b), Sept. 23, 1996, 110 Stat. 2549.

AMENDMENTS

2006—Subsec. (c)(5). Pub. L. 109–364 added par. (5).

1999—Subsec. (i). Pub. L. 106–65 substituted ''Whenever the retired pay'' for ''When the retired pay''.

1998—Subsec. (j). Pub. L. 105–261 added subsec. (j).

1997—Subsec. (a)(1)(A). Pub. L. 105–85, §1073(a)(29)(A), substituted ''provided'' for ''providing'' in introductory provisions.

Subsec. (e). Pub. L. 105–85, §1073(a)(29)(B), substituted ''section 8339(j)'' for ''section 8339(i)'' and ''section 8341(b)'' for ''section 8331(b)''.

1996—Pub. L. 104–201, §634, amended section generally, revising and restating provisions relating to reductions in retired pay.

Subsec. (h)(2). Pub. L. 104–201, §635(a), added par. (2).

1994—Subsec. (b). Pub. L. 103–337 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''The retired pay of a person to whom section 1448 of this title applies who has a dependent child but does not have an eligible spouse or former spouse, or who has a spouse or former spouse but has elected to provide an annuity for dependent children only, shall, as long as he has an eligible dependent child, be reduced by an amount prescribed under regulations of the Secretary of Defense.''

1990—Subsec. (h). Pub. L. 101–510 made clarifying amendment to directory language of Pub. L. 101–189, §1407(a)(9), see 1989 Amendment note below.

1989—Subsec. (a). Pub. L. 101–189, §1402(a), inserted heading.

Subsec. (a)(1). Pub. L. 101–189, §1402(a), added par. (1) and struck out former par. (1) which read as follows: ''Except as provided in subsection (b), the retired pay of a person to whom section 1448 of this title applies who has a spouse or former spouse, or who has a spouse or former spouse and a dependent child, and who has not elected to provide an annuity to a person designated by him under section 1450(a)(4) of this title, or who had elected to provide such an annuity to such a person but has changed his election in favor of his spouse under section 1450(f) of this title, shall be reduced each month—

''(A) by an amount equal to 2½ percent of the first $300 (as adjusted from time to time under paragraph (4)) of the base amount plus 10 percent of the remainder of the base amount, if the person is providing a standard annuity; or

''(B) by an amount prescribed under regulations of the Secretary of Defense, if the person is providing a reserve-component annuity.''

Subsec. (a)(4)(A), (B). Pub. L. 101–189, §1402(c), substituted ''amounts under paragraph (1)'' for ''amount under paragraph (1)(A)''.

Subsec. (a)(5). Pub. L. 101–189, §1402(b), added par. (5).

Subsec. (g)(1), (5). Pub. L. 101–189, §1621(a)(1), substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

Subsec. (h). Pub. L. 101–189, §1407(a)(9), as amended by Pub. L. 101–510, inserted ''(or any other provision of law)'' after ''Whenever retired pay is increased under section 1401a of this title'' and substituted ''such retired pay is so increased'' for ''such retired pay is increased under section 1401a of this title''.

1987—Subsec. (i). Pub. L. 100–224 added subsec. (i).

1986—Subsec. (c). Pub. L. 99–348 inserted provision that computation of a member's retired pay for purposes of this subsection be made without regard to any reduction under section 1409(b)(2) of this title.

Subsec. (h). Pub. L. 99–661 struck out ''and retainer'' after ''Whenever retired''.

1985—Pub. L. 99–145, §719(8)(B), struck out ''or retainer'' after ''retired'' in section catchline.

Subsec. (a)(1). Pub. L. 99–145, §714(a)(1), (2), designated existing first sentence of subsec. (a) as par. (1); redesignated cl. (1) as (A), inserting ''(as adjusted from time to time under paragraph (4))'' after ''$300'' and substituting ''a standard annuity'' for ''an annuity by virtue of eligibility under section 1448(a)(1)(A) of this title''; and redesignated cl. (2) as (B), substituting ''a reserve-component annuity'' for ''an annuity by virtue of eligibility under section 1448(a)(1)(B)''.

Pub. L. 99–145, §719(8)(A), substituted ''retired pay'' for ''retired or retainer pay''.

Pub. L. 99–145, §723(b)(2)(1), inserted ''or former spouse'' after first two references to ''spouse''.

Subsec. (a)(2). Pub. L. 99–145, §714(a)(3), designated existing second sentence of subsec. (a) as par. (2), and substituted ''If there is a dependent child as well as a spouse or former spouse, the amount prescribed under paragraph (1)'' for ''As long as there is an eligible spouse and a dependent child, that amount''.

Subsec. (a)(3). Pub. L. 99–145, §714(a)(4), designated existing third sentence of subsec. (a) as par. (3), substituted ''paragraph (1)'' for ''the first sentence of this

subsection'', and inserted ''or former spouse'' after ''eligible spouse''.

Pub. L. 99–145, §719(8)(A), substituted ''retired pay'' for ''retired or retainer pay''.

Subsec. (a)(4). Pub. L. 99–145, §714(a)(5), added par. (4).

Subsec. (b). Pub. L. 99–145, §723(b)(2)(2), inserted ''or former spouse'' after ''spouse'' in two places.

Pub. L. 99–145, §719(8)(A), substituted ''retired pay'' for ''retired or retainer pay''.

Subsec. (c). Pub. L. 99–145, §719(7), (8)(A), substituted ''retired pay'' for ''retired or retainer pay'' in three places, and substituted ''a standard annuity'' for ''the annuity by virtue of eligibility under section 1448(a)(1)(A) of this title'' in cl. (1), ''a reserve-component annuity'' for ''the annuity by virtue of eligibility under section 1448(a)(1)(B) of this title'' in cl. (2), and ''this subsection'' for ''this section'' in third sentence.

Subsecs. (d) to (h). Pub. L. 99–145, §719(8)(A), substituted ''retired pay'' for ''retired or retainer pay'' wherever appearing.

1981—Subsec. (e). Pub. L. 97–22, §11(a)(3), substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

Subsec. (g)(4). Pub. L. 97–22, §11(a)(5), substituted ''this section'' for ''section 1452 of this title''.

1980—Subsecs. (g), (h). Pub. L. 96–402, added subsecs. (g) and (h).

1978—Subsec. (a). Pub. L. 95–397, §205(a), substituted pars. (1) and (2) for ''by an amount equal to 2½ percent of the first $300 of the base amount plus 10 percent of the remainder of the base amount'' after ''shall be reduced each month''.

Subsec. (c). Pub. L. 95–397, §205(b), substituted pars. (1) and (2) for ''by 10 percent plus 5 percent for each full 5 years the individual designated is younger than that person. However, the total reduction may not exceed 40 percent. The reduction in retired or retainer pay prescribed by this subsection shall continue during the lifetime of the person designated under section 1450(a)(4) of this title or until the person receiving retired or retainer pay changes his election under section 1450(f)'', and inserted provision following par. (2) that the total reduction under clause (1) may not exceed 40 percent, and that the reduction in retired or retainer pay shall continue during the lifetime of the person designated under section 1450(a)(4) of this title or until the person changes his election under section 1450(f) of this title.

1976—Subsec. (a). Pub. L. 94–496, §1(4), (5)(A), substituted ''Except as provided in subsection (b), the retired or retainer pay'' for ''The retired or retainer pay'', ''(a)(4)'' for ''(a)(3)'', and inserted provision prohibiting a reduction in retired or retainer pay during any month in which there is no eligible spouse beneficiary.

Subsec. (b). Pub. L. 94–496, §1(5)(B), inserted ''or who has a spouse but has elected to provide an annuity for dependent children only,'' after ''spouse,''.

Subsec. (c). Pub. L. 94–496, §1(4), (5)(C), substituted ''(a)(4)'' for ''(a)(3)'', and inserted provision directing that reduction in retired or retainer pay continue during the lifetime of a beneficiary designated under section 1450(a)(4) of this title or until such person change his election pursuant to section 1450(f) of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–65 effective Oct. 1, 1999, see section 644 of Pub. L. 106–65, set out as a note under section 1401a of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 635(b) of Pub. L. 104–201 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to retired pay payable for months beginning on or after the date of the enactment of this Act [Sept. 23, 1996].''

EFFECTIVE DATE OF 1994 AMENDMENT

Section 637(b) of Pub. L. 103–337 provided that:

''(1) Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] applies to any election for child-only coverage under a reserve-component annuity under the Survivor Benefit Plan, whether made before, on, or after the date of the enactment of this Act [Oct. 5, 1994].

''(2) Paragraph (1) does not apply in a case of an election referred to in that paragraph that was made before the date of the enactment of this Act if the participant was informed, in writing, before the date of the enactment of this Act that no reduction in the participant's retired pay for child-only coverage would be made during a period when there was no eligible dependent child.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 1484(*l*)(4)(C) of Pub. L. 101–510 provided that the amendment made by that section is effective Nov. 29, 1989.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 714(b) of title VII of Pub. L. 99–145 provided that: ''The amendments made by clause (5) of subsection (a) [amending this section] shall apply only with respect to persons who first participate in the Plan on or after the effective date of this title [see note below].''

Amendment by title VII of Pub. L. 99–145 effective Mar. 1, 1986, except as otherwise provided, with prohibition against accrual of benefits to any person by reason of the enactment of such title VII for any period before Mar. 1, 1986, see section 731 of Pub. L. 99–145, set out as a note under section 1447 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–402 effective Dec. 1, 1980, applicable to annuities payable for months beginning on or after such date, and prohibiting accrual of benefits for any period before Oct. 9, 1980, see section 7 of Pub. L. 96–402, set out as a note under section 1447 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–397 effective Oct. 1, 1978, and applicable to annuities payable by virtue of amendment for months beginning on or after such date, see section 210 of Pub. L. 95–397, set out as a note under section 1447 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–496 effective Sept. 11, 1972, see section 3 of Pub. L. 94–496, set out as a note under section 1447 of this title.

RECOMPUTATION OF SBP PREMIUM FOR CURRENT PARTICIPANTS

Section 1402(d) of Pub. L. 101–189 provided that:

''(1) RECOMPUTATION.—The Secretary concerned shall recompute the SBP premium of persons described in paragraph (2). Any such recomputation shall take effect on March 1, 1990.

''(2) PERSONS COVERED.—A person referred to in paragraph (1) as described in this paragraph is a person who on March 1, 1990—

''(A) is entitled to retired pay;

''(B) is providing spouse coverage (as described in paragraph (5) of section 1452[(a)] of title 10, United States Code, as added by subsection (b)); and

''(C) is subject to an SBP premium in excess of 6½ percent of the base amount of that person under the Survivor Benefit Plan.

''(3) AMOUNT OF RECOMPUTED PREMIUM.—The amount of an SBP premium recomputed under this subsection shall be 6½ percent of the base amount under the Survivor Benefit Plan of the person whose premium is recomputed.

''(4) SBP PREMIUM DEFINED.—For purposes of this subsection, the term 'SBP premium' means a reduction in

retired pay under section 1452 of title 10, United States Code.''

§ 1453. Recovery of amounts erroneously paid

(a) RECOVERY.—In addition to any other method of recovery provided by law, the Secretary concerned may authorize the recovery of any amount erroneously paid to a person under this subchapter by deduction from later payments to that person.

(b) AUTHORITY TO WAIVE RECOVERY.—Recovery of an amount erroneously paid to a person under this subchapter is not required if, in the judgment of the Secretary concerned—

(1) there has been no fault by the person to whom the amount was erroneously paid; and

(2) recovery of such amount would be contrary to the purposes of this subchapter or against equity and good conscience.

(Added Pub. L. 92–425, § 1(3), Sept. 21, 1972, 86 Stat. 710; amended Pub. L. 104–201, div. A, title VI, § 634, Sept. 23, 1996, 110 Stat. 2577; Pub. L. 104–316, title I, § 105(a), Oct. 19, 1996, 110 Stat. 3830.)

AMENDMENTS

1996—Pub. L. 104–201 substituted ''amounts'' for ''annuity'' in section catchline and amended text generally. Prior to amendment, text read as follows: ''In addition to other methods of recovery provided by law, the Secretary concerned may authorize the recovery, by deduction from later payments to a person, of any amount erroneously paid to him under this subchapter. However, recovery is not required if, in the judgment of the Secretary concerned and the Comptroller General, there has been no fault by the person to whom the amount was erroneously paid and recovery would be contrary to the purposes of this subchapter or against equity and good conscience.''

Subsec. (b). Pub. L. 104–316 struck out ''and the Comptroller General'' after ''judgment of the Secretary concerned'' in introductory provisions.

§ 1454. Correction of administrative errors

(a) AUTHORITY.—The Secretary concerned may, under regulations prescribed under section 1455 of this title, correct or revoke any election under this subchapter when the Secretary considers it necessary to correct an administrative error.

(b) FINALITY.—Except when procured by fraud, a correction or revocation under this section is final and conclusive on all officers of the United States.

(Added Pub. L. 92–425, § 1(3), Sept. 21, 1972, 86 Stat. 711; amended Pub. L. 101–189, div. A, title XIV, § 1407(a)(10)(A), Nov. 29, 1989, 103 Stat. 1589; Pub. L. 104–201, div. A, title VI, § 634, Sept. 23, 1996, 110 Stat. 2577.)

AMENDMENTS

1996—Pub. L. 104–201 amended section generally. Prior to amendment, section read as follows: ''The Secretary concerned may, under regulations prescribed under section 1455 of this title, correct or revoke any election under this subchapter when he considers it necessary to correct an administrative error. Except when procured by fraud, a correction or revocation under this section is final and conclusive on all officers of the United States.''

1989—Pub. L. 101–189 substituted ''errors'' for ''deficiencies'' in section catchline.

§ 1455. Regulations

(a) IN GENERAL.—The President shall prescribe regulations to carry out this subchapter. Those regulations shall, so far as practicable, be uniform for the uniformed services.

(b) NOTICE OF ELECTIONS.—Regulations prescribed under this section shall provide that before the date on which a member becomes entitled to retired pay—

(1) if the member is married, the member and the member's spouse shall be informed of the elections available under section 1448(a) of this title and the effects of such elections; and

(2) if the notification referred to in section 1448(a)(3)(E) of this title is required, any former spouse of the member shall be informed of the elections available and the effects of such elections.

(c) PROCEDURE FOR DEPOSITING CERTAIN RECEIPTS.—Regulations prescribed under this section shall establish procedures for depositing the amounts referred to in sections 1448(g), 1450(k)(2), and 1452(d) of this title.

(d) PAYMENTS TO GUARDIANS AND FIDUCIARIES.—

(1) IN GENERAL.—Regulations prescribed under this section shall provide procedures for the payment of an annuity under this subchapter in the case of—

(A) a person for whom a guardian or other fiduciary has been appointed; and

(B) a minor, mentally incompetent, or otherwise legally disabled person for whom a guardian or other fiduciary has not been appointed.

(2) AUTHORIZED PROCEDURES.—The regulations under paragraph (1) may include provisions for the following:

(A) In the case of an annuitant referred to in paragraph (1)(A), payment of the annuity to the appointed guardian or other fiduciary.

(B) In the case of an annuitant referred to in paragraph (1)(B), payment of the annuity to any person who, in the judgment of the Secretary concerned, is responsible for the care of the annuitant.

(C) Subject to subparagraphs (D) and (E), a requirement for the payee of an annuity to spend or invest the amounts paid on behalf of the annuitant solely for benefit of the annuitant.

(D) Authority for the Secretary concerned to permit the payee to withhold from the annuity payment such amount, not in excess of 4 percent of the annuity, as the Secretary concerned considers a reasonable fee for the fiduciary services of the payee when a court appointment order provides for payment of such a fee to the payee for such services or the Secretary concerned determines that payment of a fee to such payee is necessary in order to obtain the fiduciary services of the payee.

(E) Authority for the Secretary concerned to require the payee to provide a surety bond in an amount sufficient to protect the interests of the annuitant and to pay for such bond out of the annuity.

(F) A requirement for the payee of an annuity to maintain and, upon request, to pro-

vide to the Secretary concerned an accounting of expenditures and investments of amounts paid to the payee.

(G) In the case of an annuitant referred to in paragraph (1)(B)—

(i) procedures for determining incompetency and for selecting a payee to represent the annuitant for the purposes of this section, including provisions for notifying the annuitant of the actions being taken to make such a determination and to select a representative payee, an opportunity for the annuitant to review the evidence being considered, and an opportunity for the annuitant to submit additional evidence before the determination is made; and

(ii) standards for determining incompetency, including standards for determining the sufficiency of medical evidence and other evidence.

(H) Provisions for any other matter that the President considers appropriate in connection with the payment of an annuity in the case of a person referred to in paragraph (1).

(3) LEGAL EFFECT OF PAYMENT TO GUARDIAN OR FIDUCIARY.—An annuity paid to a person on behalf of an annuitant in accordance with the regulations prescribed pursuant to paragraph (1) discharges the obligation of the United States for payment to the annuitant of the amount of the annuity so paid.

(Added Pub. L. 92–425, § 1(3), Sept. 21, 1972, 86 Stat. 711; amended Pub. L. 99–145, title VII, § 724, Nov. 8, 1985, 99 Stat. 678; Pub. L. 102–190, div. A, title VI, § 654(a), Dec. 5, 1991, 105 Stat. 1389; Pub. L. 104–201, div. A, title VI, § 634, Sept. 23, 1996, 110 Stat. 2577.)

AMENDMENTS

1996—Pub. L. 104–201 amended section generally, revising and restating provisions relating to regulations to carry out this subchapter.

1991—Subsecs. (a) to (d). Pub. L. 102–190 designated existing provisions as subsec. (a) and added subsecs. (b) to (d).

1985—Pars. (1), (2). Pub. L. 99–145 amended pars. (1) and (2) generally. Prior to amendment, pars. (1) and (2) read as follows:

''(1) provide that, when the notification referred to in section 1448(a) of this title is required, the member and his spouse shall, before the date the member becomes entitled to retired or retainer pay, be informed of the elections available and the effects of such elections; and

''(2) establish procedures for depositing the amounts referred to in section 1452(d) of this title.''

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by title VII of Pub. L. 99–145 effective Mar. 1, 1986, with prohibition against accrual of benefits to any person by reason of the enactment of such title VII for any period before Mar. 1, 1986, see section 731 of Pub. L. 99–145, set out as a note under section 1447 of this title.

[SUBCHAPTER III—REPEALED]

[§§ 1456 to 1460b. Repealed. Pub. L. 108–375, div. A, title VI, § 644(b)(2), Oct. 28, 2004, 118 Stat. 1961]

Section 1456, added Pub. L. 101–189, div. A, title XIV, § 1404(a)(1), Nov. 29, 1989, 103 Stat. 1580, related to supplemental spouse coverage: establishment of plan; definitions.

Section 1457, added Pub. L. 101–189, div. A, title XIV, § 1404(a)(1), Nov. 29, 1989, 103 Stat. 1580; amended Pub. L. 102–190, div. A, title VI, § 653(b)(1), Dec. 5, 1991, 105 Stat. 1388; Pub. L. 103–337, div. A, title X, § 1070(e)(5), Oct. 5, 1994, 108 Stat. 2859; Pub. L. 108–375, div. A, title VI, § 644(b)(1), Oct. 28, 2004, 118 Stat. 1960, related to supplemental spouse coverage: payment of annuity; amount.

Section 1458, added Pub. L. 101–189, div. A, title XIV, § 1404(a)(1), Nov. 29, 1989, 103 Stat. 1581; amended Pub. L. 102–190, div. A, title VI, § 653(c)(1), Dec. 5, 1991, 105 Stat. 1388; Pub. L. 108–136, div. A, title VI, § 645(b)(2), Nov. 24, 2003, 117 Stat. 1519; Pub. L. 108–375, div. A, title X, § 1084(d)(10), Oct. 28, 2004, 118 Stat. 2061, related to supplemental spouse coverage: eligible participants; elections of coverage.

Section 1459, added Pub. L. 101–189, div. A, title XIV, § 1404(a)(1), Nov. 29, 1989, 103 Stat. 1584, related to former spouse coverage: special rules.

Section 1460, added Pub. L. 101–189, div. A, title XIV, § 1404(a)(1), Nov. 29, 1989, 103 Stat. 1584; amended Pub. L. 102–190, div. A, title VI, § 653(b)(2), Dec. 5, 1991, 105 Stat. 1388; Pub. L. 110–181, div. A, title IX, § 906(c)(2), Jan. 28, 2008, 122 Stat. 277, related to supplemental spouse coverage: reductions in retired pay.

Section 1460a, added Pub. L. 101–189, div. A, title XIV, § 1404(a)(1), Nov. 29, 1989, 103 Stat. 1585; amended Pub. L. 101–510, div. A, title XIV, § 1484(k)(5), Nov. 5, 1990, 104 Stat. 1719, related to incorporation of certain administrative provisions.

Section 1460b, added Pub. L. 101–189, div. A, title XIV, § 1404(a)(1), Nov. 29, 1989, 103 Stat. 1585, related to regulations.

EFFECTIVE DATE OF REPEAL

Pub. L. 108–375, div. A, title VI, § 644(b)(2), Oct. 28, 2004, 118 Stat. 1961, provided that the repeal of this subchapter by section 644(b)(2) is effective Apr. 1, 2008.

CHAPTER 74—DEPARTMENT OF DEFENSE MILITARY RETIREMENT FUND

Sec.
1461. Establishment and purpose of Fund; definition.
1462. Assets of Fund.
1463. Payments from the Fund.
[1464. Repealed.]
1465. Determination of contributions to the Fund.
1466. Payments into the Fund.
1467. Investment of assets of Fund.

AMENDMENTS

2008—Pub. L. 110–181, div. A, title IX, § 906(b)(1)(B), Jan. 28, 2008, 122 Stat. 277, struck out item 1464 ''Board of Actuaries''.

§ 1461. Establishment and purpose of Fund; definition

(a) There is established on the books of the Treasury a fund to be known as the Department of Defense Military Retirement Fund (hereinafter in this chapter referred to as the ''Fund''), which shall be administered by the Secretary of the Treasury. The Fund shall be used for the accumulation of funds in order to finance on an actuarially sound basis liabilities of the Department of Defense under military retirement and survivor benefit programs.

(b) In this chapter, the term ''military retirement and survivor benefit programs'' means—

(1) the provisions of this title creating entitlement to, or determining the amount of, retired or retainer pay;

(2) the programs under the jurisdiction of the Department of Defense providing annuities

for survivors of members and former members of the armed forces, including chapter 73 of this title, section 4 of Public Law 92–425, and section 5 of Public Law 96–402; and

(3) the authority provided in section 1408(h) of this title.

(Added Pub. L. 98–94, title IX, § 925(a)(1), Sept. 24, 1983, 97 Stat. 644; amended Pub. L. 101–189, div. A, title XVI, § 1622(e)(7), Nov. 29, 1989, 103 Stat. 1605; Pub. L. 102–484, div. A, title VI, § 653(b)(1), Oct. 23, 1992, 106 Stat. 2428.)

REFERENCES IN TEXT

Section 4 of Public Law 92–425, referred to in subsec. (b)(2), is set out as a note under section 1448 of this title.

Section 5 of Public Law 96–402, referred to in subsec. (b)(2), is set out as a note under section 1448 of this title.

AMENDMENTS

1992—Subsec. (b)(3). Pub. L. 102–484 added par. (3).

1989—Subsec. (b). Pub. L. 101–189 inserted ''the term'' after ''In this chapter,''.

§ 1462. Assets of Fund

There shall be deposited into the Fund the following, which shall constitute the assets of the Fund:

(1) Amounts paid into the Fund under section 1466 of this title.

(2) Any amount appropriated to the Fund.

(3) Any return on investment of the assets of the Fund.

(Added Pub. L. 98–94, title IX, § 925(a)(1), Sept. 24, 1983, 97 Stat. 645.)

TRANSFER OF APPROPRIATIONS

Pub. L. 98–94, title IX, § 925(b)(3), Sept. 24, 1983, 97 Stat. 648, required transfer into the Fund on Oct. 1, 1984, of any unobligated balances of appropriations made to the Department of Defense that had been currently available for retired pay, and provided that amounts so transferred would be deemed part of the assets of the Fund.

§ 1463. Payments from the Fund

(a) There shall be paid from the Fund—

(1) retired pay payable to members on the retired lists of the Army, Navy, Air Force, and Marine Corps and payments under section 1413a or 1414 of this title paid to such members;

(2) retired pay payable under chapter 1223 of this title to former members of the armed forces (other than retired pay payable by the Secretary of Homeland Security);

(3) retainer pay payable to members of the Fleet Reserve and Fleet Marine Corps Reserve;

(4) benefits payable under programs under the jurisdiction of the Department of Defense that provide annuities for survivors of members and former members of the armed forces, including chapter 73 of this title, section 4 of Public Law 92–425, and section 5 of Public Law 96–402; and

(5) amounts payable under section 1408(h) of this title.

(b) The assets of the Fund are hereby made available for payments under subsection (a).

(Added Pub. L. 98–94, title IX, § 925(a)(1), Sept. 24, 1983, 97 Stat. 645; amended Pub. L. 101–189, div. A, title VI, § 651(c), Nov. 29, 1989, 103 Stat. 1460; Pub. L. 102–484, div. A, title VI, § 653(b)(2), Oct. 23, 1992, 106 Stat. 2428; Pub. L. 103–35, title II, § 202(a)(4), May 31, 1993, 107 Stat. 101; Pub. L. 104–106, div. A, title XV, § 1501(c)(18), Feb. 10, 1996, 110 Stat. 499; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 108–136, div. A, title VI, § 641(c)(2), Nov. 24, 2003, 117 Stat. 1515; Pub. L. 108–375, div. A, title X, § 1084(d)(11), Oct. 28, 2004, 118 Stat. 2062.)

REFERENCES IN TEXT

Section 4 of Public Law 92–425, referred to in subsec. (a)(4), is set out as a note under section 1448 of this title.

Section 5 of Public Law 96–402, referred to in subsec. (a)(4), is set out as a note under section 1448 of this title.

AMENDMENTS

2004—Subsec. (a)(1). Pub. L. 108–375 substituted ''1413a'' for ''1413, 1413a,''.

2003—Subsec. (a)(1). Pub. L. 108–136 inserted before semicolon at end ''and payments under section 1413, 1413a, or 1414 of this title paid to such members''.

2002—Subsec. (a)(2). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1996—Subsec. (a)(2). Pub. L. 104–106 substituted ''chapter 1223'' for ''chapter 67''.

1993—Subsec. (a)(5). Pub. L. 103–35 made technical amendment to directory language of Pub. L. 102–484, § 653(b)(2). See 1992 Amendment note below.

1992—Subsec. (a). Pub. L. 102–484, as amended by Pub. L. 103–35, added par. (5).

1989—Subsec. (a). Pub. L. 101–189 substituted ''members'' for ''persons'' in par. (1), added par. (2), and redesignated former pars. (2) and (3) as (3) and (4), respectively.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–136 effective Oct. 1, 2003, with Secretary of Defense to provide for certain administrative adjustments, see section 641(c)(6) of Pub. L. 108–136, set out as a note under section 1413a of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 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 1993 AMENDMENT

Amendment by Pub. L. 103–35 applicable as if included in the enactment of Pub. L. 102–484, see section 202(b) of Pub. L. 103–35, set out as a note under section 155 of this title.

EFFECTIVE DATE

Section 925(b)(2) of Pub. L. 98–94 provided that: ''Sections 1463 (relating to payments from the Fund) and 1466 (relating to payments to the Fund) of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 1984.''

[§ 1464. Repealed. Pub. L. 110–181, div. A, title IX, § 906(b)(1)(A), Jan. 28, 2008, 122 Stat. 277]

Section, added Pub. L. 98–94, title IX, § 925(a)(1), Sept. 24, 1983, 97 Stat. 645; amended Pub. L. 98–525, title XIV,

§ 1405(27), Oct. 19, 1984, 98 Stat. 2623, established in the Department of Defense a Department of Defense Retirement Board of Actuaries.

§ 1465. Determination of contributions to the Fund

(a) Not later than six months after the Board of Actuaries is first appointed, the Board shall determine the amount that is the present value (as of October 1, 1984) of future benefits payable from the Fund that are attributable to service in the armed forces performed before October 1, 1984. That amount is the original unfunded liability of the Fund. The Board shall determine the period of time over which the original unfunded liability should be liquidated and shall determine an amortization schedule for the liquidation of such liability over that period. Contributions to the Fund for the liquidation of the original unfunded liability in accordance with such schedule shall be made as provided in section 1466(b) of this title.

(b)(1) The Secretary of Defense shall determine each year, in sufficient time for inclusion in budget requests for the following fiscal year, the total amount of Department of Defense contributions to be made to the Fund during that fiscal year under section 1466(a) of this title. That amount shall be the sum of the following:

(A) The product of—

(i) the current estimate of the value of the single level percentage of basic pay to be determined under subsection (c)(1)(A) at the time of the next actuarial valuation under subsection (c); and

(ii) the total amount of basic pay expected to be paid during that fiscal year for active duty (other than the Coast Guard) and for full-time National Guard duty (other than full-time National Guard duty for training only), but excluding the amount expected to be paid for any duty that would be excluded for active-duty end strength purposes by section 115(i) of this title.

(B) The product of—

(i) the current estimate of the value of the single level percentage of basic pay and of compensation (paid pursuant to section 206 of title 37) to be determined under subsection (c)(1)(B) at the time of the next actuarial valuation under subsection (c); and

(ii) the total amount of basic pay and of compensation (paid pursuant to section 206 of title 37) expected to be paid during that fiscal year to members of the Selected Reserve of the armed forces (other than the Coast Guard) for service not otherwise described in subparagraph (A)(ii).

(2) The amount determined under paragraph (1) for any fiscal year is the amount needed to be appropriated to the Department of Defense for that fiscal year for payments to be made to the Fund during that year under section 1466(a) of this title. The President shall include not less than the full amount so determined in the budget transmitted to Congress for that fiscal year under section 1105 of title 31. The President may comment and make recommendations concerning any such amount.

(3) At the same time that the Secretary of Defense makes the determination required by paragraph (1) for any fiscal year, the Secretary shall determine the amount of the Treasury contribution to be made to the Fund for the next fiscal year under section 1466(b)(2)(D) of this title. That amount shall be determined in the same manner as the determination under paragraph (1) of the total amount of Department of Defense contributions to be made to the Fund during that fiscal year under section 1466(a) of this title, except that for purposes of this paragraph the Secretary, in making the calculations required by subparagraphs (A) and (B) of that paragraph, shall use the single level percentages determined under subsection (c)(4), rather than those determined under subsection (c)(1).

(c)(1) Not less often than every four years, the Secretary of Defense shall carry out an actuarial valuation of Department of Defense military retirement and survivor benefit programs. Each actuarial valuation of such programs shall include—

(A) a determination (using the aggregate entry-age normal cost method) of a single level percentage of basic pay for active duty (other than the Coast Guard) and for full-time National Guard duty (other than full-time National Guard duty for training only), but excluding the amount expected to be paid for any duty that would be excluded for active-duty end strength purposes by section 115(i) of this title, to be determined without regard to section 1413a or 1414 of this title; and

(B) a determination (using the aggregate entry-age normal cost method) of a single level percentage of basic pay and of compensation (paid pursuant to section 206 of title 37) for members of the Selected Reserve of the armed forces (other than the Coast Guard) for service not otherwise described by subparagraph (A), to be determined without regard to section 1413a or 1414 of this title.

Such single level percentages shall be used for the purposes of subsection (b)(1) and section 1466(a) of this title.

(2) If at the time of any such valuation (or any valuation carried out in order to comply with chapter 95 of title 31) there has been a change in benefits under a military retirement or survivor benefit program that has been made since the last such valuation and such change in benefits increases or decreases the present value of amounts payable from the Fund, the Secretary of Defense shall determine an amortization methodology and schedule for the amortization of the cumulative unfunded liability (or actuarial gain to the Fund) created by such change and any previous such changes so that the present value of the sum of the amortization payments (or reductions in payments that would otherwise be made) equals the cumulative increase (or decrease) in the present value of such amounts.

(3) If at the time of any such valuation (or any valuation carried out in order to comply with chapter 95 of title 31) the Secretary of Defense determines that, based upon changes in actuarial assumptions since the last valuation, there has been an actuarial gain or loss to the Fund, the Secretary shall determine an amortization methodology and schedule for the amortization of the cumulative gain or loss to the Fund created by such change in assumptions and any pre-

vious such changes in assumptions through an increase or decrease in the payments that would otherwise be made to the Fund.

(4) Whenever the Secretary carries out an actuarial valuation under paragraph (1), the Secretary shall include as part of such valuation the following:

(A) A determination of a single level percentage determined in the same manner as applies under subparagraph (A) of paragraph (1), but based only upon the provisions of sections 1413a and 1414 of this title.

(B) A determination of a single level percentage determined in the same manner as applies under subparagraph (B) of paragraph (1), but based only upon the provisions of sections 1413a and 1414 of this title.

Such single level percentages shall be used for the purposes of subsection (b)(3).

(5) Contributions to the Fund in accordance with amortization schedules under paragraphs (2) and (3) shall be made as provided in section 1466(b) of this title.

(d) All determinations under this section shall be made using methods and assumptions approved by the Board of Actuaries (including assumptions of interest rates and inflation) and in accordance with generally accepted actuarial principles and practices.

(e) The Secretary of Defense shall provide for the keeping of such records as are necessary for determining the actuarial status of the Fund.

(Added Pub. L. 98–94, title IX, § 925(a)(1), Sept. 24, 1983, 97 Stat. 646; amended Pub. L. 98–525, title XIV, § 1405(28), Oct. 19, 1984, 98 Stat. 2623; Pub. L. 99–500, § 101(c) [title IX, § 9131], Oct. 18, 1986, 100 Stat. 1783–82, 1783–128, and Pub. L. 99–591, § 101(c) [title IX, § 9131], Oct. 30, 1986, 100 Stat. 3341–82, 3341–128; Pub. L. 99–661, div. A, title VI, § 661(a), Nov. 14, 1986, 100 Stat. 3891; Pub. L. 108–136, div. A, title VI, § 641(c)(3), (4), Nov. 24, 2003, 117 Stat. 1515; Pub. L. 108–375, div. A, title X, § 1084(d)(11), Oct. 28, 2004, 118 Stat. 2062; Pub. L. 109–364, div. A, title V, § 591(a), Oct. 17, 2006, 120 Stat. 2232.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

Amendment of section by Pub. L. 99–500 and Pub. L. 99–591 is based on section 642 of S. 2638, Ninety-ninth Congress, as passed by the Senate on Aug. 9, 1986, which was enacted into permanent law by Pub. L. 99–500 and Pub. L. 99–591. S. 2638 was subsequently enacted as Pub. L. 99–661.

AMENDMENTS

2006—Subsec. (b)(1)(A)(ii). Pub. L. 109–364, § 591(a)(1)(A), substituted ''for active duty (other than the Coast Guard) and for full-time National Guard duty (other than full-time National Guard duty for training only), but excluding the amount expected to be paid for any duty that would be excluded for active-duty end strength purposes by section 115(i) of this title'' for ''to members of the armed forces (other than the Coast Guard) on active duty (other than active duty for training) or full-time National Guard duty (other than full-time National Guard duty for training only)''.

Subsec. (b)(1)(B)(ii). Pub. L. 109–364, § 591(a)(1)(B), substituted ''Selected Reserve'' for ''Ready Reserve'' and ''Coast Guard) for service'' for ''Coast Guard and other than members on full-time National Guard duty other than for training) who are''.

Subsec. (c)(1)(A). Pub. L. 109–364, § 591(a)(2)(A), substituted ''for active duty (other than the Coast Guard) and for full-time National Guard duty (other than full-time National Guard duty for training only), but excluding the amount expected to be paid for any duty that would be excluded for active-duty end strength purposes by section 115(i) of this title'' for ''for members of the armed forces (other than the Coast Guard) on active duty (other than active duty for training) or full-time National Guard duty (other than full-time National Guard duty for training only)''.

Subsec. (c)(1)(B). Pub. L. 109–364, § 591(a)(2)(B), substituted ''Selected Reserve'' for ''Ready Reserve'' and ''Coast Guard) for service'' for ''Coast Guard and other than members on full-time National Guard duty other than for training) who are''.

2004—Subsec. (c)(1)(A), (B), (4)(A), (B). Pub. L. 108–375 substituted ''1413a'' for ''1413, 1413a,''.

2003—Subsec. (b)(3). Pub. L. 108–136, § 641(c)(3), added par. (3).

Subsec. (c)(1). Pub. L. 108–136, § 641(c)(4)(A)(iii), substituted ''subsection (b)(1)'' for ''subsection (b)'' in concluding provisions.

Subsec. (c)(1)(A). Pub. L. 108–136, § 641(c)(4)(A)(i), inserted before semicolon '', to be determined without regard to section 1413, 1413a, or 1414 of this title''.

Subsec. (c)(1)(B). Pub. L. 108–136, § 641(c)(4)(A)(ii), inserted before period at end '', to be determined without regard to section 1413, 1413a, or 1414 of this title''.

Subsec. (c)(4), (5). Pub. L. 108–136, § 641(c)(4)(B), (C), added par. (4) and redesignated former par. (4) as (5).

1985—Subsec. (b)(1). Pub. L. 99–500 and Pub. L. 99–591, Pub. L. 99–661, § 661(a), amended par. (1) identically, inserting second sentence and striking out the existing second sentence which read as follows: ''That amount shall be determined as the product of—

''(A) the current estimate of the value of the single level percentage of basic pay to be determined at the time of the next actuarial valuation under subsection (c); and

''(B) the total amount of basic pay expected to be paid during that fiscal year to members of the armed forces (other than the Coast Guard) on active duty or in the Selected Reserve.''

Subsec. (c)(1). Pub. L. 99–500 and Pub. L. 99–591, Pub. L. 99–661, § 661(a)(2), amended par. (1) identically, inserting second and third sentences and striking out existing second sentence which read as follows: ''Each actuarial valuation of such programs shall include a determination (using the aggregate entry-age normal cost method) of a single level percentage of basic pay to be used for the purposes of subsection (b) and section 1466(a) of this title.''

1984—Subsec. (c)(1). Pub. L. 98–525 struck out ''(A)'' after ''(c)(1)''.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–364, div. A, title V, § 591(c), Oct. 17, 2006, 120 Stat. 2233, provided that: ''The amendments made by this section [amending this section and section 1466 of this title] shall take effect on October 1, 2007.''

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–136 effective Oct. 1, 2003, with Secretary of Defense to provide for certain administrative adjustments, see section 641(c)(6) of Pub. L. 108–136, set out as a note under section 1413a of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 642(c) of S. 2638, as passed by the Senate on Aug. 9, 1986, and as enacted into law by section 101(c) [title IX, § 9131] of Pub. L. 99–500 and Pub. L. 99–591, and section 661(d) of Pub. L. 99–661, provided respectively that: ''The amendments made by this section [amending this section and section 1466 of this title] shall take effect on October 1, 1986, or the date of the enactment of this Act [Oct. 18, 1986], whichever is later, and shall apply to payments required to be made under section 1466(a) of title 10, United States Code, as amended by this section, for months beginning on or after that ef-

fective date.'' and ''The amendments made by subsections (a) and (b) [amending this section and section 1466 of this title] shall apply to payments required to be made under section 1466(a) of title 10, United States Code, as amended by subsection (b), for months beginning on or after the date of the enactment of this Act [Nov. 14, 1986].''

§ 1466. Payments into the Fund

(a) The Secretary of Defense shall pay into the Fund at the end of each month as the Department of Defense contribution to the Fund for that month the amount that is the sum of the following:

(1) The product of—

(A) the level percentage of basic pay determined using all the methods and assumptions approved for the most recent (as of the first day of the current fiscal year) actuarial valuation under section 1465(c)(1)(A) of this title (except that any statutory change in the military retirement and survivor benefit systems that is effective after the date of that valuation and on or before the first day of the current fiscal year shall be used in such determination); and

(B) the total amount of basic pay accrued for that month for active duty (other than the Coast Guard) and for full-time National Guard duty (other than full-time National Guard duty for training only), but excluding the amount expected to be paid for any duty that would be excluded for active-duty end strength purposes by section 115(i) of this title.

(2) The product of—

(A) the level percentage of basic pay and of compensation (paid pursuant to section 206 of title 37) determined using all the methods and assumptions approved for the most recent (as of the first day of the current fiscal year) actuarial valuation under section 1465(c)(1)(B) of this title (except that any statutory change in the military retirement and survivor benefit systems that is effective after the date of that valuation and on or before the first day of the current fiscal year shall be used in such determination); and

(B) the total amount of basic pay and of compensation (paid pursuant to section 206 of title 37) accrued for that month by members of the Selected Reserve of the armed forces (other than the Coast Guard) for service not otherwise described in paragraph (1)(B).

Amounts paid into the Fund under this subsection shall be paid from funds available for the pay of members of the armed forces under the jurisdiction of the Secretary of a military department.

(b)(1) At the beginning of each fiscal year the Secretary of the Treasury shall promptly pay into the Fund from the General Fund of the Treasury the amount certified to the Secretary by the Secretary of Defense under paragraph (3). Such payment shall be the contribution to the Fund for that fiscal year required by sections 1465(a), 1465(b)(3), 1465(c)(2), and 1465(c)(3) of this title.

(2) At the beginning of each fiscal year the Secretary of Defense shall determine the sum of the following:

(A) The amount of the payment for that year under the amortization schedule determined by the Board of Actuaries under section 1465(a) of this title for the amortization of the original unfunded liability of the Fund.

(B) The amount (including any negative amount) for that year under the most recent amortization schedule determined by the Secretary of Defense under section 1465(c)(2) of this title for the amortization of any cumulative unfunded liability (or any gain) to the Fund resulting from changes in benefits.

(C) The amount (including any negative amount) for that year under the most recent amortization schedule determined by the Secretary of Defense under section 1465(c)(3) of this title for the amortization of any cumulative actuarial gain or loss to the Fund.

(D) The amount for that year determined by the Secretary of Defense under section 1465(b)(3) of this title for the cost to the Fund arising from increased amounts payable from the Fund by reason of section 1413a or 1414 of this title.

(3) The Secretary of Defense shall promptly certify the amount determined under paragraph (2) each year to the Secretary of the Treasury.

(c)(1) The Secretary of Defense shall pay into the Fund at the beginning of each fiscal year such amount as may be necessary to pay the cost to the Fund for that fiscal year resulting from the repeal, as of October 1, 1999, of section 5532 of title 5, including any actuarial loss to the Fund resulting from increased benefits paid from the Fund that are not fully covered by the payments made to the Fund for that fiscal year under subsections (a) and (b).

(2) Amounts paid into the Fund under this subsection shall be paid from funds available for the pay of members of the armed forces under the jurisdiction of the Secretary of a military department.

(3) The Department of Defense Board of Actuaries shall determine, for each armed force, the amount required under paragraph (1) to be deposited in the Fund each fiscal year.

(Added Pub. L. 98–94, title IX, § 925(a)(1), Sept. 24, 1983, 97 Stat. 647; amended Pub. L. 99–500, § 101(c) [title IX, §§ 9103(3), 9131], Oct. 18, 1986, 100 Stat. 1783–82, 1783–118, 1783–128, and Pub. L. 99–591, § 101(c) [title IX, §§ 9103(3), 9131], Oct. 30, 1986, 100 Stat. 3341–82, 3341–118, 3341–128; Pub. L. 99–661, div. A, title VI, § 661(b), Nov. 14, 1986, 100 Stat. 3892; Pub. L. 100–26, §§ 4(a)(1), 7(a)(3), Apr. 21, 1987, 101 Stat. 274, 275; Pub. L. 106–65, div. A, title VI, § 651(b), Oct. 5, 1999, 113 Stat. 664; Pub. L. 108–136, div. A, title VI, § 641(c)(5), Nov. 24, 2003, 117 Stat. 1516; Pub. L. 108–375, div. A, title X, § 1084(d)(11), Oct. 28, 2004, 118 Stat. 2062; Pub. L. 109–364, div. A, title V, § 591(b), Oct. 17, 2006, 120 Stat. 2233; Pub. L. 110–181, div. A, title IX, § 906(c)(3), title X, § 1063(c)(4), Jan. 28, 2008, 122 Stat. 277, 322.)

REFERENCES IN TEXT

Section 5532 of title 5, referred to in subsec. (c)(1), was repealed by Pub. L. 106–65, div. A, title VI, § 651(a)(1), Oct. 5, 1999, 113 Stat. 664.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

Amendment of section by section 9131 of Pub. L. 99–500 and Pub. L. 99–591 is based on section 642 of S. 2638, Ninety-ninth Congress, as passed by the Senate on Aug. 9, 1986, which was enacted into permanent law by section 9131 of Pub. L. 99–500 and Pub. L. 99–591. S. 2638 was subsequently enacted as Pub. L. 99–661.

AMENDMENTS

2008—Subsec. (a)(1)(B). Pub. L. 110–181, § 1063(c)(4), amended Pub. L. 109–364, § 591(b)(1). See 2006 Amendment note below.

Subsec. (c)(3). Pub. L. 110–181, § 906(c)(3), struck out ''Retirement'' before ''Board of Actuaries''.

2006—Subsec. (a)(1)(B). Pub. L. 109–364, § 591(b)(1), as amended by Pub. L. 110–181, § 1063(c)(4), substituted ''for active duty (other than the Coast Guard) and for full-time National Guard duty (other than full-time National Guard duty for training only), but excluding the amount expected to be paid for any duty that would be excluded for active-duty end strength purposes by section 115(i) of this title.'' for ''by members of the armed forces (other than the Coast Guard) on active duty (other than active duty for training) or full-time National Guard duty (other than full-time National Guard duty for training only).''

Subsec. (a)(2)(B). Pub. L. 109–364, § 591(b)(2), substituted ''Selected Reserve'' for ''Ready Reserve'' and ''Coast Guard) for service'' for ''Coast Guard and other than members on full-time National Guard duty other than for training) who are''.

2004—Subsec. (b)(2)(D). Pub. L. 108–375 substituted ''1413a'' for ''1413, 1413a,''.

2003—Subsec. (b)(1). Pub. L. 108–136, § 641(c)(5)(A), substituted ''sections 1465(a), 1465(b)(3), 1465(c)(2), and 1465(c)(3)'' for ''sections 1465(a) and 1465(c)''.

Subsec. (b)(2)(D). Pub. L. 108–136, § 641(c)(5)(B), added subpar. (D).

1999—Subsec. (c). Pub. L. 106–65 added subsec. (c).

1987—Subsec. (a). Pub. L. 100–26, § 7(a)(3), inserted at end ''Amounts paid into the Fund under this subsection shall be paid from funds available for the pay of members of the armed forces under the jurisdiction of the Secretary of a military department.''

Subsec. (a)(1)(B), (2)(B). Pub. L. 100–26, § 4(a)(1), amended Pub. L. 99–500 and 99–591, title I, § 101(c) [title IX, § 9103(3)]. See 1986 Amendment note below.

1986—Subsec. (a). Pub. L. 99–661 amended first sentence of subsec. (a), which after amendment by Pub. L. 99–500 and Pub. L. 99–591 was the only sentence of subsec. (a), by substituting language which was substantially identical to that substituted by Pub. L. 99–500 and Pub. L. 99–591.

Pub. L. 99–500 and Pub. L. 99–591, title I, § 101(c) [§ 9131], amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''The Secretary of Defense shall pay into the Fund at the end of each month as the Department of Defense contribution to the Fund for that month the amount that is the product of—

''(1) the level percentage of basic pay determined under the most recent (as of the first day of the current fiscal year) actuarial valuation under section 1465(c) of this title; and

''(2) the total amount of basic pay paid that month to members of the armed forces (other than the Coast Guard) on active duty or in the Selected Reserve.

Amounts paid into the Fund under this subsection shall be paid from funds available for the pay of members of the armed forces under the jurisdiction of the Secretary of a military department.''

Subsec. (a)(1)(B), (2)(B). Pub. L. 99–500 and Pub. L. 99–591, title I, § 101(c) [title IX, § 9103(3)], as amended by Pub. L. 100–26, § 4(a)(1), substituted ''accrued for that month by'' for ''paid that month to'' in pars. (1)(B) and (2)(B) as amended by section 661(b) of Pub. L. 99–661, see above.

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)(4) is effective as of 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

Amendment by Pub. L. 109–364 effective Oct. 1, 2007, see section 591(c) of Pub. L. 109–364, set out as a note under section 1465 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–136 effective Oct. 1, 2003, with Secretary of Defense to provide for certain administrative adjustments, see section 641(c)(6) of Pub. L. 108–136, set out as a note under section 1413a of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–65, div. A, title VI, § 651(c), Oct. 5, 1999, 113 Stat. 664, provided that: ''The amendments made by this section [amending this section and repealing section 5532 of Title 5, Government Organization and Employees] shall take effect on October 1, 1999.''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 12(b) of Pub. L. 100–26 provided that: ''The amendments made by section 4 [amending this section and provisions set out as a note under section 1014 of Title 37, Pay and Allowances of the Uniformed Services] shall apply as if included in Public Laws 99–500 and 99–591 when enacted on October 18, 1986, and October 30, 1986, respectively.''

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99–661 applicable to payments required to be made under subsec. (a) of this section for months beginning on or after Nov. 14, 1986, see section 661(d) of Pub. L. 99–661, set out as a note under section 1465 of this title.

Amendment by section 101(c) [title IX, § 9131] of Pub. L. 99–500 and Pub. L. 99–591 effective Oct. 18, 1986, and applicable to payments required to be made under subsec. (a) of this section for months beginning on or after that date, see section 642(c) of S. 2638, as enacted into law, set out as a note under section 1465 of this title.

Amendment by section 101(c) [title IX, § 9103(3)] of Pub. L. 99–500 and Pub. L. 99–591 effective Sept. 1, 1987, see section 101(c) [title IX, § 9103(4)] of Pub. L. 99–500 and Pub. L. 99–591, as amended, set out as an Effective Date note under section 1014 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE

Section effective Oct. 1, 1984, see section 925(b)(2) of Pub. L. 98–94, set out as a note under section 1463 of this title.

§ 1467. Investment of assets of Fund

The Secretary of the Treasury shall invest such portion of the Fund as is not in the judgment of the Secretary of Defense required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable to the needs of the Fund, as determined by the Secretary of Defense, and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities. The income on such investments shall be credited to and form a part of the Fund.

(Added Pub. L. 98–94, title IX, § 925(a)(1), Sept. 24, 1983, 97 Stat. 648.)

CHAPTER 75—DECEASED PERSONNEL

Subchapter		Sec.
I.	Death Investigations	1471

Subchapter Sec.
II. Death Benefits 1475

AMENDMENTS

1999—Pub. L. 106–65, div. A, title VII, § 721(a), Oct. 5, 1999, 113 Stat. 692, substituted ''DECEASED PERSONNEL'' for ''DEATH BENEFITS'' as chapter heading and added subchapter analysis.

SUBCHAPTER I—DEATH INVESTIGATIONS

Sec.
1471. Forensic pathology investigations.

AMENDMENTS

1999—Pub. L. 106–65, div. A, title VII, § 721(a), Oct. 5, 1999, 113 Stat. 692, added subchapter I heading and item 1471.

§ 1471. Forensic pathology investigations

(a) AUTHORITY.—Under regulations prescribed by the Secretary of Defense, the Armed Forces Medical Examiner may conduct a forensic pathology investigation to determine the cause or manner of death of a deceased person if such an investigation is determined to be justified under circumstances described in subsection (b). The investigation may include an autopsy of the decedent's remains.

(b) BASIS FOR INVESTIGATION.—(1) A forensic pathology investigation of a death under this section is justified if at least one of the circumstances in paragraph (2) and one of the circumstances in paragraph (3) exist.

(2) A circumstance under this paragraph is a circumstance under which—

(A) it appears that the decedent was killed or that, whatever the cause of the decedent's death, the cause was unnatural;

(B) the cause or manner of death is unknown;

(C) there is reasonable suspicion that the death was by unlawful means;

(D) it appears that the death resulted from an infectious disease or from the effects of a hazardous material that may have an adverse effect on the military installation or community involved; or

(E) the identity of the decedent is unknown.

(3) A circumstance under this paragraph is a circumstance under which—

(A) the decedent—

(i) was found dead or died at an installation garrisoned by units of the armed forces that is under the exclusive jurisdiction of the United States;

(ii) was a member of the armed forces on active duty or inactive duty for training;

(iii) was recently retired under chapter 61 of this title as a result of an injury or illness incurred while a member on active duty or inactive duty for training; or

(iv) was a civilian dependent of a member of the armed forces and was found dead or died outside the United States;

(B) in any other authorized Department of Defense investigation of matters which involves the death, a factual determination of the cause or manner of the death is necessary; or

(C) in any other authorized investigation being conducted by the Federal Bureau of Investigation, the National Transportation Safety Board, or any other Federal agency, an authorized official of such agency with authority to direct a forensic pathology investigation requests that the Armed Forces Medical Examiner conduct such an investigation.

(c) DETERMINATION OF JUSTIFICATION.—(1) Subject to paragraph (2), the determination that a circumstance exists under paragraph (2) of subsection (b) shall be made by the Armed Forces Medical Examiner.

(2) A commander may make the determination that a circumstance exists under paragraph (2) of subsection (b) and require a forensic pathology investigation under this section without regard to a determination made by the Armed Forces Medical Examiner if—

(A) in a case involving circumstances described in paragraph (3)(A)(i) of that subsection, the commander is the commander of the installation where the decedent was found dead or died; or

(B) in a case involving circumstances described in paragraph (3)(A)(ii) of that subsection, the commander is the commander of the decedent's unit at a level in the chain of command designated for such purpose in the regulations prescribed by the Secretary of Defense.

(d) LIMITATION IN CONCURRENT JURISDICTION CASES.—(1) The exercise of authority under this section is subject to the exercise of primary jurisdiction for the investigation of a death—

(A) in the case of a death in a State, by the State or a local government of the State; or

(B) in the case of a death in a foreign country, by that foreign country under any applicable treaty, status of forces agreement, or other international agreement between the United States and that foreign country.

(2) Paragraph (1) does not limit the authority of the Armed Forces Medical Examiner to conduct a forensic pathology investigation of a death that is subject to the exercise of primary jurisdiction by another sovereign if the investigation by the other sovereign is concluded without a forensic pathology investigation that the Armed Forces Medical Examiner considers complete. For the purposes of the preceding sentence a forensic pathology investigation is incomplete if the investigation does not include an autopsy of the decedent.

(e) PROCEDURES.—For a forensic pathology investigation under this section, the Armed Forces Medical Examiner shall—

(1) designate one or more qualified pathologists to conduct the investigation;

(2) to the extent practicable and consistent with responsibilities under this section, give due regard to any applicable law protecting religious beliefs;

(3) as soon as practicable, notify the decedent's family, if known, that the forensic pathology investigation is being conducted;

(4) as soon as practicable after the completion of the investigation, authorize release of the decedent's remains to the family, if known; and

(5) promptly report the results of the forensic pathology investigation to the official re-

sponsible for the overall investigation of the death.

(f) DEFINITION OF STATE.—In this section, the term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, and Guam.

(Added Pub. L. 106–65, div. A, title VII, § 721(a), Oct. 5, 1999, 113 Stat. 692.)

SUBCHAPTER II—DEATH BENEFITS

Sec.
1475. Death gratuity: death of members on active duty or inactive duty training and of certain other persons.
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1486. Other citizens of United States.
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1489. Death gratuity: members and employees dying outside the United States while assigned to intelligence duties.
1490. Transportation of remains: certain retired members and dependents who die in military medical facilities.
1491. Funeral honors functions at funerals for veterans.

AMENDMENTS

2001—Pub. L. 107–107, div. A, title X, § 1048(a)(14), Dec. 28, 2001, 115 Stat. 1223, transferred subchapter II heading so as to appear before the table of sections for that subchapter.

1999—Pub. L. 106–65, div. A, title VII, § 721(c)(1), Oct. 5, 1999, 113 Stat. 694, inserted ''SUBCHAPTER II—DEATH BENEFITS'' before section 1475 of this title.

Pub. L. 106–65, div. A, title V, § 578(k)(2)(A), Oct. 5, 1999, 113 Stat. 631, substituted ''Funeral honors functions at funerals for veterans'' for ''Honor guard details at funerals of veterans'' in item 1491.

1998—Pub. L. 105–261, div. A, title V, § 567(b)(2), Oct. 17, 1998, 112 Stat. 2031, added item 1491.

1994—Pub. L. 103–337, div. A, title X, § 1070(a)(8)(B), Oct. 5, 1994, 108 Stat. 2855, substituted ''civilian'' for ''Civilian'' in item 1482a.

1993—Pub. L. 103–160, div. A, title III, § 368(b), Nov. 30, 1993, 107 Stat. 1634, added item 1482a.

1991—Pub. L. 102–190, div. A, title VI, § 626(b)(2), Dec. 5, 1991, 105 Stat. 1380, substituted ''Transportation of remains: certain retired members and dependents who die in military medical facilities'' for ''Transportation of remains of members entitled to retired or retainer pay who die in a military medical facility'' in item 1490.

1983—Pub. L. 98–94, title X, § 1032(a)(2), Sept. 24, 1983, 97 Stat. 672, added item 1490.

1980—Pub. L. 96–450, title IV, § 403(b)(2), Oct. 14, 1980, 94 Stat. 1979, added item 1489.

1965—Pub. L. 89–150, § 1(2), Aug. 28, 1965, 79 Stat. 585, struck out ''; death while outside United States'' from item 1485.

1958—Pub. L. 85–861, § 1(32)(B), (C), Sept. 2, 1958, 72 Stat. 1455, struck out ''CARE OF THE DEAD'' from chapter heading, and added items 1475 to 1480.

§ 1475. Death gratuity: death of members on active duty or inactive duty training and of certain other persons

(a) Except as provided in section 1480 of this title, the Secretary concerned shall have a death gratuity paid to or for the survivor prescribed by section 1477 of this title, immediately upon receiving official notification of the death of—

(1) a member of an armed force under his jurisdiction who dies while on active duty or while performing authorized travel to or from active duty;

(2) a Reserve of an armed force who dies while on inactive duty training (other than work or study in connection with a correspondence course of an armed force or attendance, in an inactive status, at an educational institution under the sponsorship of an armed force or the Public Health Service);

(3) any Reserve of an armed force who, when authorized or required by an authority designated by the Secretary, assumed an obligation to perform active duty for training, or inactive duty training (other than work or study in connection with a correspondence course of an armed force or attendance, in an inactive status, at an educational institution, under the sponsorship of an armed force or the Public Health Service), and who dies while traveling directly to or from that active duty for training or inactive duty training;

(4) any member of a reserve officers' training corps who dies while performing annual training duty under orders for a period of more than 13 days, or while performing authorized travel to or from that annual training duty; or any applicant for membership in a reserve officers' training corps who dies while attending field training or a practice cruise under section 2104(b)(6)(B) of this title or while performing authorized travel to or from the place where the training or cruise is conducted; or

(5) a person who dies while traveling to or from or while at a place for final acceptance, or for entry upon active duty (other than for training), in an armed force, who has been ordered or directed to go to that place, and who—

(A) has been provisionally accepted for that duty; or

(B) has been selected, under the Military Selective Service Act (50 U.S.C. App. 451 et seq.), for service in that armed force.

(b) This section does not apply to the survivors of persons who were temporary members of the Coast Guard Reserve at the time of their death.

(Added Pub. L. 85–861, § 1(32)(A), Sept. 2, 1958, 72 Stat. 1452; amended Pub. L. 88–647, title III, § 301(1), Oct. 13, 1964, 78 Stat. 1071; Pub. L. 96–513, title V, § 511(59), Dec. 12, 1980, 94 Stat. 2925; Pub. L. 99–661, div. A, title VI, § 604(e)(1), Nov. 14, 1986, 100 Stat. 3877.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1475(a)	38:1101(2) (less last sentence, as applicable to death gratuity). 38:1101(4) (as applicable to death gratuity, less (D) (as applicable to 38:1133(a))). 38:1101(5) (as applicable to death gratuity, less (D) (as applicable to 38:1133(a))). 38:1101(6)(A) (less clause (3) of 2d sentence, as applicable to death gratuity). 38:1001(6)(B) (1st sentence, less last 32 words, as applicable to death gratuity, and less (ii)) (as applicable to 38: 1133 (a))). 38:1101(11)(E) (less last 27 words, as applicable to death gratuity). 38:1131(a).	Aug. 1, 1956, ch. 837, §§102(2) (less last sentence, as applicable to death gratuity), 102(2) (last sentence, as applicable to death gratuity), (4) (as applicable to death gratuity, less (D) (as applicable to §303(a))), (5) (as applicable to death gratuity, less (D) (as applicable to §303(a))), (6)(A) (as applicable to death gratuity), (B) (1st sentence, less last 32 words, as applicable to death gratuity, and less (ii) (as applicable to §303(a))), (11)(E) (less last 27 words, as applicable to death gratuity), 301(a), 70 Stat. 858–861, 868.
1475(b)	38:1101(2) (last sentence, as applicable to death gratuity under 38: 1131(a)). 38:1101(6)(A) (clause (3) of 2d sentence, as applicable to death gratuity under 38:1131 (a)).	

In subsection (a), the word ''receiving'' is inserted for clarity. Clause (1) is substituted for 38:1101(2) (1st sentence, and clauses (A)–(C) of 2d sentence); 38:1101(4)(A), (C), and (D); and 38:1101(5)(A), (C), and (D). Clause (2) is based on the words ''inactive duty training'', in 38:1131(a). Clause (3) (less words in parentheses) is substituted for 38:1101(6)(B) (1st sentence, less last 32 words). 38:1101(6)(A) (1st sentence) is omitted as covered by section 101(31) of this title. The words in parentheses in clause (3) are substituted for 38:1101(6)(A) (2d sentence, less clause (3)). Clause (4) is substituted for 38:1101(2) (clause (D) of 2d sentence) and (5)(C). Clause (5) is substituted for 38:1101(2)(E), (11)(E) (less last 27 words). The words ''active duty for training'', in 38:1131(a), are omitted as covered by the definition of ''active duty'' in section 101(22) of this title.

REFERENCES IN TEXT

The Military Selective Service Act, referred to in subsec. (a)(5)(B), is act June 24, 1948, ch. 625, 62 Stat. 604, as amended, which is classified principally to section 451 et seq. of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see References in Text note set out under section 451 of Title 50, Appendix, and Tables.

AMENDMENTS

1986—Subsec. (a)(3). Pub. L. 99–661 struck out ''from an injury incurred by him after December 31, 1956,'' before ''while traveling directly to or from''.

1980—Subsec. (a)(5)(B). Pub. L. 96–513 substituted ''Military Selective Service Act (50 U.S.C. App. 451 et seq.)'' for ''Universal Military Training and Service Act (50 App. U.S.C. 451 et seq.)''.

1964—Subsec. (a)(4). Pub. L. 88–647 inserted provisions covering applicants for membership in a reserve officers' training corps while attending, or in travel to or from field training or a practice cruise.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–661 applicable with respect to persons who, after Nov. 14, 1986, incur or aggravate an injury, illness, or disease or die, see section 604(g) of Pub. L. 99–661, set out as a note under section 1074a of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of 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.

PUBLIC HEALTH SERVICE

Authority vested by this chapter in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to commissioned officers of Public Health Service, by Secretary of Health and Human Services or his designee, see section 213a of Title 42, The Public Health and Welfare.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Authority vested by this chapter in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to commissioned officer corps of National Oceanic and Atmospheric Administration, by Secretary of Commerce or Secretary's designee, see section 3071 of Title 33, Navigation and Navigable Waters.

POLICY AND PROCEDURES ON CASUALTY ASSISTANCE TO SURVIVORS OF MILITARY DECEDENTS

Pub. L. 109–163, div. A, title V, §562, Jan. 6, 2006, 119 Stat. 3267, as amended by Pub. L. 109–364, div. A, title V, §566, Oct. 17, 2006, 120 Stat. 2223, provided that:

''(a) COMPREHENSIVE POLICY ON CASUALTY ASSISTANCE.—

''(1) POLICY REQUIRED.—Not later than August 1, 2006, the Secretary of Defense shall prescribe a comprehensive policy for the Department of Defense on the provision of casualty assistance to survivors and next of kin of members of the Armed Forces who die during military service (in this section referred to as 'military decedents').

''(2) CONSULTATION.—The Secretary shall develop the policy under paragraph (1) in consultation with the Secretaries of the military departments, the Secretary of Veterans Affairs, and the Secretary of Homeland Security with respect to the Coast Guard.

''(3) INCORPORATION OF PAST EXPERIENCE AND PRACTICE.—The policy developed under paragraph (1) shall be based on—

''(A) the experience and best practices of the military departments;

''(B) the recommendations of nongovernment organizations with demonstrated expertise in responding to the needs of survivors of military decedents; and

''(C) such other matters as the Secretary of Defense considers appropriate.

''(4) PROCEDURES.—The policy shall include procedures to be followed by the military departments in the provision of casualty assistance to survivors and next of kin of military decedents. The procedures shall be uniform across the military departments except to the extent necessary to reflect the traditional practices or customs of a particular military department.

''(b) ELEMENTS OF POLICY.—The comprehensive policy developed under subsection (a) shall address the following matters:

''(1) The initial notification of primary and secondary next of kin of the deaths of military decedents and any subsequent notifications of next of kin warranted by circumstances.

''(2) The transportation and disposition of remains of military decedents, including notification of survivors of the performance of autopsies.

''(3) The qualifications, assignment, training, duties, supervision, and accountability for the performance of casualty assistance responsibilities.

''(4) The relief or transfer of casualty assistance officers, including notification to survivors and next of kin of the reassignment of such officers to other duties.

''(5) Centralized, short-term and long-term case-management procedures for casualty assistance by each military department, including rapid access by survivors of military decedents and casualty assistance officers to expert case managers and counselors.

''(6) The provision, through a computer accessible Internet website and other means and at no cost to survivors of military decedents, of personalized, integrated information on the benefits and financial assistance available to such survivors from the Federal Government.

''(7) The provision, at no cost to survivors of military decedents, of legal assistance by military attorneys on matters arising from the deaths of such decedents, including tax matters, on an expedited, prioritized basis.

''(8) The provision of financial counseling to survivors of military decedents, particularly with respect to appropriate disposition of death gratuity and insurance proceeds received by surviving spouses, minor dependent children, and their representatives.

''(9) The provision of information to survivors and next of kin of military decedents on mechanisms for registering complaints about, or requests for, additional assistance related to casualty assistance.

''(10) Liaison with the Department of Veterans Affairs and the Social Security Administration in order to ensure prompt and accurate resolution of issues relating to benefits administered by those agencies for survivors of military decedents.

''(11) Data collection regarding the incidence and quality of casualty assistance provided to survivors of military decedents, including surveys of such survivors and military and civilian members assigned casualty assistance duties.

''(12) The process by which the Department of Defense, upon request, provides information (in person and otherwise) to survivors of a military decedent on the cause of, and any investigation into, the death of such military decedent and on the disposition and transportation of the remains of such decedent, which process shall—

''(A) provide for the provision of such information (in person and otherwise) by qualified Department of Defense personnel;

''(B) ensure that information is provided as soon as possible after death and that, when requested, updates are provided, in accordance with the procedures established under this paragraph, in a timely manner when new information becomes available;

''(C) ensure that—

''(i) the initial provision of such information, and each such update, relates the most complete and accurate information available at the time, subject to limitations applicable to classified information; and

''(ii) incomplete or unverified information is identified as such during the course of the provision of such information or update; and

''(D) include procedures by which such survivors shall, upon request, receive updates or supplemental information from qualified Department of Defense personnel.

''(c) ADOPTION BY MILITARY DEPARTMENTS.—Not later than November 1, 2006, the Secretary of each military department shall prescribe regulations, or modify current regulations, on the policies and procedures of such military department on the provision of casualty assistance to survivors and next of kin of military decedents in order to conform such policies and procedures to the policy developed under subsection (a).

''(d) REPORT ON IMPROVEMENT OF CASUALTY ASSISTANCE PROGRAMS.—Not later than December 1, 2006, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report that includes—

''(1) the assessment of the Secretary of the adequacy and sufficiency of the current casualty assistance programs of the military departments;

''(2) a plan for a system for the uniform provision to survivors of military decedents of personalized, accurate, and integrated information on the benefits and financial assistance available to such survivors through the casualty assistance programs of the military departments under subsection (c); and

''(3) such recommendations for other legislative or administrative action as the Secretary considers appropriate to enhance and improve such programs to achieve their intended purposes.

''(e) GAO REPORT.—

''(1) REPORT REQUIRED.—Not later than July 1, 2006, the Comptroller General shall submit to the committees specified in subsection (d) a report on the evaluation by the Comptroller General of the casualty assistance programs of the Department of Defense and of such other departments and agencies of the Federal Government as provide casualty assistance to survivors and next of kin of military decedents.

''(2) ASSESSMENT.—The report shall include the assessment of the Comptroller General of the adequacy of the current policies and procedures of, and funding for, the casualty assistance programs covered by the report to achieve their intended purposes.''

§ 1476. Death gratuity: death after discharge or release from duty or training

(a)(1) Except as provided in section 1480 of this title, the Secretary concerned shall pay a death gratuity to or for the survivors prescribed in section 1477 of this title of each person who dies within 120 days after discharge or release from—

(A) active duty; or

(B) inactive-duty training (other than work or study in connection with a correspondence course of an armed force or attendance, in an inactive status, at an educational institution under the sponsorship of an armed force or the Public Health Service).

(2) A death gratuity may be paid under paragraph (1) only if the Secretary of Veterans Affairs determines that the death resulted from an injury or disease incurred or aggravated during—

(A) the active duty or inactive-duty training described in paragraph (1); or

(B) travel directly to or from such duty.

(b) For the purpose of this section, the standards and procedures for determining the incurrence or aggravation of a disease or injury are those applicable under the laws relating to disability compensation administered by the Department of Veterans Affairs, except that there is no requirement under this section that any incurrence or aggravation have been in line of duty.

(c) This section does not apply to the survivors of persons who were temporary members of the Coast Guard Reserve at the time of their death.

(Added Pub. L. 85–861, § 1(32)(A), Sept. 2, 1958, 72 Stat. 1452; amended Pub. L. 99–661, div. A, title VI, § 604(e)(2), Nov. 14, 1986, 100 Stat. 3877; Pub. L. 101–189, div. A, title XVI, § 1621(a)(1), (2), Nov. 29, 1989, 103 Stat. 1602, 1603.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1476(a)	38:1133(a).	Aug. 1, 1956, ch. 837, §§102(2) (last sentence, as applicable to death gratuity under §303(a)), 102(4)(D) (as applicable to §303(a)), 102(5)(D) (as applicable to §303(a)), 102(6)(A) (clause (3) of 2d sentence, as applicable to death gratuity under §303(a)), 102(6)(B)(ii) (as applicable to §303(a)), 303(a), (c), 70 Stat. 858, 859, 868, 869.
1476(b)	38:1101(4)(D) (as applicable to 38:1133(a)). 38:1101(5)(D) (as applicable to 38:1133(a)). 38:1101(6)(B)(ii) (as applicable to 38:1133(a)).	
1476(c)	38:1133(c).	
1476(d)	38:1101(2) (last sentence, as applicable to death gratuity under 38:1133(a)). 38:1101(6)(A) (clause (3) of 2d sentence, as applicable to death gratuity under 38:1133(a)).	

In subsection (a), the words ''Except as provided in section 1480 of this title'' are inserted to reflect 38:1134(a). The words ''to the survivor prescribed by section 1477 of this title'' are inserted for clarity. The words ''on or after January 1, 1957'' are omitted as executed. The words in parentheses in clause (2) are inserted to reflect 38:1101(6)(A) (2d sentence). The words ''active duty for training'' are omitted as covered by the definition of ''active duty'' in section 101(22) of this title.

In subsection (c), the word ''criteria'' is omitted as covered by the word ''standards''.

AMENDMENTS

1989—Subsec. (a)(2). Pub. L. 101–189, §1621(a)(2), substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs''.

Subsec. (b). Pub. L. 101–189, §1621(a)(1), substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1986—Pub. L. 99–661 added subsec. (a), redesignated subsecs. (c) and (d) as (b) and (c), respectively, and struck out former subsecs. (a) and (b) which read as follows:

''(a) Except as provided in section 1480 of this title, the Secretary concerned shall have a death gratuity paid to or for the survivor prescribed by section 1477 of this title of each person who dies within 120 days after his discharge or release from—

''(1) active duty; or

''(2) inactive duty training (other than work or study in connection with a correspondence course of an armed force or attendance, in an inactive status, at an educational institution under the sponsorship of an armed force or the Public Health Service);

if the Administrator of Veterans' Affairs determines that the death resulted from (A) disease or injury incurred or aggravated while performing duty under clause (1) or the travel described in subsection (b), or (B) injury incurred or aggravated while performing training under clause (2) or the travel described in subsection (b)(2).

''(b) The travel covered by subsection (a) is—

''(1) authorized travel to or from the duty described in subsection (a)(1); or

''(2) travel directly to or from the duty or training described in subsection (a)(1) or (2) that is performed by a Reserve who, when authorized or required by an authority designated by the Secretary, assumed an obligation to perform that duty or training and whose injury was incurred or aggravated after December 31, 1956.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–661 applicable with respect to persons who, after Nov. 14, 1986, incur or aggravate an injury, illness, or disease or die, see section 604(g) of Pub. L. 99–661, set out as a note under section 1074a 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.

§ 1477. Death gratuity: eligible survivors

(a) DESIGNATION OF RECIPIENTS.—(1) On and after July 1, 2008, or such earlier date as the Secretary of Defense may prescribe, a person covered by section 1475 or 1476 of this title may designate one or more persons to receive all or a portion of the amount payable under section 1478 of this title. The designation of a person to receive a portion of the amount shall indicate the percentage of the amount, to be specified only in 10 percent increments, that the designated person may receive. The balance of the amount of the death gratuity, if any, shall be paid in accordance with subsection (b).

(2) If a person covered by section 1475 or 1476 of this title has a spouse, but designates a person other than the spouse to receive all or a portion of the amount payable under section 1478 of this title, the Secretary concerned shall provide notice of the designation to the spouse.

(b) DISTRIBUTION OF REMAINDER; DISTRIBUTION IN ABSENCE OF DESIGNATED RECIPIENT.—If a person covered by section 1475 or 1476 of this title does not make a designation under subsection (a) or designates only a portion of the amount payable under section 1478 of this title, the amount of the death gratuity not covered by a designation shall be paid as follows:

(1) To the surviving spouse of the person, if any.

(2) If there is no surviving spouse, to any surviving children (as prescribed by subsection (d)) of the person and the descendants of any deceased children by representation.

(3) If there is none of the above, to the surviving parents (as prescribed by subsection (c)) of the person or the survivor of them.

(4) If there is none of the above, to the duly-appointed executor or administrator of the estate of the person.

(5) If there is none of the above, to other next of kin of the person entitled under the laws of domicile of the person at the time of the person's death.

(c) TREATMENT OF PARENTS.—For purposes of subsection (b)(3), parents include fathers and mothers through adoption. However, only one father and one mother may be recognized in any case, and preference shall be given to those who exercised a parental relationship on the date, or most nearly before the date, on which the decedent entered a status described in section 1475 or 1476 of this title.

(d) TREATMENT OF CHILDREN.—Subsection (b)(2) applies, without regard to age or marital status, to—

(1) legitimate children;

(2) adopted children;

(3) stepchildren who were a part of the decedent's household at the time of his death;

(4) illegitimate children of a female decedent; and

(5) illegitimate children of a male decedent—

(A) who have been acknowledged in writing signed by the decedent;

(B) who have been judicially determined, before the decedent's death, to be his children;

(C) who have been otherwise proved, by evidence satisfactory to the Secretary of Veterans Affairs, to be children of the decedent; or

(D) to whose support the decedent had been judicially ordered to contribute.

(e) EFFECT OF DEATH BEFORE RECEIPT OF GRATUITY.— If a person entitled to all or a portion of a death gratuity under subsection (a) or (b) dies before the person receives the death gratuity, it shall be paid to the living survivor next in the order prescribed by subsection (b).

(Added Pub. L. 85–861, § 1(32)(A), Sept. 2, 1958, 72 Stat. 1453; amended Pub. L. 101–189, div. A, title XVI, § 1621(a)(2), Nov. 29, 1989, 103 Stat. 1603; Pub. L. 110–28, title III, § 3306, May 25, 2007, 121 Stat. 136; Pub. L. 110–181, div. A, title VI, § 645(a), (b), Jan. 28, 2008, 122 Stat. 158, 159; Pub. L. 110–417, [div. A], title X, § 1061(a)(4), Oct. 14, 2008, 122 Stat. 4612.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1477(a)	38:1131(c) (less words in parentheses in clause (2)).	Aug. 1, 1956, ch. 837, §§ 102(7) (as applicable to death gratuity), 301(c), (d), 304(d), 70 Stat. 860, 868, 869.
	38:1134(d).	
1477(b)	38:1101(7) (as applicable to children and as applicable to death gratuity).	
	38:1131(c) (words in parentheses in clause (2)).	
1477(c)	38:1101(7) (less applicability to children, as applicable to death gratuity).	
1477(d)	38:1131(d).	

In subsection (a), the words ''highest on the following list'' are substituted for the words ''first listed below'', in 38:1131(c). The words ''as prescribed by subsection (b)'' are inserted in clause (2) to reflect that subsection. The words ''or persons in loco parentis, as prescribed by subsection (c)'' are inserted in clauses (3) (A) and (4) to reflect the fact that certain persons who are not parents in the normal sense are included as eligible survivors.

In subsection (d), the words ''the death gratuity'' are substituted for the words ''the amount to which he is entitled under this subchapter''. The words ''next in the order prescribed'' are substituted for the words ''first listed under''.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–181, § 645(a)(3), added subsec. (a) and struck out former subsec. (a) which required a death gratuity payable upon the death of a person covered by section 1475 or 1476 of this title to be paid to or for the living survivor highest on a specified list.

Subsec. (b). Pub. L. 110–181, § 645(a)(3), added subsec. (b). Former subsec. (b) redesignated (d).

Subsec. (c). Pub. L. 110–181, § 645(a)(3), added subsec. (c).

Pub. L. 110–181, § 645(a)(1), struck out subsec. (c) which read as follows: ''Clauses (3) and (4) of subsection (a), so far as they apply to parents and persons in loco parentis, include fathers and mothers through adoption, and persons who stood in loco parentis to the decedent for a period of not less than one year at any time before he acquired a status described in section 1475 or 1476 of this title. However, only one father and one mother, or their counterparts in loco parentis, may be recognized in any case, and preference shall be given to those who exercised a parental relationship on the date, or most nearly before the date, on which the decedent entered that status.''

Subsec. (d). Pub. L. 110–181, § 645(a)(2), redesignated subsec. (b) as (d) and substituted ''Treatment of Children.—Subsection (b)(2)'' for ''Subsection (a)(2)'' in introductory provisions.

Pub. L. 110–181, § 645(a)(1), struck out subsec. (d) which read as follows: ''During the period beginning on the date of the enactment of this subsection and ending on September 30, 2007, a person covered by section 1475 or 1476 of this title may designate another person to receive not more than 50 percent of the amount payable under section 1478 of this title. The designation shall indicate the percentage of the amount, to be specified only in 10 percent increments up to the maximum of 50 percent, that the designated person may receive. The balance of the amount of the death gratuity shall be paid to or for the living survivors of the person concerned in accordance with paragraphs (1) through (5) of subsection (a).''

Subsec. (e). Pub. L. 110–417 inserted period at end.

Pub. L. 110–181, § 645(b), inserted heading and substituted ''subsection (a) or (b)'' for ''subsection (a) or (d)'' and ''subsection (b)'' for ''subsection (a).''.

2007—Subsec. (a). Pub. L. 110–28, § 3306(1), substituted ''Subject to subsection (d), a death gratuity'' for ''A death gratuity''.

Subsec. (d). Pub. L. 110–28, § 3306(3), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 110–28, § 3306(2), redesignated subsec. (d) as (e) and substituted ''If a person entitled to all or a portion of a death gratuity under subsection (a) or (d) dies before the person'' for ''If an eligible survivor dies before he''.

1989—Subsec. (b)(5)(C). Pub. L. 101–189 substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs''.

REGULATIONS

Pub. L. 110–181, div. A, title VI, § 645(d), Jan. 28, 2008, 122 Stat. 160, provided that:

''(1) IN GENERAL.—Not later than April 1, 2008, the Secretary of Defense shall prescribe regulations to implement the amendments to section 1477 of title 10, United States Code, made by subsection (a).

''(2) ELEMENTS.—The regulations required by paragraph (1) shall include forms for the making of the designation contemplated by subsection (a) of section 1477 of title 10, United States Code, as amended by subsection (a) of this section, and instructions for members of the Armed Forces in the filling out of such forms.''

EXISTING DESIGNATION AUTHORITY

Pub. L. 110–181, div. A, title VI, § 645(c), Jan. 28, 2008, 122 Stat. 159, provided that: ''The authority provided by subsection (d) of section 1477 of title 10, United States Code, as in effect on the day before the date of the enactment of this Act [Jan. 28, 2008], shall remain available to persons covered by section 1475 or 1476 of such title until July 1, 2008, or such earlier date as the Secretary of Defense may prescribe, and any designation under such subsection made before July 1, 2008, or the earlier date prescribed by the Secretary, shall continue in effect until such time as the person who made the designation makes a new designation under such section 1477, as amended by subsection (a) of this section.''

§ 1478. Death gratuity: amount

(a) The death gratuity payable under sections 1475 through 1477 of this title shall be $100,000. For this purpose:

(1) A person covered by subsection (a)(1) of section 1475 of this title who died while travel-

ing to or from active duty (other than for training) is considered to have been on active duty on the date of his death.

(2) A person covered by subsection (a)(3) of section 1475 of this title who died while traveling directly to or from active duty for training is considered to have been on active duty for training on the date of his death.

(3) A person covered by subsection (a)(3) of section 1475 of this title who died while traveling directly to or from inactive duty training is considered to have been on inactive duty training on the date of his death.

(4) A person covered by subsection (a)(4) of section 1475 of this title who died while performing annual training duty or while traveling directly to or from that duty is considered to have been entitled, on the date of his death, to the pay prescribed by the first sentence of section 209(c) of title 37. A person covered by section 1475(a)(4) of this title who dies while attending field training or a practice cruise under section 2104(b)(6)(B) of this title, or while traveling directly to or from the place where the training or cruise is conducted, is considered to have been entitled, on the date of his death, to the pay prescribed by the second sentence of section 209(c) of title 37.

(5) A person covered by subsection (a)(5) of section 1475 of this title is considered to have been on active duty, on the date of his death, in the grade that he would have held on final acceptance, or entry on active duty.

(6) A person covered by section 1476 of this title is considered to have been entitled, on the date of his death, to pay at the rate to which he was entitled on the last day on which he performed duty or training.

(7) A person covered by section 1475 or 1476 of this title who performed active duty, or inactive duty training, without pay is considered to have been entitled to basic pay while performing that duty or training.

(8) A person covered by section 1475 or 1476 of this title who incurred a disability while on active duty or inactive duty training and who became entitled to basic pay while receiving hospital or medical care, including out-patient care, for that disability, is considered to have been on active duty or inactive duty training, as the case may be, for as long as he is entitled to that pay.

(b) A person who is discharged, or released from active duty (other than for training), is considered to continue on that duty during the period following the date of his discharge or release that, as determined by the Secretary concerned, is necessary for that person to go to his home by the most direct route. That period may not end before midnight of the day on which the member is discharged or released.

[(c) Repealed. Pub. L. 109–163, div. A, title VI, § 664(a)(2)(B), Jan. 6, 2006, 119 Stat. 3316.]

(d)(1) In the case of a person described in paragraph (2), a death gratuity shall be payable, subject to section 664(c) of the National Defense Authorization Act for Fiscal Year 2006, for the death of such person that is in addition to the death gratuity payable in the case of such death under subsection (a).

(2) This subsection applies in the case of a person who died during the period beginning on October 7, 2001, and ending on August 31, 2005, while a member of the armed forces on active duty and whose death did not establish eligibility for an additional death gratuity under the prior subsection (e) of this section (as added by section 1013(b) of Public Law 109–13; 119 Stat. 247), because the person was not described in paragraph (2) of that prior subsection.

(3) The amount of additional death gratuity payable under this subsection shall be $150,000.

(4) A payment pursuant to this subsection shall be paid in the same manner as provided under paragraph (4) of the prior subsection (e) of this section (as added by section 1013(b) of Public Law 109–13; 119 Stat. 247), for payments pursuant to paragraph (3)(A) of that prior subsection.

(Added Pub. L. 85–861, § 1(32)(A), Sept. 2, 1958, 72 Stat. 1454; amended Pub. L. 88–647, title III, § 301(2), Oct. 13, 1964, 78 Stat. 1071; Pub. L. 89–718, § 11, Nov. 2, 1966, 80 Stat. 1117; Pub. L. 102–190, div. A, title VI, § 652(a), Dec. 5, 1991, 105 Stat. 1387; Pub. L. 108–121, title I, § 102(a)(1), Nov. 11, 2003, 117 Stat. 1337; Pub. L. 108–136, div. A, title VI, § 646(a), Nov. 24, 2003, 117 Stat. 1520; Pub. L. 108–375, div. A, title VI, § 643(b), Oct. 28, 2004, 118 Stat. 1958; Pub. L. 109–13, div. A, title I, § 1013(a)–(c), May 11, 2005, 119 Stat. 246–248; Pub. L. 109–163, div. A, title VI, § 664(a)(1), (2), (b), Jan. 6, 2006, 119 Stat. 3316; Pub. L. 109–234, title I, § 1210, June 15, 2006, 120 Stat. 430.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1478(a)	38:1101(6)(B) (last 32 words of 1st sentence, as applicable to death gratuity). 38:1101(10)(B) (as applicable to death gratuity). 38:1101(11)(E) (last 27 words, as applicable to death gratuity). 38:1131(b). 38:1133(d). 38:1134(c).	Aug. 1, 1956, ch. 837, §§ 102(6)(B) (last 32 words of 1st sentence, as applicable to death gratuity), (10)(B) (as applicable to death gratuity), (11)(E) (last 27 words, as applicable to death gratuity), (12) (as applicable to death gratuity), 301(b), 303(d), 304(c), 70 Stat. 859—861, 868, 869.
1478(b)	38:1101(12) (as applicable to death gratuity).	

In subsection (a), the word ''pay'' is substituted for the words ''basic pay (plus special and incentive pays)'', since the word ''pay'', as defined in section 101(27) of this title, includes those types of pay. Clause (1) is inserted to reflect section 1475(a)(1) of this title. Clauses (2) and (3) are substituted for 38:1101(6)(B) (last 32 words of 1st sentence). Clause 4 is substituted for 38:1101(10)(B). The words ''to the pay prescribed by section 4385(c) or 9385(c) of this title'' are inserted to reflect those sections, which prescribe the training pay of members of reserve officers' training corps units. Clause (5) is substituted for 38:1101(11)(E) (last 27 words). Clause (6) is substituted for 38:1133(d). In clause (6), the word ''pay'' is substituted for the words ''basic pay (plus special and incentive pays)'', since the word ''pay'', as defined in section 101(27) of this title, includes those kinds of pay. Clauses (7) and (8) are substituted for 38:1134(c). In those clauses, the words ''active duty for training'' are omitted as covered by the definition of ''active duty'' in section 101(22) of this title. In clause (8), the words ''and who became entitled to basic pay'' are substituted for the words ''and is placed in a pay status'' and the words ''is entitled to that pay'' are substituted for the words ''remains in a pay status''.

In subsection (b), the words ''on or after January 1, 1957'' are omitted as executed. The words ''(other than

for training)'' are inserted, since the words ''active duty'' in the source statute did not include active duty for training. The words ''is considered to continue on that duty'' are substituted for the words ''shall be deemed to continue on active duty''. The last sentence is substituted for 38:1101(12) (last 14 words).

REFERENCES IN TEXT

Section 664(c) of the National Defense Authorization Act for Fiscal Year 2006, referred to in subsec. (d)(1), is section 664(c) of title VI of div. A of Pub. L. 109–163, Jan. 6, 2006, 119 Stat. 3317, which is not classified to the Code.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–163, § 664(a)(1), (2)(A), in introductory provisions, substituted ''$100,000'' for ''$12,000'' and struck out ''(as adjusted under subsection (c))'' before period at end of first sentence.

Subsec. (c). Pub. L. 109–163, § 664(a)(2)(B), struck out subsec. (c) which read as follows: ''Effective on the date on which rates of basic pay under section 204 of title 37 are increased under section 1009 of that title or any other provision of law, the amount of the death gratuity in effect under subsection (a) shall be increased by the same overall average percentage of the increase in the rates of basic pay taking effect on that date.''

Subsec. (d). Pub. L. 109–163, § 664(b), added subsec. (d).

Subsec. (d)(2). Pub. L. 109–234 substituted ''August 31, 2005'' for ''May 11, 2005''.

2005—Subsec. (a). Pub. L. 109–13, § 1013(a)(2), (e), temporarily substituted ''(as adjusted under subsection (d))'' for ''(as adjusted under subsection (c))'' in introductory provisions. See Effective and Termination Dates of 2005 Amendments notes below.

Pub. L. 109–13, § 1013(a)(1)(A), (e), temporarily inserted '', except as provided in subsections (c), (e), and (f)'' after ''$12,000'' in introductory provisions. See Effective and Termination Dates of 2005 Amendments notes below.

Subsec. (c). Pub. L. 109–13, § 1013(a)(1)(C), (e), temporarily added subsec. (c) which read as follows: ''The death gratuity payable under sections 1475 through 1477 of this title is $100,000 in the case of a death resulting from wounds, injuries, or illnesses that are—

''(1) incurred as described in section 1413a(e)(2) of this title; or

''(2) incurred in an operation or area designated as a combat operation or a combat zone, respectively, by the Secretary of Defense under section 1967(e)(1)(A) of title 38.''

Former subsec. (c) temporarily redesignated (d). See Effective and Termination Dates of 2005 Amendments notes below.

Subsec. (d). Pub. L. 109–13, § 1013(a)(1)(B), (e), temporarily redesignated subsec. (c) as (d). See Effective and Termination Dates of 2005 Amendments notes below.

Subsec. (e). Pub. L. 109–13, § 1013(b), (e), temporarily added subsec. (e) which read as follows:

''(e)(1) In the case of a person described in paragraph (2), a death gratuity shall be payable in accordance with this subsection for the death of such person that is in addition to the death gratuity payable in the case of such death under subsection (a).

''(2) This subsection applies in the case of a member of the armed forces who dies before the date of the enactment of this subsection as a direct result of one or more wounds, injuries, or illnesses that—

''(A) were incurred in the theater of operations of Operation Enduring Freedom or Operation Iraqi Freedom; or

''(B) were incurred as described in section 1413a(e)(2) of this title on or after October 7, 2001.

''(3) The amount of additional death gratuity payable under this subsection shall be $238,000, of which—

''(A) $150,000 shall be paid in the manner specified in paragraph (4); and

''(B) $88,000 shall be paid in the manner specified in paragraph (5).

''(4) A payment pursuant to paragraph (3)(A) by reason of a death covered by this subsection shall be paid—

''(A) to a beneficiary in proportion to the share of benefits applicable to such beneficiary in the payment of life insurance proceeds paid on the basis of that death under the Servicemembers Group Life Insurance program under subchapter III of chapter 19 of title 38; or

''(B) in the case of a person who elected not to be insured under the provisions of that subchapter, in equal shares to the person or persons who would have received proceeds under those provisions of law for a member who is insured under that subchapter but does not designate named beneficiaries.

''(5) A payment pursuant to paragraph (3)(B) by reason of a death covered by this subsection shall be paid equal shares to the beneficiaries who were paid the death gratuity that was paid with respect to that death under this section.'' See Effective and Termination Dates of 2005 Amendments notes below.

Subsec. (f). Pub. L. 109–13, § 1013(c), (e), temporarily added subsec. (f) which read as follows:

''(f)(1) In the case of a person described in paragraph (2), a death gratuity shall be payable in accordance with this subsection for the death of such person that is in addition to the death gratuity payable in the case of such death under subsection (e).

''(2) This subsection applies in the case of a member of the armed forces who dies during the period beginning on the date of the enactment of this subsection and ending on the first day of the first month that begins more than 90 days after such date of one or more wounds, injuries, or illnesses that—

''(A) are incurred in the theater of operations of Operation Enduring Freedom or Operation Iraqi Freedom; or

''(B) are incurred as described in section 1413a(e)(2) of this title.

''(3) The amount of additional death gratuity payable under this subsection shall be $150,000.

''(4) A payment pursuant to paragraph (3) by reason of a death covered by this subsection shall be paid—

''(A) to a beneficiary in proportion to the share of benefits applicable to such beneficiary in the payment of life insurance proceeds payable on the basis of that death under the Servicemembers Group Life Insurance program under subchapter III of chapter 19 of title 38; or

''(B) in the case of a person who elected not to be insured under the provisions of that subchapter, in equal shares to the person or persons who receive proceeds under those provisions of law for a member who is insured under that subchapter but does not designate named beneficiaries.''

See Effective and Termination Dates of 2005 Amendments notes below.

2004—Subsec. (a). Pub. L. 108–375, § 643(b)(1), inserted ''(as adjusted under subsection (c))'' before period in introductory provisions.

Subsec. (c). Pub. L. 108–375, § 643(b)(2), added subsec. (c).

2003—Subsec. (a). Pub. L. 108–121 and Pub. L. 108–136 amended subsec. (a) identically, substituting ''$12,000'' for ''$6,000'' in introductory provisions.

1991—Subsec. (a). Pub. L. 102–190, in first sentence, substituted ''1475 through 1477'' for ''1475–1477'' and ''$6,000'' for ''equal to six months' pay at the rate to which the decedent was entitled on the date of his death, except that the gratuity may not be less than $800 of more than $3,000.''

1966—Subsec. (a)(4). Pub. L. 89–718 struck out '', United States Code'' after ''title 37'' in two places.

1964—Subsec. (a)(4). Pub. L. 88–647 substituted ''the first sentence of section 209(c) of title 37, United States Code'' for ''section 4385(c) or 9385(c) of this title'', and provided that a person covered by section 1475(a)(4) of this title who dies in field training or on a practice cruise, or in travel to or from such training or cruise, is considered entitled on the day of his death to the pay

prescribed by the second sentence of section 209(c) of Title 37.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–234, title I, § 1210, June 15, 2006, 120 Stat. 430, provided that the amendment made by section 1210 is effective as of Jan. 6, 2006, and as if included in the enactment of Pub. L. 109–163.

Pub. L. 109–163, div. A, title VI, § 664(a)(3), Jan. 6, 2006, 119 Stat. 3316, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as of October 7, 2001, and shall apply to deaths occurring on or after the date of the enactment of this Act [Jan. 6, 2006] and, subject to subsection (c) [119 Stat. 3317], to deaths occurring during the period beginning on October 7, 2001, and ending on the day before the date of the enactment of this Act.''

EFFECTIVE AND TERMINATION DATES OF 2005 AMENDMENTS

Pub. L. 109–77, § 115, Sept. 30, 2005, 119 Stat. 2040, provided that: ''The provisions of, and amendments made by, sections 1011, 1012, 1013, 1023, and 1026 of Public Law 109–13 [amending this section, section 411h of Title 37, Pay and Allowances of the Uniformed Services, and sections 1967, 1969, 1970, and 1977 of Title 38, Veterans' Benefits, and enacting provisions set out as notes under this section, section 411h of Title 37, and section 1967 of Title 38] shall continue in effect, notwithstanding the fiscal year limitation in section 1011 [119 Stat. 244] and the provisions of sections 1012(i), 1013(e), 1023(c), and 1026(e) of that Public Law [enacting provisions set out as notes under this section, section 411h of Title 37, and section 1967 of Title 38], through the earlier of: (1) the date specified in section 106(3) of this joint resolution [Dec. 31, 2005]; or (2) with respect to any such section of Public Law 109–13, the date of the enactment into law of legislation that supersedes the provisions of, or the amendments made by, that section.''

Pub. L. 109–13, div. A, title I, § 1013(d), (e), May 11, 2005, 119 Stat. 248, provided that:

''(d) EFFECTIVE DATE.—This section [amending this section] and the amendments made by this section shall take effect on the date of the enactment of this Act [May 11, 2005].

''(e) TERMINATION.—

''(1) IN GENERAL.—This section [amending this section] and the amendment made by this subsection [probably means this section] shall terminate on September 30, 2005. Effective as of October 1, 2005, the provisions of section 1478 of title 10, United States Code, as in effect on the date before the date of the enactment of this Act [May 11, 2005] shall be revived.

''(2) CONTINUING OBLIGATION TO PAY.—Any amount of additional death gratuity payable under section 1478 of title 10, United States Code, by reason of the amendments made by subsections (b) and (c) of this section [amending this section] that remains payable as of September 30, 2005, shall, notwithstanding paragraph (1), remain payable after that date until paid.''

EFFECTIVE DATE OF 2003 AMENDMENTS

Pub. L. 108–136, div. A, title VI, § 646(b), Nov. 24, 2003, 117 Stat. 1520, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect as of September 11, 2001, and shall apply with respect to deaths occurring on or after that date.''

Pub. L. 108–121, title I, § 102(a)(2), Nov. 11, 2003, 117 Stat. 1337, provided that: ''The amendment made by this subsection [amending this section] shall take effect as of September 11, 2001, and shall apply with respect to deaths occurring on or after that date.''

EFFECTIVE DATE OF 1991 AMENDMENT; TRANSITION PROVISION

Section 652(b) of Pub. L. 102–190 provided that:

''(1) The amendments made by subsection (a) [amending this section] shall take effect as of August 2, 1990.

''(2) In the case of the payment of a death gratuity under sections 1475 through 1477 of title 10, United States Code, with respect to a person who died during the period beginning on August 2, 1990, and ending on the date of the enactment of this Act [Dec. 5, 1991], the amount of the death gratuity under section 1478(a) of such title (as amended by subsection (a)) shall be reduced by the amount of any such gratuity paid with respect to such person under this section (as in effect on August 1, 1990).''

TEMPORARY INCREASE IN AMOUNT OF DEATH GRATUITY; PERSIAN GULF CONFLICT

Pub. L. 102–25, title III, § 307, Apr. 6, 1991, 105 Stat. 82, provided that: ''In lieu of the amount of the death gratuity specified in section 1478(a) of title 10, United States Code, the amount of the death gratuity payable under that section shall be $6,000 for a death resulting from any injury or illness incurred during the Persian Gulf conflict or during the 180-day period beginning at the end of the Persian Gulf conflict.''

DEATH GRATUITY FOR CERTAIN PARTICIPANTS WHO DIED BETWEEN AUGUST 1, 1990, AND APRIL 6, 1991

Pub. L. 102–25, title III, § 308, Apr. 6, 1991, 105 Stat. 83, required Secretary of Defense to pay death gratuity to each SGLI beneficiary of each deceased member of uniformed services who died after Aug. 1, 1990, and before Apr. 6, 1991, and whose death was in conjunction with or in support of Operation Desert Storm, or attributable to hostile action in regions other than Persian Gulf, as prescribed in regulations set forth by Secretary of Defense.

§ 1479. Death gratuity: delegation of determinations, payments

For the purpose of making immediate payments under section 1475 of this title, the Secretary concerned shall—

(1) authorize the commanding officer of a territorial command, installation, or district in which a survivor of a person covered by that section is residing to determine the beneficiary eligible for the death gratuity; and

(2) authorize a disbursing or certifying official of each of those commands, installations, or districts to make the payments to the beneficiary, or certify the payments due them, as the case may be.

(Added Pub. L. 85–861, § 1(32)(A), Sept. 2, 1958, 72 Stat. 1455; amended Pub. L. 97–258, § 2(b)(1)(A), Sept. 13, 1982, 96 Stat. 1052.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1479	38:1132.	Aug. 1, 1956, ch. 837, § 302, 70 Stat. 868.

The word ''territorial'' is substituted for the words ''military or naval'', since the subsection could only apply to that type of command, installation, or district. Clause (2) is substituted for 38:1132(2).

AMENDMENTS

1982—Par. (2). Pub. L. 97–258 substituted ''official'' for ''officer''.

§ 1480. Death gratuity: miscellaneous provisions

(a) A payment may not be made under sections 1475–1477 of this title if the decedent was put to death as lawful punishment for a crime or a military offense, unless he was put to death by a hostile force with which the armed forces of the United States were engaged in armed conflict.

(b) A payment may not be made under section 1476 unless the Secretary of Veterans Affairs determines that the decedent was discharged or released, as the case may be, under conditions other than dishonorable from the last period of the duty or training that he performed.

(c) For the purposes of section 1475(a)(3) of this title, the Secretary concerned shall determine whether the decedent was authorized or required to perform the duty or training and whether or not he died from injury so incurred. For the purposes of section 1476 of this title, the Secretary of Veterans Affairs shall make those determinations. In making those determinations, the Secretary concerned or the Secretary of Veterans Affairs, as the case may be, shall consider—

(1) the hour on which the Reserve began to travel directly to or from the duty or training;

(2) the hour at which he was scheduled to arrive for, or at which he ceased performing, that duty or training;

(3) the method of travel used;

(4) the itinerary;

(5) the manner in which the travel was performed; and

(6) the immediate cause of death.

In cases covered by this subsection, the burden of proof is on the claimant.

(d) Payments under sections 1475–1477 of this title shall be made from appropriations available for the payment of members of the armed force concerned.

(Added Pub. L. 85–861, § 1(32)(A), Sept. 2, 1958, 72 Stat. 1455; amended Pub. L. 101–189, div. A, title XVI, § 1621(a)(2), (5), Nov. 29, 1989, 103 Stat. 1603.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1480(a)	38:1134(a).	Aug. 1, 1956, ch. 837, §§ 102(6)(B) (less 1st sentence, as applicable to death gratuity) 303(e), 304(a), (b), 70 Stat. 859, 869.
1480(b)	38:1133(e).	
1480(c)	38:1101(6)(B) (less 1st sentence, as applicable to death gratuity).	
1480(d)	38:1134(b).	

In subsection (a), the words ''was put to death'' are substituted for the words ''suffered death''. The words ''or naval'' are omitted as covered by the word ''military''.

In subsection (b), the words ''last period * * * that he performed'' are substituted for the words ''such period''.

AMENDMENTS

1989—Subsec. (b). Pub. L. 101–189, § 1621(a)(2), substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs''.

Subsec. (c). Pub. L. 101–189, § 1621(a)(2), (5), substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs'' after ''section 1476 of this title, the'' and ''the Secretary concerned or the Secretary of Veterans Affairs'' for ''the Secretary or the Administrator''.

§ 1481. Recovery, care, and disposition of remains: decedents covered

(a) The Secretary concerned may provide for the recovery, care, and disposition of the remains of the following persons:

(1) Any Regular of an armed force under his jurisdiction who dies while on active duty.

(2) A member of a reserve component of an armed force who dies while—

(A) on active duty;

(B) performing inactive-duty training;

(C) performing authorized travel directly to or from active duty or inactive-duty training;

(D) remaining overnight immediately before the commencement of inactive-duty training, or remaining overnight, between successive periods of inactive-duty training, at or in the vicinity of the site of the inactive-duty training;

(E) hospitalized or undergoing treatment for an injury, illness, or disease incurred or aggravated while on active duty or performing inactive-duty training; or

(F) either—

(i) serving on funeral honors duty under section 12503 of this title or section 115 of title 32;

(ii) traveling directly to or from the place at which the member is to so serve; or

(iii) remaining overnight at or in the vicinity of that place before so serving, if the place is outside reasonable commuting distance from the member's residence.

[(3) Repealed. Pub. L. 99–661, div. A, title VI, § 604(e)(3)(B), Nov. 14, 1986, 100 Stat. 3877.]

(4) Any member of, or applicant for membership in, a reserve officers' training corps who dies while (A) attending a training camp, (B) on an authorized practice cruise, (C) performing authorized travel to or from such a camp or cruise, or (D) hospitalized or undergoing treatment at the expense of the United States for injury incurred, or disease contracted, while attending such a camp, while on such a cruise, or while performing that travel.

(5) Any accepted applicant for enlistment in an armed force under his jurisdiction.

(6) Any person who has been discharged from an enlistment in an armed force under his jurisdiction while a patient in a United States hospital, and who continues to be such a patient until the date of his death.

(7) A person who—

(A) dies as a retired member of an armed force under the Secretary's jurisdiction during a continuous hospitalization of the member as a patient in a United States hospital that began while the member was on active duty for a period of more than 30 days; or

(B) is not covered by subparagraph (A) and, while in a retired status by reason of eligibility to retire under chapter 61 of this title, dies during a continuous hospitalization of the person that began while the person was on active duty as a Regular of an armed force under the Secretary's jurisdiction.

(8) Any military prisoner who dies while in his custody.

(9) To the extent authorized under section 1482(f) of this title, any retired member of an armed force who dies while outside the United States or any individual who dies outside the United States while a dependent of such a member.

(b) This section applies to each person covered by subsection (a)(1)–(7) even though he may have been temporarily absent from active duty, with

or without leave, at the time of his death, unless he had been dropped from the rolls of his organization before his death.

(c) In this section, the term ''dependent'' has the meaning given such term in section 1072(2) of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 112; Pub. L. 88–647, title III, §301(3), Oct. 13, 1964, 78 Stat. 1071; Pub. L. 99–661, div. A, title VI, §604(e)(3), Nov. 14, 1986, 100 Stat. 3877; Pub. L. 103–337, div. A, title VI, §652(a)(1), Oct. 5, 1994, 108 Stat. 2793; Pub. L. 104–106, div. A, title VII, §702(b), Feb. 10, 1996, 110 Stat. 371; Pub. L. 105–85, div. A, title V, §513(e), Nov. 18, 1997, 111 Stat. 1732; Pub. L. 105–261, div. A, title VI, §645(a), (b), Oct. 17, 1998, 112 Stat. 2049, 2050; Pub. L. 106–65, div. A, title V, §578(i)(5), Oct. 5, 1999, 113 Stat. 630; Pub. L. 106–398, §1 [[div. A], title X, §1087(d)(3)], Oct. 30, 2000, 114 Stat. 1654, 1654A–293; Pub. L. 107–107, div. A, title V, §513(c), title VI, §638(b)(2), Dec. 28, 2001, 115 Stat. 1093, 1147.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1481(a)	5:2151 (as applicable to armed forces). 5:2152 (1st 27 words, as applicable to armed forces). 5:2153 (less 1st 18 words, as applicable to armed forces).	July 15, 1954, ch. 507, §§1, 2 (1st 25 words, as applicable to armed forces), 3 (less 1st 16 words, as applicable to armed forces), 4 (as applicable to armed forces), 68 Stat. 478.
1481(b)	5:2154 (as applicable to armed forces).	

In subsection (a), 5:2151 is omitted as covered by the revised sections of this chapter. In clauses (1), (2), (5)–(7), the words ''under his jurisdiction'' are inserted for clarity. In clause (1) the words ''regular member of an armed force, or member of an armed force without component'' are substituted for the words ''military personnel'', since all other members of the military services are covered by more specific rules set forth in clauses (2) and (7). In clauses (2) and (3), the words ''active duty for training'' are omitted as covered by the words ''active duty''. The words ''injury incurred, or disease contracted'' are substituted for the words ''injuries, illness, or disease contracted or incurred''. The words ''by law'', ''authorized'', ''proper authority'', and ''as authorized by law'' are omitted as surplusage. In clause (3), the words ''while entitled to'' are substituted for the words ''in respect of duty for which they are entitled by law to receive''. In clause (4), the words ''injury incurred, or disease contracted'' are substituted for the words ''injury, disease or illness contracted or incurred''. The words ''as authorized by law'' are omitted as surplusage. In clause (6), the word ''person'' is substituted for the words ''former enlisted members''. In clause (7), the words ''active duty for a period of more than 30 days'' are substituted for the words ''extended active duty''.

In subsection (b), the words ''This section applies to each person * * * even though'' are substituted for the words ''The benefits of this Act shall not be denied in respect of a person * * * on the ground''.

AMENDMENTS

2001—Subsec. (a)(2)(D). Pub. L. 107–107, §513(c), struck out '', if the site is outside reasonable commuting distance from the member's residence'' before semicolon at end.

Subsec. (a)(9). Pub. L. 107–107, §638(b)(2), substituted ''section 1482(f)'' for ''section 1482(g)''.

2000—Subsec. (a)(1). Pub. L. 106–398 amended directory language of Pub. L. 105–261, §645(b). See 1998 Amendment note below.

1999—Subsec. (a)(2)(F). Pub. L. 106–65 added subpar. (F).

1998—Subsec. (a)(1). Pub. L. 105–261, §645(b), as amended by Pub. L. 106–398, struck out '', or member of an armed force without component,'' after ''Regular of an armed force''.

Subsec. (a)(7). Pub. L. 105–261, §645(a), amended par. (7) generally. Prior to amendment, par. (7) read as follows: ''Any retired member of an armed force under his jurisdiction who becomes a patient in a United States hospital while he is on active duty for a period of more than 30 days, and who continues to be such a patient until the date of his death.''

1997—Subsec. (a)(2)(D). Pub. L. 105–85 inserted ''remaining overnight immediately before the commencement of inactive-duty training, or'' after ''(D)''.

1996—Subsec. (a)(2)(C) to (E). Pub. L. 104–106 struck out ''or'' at end of subpar. (C), added subpar. (D), and redesignated former subpar. (D) as (E).

1994—Subsec. (a). Pub. L. 103–337, §652(a)(1)(A), substituted ''the remains of the following persons:'' for ''the remains of—'', capitalized the first letter of the first word in pars. (1) to (8), substituted a period for the last semicolon in pars. (1) to (6), substituted a period for ''; and'' in par. (7), and added par. (9).

Subsec. (c). Pub. L. 103–337, §652(a)(1)(B), added subsec. (c).

1986—Subsec. (a)(2), (3). Pub. L. 99–661 added par. (2) and struck out former pars. (2) and (3) which read as follows:

''(2) any Reserve of an armed force under his jurisdiction who dies while (A) on active duty, (B) performing authorized travel to or from that duty, (C) on authorized inactive-duty training, or (D) hospitalized or undergoing treatment at the expense of the United States for injury incurred, or disease contracted, while on that duty or training or while performing that travel;

''(3) any member of the Army National Guard or Air National Guard who dies while entitled to pay from the United States and while (A) on active duty, (B) performing authorized travel to or from that duty, (C) on authorized inactive-duty training, or (D) hospitalized or undergoing treatment at the expense of the United States for injury incurred, or disease contracted, while on that duty or training or while performing that travel;''.

1964—Subsec. (a)(4). Pub. L. 88–647 substituted '', or applicant for membership in, a reserve officers' training corps'' for ''the Army Reserve Officers' Training Corps, Naval Reserve Officers' Training Corps, or Air Force Reserve Officers' Training Corps''.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, §1 [[div. A], title X, §1087(d)], Oct. 30, 2000, 114 Stat. 1654, 1654A–292, provided that the amendment made by section 1 [[div. A], title X, §1087(d)(3)] is effective Oct. 17, 1998, and as if included in the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, Pub. L. 105–261, as enacted.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–261, div. A, title VI, §645(c), Oct. 17, 1998, 112 Stat. 2050, provided that: ''The amendment made by subsection (a) [amending this section] applies with respect to deaths occurring on or after the date of the enactment of this Act [Oct. 17, 1998].''

EFFECTIVE DATE OF 1994 AMENDMENT

Section 652(a)(3) of Pub. L. 103–337 provided that: ''The amendments made by this subsection [amending this section and section 1482 of this title] shall apply with respect to the remains of, and incidental expenses incident to the recovery, care, and disposition of, an individual who dies after the date of the enactment of this Act [Oct. 5, 1994].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–661 applicable with respect to persons who, after Nov. 14, 1986, incur or aggravate an injury, illness, or disease or die, see section 604(g) of

Pub. L. 99–661, set out as a note under section 1074a of this title.

REQUIREMENT FOR DEPLOYING MILITARY MEDICAL PERSONNEL TO BE TRAINED IN PRESERVATION OF REMAINS UNDER COMBAT OR COMBAT-RELATED CONDITIONS

Pub. L. 109–364, div. A, title V, § 567, Oct. 17, 2006, 120 Stat. 2224, provided that:

''(a) REQUIREMENT.—The Secretary of each military department shall ensure that each military health care professional under that Secretary's jurisdiction who is deployed to a theater of combat operations is trained, before such deployment, in the preservation of remains under combat or combat-related conditions.

''(b) MATTERS COVERED BY TRAINING.—The training under subsection (a) shall include, at a minimum, the following:

''(1) Best practices and procedures for the preservation of the remains of a member of the Armed Forces after death, taking into account the conditions likely to be encountered and the objective of returning the remains to the member's family in the best possible condition.

''(2) Practical case studies based on experience of the Armed Forces in a variety of climactic conditions.

''(c) COVERED MILITARY HEALTH CARE PROFESSIONALS.—In this section, the term 'military health care professional' means—

''(1) a physician, nurse, nurse practitioner, physician assistant, or combat medic; and

''(2) any other medical personnel with medical specialties who may provide direct patient care and who are designated by the Secretary of the military department concerned.

''(d) EFFECTIVE DATE.—Subsection (a) shall apply with respect to any military health care professional who is deployed to a theater of combat operations after the end of the 90-day period beginning on the date of the enactment of this Act [Oct. 17, 2006].''

§ 1482. Expenses incident to death

(a) Incident to the recovery, care, and disposition of the remains of any decedent covered by section 1481 of this title, the Secretary concerned may pay the necessary expenses of the following:

(1) Recovery and identification of the remains.

(2) Notification to the next of kin or other appropriate person.

(3) Preparation of the remains for burial, including cremation if requested by the person designated to direct disposition of the remains.

(4) Furnishing of a uniform or other clothing.

(5) Furnishing of a casket or urn, or both, with outside box.

(6) Hearse service.

(7) Funeral director's services.

(8) Transportation of the remains, and roundtrip transportation and prescribed allowances for an escort of one person, to the place selected by the person designated to direct disposition of the remains or, if such a selection is not made, to a national or other cemetery which is selected by the Secretary and in which burial of the decedent is authorized. When transportation of the remains includes transportation by aircraft under section 562 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364; 10 U.S.C. 1482 note), the Secretary concerned shall provide, to the maximum extent practicable, for delivery of the remains by air to the commercial, general aviation, or military airport nearest to the place selected by the designee.

(9) Interment of the remains.

(b) If an individual pays any expense payable by the United States under this section, the Secretary concerned shall reimburse him or his representative in an amount not larger than that normally incurred by the Secretary in furnishing the supply or service concerned. If reimbursement by the United States is also authorized under another provision of law or regulation, the individual may elect under which provision to be reimbursed.

(c) Only the following persons may be designated to direct disposition of the remains of a decedent covered by this chapter:

(1) The surviving spouse of the decedent.

(2) Blood relatives of the decedent.

(3) Adoptive relatives of the decedent.

(4) If no person covered by clauses (1)–(3) can be found, a person standing in loco parentis to the decedent.

(d) When the remains of a decedent covered by section 1481 of this title, whose death occurs after January 1, 1961, are determined to be nonrecoverable, the person who would have been designated under subsection (c) to direct disposition of the remains if they had been recovered may be—

(1) presented with a flag of the United States; however, if the person designated by subsection (c) is other than a parent of the deceased member, a flag of equal size may also be presented to the parents, and

(2) reimbursed by the Secretary concerned for the necessary expenses of a memorial service.

However, the amount of the reimbursement shall be determined in the manner prescribed in subsection (b) for an interment, but may not be larger than that authorized when the United States provides the grave site. A claim for reimbursement under this subsection may be allowed only if it is presented within two years after the date of death or the date the person who would have been designated under subsection (c) to direct disposition of the remains, if they had been recovered, receives notification that the member has been reported or determined to be dead under authority of chapter 10 of title 37, whichever is later.

(e) PRESENTATION OF FLAG OF THE UNITED STATES.—(1) In the case of a decedent covered by section 1481 of this title, the Secretary concerned may pay the necessary expenses for the presentation of a flag of the United States to the following persons:

(A) The person designated under subsection (c) to direct disposition of the remains of the decedent.

(B) The parents or parent of the decedent, if the person to be presented a flag under subparagraph (A) is other than a parent of the decedent.

(C) The surviving spouse of the decedent (including a surviving spouse who remarries after the decedent's death), if the person to be pre-

sented a flag under subparagraph (A) is other than the surviving spouse.

(D) Each child of the decedent, regardless of whether the person to be presented a flag under subparagraph (A) is a child of the decedent.

(2) The Secretary concerned may pay the necessary expenses for the presentation of a flag to the person designated to direct the disposition of the remains of a member of the Reserve of an armed force under his jurisdiction who dies under honorable circumstances as determined by the Secretary and who is not covered by section 1481 of this title if, at the time of such member's death, he—

(A) was a member of the Ready Reserve; or

(B) had performed at least twenty years of service as computed under section 12732 of this title and was not entitled to retired pay under section 12731 of this title.

(3) A flag to be presented to a person under subparagraph (B), (C), or (D) of paragraph (1) shall be of equal size to the flag presented under subparagraph (A) of such paragraph to the person designated to direct disposition of the remains of the decedent.

(4) This subsection does not apply to a military prisoner who dies while in the custody of the Secretary concerned and while under a sentence that includes a discharge.

(5) In this subsection:

(A) The term ''parent'' includes a natural parent, a stepparent, a parent by adoption, or a person who for a period of not less than one year before the death of the decedent stood in loco parentis to the decedent. Preference under paragraph (1)(B) shall be given to the persons who exercised a parental relationship at the time of, or most nearly before, the death of the decedent.

(B) The term ''child'' has the meaning prescribed by section 1477(d) of this title.

(f) The payment of expenses incident to the recovery, care, and disposition of a decedent covered by section 1481(a)(9) of this title is limited to the payment of expenses described in paragraphs (1) through (5) of subsection (a) and air transportation of the remains from a location outside the United States to a point of entry in the United States. Such air transportation may be provided without reimbursement on a space-available basis in military or military-chartered aircraft. The Secretary concerned shall pay all other expenses authorized to be paid under this subsection only on a reimbursable basis. Amounts reimbursed to the Secretary concerned under this subsection shall be credited to appropriations available, at the time of reimbursement, for the payment of such expenses.

(Aug. 10, 1956, ch. 1041, 70A Stat. 113; Pub. L. 85–716, Aug. 21, 1958, 72 Stat. 708; Pub. L. 91–397, Sept. 1, 1970, 84 Stat. 837; Pub. L. 91–487, Oct. 22, 1970, 84 Stat. 1086; Pub. L. 93–292, May 28, 1974, 88 Stat. 176; Pub. L. 93–649, Jan. 8, 1975, 88 Stat. 2361; Pub. L. 101–189, div. A, title VI, §§652(a)(3), 653(a)(6), title XVI, §1622(c)(4), Nov. 29, 1989, 103 Stat. 1461, 1462, 1604; Pub. L. 103–337, div. A, title VI, §652(a)(2), title XVI, §1671(c)(8), Oct. 5, 1994, 108 Stat. 2793, 3014; Pub. L. 104–106, div. A, title XV, §1501(c)(19), Feb. 10, 1996, 110 Stat. 499; Pub. L. 107–107, div. A, title VI, §638(b)(1), Dec. 28, 2001, 115 Stat. 1147; Pub. L. 110–181, div. A, title V, §591, Jan. 28, 2008, 122 Stat. 138; Pub. L. 110–417, [div. A], title V, §581, Oct. 14, 2008, 122 Stat. 4472.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1482(a)	5:2152 (less 1st 27 words, as applicable to armed forces). 5:2153 (1st 18 words, as applicable to armed forces).	July 15, 1954, ch. 507, §§2 (less 1st 25 words, as applicable to armed forces), 3 (1st 16 words, as applicable to armed forces), 11 (as applicable to armed forces), 12 (as applicable to armed forces), 68 Stat. 478, 480, 481.
1482(b)	5:2161 (as applicable to armed forces).	
1482(c)	5:2162 (as applicable to armed forces).	

In subsection (a), the list of payable expenses has been rearranged to produce a generally chronological result. The words ''person designated'' are substituted for the words ''person recognized as the person.''

In subsection (a)(4), the words ''articles of'' are omitted as surplusage.

In subsection (a)(8), the word ''place'' is substituted for the words ''town or city''.

In subsection (a)(10), the words ''other than honorable'' are omitted, since a person cannot be sentenced to an honorable discharge.

In subsection (b), the words ''If an individual pays'' are substituted for the words ''In any case where expenses * * * are borne by individuals''. The second sentence of 5:2161 is omitted as executed. The last sentence is substituted for the last sentence of 5:2161.

In subsection (c), 5:2162 (1st sentence) is omitted since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory functions. The introductory language is substituted for 5:2162 (1st 22 words of 2d sentence). The words ''ascertained and'' are omitted as surplusage.

AMENDMENTS

2008—Subsec. (a)(8). Pub. L. 110–181 inserted at end ''When transportation of the remains includes transportation by aircraft under section 562 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364; 10 U.S.C. 1482 note), the Secretary concerned shall provide, to the maximum extent practicable, for delivery of the remains by air to the commercial, general aviation, or military airport nearest to the place selected by the designee.''

Subsec. (a)(10), (11). Pub. L. 110–417, §581(b), struck out pars. (10) and (11) which read as follows:

''(10) Presentation of a flag of the United States to the person designated to direct disposition of the remains, except in the case of a military prisoner who dies while in the custody of the Secretary and while under a sentence that includes a discharge.

''(11) Presentation of a flag of equal size to the flag presented under paragraph (10) to the parents or parent, if the person to be presented a flag under paragraph (10) is other than the parent of the decedent. For the purpose of this paragraph, the term 'parent' includes a natural parent, a stepparent, a parent by adoption or a person who for a period of not less than one year before the death of the decedent stood in loco parentis to him, and preference under this paragraph shall be given to the persons who exercised a parental relationship at the time of, or most nearly before, the death of the decedent.''

Subsec. (e). Pub. L. 110–417, §581(a), designated existing provisions as par. (2), redesignated former pars. (1) and (2) of subsec. (e) as subpars. (A) and (B), respectively, of par. (2), inserted subsec. (e) heading, and added pars. (1) and (3) to (5).

2001—Subsecs. (d) to (g). Pub. L. 107–107 redesignated subsecs. (e) to (g) as (d) to (f), respectively, and struck

out former subsec. (d) which read as follows: ''When, as a result of a disaster involving the multiple deaths of persons covered by section 1481 of this title, the Secretary concerned has possession of commingled remains that cannot be individually identified, and burial of those remains in a common grave in a national cemetery is considered necessary, he may, for the interment services of each known decedent, pay the expenses of round-trip transportation to the cemetery of (1) the person who would have been designated under subsection (c) to direct disposition of the remains if individual identification had been made, and (2) two additional persons selected by that person who are closely related to the decedent. The transportation expenses authorized to be paid under this subsection may not exceed the transportation allowances authorized for members of the armed forces for travel on official business, but no per diem allowance may be paid.''

1996—Subsec. (f)(2). Pub. L. 104–106 inserted ''section'' before ''12731''.

1994—Subsec. (f)(2). Pub. L. 103–337, § 1671(c)(8), substituted ''section 12732'' for ''section 1332'' and ''12731'' for ''section 1331''.

Subsec. (g). Pub. L. 103–337, § 652(a)(2), added subsec. (g).

1989—Subsec. (a). Pub. L. 101–189, § 653(a)(6)(A), substituted ''expenses of the following:'' for ''expenses of—'' in introductory provisions.

Subsec. (a)(1) to (9). Pub. L. 101–189, § 653(a)(6)(B), (C), in each of pars. (1) to (9), capitalized first letter of first word and substituted period for semicolon at the end.

Subsec. (a)(10). Pub. L. 101–189, § 653(a)(6)(B), (D), capitalized first letter of first word and substituted period for ''; and''.

Subsec. (a)(11). Pub. L. 101–189, § 653(a)(6)(B), (E), capitalized first letter of first word, substituted ''paragraph'' for ''clause'' in four places, and substituted ''decedent. For the'' for ''decedent; for the''.

Subsec. (e). Pub. L. 101–189, §§ 652(a)(3), 1622(c)(4), substituted ''the date of death'' for ''the effective date of this subsection, or the date of death,'' and ''chapter 10 of title 37'' for ''chapter 10, title 37'' in last sentence.

1975—Subsec. (e). Pub. L. 93–649 inserted provision relating to date of notification of death under authority of chapter 10, title 37, to that person who would have been designated under subsection (c) to direct disposition of the remains, had they been recovered.

1974—Subsec. (f). Pub. L. 93–292 added subsec. (f).

1970—Subsec. (a)(11). Pub. L. 91–397 added cl. (11).

Subsec. (e). Pub. L. 91–487 added subsec. (e).

1958—Subsec. (d). Pub. L. 85–716 added subsec. (d).

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 section 652(a)(2) of Pub. L. 103–337 applicable with respect to remains of, and incidental expenses incident to recovery, care, and disposition of, an individual who dies after Oct. 5, 1994, see section 652(a)(3) of Pub. L. 103–337, set out as a note under section 1481 of this title.

Amendment by section 1671(c)(8) of Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

DEPARTMENT OF DEFENSE POLICY AND PROCEDURES ON MEDIA ACCESS AT CEREMONIES FOR DIGNIFIED TRANSFER OF REMAINS OF MEMBERS OF THE ARMED FORCES WHO DIE OVERSEAS

Pub. L. 111–84, div. A, title V, § 542(a), Oct. 28, 2009, 123 Stat. 2299, provided that:

''(1) POLICY REQUIRED.—Not later than April 1, 2010, the Secretary of Defense shall prescribe a policy guaranteeing media access at ceremonies for the dignified transfer of remains of members of the Armed Forces who die while located or serving overseas (in this section referred to as 'military decedents') when approved by the primary next of kin of such military decedents.

''(2) PROCEDURES.—The policy developed under paragraph (1) shall include procedures to be followed by the military departments in conducting appropriate ceremonies for the dignified transfer of remains of military decedents. The procedures shall be uniform across the military departments except to the extent necessary to reflect the traditional practices or customs of a particular military department.

''(3) ELEMENTS.—The policy developed under paragraph (1) shall include, but not be limited to, the following:

''(A) Provision for access by media representatives to transfers described in paragraph (1) if approved in advance by the primary next of kin of the military decedent or their designee.

''(B) Procedures for designating with certainty who is authorized to make the decision to approve media access at transfer ceremonies described in that paragraph under reasonable, foreseeable circumstances.

''(C) Conditions for coverage that media representatives must comply with during such transfer ceremonies, and procedures for ensuring agreement in advance by media representatives with the conditions for coverage prescribed by military authorities.

''(D) Procedures for the waiver by the primary next of kin or other designees of Departmental polices relating to delays in release of casualty information to the media and general public, when such waiver is required.''

TRANSPORTATION OF REMAINS OF CASUALTIES DYING IN A THEATER OF COMBAT OPERATIONS

Pub. L. 109–364, div. A, title V, § 562, Oct. 17, 2006, 120 Stat. 2220, provided that:

''(a) REQUIRED TRANSPORTATION.—In the case of a member of the Armed Forces who dies in a combat theater of operations and whose remains are returned to the United States through the mortuary facility at Dover Air Force Base, Delaware, the Secretary concerned, under regulations prescribed by the Secretary of Defense, shall provide transportation of the remains of that member from Dover Air Force Base to the applicable escorted remains destination in accordance with section 1482(a)(8) of title 10, United States Code, and this section.

''(b) ESCORTED REMAINS DESTINATION.—In this section, the term 'escorted remains destination' means the place to which remains are authorized to be transported under section 1482(a)(8) of title 10, United States Code.

''(c) AIR TRANSPORTATION FROM DOVER AFB.—

''(1) MILITARY TRANSPORTATION.—If transportation of remains under subsection (a) includes transportation by air, such transportation (except as provided under paragraph (2)) shall be made by military aircraft or military-contracted aircraft.

''(2) ALTERNATIVE TRANSPORTATION BY AIRCRAFT.—The provisions of paragraph (1) shall not be applicable to the transportation of remains by air to the extent that the person designated to direct disposition of the remains directs otherwise.

''(3) PRIMARY MISSION.—When remains are transported by military aircraft or military-contracted aircraft under this section, the primary mission of the aircraft providing that transportation shall be the transportation of such remains. However, more than one set of remains may be transported on the same flight.

''(d) ESCORT.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary concerned shall ensure that remains transported under this section are continuously escorted from Dover Air Force Base to the applicable escorted remains destination by a member of the Armed Forces in an appropriate grade, as determined by the Secretary.

''(2) OTHER ESCORT.—If a specific military escort is requested by the person designated to direct disposition of such remains and the Secretary approves that request, then the Secretary is not required to provide an additional military escort under paragraph (1).

''(e) HONOR GUARD DETAIL.—

''(1) PROVISION OF DETAIL.—Except in a case in which the person designated to direct disposition of remains requests that no military honor guard be present, the Secretary concerned shall ensure that an honor guard detail is provided in each case of the transportation of remains under this section. The honor guard detail shall be in addition to the escort provided for the transportation of remains under section (d).

''(2) COMPOSITION.—An honor guard detail provided under this section shall consist of sufficient members of the Armed Forces to perform the duties specified in paragraph (3). The members of the honor guard detail shall be in uniform.

''(3) DUTIES.—Except to the extent that the person designated to direct disposition of remains requests that any of the following functions not be performed, an honor guard detail under this section—

''(A) shall—

''(i) travel with the remains during transportation; or

''(ii) meet the remains at the place to which transportation by air (or by rail or motor vehicle, if applicable) is made for the transfer of the remains;

''(B) shall provide appropriate honors at the arrival of the remains referred to in subparagraph (A)(ii) (unless airline or other security requirements do not permit such honors to be provided); and

''(C) shall participate in the transfer of the remains from an aircraft, when airport and airline security requirements permit, by carrying out the remains with a flag draped over the casket to a hearse or other form of ground transportation for travel to a funeral home or other place designated by the person designated to direct disposition of such remains.

''(f) SECRETARY CONCERNED DEFINED.—In this section, the term 'Secretary concerned' has the meaning given that term in section 101(a)(9) of title 10, United States Code.

''(g) EFFECTIVE DATE.—This section shall take effect at such time as may be prescribed by the Secretary of Defense, but not later than January 1, 2007.''

§ 1482a. Expenses incident to death: civilian employees serving with an armed force

(a) PAYMENT OF EXPENSES.—The Secretary concerned may pay the expenses incident to the death of a civilian employee who dies of injuries incurred in connection with the employee's service with an armed force in a contingency operation, or who dies of injuries incurred in connection with a terrorist incident occurring during the employee's service with an armed force, as follows:

(1) Round-trip transportation and prescribed allowances for one person to escort the remains of the employee to the place authorized under section 5742(b)(1) of title 5.

(2) Presentation of a flag of the United States to the next of kin of the employee.

(3) Presentation of a flag of equal size to the flag presented under paragraph (2) to the parents or parent of the employee, if the person to be presented a flag under paragraph (2) is other than the parent of the employee.

(b) REGULATIONS.—The Secretary of Defense shall prescribe regulations to implement this section. The Secretary of Homeland Security shall prescribe regulations to implement this section with regard to civilian employees of the Department of Homeland Security. Regulations under this subsection shall be uniform to the extent possible and shall provide for the Secretary's consideration of the conditions and circumstances surrounding the death of an employee and the nature of the employee's service with the armed force.

(c) DEFINITIONS.—In this section:

(1) The term ''civilian employee'' means a person employed by the Federal Government, including a person entitled to basic pay in accordance with the General Schedule provided in section 5332 of title 5 or a similar basic pay schedule of the Federal Government.

(2) The term ''contingency operation'' includes humanitarian operations, peacekeeping operations, and similar operations.

(3) The term ''parent'' has the meaning given such term in section 1482(e)(5)(A) of this title.

(4) The term ''Secretary concerned'' includes the Secretary of Defense with respect to employees of the Department of Defense who are not employees of a military department.

(Added Pub. L. 103–160, div. A, title III, § 368(a), Nov. 30, 1993, 107 Stat. 1633; amended Pub. L. 103–337, div. A, title X, § 1070(a)(8)(A), Oct. 5, 1994, 108 Stat. 2855; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 111–383, div. A, title X, § 1075(b)(20), Jan. 7, 2011, 124 Stat. 4370.)

AMENDMENTS

2011—Subsec. (c)(3). Pub. L. 111–383 substituted ''section 1482(e)(5)(A)'' for ''section 1482(a)(11)''.

2002—Subsec. (b). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation'' in two places.

1994—Pub. L. 103–337 substituted ''civilian'' for ''Civilian'' in section catchline.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE

Section 368(c) of Pub. L. 103–160 provided that: ''The amendments made by this section [enacting this section] shall apply with respect to the payment of incidental expenses for civilian employees who die while serving in a contingency operation that occurs after the date of the enactment of this Act [Nov. 30, 1993].''

§ 1483. Prisoners of war and interned enemy aliens

The Secretary concerned may provide for the care and disposition of the remains of prisoners of war and interned enemy aliens who die while in his custody and, incident thereto, pay the necessary expenses of—

(1) notification to the next of kin or other appropriate person;

(2) preparation of the remains for burial, including cremation;

(3) furnishing of clothing;

(4) furnishing of a casket or urn, or both, with outside box;

(5) transportation of the remains to the cemetery or other place selected by the Secretary; and

(6) interment of the remains.

(Aug. 10, 1956, ch. 1041, 70A Stat. 113.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1483	5:2155 (as applicable to armed forces).	July 15, 1954, ch. 507, § 5 (as applicable to armed forces), 68 Stat. 479.

The list of payable expenses has been rearranged to produce a generally chronological result. The words ''incurred for'', and the words ''articles of'' in clause (3), are omitted as surplusage. In clause (5), the words ''cemetery or other place'' are substituted for the words ''town, city, or cemetery''.

§ 1484. Pensioners, indigent patients, and persons who die on military reservations

If proper disposition of the remains cannot otherwise be made, the Secretary concerned may provide for the care and disposition of the remains of pensioners and indigent patients who die in hospitals operated by his department and of persons who die on the military reservations of that department and, incident thereto, pay the necessary expenses of—

(1) notification to the next of kin or other appropriate person;

(2) preparation of the remains for burial, including cremation;

(3) furnishing of clothing;

(4) furnishing of a casket or urn, or both, with outside box;

(5) transportation of the remains to a cemetery selected by the Secretary; and

(6) interment of the remains.

(Aug. 10, 1956, ch. 1041, 70A Stat. 114.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1484	5:2156 (as applicable to armed forces).	July 15, 1954, ch. 507, § 6 (as applicable to armed forces), 68 Stat. 479.

The words ''If proper disposition of the remains cannot otherwise be made'' are substituted for 5:2156 (last sentence). The words ''maintained and'' and ''incurred for'', and the words ''articles of'' in clause (3), are omitted as surplusage. The words ''of that department'' are inserted for clarity.

§ 1485. Dependents of members of armed forces

(a) The Secretary concerned may, if a dependent of a member of an armed force dies while the member is on active duty (other than for training), provide for, and pay the necessary expenses of, transporting the remains of the deceased dependent to the home of the decedent or to any other place that the Secretary determines to be the appropriate place of interment.

(b) The Secretary may furnish mortuary services and supplies, on a reimbursable basis, for persons covered by subsection (a), if (1) that action is practicable, and (2) local commercial mortuary services and supplies are not available or the Secretary believes that their cost is prohibitive.

(c) Reimbursement for mortuary services and supplies furnished under this section shall be collected and credited to appropriations available, at the time of reimbursement, for those services and supplies.

(Aug. 10, 1956, ch. 1041, 70A Stat. 114; Pub. L. 89–150, § 1(1), Aug. 28, 1965, 79 Stat. 585.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1485(a)	5:2157 (1st sentence, as applicable to armed forces).	July 15, 1954, ch. 507, § 7(a) (as applicable to armed forces), 68 Stat. 479.
1485(b)	5:2157 (2d sentence, as applicable to armed forces).	
1485(c)	5:2157 (less 1st and 2d sentences, as applicable to armed forces).	

In subsection (a), the words ''a member of an armed force'' are substituted for the words ''military personnel''. The words ''the continental limits * * * or in Alaska'' are omitted as covered by the definition of ''United States'' in section 101(1) of this title. The words ''while traveling'' are substituted for the words ''while in transit''.

In subsection (b), the word ''services'' is substituted for the word ''facilities''.

In subsection (c), the words ''the authority of'' and ''the payments of'' are omitted as surplusage. The words ''at the time of reimbursement'' are substituted for the word ''current''.

AMENDMENTS

1965—Pub. L. 89–150 struck out ''; death while outside United States'' in section catchline.

Subsec. (a). Pub. L. 89–150 substituted provision for payment of transportation expenses of remains of deceased dependent of a member of an armed force while the member is on active duty (other than for training), for former provision for payment of the expenses where the member of the armed force is on active duty at a place outside the United States and the dependent dies while residing with that member or while traveling to or from that place.

§ 1486. Other citizens of United States

(a) If local commercial mortuary services and supplies are not available, or if he believes that their cost is prohibitive, the Secretary concerned may furnish those services and supplies on a reimbursable basis in the case of any of the following citizens of the United States who die outside the United States:

(1) Any employee of a humanitarian agency accredited to the armed forces, such as the American Red Cross and the United Services Organization.

(2) Any civilian performing a service directly for the Secretary because of employment by an agency under a contract with the Secretary.

(3) Any officer or member of a crew of a merchant vessel operated by or for the United States through the Secretary.

(4) Any person who is on duty with an armed force under the jurisdiction of the Secretary and who is paid from non-appropriated funds.

(5) Upon the specific request of the Department of State, any person not otherwise covered by this section.

(6) Any dependent of a person who is covered by this section, if the dependent is living outside the United States with that person at the time of death.

(b) The Secretary may furnish transportation of the remains of persons covered by this sec-

tion, on a reimbursable basis, to a port of entry in the United States.

(c) Reimbursement for services, supplies, and transportation furnished under this section shall be collected and credited to appropriations available, at the time of reimbursement, for those services, supplies, and transportation.

(Aug. 10, 1956, ch. 1041, 70A Stat. 114.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1486(a)	5:2158 (1st sentence as applicable to armed forces).	July 15, 1954, ch. 507, § 8 (as applicable to armed forces), 68 Stat. 480.
1486(b)	5:2158 (2d sentence, as applicable to armed forces).	
1486(c)	5:2158 (less 1st and 2d sentences, as applicable to armed forces).	

In subsection (a), the word ''services'' is substituted for the word ''facilities''. The words ''the continental limits * * * or in Alaska'' are omitted as covered by definition of ''United States'' in section 101(1) of this title. In clause (3), the word ''masters'' is omitted as covered by the word ''officer''. In clause (4), the words ''under the jurisdiction of the Secretary'' are inserted for clarity. In clause (5), the words ''otherwise covered'' are substituted for the words ''specifically enumerated''. In clause (6), the words ''who is covered'' are substituted for the words ''within the classes enumerated''. The words ''outside the United States'' are substituted for the word ''abroad''. The words ''that person'' are substituted for the words ''the supporting citizen concerned''.

In subsection (b), the word ''Government'' is omitted as surplusage.

In subsection (c), the words ''the authority of'' are omitted as surplusage. The words ''at the time of reimbursement'' are substituted for the word ''current''.

§ 1487. Temporary interment

Whenever necessary for the temporary interment of remains pending transportation under this chapter to a designated cemetery, the Secretary concerned may acquire, and provide for the maintenance of, grave sites in commercial cemeteries, or he may acquire the right to use such grave sites for burial purposes. If the death occurs outside the United States and a temporary commercial grave site is not available on a reasonable basis, the Secretary may acquire land, or the right to use land, necessary for the temporary interment of the remains under this chapter.

(Aug. 10, 1956, ch. 1041, 70A Stat. 115.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1487	5:2159 (as applicable to armed forces).	July 15, 1954, ch. 507, § 9 (as applicable to armed forces), 68 Stat. 480.

The words ''as authorized by this chapter, section 103a(c) of this Title, and section 224 of Title 42'', ''by purchase or otherwise'', ''care and'', and ''single or multiple'' are omitted as surplusage. The word ''continental'' is omitted as covered by the definition of ''United States'' in section 101(1) of this title.

§ 1488. Removal of remains

If a cemetery on a military reservation, including an installation cemetery, has been or is to be discontinued, the Secretary concerned may provide for the removal of remains from that cemetery to any other cemetery. With respect to any deceased member of an armed force under his jurisdiction whose last service terminated honorably by death or otherwise, the Secretary may also provide for the removal of the remains from a place of temporary interment, or from an abandoned grave or cemetery, to a national cemetery.

(Aug. 10, 1956, ch. 1041, 70A Stat. 115.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1488	5:2160 (as applicable to armed forces).	July 15, 1954, ch. 507, § 10 (as applicable to armed forces), 68 Stat. 480.

The words ''national cemeteries, other installation cemeteries, or'' are omitted as surplusage.

§ 1489. Death gratuity: members and employees dying outside the United States while assigned to intelligence duties

(a) The Secretary of Defense may pay a gratuity to the surviving dependents of any member of the armed forces or of any employee of the Department of Defense—

(1) who—

(A) is assigned to duty with an intelligence component of the Department of Defense and whose identity as such a member or employee is disguised or concealed; or

(B) is within a category of individuals determined by the Secretary of Defense to be engaged in clandestine intelligence activities; and

(2) who after October 14, 1980 dies as a result of injuries (excluding disease) sustained outside the United States and whose death—

(A) resulted from hostile or terrorist activities; or

(B) occurred in connection with an intelligence activity having a substantial element of risk.

(b) Any payment under subsection (a)—

(1) shall be in an amount equal to the amount of the annual basic pay or salary of the member or employee concerned at the time of death;

(2) shall be considered a gift and shall be in lieu of payment of any lesser death gratuity authorized by this chapter or any other Federal law; and

(3) shall be made under the same conditions as apply to payments authorized by section 413 of the Foreign Service Act of 1980 (22 U.S.C. 3973).

(Added Pub. L. 96–450, title IV, § 403(b)(1), Oct. 14, 1980, 94 Stat. 1979; amended Pub. L. 97–22, § 11(a)(6), July 10, 1981, 95 Stat. 138; Pub. L. 98–94, title XII, § 1268(9), Sept. 24, 1983, 97 Stat. 706; Pub. L. 99–145, title XIII, § 1303(a)(12), Nov. 8, 1985, 99 Stat. 739.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99–145 substituted ''armed forces'' for ''Armed Forces''.

1983—Subsec. (a)(2). Pub. L. 98–94 substituted ''October 14, 1980'' for ''the date of the enactment of this section''.

1981—Subsec. (b)(3). Pub. L. 97–22 substituted ''section 413 of the Foreign Service Act of 1980 (22 U.S.C. 3973)'' for ''section 14 of the Act of August 1, 1956 (22 U.S.C. 2679a)''.

§ 1490. Transportation of remains: certain retired members and dependents who die in military medical facilities

(a) Subject to subsection (b), when a member entitled to retired or retainer pay or equivalent pay, or a dependent of such a member, dies while properly admitted under chapter 55 of this title to a medical facility of the armed forces, the Secretary concerned may transport the remains, or pay the cost of transporting the remains, of the decedent to the place of burial of the decedent.

(b)(1) Transportation provided under this section may not be to a place further from the place of death than the decedent's last place of permanent residence, and any amount paid under this section may not exceed the cost of transportation from the place of death to the decedent's last place of permanent residence.

(2) Transportation of the remains of a decedent may not be provided under this section if such transportation is authorized by sections 1481 and 1482 of this title or by chapter 23 of title 38.

(c) DEFINITION OF DEPENDENT.—In this section, the term ''dependent'' has the meaning given such term in section 1072(2) of this title.

(Added Pub. L. 98–94, title X, § 1032(a)(1), Sept. 24, 1983, 97 Stat. 671; amended Pub. L. 100–26, § 7(k)(3), Apr. 21, 1987, 101 Stat. 284; Pub. L. 102–190, div. A, title VI, § 626(a), (b)(1), Dec. 5, 1991, 105 Stat. 1379, 1380; Pub. L. 108–136, div. A, title V, § 562(a), (b), Nov. 24, 2003, 117 Stat. 1483.)

AMENDMENTS

2003—Subsec. (a). Pub. L. 108–136, § 562(a)(1), struck out ''located in the United States'' after ''armed forces''.

Subsec. (b)(1). Pub. L. 108–136, § 562(a)(2), struck out ''outside the United States or to a place'' before ''further''.

Subsec. (c). Pub. L. 108–136, § 562(b), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''In this section:

''(1) The term 'United States' includes the Commonwealth of Puerto Rico and the territories and possessions of the United States.

''(2) The term 'dependent' has the meaning given such term in section 1072(2) of this title.''

1991—Pub. L. 102–190, § 626(b)(1), amended section catchline generally. Prior to amendment, section catchline read as follows: ''Transportation of remains of members entitled to retired or retainer pay who die in a military medical facility''.

Subsec. (a). Pub. L. 102–190, § 626(a)(1), inserted '', or a dependent of such a member,'' after ''equivalent pay''.

Subsec. (c). Pub. L. 102–190, § 626(a)(2), added subsec. (c) and struck out former subsec. (c) which read as follows: ''In this section, the term 'United States' includes the Commonwealth of Puerto Rico and the territories and possessions of the United States.''

1987—Subsec. (c). Pub. L. 100–26 inserted ''the term'' after ''In this section,''.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–136, div. A, title V, § 562(c), Nov. 24, 2003, 117 Stat. 1483, provided that: ''The amendments made by this section [amending this section] shall apply only with respect to persons dying on or after the date of the enactment of this Act [Nov. 24, 2003].''

EFFECTIVE DATE

Section 1032(b) of Pub. L. 98–94 provided that: ''Section 1490 of title 10, United States Code, as added by subsection (a), shall apply with respect to the transportation of the remains of persons dying after September 30, 1983.''

§ 1491. Funeral honors functions at funerals for veterans

(a) AVAILABILITY OF FUNERAL HONORS DETAIL ENSURED.—The Secretary of Defense shall ensure that, upon request, a funeral honors detail is provided for the funeral of any veteran, except when military honors are prohibited under section 985(a) of this title.

(b) COMPOSITION OF FUNERAL HONORS DETAILS.—(1) The Secretary of each military department shall ensure that a funeral honors detail for the funeral of a veteran consists of two or more persons.

(2) At least two members of the funeral honors detail for a veteran's funeral shall be members of the armed forces (other than members in a retired status), at least one of whom shall be a member of the armed force of which the veteran was a member. The remainder of the detail may consist of members of the armed forces (including members in a retired status), or members of veterans organizations or other organizations approved for purposes of this section under regulations prescribed by the Secretary of Defense. Each member of the armed forces in the detail shall wear the uniform of the member's armed force while serving in the detail.

(c) CEREMONY.—A funeral honors detail shall, at a minimum, perform at the funeral a ceremony that includes the folding of a United States flag and presentation of the flag to the veteran's family and the playing of Taps. Unless a bugler is a member of the detail, the funeral honors detail shall play a recorded version of Taps using audio equipment which the detail shall provide if adequate audio equipment is not otherwise available for use at the funeral.

(d) SUPPORT.—(1) To support a funeral honors detail under this section, the Secretary of a military department may provide the following:

(A) For a person who participates in a funeral honors detail (other than a person who is a member of the armed forces not in a retired status or an employee of the United States), either transportation (or reimbursement for transportation) and expenses or the daily stipend prescribed under paragraph (2).

(B) For members of a veterans organization or other organization referred to in subsection (b)(2) and for members of the armed forces in a retired status, materiel, equipment, and training.

(C) For members of a veterans organization or other organization referred to in subsection (b)(2), articles of clothing that, as determined by the Secretary concerned, are appropriate as a civilian uniform for persons participating in a funeral honors detail.

(2) The Secretary of Defense shall prescribe annually a flat rate daily stipend for purposes of paragraph (1)(A). Such stipend shall be set at a rate so as to encompass typical costs for transportation and other miscellaneous expenses for

persons participating in funeral honors details who are members of the armed forces in a retired status and other persons who are not members of the armed forces or employees of the United States.

(3) A stipend paid under this subsection to a member of the armed forces in a retired status is in addition to any compensation to which the member is entitled under section 435(a)(2) of title 37 and any other compensation to which the member may be entitled.

(e) WAIVER AUTHORITY.—(1) The Secretary of Defense may waive any requirement provided in or pursuant to this section when the Secretary considers it necessary to do so to meet the requirements of war, national emergency, or a contingency operation or other military requirements. The authority to make such a waiver may not be delegated to an official of a military department other than the Secretary of the military department and may not be delegated within the Office of the Secretary of Defense to an official at a level below Under Secretary of Defense.

(2) Before or promptly after granting a waiver under paragraph (1), the Secretary shall transmit a notification of the waiver to the Committees on Armed Services of the Senate and House of Representatives.

(f) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section. Those regulations shall include the following:

(1) A system for selection of units of the armed forces and other organizations to provide funeral honors details.

(2) Procedures for responding and coordinating responses to requests for funeral honors details.

(3) Procedures for establishing standards and protocol.

(4) Procedures for providing training and ensuring quality of performance.

(g) ANNUAL REPORT.—The Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report not later than January 31 of each year beginning with 2001 and ending with 2005 on the experience of the Department of Defense under this section. Each such report shall provide data on the number of funerals supported under this section, the cost for that support, shown by manpower and other cost factors, and the number and costs of funerals supported by each participating organization. The data in the report shall be presented in a standard format, regardless of military department or other organization.

(h) VETERAN DEFINED.—In this section, the term ''veteran'' means a decedent who—

(1) served in the active military, naval, or air service (as defined in section 101(24) of title 38) and who was discharged or released therefrom under conditions other than dishonorable; or

(2) was a member or former member of the Selected Reserve described in section 2301(f) of title 38.

(Added Pub. L. 105–261, div. A, title V, §567(b)(1), Oct. 17, 1998, 112 Stat. 2030; amended Pub. L. 106–65, div. A, title V, §578(a)(1), (b)–(e), (k)(1), title X, §1067(1), Oct. 5, 1999, 113 Stat. 625–627, 630, 774; Pub. L. 107–107, div. A, title V, §§561(a), 564, Dec. 28, 2001, 115 Stat. 1119, 1120; Pub. L. 107–314, div. A, title V, §571, Dec. 2, 2002, 116 Stat. 2556; Pub. L. 109–163, div. A, title VI, §662(b)(4), Jan. 6, 2006, 119 Stat. 3315.)

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–163 inserted '', except when military honors are prohibited under section 985(a) of this title'' before period at end.

2002—Subsec. (d)(1). Pub. L. 107–314, §571(1), designated existing provisions as par. (1) and substituted '' To support a'' for ''To provide a''. Former par. (1) redesignated (1)(A).

Subsec. (d)(1)(A). Pub. L. 107–314, §571(2), redesignated par. (1) as subpar. (A) of par. (1) and amended it generally. Prior to amendment, text read as follows: ''Transportation, or reimbursement for transportation, and expenses for a person who participates in the funeral honors detail and is not a member of the armed forces or an employee of the United States.''

Subsec. (d)(1)(B). Pub. L. 107–314, §571(3), redesignated par. (2) as subpar. (B) of par. (1), substituted ''For'' for ''Materiel, equipment, and training for'', and inserted ''and for members of the armed forces in a retired status, materiel, equipment, and training'' before period at end.

Subsec. (d)(1)(C). Pub. L. 107–314, §571(4), redesignated par. (3) as subpar. (C) of par. (1), substituted ''For'' for ''Articles of clothing for'', and inserted '', articles of clothing'' after ''subsection (b)(2)''.

Subsec. (d)(2), (3). Pub. L. 107–314, §571(5), added pars. (2) and (3). Former pars. (2) and (3) redesignated subpars. (B) and (C), respectively, of par. (1).

2001—Subsec. (b)(2). Pub. L. 107–107, §561(a), inserted ''(other than members in a retired status)'' after ''members of the armed forces'' in first sentence and inserted ''(including members in a retired status),'' after ''members of the armed forces'' in second sentence.

Subsec. (d)(3). Pub. L. 107–107, §564, added par. (3).

1999—Pub. L. 106–65, §578(k)(1), substituted ''Funeral honors functions at funerals for veterans'' for ''Honor guard details at funerals of veterans'' as section catchline.

Subsec. (a). Pub. L. 106–65, §578(a)(1), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: ''The Secretary of a military department shall, upon request, provide an honor guard detail (or ensure that an honor guard detail is provided) for the funeral of any veteran that occurs after December 31, 1999.''

Subsec. (b). Pub. L. 106–65, §578(b), substituted ''Funeral Honors Details'' for ''Honor Guard Details'' in subsec. (b) heading, designated existing provisions as par. (1), substituted ''a funeral honors detail'' for ''an honor guard detail'' and ''two or more persons.'' for ''not less than three persons and (unless a bugler is part of the detail) has the capability to play a recorded version of Taps.'', redesignated subsec. (c) as subsec. (b)(2), struck out former subsec. (c) heading ''Persons Forming Honor Guards'', and substituted ''At least two members of the funeral honors detail for a veteran's funeral shall be members of the armed forces, at least one of whom shall be a member of the armed force of which the veteran was a member. The remainder of the detail'' for ''An honor guard detail'' and ''Each member of the armed forces in the detail shall wear the uniform of the member's armed force while serving in the detail.'' for ''The Secretary of a military department may provide transportation, or reimbursement for transportation, and expenses for a person who participates in an honor guard detail under this section and is not a member of the armed forces or an employee of the United States.''

Subsec. (c). Pub. L. 106–65, §578(c)(2), added subsec. (c). Former subsec. (c) redesignated subsec. (b)(2).

Subsecs. (d), (e). Pub. L. 106–65, §578(c)(2), added subsecs. (d) and (e). Former subsecs. (d) and (e) redesignated (f) and (g), respectively.

Subsec. (f). Pub. L. 106–65, § 578(d), amended heading and text of subsec. (f) generally. Prior to amendment, text read as follows: ''The Secretary of Defense shall by regulation establish a system for selection of units of the armed forces and other organizations to provide honor guard details. The system shall place an emphasis on balancing the funeral detail workload among the units and organizations providing honor guard details in an equitable manner as they are able to respond to requests for such details in terms of geographic proximity and available resources. The Secretary shall provide in such regulations that the armed force in which a veteran served shall not be considered to be a factor when selecting the military unit or other organization to provide an honor guard detail for the funeral of the veteran.''

Pub. L. 106–65, § 578(c)(1), redesignated subsec. (d) as (f). Former subsec. (f) redesignated (h).

Subsec. (g). Pub. L. 106–65, § 1067(1), substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

Pub. L. 106–65, § 578(c)(1), redesignated subsec. (e) as (g).

Subsec. (h). Pub. L. 106–65, § 578(e), amended heading and text of subsec. (h) generally. Prior to amendment, text read as follows: ''In this section, the term 'veteran' has the meaning given that term in section 101(2) of title 38.''

Pub. L. 106–65, § 578(c)(1), redesignated subsec. (f) as (h).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–163 applicable with respect to funerals and burials that occur on or after Jan. 6, 2006, see section 662(e) of Pub. L. 109–163, set out as a note under section 985 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–65, div. A, title V, § 578(a)(2), Oct. 5, 1999, 113 Stat. 625, provided that: ''Section 1491(a) of title 10, United States Code, as amended by paragraph (1), shall apply with respect to funerals that occur after December 31, 1999.''

CHAPTER 76—MISSING PERSONS

Sec.
1501. System for accounting for missing persons.
1502. Missing persons: initial report.
1503. Actions of Secretary concerned; initial board inquiry.
1504. Subsequent board of inquiry.
1505. Further review.
1506. Personnel files.
1507. Recommendation of status of death.
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1509. Program to resolve preenactment missing person cases.
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1513. Definitions.

AMENDMENTS

2009—Pub. L. 111–84, div. A, title V, § 541(b), Oct. 28, 2009, 123 Stat. 2298, substituted ''Program to resolve preenactment missing person cases'' for ''Preenactment cases'' in item 1509.

1996—Pub. L. 104–201, div. A, title V, § 578(f)(2)(B), Sept. 23, 1996, 110 Stat. 2537, struck out '', special interest'' after ''Preenactment'' in item 1509.

§ 1501. System for accounting for missing persons

(a) RESPONSIBILITY FOR MISSING PERSONNEL.—(1) The Secretary of Defense shall designate within the Office of the Secretary of Defense an official as the Deputy Assistant Secretary of Defense for Prisoner of War/Missing Personnel Affairs to have responsibility for Department of Defense matters relating to missing persons. Subject to the authority, direction, and control of the Secretary of Defense, the responsibilities of the official designated under this paragraph shall include—

(A) policy, control, and oversight within the Department of Defense of the entire process for investigation and recovery related to missing persons (including matters related to search, rescue, escape, and evasion);

(B) policy, control, and oversight of the program established under section 1509 of this title, as well as the accounting for missing persons (including locating, recovering, and identifying missing persons or their remains after hostilities have ceased); and

(C) coordination for the Department of Defense with other departments and agencies of the United States on all matters concerning missing persons.

(2) The official designated under paragraph (1) shall also serve as the Director, Defense Prisoner of War/Missing Personnel Office, as established under paragraph (6)(A), exercising authority, direction, and control over that activity.

(3) In carrying out the responsibilities established under this subsection, the official designated under paragraph (1) and (2) shall be responsible for the coordination for such purposes within the Department of Defense among the military departments, the Joint Staff, and the commanders of the combatant commands.

(4) The designated official shall establish policies, which shall apply uniformly throughout the Department of Defense, for personnel recovery (including search, rescue, escape, and evasion) and for personnel accounting (including locating, recovering, and identifying missing persons or their remains after hostilities have ceased).

(5) The designated official shall establish procedures to be followed by Department of Defense boards of inquiry, and by officials reviewing the reports of such boards, under this chapter.

(6)(A) The Secretary of Defense shall establish an activity to account for personnel who are missing or whose remains have not been recovered from the conflict in which they were lost. This activity shall be known as the Defense Prisoner of War/Missing Personnel Office. The Secretary of Defense shall ensure that the activity is provided sufficient military and civilian personnel, and sufficient funding, to enable the activity to fully perform the complete range of missions of the activity. The Secretary shall ensure that Department of Defense programming, planning, and budgeting procedures are structured so as to ensure compliance with the preceding sentence for each fiscal year.

(B)(i) For any fiscal year, the number of military and civilian personnel, whether temporary or permanent, assigned or detailed activity may not be less than the number requested in the President's budget for fiscal year 2003, unless a level below such number is expressly required by law.

(ii) If for any reason the number of military and civilian personnel assigned or detailed activity should fall below the required level under

clause (i), the Secretary of Defense shall promptly notify the Committees on Armed Services of the Senate and House of Representatives of the number of personnel so assigned or detailed and of the Secretary's plan to restore the staffing level of the activity to at least the required minimum number under clause (i). The Secretary shall publish such notice and plan in the Federal Register.

(C) For any fiscal year, the level of funding allocated to the activity within the Department of Defense may not be below the level requested for such purposes in the President's budget for fiscal year 2003, unless such a level of funding is expressly required by law.

(b) UNIFORM DOD PROCEDURES.—(1) The Secretary of Defense shall prescribe procedures, to apply uniformly throughout the Department of Defense, for—

(A) the determination of the status of persons described in subsection (c); and

(B) for the systematic, comprehensive, and timely collection, analysis, review, dissemination, and periodic update of information related to such persons.

(2) Such procedures may provide for the delegation by the Secretary of Defense of any responsibility of the Secretary under this chapter to the Secretary of a military department.

(3) Such procedures shall be prescribed in a single directive applicable to all elements of the Department of Defense.

(4) As part of such procedures, the Secretary may provide for the extension, on a case-by-case basis, of any time limit specified in section 1502, 1503, or 1504 of this title. Any such extension may not be for a period in excess of the period with respect to which the extension is provided. Subsequent extensions may be provided on the same basis.

(c) COVERED PERSONS.—(1) Section 1502 of this title applies in the case of any member of the armed forces on active duty—

(A) who becomes involuntarily absent as a result of a hostile action or under circumstances suggesting that the involuntary absence is a result of a hostile action; and

(B) whose status is undetermined or who is unaccounted for.

(2) Section 1502 of this title applies in the case of any other person who is a citizen of the United States and a civilian officer or employee of the Department of Defense or (subject to paragraph (3)) an employee of a contractor of the Department of Defense—

(A) who serves in direct support of, or accompanies, the armed forces in the field under orders and becomes involuntarily absent as a result of a hostile action or under circumstances suggesting that the involuntary absence is a result of a hostile action; and

(B) whose status is undetermined or who is unaccounted for.

(3) The Secretary of Defense shall determine, with regard to a pending or ongoing military operation, the specific employees, or groups of employees, of contractors of the Department of Defense to be considered to be covered by this subsection.

(d) PRIMARY NEXT OF KIN.—The individual who is primary next of kin of any person described in subsection (c) may for purposes of this chapter designate another individual to act on behalf of that individual as primary next of kin. The Secretary concerned shall treat an individual so designated as if the individual designated were the primary next of kin for purposes of this chapter. A designation under this subsection may be revoked at any time by the person who made the designation.

(e) TERMINATION OF APPLICABILITY OF PROCEDURES WHEN MISSING PERSON IS ACCOUNTED FOR.—The provisions of this chapter relating to boards of inquiry and to the actions by the Secretary concerned on the reports of those boards shall cease to apply in the case of a missing person upon the person becoming accounted for or otherwise being determined to be in a status other than missing.

(f) SECRETARY CONCERNED.—In this chapter, the term ''Secretary concerned'' includes, in the case of a civilian officer or employee of the Department of Defense or an employee of a contractor of the Department of Defense, the Secretary of the military department or head of the element of the Department of Defense employing the officer or employee or contracting with the contractor, as the case may be.

(Added Pub. L. 104–106, div. A, title V, § 569(b)(1), Feb. 10, 1996, 110 Stat. 336; amended Pub. L. 104–201, div. A, title V, § 578(a)(1), Sept. 23, 1996, 110 Stat. 2536; Pub. L. 105–85, div. A, title V, § 599(a)(1), Nov. 18, 1997, 111 Stat. 1766; Pub. L. 106–65, div. A, title X, § 1066(a)(13), Oct. 5, 1999, 113 Stat. 771; Pub. L. 107–314, div. A, title V, § 551, Dec. 2, 2002, 116 Stat. 2551; Pub. L. 108–375, div. A, title V, § 582(a), Oct. 28, 2004, 118 Stat. 1928; Pub. L. 111–383, div. A, title IX, § 901(g), Jan. 7, 2011, 124 Stat. 4322.)

AMENDMENTS

2011—Subsec. (a). Pub. L. 111–383, § 901(g)(1), substituted ''Responsibility for Missing Personnel'' for ''Office for Missing Personnel'' in heading.

Subsec. (a)(1). Pub. L. 111–383, § 901(g)(2)(A)–(C), in introductory provisions, substituted ''designate within the Office of the Secretary of Defense an official as the Deputy Assistant Secretary of Defense for Prisoner of War/Missing Personnel Affairs to have responsibility for Department of Defense matters'' for ''establish within the Office of the Secretary of Defense an office to have responsibility for Department of Defense policy'', struck out ''Such office shall be known as the Defense Prisoner of War/Missing Personnel Office.'' after ''persons.'', and substituted ''of the official designated under this paragraph'' for ''of the office''.

Subsec. (a)(1)(B), (C). Pub. L. 111–383, § 901(g)(2)(D)–(F), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (a)(2). Pub. L. 111–383, § 901(g)(4), added par. (2). Former par. (2) redesignated (3).

Subsec. (a)(3). Pub. L. 111–383, § 901(g)(3), (5), redesignated par. (2) as (3), struck out ''of the office'' after ''responsibilities'', and substituted ''official designated under paragraph (1) and (2)'' for ''head of the office''. Former par. (3) redesignated (4).

Subsec. (a)(4). Pub. L. 111–383, § 901(g)(3), (6), redesignated par. (3) as (4), substituted ''designated official'' for ''office'', and inserted ''and for personnel accounting (including locating, recovering, and identifying missing persons or their remains after hostilities have ceased)'' after ''evasion)''. Former par. (4) redesignated (5).

Subsec. (a)(5). Pub. L. 111–383, § 901(g)(3), (7), redesignated par. (4) as (5) and substituted ''designated official'' for ''office''. Former par. (5) redesignated (6).

Subsec. (a)(6). Pub. L. 111–383, § 901(g)(3), redesignated par. (5) as (6).

Subsec. (a)(6)(A). Pub. L. 111–383, § 901(g)(8)(A)(ii), which directed the substitution of ''activity'' for ''office'' both places appearing, was executed by making the substitution in three places to reflect the probable intent of Congress.

Pub. L. 111–383, § 901(g)(8)(A)(i), inserted ''The Secretary of Defense shall establish an activity to account for personnel who are missing or whose remains have not been recovered from the conflict in which they were lost. This activity shall be known as the Defense Prisoner of War/Missing Personnel Office.'' after ''(A)''.

Subsec. (a)(6)(B)(i). Pub. L. 111–383, § 901(g)(8)(B), substituted ''activity'' for ''to the office''.

Subsec. (a)(6)(B)(ii). Pub. L. 111–383, § 901(g)(8)(C), substituted ''activity'' for ''to the office'' and ''of the activity'' for ''of the office''.

Subsec. (a)(6)(C). Pub. L. 111–383, § 901(g)(8)(D), substituted ''activity'' for ''office''.

2004—Subsec. (a)(5)(B). Pub. L. 108–375 designated existing provisions as cl. (i), inserted '', whether temporary or permanent,'' after ''civilian personnel'', and added cl. (ii).

2002—Subsec. (a)(1). Pub. L. 107–314, § 551(b), inserted ''Such office shall be known as the Defense Prisoner of War/Missing Personnel Office.'' after first sentence.

Subsec. (a)(5). Pub. L. 107–314, § 551(a), added par. (5).

1999—Subsec. (d). Pub. L. 106–65 substituted ''described'' for ''prescribed'' in first sentence.

1997—Subsec. (c). Pub. L. 105–85, § 599(a)(1)(A), added subsec. (c) and struck out former subsec. (c) which read as follows:

''(c) COVERED PERSONS.—Section 1502 of this title applies in the case of any member of the armed forces on active duty who becomes involuntarily absent as a result of a hostile action, or under circumstances suggesting that the involuntary absence is a result of a hostile action, and whose status is undetermined or who is unaccounted for.''

Subsec. (f). Pub. L. 105–85, § 599(a)(1)(B), added subsec. (f).

1996—Subsec. (c). Pub. L. 104–201, § 578(a)(1)(A), substituted ''applies in the case of'' for ''applies in the case of the following persons:'' and ''any member'' for ''(1) Any member'' and struck out par. (2) which read as follows: ''Any civilian employee of the Department of Defense, and any employee of a contractor of the Department of Defense, who serves with or accompanies the armed forces in the field under orders who becomes involuntarily absent as a result of a hostile action, or under circumstances suggesting that the involuntary absence is a result of a hostile action, and whose status is undetermined or who is unaccounted for.''

Subsec. (f). Pub. L. 104–201, § 578(a)(1)(B), struck out subsec. (f) which read as follows:

''(f) SECRETARY CONCERNED.—In this chapter, the term 'Secretary concerned' includes, in the case of a civilian employee of the Department of Defense or contractor of the Department of Defense, the Secretary of the military department or head of the element of the Department of Defense employing the employee or contracting with the contractor, as the case may be.''

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 111–383 effective Jan. 1, 2011, see section 901(p) of Pub. L. 111–383, set out as a note under section 131 of this title.

RECOVERY AND IDENTIFICATION OF REMAINS OF CERTAIN WORLD WAR II SERVICEMEN LOST IN PACIFIC THEATER OF OPERATIONS

Pub. L. 106–65, div. A, title V, § 576, Oct. 5, 1999, 113 Stat. 624, as amended by Pub. L. 107–107, div. A, title X, § 1048(g)(3), Dec. 28, 2001, 115 Stat. 1228, provided that:

''(a) RECOVERY OF REMAINS.—(1) The Secretary of Defense shall make every reasonable effort to search for, recover, and identify the remains of United States servicemen lost in the Pacific theater of operations during World War II (including in New Guinea) while engaged in flight operations.

''(2) In order to provide high priority to carrying out paragraph (1), the Secretary of Defense shall consider increasing the number of personnel assigned to the Central Identification Laboratory, Hawaii.

''(3) Not later than September 30, 2000, the Secretary shall submit to Congress a report setting forth the efforts made to accomplish the objectives specified in paragraph (1). The Secretary shall include in the report a statement of the backlog of cases at the Central Identification Laboratory, Hawaii, shown by conflict, and the status of the joint manning plan required by section 566(c) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261; 112 Stat. 2029).

''(b) DIPLOMATIC INTERVENTION IF REQUIRED.—The Secretary of State, upon request by the Secretary of Defense, shall work with officials of governments of nations in the area that was covered by the Pacific theater of operations of World War II to seek to overcome any diplomatic obstacles that may impede the Secretary of Defense from carrying out the objectives specified in subsection (a)(1).''

POW/MIA INTELLIGENCE ANALYSIS

Pub. L. 105–85, div. A, title IX, § 934, Nov. 18, 1997, 111 Stat. 1866, as amended by Pub. L. 106–65, div. A, title X, § 1066(c)(4), Oct. 5, 1999, 113 Stat. 773, provided that:

''(a) INTELLIGENCE ANALYSIS.—The Director of Central Intelligence, in consultation with the Secretary of Defense, shall provide intelligence analysis on matters concerning prisoners of war and missing persons (as defined in chapter 76 of title 10, United States Code) to all departments and agencies of the Federal Government involved in such matters.

''(b) USE OF INTELLIGENCE IN ANALYSIS OF POW/MIA CASES IN DEPARTMENT OF DEFENSE.—The Secretary of Defense shall ensure that the Defense Prisoner of War/Missing Personnel Office of the Department of Defense takes into full account all intelligence regarding matters concerning prisoners of war and missing persons (as defined in chapter 76 of title 10, United States Code) in analyzing cases involving such persons.''

[Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108–458, set out as a note under section 401 of Title 50, War and National Defense.]

CONGRESSIONAL STATEMENT OF PURPOSE

Section 569(a) of Pub. L. 104–106 provided that: ''The purpose of this section [enacting this chapter and section 655 of this title, amending sections 552, 553, 555, and 556 of Title 37, Pay and Allowances of the Uniformed Services, and enacting provisions set out as a note under section 5561 of Title 5, Government Organization and Employees] is to ensure that any member of the Armed Forces (and any Department of Defense civilian employee or contractor employee who serves with or accompanies the Armed Forces in the field under orders) who becomes missing or unaccounted for is ultimately accounted for by the United States and, as a general rule, is not declared dead solely because of the passage of time.''

§ 1502. Missing persons: initial report

(a) PRELIMINARY ASSESSMENT AND RECOMMENDATION BY COMMANDER.—After receiving information that the whereabouts and status of a person described in section 1501(c) of this title is

uncertain and that the absence of the person may be involuntary, the commander of the unit, facility, or area to or in which the person is assigned shall make a preliminary assessment of the circumstances. If, as a result of that assessment, the commander concludes that the person is missing, the commander shall—

(1) recommend that the person be placed in a missing status; and

(2) not later than 10 days after receiving such information, transmit a report containing that recommendation to the Secretary concerned in accordance with procedures prescribed under section 1501(b) of this title.

(b) TRANSMISSION OF ADVISORY COPY TO THEATER COMPONENT COMMANDER.—When transmitting a report under subsection (a)(2) recommending that a person be placed in a missing status, the commander transmitting that report shall transmit an advisory copy of the report to the theater component commander with jurisdiction over the missing person.

(c) SAFEGUARDING AND FORWARDING OF RECORDS.—A commander making a preliminary assessment under subsection (a) with respect to a missing person shall (in accordance with procedures prescribed under section 1501 of this title) safeguard and forward for official use any information relating to the whereabouts and status of the missing person that results from the preliminary assessment or from actions taken to locate the person.

(Added Pub. L. 104–106, div. A, title V, § 569(b)(1), Feb. 10, 1996, 110 Stat. 338; amended Pub. L. 104–201, div. A, title V, § 578(b)(1), Sept. 23, 1996, 110 Stat. 2536; Pub. L. 105–85, div. A, title V, § 599(b)(1), Nov. 18, 1997, 111 Stat. 1768.)

AMENDMENTS

1997—Subsecs. (b), (c). Pub. L. 105–85 added subsec. (b) and redesignated former subsec. (b) as (c).

1996—Subsec. (a)(2). Pub. L. 104–201, § 578(b)(1)(A), substituted ''10 days'' for ''48 hours'' and ''Secretary concerned'' for ''theater component commander with jurisdiction over the missing person''.

Subsec. (b). Pub. L. 104–201, § 578(b)(1)(D), struck out at end ''The theater component commander through whom the report with respect to the missing person is transmitted under subsection (b) shall ensure that all pertinent information relating to the whereabouts and status of the missing person that results from the preliminary assessment or from actions taken to locate the person is properly safeguarded to avoid loss, damage, or modification.''

Pub. L. 104–201, § 578(b)(1)(B), (C), redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: ''TRANSMISSION THROUGH THEATER COMPONENT COMMANDER.—Upon reviewing a report under subsection (a) recommending that a person be placed in a missing status, the theater component commander shall ensure that all necessary actions are being taken, and all appropriate assets are being used, to resolve the status of the missing person. Not later than 14 days after receiving the report, the theater component commander shall forward the report to the Secretary of Defense or the Secretary concerned in accordance with procedures prescribed under section 1501(b) of this title. The theater component commander shall include with such report a certification that all necessary actions are being taken, and all appropriate assets are being used, to resolve the status of the missing person.''

Subsec. (c). Pub. L. 104–201, § 578(b)(1)(C), redesignated subsec. (c) as (b).

§ 1503. Actions of Secretary concerned; initial board inquiry

(a) DETERMINATION BY SECRETARY.—Upon receiving a recommendation under section 1502(a) of this title that a person be placed in a missing status, the Secretary receiving the recommendation shall review the recommendation and, not later than 10 days after receiving such recommendation, shall appoint a board under this section to conduct an inquiry into the whereabouts and status of the person.

(b) INQUIRIES INVOLVING MORE THAN ONE MISSING PERSON.—If it appears to the Secretary who appoints a board under this section that the absence or missing status of two or more persons is factually related, the Secretary may appoint a single board under this section to conduct the inquiry into the whereabouts and status of all such persons.

(c) COMPOSITION.—(1) A board appointed under this section to inquire into the whereabouts and status of a person shall consist of at least one individual described in paragraph (2) who has experience with and understanding of military operations or activities similar to the operation or activity in which the person disappeared.

(2) An individual referred to in paragraph (1) is the following:

(A) A military officer, in the case of an inquiry with respect to a member of the armed forces.

(B) A civilian, in the case of an inquiry with respect to a civilian employee of the Department of Defense or of a contractor of the Department of Defense.

(3) An individual may be appointed as a member of a board under this section only if the individual has a security clearance that affords the individual access to all information relating to the whereabouts and status of the missing persons covered by the inquiry.

(4) A Secretary appointing a board under this subsection shall, for purposes of providing legal counsel to the board, assign to the board a judge advocate, or appoint to the board an attorney, who has expertise in the law relating to missing persons, the determination of death of such persons, and the rights of family members and dependents of such persons.

(d) DUTIES OF BOARD.—A board appointed to conduct an inquiry into the whereabouts and status of a missing person under this section shall—

(1) collect, develop, and investigate all facts and evidence relating to the disappearance or whereabouts and status of the person;

(2) collect appropriate documentation of the facts and evidence covered by the board's investigation;

(3) analyze the facts and evidence, make findings based on that analysis, and draw conclusions as to the current whereabouts and status of the person; and

(4) with respect to each person covered by the inquiry, recommend to the Secretary who appointed the board that—

(A) the person be placed in a missing status; or

(B) the person be declared to have deserted, to be absent without leave, or (sub-

ject to the requirements of section 1507 of this title) to be dead.

(e) BOARD PROCEEDINGS.—During the proceedings of an inquiry under this section, a board shall—

(1) collect, record, and safeguard all facts, documents, statements, photographs, tapes, messages, maps, sketches, reports, and other information (whether classified or unclassified) relating to the whereabouts and status of each person covered by the inquiry;

(2) gather information relating to actions taken to find the person, including any evidence of the whereabouts and status of the person arising from such actions; and

(3) maintain a record of its proceedings.

(f) COUNSEL FOR MISSING PERSON.—(1) The Secretary appointing a board to conduct an inquiry under this section shall appoint counsel to represent each person covered by the inquiry or, in a case covered by subsection (b), one counsel to represent all persons covered by the inquiry. Counsel appointed under this paragraph may be referred to as ''missing person's counsel'' and represents the interests of the person covered by the inquiry (and not any member of the person's family or other interested parties). The identity of counsel appointed under this paragraph for a missing person shall be made known to the missing person's primary next of kin and any other previously designated person of the person.

(2) To be appointed as a missing person's counsel, a person must—

(A) have the qualifications specified in section 827(b) of this title (article 27(b) of the Uniform Code of Military Justice) for trial counsel or defense counsel detailed for a general court-martial;

(B) have a security clearance that affords the counsel access to all information relating to the whereabouts and status of the person or persons covered by the inquiry; and

(C) have expertise in the law relating to missing persons, the determination of the death of such persons, and the rights of family members and dependents of such persons.

(3) A missing person's counsel—

(A) shall have access to all facts and evidence considered by the board during the proceedings under the inquiry for which the counsel is appointed;

(B) shall observe all official activities of the board during such proceedings;

(C) may question witnesses before the board; and

(D) shall monitor the deliberations of the board.

(4) A missing person's counsel shall assist the board in ensuring that all appropriate information concerning the case is collected, logged, filed, and safeguarded. The primary next of kin of a missing person and any other previously designated person of the missing person shall have the right to submit information to the missing person's counsel relative to the disappearance or status of the missing person.

(5) A missing person's counsel shall review the report of the board under subsection (h) and submit to the Secretary concerned who appointed the board an independent review of that report. That review shall be made an official part of the record of the board.

(g) ACCESS TO PROCEEDINGS.—The proceedings of a board during an inquiry under this section shall be closed to the public (including, with respect to the person covered by the inquiry, the primary next of kin, other members of the immediate family, and any other previously designated person of the person).

(h) REPORT.—(1) A board appointed under this section shall submit to the Secretary who appointed the board a report on the inquiry carried out by the board. The report shall include—

(A) a discussion of the facts and evidence considered by the board in the inquiry;

(B) the recommendation of the board under subsection (d) with respect to each person covered by the report; and

(C) disclosure of whether classified documents and information were reviewed by the board or were otherwise used by the board in forming recommendations under subparagraph (B).

(2) A board shall submit a report under this subsection with respect to the inquiry carried out by the board not later than 30 days after the date of the appointment of the board to carry out the inquiry. The report may include a classified annex.

(3) The Secretary of Defense shall prescribe procedures for the release of a report submitted under this subsection with respect to a missing person. Such procedures shall provide that the report may not be made public (except as provided for in subsection (j)) until one year after the date on which the report is submitted.

(i) DETERMINATION BY SECRETARY.—(1) Not later than 30 days after receiving a report from a board under subsection (h), the Secretary receiving the report shall review the report.

(2) In reviewing a report under paragraph (1), the Secretary shall determine whether or not the report is complete and free of administrative error. If the Secretary determines that the report is incomplete, or that the report is not free of administrative error, the Secretary may return the report to the board for further action on the report by the board.

(3) Upon a determination by the Secretary that a report reviewed under this subsection is complete and free of administrative error, the Secretary shall make a determination concerning the status of each person covered by the report, including whether the person shall—

(A) be declared to be missing;

(B) be declared to have deserted;

(C) be declared to be absent without leave; or

(D) be declared to be dead.

(j) REPORT TO FAMILY MEMBERS AND OTHER INTERESTED PERSONS.—Not later than 30 days after the date on which the Secretary concerned makes a determination of the status of a person under subsection (i), the Secretary shall take reasonable actions to—

(1) provide to the primary next of kin, the other members of the immediate family, and any other previously designated person of the person—

(A) an unclassified summary of the unit commander's report with respect to the person under section 1502(a) of this title; and

(B) the report of the board (including the names of the members of the board) under subsection (h); and

(2) inform each individual referred to in paragraph (1) that the United States will conduct a subsequent inquiry into the whereabouts and status of the person on or about one year after the date of the first official notice of the disappearance of the person, unless information becomes available sooner that may result in a change in status of the person.

(k) TREATMENT OF DETERMINATION.—Any determination of the status of a missing person under subsection (i) shall be treated as the determination of the status of the person by all departments and agencies of the United States.

(Added Pub. L. 104–106, div. A, title V, § 569(b)(1), Feb. 10, 1996, 110 Stat. 338; amended Pub. L. 104–201, div. A, title V, § 578(a)(2), (b)(2), Sept. 23, 1996, 110 Stat. 2536; Pub. L. 105–85, div. A, title V, § 599(a)(2), (d), Nov. 18, 1997, 111 Stat. 1767, 1769.)

AMENDMENTS

1997—Subsec. (c)(1). Pub. L. 105–85, § 599(a)(2)(A), substituted ''one individual described in paragraph (2)'' for ''one military officer''.

Subsec. (c)(2) to (4). Pub. L. 105–85, § 599(a)(2)(B), (C), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

Subsec. (f)(1). Pub. L. 105–85, § 599(d)(1), inserted at end ''The identity of counsel appointed under this paragraph for a missing person shall be made known to the missing person's primary next of kin and any other previously designated person of the person.''

Subsec. (f)(4). Pub. L. 105–85, § 599(d)(2), inserted at end ''The primary next of kin of a missing person and any other previously designated person of the missing person shall have the right to submit information to the missing person's counsel relative to the disappearance or status of the missing person.''

1996—Subsec. (a). Pub. L. 104–201, § 578(b)(2), substituted ''section 1502(a)'' for ''section 1502(b)''.

Subsec. (c)(1). Pub. L. 104–201, § 578(a)(2)(A), substituted ''one military officer'' for ''one individual described in paragraph (2)''.

Subsec. (c)(2) to (4). Pub. L. 104–201, § 578(a)(2)(B), (C), redesignated pars. (3) and (4) as (2) and (3), respectively, and struck out former par. (2) which read as follows: ''An individual referred to in paragraph (1) is the following:

''(A) A military officer, in the case of an inquiry with respect to a member of the armed forces.

''(B) A civilian, in the case of an inquiry with respect to a civilian employee of the Department of Defense or of a contractor of the Department of Defense.''

§ 1504. Subsequent board of inquiry

(a) ADDITIONAL BOARD.—If information that may result in a change of status of a person covered by a determination under section 1503(i) of this title becomes available within one year after the date of the transmission of a report with respect to the person under section 1502(a)(2) of this title, the Secretary concerned shall appoint a board under this section to conduct an inquiry into the information.

(b) DATE OF APPOINTMENT.—The Secretary concerned shall appoint a board under this section to conduct an inquiry into the whereabouts and status of a missing person on or about one year after the date of the transmission of a report concerning the person under section 1502(a)(2) of this title.

(c) COMBINED INQUIRIES.—If it appears to the Secretary concerned that the absence or status of two or more persons is factually related, the Secretary may appoint one board under this section to conduct the inquiry into the whereabouts and status of such persons.

(d) COMPOSITION.—(1) A board appointed under this section shall be composed of at least three members as follows:

(A) In the case of a board that will inquire into the whereabouts and status of one or more members of the armed forces (and no civilians described in subparagraph (B)), the board shall be composed of officers having the grade of major or lieutenant commander or above.

(B) In the case of a board that will inquire into the whereabouts and status of one or more civilian employees of the Department of Defense or contractors of the Department of Defense (and no members of the armed forces), the board shall be composed of—

(i) not less than three employees of the Department of Defense whose rate of annual pay is equal to or greater than the rate of annual pay payable for grade GS–13 of the General Schedule under section 5332 of title 5; and

(ii) such members of the armed forces as the Secretary considers advisable.

(C) In the case of a board that will inquire into the whereabouts and status of both one or more members of the armed forces and one or more civilians described in subparagraph (B)—

(i) the board shall include at least one officer described in subparagraph (A) and at least one employee of the Department of Defense described in subparagraph (B)(i); and

(ii) the ratio of such officers to such employees on the board shall be roughly proportional to the ratio of the number of members of the armed forces who are subjects of the board's inquiry to the number of civilians who are subjects of the board's inquiry.

(2) The Secretary concerned shall designate one member of a board appointed under this section as president of the board. The president of the board shall have a security clearance that affords the president access to all information relating to the whereabouts and status of each person covered by the inquiry.

(3) One member of each board appointed under this subsection shall be an individual who—

(A) has an occupational specialty similar to that of one or more of the persons covered by the inquiry; and

(B) has an understanding of and expertise in the type of official activities that one or more such persons were engaged in at the time such person or persons disappeared.

(4) The Secretary who appoints a board under this subsection shall, for purposes of providing legal counsel to the board, assign to the board a judge advocate, or appoint to the board an attorney, with the same qualifications as specified in section 1503(c)(4) of this title.

(e) DUTIES OF BOARD.—A board appointed under this section to conduct an inquiry into the whereabouts and status of a person shall—

(1) review the reports with respect to the person transmitted under section 1502(a)(2) of this title and submitted under section 1503(h) of this title;

(2) collect and evaluate any document, fact, or other evidence with respect to the whereabouts and status of the person that has become available since the determination of the status of the person under section 1503 of this title;

(3) draw conclusions as to the whereabouts and status of the person;

(4) determine on the basis of the activities under paragraphs (1) and (2) whether the status of the person should be continued or changed; and

(5) submit to the Secretary concerned a report describing the findings and conclusions of the board, together with a recommendation for a determination by the Secretary concerning the whereabouts and status of the person.

(f) COUNSEL FOR MISSING PERSONS.—(1) When the Secretary concerned appoints a board to conduct an inquiry under this section, the Secretary shall appoint counsel to represent each person covered by the inquiry. The identity of counsel appointed under this paragraph for a missing person shall be made known to the missing person's primary next of kin and any other previously designated person of the person.

(2) A person appointed as counsel under this subsection shall meet the qualifications and have the duties set forth in section 1503(f) of this title for a missing person's counsel appointed under that section.

(3) The review of the report of a board on an inquiry that is submitted by such counsel shall be made an official part of the record of the board with respect to the inquiry.

(g) ATTENDANCE OF FAMILY MEMBERS AND CERTAIN OTHER INTERESTED PERSONS AT PROCEEDINGS.—(1) With respect to any person covered by an inquiry under this section, the primary next of kin, other members of the immediate family, and any other previously designated person of the person may attend the proceedings of the board during the inquiry.

(2) The Secretary concerned shall take reasonable actions to notify each individual referred to in paragraph (1) of the opportunity to attend the proceedings of a board. Such notice shall be provided not less than 60 days before the first meeting of the board.

(3) An individual who receives notice under paragraph (2) shall notify the Secretary of the intent, if any, of that individual to attend the proceedings of the board not later than 21 days after the date on which the individual receives the notice.

(4) Each individual who notifies the Secretary under paragraph (3) of the individual's intent to attend the proceedings of the board—

(A) in the case of an individual who is the primary next of kin or the previously designated person, may attend the proceedings of the board with private counsel;

(B) shall have access to the personnel file of the missing person, to unclassified reports, if any, of the board appointed under section 1503 of this title to conduct the inquiry into the whereabouts and status of the person, and to any other unclassified information or documents relating to the whereabouts and status of the person;

(C) shall be afforded the opportunity to present information at the proceedings of the board that such individual considers to be relevant to those proceedings; and

(D) subject to paragraph (5), shall be given the opportunity to submit in writing an objection to any recommendation of the board under subsection (i) as to the status of the missing person.

(5)(A) Individuals who wish to file objections under paragraph (4)(D) to any recommendation of the board shall—

(i) submit a letter of intent to the president of the board not later than 15 days after the date on which the recommendations are made; and

(ii) submit to the president of the board the objections in writing not later than 30 days after the date on which the recommendations are made.

(B) The president of a board shall include any objections to a recommendation of the board that are submitted to the president of the board under subparagraph (A) in the report of the board containing the recommendation under subsection (i).

(6) An individual referred to in paragraph (1) who attends the proceedings of a board under this subsection shall not be entitled to reimbursement by the United States for any costs (including travel, lodging, meals, local transportation, legal fees, transcription costs, witness expenses, and other expenses) incurred by that individual in attending such proceedings.

(h) AVAILABILITY OF INFORMATION TO BOARDS.—(1) In conducting proceedings in an inquiry under this section, a board may secure directly from any department or agency of the United States any information that the board considers necessary in order to conduct the proceedings.

(2) Upon written request from the president of a board, the head of a department or agency of the United States shall release information covered by the request to the board. In releasing such information, the head of the department or agency shall—

(A) declassify to an appropriate degree classified information; or

(B) release the information in a manner not requiring the removal of markings indicating the classified nature of the information.

(3)(A) If a request for information under paragraph (2) covers classified information that cannot be declassified, or if the classification markings cannot be removed before release from the information covered by the request, or if the material cannot be summarized in a manner that prevents the release of classified information, the classified information shall be made available only to the president of the board making the request and the counsel for the missing person appointed under subsection (f).

(B) The president of a board shall close to persons who do not have appropriate security clear-

ances the proceeding of the board at which classified information is discussed. Participants at a proceeding of a board at which classified information is discussed shall comply with all applicable laws and regulations relating to the disclosure of classified information. The Secretary concerned shall assist the president of a board in ensuring that classified information is not compromised through board proceedings.

(i) RECOMMENDATION ON STATUS.—(1) Upon completion of an inquiry under this section, a board shall make a recommendation as to the current whereabouts and status of each missing person covered by the inquiry.

(2) A board may not recommend under paragraph (1) that a person be declared dead unless in making the recommendation the board complies with section 1507 of this title.

(j) REPORT.—A board appointed under this section shall submit to the Secretary concerned a report on the inquiry carried out by the board, together with the evidence considered by the board during the inquiry. The report may include a classified annex.

(k) ACTIONS BY SECRETARY CONCERNED.—(1) Not later than 30 days after the receipt of a report from a board under subsection (j), the Secretary shall review—

(A) the report;

(B) the review of the report submitted to the Secretary under subsection (f)(3) by the counsel for each person covered by the report; and

(C) the objections, if any, to the report submitted to the president of the board under subsection (g)(5).

(2) In reviewing a report under paragraph (1) (including the objections described in subparagraph (C) of that paragraph), the Secretary concerned shall determine whether or not the report is complete and free of administrative error. If the Secretary determines that the report is incomplete, or that the report is not free of administrative error, the Secretary may return the report to the board for further action on the report by the board.

(3) Upon a determination by the Secretary that a report reviewed under this subsection is complete and free of administrative error, the Secretary shall make a determination concerning the status of each person covered by the report.

(*l*) REPORT TO FAMILY MEMBERS AND OTHER INTERESTED PERSONS.—Not later than 60 days after the date on which the Secretary concerned makes a determination with respect to a missing person under subsection (k), the Secretary shall—

(1) provide the report reviewed by the Secretary in making the determination to the primary next of kin, the other members of the immediate family, and any other previously designated person of the person; and

(2) in the case of a person who continues to be in a missing status, inform each individual referred to in paragraph (1) that the United States will conduct a further investigation into the whereabouts and status of the person as specified in section 1505 of this title.

(m) TREATMENT OF DETERMINATION.—Any determination of the status of a missing person under subsection (k) shall supersede the determination of the status of the person under section 1503 of this title and shall be treated as the determination of the status of the person by all departments and agencies of the United States.

(Added Pub. L. 104–106, div. A, title V, § 569(b)(1), Feb. 10, 1996, 110 Stat. 341; amended Pub. L. 104–201, div. A, title V, § 578(a)(3), Sept. 23, 1996, 110 Stat. 2536; Pub. L. 105–85, div. A, title V, § 599(a)(3), (d)(1), title X, § 1073(a)(30), Nov. 18, 1997, 111 Stat. 1767, 1769, 1902.)

AMENDMENTS

1997—Subsec. (d)(1). Pub. L. 105–85, § 599(a)(3)(A), substituted ''as follows:'' and subpars. (A) to (C) for ''who are officers having the grade of major or lieutenant commander or above.''

Subsec. (d)(4). Pub. L. 105–85, § 599(a)(3)(B), substituted ''section 1503(c)(4)'' for ''section 1503(c)(3)''.

Subsec. (f)(1). Pub. L. 105–85, § 599(d)(1), inserted at end ''The identity of counsel appointed under this paragraph for a missing person shall be made known to the missing person's primary next of kin and any other previously designated person of the person.''

Subsec. (i)(1). Pub. L. 105–85, § 1073(a)(30), substituted ''this section'' for ''this subsection''.

1996—Subsec. (d)(1). Pub. L. 104–201, § 578(a)(3)(A), added text of par. (1) and struck out former text of par. (1) which read as follows: ''A board appointed under this section shall be composed of at least three members as follows:

''(A) In the case of a board that will inquire into the whereabouts and status of one or more members of the armed forces (and no civilians described in subparagraph (B)), the board shall be composed of officers having the grade of major or lieutenant commander or above.

''(B) In the case of a board that will inquire into the whereabouts and status of one or more civilian employees of the Department of Defense or contractors of the Department of Defense (and no members of the armed forces), the board shall be composed of—

''(i) not less than three employees of the Department of Defense whose rate of annual pay is equal to or greater than the rate of annual pay payable for grade GS–13 of the General Schedule under section 5332 of title 5; and

''(ii) such members of the armed forces as the Secretary considers advisable.

''(C) In the case of a board that will inquire into the whereabouts and status of both one or more members of the armed forces and one or more civilians described in subparagraph (B)—

''(i) the board shall include at least one officer described in subparagraph (A) and at least one employee of the Department of Defense described in subparagraph (B)(i); and

''(ii) the ratio of such officers to such employees on the board shall be roughly proportional to the ratio of the number of members of the armed forces who are subjects of the board's inquiry to the number of civilians who are subjects of the board's inquiry.''

Subsec. (d)(4). Pub. L. 104–201, § 578(a)(3)(B), substituted ''section 1503(c)(3)'' for ''section 1503(c)(4)''.

§ 1505. Further review

(a) SUBSEQUENT REVIEW.—The Secretary concerned shall conduct subsequent inquiries into the whereabouts and status of any person determined by the Secretary under section 1504 of this title to be in a missing status.

(b) FREQUENCY OF SUBSEQUENT REVIEWS.—The Secretary concerned shall conduct inquiries into the whereabouts and status of a person under subsection (a) upon receipt of information that

may result in a change of status of the person. The Secretary concerned shall appoint a board to conduct such inquiries.

(c) ACTION UPON DISCOVERY OR RECEIPT OF INFORMATION.—(1) Whenever any United States intelligence agency or other element of the Government finds or receives information that may be related to a missing person, the information shall promptly be forwarded to the office established under section 1501 of this title.

(2) Upon receipt of information under paragraph (1), the head of the office established under section 1501 of this title shall as expeditiously as possible ensure that the information is added to the appropriate case file for that missing person and notify (A) the designated missing person's counsel for that person, and (B) the primary next of kin and any previously designated person for the missing person of the existence of that information.

(3) The head of the office established under section 1501 of this title, with the advice of the missing person's counsel notified under paragraph (2), shall determine whether the information is significant enough to require a board review under this section.

(d) CONDUCT OF PROCEEDINGS.—If it is determined that such a board should be appointed, the appointment of, and activities before, a board appointed under this section shall be governed by the provisions of section 1504 of this title with respect to a board appointed under that section.

(Added Pub. L. 104–106, div. A, title V, § 569(b)(1), Feb. 10, 1996, 110 Stat. 345; amended Pub. L. 104–201, div. A, title V, § 578(c), Sept. 23, 1996, 110 Stat. 2536.)

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–201 reenacted heading without change and amended text generally. Prior to amendment, text read as follows:

''(1) In the case of a missing person who was last known to be alive or who was last suspected of being alive, the Secretary shall appoint a board to conduct an inquiry with respect to a person under this subsection—

''(A) on or about three years after the date of the initial report of the disappearance of the person under section 1502(a) of this title; and

''(B) not later than every three years thereafter.

''(2) In addition to appointment of boards under paragraph (1), the Secretary shall appoint a board to conduct an inquiry with respect to a missing person under this subsection upon receipt of information that could result in a change of status of the missing person. When the Secretary appoints a board under this paragraph, the time for subsequent appointments of a board under paragraph (1)(B) shall be determined from the date of the receipt of such information.

''(3) The Secretary is not required to appoint a board under paragraph (1) with respect to the disappearance of any person—

''(A) more than 30 years after the initial report of the disappearance of the missing person required by section 1502 of this title; or

''(B) if, before the end of such 30-year period, the missing person is accounted for.''

§ 1506. Personnel files

(a) INFORMATION IN FILES.—Except as provided in subsections (b), (c), and (d), the Secretary concerned shall, to the maximum extent practicable, ensure that the personnel file of a missing person contains all information in the possession of the United States relating to the disappearance and whereabouts and status of the person.

(b) CLASSIFIED INFORMATION.—(1) The Secretary concerned may withhold classified information from a personnel file under this section. If the Secretary concerned withholds classified information from a personnel file, the Secretary shall ensure that the file contains the following:

(A) A notice that the withheld information exists.

(B) A notice of the date of the most recent review of the classification of the withheld information.

(2)(A) If classified information withheld under this subsection refers to one or more unnamed missing persons, the Secretary shall ensure that notice of that withheld information, and notice of the date of the most recent review of the classification of that withheld information, is made reasonably accessible to the primary next of kin, members of the immediate family, and the previously designated person of all missing persons from the conflict or period of war to which the classified information pertains.

(B) For purposes of subparagraph (A), information shall be considered to be made reasonably accessible if placed in a separate and distinct file that is available for review by persons specified in subparagraph (A) upon the request of any such person either to review the separate file or to review the personnel file of the missing person concerned.

(c) PROTECTION OF PRIVACY.—The Secretary concerned shall maintain personnel files under this section, and shall permit disclosure of or access to such files, in accordance with the provisions of section 552a of title 5 and with other applicable laws and regulations pertaining to the privacy of the persons covered by the files.

(d) PRIVILEGED INFORMATION.—(1) The Secretary concerned shall withhold from personnel files under this section, as privileged information, debriefing reports provided by missing persons returned to United States control which are obtained under a promise of confidentiality made for the purpose of ensuring the fullest possible disclosure of information.

(2) If a debriefing report contains non-derogatory information about the status and whereabouts of a missing person other than the source of the debriefing report or about unnamed missing persons, the Secretary concerned shall prepare an extract of the non-derogatory information. That extract, following a review by the source of the debriefing report, shall be placed in the personnel file of each missing person named in the debriefing report in such a manner as to protect the identity of the source providing the information. Any information contained in the extract of the debriefing report that pertains to unnamed missing persons shall be made reasonably accessible to the primary next of kin, members of the immediate family, and the previously designated person.

(3) Whenever the Secretary concerned withholds a debriefing report, or part of a debriefing report, from a personnel file under this subsection, the Secretary shall ensure that the file

contains a notice that withheld information exists.

(e) AVAILABILITY OF INFORMATION.—The Secretary concerned shall, upon request, make available the contents of the personnel file of a missing person to the primary next of kin, the other members of the immediate family, or any other previously designated person of the person.

(f) NONDISCLOSURE OF CERTAIN INFORMATION.—A record of the content of a debriefing of a missing person returned to United States control during the period beginning on July 8, 1959, and ending on February 10, 1996, that was conducted by an official of the United States authorized to conduct the debriefing is privileged information and, notwithstanding sections 552 and 552a of title 5, may not be disclosed, in whole or in part, under either such section. However, this subsection does not limit the responsibility of the Secretary concerned under paragraphs (2) and (3) of subsection (d) to place extracts of non-derogatory information, or a notice of the existence of such information, in the personnel file of a missing person.

(Added Pub. L. 104–106, div. A, title V, § 569(b)(1), Feb. 10, 1996, 110 Stat. 346; amended Pub. L. 104–201, div. A, title V, § 578(d), Sept. 23, 1996, 110 Stat. 2537; Pub. L. 105–85, div. A, title V, § 599(f), (g), Nov. 18, 1997, 111 Stat. 1770; Pub. L. 106–65, div. A, title V, § 575, Oct. 5, 1999, 113 Stat. 624; Pub. L. 107–107, div. A, title V, § 573, Dec. 28, 2001, 115 Stat. 1122.)

AMENDMENTS

2001—Subsec. (b)(2). Pub. L. 107–107 designated existing provisions as subpar. (A), inserted ''of all missing persons from the conflict or period of war to which the classified information pertains'' before period at end, and added subpar. (B).

1999—Subsec. (f). Pub. L. 106–65 added subsec. (f).

1997—Subsec. (b). Pub. L. 105–85, § 599(f), designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), and added par. (2).

Subsec. (d)(2). Pub. L. 105–85, § 599(g)(1), inserted ''or about unnamed missing persons'' after ''the debriefing report'' in first sentence, substituted ''each missing person named in the debriefing report'' for ''the missing person'' in second sentence, and inserted at end ''Any information contained in the extract of the debriefing report that pertains to unnamed missing persons shall be made reasonably accessible to the primary next of kin, members of the immediate family, and the previously designated person.''

Subsec. (d)(3). Pub. L. 105–85, § 599(g)(2), inserted '', or part of a debriefing report,'' after ''a debriefing report''.

1996—Subsecs. (e), (f). Pub. L. 104–201 redesignated subsec. (f) as (e) and struck out former subsec. (e) which read as follows: ''WRONGFUL WITHHOLDING.—Except as provided in subsections (a) through (d), any person who knowingly and willfully withholds from the personnel file of a missing person any information relating to the disappearance or whereabouts and status of a missing person shall be fined as provided in title 18 or imprisoned not more than one year, or both.''

§ 1507. Recommendation of status of death

(a) REQUIREMENTS RELATING TO RECOMMENDATION.—A board appointed under section 1503, 1504, or 1505 of this title may not recommend that a person be declared dead unless—

(1) credible evidence exists to suggest that the person is dead;

(2) the United States possesses no credible evidence that suggests that the person is alive; and

(3) representatives of the United States—

(A) have made a complete search of the area where the person was last seen (unless, after making a good faith effort to obtain access to such area, such representatives are not granted such access); and

(B) have examined the records of the government or entity having control over the area where the person was last seen (unless, after making a good faith effort to obtain access to such records, such representatives are not granted such access).

(b) SUBMITTAL OF INFORMATION ON DEATH.—If a board appointed under section 1503, 1504, or 1505 of this title makes a recommendation that a missing person be declared dead, the board shall include in the report of the board with respect to the person under that section the following:

(1) A detailed description of the location where the death occurred.

(2) A statement of the date on which the death occurred.

(3) A description of the location of the body, if recovered.

(4) If the body has been recovered and is not identifiable through visual means, a certification by a forensic pathologist that the body recovered is that of the missing person. In determining whether to make such a certification, the forensic pathologist shall consider, as determined necessary by the Secretary of the military department concerned, additional evidence and information provided by appropriate specialists in forensic medicine or other appropriate medical sciences.

(Added Pub. L. 104–106, div. A, title V, § 569(b)(1), Feb. 10, 1996, 110 Stat. 347; amended Pub. L. 104–201, div. A, title V, § 578(e), Sept. 23, 1996, 110 Stat. 2537; Pub. L. 105–85, div. A, title V, § 599(c), Nov. 18, 1997, 111 Stat. 1768.)

AMENDMENTS

1997—Subsec. (b)(3), (4). Pub. L. 105–85 added pars. (3) and (4).

1996—Subsec. (b)(3), (4). Pub. L. 104–201 struck out pars. (3) and (4) which read as follows:

''(3) A description of the location of the body, if recovered.

''(4) If the body has been recovered and is not identifiable through visual means, a certification by a practitioner of an appropriate forensic science that the body recovered is that of the missing person.''

§ 1508. Judicial review

(a) RIGHT OF REVIEW.—A person who is the primary next of kin (or the previously designated person) of a person who is the subject of a finding described in subsection (b) may obtain judicial review in a United States district court of that finding, but only on the basis of a claim that there is information that could affect the status of the missing person's case that was not adequately considered during the administrative review process under this chapter. Any such review shall be as provided in section 706 of title 5.

(b) FINDINGS FOR WHICH JUDICIAL REVIEW MAY BE SOUGHT.—Subsection (a) applies to the following findings:

(1) A finding by a board appointed under section 1504 or 1505 of this title that a missing person is dead.

(2) A finding by a board appointed under section 1509 of this title that confirms that a missing person formerly declared dead is in fact dead.

(c) SUBSEQUENT REVIEW.—Appeals from a decision of the district court shall be taken to the appropriate United States court of appeals and to the Supreme Court as provided by law.

(Added Pub. L. 104–106, div. A, title V, § 569(b)(1), Feb. 10, 1996, 110 Stat. 348.)

§ 1509. Program to resolve preenactment missing person cases

(a) PROGRAM REQUIRED; COVERED CONFLICTS.—The Secretary of Defense shall implement a comprehensive, coordinated, integrated, and fully resourced program to account for persons described in subparagraph (A) or (B) of section 1513(1) of this title who are unaccounted for from the following conflicts:

(1) World War II during the period beginning on December 7, 1941, and ending on December 31, 1946, including members of the armed forces who were lost during flight operations in the Pacific theater of operations covered by section 576 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65; 10 U.S.C. 1501 note).

(2) The Cold War during the period beginning on September 2, 1945, and ending on August 21, 1991.

(3) The Korean War during the period beginning on June 27, 1950, and ending on January 31, 1955.

(4) The Indochina War era during the period beginning on July 8, 1959, and ending on May 15, 1975.

(5) The Persian Gulf War during the period beginning on August 2, 1990, and ending on February 28, 1991.

(6) Such other conflicts in which members of the armed forces served as the Secretary of Defense may designate.

(b) IMPLEMENTATION PROCESS.—(1) The Secretary of Defense shall implement the program within the Department of Defense POW/MIA accounting community.

(2) For purposes of paragraph (1), the term ''POW/MIA accounting community'' means:

(A) The Defense Prisoner of War/Missing Personnel Office (DPMO).

(B) The Joint POW/MIA Accounting Command (JPAC).

(C) The Armed Forces DNA Identification Laboratory (AFDIL).

(D) The Life Sciences Equipment Laboratory of the Air Force (LSEL).

(E) The casualty and mortuary affairs offices of the military departments.

(F) Any other element of the Department of Defense whose mission (as designated by the Secretary of Defense) involves the accounting for and recovery of members of the armed forces who are missing in action, prisoners of war, or unaccounted for.

(c) TREATMENT AS MISSING PERSONS.—Each unaccounted for person covered by subsection (a) shall be considered to be a missing person for purposes of the applicability of other provisions of this chapter to the person.

(d) ESTABLISHMENT OF PERSONNEL FILES.—(1) The Secretary of Defense shall ensure that a personnel file is established and maintained for each person covered by subsection (a) if the Secretary—

(A) possesses any information relevant to the status of the person; or

(B) receives any new information regarding the missing person as provided in subsection (e).

(2) The Secretary of Defense shall ensure that each file established under this subsection contains all relevant information pertaining to a person covered by subsection (a) and is readily accessible to all elements of the department, the combatant commands, and the armed forces involved in the effort to account for the person.

(3) Each file established under this subsection shall be handled in accordance with, and subject to the provisions of, section 1506 of this title in the same manner as applies to the file of a missing person otherwise subject to such section.

(e) REVIEW OF STATUS REQUIREMENTS.—(1) If new information (as described in paragraph (3)) is found or received that may be related to one or more unaccounted for persons covered by subsection (a), whether or not such information specifically relates (or may specifically relate) to any particular such unaccounted for person, that information shall be provided to the Secretary of Defense.

(2) Upon receipt of new information under paragraph (1), the Secretary shall ensure that—

(A) the information is treated under paragraph (2) of subsection (c) of section 1505 of this title, relating to addition of the information to the personnel file of a person and notification requirements, in the same manner as information received under paragraph (1) under such subsection; and

(B) the information is treated under paragraph (3) of subsection (c) and subsection (d) of such section, relating to a board review under such section, in the same manner as information received under paragraph (1) of such subsection (c).

(3) For purposes of this subsection, new information is information that is credible and that—

(A) is found or received after November 18, 1997, by a United States intelligence agency, by a Department of Defense agency, or by a person specified in section 1504(g) of this title; or

(B) is identified after November 18, 1997, in records of the United States as information that could be relevant to the case of one or more unaccounted for persons covered by subsection (a).

(f) COORDINATION REQUIREMENTS.—(1) In establishing and carrying out the program, the Secretary of Defense shall coordinate with the Secretaries of the military departments, the Chairman of the Joint Chiefs of Staff, and the commanders of the combatant commands.

(2) In carrying out the program, the Secretary of Defense shall establish close coordination

with the Department of State, the Central Intelligence Agency, and the National Security Council to enhance the ability of the Department of Defense POW/MIA accounting community to account for persons covered by subsection (a).

(Added Pub. L. 104–106, div. A, title V, § 569(b)(1), Feb. 10, 1996, 110 Stat. 348; amended Pub. L. 104–201, div. A, title V, § 578(f)(1), (2)(A), Sept. 23, 1996, 110 Stat. 2537; Pub. L. 105–85, div. A, title V, § 599(e), Nov. 18, 1997, 111 Stat. 1769; Pub. L. 106–65, div. A, title X, § 1066(a)(14), Oct. 5, 1999, 113 Stat. 771; Pub. L. 111–84, div. A, title V, § 541(a), Oct. 28, 2009, 123 Stat. 2296.)

AMENDMENTS

2009—Pub. L. 111–84 amended section generally. Prior to amendment, section consisted of subsecs. (a) to (d) relating to review of status of missing person cases arising before enactment of this chapter.

1999—Subsec. (a)(2)(A), (B). Pub. L. 106–65 substituted ''November 18, 1997,'' for ''the date of the enactment of the National Defense Authorization Act for Fiscal Year 1998''.

1997—Subsec. (a). Pub. L. 105–85, § 599(e)(1), added subsec. (a) and struck out former subsec. (a) which read as follows:

''(a) REVIEW OF STATUS.—In the case of an unaccounted for person covered by section 1501(c) of this title who is described in subsection (b), if new information that could change the status of that person is found or received by a United States intelligence agency, by a Department of Defense agency, or by a person specified in section 1504(g) of this title, that information shall be provided to the Secretary of Defense with a request that the Secretary evaluate the information in accordance with sections 1505(c) and 1505(d) of this title.''

Subsec. (d). Pub. L. 105–85, § 599(e)(2), added subsec. (d).

1996—Pub. L. 104–201, § 578(f)(2)(A), struck out '', special interest'' after ''Preenactment'' in section catchline.

Subsecs. (c), (d). Pub. L. 104–201, § 578(f)(1), redesignated subsec. (d) as (c) and struck out former subsec. (c) which read as follows:

''(c) SPECIAL RULE FOR PERSONS CLASSIFIED AS 'KIA/BNR'.—In the case of a person described in subsection (b) who was classified as 'killed in action/body not recovered', the case of that person may be reviewed under this section only if the new information referred to in subsection (a) is compelling.''

IMPLEMENTATION

Pub. L. 111–84, div. A, title V, § 541(d), Oct. 28, 2009, 123 Stat. 2298, provided that:

''(1) PRIORITY.—A priority of the program required by section 1509 of title 10, United States Code, as amended by subsection (a), to resolve missing person cases arising before the enactment of chapter 76 of such title by section 569 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106; 110 Stat. 336) [approved Feb. 10, 1996] shall be the return of missing persons to United States control alive.

''(2) ACCOUNTING FOR GOAL.—In implementing the program, the Secretary of Defense, in coordination with the officials specified in subsection (f)(1) of section 1509 of title 10, United States Code, shall provide such funds, personnel, and resources as the Secretary considers appropriate to increase significantly the capability and capacity of the Department of Defense, the Armed Forces, and commanders of the combatant commands to account for missing persons so that, beginning with fiscal year 2015, the POW/MIA accounting community has sufficient resources to ensure that at least 200 missing persons are accounted for under the program annually.

''(3) DEFINITIONS.—In this subsection:

''(A) The term 'accounted for' has the meaning given such term in section 1513(3)(B) of title 10, United States Code.

''(B) The term 'POW/MIA accounting community' has the meaning given such term in section 1509(b)(2) of such title.''

§ 1510. Applicability to Coast Guard

(a) DESIGNATED OFFICER TO HAVE RESPONSIBILITY.—The Secretary of Homeland Security shall designate an officer of the Department of Homeland Security to have responsibility within the Department of Homeland Security for matters relating to missing persons who are members of the Coast Guard.

(b) PROCEDURES.—The Secretary of Homeland Security shall prescribe procedures for the determination of the status of persons described in section 1501(c) of this title who are members of the Coast Guard and for the collection, analysis, review, and update of information on such persons. To the maximum extent practicable, the procedures prescribed under this section shall be similar to the procedures prescribed by the Secretary of Defense under section 1501(b) of this title.

(Added Pub. L. 104–106, div. A, title V, § 569(b)(1), Feb. 10, 1996, 110 Stat. 349; amended Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation'' wherever appearing.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

§ 1511. Return alive of person declared missing or dead

(a) PAY AND ALLOWANCES.—Any person (except for a person subsequently determined to have been absent without leave or a deserter) in a missing status or declared dead under subchapter VII of chapter 55 of title 5 or chapter 10 of title 37 or by a board appointed under this chapter who is found alive and returned to the control of the United States shall be paid for the full time of the absence of the person while given that status or declared dead under the law and regulations relating to the pay and allowances of persons returning from a missing status.

(b) EFFECT ON GRATUITIES PAID AS A RESULT OF STATUS.—Subsection (a) shall not be interpreted to invalidate or otherwise affect the receipt by any person of a death gratuity or other payment from the United States on behalf of a person referred to in subsection (a) before February 10, 1996.

(Added Pub. L. 104–106, div. A, title V, § 569(b)(1), Feb. 10, 1996, 110 Stat. 349; amended Pub. L. 107–107, div. A, title X, § 1048(c)(10), Dec. 28, 2001, 115 Stat. 1226.)

AMENDMENTS

2001—Subsec. (b). Pub. L. 107–107 substituted ''February 10, 1996'' for ''the date of the enactment of this chapter''.

§ 1512. Effect on State law

(a) NONPREEMPTION OF STATE AUTHORITY.—Nothing in this chapter shall be construed to invalidate or limit the power of any State court or administrative entity, or the power of any court or administrative entity of any political subdivision thereof, to find or declare a person dead for purposes of such State or political subdivision.

(b) STATE DEFINED.—In this section, the term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(Added Pub. L. 104–106, div. A, title V, § 569(b)(1), Feb. 10, 1996, 110 Stat. 349.)

§ 1513. Definitions

In this chapter:

(1) The term ''missing person'' means—

(A) a member of the armed forces on active duty who is in a missing status; or

(B) a civilian employee of the Department of Defense or an employee of a contractor of the Department of Defense who serves in direct support of, or accompanies, the armed forces in the field under orders and who is in a missing status.

Such term includes an unaccounted for person described in subsection (a) of section 1509 of this title who is required by subsection (b) of such section to be considered a missing person.

(2) The term ''missing status'' means the status of a missing person who is determined to be absent in a category of any of the following:

(A) Missing.

(B) Missing in action.

(C) Interned in a foreign country.

(D) Captured.

(E) Beleaguered.

(F) Besieged.

(G) Detained in a foreign country against that person's will.

(3) The term ''accounted for'', with respect to a person in a missing status, means that—

(A) the person is returned to United States control alive;

(B) the remains of the person are recovered and, if not identifiable through visual means as those of the missing person, are identified as those of the missing person by a practitioner of an appropriate forensic science; or

(C) credible evidence exists to support another determination of the person's status.

(4) The term ''primary next of kin'', in the case of a missing person, means the individual authorized to direct disposition of the remains of the person under section 1482(c) of this title.

(5) The term ''member of the immediate family'', in the case of a missing person, means the following:

(A) The spouse of the person.

(B) A natural child, adopted child, stepchild, or illegitimate child (if acknowledged by the person or parenthood has been established by a court of competent jurisdiction) of the person, except that if such child has not attained the age of 18 years, the term means a surviving parent or legal guardian of such child.

(C) A biological parent of the person, unless legal custody of the person by the parent has been previously terminated by reason of a court decree or otherwise under law and not restored.

(D) A brother or sister of the person, if such brother or sister has attained the age of 18 years.

(E) Any other blood relative or adoptive relative of the person, if such relative was given sole legal custody of the person by a court decree or otherwise under law before the person attained the age of 18 years and such custody was not subsequently terminated before that time.

(6) The term ''previously designated person'', in the case of a missing person, means an individual designated by the person under section 655 of this title for purposes of this chapter.

(7) The term ''classified information'' means any information the unauthorized disclosure of which (as determined under applicable law and regulations) could reasonably be expected to damage the national security.

(8) The term ''theater component commander'' means, with respect to any of the combatant commands, an officer of any of the armed forces who (A) is commander of all forces of that armed force assigned to that combatant command, and (B) is directly subordinate to the commander of the combatant command.

(Added Pub. L. 104–106, div. A, title V, § 569(b)(1), Feb. 10, 1996, 110 Stat. 350; amended Pub. L. 104–201, div. A, title V, § 578(a)(4), (b)(3), Sept. 23, 1996, 110 Stat. 2536; Pub. L. 105–85, div. A, title V, § 599(a)(4), (b)(2), Nov. 18, 1997, 111 Stat. 1768; Pub. L. 106–65, div. A, title X, § 1066(a)(15), Oct. 5, 1999, 113 Stat. 771; Pub. L. 111–84, div. A, title V, § 541(c), Oct. 28, 2009, 123 Stat. 2298.)

AMENDMENTS

2009—Par. (1). Pub. L. 111–84 substituted ''subsection (a) of section 1509 of this title who is required by subsection (b) of such section'' for ''section 1509(b) of this title who is required by section 1509(a)(1) of this title'' in concluding provisions.

1999—Par. (1). Pub. L. 106–65 substituted ''who is required by section 1509(a)(1) of this title to be considered a missing person'' for '', under the circumstances specified in the last sentence of section 1509(a) of this title'' in concluding provisions.

1997—Par. (1). Pub. L. 105–85, § 599(a)(4), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The term 'missing person' means a member of the armed forces on active duty who is in a missing status.''

Par. (8). Pub. L. 105–85, § 599(b)(2), added par. (8).

1996—Par. (1). Pub. L. 104–201, § 578(a)(4), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The term 'missing person' means—

''(A) a member of the Armed Forces on active duty who is in a missing status; or

''(B) a civilian employee of the Department of Defense or an employee of a contractor of the Department of Defense who serves with or accompanies the Armed Forces in the field under orders and who is in a missing status.''

Par. (8). Pub. L. 104–201, § 578(b)(3), struck out par. (8) which read as follows: ''The term 'theater component

commander' means, with respect to any of the combatant commands, an officer of any of the armed forces who (A) is commander of all forces of that armed force assigned to that combatant command, and (B) is directly subordinate to the commander of the combatant command.''

CHAPTER 77—POSTHUMOUS COMMISSIONS AND WARRANTS

Sec.
1521. Posthumous commissions.
1522. Posthumous warrants.
1523. Posthumous commissions and warrants: effect on pay and allowances.
1524. Posthumous commissions and warrants: determination of date of death.

AMENDMENTS

1966—Pub. L. 89–718, § 12(a)(2), Nov. 2, 1966, 80 Stat. 1117, added item 1524.

§ 1521. Posthumous commissions

(a) The President may issue, or have issued, an appropriate commission in the name of a member of the armed forces who, after September 8, 1939—

(1) was appointed to a commissioned grade but was unable to accept the appointment because of death;

(2) successfully completed the course at an officers' training school and was recommended for appointment to a commissioned grade by the commanding officer or officer in charge of the school but was unable to accept the appointment because of death; or

(3) was officially recommended for appointment or promotion to a commissioned grade but was unable to accept the promotion or appointment because of death.

(b) A commission issued under subsection (a) shall issue as of the date of the appointment, recommendation, or official recommendation, as the case may be, and the member's name shall be carried on the records of the military or executive department concerned as if he had served in the grade, and branch if any, in which posthumously commissioned, from the date of the appointment, recommendation, or official recommendation to the date of his death.

(c) A commission issued under subsection (a) in connection with the promotion of a deceased member to a higher commissioned grade shall require certification by the Secretary concerned that, at the time of death of the member, the member was qualified for appointment to that higher grade.

(Aug. 10, 1956, ch. 1041, 70A Stat. 115; Pub. L. 106–398, § 1 [[div. A], title V, § 505], Oct. 30, 2000, 114 Stat. 1654, 1654A–102; Pub. L. 110–417, [div. A], title V, § 502(a), Oct. 14, 2008, 122 Stat. 4433.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1521(a)	10:491a (words before semicolon). 10:491b (words before semicolon). 10:491c (words before semicolon). 34:285b (words before semicolon). 34:285c (words before semicolon).	July 28, 1942, ch. 528, §§ 1–3, 56 Stat. 722, 723; July 17, 1953, ch. 220, § 1(a)–(c), 67 Stat. 176.

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1521(b)	34:285d (words before semicolon). 10:491a (words after semicolon). 10:491b (words after semicolon). 10:491c (words after semicolon). 34:285b (words after semicolon). 34:285c (words after semicolon). 34:285d (words after semicolon).	

In subsection (a), the words ''a member of'' are substituted for the words ''any person who, while in'', in 10:491a, 491b, 491c, and 34:285b, 285c, and 285d. The words ''armed forces'' are substituted for the words ''military service of the United States'', in 10:491a, 491b, and 491c; and the words ''naval service of the United States'', in 34:285b, 285c, and 285d (which did not appear in the source statute for the revised section, as amended by the Act of July 17, 1953, ch. 220, § 1(b), 67 Stat. 177). The words ''to such grade'', in 10:491a and 34:285b, ''receive or'', in 10:491c and 34:285d, are omitted as surplusage.

In subsection (b), the words ''if any'' are substituted for words ''of the service''. The words ''appointment and'', in 10:491b and 34:285c, and ''appointment or promotion and'', in 10:491c and 34:285d, are omitted as surplusage.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–417, § 502(a)(1), struck out ''in line of duty'' after ''death'' in pars. (1) to (3).

Subsec. (c). Pub. L. 110–417, § 502(a)(2), added subsec. (c).

2000—Subsec. (a)(3). Pub. L. 106–398, § 1 [[div. A], title V, § 505(a)], struck out ''and the recommendation for whose appointment or promotion was approved by the Secretary concerned'' after ''commissioned grade''.

Subsec. (b). Pub. L. 106–398, § 1 [[div. A], title V, § 505(b)], substituted ''official recommendation'' for ''approval'' in two places.

DELEGATION OF FUNCTIONS

For assignment of functions of President under subsec. (a) of this section, see sections 1(a) and 2(a) of Ex. Ord. No. 13358, Sept. 28, 2004, 69 F.R. 58797, set out as a note under section 301 of Title 3, The President.

DETERMINATION OF DATE OF DEATH UNDER MISSING PERSONS ACT

Section 5 of act July 28, 1942, ch. 528, as added July 17, 1953, ch. 220, § 1(e), 67 Stat. 177, provided that for purposes of this chapter, in any case where the date of death is established under the Missing Persons Act, as amended, the date of death is the date of receipt by the head of the department concerned of evidence that the person is dead, or the date the finding of death is made under section 5 of that Act, prior to repeal by Pub. L. 89–718, § 12(b), Nov. 2, 1966, 80 Stat. 1117. See section 1524 of this title.

§ 1522. Posthumous warrants

(a) The Secretary concerned may issue, or have issued, an appropriate warrant in the name of a member of the armed forces who, after September 8, 1939, was officially recommended for appointment or promotion to a grade other than a commissioned grade but was unable to accept the appointment or promotion because of death.

(b) A warrant issued under subsection (a) shall issue as of the date of the recommendation, and the member's name shall be carried on the records of the military or executive department

concerned as if he had served in the grade to which posthumously appointed or promoted from the date of the recommendation to the date of his death.

(c) A warrant issued under subsection (a) in connection with the promotion of a deceased member to a higher grade shall require a finding by the Secretary concerned that, at the time of death of the member, the member was qualified for appointment to that higher grade.

(Aug. 10, 1956, ch. 1041, 70A Stat. 116; Pub. L. 110–417, [div. A], title V, § 502(b), Oct. 14, 2008, 122 Stat. 4433.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1522(a)	10:612 (words before semicolon). 34:285e (words before semicolon).	July 28, 1942, ch. 528, § 4, 56 Stat. 723; July 17, 1953, ch. 220, § 1 (a)–(d), 67 Stat. 176.
1522(b)	10:612 (words after semicolon). 34:285e (words after semicolon).	

In subsection (a), the words ''a member of'' are substituted for the words ''any person who, while in'', in 10:612 and 34:285e. The words ''armed forces'' are substituted for the words ''the military service of the United States'', in 10:612; and ''the naval service of the United States'', in 34:285e (which did not appear in the source statute for the revised section, as amended by the act of July 17, 1953, ch. 220, § 1(b), 67 Stat. 177). The words ''other than a commissioned grade'' are substituted for the words ''noncommissioned grade'' to make it clear that the revised section covers warrant officers. The words ''receive or'' are omitted as surplusage.

In subsection (b), the words ''appointment or promotion'', ''and branch of the service'', ''official'', and ''by such warrant'' are omitted as surplusage.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–417, § 502(b)(1), struck out ''in line of duty'' before period at end.

Subsec. (c). Pub. L. 110–417, § 502(b)(2), added subsec. (c).

§ 1523. Posthumous commissions and warrants: effect on pay and allowances

No person is entitled to any bonus, gratuity, pay, or allowance because of a posthumous commission or warrant.

(Aug. 10, 1956, ch. 1041, 70A Stat. 116.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1523	10:491d. 34:285f.	July 28, 1942, ch. 528, § 6, 56 Stat. 723; July 17, 1953, ch. 220, § 1(e) (1st 7 words), 67 Stat. 177.

The word ''receive'' is omitted as surplusage. The words ''because of a posthumous commission or warrant'' are substituted for the words ''by virtue of any provision of sections 491a–491d [285b–285d] and 612 [285e] of this title'', in 10:491d and 34:285f.

§ 1524. Posthumous commissions and warrants: determination of date of death

For the purposes of sections 1521 and 1522 of this title, in any case where the date of death is established or determined under section 551–558 of title 37, the date of death is the date the Secretary concerned receives evidence that the person is dead, or the date the finding of death is made under section 555 of title 37.

(Added Pub. L. 89–718, § 12(a)(1), Nov. 2, 1966, 80 Stat. 1117.)

CHAPTER 79—CORRECTION OF MILITARY RECORDS

Sec.
1551. Correction of name after separation from service under an assumed name.
1552. Correction of military records: claims incident thereto.
1553. Review of discharge or dismissal.
1554. Review of retirement or separation without pay for physical disability.
1554a. Review of separation with disability rating of 20 percent disabled or less.
1555. Professional staff.
1556. Ex parte communications prohibited.
1557. Timeliness standards for disposition of applications before Corrections Boards.
1558. Review of actions of selection boards: correction of military records by special boards; judicial review.
1559. Personnel limitation.

AMENDMENTS

2008—Pub. L. 110–181, div. A, title XVI, § 1643(a)(2), Jan. 28, 2008, 122 Stat. 467, added item 1554a.

2002—Pub. L. 107–314, div. A, title V, § 552(b), Dec. 2, 2002, 116 Stat. 2552, added item 1559.

2001—Pub. L. 107–107, div. A, title V, § 503(a)(2), Dec. 28, 2001, 115 Stat. 1083, added item 1558.

1998—Pub. L. 105–261, div. A, title V, §§ 542(a)(2), 543(a)(2), 544(b), Oct. 17, 1998, 112 Stat. 2020–2022, added items 1555 to 1557.

1962—Pub. L. 87–651, title I, § 110(b), Sept. 7, 1962, 76 Stat. 510, substituted ''discharge or dismissal'' for ''discharges or dismissals'' in item 1553, and ''retirement or separation without pay for physical disability'' for ''decisions of retiring boards and similar boards'' in item 1554.

1958—Pub. L. 85–857, § 13(v)(3), Sept. 2, 1958, 72 Stat. 1268, added items 1553 and 1554.

§ 1551. Correction of name after separation from service under an assumed name

The Secretary of the military department concerned shall issue a certificate of discharge or an order of acceptance of resignation in the true name of any person who was separated from the Army, Navy, Air Force, or Marine Corps honorably or under honorable conditions after serving under an assumed name during a war with another nation or people, upon application by, or on behalf of, that person, and upon proof of his identity. However, a certificate or order may not be issued under this section if the name was assumed to conceal a crime or to avoid its consequences.

(Aug. 10, 1956, ch. 1041, 70A Stat. 116.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1551	5:200. 34:597.	Apr. 14, 1890, ch. 80; restated June 25, 1910, ch. 393, 36 Stat. 824. Aug. 22, 1912, ch. 329, 37 Stat. 324.

The word ''shall'' is substituted for the words ''is authorized and required''. The word ''separated'' is sub-

stituted for the word ''discharged'', since the revised section covers acceptances of resignations as well as certificates of discharge. The words ''enlisted or'' and ''while minors or otherwise'' are omitted as surplusage. The words ''the War of the Rebellion'' are omitted as obsolete. The word ''with'' is substituted for the words ''between the United States and''. The words ''honorably or under honorable conditions'' are substituted for the word ''honorably''.

PERSONNEL FREEZE FOR SERVICE REVIEW AGENCIES

Pub. L. 105–261, div. A, title V, § 541, Oct. 17, 1998, 112 Stat. 2019, provided that, during fiscal years 1999, 2000, and 2001, the Secretary of a military department could not carry out any reduction in the number of military and civilian personnel assigned to duty with the service review agency for that military department below the baseline number for that agency until: (1) the Secretary had submitted to Congress a report that described the reduction to be made and the rationale for that reduction, and specified the number of such personnel that would be assigned to duty with that agency after the reduction; and (2) a period of 90 days had elapsed after the date on which such report had been submitted.

§ 1552. Correction of military records: claims incident thereto

(a)(1) The Secretary of a military department may correct any military record of the Secretary's department when the Secretary considers it necessary to correct an error or remove an injustice. Except as provided in paragraph (2), such corrections shall be made by the Secretary acting through boards of civilians of the executive part of that military department. The Secretary of Homeland Security may in the same manner correct any military record of the Coast Guard.

(2) The Secretary concerned is not required to act through a board in the case of the correction of a military record announcing a decision that a person is not eligible to enlist (or reenlist) or is not accepted for enlistment (or reenlistment) or announcing the promotion and appointment of an enlisted member to an initial or higher grade or the decision not to promote an enlisted member to a higher grade. Such a correction may be made only if the correction is favorable to the person concerned.

(3) Corrections under this section shall be made under procedures established by the Secretary concerned. In the case of the Secretary of a military department, those procedures must be approved by the Secretary of Defense.

(4) Except when procured by fraud, a correction under this section is final and conclusive on all officers of the United States.

(b) No correction may be made under subsection (a)(1) unless the claimant or his heir or legal representative files a request for the correction within three years after he discovers the error or injustice. However, a board established under subsection (a)(1) may excuse a failure to file within three years after discovery if it finds it to be in the interest of justice.

(c)(1) The Secretary concerned may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or for the repayment of a fine or forfeiture, if, as a result of correcting a record under this section, the amount is found to be due the claimant on account of his or another's service in the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be, or on account of his or another's service as a civilian employee.

(2) If the claimant is dead, the money shall be paid, upon demand, to his legal representative. However, if no demand for payment is made by a legal representative, the money shall be paid—

(A) to the surviving spouse, heir, or beneficiaries, in the order prescribed by the law applicable to that kind of payment;

(B) if there is no such law covering order of payment, in the order set forth in section 2771 of this title; or

(C) as otherwise prescribed by the law applicable to that kind of payment.

(3) A claimant's acceptance of a settlement under this section fully satisfies the claim concerned. This section does not authorize the payment of any claim compensated by private law before October 25, 1951.

(4) If the correction of military records under this section involves setting aside a conviction by court-martial, the payment of a claim under this subsection in connection with the correction of the records shall include interest at a rate to be determined by the Secretary concerned, unless the Secretary determines that the payment of interest is inappropriate under the circumstances. If the payment of the claim is to include interest, the interest shall be calculated on an annual basis, and compounded, using the amount of the lost pay, allowances, compensation, emoluments, or other pecuniary benefits involved, and the amount of any fine or forfeiture paid, beginning from the date of the conviction through the date on which the payment is made.

(d) Applicable current appropriations are available to continue the pay, allowances, compensation, emoluments, and other pecuniary benefits of any person who was paid under subsection (c), and who, because of the correction of his military record, is entitled to those benefits, but for not longer than one year after the date when his record is corrected under this section if he is not reenlisted in, or appointed or reappointed to, the grade to which those payments relate. Without regard to qualifications for reenlistment, or appointment or reappointment, the Secretary concerned may reenlist a person in, or appoint or reappoint him to, the grade to which payments under this section relate.

(e) No payment may be made under this section for a benefit to which the claimant might later become entitled under the laws and regulations administered by the Secretary of Veterans Affairs.

(f) With respect to records of courts-martial and related administrative records pertaining to court-martial cases tried or reviewed under chapter 47 of this title (or under the Uniform Code of Military Justice (Public Law 506 of the 81st Congress)), action under subsection (a) may extend only to—

(1) correction of a record to reflect actions taken by reviewing authorities under chapter 47 of this title (or under the Uniform Code of Military Justice (Public Law 506 of the 81st Congress)); or

(2) action on the sentence of a court-martial for purposes of clemency.

(g) In this section, the term ''military record'' means a document or other record that pertains to (1) an individual member or former member of the armed forces, or (2) at the discretion of the Secretary of the military department concerned, any other military matter affecting a member or former member of the armed forces, an employee or former employee of that military department, or a dependent or current or former spouse of any such person. Such term does not include records pertaining to civilian employment matters (such as matters covered by title 5 and chapters 81, 83, 87, 108, 373, 605, 607, 643, and 873 of this title).

(Aug. 10, 1956, ch. 1041, 70A Stat. 116; Pub. L. 86–533, § 1(4), June 29, 1960, 74 Stat. 246; Pub. L. 96–513, title V, § 511(60), Dec. 12, 1980, 94 Stat. 2925; Pub. L. 98–209, § 11(a), Dec. 6, 1983, 97 Stat. 1407; Pub. L. 100–456, div. A, title XII, § 1233(a), Sept. 29, 1988, 102 Stat. 2057; Pub. L. 101–189, div. A, title V, § 514, title XVI, § 1621(a)(2), Nov. 29, 1989, 103 Stat. 1441, 1603; Pub. L. 102–484, div. A, title X, § 1052(19), Oct. 23, 1992, 106 Stat. 2500; Pub. L. 105–261, div. A, title V, § 545(a), (b), Oct. 17, 1998, 112 Stat. 2022; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 110–417, [div. A], title V, § 592(a), (b), Oct. 14, 2008, 122 Stat. 4474, 4475.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1552(a)	5:191a(a) (less 2d and last provisos). 5:275(a) (less 2d and last provisos).	Aug. 2, 1946, ch. 753, § 207; restated Oct. 25, 1951, ch. 588, 65 Stat. 655.
1552(b)	5:191a(a) (2d and last provisos). 5:275(a) (2d and last provisos).	
1552(c)	5:191a(b), (c). 5:275(b), (c).	
1552(d)	5:191a(d). 5:275(d).	
1552(e)	5:191a(f). 5:275(f).	
1552(f)	5:191a(e). 5:275(e).	

In subsection (a), the words ''and approved by the Secretary of Defense'' are substituted for 5:191a(a) (1st proviso). The words ''when he considers it'' are substituted for the words ''where in their judgment such action is'', in 5:191a and 275. The words ''officers or employees'' and ''means of'', in 5:191a and 275, are omitted as surplusage. The word ''naval'', in 5:191a and 275, is omitted as covered by the word ''military''.

In subsection (b), the words ''before October 26, 1961'' are substituted for the words ''or within ten years after the date of enactment of this section'', in 5:191a and 275. The last sentence of the revised subsection is substituted for 5:191a(a) (last proviso) and 275(a) (last proviso).

In subsection (c), the words ''if, as a result of correcting a record under this section * * * the amount is found to be due the claimant on account of his or another's service in the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be'' are substituted for the words ''which are found to be due on account of military or naval service as a result of the action * * * hereafter taken pursuant to subsection (a) of this section'', in 5:191a and 275. The words ''heretofore taken pursuant to this section'', in 5:191a and 275, are omitted as executed. The words ''of any persons, their heirs at law or legal representative as hereinafter provided'', ''(including retired or retirement pay)'', ''as the case may be'', ''duly appointed'', ''otherwise due hereunder'', ''decedent's'', ''precedence or succession'', and ''of precedence'', in 5:191a and 275, are omitted as surplusage. The last sentence is substituted for 5:191a(c) and 275(c).

In subsection (d), the word ''but'' is substituted for the words ''That, continuing payments are authorized to be made to such personnel'', in 5:191a and 275. The words ''if he is not reenlisted in, or appointed or reappointed to, the grade to which those payments relate'' are substituted for the words ''without the necessity for reenlistment, appointment, or reappointment to the grade, rank, or office to which such pay (including retired or retirement pay), allowances, compensation, emoluments, and other monetary benefits are attached'', in 5:191a and 275. The words ''or one year following the date of enactment of this section'', in 5:191a and 275, are omitted as executed. The words ''for payment of such sums as may be due for'', in 5:191a and 275, are omitted as surplusage. The words ''(including retired or retirement pay)'', in 5:191a and 275, are omitted as covered by the definition of ''pay'' in section 101(27) of this title.

In subsection (e), the words ''No payment may be made under this section'' are substituted for the words ''Nothing in this section shall be construed to authorize the payment of any amount as compensation'', in 5:191a and 275.

REFERENCES IN TEXT

The Uniform Code of Military Justice (Public Law 506 of the 81st Congress), referred to in subsec. (f), is act May 5, 1950, ch. 169, § 1, 64 Stat. 107, which was classified to chapter 22 (§ 551 et seq.) of Title 50, War and National Defense, and was repealed and reenacted as chapter 47 (§ 801 et seq.) of this title by act Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641, the first section of which enacted this title.

AMENDMENTS

2008—Subsec. (c). Pub. L. 110–417 designated existing provisions as pars. (1) to (3), redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, of par. (2), and added par. (4).

2002—Subsec. (a)(1). Pub. L. 107–296 substituted ''Secretary of Homeland Security'' for ''Secretary of Transportation''.

1998—Subsec. (c). Pub. L. 105–261, § 545(a), inserted '', or on account of his or another's service as a civilian employee'' before period at end of first sentence.

Subsec. (g). Pub. L. 105–261, § 545(b), added subsec. (g).

1992—Subsec. (a)(2). Pub. L. 102–484 substituted ''announcing the promotion and appointment of an enlisted member to an initial or higher grade or the decision not to promote an enlisted member to a higher grade'' for ''announcing a decision not to promote an enlisted member to a higher grade''.

1989—Subsec. (a). Pub. L. 101–189, § 514(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''The Secretary of a military department, under procedures established by him and approved by the Secretary of Defense, and acting through boards of civilians of the executive part of that military department, may correct any military record of that department when he considers it necessary to correct an error or remove an injustice. Under procedures prescribed by him, the Secretary of Transportation may in the same manner correct any military record of the Coast Guard. Except when procured by fraud, a correction under this section is final and conclusive on all officers of the United States.''

Subsec. (b). Pub. L. 101–189, § 514(b), substituted ''subsection (a)(1)'' for ''subsection (a)'' in two places.

Subsec. (e). Pub. L. 101–189, § 1621(a)(2), substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs''.

1988—Subsec. (b). Pub. L. 100–456, § 1233(a)(1), substituted ''for the correction within three years after he discovers the error or injustice'' for ''therefor before October 26, 1961, or within three years after he discovers the error or injustice, whichever is later''.

Subsec. (c). Pub. L. 100–456, § 1233(a)(2), substituted ''The Secretary concerned'' for ''The department concerned''.

1983—Subsec. (f). Pub. L. 98–209 added subsec. (f).

1980—Subsec. (a). Pub. L. 96–513 substituted ''Secretary of Transportation'' for ''Secretary of the Treasury''.

1960—Subsec. (f). Pub. L. 86–533 repealed subsec. (f) which required reports to the Congress every six months with respect to claims paid under this section.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–417, [div. A], title V, § 592(c), Oct. 14, 2008, 122 Stat. 4475, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to any sentence of a court-martial set aside by a Corrections Board on or after October 1, 2007, when the Corrections Board includes an order or recommendation for the payment of a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or for the repayment of a fine or forfeiture, that arose as a result of the conviction. In this subsection, the term 'Corrections Board' has the meaning given that term in section 1557 of title 10, United States Code.''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

BOARD FOR CORRECTION OF MILITARY RECORDS

Pub. L. 101–225, title II, § 212, Dec. 12, 1989, 103 Stat. 1914, provided that: ''Not later than 6 months after the date of the enactment of this Act [Dec. 12, 1989], the Secretary of Transportation shall—

''(1) amend part 52 of title 33, Code of Federal Regulations, governing the proceedings of the board established by the Secretary under section 1552 of title 10, United States Code, to ensure that a complete application for correction of military records is processed expeditiously and that final action on the application is taken within 10 months of its receipt; and

''(2) appoint and maintain a permanent staff, and a panel of civilian officers or employees to serve as members of the board, which are adequate to ensure compliance with paragraph (1) of this subsection.''

§ 1553. Review of discharge or dismissal

(a) The Secretary concerned shall, after consulting the Secretary of Veterans Affairs, establish a board of review, consisting of five members, to review the discharge or dismissal (other than a discharge or dismissal by sentence of a general court-martial) of any former member of an armed force under the jurisdiction of his department upon its own motion or upon the request of the former member or, if he is dead, his surviving spouse, next of kin, or legal representative. A motion or request for review must be made within 15 years after the date of the discharge or dismissal. With respect to a discharge or dismissal adjudged by a court-martial case tried or reviewed under chapter 47 of this title (or under the Uniform Code of Military Justice (Public Law 506 of the 81st Congress)), action under this subsection may extend only to a change in the discharge or dismissal or issuance of a new discharge for purposes of clemency.

(b) A board established under this section may, subject to review by the Secretary concerned, change a discharge or dismissal, or issue a new discharge, to reflect its findings.

(c) A review by a board established under this section shall be based on the records of the armed forces concerned and such other evidence as may be presented to the board. A witness may present evidence to the board in person or by affidavit. A person who requests a review under this section may appear before the board in person or by counsel or an accredited representative of an organization recognized by the Secretary of Veterans Affairs under chapter 59 of title 38.

(d)(1) In the case of a former member of the armed forces who, while serving on active duty as a member of the armed forces, was deployed in support of a contingency operation and who, at any time after such deployment, was diagnosed by a physician, clinical psychologist, or psychiatrist as experiencing post-traumatic stress disorder or traumatic brain injury as a consequence of that deployment, a board established under this section to review the former member's discharge or dismissal shall include a member who is a physician, clinical psychologist, or psychiatrist.

(2) In the case of a former member described in paragraph (1) or a former member whose application for relief is based in whole or in part on matters relating to post-traumatic stress disorder or traumatic brain injury as supporting rationale or as justification for priority consideration, the Secretary concerned shall expedite a final decision and shall accord such cases sufficient priority to achieve an expedited resolution. In determining the priority of cases, the Secretary concerned shall weigh the medical and humanitarian circumstances of all cases and accord higher priority to cases not involving post-traumatic stress disorder or traumatic brain injury only when the individual cases are considered more compelling.

(Added Pub. L. 85–857, § 13(v)(2), Sept. 2, 1958, 72 Stat. 1266; amended Pub. L. 87–651, title I, § 110(a), Sept. 7, 1962, 76 Stat. 509; Pub. L. 98–209, § 11(b), Dec. 6, 1983, 97 Stat. 1407; Pub. L. 101–189, div. A, title XVI, § 1621(a)(2), Nov. 29, 1989, 103 Stat. 1603; Pub. L. 111–84, div. A, title V, § 512(b), Oct. 28, 2009, 123 Stat. 2281.)

HISTORICAL AND REVISION NOTES

Sections 1553 and 1554 are restated, without substantive change, to conform to the style adopted for title 10.

REFERENCES IN TEXT

The Uniform Code of Military Justice (Public Law 506 of the 81st Congress), referred to in subsec. (a), is act May 5, 1950, ch. 169, § 1, 64 Stat. 107, which was classified to chapter 22 (§ 551 et seq.) of Title 50, War and National Defense, and was repealed and reenacted as chapter 47 (§ 801 et seq.) of this title by act Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641, the first section of which enacted this title.

AMENDMENTS

2009—Subsec. (d). Pub. L. 111–84 added subsec. (d).

1989—Subsecs. (a), (c). Pub. L. 101–189 substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs''.

1983—Subsec. (a). Pub. L. 98–209 inserted provision that with respect to a discharge or dismissal adjudged by a court-martial case tried or reviewed under chapter 47 of this title (or under the Uniform Code of Military Justice (Public Law 506 of the 81st Congress)), action

under this subsection may extend only to a change in the discharge or dismissal or issuance of a new discharge for purposes of clemency.

1962—Pub. L. 87–651 amended section generally without substantive change to conform to the style adopted for the revision of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1959, see section 2 of Pub. L. 85–857, set out as a note preceding Part I of Title 38, Veterans' Benefits.

§ 1554. Review of retirement or separation without pay for physical disability

(a) The Secretary concerned shall from time to time establish boards of review, each consisting of five commissioned officers, two of whom shall be selected from officers of the Army Medical Corps, officers of the Navy Medical Corps, Air Force officers designated as medical officers, or officers of the Public Health Service, as the case may be, to review, upon the request of a member or former member of the uniformed services retired or released from active duty without pay for physical disability, the findings and decisions of the retiring board, board of medical survey, or disposition board in the member's case. A request for review must be made within 15 years after the date of the retirement or separation.

(b) A board established under this section has the same powers as the board whose findings and decision are being reviewed. The findings of the board shall be sent to the Secretary concerned, who shall submit them to the President for approval.

(c) A review by a board established under this section shall be based upon the records of the armed forces concerned and such other evidence as may be presented to the board. A witness may present evidence to the board in person or by affidavit. A person who requests a review under this section may appear before the board in person or by counsel or an accredited representative of an organization recognized by the Secretary of Veterans Affairs under chapter 59 of title 38.

(Added Pub. L. 85–857, § 13(v)(2), Sept. 2, 1958, 72 Stat. 1267; amended Pub. L. 87–651, title I, § 110(a), Sept. 7, 1962, 76 Stat. 510; Pub. L. 101–189, div. A, title XVI, § 1621(a)(2), Nov. 29, 1989, 103 Stat. 1603; Pub. L. 111–383, div. A, title V, § 533(a), Jan. 7, 2011, 124 Stat. 4216.)

HISTORICAL AND REVISION NOTES

Sections 1553 and 1554 are restated, without substantive change, to conform to the style adopted for title 10.

AMENDMENTS

2011—Subsec. (a). Pub. L. 111–383 substituted ''a member or former member of the uniformed services'' for ''an officer'' and ''the member's case'' for ''his case''.

1989—Subsec. (c). Pub. L. 101–189 substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs''.

1962—Pub. L. 87–651 amended section generally without substantive change to conform to the style adopted for the revision of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1959, see section 2 of Pub. L. 85–857, set out as a note preceding Part I of Title 38, Veterans' Benefits.

TRANSFER OF FUNCTIONS

For transfer of functions of Public Health Service, see note set out under section 802 of this title.

§ 1554a. Review of separation with disability rating of 20 percent disabled or less

(a) IN GENERAL.—(1) The Secretary of Defense shall establish within the Office of the Secretary of Defense a board of review to review the disability determinations of covered individuals by Physical Evaluation Boards. The board shall be known as the ''Physical Disability Board of Review''.

(2) The Physical Disability Board of Review shall consist of not less than three members appointed by the Secretary.

(b) COVERED INDIVIDUALS.—For purposes of this section, covered individuals are members and former members of the armed forces who, during the period beginning on September 11, 2001, and ending on December 31, 2009—

(1) are separated from the armed forces due to unfitness for duty due to a medical condition with a disability rating of 20 percent disabled or less; and

(2) are found to be not eligible for retirement.

(c) REVIEW.—(1) Upon the request of a covered individual, or a surviving spouse, next of kin, or legal representative of a covered individual, the Physical Disability Board of Review shall review the findings and decisions of the Physical Evaluation Board with respect to such covered individual. Subject to paragraph (3), upon its own motion, the Physical Disability Board of Review may review the findings and decisions of the Physical Evaluation Board with respect to a covered individual.

(2) The review by the Physical Disability Board of Review under paragraph (1) shall be based on the records of the armed force concerned and such other evidence as may be presented to the Physical Disability Board of Review. A witness may present evidence to the Board by affidavit or by any other means considered acceptable by the Secretary of Defense.

(3) If the Physical Disability Board of Review proposes to review, upon its own motion, the findings and decisions of the Physical Evaluation Board with respect to a covered individual, the Physical Disability Board of Review shall notify the covered individual, or a surviving spouse, next of kin, or legal representative of the covered individual, of the proposed review and obtain the consent of the covered individual or a surviving spouse, next of kin, or legal representative of the covered individual before proceeding with the review.

(4) With respect to any review by the Physical Disability Board of Review of the findings and decisions of the Physical Evaluation Board with respect to a covered individual, whether initiated at the request of the covered individual or a surviving spouse, next of kin, or legal representative of the covered individual or initiated by the Physical Disability Board of Review, the Physical Disability Board of Review shall notify the covered individual or a surviving spouse, next of kin, or legal representative of the covered individual that, as a result of the request or

consent, the covered individual or a surviving spouse, next of kin, or legal representative of the covered individual may not seek relief from the Board for Correction of Military Records operated by the Secretary concerned.

(d) AUTHORIZED RECOMMENDATIONS.—The Physical Disability Board of Review may, as a result of its findings under a review under subsection (c), recommend to the Secretary concerned the following (as applicable) with respect to a covered individual:

(1) No recharacterization of the separation of such individual or modification of the disability rating previously assigned such individual.

(2) The recharacterization of the separation of such individual to retirement for disability.

(3) The modification of the disability rating previously assigned such individual by the Physical Evaluation Board concerned, which modified disability rating may not be a reduction of the disability rating previously assigned such individual by that Physical Evaluation Board.

(4) The issuance of a new disability rating for such individual.

(e) CORRECTION OF MILITARY RECORDS.—(1) The Secretary concerned may correct the military records of a covered individual in accordance with a recommendation made by the Physical Disability Board of Review under subsection (d). Any such correction may be made effective as of the effective date of the action taken on the report of the Physical Evaluation Board to which such recommendation relates.

(2) In the case of a member previously separated pursuant to the findings and decision of a Physical Evaluation Board together with a lump-sum or other payment of back pay and allowances at separation, the amount of pay or other monetary benefits to which such member would be entitled based on the member's military record as corrected shall be reduced to take into account receipt of such lump-sum or other payment in such manner as the Secretary of Defense considers appropriate.

(3) If the Physical Disability Board of Review makes a recommendation not to correct the military records of a covered individual, the action taken on the report of the Physical Evaluation Board to which such recommendation relates shall be treated as final as of the date of such action.

(f) Regulations.—(1) This section shall be carried out in accordance with regulations prescribed by the Secretary of Defense.

(2) The regulations under paragraph (1) shall specify reasonable deadlines for the performance of reviews required by this section.

(3) The regulations under paragraph (1) shall specify the effect of a determination or pending determination of a Physical Evaluation Board on considerations by boards for correction of military records under section 1552 of this title.

(Added Pub. L. 110–181, div. A, title XVI, § 1643(a)(1), Jan. 28, 2008, 122 Stat. 465.)

IMPLEMENTATION

Pub. L. 110–181, div. A, title XVI, § 1643(b), Jan. 28, 2008, 122 Stat. 467, provided that: ''The Secretary of Defense shall establish the board of review required by section 1554a of title 10, United States Code (as added by subsection (a)), and prescribe the regulations required by such section, not later than 90 days after the date of the enactment of this Act [Jan. 28, 2008].''

§ 1555. Professional staff

(a) The Secretary of each military department shall assign to the staff of the service review agency of that military department at least one attorney and at least one physician. Such assignments shall be made on a permanent, full-time basis and may be made from members of the armed forces or civilian employees.

(b) Personnel assigned pursuant to subsection (a)—

(1) shall work under the supervision of the director or executive director (as the case may be) of the service review agency; and

(2) shall be assigned duties as advisers to the director or executive director or other staff members on legal and medical matters, respectively, that are being considered by the agency.

(c) In this section, the term ''service review agency'' means—

(1) with respect to the Department of the Army, the Army Review Boards Agency;

(2) with respect to the Department of the Navy, the Navy Council of Personnel Boards and the Board for Correction of Naval Records; and

(3) with respect to the Department of the Air Force, the Air Force Review Boards Agency.

(Added Pub. L. 105–261, div. A, title V, § 542(a)(1), Oct. 17, 1998, 112 Stat. 2020; amended Pub. L. 106–65, div. A, title V, § 582, Oct. 5, 1999, 113 Stat. 634.)

AMENDMENTS

1999—Subsec. (c)(2). Pub. L. 106–65 inserted ''the Navy Council of Personnel Boards and'' after ''Department of the Navy,''.

EFFECTIVE DATE

Pub. L. 105–261, div. A, title V, § 542(b), Oct. 17, 1998, 112 Stat. 2020, provided that: ''Section 1555 of title 10, United States Code, as added by subsection (a), shall take effect 180 days after the date of the enactment of this Act [Oct. 17, 1998].''

§ 1556. Ex parte communications prohibited

(a) IN GENERAL.—The Secretary of each military department shall ensure that an applicant seeking corrective action by the Army Review Boards Agency, the Air Force Review Boards Agency, or the Board for Correction of Naval Records, as the case may be, is provided a copy of all correspondence and communications (including summaries of verbal communications) to or from the agency or board, or a member of the staff of the agency or board, with an entity or person outside the agency or board that pertain directly to the applicant's case or have a material effect on the applicant's case.

(b) EXCEPTIONS.—Subsection (a) does not apply to the following:

(1) Classified information.

(2) Information the release of which is otherwise prohibited by law or regulation.

(3) Any record previously provided to the applicant or known to be possessed by the applicant.

(4) Any correspondence that is purely administrative in nature.

(5) Any military record that is (or may be) provided to the applicant by the Secretary of the military department or other source.

(Added Pub. L. 105–261, div. A, title V, § 543(a)(1), Oct. 17, 1998, 112 Stat. 2020.)

EFFECTIVE DATE

Pub. L. 105–261, div. A, title V, § 543(b), Oct. 17, 1998, 112 Stat. 2021, provided that: ''Section 1556 of title 10, United States Code, as added by subsection (a), shall apply with respect to correspondence and communications made 60 days or more after the date of the enactment of this Act [Oct. 17, 1998].''

§ 1557. Timeliness standards for disposition of applications before Corrections Boards

(a) TEN-MONTH CLEARANCE PERCENTAGE.—Of the applications received by a Corrections Board during a period specified in the following table, the percentage on which final action by the Corrections Board must be completed within 10 months of receipt (other than for those applications considered suitable for administrative correction) is as follows:

For applications received during—	The percentage on which final Correction Board action must be completed within 10 months of receipt is—
the period of fiscal years 2001 and 2002	50
the period of fiscal years 2003 and 2004	60
the period of fiscal years 2005, 2006, and 2007	70
the period of fiscal years 2008, 2009, and 2010	80
the period of any fiscal year after fiscal year 2010	90.

(b) CLEARANCE DEADLINE FOR ALL APPLICATIONS.—Final action by a Corrections Board on all applications received by the Corrections Board (other than those applications considered suitable for administrative correction) shall be completed within 18 months of receipt.

(c) WAIVER AUTHORITY.—The Secretary of the military department concerned may exclude an individual application from the timeliness standards prescribed in subsections (a) and (b) if the Secretary determines that the application warrants a longer period of consideration. The authority of the Secretary of a military department under this subsection may not be delegated.

(d) FAILURE TO MEET TIMELINESS STANDARDS NOT TO AFFECT ANY INDIVIDUAL APPLICATION.—Failure of a Corrections Board to meet the applicable timeliness standard for any period of time under subsection (a) or (b) does not confer any presumption or advantage with respect to consideration by the board of any application.

(e) REPORTS ON FAILURE TO MEET TIMELINESS STANDARDS.—The Secretary of the military department concerned shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report not later than June 1 following any fiscal year during which the Corrections Board of that Secretary's military department was unable to meet the applicable timeliness standard for that fiscal year under subsections (a) and (b). The report shall specify the reasons why the standard could not be met and the corrective actions initiated to ensure compliance in the future. The report shall also specify the number of waivers granted under subsection (c) during that fiscal year.

(f) CORRECTIONS BOARD DEFINED.—In this section, the term ''Corrections Board'' means—

(1) with respect to the Department of the Army, the Army Board for Correction of Military Records;

(2) with respect to the Department of the Navy, the Board for Correction of Naval Records; and

(3) with respect to the Department of the Air Force, the Air Force Board for Correction of Military Records.

(Added Pub. L. 105–261, div. A, title V, § 544(a), Oct. 17, 1998, 112 Stat. 2021; amended Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 108–375, div. A, title X, § 1084(d)(12), Oct. 28, 2004, 118 Stat. 2062.)

AMENDMENTS

2004—Subsec. (b). Pub. L. 108–375 substituted ''Final'' for ''Effective October 1, 2002, final''.

1999—Subsec. (e). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

§ 1558. Review of actions of selection boards: correction of military records by special boards; judicial review

(a) CORRECTION OF MILITARY RECORDS.—The Secretary of a military department may correct a person's military records in accordance with a recommendation made by a special board. Any such correction may be made effective as of the effective date of the action taken on a report of a previous selection board that resulted in the action corrected in the person's military records.

(b) DEFINITIONS.—In this section:

(1) SPECIAL BOARD.—(A) The term ''special board'' means a board that the Secretary of a military department convenes under any authority to consider whether to recommend a person for appointment, enlistment, reenlistment, assignment, promotion, retention, separation, retirement, or transfer to inactive status in a reserve component instead of referring the records of that person for consideration by a previously convened selection board which considered or should have considered that person.

(B) Such term includes a board for the correction of military records convened under section 1552 of this title, if designated as a special board by the Secretary concerned.

(C) Such term does not include a promotion special selection board convened under section 628 or 14502 of this title.

(2) SELECTION BOARD.—(A) The term ''selection board'' means a selection board convened under section 573(c), 580, 580a, 581, 611(b), 637, 638, 638a, 14101(b), 14701, 14704, or 14705 of this title, and any other board convened by the Secretary of a military department under any authority to recommend persons for appointment, enlistment, reenlistment, assignment, promotion, or retention in the armed forces or

for separation, retirement, or transfer to inactive status in a reserve component for the purpose of reducing the number of persons serving in the armed forces.

(B) Such term does not include any of the following:

(i) A promotion board convened under section 573(a), 611(a), or 14101(a) of this title.

(ii) A special board.

(iii) A special selection board convened under section 628 of this title.

(iv) A board for the correction of military records convened under section 1552 of this title.

(3) INVOLUNTARILY BOARD-SEPARATED.—The term ''involuntarily board-separated'' means separated or retired from an armed force, or transferred to the Retired Reserve or to inactive status in a reserve component, as a result of a recommendation of a selection board.

(c) RELIEF ASSOCIATED WITH CORRECTION OF CERTAIN ACTIONS.—(1) The Secretary of the military department concerned shall ensure that an involuntarily board-separated person receives relief under paragraph (2) or under paragraph (3) if the person, as a result of a correction of the person's military records under subsection (a), becomes entitled to retention on or restoration to active duty or to active status in a reserve component.

(2)(A) A person referred to in paragraph (1) shall, with that person's consent, be restored to the same status, rights, and entitlements (less appropriate offsets against back pay and allowances) in that person's armed force as the person would have had if the person had not been selected to be involuntarily board-separated as a result of an action the record of which is corrected under subsection (a). An action under this subparagraph is subject to subparagraph (B).

(B) Nothing in subparagraph (A) may be construed to permit a person to be on active duty or in an active status in a reserve component after the date on which the person would have been separated, retired, or transferred to the Retired Reserve or to inactive status in a reserve component if the person had not been selected to be involuntarily board-separated in an action of a selection board the record of which is corrected under subsection (a).

(3) If an involuntarily board-separated person referred to in paragraph (1) does not consent to a restoration of status, rights, and entitlements under paragraph (2), the Secretary concerned shall pay that person back pay and allowances (less appropriate offsets), and shall provide that person service credit, for the period—

(A) beginning on the date of the person's separation, retirement, or transfer to the Retired Reserve or to inactive status in a reserve component, as the case may be; and

(B) ending on the earlier of—

(i) the date on which the person would have been so restored under paragraph (2), as determined by the Secretary concerned; or

(ii) the date on which the person would otherwise have been separated, retired, or transferred to the Retired Reserve or to inactive status in a reserve component, as the case may be.

(d) FINALITY OF UNFAVORABLE ACTION.—If a special board makes a recommendation not to correct the military records of a person regarding action taken in the case of that person on the basis of a previous report of a selection board, the action previously taken on that report shall be considered as final as of the date of the action taken on that report.

(e) 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 (f), other than to paragraph (4)(C) of that subsection.

(2) The Secretary may prescribe in the regulations under paragraph (1) the circumstances under which consideration by a special 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 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.

(f) JUDICIAL REVIEW.—(1) A person seeking to challenge an action or recommendation of a selection board, or an action taken by the Secretary of the military department concerned on the report of a selection board, is not entitled to relief in any judicial proceeding unless the action or recommendation has first been considered by a special board under this section or the Secretary concerned has denied the convening of such a board for such consideration.

(2)(A) A court of the United States may review a determination by the Secretary of a military department not to convene a special 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 board, it shall remand the case to the Secretary concerned, who shall provide for consideration by a special board.

(3) A court of the United States may review a recommendation of a special board or an action of the Secretary of the military department concerned on the report of a special board. In any such case, a court may set aside the action only if the court finds that the recommendation or 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.

(4)(A) If, six months after receiving a complete application for consideration by a special board

in any case, the Secretary concerned has not convened a special board and has not denied consideration by a special board in that case, the Secretary shall be deemed for the purposes of this subsection to have denied consideration of the case by a special board.

(B) If, six months after the convening of a special board in any case, the Secretary concerned has not taken final action on the report of the special 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 (e), 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.

(g) 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.

(Added Pub. L. 107–107, div. A, title V, § 503(a)(1), Dec. 28, 2001, 115 Stat. 1080.)

EFFECTIVE DATE

Section applicable with respect to any proceeding pending on or after 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, but not applicable with respect to any action commenced in a court of the United States before Dec. 28, 2001, see section 503(c) of Pub. L. 107–107, set out as an Effective Date of 2001 Amendment note under section 628 of this title.

§ 1559. Personnel limitation

(a) LIMITATION.—Before December 31, 2013, the Secretary of a military department may not carry out any reduction in the number of military and civilian personnel assigned to duty with the service review agency for that military department below the baseline number for that agency until—

(1) the Secretary submits to Congress a report that—

(A) describes the reduction proposed to be made;

(B) provides the Secretary's rationale for that reduction; and

(C) specifies the number of such personnel that would be assigned to duty with that agency after the reduction; and

(2) a period of 90 days has elapsed after the date on which the report is submitted.

(b) BASELINE NUMBER.—The baseline number for a service review agency under this section is—

(1) for purposes of the first report with respect to a service review agency under this section, the number of military and civilian personnel assigned to duty with that agency as of January 1, 2002; and

(2) for purposes of any subsequent report with respect to a service review agency under this section, the number of such personnel specified in the most recent report with respect to that agency under this section.

(c) SERVICE REVIEW AGENCY DEFINED.—In this section, the term ''service review agency'' means—

(1) with respect to the Department of the Army, the Army Review Boards Agency;

(2) with respect to the Department of the Navy, the Board for Correction of Naval Records; and

(3) with respect to the Department of the Air Force, the Air Force Review Boards Agency.

(Added Pub. L. 107–314, div. A, title V, § 552(a), Dec. 2, 2002, 116 Stat. 2552; amended Pub. L. 108–375, div. A, title V, § 581, Oct. 28, 2004, 118 Stat. 1928; Pub. L. 110–417, [div. A], title V, § 593, Oct. 14, 2008, 122 Stat. 4475; Pub. L. 111–383, div. A, title V, § 533(b), Jan. 7, 2011, 124 Stat. 4216.)

AMENDMENTS

2011—Subsec. (a). Pub. L. 111–383 substituted ''December 31, 2013'' for ''December 31, 2010'' in introductory provisions.

2008—Subsec. (a). Pub. L. 110–417 substituted ''December 31, 2010'' for ''October 1, 2008'' in introductory provisions.

2004—Subsec. (a). Pub. L. 108–375 substituted ''Before October 1, 2008,'' for ''During fiscal years 2003, 2004, and 2005,''.

CHAPTER 80—MISCELLANEOUS INVESTIGATION REQUIREMENTS AND OTHER DUTIES

Sec.
1561. Complaints of sexual harassment: investigation by commanding officers.
1561a. Civilian orders of protection: force and effect on military installations.
1562. Database on domestic violence incidents.
1563. Consideration of proposals for posthumous and honorary promotions and appointments: procedures for review.
1564. Security clearance investigations.
1564a. Counterintelligence polygraph program.
1565. DNA identification information: collection from certain offenders; use.
1565a. DNA samples maintained for identification of human remains: use for law enforcement purposes.
1566. Voting assistance: compliance assessments; assistance.
1566a. Voting assistance: voter assistance offices.
1567. Duration of military protective orders.
1567a. Mandatory notification of issuance of military protective order to civilian law enforcement.

PRIOR PROVISIONS

A prior chapter 80, comprised of sections 1571 to 1577, relating to Exemplary Rehabilitation Certificates, was repealed by Pub. L. 90–83, § 3(2), Sept. 11, 1967, 81 Stat. 220.

AMENDMENTS

2009—Pub. L. 111–84, div. A, title V, § 583(b)(2), Oct. 28, 2009, 123 Stat. 2330, added item 1566a.

2008—Pub. L. 110–417, [div. A], title V, §§ 561(b), 562(b), Oct. 14, 2008, 122 Stat. 4470, added items 1567 and 1567a.

2003—Pub. L. 108–136, div. A, title X, §§ 1031(a)(11)(B), 1041(a)(2), Nov. 24, 2003, 117 Stat. 1597, 1608, struck out

''and recommendation'' after ''review'' in item 1563 and added item 1564a.

2002—Pub. L. 107–314, div. A, title X, § 1063(b), Dec. 2, 2002, 116 Stat. 2653, added item 1565a.

Pub. L. 107–311, § 2(b), Dec. 2, 2002, 116 Stat. 2455, added item 1561a.

2001—Pub. L. 107–107, div. A, title XVI, § 1602(a)(2), Dec. 28, 2001, 115 Stat. 1276, added item 1566.

2000—Pub. L. 106–546, § 5(a)(2), Dec. 19, 2000, 114 Stat. 2732, added item 1565.

Pub. L. 106–398, § 1 [[div. A], title V, § 542(b), title X, § 1072(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–115, 1654A–277, added items 1563 and 1564.

1999—Pub. L. 106–65, div. A, title V, § 594(b), Oct. 5, 1999, 113 Stat. 644, added item 1562.

§ 1561. Complaints of sexual harassment: investigation by commanding officers

(a) ACTION ON COMPLAINTS ALLEGING SEXUAL HARASSMENT.—A commanding officer or officer in charge of a unit, vessel, facility, or area of the Army, Navy, Air Force, or Marine Corps who receives from a member of the command or a civilian employee under the supervision of the officer a complaint alleging sexual harassment by a member of the armed forces or a civilian employee of the Department of Defense shall carry out an investigation of the matter in accordance with this section.

(b) COMMENCEMENT OF INVESTIGATION.—To the extent practicable, a commanding officer or officer in charge receiving such a complaint shall, within 72 hours after receipt of the complaint—

(1) forward the complaint or a detailed description of the allegation to the next superior officer in the chain of command who is authorized to convene a general court-martial;

(2) commence, or cause the commencement of, an investigation of the complaint; and

(3) advise the complainant of the commencement of the investigation.

(c) DURATION OF INVESTIGATION.—To the extent practicable, a commanding officer or officer in charge receiving such a complaint shall ensure that the investigation of the complaint is completed not later than 14 days after the date on which the investigation is commenced.

(d) REPORT ON INVESTIGATION.—To the extent practicable, a commanding officer or officer in charge receiving such a complaint shall—

(1) submit a final report on the results of the investigation, including any action taken as a result of the investigation, to the next superior officer referred to in subsection (b)(1) within 20 days after the date on which the investigation is commenced; or

(2) submit a report on the progress made in completing the investigation to the next superior officer referred to in subsection (b)(1) within 20 days after the date on which the investigation is commenced and every 14 days thereafter until the investigation is completed and, upon completion of the investigation, then submit a final report on the results of the investigation, including any action taken as a result of the investigation, to that next superior officer.

(e) SEXUAL HARASSMENT DEFINED.—In this section, the term ''sexual harassment'' means any of the following:

(1) Conduct (constituting a form of sex discrimination) that—

(A) involves unwelcome sexual advances, requests for sexual favors, and deliberate or repeated offensive comments or gestures of a sexual nature when—

(i) submission to such conduct is made either explicitly or implicitly a term or condition of a person's job, pay, or career;

(ii) submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person; or

(iii) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile, or offensive working environment; and

(B) is so severe or pervasive that a reasonable person would perceive, and the victim does perceive, the work environment as hostile or offensive.

(2) Any use or condonation, by any person in a supervisory or command position, of any form of sexual behavior to control, influence, or affect the career, pay, or job of a member of the armed forces or a civilian employee of the Department of Defense.

(3) Any deliberate or repeated unwelcome verbal comment or gesture of a sexual nature in the workplace by any member of the armed forces or civilian employee of the Department of Defense.

(Added Pub. L. 105–85, div. A, title V, § 591(a)(1), Nov. 18, 1997, 111 Stat. 1760.)

PRIOR PROVISIONS

Prior sections 1571 to 1577, Pub. L. 89–690, § 1, Oct. 15, 1966, 80 Stat. 1016, related to creation of Exemplary Rehabilitation Certificates to be issued by the Secretary of Labor to persons discharged or dismissed from the Armed Forces under conditions other than honorable or to persons who had received a general discharge but who had established that they had rehabilitated themselves and established the administrative and other authority in connection therewith, prior to repeal by Pub. L. 90–83, § 3(2), Sept. 11, 1967, 81 Stat. 220.

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107–311, § 1, Dec. 2, 2002, 116 Stat. 2455, provided that: ''This Act [enacting section 1561a of this title] may be cited as the 'Armed Forces Domestic Security Act'.''

IMPROVED SEXUAL ASSAULT PREVENTION AND RESPONSE IN THE ARMED FORCES

Pub. L. 111–383, div. A, title XVI, Jan. 7, 2011, 124 Stat. 4429, provided that:

''SEC. 1601. DEFINITION OF DEPARTMENT OF DEFENSE SEXUAL ASSAULT PREVENTION AND RESPONSE PROGRAM AND OTHER DEFINITIONS.

''(a) SEXUAL ASSAULT PREVENTION AND RESPONSE PROGRAM DEFINED.—In this title, the term 'sexual assault prevention and response program' refers to Department of Defense policies and programs, including policies and programs of a specific military department or Armed Force, that, as modified as required by this title—

''(1) are intended to reduce the number of sexual assaults involving members of the Armed Forces, whether members are the victim, alleged assailant, or both; and

''(2) improve the response of the Department of Defense, the military departments, and the Armed Forces to reports of sexual assaults involving mem-

bers of the Armed Forces, whether members are the victim, alleged assailant, or both, and to reports of sexual assaults when a covered beneficiary under chapter 55 of title 10, United States Code, is the victim.

''(b) OTHER DEFINITIONS.—In this title:

''(1) The term 'Armed Forces' means the Army, Navy, Air Force, and Marine Corps.

''(2) The terms 'covered beneficiary' and 'dependent' have the meanings given those terms in section 1072 of title 10, United States Code.

''(3) The term 'department' has the meaning given that term in section 101(a)(6) of title 10, United States Code.

''(4) The term 'military installation' has the meaning given that term by the Secretary concerned.

''(5) The term 'Secretary concerned' means—

''(A) the Secretary of the Army, with respect to matters concerning the Army;

''(B) the Secretary of the Navy, with respect to matters concerning the Navy and the Marine Corps; and

''(C) the Secretary of the Air Force, with respect to matters concerning the Air Force.

''(6) The term 'sexual assault' has the definition developed for that term by the Secretary of Defense pursuant to subsection (a)(3) of section 577 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375; 10 U.S.C. 113 note) [now set out below], subject to such modifications as the Secretary considers appropriate.

''SEC. 1602. COMPREHENSIVE DEPARTMENT OF DEFENSE POLICY ON SEXUAL ASSAULT PREVENTION AND RESPONSE PROGRAM.

''(a) COMPREHENSIVE POLICY REQUIRED.—Not later than March 30, 2012, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a revised comprehensive policy for the Department of Defense sexual assault prevention and response program that—

''(1) builds upon the comprehensive sexual assault prevention and response policy developed under subsections (a) and (b) of section 577 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375; 10 U.S.C. 113 note) [now set out below];

''(2) incorporates into the sexual assault prevention and response program the new requirements identified by this title; and

''(3) ensures that the policies and procedures of the military departments regarding sexual assault prevention and response are consistent with the revised comprehensive policy.

''(b) CONSIDERATION OF TASK FORCE FINDINGS, RECOMMENDATIONS, AND PRACTICES.—In developing the comprehensive policy required by subsection (a), the Secretary of Defense shall take into account the findings and recommendations found in the report of the Defense Task Force on Sexual Assault in the Military Services issued in December 2009.

''(c) SEXUAL ASSAULT PREVENTION AND RESPONSE EVALUATION PLAN.—

''(1) PLAN REQUIRED.—The Secretary of Defense shall develop and implement an evaluation plan for assessing the effectiveness of the comprehensive policy prepared under subsection (a) in achieving its intended outcomes at the department and individual Armed Force levels.

''(2) ROLE OF SERVICE SECRETARIES.—As a component of the evaluation plan, the Secretary of each military department shall assess the adequacy of measures undertaken at military installations and by units of the Armed Forces under the jurisdiction of the Secretary to ensure the safest and most secure living and working environments with regard to preventing sexual assault.

''(d) PROGRESS REPORT.—Not later than October 1, 2011, the Secretary of Defense shall submit to the congressional defense committees a report—

''(1) describing the process by which the comprehensive policy required by subsection (a) is being revised;

''(2) describing the extent to which revisions of the comprehensive policy and the evaluation plan required by subsection (c) have already been implemented; and

''(3) containing a determination by the Secretary regarding whether the Secretary will be able to comply with the revision deadline specified in subsection (a).

''(e) CONSISTENCY OF TERMINOLOGY, POSITION DESCRIPTIONS, PROGRAM STANDARDS, AND ORGANIZATIONAL STRUCTURES.—

''(1) IN GENERAL.—The Secretary of Defense shall require the use of consistent terminology, position descriptions, minimum program standards, and organizational structures throughout the Armed Forces in implementing the sexual assault prevention and response program.

''(2) MINIMUM STANDARDS.—The Secretary of Defense shall establish minimum standards for—

''(A) the training, qualifications, and status of Sexual Assault Response Coordinators and Sexual Assault Victim Advocates for the Armed Forces; and

''(B) the curricula to be used to provide sexual assault prevention and response training and education for members of the Armed Forces and civilian employees of the department to strengthen individual knowledge, skills, and capacity to prevent and respond to sexual assault.

''(3) RECOGNIZING OPERATIONAL DIFFERENCES.—In complying with this subsection, the Secretary of Defense shall take into account the responsibilities of the Secretary concerned and operational needs of the Armed Force involved.

''Subtitle A—Organizational Structure and Application of Sexual Assault Prevention and Response Program Elements

''SEC. 1611. SEXUAL ASSAULT PREVENTION AND RESPONSE OFFICE.

''(a) APPOINTMENT OF DIRECTOR.—There shall be a Director of the Sexual Assault Prevention and Response Office. During the development and implementation of the comprehensive policy for the Department of Defense sexual assault prevention and response program, the Director shall operate under the oversight of the Advisory Working Group of the Deputy Secretary of Defense.

''(b) DUTIES OF DIRECTOR.—The Director of the Sexual Assault Prevention and Response Office shall—

''(1) oversee implementation of the comprehensive policy for the Department of Defense sexual assault prevention and response program;

''(2) serve as the single point of authority, accountability, and oversight for the sexual assault prevention and response program; and

''(3) provide oversight to ensure that the military departments comply with the sexual assault prevention and response program.

''(c) ROLE OF INSPECTORS GENERAL.—

''(1) IN GENERAL.—The Inspector General of the Department of Defense, the Inspector General of the Army, the Naval Inspector General, and the Inspector General of the Air Force shall treat the sexual assault prevention and response program as an item of special interest when conducting inspections of organizations and activities with responsibilities regarding the prevention and response to sexual assault.

''(2) COMPOSITION OF INVESTIGATION TEAMS.—The Inspector General inspection teams shall include at least one member with expertise and knowledge of sexual assault prevention and response policies related to a specific Armed Force.

''(d) STAFF.—

''(1) ASSIGNMENT.—Not later than 18 months after the date of the enactment of this Act [Jan. 7, 2011], an officer from each of the Armed Forces in the grade of

O–4 or above shall be assigned to the Sexual Assault Prevention and Response Office for a minimum tour length of at least 18 months.

''(2) HIGHER GRADE.—Notwithstanding paragraph (1), of the four officers assigned to the Sexual Assault Prevention and Response Office under this subsection at any time, one officer shall be in the grade of O–6 or above.

''SEC. 1612. OVERSIGHT AND EVALUATION STANDARDS.

''(a) ISSUANCE OF STANDARDS.—The Secretary of Defense shall issue standards to assess and evaluate the effectiveness of the sexual assault prevention and response program of each Armed Force in reducing the number of sexual assaults involving members of the Armed Forces and in improving the response of the department to reports of sexual assaults involving members of the Armed Forces, whether members of the Armed Forces are the victim, alleged assailant, or both.

''(b) SEXUAL ASSAULT PREVENTION EVALUATION PLAN.—The Secretary of Defense shall use the sexual assault prevention and response evaluation plan developed under section 1602(c) to ensure that the Armed Forces implement and comply with assessment and evaluation standards issued under subsection (a).

''SEC. 1613. REPORT AND PLAN FOR COMPLETION OF ACQUISITION OF CENTRALIZED DEPARTMENT OF DEFENSE SEXUAL ASSAULT DATABASE.

''(a) REPORT AND PLAN REQUIRED.—Not later than April 1, 2011, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report—

''(1) describing the status of development and implementation of the centralized Department of Defense sexual assault database required by section 563 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417; 122 Stat. 4470; 10 U.S.C. 113 note) [now set out below];

''(2) containing a revised implementation plan under subsection (c) of such section for completing implementation of the database; and

''(3) indicating the date by which the database will be operational.

''(b) CONTENT OF IMPLEMENTATION PLAN.—The plan referred to in subsection (a)(2) shall address acquisition best practices associated with successfully acquiring and deploying information technology systems related to the centralized sexual assault database, such as economically justifying the proposed system solution and effectively developing and managing requirements.

''SEC. 1614. RESTRICTED REPORTING OF SEXUAL ASSAULTS.

''The Secretary of Defense shall clarify the limitations on the ability of a member of the Armed Forces to make a restricted report regarding the occurrence of a sexual assault and the circumstances under which information contained in a restricted report may no longer be confidential.

''SUBTITLE B—IMPROVED AND EXPANDED AVAILABILITY OF SERVICES

''SEC. 1621. IMPROVED PROTOCOLS FOR PROVIDING MEDICAL CARE FOR VICTIMS OF SEXUAL ASSAULT.

''The Secretary of Defense shall establish comprehensive and consistent protocols for providing and documenting medical care to a member of the Armed Forces or covered beneficiary who is a victim of a sexual assault, including protocols with respect to the appropriate screening, prevention, and mitigation of diseases. In establishing the protocols, the Secretary shall take into consideration the gender of the victim.

''SEC. 1622. SEXUAL ASSAULT VICTIMS ACCESS TO VICTIM ADVOCATE SERVICES.

''(a) AVAILABILITY OF VICTIM ADVOCATE SERVICES.—

''(1) AVAILABILITY.—A member of the Armed Forces or a dependent, as described in paragraph (2), who is the victim of a sexual assault is entitled to assistance provided by a qualified Sexual Assault Victim Advocate.

''(2) COVERED DEPENDENTS.—The assistance described in paragraph (1) is available to a dependent of a member of the Armed Forces who is the victim of a sexual assault and who resides on or in the vicinity of a military installation. The Secretary concerned shall define the term ''vicinity'' for purposes of this paragraph.

''(b) NOTICE OF AVAILABILITY OF ASSISTANCE; OPT OUT.—The member or dependent shall be informed of the availability of assistance under subsection (a) as soon as the member or dependent seeks assistance from a Sexual Assault Response Coordinator. The victim shall also be informed that the services of a Sexual Assault Response Coordinator and Sexual Assault Victim Advocate are optional and that these services may be declined, in whole or in part, at any time.

''(c) NATURE OF REPORTING IMMATERIAL.—In the case of a member of the Armed Forces, Victim Advocate services are available regardless of whether the member elects unrestricted or restricted (confidential) reporting of the sexual assault.

''SUBTITLE C—REPORTING REQUIREMENTS

''SEC. 1631. ANNUAL REPORT REGARDING SEXUAL ASSAULTS INVOLVING MEMBERS OF THE ARMED FORCES AND IMPROVEMENT TO SEXUAL ASSAULT PREVENTION AND RESPONSE PROGRAM.

''(a) ANNUAL REPORTS ON SEXUAL ASSAULTS.—Not later than March 1, 2012, and each March 1 thereafter through March 1, 2017, the Secretary of each military department shall submit to the Secretary of Defense a report on the sexual assaults involving members of the Armed Forces under the jurisdiction of that Secretary during the preceding year. In the case of the Secretary of the Navy, separate reports shall be prepared for the Navy and for the Marine Corps.

''(b) CONTENTS.—The report of a Secretary of a military department for an Armed Force under subsection (a) shall contain the following:

''(1) The number of sexual assaults committed against members of the Armed Force that were reported to military officials during the year covered by the report, and the number of the cases so reported that were substantiated.

''(2) The number of sexual assaults committed by members of the Armed Force that were reported to military officials during the year covered by the report, and the number of the cases so reported that were substantiated. The information required by this paragraph may not be combined with the information required by paragraph (1).

''(3) A synopsis of each such substantiated case, organized by offense, and, for each such case, the action taken in the case, including the type of disciplinary or administrative sanction imposed, if any, including courts-martial sentences, non-judicial punishments administered by commanding officers pursuant to section 815 of title 10, United States Code (article 15 of the Uniform Code of Military Justice), and administrative separations.

''(4) The policies, procedures, and processes implemented by the Secretary concerned during the year covered by the report in response to incidents of sexual assault involving members of the Armed Force concerned.

''(5) The number of substantiated sexual assault cases in which the victim is a deployed member of the Armed Forces and the assailant is a foreign national, and the policies, procedures, and processes implemented by the Secretary concerned to monitor the investigative processes and disposition of such cases and any actions taken to eliminate any gaps in investigating and adjudicating such cases.

''(6) A description of the implementation of the accessibility plan implemented pursuant to section 596(b) of such Act [probably means section 596(b) of the National Defense Authorization Act for Fiscal Year 2006, Pub. L. 109–163, set out below], including a description of the steps taken during that year to ensure that trained personnel, appropriate supplies, and transportation resources are accessible to deployed units in order to provide an appropriate and timely response in any case of reported sexual assault in a deployed unit, location, or environment.

''(c) CONSISTENT DEFINITION OF SUBSTANTIATED.—Not later than December 31, 2011, the Secretary of Defense shall establish a consistent definition of 'substantiated' for purposes of paragraphs (1), (2), (3), and (5) of subsection (b) and provide synopses for those cases for the preparation of reports under this section.

''(d) SUBMISSION TO CONGRESS.—Not later than April 30 of each year in which the Secretary of Defense receives reports under subsection (a), the Secretary of Defense shall forward the reports to the Committees on Armed Services of the Senate and House of Representatives, together with—

''(1) the results of assessments conducted under the evaluation plan required by section 1602(c); and

''(2) such assessments on the reports as the Secretary of Defense considers appropriate.

''(e) REPEAL OF SUPERSEDED REPORTING REQUIREMENT.—

''(1) [Amended section 577 of Pub. L. 108–375, set out below.]

''(2) SUBMISSION OF 2010 REPORT.—The reports required by subsection (f) of section 577 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375; 10 U.S.C. 113 note) [now set out below] covering calendar year 2010 are still required to be submitted to the Secretary of Defense and the Committees on Armed Services of the Senate and House of Representatives pursuant to the terms of such subsection, as in effect before the date of the enactment of this Act [Jan. 7, 2011].

''SEC. 1632. ADDITIONAL REPORTS.

''(a) EXTENSION OF SEXUAL ASSAULT PREVENTION AND RESPONSE SERVICES TO ADDITIONAL PERSONS.—The Secretary of Defense shall evaluate the feasibility of extending department sexual assault prevention and response services to Department of Defense civilian employees and employees of defense contractors who—

''(1) are victims of a sexual assault; and

''(2) work on or in the vicinity of a military installation or with members of the Armed Forces.

''(b) EXTENSION OF SEXUAL ASSAULT PREVENTION AND RESPONSE PROGRAM TO RESERVE COMPONENTS.—The Secretary of Defense shall evaluate the application of the sexual assault prevention and response program to members of the reserve components, including, at a minimum, the following:

''(1) The ability of members of the reserve components to access the services available under the sexual assault prevention and response program, including policies and programs of a specific military department or Armed Force.

''(2) The quality of training provided to Sexual Assault Response Coordinators and Sexual Assault Victim Advocates in the reserve components.

''(3) The degree to which the services available for regular and reserve members under the sexual assault prevention and response program are integrated.

''(4) Such recommendations as the Secretary of Defense considers appropriate on how to improve the services available for reserve members under the sexual assault prevention and response program and their access to the services.

''(c) COPY OF RECORD OF COURT-MARTIAL TO VICTIM OF SEXUAL ASSAULT.—The Secretary of Defense shall evaluate the feasibility of requiring that a copy of the prepared record of the proceedings of a general or special court-martial involving a sexual assault be given to the victim in cases in which the victim testified during the proceedings.

''(d) ACCESS TO LEGAL ASSISTANCE.—The Secretary of Defense shall evaluate the feasibility of authorizing members of the Armed Forces who are victims of a sexual assault and dependents of members who are victims of a sexual assault to receive legal assistance provided by a military legal assistance counsel certified as competent to provide legal assistance related to responding to sexual assault.

''(e) USE OF FORENSIC MEDICAL EXAMINERS.—The Secretary of Defense shall evaluate the feasibility of utilizing, when sexual assaults involving members of the Armed Forces occur in a military environment where civilian resources are limited or unavailable, forensic medical examiners who are specially trained regarding the collection and preservation of evidence in cases involving sexual assault.

''(f) SUBMISSION OF RESULTS.—The Secretary of Defense shall submit the results of the evaluations required by this section to the Committees on Armed Services of the Senate and House of Representatives.''

DEFENSE INCIDENT-BASED REPORTING SYSTEM AND DEFENSE SEXUAL ASSAULT INCIDENT DATABASE

Pub. L. 111–84, div. A, title V, § 598, Oct. 28, 2009, 123 Stat. 2345, provided that: ''Not later than 120 days after the date of the enactment of this Act [Oct. 28, 2009], and every six months thereafter, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report detailing the progress of the Secretary with respect to the completion of the following:

''(1) The Defense Incident-Based Reporting System.

''(2) The Defense Sexual Assault Incident Database.''

Pub. L. 110–417, [div. A], title V, § 563(a)–(d), Oct. 14, 2008, 122 Stat. 4470, 4471, provided that:

''(a) DATABASE REQUIRED.—The Secretary of Defense shall implement a centralized, case-level database for the collection, in a manner consistent with Department of Defense regulations for restricted reporting, and maintenance of information regarding sexual assaults involving a member of the Armed Forces, including information, if available, about the nature of the assault, the victim, the offender, and the outcome of any legal proceedings in connection with the assault.

''(b) AVAILABILITY OF DATABASE.—The database required by subsection (a) shall be available to personnel of the Sexual Assault Prevention and Response Office of the Department of Defense.

''(c) IMPLEMENTATION.—

''(1) PLAN FOR IMPLEMENTATION.—Not later than 90 days after the date of the enactment of this Act [Oct. 14, 2008], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a plan to provide for the implementation of the database required by subsection (a).

''(2) RELATION TO DEFENSE INCIDENT-BASED REPORTING SYSTEM.—Not later than 180 days after the date of enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report containing—

''(A) a description of the current status of the Defense Incident-Based Reporting System; and

''(B) an explanation of how the Defense Incident-Based Reporting System will relate to the database required by subsection (a).

''(3) COMPLETION.—Not later than 15 months after the date of enactment of this Act, the Secretary shall complete implementation of the database required by subsection (a).

''(d) REPORTS.—The database required by subsection (a) shall be used to develop and implement congressional reports, as required by—

''(1) section 577(f) of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375) [set out below];

''(2) section 596(c) of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163) [amending Pub. L. 108–375, § 577, set out below];

''(3) section 532 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364) [enacting sections 4361, 6980, and 9361 of this title and provisions set out as a note under section 4361 of this title and repealing provisions set out as a note under section 4331 of this title]; and

''(4) sections 4361, 6980, and 9361 of title 10, United States Code.''

IMPROVEMENT TO DEPARTMENT OF DEFENSE CAPACITY TO RESPOND TO SEXUAL ASSAULT AFFECTING MEMBERS OF THE ARMED FORCES

Pub. L. 109–163, div. A, title V, §596(a), (b), Jan. 6, 2006, 119 Stat. 3282, provided that:

''(a) PLAN FOR SYSTEM TO TRACK CASES IN WHICH CARE OR PROSECUTION HINDERED BY LACK OF AVAILABILITY.—

''(1) PLAN REQUIRED.—The Secretary of Defense shall develop and implement a system to track cases under the jurisdiction of the Department of Defense in which care to a victim of rape or sexual assault, or the investigation or prosecution of an alleged perpetrator of rape or sexual assault, is hindered by the lack of availability of a rape kit or other needed supplies or by the lack of timely access to appropriate laboratory testing resources.

''(2) SUBMITTAL TO CONGRESSIONAL COMMITTEES.—The Secretary shall submit the plan developed under paragraph (1) to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives not later than 120 days after the date of the enactment of this Act [Jan. 6, 2006].

''(b) ACCESSIBILITY PLAN FOR DEPLOYED UNITS.—

''(1) PLAN REQUIRED.—The Secretary of Defense shall develop and implement a plan for ensuring accessibility and availability of supplies, trained personnel, and transportation resources for responding to sexual assaults occurring in deployed units. The plan shall include the following:

''(A) A plan for the training of personnel who are considered to be 'first responders' to sexual assaults (including criminal investigators, medical personnel responsible for rape kit evidence collection, and victims advocates), such training to include current techniques on the processing of evidence, including rape kits, and on conducting investigations.

''(B) A plan for ensuring the availability at military hospitals of supplies needed for the treatment of victims of sexual assault who present at a military hospital, including rape kits, equipment for processing rape kits, and supplies for testing and treatment for sexually transmitted infections and diseases, including HIV, and for testing for pregnancy.

''(2) SUBMITTAL TO CONGRESSIONAL COMMITTEES.—The Secretary shall submit the plan developed under paragraph (1) to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives not later than 120 days after the date of the enactment of this Act [Jan. 6, 2006].''

DEPARTMENT OF DEFENSE POLICY AND PROCEDURES ON PREVENTION AND RESPONSE TO SEXUAL ASSAULTS INVOLVING MEMBERS OF THE ARMED FORCES

Pub. L. 111–84, div. A, title V, §567(c), Oct. 28, 2009, 123 Stat. 2314, provided that:

''(1) REQUIREMENT FOR DATA COLLECTION.—

''(A) IN GENERAL.—Pursuant to regulations prescribed by the Secretary of Defense, information shall be collected on—

''(i) whether a military protective order was issued that involved either the victim or alleged perpetrator of a sexual assault; and

''(ii) whether military protective orders involving members of the Armed Forces were violated in the course of substantiated incidents of sexual assaults against members of the Armed Forces.

''(B) SUBMISSION OF DATA.—The data required to be collected under this subsection shall be included in the annual report submitted to Congress on sexual assaults involving members of the Armed Forces.

''(2) INFORMATION TO MEMBERS.—Not later than 180 days after the date of the enactment of this Act [Oct. 28, 2009], the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report explaining the measures being taken to ensure that, when a military protective order has been issued, the member of the Armed Forces who is protected by the order is informed, in a timely manner, of the member's option to request transfer from the command to which the member is assigned.''

Pub. L. 108–375, div. A, title V, §577, Oct. 28, 2004, 118 Stat. 1926, as amended by Pub. L. 109–163, div. A, title V, §596(c), Jan. 6, 2006, 119 Stat. 3283; Pub. L. 109–364, div. A, title V, §583, Oct. 17, 2006, 120 Stat. 2230; Pub. L. 110–417, [div. A], title V, §563(e), Oct. 14, 2008, 122 Stat. 4471; Pub. L. 111–383, div. A, title X, §1075(i)(1), title XVI, §1631(e)(1), Jan. 7, 2011, 124 Stat. 4377, 4435, provided that:

''(a) COMPREHENSIVE POLICY ON PREVENTION AND RESPONSE TO SEXUAL ASSAULTS.—(1) Not later than January 1, 2005, the Secretary of Defense shall develop a comprehensive policy for the Department of Defense on the prevention of and response to sexual assaults involving members of the Armed Forces.

''(2) The policy shall be based on the recommendations of the Department of Defense Task Force on Care for Victims of Sexual Assaults and on such other matters as the Secretary considers appropriate.

''(3) Before developing the comprehensive policy required by paragraph (1), the Secretary of Defense shall develop a definition of sexual assault. The definition so developed shall be used in the comprehensive policy under paragraph (1) and otherwise within the Department of Defense and Coast Guard in matters involving members of the Armed Forces. The definition shall be uniform for all the Armed Forces and shall be developed in consultation with the Secretaries of the military departments and the Secretary of Homeland Security with respect to the Coast Guard.

''(b) ELEMENTS OF COMPREHENSIVE POLICY.—The comprehensive policy developed under subsection (a) shall, at a minimum, address the following matters:

''(1) Prevention measures.

''(2) Education and training on prevention and response.

''(3) Investigation of complaints by command and law enforcement personnel.

''(4) Medical treatment of victims.

''(5) Confidential reporting of incidents.

''(6) Victim advocacy and intervention.

''(7) Oversight by commanders of administrative and disciplinary actions in response to substantiated incidents of sexual assault.

''(8) Disposition of victims of sexual assault, including review by appropriate authority of administrative separation actions involving victims of sexual assault.

''(9) Disposition of members of the Armed Forces accused of sexual assault.

''(10) Liaison and collaboration with civilian agencies on the provision of services to victims of sexual assault.

''(11) Uniform collection of data on the incidence of sexual assaults and on disciplinary actions taken in substantiated cases of sexual assault.

''(12) Implementation of clear, consistent, and streamlined sexual assault terminology for use throughout the Department of Defense.

''(c) REPORT ON IMPROVEMENT OF CAPABILITY TO RESPOND TO SEXUAL ASSAULTS.—Not later than March 1, 2005, the Secretary of Defense shall submit to Congress a proposal for such legislation as the Secretary considers necessary to enhance the capability of the Department of Defense to address matters relating to sexual assaults involving members of the Armed Forces.

''(d) APPLICATION OF COMPREHENSIVE POLICY TO MILITARY DEPARTMENTS.—The Secretary of Defense shall

ensure that, to the maximum extent practicable, the policy developed under subsection (a) is implemented uniformly by the military departments.

''(e) POLICIES AND PROCEDURES OF MILITARY DEPARTMENTS.—(1) Not later than March 1, 2005, the Secretaries of the military departments shall prescribe regulations, or modify current regulations, on the policies and procedures of the military departments on the prevention of and response to sexual assaults involving members of the Armed Forces in order—

''(A) to conform such policies and procedures to the policy developed under subsection (a); and

''(B) to ensure that such policies and procedures include the elements specified in paragraph (2).

''(2) The elements specified in this paragraph are as follows:

''(A) A program to promote awareness of the incidence of sexual assaults involving members of the Armed Forces.

''(B) A program to provide victim advocacy and intervention for members of the Armed Force concerned who are victims of sexual assault, which program shall make available, at home stations and in deployed locations, trained advocates who are readily available to intervene on behalf of such victims.

''(C) Procedures for members of the Armed Force concerned to follow in the case of an incident of sexual assault involving a member of such Armed Force, including—

''(i) specification of the person or persons to whom the alleged offense should be reported;

''(ii) specification of any other person whom the victim should contact;

''(iii) procedures for the preservation of evidence; and

''(iv) procedures for confidential reporting and for contacting victim advocates.

''(D) Procedures for disciplinary action in cases of sexual assault by members of the Armed Force concerned.

''(E) Other sanctions authorized to be imposed in substantiated cases of sexual assault, whether forcible or nonforcible, by members of the Armed Force concerned.

''(F) Training on the policies and procedures for all members of the Armed Force concerned, including specific training for members of the Armed Force concerned who process allegations of sexual assault against members of such Armed Force.

''(G) Any other matters that the Secretary of Defense considers appropriate.''

REPORTS

Pub. L. 105–85, div. A, title V, § 591(b), Nov. 18, 1997, 111 Stat. 1762, required each officer receiving a complaint forwarded in accordance with subsec. (b) of this section during 1997 and 1998 to submit to the Secretary of the military department concerned a report on all such complaints and the investigations of such complaints not later than Jan. 1 of each of 1998 and 1999, required each Secretary receiving a report for a year to submit to the Secretary of Defense a report on all reports received not later than Mar. 1 of each of 1998 and 1999, and required the Secretary of Defense to transmit to Congress all reports received for the year together with the Secretary's assessment of each report not later than Apr. 1 following receipt of a report for a year.

DEPARTMENT OF DEFENSE POLICIES AND PROCEDURES ON DISCRIMINATION AND SEXUAL HARASSMENT

Pub. L. 103–337, div. A, title V, § 532, Oct. 5, 1994, 108 Stat. 2759, provided that:

''(a) REPORT OF TASK FORCE.—(1) The Department of Defense Task Force on Discrimination and Sexual Harassment, constituted by the Secretary of Defense on March 15, 1994, shall transmit a report of its findings and recommendations to the Secretary of Defense not later than October 1, 1994.

''(2) The Secretary shall transmit to Congress the report of the task force not later than October 10, 1994.

''(b) SECRETARIAL REVIEW.—Not later than 45 days after receiving the report under subsection (a), the Secretary shall—

''(1) review the recommendations for action contained in the report;

''(2) determine which recommendations the Secretary approves for implementation and which recommendations the Secretary disapproves; and

''(3) submit to Congress a report that—

''(A) identifies the approved recommendations and the disapproved recommendations; and

''(B) explains the reasons for each such approval and disapproval.

''(c) COMPREHENSIVE DOD POLICY.—(1) Based on the approved recommendations of the task force and such other factors as the Secretary considers appropriate, the Secretary shall develop a comprehensive Department of Defense policy for processing complaints of sexual harassment and discrimination involving members of the Armed Forces under the jurisdiction of the Secretary.

''(2) The Secretary shall issue policy guidance for the implementation of the comprehensive policy and shall require the Secretaries of the military departments to prescribe regulations to implement that policy not later than March 1, 1995.

''(3) The Secretary shall ensure that the policy is implemented uniformly by the military departments insofar as practicable.

''(4) Not later than March 31, 1995, the Secretary of Defense shall submit to Congress a proposal for any legislation necessary to enhance the capability of the Department of Defense to address the issues of unlawful discrimination and sexual harassment.

''(d) MILITARY DEPARTMENT POLICIES.—(1) The Secretary of the Navy and the Secretary of the Air Force shall review and revise the regulations of the Department of the Navy and the Department of the Air Force, respectively, relating to equal opportunity policy and procedures in that Department for the making of, and responding to, complaints of unlawful discrimination and sexual harassment in order to ensure that those regulations are substantially equivalent to the regulations of the Department of the Army on such matters.

''(2) In revising regulations pursuant to paragraph (1), the Secretary of the Navy and the Secretary of the Air Force may make such additions and modifications as the Secretary of Defense determines appropriate to strengthen those regulations beyond the substantial equivalent of the Army regulations in accordance with—

''(A) the approved recommendations of the Department of Defense Task Force on Discrimination and Sexual Harassment; and

''(B) the experience of the Army, Navy, Air Force, and Marine Corps regarding equal opportunity cases.

''(3) The Secretary of the Army shall review the regulations of the Department of the Army relating to equal opportunity policy and complaint procedures and revise the regulations as the Secretary of Defense considers appropriate to strengthen the regulations in accordance with the recommendations and experience described in subparagraphs (A) and (B) of paragraph (2).

''(e) REPORT OF ADVISORY BOARD.—(1) The Secretary of Defense shall direct the Advisory Board on the Investigative Capability of the Department of Defense, established by the Secretary of Defense in November 1993, to include in its report to the Secretary (scheduled to be transmitted to the Secretary during December 1994)—

''(A) the recommendations of the Advisory Board as to whether the current Department of Defense organizational structure is adequate to oversee all investigative matters related to unlawful discrimination, sexual harassment, and other misconduct related to the gender of the victim; and

''(B) recommendations as to whether additional data collection and reporting procedures are needed to enhance the ability of the Department of Defense to respond to unlawful discrimination, sexual harass-

ment, and other misconduct related to the gender of the victim.

''(2) The Secretary shall transmit to Congress the report of the Advisory Board not later than 15 days after receiving the report.

''(f) PERFORMANCE EVALUATION STANDARDS FOR MEMBERS OF THE ARMED FORCES.—The Secretary of Defense shall ensure that Department of Defense regulations governing consideration of equal opportunity matters in evaluations of the performance of members of the Armed Forces include provisions requiring as a factor in such evaluations consideration of a member's commitment to elimination of unlawful discrimination or of sexual harassment in the Armed Forces.''

§ 1561a. Civilian orders of protection: force and effect on military installations

(a) FORCE AND EFFECT.—A civilian order of protection shall have the same force and effect on a military installation as such order has within the jurisdiction of the court that issued such order.

(b) CIVILIAN ORDER OF PROTECTION DEFINED.—In this section, the term ''civilian order of protection'' has the meaning given the term ''protection order'' in section 2266(5) of title 18.

(c) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section. The regulations shall be designed to further good order and discipline by members of the armed forces and civilians present on military installations.

(Added Pub. L. 107–311, § 2(a), Dec. 2, 2002, 116 Stat. 2455.)

§ 1562. Database on domestic violence incidents

(a) DATABASE ON DOMESTIC VIOLENCE INCIDENT.—The Secretary of Defense shall establish a central database of information on the incidents of domestic violence involving members of the armed forces.

(b) REPORTING OF INFORMATION FOR THE DATABASE.—The Secretary shall require that the Secretaries of the military departments maintain and report annually to the administrator of the database established under subsection (a) any information received on the following matters:

(1) Each domestic violence incident reported to a commander, a law enforcement authority of the armed forces, or a family advocacy program of the Department of Defense.

(2) The number of those incidents that involve evidence determined sufficient for supporting disciplinary action and, for each such incident, a description of the substantiated allegation and the action taken by command authorities in the incident.

(3) The number of those incidents that involve evidence determined insufficient for supporting disciplinary action and for each such case, a description of the allegation.

(Added Pub. L. 106–65, div. A, title V, § 594(a), Oct. 5, 1999, 113 Stat. 643.)

IMPROVEMENTS TO DEPARTMENT OF DEFENSE DOMESTIC VIOLENCE PROGRAMS

Pub. L. 111–383, div. A, title V, § 543, Jan. 7, 2011, 124 Stat. 4218, provided that:

''(a) IMPLEMENTATION OF OUTSTANDING COMPTROLLER GENERAL RECOMMENDATIONS.—Consistent with the recommendations contained in the report of the Comptroller General of the United States titled 'Status of Implementation of GAO's 2006 Recommendations on the Department of Defense's Domestic Violence Program' (GAO–10–577R), the Secretary of Defense shall complete, not later than one year after the date of enactment of this Act [Jan. 7, 2011], implementation of actions to address the following recommendations:

''(1) DEFENSE INCIDENT-BASED REPORTING SYSTEM.—The Secretary of Defense shall develop a comprehensive management plan to address deficiencies in the data captured in the Defense Incident-Based Reporting System to ensure the system can provide an accurate count of domestic violence incidents, and any consequent disciplinary action, that are reported throughout the Department of Defense.

''(2) ADEQUATE PERSONNEL.—The Secretary of Defense shall develop a plan to ensure that adequate personnel are available to implement recommendations made by the Defense Task Force on Domestic Violence.

''(3) DOMESTIC VIOLENCE TRAINING DATA FOR CHAPLAINS.—The Secretary of Defense shall develop a plan to collect domestic violence training data for chaplains.

''(4) OVERSIGHT FRAMEWORK.—The Secretary of Defense shall develop an oversight framework for Department of Defense domestic violence programs, to include oversight of implementation of recommendations made by the Defense Task Force on Domestic Violence, including budgeting, communication initiatives, and policy compliance.

''(b) IMPLEMENTATION REPORT.—The Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] an implementation report within 90 days of the completion of actions outlined in subsection (a).''

COMPTROLLER GENERAL REVIEW AND REPORT

Pub. L. 108–136, div. A, title V, § 575, Nov. 24, 2003, 117 Stat. 1486, provided that:

''(a) REVIEW.—During the two-year period beginning on the date of the enactment of this Act [Nov. 24, 2003], the Comptroller General shall review and assess the progress of the Department of Defense in implementing the recommendations of the Defense Task Force on Domestic Violence. In reviewing the status of the Department's efforts, the Comptroller General should specifically focus on—

''(1) the efforts of the Department to ensure confidentiality for victims and accountability and education of commanding officers and chaplains; and

''(2) the resources that the Department of Defense has provided toward such implementation, including personnel, facilities, and other administrative support, in order to ensure that necessary resources are provided to the organization within the Office of the Secretary of Defense with direct responsibility for oversight of implementation by the military departments of recommendations of the Task Force in order for that organization to carry out its duties and responsibilities.

''(b) REPORT.—The Comptroller General shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the results of the review and assessment under subsection (a) not later than 30 months after the date of the enactment of this Act [Nov. 24, 2003].''

DEFENSE TASK FORCE ON DOMESTIC VIOLENCE

Pub. L. 106–65, div. A, title V, § 591, Oct. 5, 1999, 113 Stat. 639, as amended by Pub. L. 107–107, div. A, title V, § 575, Dec. 28, 2001, 115 Stat. 1123, directed the Secretary of Defense to establish a Department of Defense Task Force on Domestic Violence; required the task force to submit to the Secretary of Defense a long-term, strategic plan to address matters relating to domestic violence within the military more effectively, to review the victims' safety program under Pub. L. 106–65, § 592,

set out below, and other matters relating to acts of domestic violence involving members of the Armed Forces, and to submit to the Secretary an annual report on its activities and activities of the military departments; directed the Secretary to submit the report and the Secretary's evaluation of the report to committees of Congress; and provided for the termination of the task force on Apr. 24, 2003.

INCENTIVE PROGRAM FOR IMPROVING RESPONSES TO DOMESTIC VIOLENCE INVOLVING MEMBERS OF THE ARMED FORCES AND MILITARY FAMILY MEMBERS

Pub. L. 106–65, div. A, title V, § 592, Oct. 5, 1999, 113 Stat. 642, provided that:

''(a) PURPOSE.—The purpose of this section is to provide a program for the establishment on military installations of collaborative projects involving appropriate elements of the Armed Forces and the civilian community to improve, strengthen, or coordinate prevention and response efforts to domestic violence involving members of the Armed Forces, military family members, and others.

''(b) PROGRAM.—The Secretary of Defense shall establish a program to provide funds and other incentives to commanders of military installations for the following purposes:

''(1) To improve coordination between military and civilian law enforcement authorities in policies, training, and responses to, and tracking of, cases involving military domestic violence.

''(2) To develop, implement, and coordinate with appropriate civilian authorities tracking systems (A) for protective orders issued to or on behalf of members of the Armed Forces by civilian courts, and (B) for orders issued by military commanders to members of the Armed Forces ordering them not to have contact with a dependent.

''(3) To strengthen the capacity of attorneys and other legal advocates to respond appropriately to victims of military domestic violence.

''(4) To assist in educating judges, prosecutors, and legal offices in improved handling of military domestic violence cases.

''(5) To develop and implement more effective policies, protocols, orders, and services specifically devoted to preventing, identifying, and responding to domestic violence.

''(6) To develop, enlarge, or strengthen victims' services programs, including sexual assault and domestic violence programs, developing or improving delivery of victims' services, and providing confidential access to specialized victims' advocates.

''(7) To develop and implement primary prevention programs.

''(8) To improve the response of health care providers to incidents of domestic violence, including the development and implementation of screening protocols.

''(c) PRIORITY.—The Secretary shall give priority in providing funds and other incentives under the program to installations at which the local program will emphasize building or strengthening partnerships and collaboration among military organizations such as family advocacy program, military police or provost marshal organizations, judge advocate organizations, legal offices, health affairs offices, and other installation-level military commands between those organizations and appropriate civilian organizations, including civilian law enforcement, domestic violence advocacy organizations, and domestic violence shelters.

''(d) APPLICATIONS.—The Secretary shall establish guidelines for applications for an award of funds under the program to carry out the program at an installation.

''(e) AWARDS.—The Secretary shall determine the award of funds and incentives under this section. In making a determination of the installations to which funds or other incentives are to be provided under the program, the Secretary shall consult with an award review committee consisting of representatives from the Armed Forces, the Department of Justice, the Department of Health and Human Services, and organizations with a demonstrated expertise in the areas of domestic violence and victims' safety.''

UNIFORM DEPARTMENT OF DEFENSE POLICIES FOR RESPONSES TO DOMESTIC VIOLENCE

Pub. L. 106–65, div. A, title V, § 593, Oct. 5, 1999, 113 Stat. 643, provided that:

''(a) REQUIREMENT.—The Secretary of Defense shall prescribe the following:

''(1) Standard guidelines to be used by the Secretaries of the military departments for negotiating agreements with civilian law enforcement authorities relating to acts of domestic violence involving members of the Armed Forces.

''(2) A requirement (A) that when a commanding officer issues to a member of the Armed Forces under that officer's command an order that the member not have contact with a specified person that a written copy of that order be provided within 24 hours after the issuance of the order to the person with whom the member is ordered not to have contact, and (B) that there be a system of recording and tracking such orders.

''(3) Standard guidelines on the factors for commanders to consider when seeking to substantiate allegations of domestic violence by a person subject to the Uniform Code of Military Justice and when determining appropriate action for such allegations that are so substantiated.

''(4) A standard training program for all commanding officers in the Armed Forces, including a standard curriculum, on the handling of domestic violence cases.

''(b) DEADLINE.—The Secretary of Defense shall carry out subsection (a) not later than six months after the date on which the Secretary receives the first report of the Defense Task Force on Domestic Violence under section 591(e) [set out as a note above].''

§ 1563. Consideration of proposals for posthumous and honorary promotions and appointments: procedures for review

(a) REVIEW BY SECRETARY CONCERNED.—Upon request of a Member of Congress, the Secretary concerned shall review a proposal for the posthumous or honorary promotion or appointment of a member or former member of the armed forces, or any other person considered qualified, that is not otherwise authorized by law. Based upon such review, the Secretary shall make a determination as to the merits of approving the posthumous or honorary promotion or appointment.

(b) NOTICE OF RESULTS OF REVIEW.—Upon making a determination under subsection (a) as to the merits of approving the posthumous or honorary promotion or appointment, the Secretary concerned shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives and to the requesting Member of Congress a detailed discussion of the rationale supporting the determination.

(c) DEFINITION.—In this section, the term ''Member of Congress'' means—

(1) a Senator; or

(2) a Representative in, or a Delegate or Resident Commissioner to, Congress.

(Added Pub. L. 106–398, § 1 [[div. A], title V, § 542(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–114; Pub. L. 108–136, div. A, title X, § 1031(a)(11), Nov. 24, 2003, 117 Stat. 1597.)

AMENDMENTS

2003—Pub. L. 108–136, § 1031(a)(11)(B), struck out ''and recommendation'' after ''review'' in section catchline.

Subsec. (a). Pub. L. 108–136, § 1031(a)(11)(A)(i), struck out ''and the other determinations necessary to comply with subsection (b)'' before period at end.

Subsec. (b). Pub. L. 108–136, § 1031(a)(11)(A)(ii), substituted ''a detailed discussion of the rationale supporting the determination.'' for ''notice in writing of one of the following:

''(1) The posthumous or honorary promotion or appointment does not warrant approval on the merits.

''(2) The posthumous or honorary promotion or appointment warrants approval and authorization by law for the promotion or appointment is recommended.

''(3) The posthumous or honorary promotion or appointment warrants approval on the merits and has been recommended to the President as an exception to policy.

''(4) The posthumous or honorary promotion or appointment warrants approval on the merits and authorization by law for the promotion or appointment is required but is not recommended.

A notice under paragraph (1) or (4) shall be accompanied by a statement of the reasons for the decision of the Secretary.''

§ 1564. Security clearance investigations

(a) EXPEDITED PROCESS.—The Secretary of Defense may prescribe a process for expediting the completion of the background investigations necessary for granting security clearances for—

(1) Department of Defense personnel and Department of Defense contractor personnel who are engaged in sensitive duties that are critical to the national security; and

(2) any individual who—

(A) submits an application for a position as an employee of the Department of Defense for which—

(i) the individual is qualified; and

(ii) a security clearance is required; and

(B) is—

(i) a member of the armed forces who was retired or separated, or is expected to be retired or separated, for physical disability pursuant to chapter 61 of this title;

(ii) the spouse of a member of the armed forces who retires or is separated, after the date of the enactment of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011, for a physical disability as a result of a wound, injuries or illness incurred or aggravated in the line of duty (as determined by the Secretary concerned); or

(iii) the spouse of a member of the armed forces who dies, after the date of the enactment of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011, as a result of a wound, injury, or illness incurred or aggravated in the line of duty (as determined by the Secretary concerned).

(b) REQUIRED FEATURES.—The process developed under subsection (a) shall provide for the following:

(1) Quantification of the requirements for background investigations necessary for grants of security clearances for Department of Defense personnel and Department of Defense contractor personnel.

(2) Categorization of personnel on the basis of the degree of sensitivity of their duties and the extent to which those duties are critical to the national security.

(3) Prioritization of the processing of background investigations on the basis of the categories of personnel determined under paragraph (2).

(c) ANNUAL REVIEW.—The Secretary shall conduct an annual review of the process prescribed under subsection (a) and shall revise that process as determined necessary in relation to ongoing Department of Defense missions.

(d) CONSULTATION REQUIREMENT.—The Secretary shall consult with the Secretaries of the military departments and the heads of Defense Agencies in carrying out this section.

(e) SENSITIVE DUTIES.—For the purposes of this section, it is not necessary for the performance of duties to involve classified activities or classified matters in order for the duties to be considered sensitive and critical to the national security.

(f) USE OF APPROPRIATED FUNDS.—The Secretary of Defense may use funds authorized to be appropriated to the Department of Defense for operation and maintenance to conduct background investigations under this section for individuals described in subsection (a)(2).

(Added Pub. L. 106–398, § 1 [[div. A], title X, § 1072(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–276; amended Pub. L. 111–383, div. A, title III, § 351(a), Jan. 7, 2011, 124 Stat. 4192.)

REFERENCES IN TEXT

The date of the enactment of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011, referred to in subsec. (a)(2)(B)(ii), (iii), is the date of enactment of Pub. L. 111–383, which was approved Jan. 7, 2011.

AMENDMENTS

2011—Subsec. (a). Pub. L. 111–383, § 351(a)(1), added subsec. (a) and struck out former subsec. (a). Prior to amendment, text read as follows: ''The Secretary of Defense shall prescribe a process for expediting the completion of the background investigations necessary for granting security clearances for Department of Defense personnel and Department of Defense contractor personnel who are engaged in sensitive duties that are critical to the national security.''

Subsec. (f). Pub. L. 111–383, § 351(a)(2), added subsec. (f).

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 111–383, div. A, title III, § 351(b), Jan. 7, 2011, 124 Stat. 4193, provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to a background investigation conducted after the date of the enactment of this Act [Jan. 7, 2011].''

DEADLINE FOR PRESCRIBING PROCESS FOR PRIORITIZING BACKGROUND INVESTIGATIONS FOR SECURITY CLEARANCES

Pub. L. 106–398, § 1 [[div. A], title X, § 1072(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–277, provided that: ''The process required by section 1564(a) of title 10, United States Code, as added by subsection (a), for expediting the completion of the background investigations necessary for granting security clearances for certain persons shall be prescribed not later than January 1, 2001.''

§ 1564a. Counterintelligence polygraph program

(a) AUTHORITY FOR PROGRAM.—The Secretary of Defense may carry out a program for the administration of counterintelligence polygraph examinations to persons described in subsection (b). The program shall be conducted in accordance with the standards specified in subsection (e).

(b) PERSONS COVERED.—Except as provided in subsection (d), the following persons, if their duties are described in subsection (c), are subject to this section:

(1) Military and civilian personnel of the Department of Defense.

(2) Personnel of defense contractors.

(3) A person assigned or detailed to the Department of Defense.

(4) An applicant for a position in the Department of Defense.

(c) COVERED TYPES OF DUTIES.—The Secretary of Defense may provide, under standards established by the Secretary, that a person described in subsection (b) is subject to this section if that person's duties involve—

(1) access to information that—

(A) has been classified at the level of top secret; or

(B) is designated as being within a special access program under section 4.4(a) of Executive Order No. 12958 (or a successor Executive order); or

(2) assistance in an intelligence or military mission in a case in which the unauthorized disclosure or manipulation of information, as determined under standards established by the Secretary of Defense, could reasonably be expected to—

(A) jeopardize human life or safety;

(B) result in the loss of unique or uniquely productive intelligence sources or methods vital to United States security; or

(C) compromise technologies, operational plans, or security procedures vital to the strategic advantage of the United States and its allies.

(d) EXCEPTIONS FROM COVERAGE FOR CERTAIN INTELLIGENCE AGENCIES AND FUNCTIONS.—This section does not apply to the following persons:

(1) A person assigned or detailed to the Central Intelligence Agency or to an expert or consultant under a contract with the Central Intelligence Agency.

(2) A person who is—

(A) employed by or assigned or detailed to the National Security Agency;

(B) an expert or consultant under contract to the National Security Agency;

(C) an employee of a contractor of the National Security Agency; or

(D) a person applying for a position in the National Security Agency.

(3) A person assigned to a space where sensitive cryptographic information is produced, processed, or stored.

(4) A person employed by, or assigned or detailed to, an office within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance programs or a contractor of such an office.

(e) STANDARDS.—(1) Polygraph examinations conducted under this section shall comply with all applicable laws and regulations.

(2) Such examinations may be authorized for any of the following purposes:

(A) To assist in determining the initial eligibility for duties described in subsection (c) of, and aperiodically thereafter, on a random basis, to assist in determining the continued eligibility of, persons described in subsections (b) and (c).

(B) With the consent of, or upon the request of, the examinee, to—

(i) resolve serious credible derogatory information developed in connection with a personnel security investigation; or

(ii) exculpate him- or herself of allegations or evidence arising in the course of a counterintelligence or personnel security investigation.

(C) To assist, in a limited number of cases when operational exigencies require the immediate use of a person's services before the completion of a personnel security investigation, in determining the interim eligibility for duties described in subsection (c) of the person.

(3) Polygraph examinations conducted under this section shall provide adequate safeguards, prescribed by the Secretary of Defense, for the protection of the rights and privacy of persons subject to this section under subsection (b) who are considered for or administered polygraph examinations under this section. Such safeguards shall include the following:

(A) The examinee shall receive timely notification of the examination and its intended purpose and may only be given the examination with the consent of the examinee.

(B) The examinee shall be advised of the examinee's right to consult with legal counsel.

(C) All questions asked concerning the matter at issue, other than technical questions necessary to the polygraph technique, must have a relevance to the subject of the inquiry.

(f) OVERSIGHT.—(1) The Secretary shall establish a process to monitor responsible and effective application of polygraph examinations within the Department of Defense.

(2) The Secretary shall make information on the use of polygraphs within the Department of Defense available to the congressional defense committees.

(g) POLYGRAPH RESEARCH PROGRAM.—The Secretary shall carry out a continuing research program to support the polygraph examination activities of the Department of Defense. The program shall include the following:

(1) An on-going evaluation of the validity of polygraph techniques used by the Department.

(2) Research on polygraph countermeasures and anti-countermeasures.

(3) Developmental research on polygraph techniques, instrumentation, and analytic methods.

(Added Pub. L. 108–136, div. A, title X, § 1041(a)(1), Nov. 24, 2003, 117 Stat. 1607; amended Pub. L. 109–163, div. A, title X, § 1054(a), Jan. 6, 2006, 119 Stat. 3436.)

REFERENCES IN TEXT

Executive Order No. 12958, referred to in subsec. (c)(1)(B), which was formerly set out as a note under section 435 of Title 50, War and National Defense, was revoked by Ex. Ord. No. 13526, § 6.2(g), Dec. 29, 2009, 75 F.R. 731.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 100–180, title XI, § 1121, Dec. 4, 1987, 101 Stat. 1147, as amended, which was set out as a note under section 113 of this title, prior to repeal by Pub. L. 108–136, div. A, title X, § 1041(b), Nov. 24, 2003, 117 Stat. 1608.

AMENDMENTS

2006—Pub. L. 109–163 reenacted section catchline without change and amended text generally. Prior to amendment, section related to authority for program for administration of counterintelligence polygraph examinations in subsec. (a), persons covered in subsec. (b), exceptions from coverage for certain intelligence agencies and functions in subsec. (c), oversight in subsec. (d), and polygraph research program in subsec. (e).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–163, div. A, title X, § 1054(b), Jan. 6, 2006, 119 Stat. 3438, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to polygraph examinations administered beginning on the date of the enactment of this Act [Jan. 6, 2006].''

§ 1565. DNA identification information: collection from certain offenders; use

(a) COLLECTION OF DNA SAMPLES.—(1) The Secretary concerned shall collect a DNA sample from each member of the armed forces under the Secretary's jurisdiction who is, or has been, convicted of a qualifying military offense (as determined under subsection (d)).

(2) For each member described in paragraph (1), if the Combined DNA Index System (in this section referred to as ''CODIS'') of the Federal Bureau of Investigation contains a DNA analysis with respect to that member, or if a DNA sample has been or is to be collected from that member under section 3(a) of the DNA Analysis Backlog Elimination Act of 2000, the Secretary concerned may (but need not) collect a DNA sample from that member.

(3) The Secretary concerned may enter into agreements with other Federal agencies, units of State or local government, or private entities to provide for the collection of samples described in paragraph (1).

(b) ANALYSIS AND USE OF SAMPLES.—The Secretary concerned shall furnish each DNA sample collected under subsection (a) to the Secretary of Defense. The Secretary of Defense shall—

(1) carry out a DNA analysis on each such DNA sample in a manner that complies with the requirements for inclusion of that analysis in CODIS; and

(2) furnish the results of each such analysis to the Director of the Federal Bureau of Investigation for inclusion in CODIS.

(c) DEFINITIONS.—In this section:

(1) The term ''DNA sample'' means a tissue, fluid, or other bodily sample of an individual on which a DNA analysis can be carried out.

(2) The term ''DNA analysis'' means analysis of the deoxyribonucleic acid (DNA) identification information in a bodily sample.

(d) QUALIFYING MILITARY OFFENSES.—The offenses that shall be treated for purposes of this section as qualifying military offenses are the following offenses, as determined by the Secretary of Defense, in consultation with the Attorney General:

(1) Any offense under the Uniform Code of Military Justice for which a sentence of confinement for more than one year may be imposed.

(2) Any other offense under the Uniform Code of Military Justice that is comparable to a qualifying Federal offense (as determined under section 3(d) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a(d))).

(e) EXPUNGEMENT.—(1) The Secretary of Defense shall promptly expunge, from the index described in subsection (a) of section 210304 of the Violent Crime Control and Law Enforcement Act of 1994, the DNA analysis of a person included in the index on the basis of a qualifying military offense if the Secretary receives, for each conviction of the person of a qualifying offense, a certified copy of a final court order establishing that such conviction has been overturned.

(2) For purposes of paragraph (1), the term ''qualifying offense'' means any of the following offenses:

(A) A qualifying Federal offense, as determined under section 3 of the DNA Analysis Backlog Elimination Act of 2000.

(B) A qualifying District of Columbia offense, as determined under section 4 of the DNA Analysis Backlog Elimination Act of 2000.

(C) A qualifying military offense.

(3) For purposes of paragraph (1), a court order is not ''final'' if time remains for an appeal or application for discretionary review with respect to the order.

(f) REGULATIONS.—This section shall be carried out under regulations prescribed by the Secretary of Defense, in consultation with the Secretary of Homeland Security and the Attorney General. Those regulations shall apply, to the extent practicable, uniformly throughout the armed forces.

(Added Pub. L. 106–546, § 5(a)(1), Dec. 19, 2000, 114 Stat. 2731; amended Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 108–405, title II, § 203(c), Oct. 30, 2004, 118 Stat. 2270.)

REFERENCES IN TEXT

Sections 3 and 4 of the DNA Analysis Backlog Elimination Act of 2000, referred to in subsecs. (a)(2), (d)(2), and (e)(2), are classified to sections 14135a and 14135b, respectively, of Title 42, The Public Health and Welfare.

The Uniform Code of Military Justice, referred to in subsec. (d), is classified to chapter 47 (§ 801 et seq.) of this title.

Section 210304 of the Violent Crime Control and Law Enforcement Act of 1994, referred to in subsec. (e)(1), is classified to section 14132 of Title 42.

AMENDMENTS

2004—Subsec. (d). Pub. L. 108–405 reenacted heading without change and amended text generally. Prior to amendment, text read as follows:

''(1) Subject to paragraph (2), the Secretary of Defense, in consultation with the Attorney General, shall determine those felony or sexual offenses under the Uniform Code of Military Justice that shall be treated for purposes of this section as qualifying military offenses.

''(2) An offense under the Uniform Code of Military Justice that is comparable to a qualifying Federal offense (as determined under section 3(d) of the DNA Analysis Backlog Elimination Act of 2000), as determined by the Secretary in consultation with the Attorney General, shall be treated for purposes of this section as a qualifying military offense.''

2002—Subsec. (f). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

INITIAL DETERMINATION OF QUALIFYING MILITARY OFFENSES

Pub. L. 106–546, § 5(b), Dec. 19, 2000, 114 Stat. 2733, provided that: ''The initial determination of qualifying military offenses under section 1565(d) of title 10, United States Code, as added by subsection (a)(1), shall be made not later than 120 days after the date of the enactment of this Act [Dec. 19, 2000].''

COMMENCEMENT OF COLLECTION

Pub. L. 106–546, § 5(c), Dec. 19, 2000, 114 Stat. 2733, provided that: ''Collection of DNA samples under section 1565(a) of such title, as added by subsection (a)(1), shall, subject to the availability of appropriations, commence not later than the date that is 60 days after the date of the initial determination referred to in subsection (b) [set out above].''

§ 1565a. DNA samples maintained for identification of human remains: use for law enforcement purposes

(a) COMPLIANCE WITH COURT ORDER.—(1) Subject to paragraph (2), if a valid order of a Federal court (or military judge) so requires, an element of the Department of Defense that maintains a repository of DNA samples for the purpose of identification of human remains shall make available, for the purpose specified in subsection (b), such DNA samples on such terms and conditions as such court (or military judge) directs.

(2) A DNA sample with respect to an individual shall be provided under paragraph (1) in a manner that does not compromise the ability of the Department of Defense to maintain a sample with respect to that individual for the purpose of identification of human remains.

(b) COVERED PURPOSE.—The purpose referred to in subsection (a) is the purpose of an investigation or prosecution of a felony, or any sexual offense, for which no other source of DNA information is reasonably available.

(c) DEFINITION.—In this section, the term ''DNA sample'' has the meaning given such term in section 1565(c) of this title.

(Added Pub. L. 107–314, div. A, title X, § 1063(a), Dec. 2, 2002, 116 Stat. 2653.)

§ 1566. Voting assistance: compliance assessments; assistance

(a) REGULATIONS.—The Secretary of Defense shall prescribe regulations to require that the Army, Navy, Air Force, and Marine Corps ensure their compliance with any directives issued by the Secretary of Defense in implementing any voting assistance program.

(b) VOTING ASSISTANCE PROGRAMS DEFINED.—In this section, the term ''voting assistance programs'' means—

(1) the Federal Voting Assistance Program carried out under the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.); and

(2) any similar program.

(c) ANNUAL EFFECTIVENESS AND COMPLIANCE REVIEWS.—(1) The Inspector General of each of the Army, Navy, Air Force, and Marine Corps shall conduct—

(A) an annual review of the effectiveness of voting assistance programs; and

(B) an annual review of the compliance with voting assistance programs of that armed force.

(2) Upon the completion of each annual review under paragraph (1), each Inspector General specified in that paragraph shall submit to the Inspector General of the Department of Defense a report on the results of each such review. Such report shall be submitted in time each year to be reflected in the report of the Inspector General of the Department of Defense under paragraph (3).

(3) Not later than March 31 each year, the Inspector General of the Department of Defense shall submit to Congress a report on—

(A) the effectiveness during the preceding calendar year of voting assistance programs; and

(B) the level of compliance during the preceding calendar year with voting assistance programs of each of the Army, Navy, Air Force, and Marine Corps.

[(d) Repealed. Pub. L. 109–364, div. A, title V, § 596(a), Oct. 17, 2006, 120 Stat. 2235.]

(e) REGULAR MILITARY DEPARTMENT ASSESSMENTS.—The Secretary of each military department shall include in the set of issues and programs to be reviewed during any management effectiveness review or inspection at the installation level an assessment of compliance with the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.) and with Department of Defense regulations regarding the Federal Voting Assistance Program.

(f) VOTING ASSISTANCE OFFICERS.—(1) Voting assistance officers shall be appointed or assigned under Department of Defense regulations. Commanders at all levels are responsible for ensuring that unit voting officers are trained and equipped to provide information and assistance to members of the armed forces on voting matters. Performance evaluation reports pertaining to a member who has been assigned to serve as a voting assistance officer shall comment on the performance of the member as a voting assistance officer.

(2) Under regulations and procedures (including directives) prescribed by the Secretary, a member of the armed forces appointed or assigned to duty as a voting assistance officer shall, to the maximum extent practicable, be given the time and resources needed to perform

the member's duties as a voting assistance officer during the period in advance of a general election when members and their dependents are preparing and submitting absentee ballots.

(g) DELIVERY OF MAIL FROM OVERSEAS PRECEDING FEDERAL ELECTIONS.—(1) During the four months preceding a general Federal election month, the Secretary of Defense shall periodically conduct surveys of all overseas locations and vessels at sea with military units responsible for collecting mail for return shipment to the United States and all port facilities in the United States and overseas where military-related mail is collected for shipment to overseas locations or to the United States. The purpose of each survey shall be to determine if voting materials are awaiting shipment at any such location and, if so, the length of time that such materials have been held at that location. During the fourth and third months before a general Federal election month, such surveys shall be conducted biweekly. During the second and first months before a general Federal election month, such surveys shall be conducted weekly.

(2) The Secretary shall ensure that voting materials are transmitted expeditiously by military postal authorities at all times. The Secretary shall, to the maximum extent practicable, implement measures to ensure that a postmark or other official proof of mailing date is provided on each absentee ballot collected at any overseas location or vessel at sea whenever the Department of Defense is responsible for collecting mail for return shipment to the United States. The Secretary shall ensure that the measures implemented under the preceding sentence do not result in the delivery of absentee ballots to the final destination of such ballots after the date on which the election for Federal office is held.

(3) In this section, the term ''general Federal election month'' means November in an even-numbered year.

(h) NOTICE OF DEADLINES AND REQUIREMENTS.—The Secretary of each military department, utilizing the voting assistance officer network established for each military installation, shall, to the maximum extent practicable, provide notice to members of the armed forces stationed at that installation of the last date before a general Federal election for which absentee ballots mailed from a postal facility located at that installation can reasonably be expected to be timely delivered to the appropriate State and local election officials.

(i) REGISTRATION AND VOTING INFORMATION FOR MEMBERS AND DEPENDENTS.—(1) The Secretary of each military department, using a variety of means including both print and electronic media, shall, to the maximum extent practicable, ensure that members of the armed forces and their dependents who are qualified to vote have ready access to information regarding voter registration requirements and deadlines (including voter registration), absentee ballot application requirements and deadlines, and the availability of voting assistance officers to assist members and dependents to understand and comply with these requirements.

(2) The Secretary of each military department shall make the national voter registration form prepared for purposes of the Uniformed and Overseas Citizens Absentee Voting Act by the Federal Election Commission available so that each person who enlists shall receive such form at the time of the enlistment, or as soon thereafter as practicable.

(3) Where practicable, a special day or days shall be designated at each military installation for the purpose of informing members of the armed forces and their dependents of election timing, registration requirements, and voting procedures.

(Added Pub. L. 107–107, div. A, title XVI, §1602(a)(1), Dec. 28, 2001, 115 Stat. 1274; amended Pub. L. 107–252, title VII, §701, Oct. 29, 2002, 116 Stat. 1722; Pub. L. 108–375, div. A, title X, §1084(d)(13), Oct. 28, 2004, 118 Stat. 2062; Pub. L. 109–364, div. A, title V, §596(a), (d), Oct. 17, 2006, 120 Stat. 2235, 2236.)

REFERENCES IN TEXT

The Uniformed and Overseas Citizens Absentee Voting Act, referred to in subsecs. (b)(1), (e), and (i)(2), is Pub. L. 99–410, Aug. 28, 1986, 100 Stat. 924, as amended, which is classified principally to subchapter I–G (§1973ff et seq.) of chapter 20 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title of 1986 Amendment note set out under section 1971 of Title 42 and Tables.

AMENDMENTS

2006—Subsec. (d). Pub. L. 109–364, §596(a), struck out subsec. (d), which required the Inspector General of the Department of Defense to periodically conduct unannounced assessments of compliance with requirements of law regarding voting by members of the armed forces at Department of Defense installations.

Subsec. (g)(2). Pub. L. 109–364, §596(d), struck out at end ''Not later than April 29, 2003, the Secretary shall submit to Congress a report describing the measures to be implemented to ensure the timely transmittal and postmarking of voting materials and identifying the persons responsible for implementing such measures.''

2004—Subsec. (g)(2). Pub. L. 108–375, §1084(d)(13)(A), substituted ''April 29, 2003'' for ''the date that is 6 months after the date of the enactment of the Help America Vote Act of 2002''.

Subsecs. (h), (i)(1), (3). Pub. L. 108–375, §1084(d)(13)(B), substituted ''armed forces'' for ''Armed Forces''.

2002—Subsec. (f). Pub. L. 107–252, §701(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (g)(2). Pub. L. 107–252, §701(b), inserted at end ''The Secretary shall, to the maximum extent practicable, implement measures to ensure that a postmark or other official proof of mailing date is provided on each absentee ballot collected at any overseas location or vessel at sea whenever the Department of Defense is responsible for collecting mail for return shipment to the United States. The Secretary shall ensure that the measures implemented under the preceding sentence do not result in the delivery of absentee ballots to the final destination of such ballots after the date on which the election for Federal office is held. Not later than the date that is 6 months after the date of the enactment of the Help America Vote Act of 2002, the Secretary shall submit to Congress a report describing the measures to be implemented to ensure the timely transmittal and postmarking of voting materials and identifying the persons responsible for implementing such measures.''

Subsec. (h). Pub. L. 107–252, §701(c), added subsec. (h).

Subsec. (i). Pub. L. 107–252, §701(d), added subsec. (i).

INITIAL REPORT

Pub. L. 107–107, div. A, title XVI, §1602(b), Dec. 28, 2001, 115 Stat. 1276, directed that the first report under

subsec. (c)(3) of this section be submitted not later than Mar. 31, 2003.

§ 1566a. Voting assistance: voter assistance offices

(a) DESIGNATION OF OFFICES ON MILITARY INSTALLATIONS AS VOTER ASSISTANCE OFFICES.—Not later than 180 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2010 and under regulations prescribed by the Secretary of Defense under subsection (f), the Secretaries of the military departments shall designate offices on installations under their jurisdiction to provide absent uniformed services voters, particularly those individuals described in subsection (b), and their family members with the following:

(1) Information on voter registration procedures and absentee ballot procedures (including the official post card form prescribed under section 101 of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff)).

(2) Information and assistance, if requested, including access to the Internet where practicable, to register to vote in an election for Federal office.

(3) Information and assistance, if requested, including access to the Internet where practicable, to update the individual's voter registration information, including instructions for absent uniformed services voters to change their address by submitting the official post card form prescribed under section 101 of the Uniformed and Overseas Citizens Absentee Voting Act to the appropriate State election official.

(4) Information and assistance, if requested, to request an absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.).

(b) COVERED INDIVIDUALS.—The individuals described in this subsection are absent uniformed services voters who—

(1) are undergoing a permanent change of duty station;

(2) are deploying overseas for at least six months;

(3) are returning from an overseas deployment of at least six months; or

(4) otherwise request assistance related to voter registration.

(c) TIMING OF PROVISION OF ASSISTANCE.—The regulations prescribed by the Secretary of Defense under subsection (f) shall ensure, to the maximum extent practicable and consistent with military necessity, that the assistance provided under subsection (a) is provided to a covered individual described in subsection (b)—

(1) if described in subsection (b)(1), as part of the administrative in-processing of the covered individual upon arrival at the new duty station of the covered individual;

(2) if described in subsection (b)(2), as part of the administrative out-processing of the covered individual in preparation for deployment from the home duty station of the covered individual;

(3) if described in subsection (b)(3), as part of the administrative in-processing of the covered individual upon return to the home duty station of the covered individual; or

(4) if described in subsection (b)(4), at the time the covered individual requests such assistance.

(d) OUTREACH.—The Secretary of each military department, or the Presidential designee, shall take appropriate actions to inform absent uniformed services voters of the assistance available under subsection (a), including—

(1) the availability of information and voter registration assistance at offices designated under subsection (a); and

(2) the time, location, and manner in which an absent uniformed services voter may utilize such assistance.

(e) AUTHORITY TO DESIGNATE VOTING ASSISTANCE OFFICES AS VOTER REGISTRATION AGENCY ON MILITARY INSTALLATIONS.—The Secretary of Defense may authorize the Secretaries of the military departments to designate offices on military installations as voter registration agencies under section 7(a)(2) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg–5(a)(2)) for all purposes of such Act. Any office so designated shall discharge the requirements of this section, under the regulations prescribed by the Secretary of Defense under subsection (f).

(f) REGULATIONS.—The Secretary of Defense shall prescribe regulations relating to the administration of the requirements of this section. The regulations shall be prescribed before the regularly scheduled general election for Federal office held in November 2010, and shall be implemented for such general election for Federal office and for each succeeding election for Federal office.

(g) DEFINITIONS.—In this section:

(1) The term ''absent uniformed services voter'' has the meaning given that term in section 107(1) of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff–6(1)).

(2) The term ''Federal office'' has the meaning given that term in section 107(3) of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff–6(3)).

(3) The term ''Presidential designee'' means the official designated by the President under section 101(a) of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff(a)).

(Added Pub. L. 111–84, div. A, title V, § 583(b)(1), Oct. 28, 2009, 123 Stat. 2328; amended Pub. L. 111–383, div. A, title X, § 1075(b)(21), Jan. 7, 2011, 124 Stat. 4370.)

REFERENCES IN TEXT

The date of the enactment of the National Defense Authorization Act for Fiscal Year 2010, referred to in subsec. (a), is the date of enactment of Pub. L. 111–84, which was approved Oct. 28, 2009.

The Uniformed and Overseas Citizens Absentee Voting Act, referred to in subsec. (a)(4), is Pub. L. 99–410, Aug. 28, 1986, 100 Stat. 924, which is classified principally to subchapter I–G (§ 1973ff et seq.) of chapter 20 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1971 of Title 42 and Tables.

The National Voter Registration Act of 1993, referred to in subsec. (e), is Pub. L. 103–31, May 20, 1993, 107 Stat. 77, which is classified principally to subchapter I–H (§ 1973gg et seq.) of chapter 20 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1971 of Title 42 and Tables.

AMENDMENTS

2011—Subsec. (a)(1). Pub. L. 111–383 inserted closing parenthesis before period at end.

§ 1567. Duration of military protective orders

A military protective order issued by a military commander shall remain in effect until such time as the military commander terminates the order or issues a replacement order.

(Added Pub. L. 110–417, [div. A], title V, § 561(a), Oct. 14, 2008, 122 Stat. 4470; amended Pub. L. 111–84, div. A, title X, § 1073(a)(16), Oct. 28, 2009, 123 Stat. 2473.)

AMENDMENTS

2009—Pub. L. 111–84 made technical amendment to section catchline.

§ 1567a. Mandatory notification of issuance of military protective order to civilian law enforcement

(a) INITIAL NOTIFICATION.—In the event a military protective order is issued against a member of the armed forces and any individual involved in the order does not reside on a military installation at any time during the duration of the military protective order, the commander of the military installation shall notify the appropriate civilian authorities of—

(1) the issuance of the protective order; and

(2) the individuals involved in the order.

(b) NOTIFICATION OF CHANGES OR TERMINATION.—The commander of the military installation also shall notify the appropriate civilian authorities of—

(1) any change made in a protective order covered by subsection (a); and

(2) the termination of the protective order.

(Added Pub. L. 110–417, [div. A], title V, § 562(a), Oct. 14, 2008, 122 Stat. 4470; amended Pub. L. 111–84, div. A, title X, § 1073(a)(17), Oct. 28, 2009, 123 Stat. 2473.)

AMENDMENTS

2009—Pub. L. 111–84 made technical amendment to section catchline.

CHAPTER 81—CIVILIAN EMPLOYEES

Sec.

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1599c. Health care professionals: enhanced appointment and compensation authority for personnel for care and treatment of wounded and injured members of the armed forces.

1599d. Professional accounting positions: authority to prescribe certification and credential standards.

AMENDMENTS

2008—Pub. L. 110–181, div. A, title XVI, § 1636(b), Jan. 28, 2008, 122 Stat. 464, added item 1599c and struck out former item 1599c ''Appointment in excepted service of certain health care professionals''.

2004—Pub. L. 108–375, div. A, title XI, § 1104(b), Oct. 28, 2004, 118 Stat. 2074, added item 1587a.

Pub. L. 108–375, div. A, title X, § 1084(g), Oct. 28, 2004, 118 Stat. 2064, amended directory language of Pub. L. 107–314, § 1064(a)(2), effective Dec. 2, 2002, as if included in Pub. L. 107–314 as enacted. See 2002 Amendment note below.

2002—Pub. L. 107–314, div. A, title XI, § 1104(a)(2), Dec. 2, 2002, 116 Stat. 2661, added item 1599d.

Pub. L. 107–314, div. A, title X, § 1064(a)(2), Dec. 2, 2002, 116 Stat. 2654, as amended by Pub. L. 108–375, div. A, title X, § 1084(g), Oct. 28, 2004, 118 Stat. 2064, added item 1596b.

2001—Pub. L. 107–107, div. A, title XI, § 1104(b), Dec. 28, 2001, 115 Stat. 1238, added item 1599c.

2000—Pub. L. 106–398, § 1 [[div. A], title VII, § 751(c)(2), title XI, §§ 1102(b), 1131(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–194, 1654A–311, 1654A–317, added items 1580a, 1582, 1596, and 1596a and struck out former item 1596 ''Foreign language proficiency: special pay''.

1999—Pub. L. 106–65, div. A, title XI, § 1103(b)(2), Oct. 5, 1999, 113 Stat. 777, added item 1580.

1998—Pub. L. 105–339, § 6(c)(1)(B), Oct. 31, 1998, 112 Stat. 3188, struck out item 1599c ''Veterans' preference requirements: Department of Defense failure to comply treated as a prohibited personnel practice''.

1997—Pub. L. 105–85, div. A, title V, § 593(b)(2), title X, § 1071(b), Nov. 18, 1997, 111 Stat. 1764, 1898, added items 1585a and 1589.

1996—Pub. L. 104–201, div. A, title X, § 1074(a)(7), title XVI, §§ 1604(b), 1614(b)(2), 1615(a)(2), 1633(c)(2), Sept. 23, 1996, 110 Stat. 2659, 2736, 2739, 2741, 2751, struck out items 1589 ''Prohibition on payment of lodging expenses when adequate Government quarters are available'', 1590 ''Management of civilian intelligence personnel of the military departments'', and 1599 ''Postemployment assistance: certain terminated intelligence employees'', struck out ''Sec.'' at beginning of item 1599a, and added items 1599b and 1599c.

Pub. L. 104–106, div. A, title X, § 1040(d)(2), Feb. 10, 1996, 110 Stat. 433, inserted '': reprisals'' after ''instrumentalities'' in item 1587.

Pub. L. 104–93, title V, § 505(b), Jan. 6, 1996, 109 Stat. 974, added item 1599a.

1994—Pub. L. 103–359, title VIII, § 806(a)(2), Oct. 14, 1994, 108 Stat. 3442, added item 1599.

1993—Pub. L. 103–160, div. A, title IX, § 923(a)(2), Nov. 30, 1993, 107 Stat. 1731, substituted ''Civilian faculty members at certain Department of Defense schools: employment and compensation'' for ''National Defense University; Foreign Language Center of the Defense Language Institute: civilian faculty members'' in item 1595.

1992—Pub. L. 102–484, div. A, title III, § 371(b), title IX, § 923(a)(2)(B), div. D, title XLIV, § 4442(b), Oct. 23, 1992, 106 Stat. 2384, 2474, 2732, substituted ''University; Foreign Language Center of the Defense Language Institute'' for ''University:'' in item 1595, substituted ''Civilian positions: guidelines for reductions'' for ''Employees of industrial-type or commercial-type activities: guidelines for future reductions'' in item 1597, and added item 1598.

1991—Pub. L. 102–190, div. A, title X, § 1003(a)(2), Dec. 5, 1991, 105 Stat. 1456, added item 1581.

Pub. L. 102–25, title VII, § 701(e)(4), (8)(B), Apr. 6, 1991, 105 Stat. 114, 115, substituted ''Employment of non-citizens'' for ''Laws relating to employment of non-citizens: not applicable to research and development activities'' in item 1584 and struck out ''mandatory'' after ''error in'' in item 1594.

1990—Pub. L. 101–510, div. A, title III, § 322(a)(2), title XIV, § 1484(a), Nov. 5, 1990, 104 Stat. 1529, 1715, redesignated item 1592 ''Foreign language proficiency: special pay'' as item 1596 and added item 1597.

1989—Pub. L. 101–193, title V, § 501(a)(2), Nov. 30, 1989, 103 Stat. 1708, added item 1592 ''Foreign language proficiency: special pay''.

Pub. L. 101–189, div. A, title III, §§ 311(b)(2), 336(a)(2), title VI, § 664(b)(2), title XI, § 1124(a)(2), Nov. 29, 1989, 103 Stat. 1412, 1419, 1467, 1558, added item 1592 ''Prohibition on payment of severance pay to foreign nationals in the event of certain overseas base closures.'', and items 1593 to 1595.

1987—Pub. L. 100–180, div. A, title VI, § 617(b)(2), Dec. 4, 1987, 101 Stat. 1097, added item 1591.

1986—Pub. L. 99–569, title V, § 504(b), Oct. 27, 1986, 100 Stat. 3199, added item 1590.

1984—Pub. L. 98–525, title XIV, § 1401(f)(2), Oct. 19, 1984, 98 Stat. 2618, added item 1589.

1983—Pub. L. 98–94, title XII, §§ 1253(a)(2), 1266(b), Sept. 24, 1983, 97 Stat. 700, 705, added items 1587 and 1588.

1982—Pub. L. 97–295, § 1(19)(B), (20)(C), Oct. 12, 1982, 96 Stat. 1290, struck out items 1581 ''Appointment: professional and scientific services'' and 1582 ''Professional and scientific services: reports to Congress on appointments'', and substituted ''pay'' for ''compensation'' in item 1583.

1966—Pub. L. 89–718, § 13, Nov. 2, 1966, 80 Stat. 1117, struck out item 1580 ''Appointment generally''.

1962—Pub. L. 87–651, title II, § 206(b), Sept. 7, 1962, 76 Stat. 520, added item 1580.

1960—Pub. L. 86–585, § 2, July 5, 1960, 74 Stat. 327, added item 1586.

1958—Pub. L. 85–577, § 1(2), July 31, 1958, 72 Stat. 456, added item 1585.

AVAILABILITY OF FUNDS FOR COMPENSATION OF CERTAIN CIVILIAN EMPLOYEES OF THE DEPARTMENT OF DEFENSE

Pub. L. 111–84, div. A, title XI, § 1111, Oct. 28, 2009, 123 Stat. 2495, as amended by Pub. L. 111–383, div. A, title X, § 1075(d)(16), Jan. 7, 2011, 124 Stat. 4373, provided that:

''(a) AVAILABILITY OF FUNDS.—Funds authorized to be appropriated for the Department of Defense that are available for the purchase of contract services to meet a requirement that is anticipated to continue for five years or more shall be available to provide compensation for civilian employees of the Department to meet the same requirement.

''(b) REGULATIONS.—Not later than 120 days after the date of the enactment of this Act [Oct. 28, 2009], the Secretary of Defense shall prescribe regulations implementing the authority in subsection (a). Such regulations—

''(1) shall ensure that the authority in subsection (a) is utilized to build government capabilities that are needed to perform inherently governmental functions, functions closely associated with inherently governmental functions, and other critical functions;

''(2) shall include a mechanism to ensure that follow-on funding to provide compensation for civilian employees of the Department to perform functions described in paragraph (1) is provided from appropriate accounts; and

''(3) may establish additional criteria and levels of approval within the Department for the utilization of funds to provide compensation for civilian employees of the Department pursuant to subsection (a).

''(c) ANNUAL REPORT.—Not later than 60 days after the end of each fiscal year for which the authority in subsection (a) is in effect, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the use of such authority. Each report shall cover the preceding fiscal year and shall identify, at a minimum, the following:

''(1) The amount of funds used under the authority in subsection (a) to provide compensation for civilian employees.

''(2) The source or sources of the funds so used.

''(3) The number of civilian employees employed through the use of such funds.

''(4) The actions taken by the Secretary to ensure that follow-on funding for such civilian employees is provided through appropriate accounts.

''(d) TEMPORARY AUTHORITY.—The authority in subsection (a) shall apply to funds authorized to be appropriated for the Department of Defense for fiscal years 2010 through 2019.''

DEPARTMENT OF DEFENSE CIVILIAN LEADERSHIP PROGRAM

Pub. L. 111–84, div. A, title XI, § 1112, Oct. 28, 2009, 123 Stat. 2496, provided that:

''(a) LEADERSHIP PROGRAM REQUIRED.—

''(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Oct. 28, 2009], the Secretary of Defense shall establish a program of leadership recruitment and development for civilian employees of the Department of Defense, to be known as the 'Department of Defense Civilian Leadership Program' (in this section referred to as the 'program').

''(2) OBJECTIVES.—The objectives of the program shall be as follows:

''(A) To develop a new generation of civilian leaders for the Department of Defense.

''(B) To recruit individuals with the academic merit, work experience, and demonstrated leadership skills to meet the future needs of the Department.

''(C) To offer rapid advancement, competitive compensation, and leadership opportunities to highly qualified civilian employees of the Department.

''(3) AVAILABLE AUTHORITIES.—In carrying out the program, the Secretary may exercise any authority available to the Office of Personnel Management under section 4703 of title 5, United States Code, except that the Secretary shall not be bound by the limitations in subsection (d) of such section. Nothing in this section shall be construed to authorize the waiver of any part of chapter 71 of title 5, United States Code, or any regulation implementing such chapter, in the carrying out of the program.

''(b) ELIGIBLE INDIVIDUALS.—

''(1) IN GENERAL.—The following individuals shall be eligible to participate in the program:

''(A) Current employees of the Department of Defense.

''(B) Appropriate individuals in the private sector.

''(2) LIMITATION ON NUMBER OF PARTICIPANTS IN PROGRAM.—The total number of individuals who may participate in the program in any fiscal year may not exceed 5,000.

''(3) LIMITATION ON PERIOD OF PARTICIPATION IN PROGRAM.—The maximum period of time that an individual may participate in the program is three years.

''(c) ELEMENTS OF PROGRAM.—

''(1) COMPETITIVE ENTRY.—The selection of individuals for entry into the program shall be made on the basis of a competition conducted at least twice each year. In each competition, participants in the program shall be selected from among applicants determined by the Secretary to be the most highly qualified in terms of academic merit, work experience, and demonstrated leadership skills. Each competition shall provide for entry-level participants and mid-career participants in the program.

''(2) ALLOCATION OF POSITIONS.—The Secretary shall allocate positions in the program among the components of the Department of Defense that—

''(A) offer the most challenging assignments;

''(B) provide the greatest level of responsibility; and

''(C) demonstrate the greatest need for participants in the program.

''(3) ASSIGNMENTS TO POSITIONS.—Participants in the program shall be assigned to components of the Department that best match their skills and qualifications. Participants in the program may be rotated among components of the Department of Defense at the discretion of the Secretary.

''(4) INITIAL COMPENSATION.—The initial compensation of participants in the program shall be determined by the Secretary based on the qualifications of such participants and applicable market conditions.

''(5) EDUCATION AND TRAINING.—The Secretary shall provide participants in the program with training, mentoring, and educational opportunities that are appropriate to facilitate the development of such participants into effective civilian leaders for the Department of Defense.

''(6) OBJECTIVE, MERIT-BASED PRINCIPLES FOR PERSONNEL DECISIONS.—The Secretary shall make personnel decisions under the program in accordance with such objective, merit-based criteria as the Secretary shall prescribe in regulations for purposes of the program. Such criteria shall include, but not be limited to, criteria applicable to the following:

''(A) The selection of individuals for entry into the program.

''(B) The assignment of participants in the program to positions in the Department of Defense.

''(C) The initial compensation of participants in the program.

''(D) The access of participants in the program to training, mentoring, and educational opportunities under the program.

''(E) The consideration of participants in the program for selection into the senior management, functional, and technical workforce of the Department.

''(7) CONSIDERATION FOR SENIOR MANAGEMENT, FUNCTIONAL, AND TECHNICAL WORKFORCE.—Any participant in the program who, as determined by the Secretary, demonstrates outstanding performance shall be afforded priority in consideration for selection into the appropriate element of the senior management, functional, and technical workforce of the Department of Defense (as defined in section 115b(f) of title 10, United States Code).''

DIRECT HIRE AUTHORITY AT PERSONNEL DEMONSTRATION LABORATORIES FOR CERTAIN CANDIDATES

Pub. L. 110–417, [div. A], title XI, §1108, Oct. 14, 2008, 122 Stat. 4618, as amended by Pub. L. 111–383, div. A, title XI, §1101(a), Jan. 7, 2011, 124 Stat. 4381, provided that:

''(a) AUTHORITY.—The Secretary of Defense may appoint qualified candidates possessing an advanced degree to positions described in subsection (b) without regard to the provisions of subchapter I of chapter 33 of title 5, United States Code, other than sections 3303 and 3328 of such title.

''(b) APPLICABILITY.—This section applies with respect to candidates for scientific and engineering positions within any laboratory designated by section 1105(a) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2486; 10 U.S.C. 2358 note) as a Department of Defense science and technology reinvention laboratory.

''(c) LIMITATION.—(1) Authority under this section may not, in any calendar year and with respect to any laboratory, be exercised with respect to a number of candidates greater than the number equal to 5 percent of the total number of scientific and engineering positions within such laboratory that are filled as of the close of the fiscal year last ending before the start of such calendar year.

''(2) For purposes of this subsection, positions and candidates shall be counted on a full-time equivalent basis.

''(d) EMPLOYEE DEFINED.—As used in this section, the term 'employee' has the meaning given such term by section 2105 of title 5, United States Code.

''(e) TERMINATION.—The authority to make appointments under this section shall not be available after December 31, 2013.''

[Amendment by section 1101(a)(1) of Pub. L. 111–383 to section 1108(b) of Pub. L. 110–417, set out above, effective Oct. 28, 2009, and amendment by section 1101(a)(2) of Pub. L. 111–383 to section 1108(c) of Pub. L. 110–417, set out above, effective Jan. 7, 2011, see section 1101(d) of Pub. L. 111–383, set out as an Effective Date of 2011 Amendment note under section 9902 of Title 5, Government Organization and Employees.]

EMPLOYMENT FOR RESETTLED IRAQIS

Pub. L. 110–417, [div. A], title XII, §1235, Oct. 14, 2008, 122 Stat. 4641, provided that:

''(a) IN GENERAL.—The Secretary of Defense and the Secretary of State are authorized to jointly establish and operate a temporary program to offer employment as translators, interpreters, or cultural awareness instructors to individuals described in subsection (b). Individuals described in such subsection may be appointed to temporary positions of one year or less outside Iraq with either the Department of Defense or the Department of State, without competition and without regard for the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code. Such individuals may also be hired as personal services contractors by either of such Departments to provide translation, interpreting, or cultural awareness instruction, except that such individuals so hired shall not by virtue of such employment be considered employees of the United States Government, except for purposes of chapter 81 of title 5, United States Code, and chapter 171 of title 28, United States Code.

''(b) ELIGIBILITY.—Individuals referred to in subsection (a) are Iraqi nationals who—

''(1) have received a special immigrant visa issued pursuant to section 1059 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163) [8 U.S.C. 1101 note] or section 1244 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181) [8 U.S.C. 1157 note]; and

''(2) are lawfully present in the United States.

''(c) FUNDING.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the program established under subsection (a) shall be funded from the annual general operating budget of the Department of Defense.

''(2) EXCEPTION.—The Secretary of State shall reimburse the Department of Defense for any costs associated with individuals described in subsection (b) whose work is for or on behalf of the Department of State.

''(d) RULE OF CONSTRUCTION REGARDING ACCESS TO CLASSIFIED INFORMATION.—Nothing in this section may be construed as affecting in any manner practices and procedures regarding the handling of or access to classified information.

''(e) INFORMATION SHARING.—The Secretary of Defense and the Secretary of State shall work with the Secretary of Homeland Security and the Office of Refugee Resettlement of the Department of Health and Human Services to ensure that individuals described in subsection (b) are informed of the program established under subsection (a).

''(f) REGULATION.—The Secretary of Defense, jointly with the Secretary of State and with the concurrence of the Director of the Office of Personnel Management, shall prescribe such regulations as are necessary to carry out the program established under subsection (a), including ensuring the suitability for employment described in subsection (a) of individuals described in subsection (b), determining the number of positions, and establishing pay scales and hiring procedures.

''(g) TERMINATION.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the program established under subsection (a) shall terminate on December 31, 2014.

''(2) EARLIER TERMINATION.—If the Secretary of Defense, jointly with the Secretary of State, determines that the program established under subsection (a) should terminate before the date specified in paragraph (1), the Secretaries may terminate the program if the Secretaries notify Congress in writing of such termination at least 180 days before such termination.''

STRATEGIC HUMAN CAPITAL PLAN FOR CIVILIAN EMPLOYEES OF THE DEPARTMENT OF DEFENSE

Pub. L. 110–181, div. A, title VIII, § 851, Jan. 28, 2008, 122 Stat. 247, which required that, in updates of the strategic human capital plan, the Secretary of Defense was to include a separate section focused on the defense acquisition workforce, was repealed by Pub. L. 111–84, div. A, title XI, § 1108(c)(3), Oct. 28, 2009, 123 Stat. 2492.

Pub. L. 109–163, div. A, title XI, § 1122, Jan. 6, 2006, 119 Stat. 3452, which required the Secretary of Defense to develop and submit to the Committees on Armed Services of the Senate and House of Representatives a strategic human capital plan to shape and improve the civilian employee workforce of the Department of Defense, along with updates and the assessment of the Secretary of the progress of the Department in implementing the plan, and required the Comptroller General to submit to the Committees on Armed Services a report on the plan, was repealed by Pub. L. 111–84, div. A, title XI, § 1108(c)(1), Oct. 28, 2009, 123 Stat. 2491.

§ 1580. Emergency essential employees: designation

(a) CRITERIA FOR DESIGNATION.—The Secretary of Defense or the Secretary of the military department concerned may designate as an emergency essential employee any employee of the Department of Defense, whether permanent or temporary, the duties of whose position meet all of the following criteria:

(1) It is the duty of the employee to provide immediate and continuing support for combat operations or to support maintenance and repair of combat essential systems of the armed forces.

(2) It is necessary for the employee to perform that duty in a combat zone after the evacuation of nonessential personnel, including any dependents of members of the armed forces, from the zone in connection with a war, a national emergency declared by Congress or the President, or the commencement of combat operations of the armed forces in the zone.

(3) It is impracticable to convert the employee's position to a position authorized to be filled by a member of the armed forces because of a necessity for that duty to be performed without interruption.

(b) ELIGIBILITY OF EMPLOYEES OF NONAPPROPRIATED FUND INSTRUMENTALITIES.—A nonappropriated fund instrumentality employee is eligible for designation as an emergency essential employee under subsection (a).

(c) DEFINITIONS.—In this section:

(1) The term ''combat zone'' has the meaning given that term in section 112(c)(2) of the Internal Revenue Code of 1986.

(2) The term ''nonappropriated fund instrumentality employee'' has the meaning given that term in section 1587(a)(1) of this title.

(Added Pub. L. 106–65, div. A, title XI, § 1103(b)(1), Oct. 5, 1999, 113 Stat. 776.)

REFERENCES IN TEXT

Section 112(c)(2) of the Internal Revenue Code of 1986, referred to in subsec. (c)(1), is classified to section 112(c)(2) of Title 26, Internal Revenue Code.

PRIOR PROVISIONS

A prior section 1580, added Pub. L. 87–651, title II, § 206(a), Sept. 7, 1962, 76 Stat. 519, related to appointment of civilian employees by the Secretary of Defense, prior to repeal by Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 663.

§ 1580a. Emergency essential employees: notification of required participation in anthrax vaccine immunization program

The Secretary of Defense shall—

(1) prescribe regulations for the purpose of ensuring that any civilian employee of the Department of Defense who is determined to be an emergency essential employee and who is required to participate in the anthrax vaccine immunization program is notified of the requirement to participate in the program and the consequences of a decision not to participate; and

(2) ensure that any individual who is being considered for a position as such an employee is notified of the obligation to participate in the program before being offered employment in such position.

(Added Pub. L. 106–398, § 1 [[div. A], title VII, § 751(c)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–194.)

§ 1581. Foreign National Employees Separation Pay Account

(a) ESTABLISHMENT AND PURPOSE.—There is established on the books of the Treasury an account to be known as the ''Foreign National Employees Separation Pay Account, Defense''. The account shall be used for the accumulation of funds to finance obligations of the United States for separation pay for foreign nationals referred to in subsection (e).

(b) DEPOSITS INTO ACCOUNT.—The Secretary of Defense shall deposit into the account from applicable appropriations all amounts obligated for separation pay for foreign nationals referred to in subsection (e).

(c) PAYMENTS FROM ACCOUNT.—Amounts in the account shall remain available for expenditure in accordance with the purpose for which obligated until expended.

(d) DEOBLIGATED FUNDS.—Any amount in the account that is deobligated shall be available for a period of two years from the date of deobligation for recording, adjusting, and liquidating amounts properly chargeable to the liability of the United States for which the obligation was made. Any such deobligated amount remaining at the end of such two-year period shall be canceled.

(e) EMPLOYEES COVERED.—This section applies only with respect to separation pay of foreign nationals employed by the Department of Defense, and foreign nationals employed by a foreign government for the benefit of the Department of Defense, under any of the following agreements that provide for payment of separation pay:

(1) A contract.

(2) A treaty.

(3) A memorandum of understanding with a foreign nation.

(Added Pub. L. 102–190, div. A, title X, § 1003(a)(1), Dec. 5, 1991, 105 Stat. 1456; amended Pub. L. 102–484, div. A, title X, § 1052(20), Oct. 23, 1992, 106 Stat. 2500; Pub. L. 103–337, div. A, title III, § 346, Oct. 5, 1994, 108 Stat. 2724; Pub. L. 107–107, div. A, title X, § 1048(e)(2), Dec. 28, 2001, 115 Stat. 1227.)

PRIOR PROVISIONS

A prior section 1581, acts Aug. 10, 1956, ch. 1041, 70A Stat. 118; Sept. 2, 1958, Pub. L. 85–861, § 1(34), 72 Stat. 1456; May 29, 1959, Pub. L. 86–36, § 3, 73 Stat. 63; Sept. 23, 1959, Pub. L. 86–377, § 2, 73 Stat. 701; Oct. 4, 1961, Pub. L. 87–367, title II, § 203, 75 Stat. 790; Oct. 11, 1962, Pub. L. 87–793, § 1001(b), 76 Stat. 863, provided for appointment of a limited number of civilian research and development personnel and prescribed their relationship to civil service provisions, prior to repeal by Pub. L. 97–295, § 1(19)(A), Oct. 12, 1982, 96 Stat. 1290.

AMENDMENTS

2001—Subsec. (b). Pub. L. 107–107 struck out par. (2) designation and ''on or after December 5, 1991,'' after ''all amounts obligated'' and struck out par. (1) which read as follows: ''The Secretary of the Treasury shall deposit into the account all amounts that were obligated by the Secretary of Defense before December 5, 1991, and that remain unexpended for separation pay for foreign nationals referred to in subsection (e).''

1994—Subsecs. (a), (b). Pub. L. 103–337, § 346(1), substituted ''foreign nationals referred to in subsection (e)'' for ''foreign national employees of the Department of Defense'' wherever appearing.

Subsec. (e). Pub. L. 103–337, § 346(2), added subsec. (e) and struck out former subsec. (e) which read as follows: ''EMPLOYEES COVERED.—This section applies only with respect to separation pay of foreign nationals employed by the Department of Defense under any of the following agreements that provide for payment of separation pay:

''(1) A contract.

''(2) A treaty.

''(3) A memorandum of understanding with a foreign nation.''

1992—Subsec. (b)(1), (2). Pub. L. 102–484 substituted ''December 5, 1991,'' for ''the date of the enactment of this section''.

§ 1582. Assistive technology, assistive technology devices, and assistive technology services

(a) AUTHORITY.—The Secretary of Defense may provide assistive technology, assistive technology devices, and assistive technology services to the following:

(1) Department of Defense employees with disabilities.

(2) Organizations within the Department that have requirements to make programs or facilities accessible to, and usable by, persons with disabilities.

(3) Any other department or agency of the Federal Government, upon the request of the head of that department or agency, for its employees with disabilities or for satisfying a requirement to make its programs or facilities accessible to, and usable by, persons with disabilities.

(b) DEFINITIONS.—In this section, the terms ''assistive technology'', ''assistive technology device'', ''assistive technology service'', and ''disability'' have the meanings given those terms in section 3 of the Assistive Technology Act of 1998 (29 U.S.C. 3002).

(Added Pub. L. 106–398, § 1 [[div. A], title XI, § 1102(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–311.)

PRIOR PROVISIONS

A prior section 1582, acts Aug. 10, 1956, ch. 1041, 70A Stat. 118; Sept. 2, 1958, Pub. L. 85–861, § 1(35), 72 Stat. 1456; Sept. 23, 1959, Pub. L. 86–377, § 3, 73 Stat. 701, directed Secretary of Defense to report annually to Congress on civilian research and development personnel employed by Department of Defense under former section 1581 of this title, prior to repeal by Pub. L. 97–295, § 1(19)(A), Oct. 12, 1982, 96 Stat. 1290.

§ 1583. Employment of certain persons without pay

The Secretary of Defense may employ, without pay, not more than 10 persons of outstanding experience and ability. However, a person so employed may be allowed transportation, and not more than $15 a day instead of subsistence, while away from his home or regular place of business pursuant to employment under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 118; Pub. L. 89–718, § 14, Nov. 2, 1966, 80 Stat. 1117; Pub. L. 97–295, § 1(20)(A), (B), Oct. 12, 1982, 96 Stat. 1290.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1583(a)	5:171v (less words of 1st sentence after semicolon).	Jan. 6, 1951, ch. 1213, subch. VII, § 704, 64 Stat. 1235.

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1583(b)	5:171v (words of 1st sentence after semicolon).	

AMENDMENTS

1982—Pub. L. 97–295 substituted ''pay'' for ''compensation'' in section catchline and text.

1966—Pub. L. 89–718 struck out designation ''(a)'' at beginning of section and repealed subsec. (b) which authorized the Secretary, by regulation, to exempt persons employed under provisions formerly designated subsec. (a) from former sections 281, 283, 284, 434, and 1914 of title 18 and former section 99 of title 5.

§ 1584. Employment of non-citizens

Laws prohibiting the employment of, or payment of pay or expenses to, a person who is not a citizen of the United States do not apply to personnel of the Department of Defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 118; Pub. L. 97–295, § 1(20)(A), Oct. 12, 1982, 96 Stat. 1290; Pub. L. 101–510, div. A, title XIV, §§ 1481(d)(1), (2), 1482(b), Nov. 5, 1990, 104 Stat. 1706, 1709; Pub. L. 104–106, div. A, title X, § 1062(b), Feb. 10, 1996, 110 Stat. 444.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1584	5:235c. 5:475h. 5:628c.	July 16, 1952, ch. 882, § 2, 66 Stat. 725.

The words ''appointment or'' are omitted as surplusage.

AMENDMENTS

1996—Pub. L. 104–106 struck out subsec. (a) heading ''Waiver of employment restrictions for certain personnel'', designated subsec. (a) as entire section, and struck out subsec. (b) which read as follows: ''NOTICE TO CONGRESS OF CERTAIN SALARY INCREASES.—The Secretary of Defense shall notify the Committees on Armed Services and the Committees on Appropriations of the Senate and House of Representatives when any salary increase granted to direct and indirect hire foreign national employees of the Department of Defense overseas, stated as a percentage, is greater than the higher of the following percentages:

''(1) The percentage pay increase authorized by law for civilian employees of the Department of Defense whose pay is computed under the provisions of section 5332 of title 5.

''(2) The percentage increase provided to national government employees of the host nation.''

1990—Pub. L. 101–510, § 1482(b), substituted ''personnel of the Department of Defense'' for ''any expert, scientist, technician, or professional person whose employment in connection with the research and development activities of a military department is determined to be necessary by the Secretary of that department'' in subsec. (a).

Pub. L. 101–510, § 1481(d)(1), (2), substituted ''Employment of non-citizens'' for ''Laws relating to employment of non-citizens: not applicable to research and development activities'' in section catchline, designated existing provisions as subsec. (a) and inserted heading, and added subsec. (b).

1982—Pub. L. 97–295 substituted ''pay'' for ''compensation''.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 1482(b) of Pub. L. 101–510 effective Oct. 1, 1991, see section 1482(d) of Pub. L. 101–510, set out as a note under section 119 of this title.

CITIZENSHIP REQUIREMENT NOT APPLICABLE

Pub. L. 111–118, div. A, title VIII, § 8002, Dec. 19, 2009, 123 Stat. 3426, provided that: ''During the current fiscal year, provisions of law prohibiting the payment of compensation to, or employment of, any person not a citizen of the United States shall not apply to personnel of the Department of Defense: *Provided*, That salary increases granted to direct and indirect hire foreign national employees of the Department of Defense funded by this Act [div. A of Pub. L. 111–118, see Tables for classification] shall not be at a rate in excess of the percentage increase authorized by law for civilian employees of the Department of Defense whose pay is computed under the provisions of section 5332 of title 5, United States Code, or at a rate in excess of the percentage increase provided by the appropriate host nation to its own employees, whichever is higher: *Provided further*, That this section shall not apply to Department of Defense foreign service national employees serving at United States diplomatic missions whose pay is set by the Department of State under the Foreign Service Act of 1980 [22 U.S.C. 3901 et seq.]: *Provided further*, That the limitations of this provision shall not apply to foreign national employees of the Department of Defense in the Republic of Turkey.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 110–329, div. C, title VIII, § 8002, Sept. 30, 2008, 122 Stat. 3619.

Pub. L. 110–116, div. A, title VIII, § 8002, Nov. 13, 2007, 121 Stat. 1313.

Pub. L. 109–289, div. A, title VIII, § 8002, Sept. 29, 2006, 120 Stat. 1271.

Pub. L. 109–148, div. A, title VIII, § 8002, Dec. 30, 2005, 119 Stat. 2697.

Pub. L. 108–287, title VIII, § 8002, Aug. 5, 2004, 118 Stat. 968.

Pub. L. 108–87, title VIII, § 8002, Sept. 30, 2003, 117 Stat. 1071.

Pub. L. 107–248, title VIII, § 8002, Oct. 23, 2002, 116 Stat. 1536.

Pub. L. 107–117, div. A, title VIII, § 8002, Jan. 10, 2002, 115 Stat. 2247.

Pub. L. 106–259, title VIII, § 8002, Aug. 9, 2000, 114 Stat. 674.

Pub. L. 106–79, title VIII, § 8002, Oct. 25, 1999, 113 Stat. 1230.

Pub. L. 105–262, title VIII, § 8002, Oct. 17, 1998, 112 Stat. 2296.

Pub. L. 105–56, title VIII, § 8002, Oct. 8, 1997, 111 Stat. 1219.

Pub. L. 104–208, div. A, title I, § 101(b) [title VIII, § 8002], Sept. 30, 1996, 110 Stat. 3009–71, 3009–87.

Pub. L. 104–61, title VIII, § 8002, Dec. 1, 1995, 109 Stat. 651.

Pub. L. 103–335, title VIII, § 8002, Sept. 30, 1994, 108 Stat. 2616.

Pub. L. 103–139, title VIII, § 8002, Nov. 11, 1993, 107 Stat. 1437.

Pub. L. 102–396, title IX, § 9002, Oct. 6, 1992, 106 Stat. 1900.

Pub. L. 102–172, title VIII, § 8002, Nov. 26, 1991, 105 Stat. 1170.

Pub. L. 101–511, title VIII, § 8002, Nov. 5, 1990, 104 Stat. 1873.

Pub. L. 101–165, title IX, § 9003, Nov. 21, 1989, 103 Stat. 1129.

Pub. L. 100–463, title VIII, § 8003, Oct. 1, 1988, 102 Stat. 2270–17.

Pub. L. 100–202, § 101(b) [title VIII, § 8004], Dec. 22, 1987, 101 Stat. 1329–43, 1329–62.

Pub. L. 99–500, § 101(c) [title IX, § 9004], Oct. 18, 1986, 100 Stat. 1783–82, 1783–101, and Pub. L. 99–591, § 101(c) [title IX, § 9004], Oct. 30, 1986, 100 Stat. 3341–82, 3341–101.

Pub. L. 99–190, § 101(b) [title VIII, § 8004], Dec. 19, 1985, 99 Stat. 1185, 1202.

Pub. L. 98–473, title I, § 101(h) [title VIII, § 8004], Oct. 12, 1984, 98 Stat. 1904, 1922.

Pub. L. 98–212, title VII, § 704, Dec. 8, 1983, 97 Stat. 1437.

Pub. L. 97–377, title I, § 101(c) [title VII, § 704], Dec. 21, 1982, 96 Stat. 1833, 1349.
Pub. L. 97–114, title VII, § 704, Dec. 29, 1981, 95 Stat. 1578.
Pub. L. 96–527, title VII, § 704, Dec. 15, 1980, 94 Stat. 3080.
Pub. L. 96–154, title VII, § 704, Dec. 21, 1979, 93 Stat. 1152.
Pub. L. 95–457, title VIII, § 804, Oct. 13, 1978, 92 Stat. 1243.
Pub. L. 95–111, title VIII, § 803, Sept. 21, 1977, 91 Stat. 899.
Pub. L. 94–419, title VII, § 703, Sept. 22, 1976, 90 Stat. 1290.
Pub. L. 94–212, title VII, § 703, Feb. 9, 1976, 90 Stat. 168.
Pub. L. 93–437, title VIII, § 803, Oct. 8, 1974, 88 Stat. 1224.
Pub. L. 93–238, title VII, § 703, Jan. 2, 1974, 87 Stat. 1038.
Pub. L. 92–570, title VII, § 703, Oct. 26, 1972, 86 Stat. 1196.
Pub. L. 92–204, title VII, § 703, Dec. 18, 1971, 85 Stat. 726.
Pub. L. 91–668, title VIII, § 803, Jan. 11, 1971, 84 Stat. 2029.
Pub. L. 91–171, title VI, § 603, Dec. 29, 1969, 83 Stat. 479.
Pub. L. 90–580, title V, § 502, Oct. 17, 1968, 82 Stat. 1129.
Pub. L. 90–96, title VI, § 602, Sept. 29, 1967, 81 Stat. 241.
Pub. L. 89–687, title VI, § 602, Oct. 15, 1966, 80 Stat. 990.
Pub. L. 89–213, title VI, § 602, Sept. 29, 1965, 79 Stat. 873.
Pub. L. 88–446, title V, § 502, Aug. 19, 1964, 78 Stat. 474.
Pub. L. 88–149, title V, § 502, Oct. 17, 1963, 77 Stat. 263.
Pub. L. 87–577, title V, § 502, Aug. 9, 1962, 76 Stat. 327.
Pub. L. 87–144, title VI, § 602, Aug. 17, 1961, 75 Stat. 375.
Pub. L. 86–601, title V, § 502, July 7, 1960, 74 Stat. 349.
Pub. L. 86–166, title V, § 602, Aug. 18, 1959, 73 Stat. 378.
Pub. L. 85–724, title VI, § 602, Aug. 22, 1958, 72 Stat. 723.
Pub. L. 85–117, title VI, § 602, Aug. 2, 1957, 71 Stat. 323.
July 2, 1956, ch. 488, title VI, § 602, 70 Stat. 467.
July 13, 1955, ch. 358, title VI, § 603, 69 Stat. 314.
June 30, 1954, ch. 432, title VII, § 703, 68 Stat. 349.
Aug. 1, 1953, ch. 305, title VI, § 603, 67 Stat. 349.
July 10, 1952, ch. 630, title VI, § 603, 66 Stat. 531.
Oct. 18, 1951, ch. 512, title VI, § 603, 65 Stat. 444.
Sept. 6, 1950, ch. 896, Ch. X, title VI, § 603, 64 Stat. 752.
Oct. 29, 1949, ch. 787, title VI, § 603, 63 Stat. 1017.
June 24, 1948, ch. 632, 62 Stat. 651.
July 30, 1947, ch. 357, title I, § 1, 61 Stat. 553.
July 16, 1946, ch. 583, § 1, 60 Stat. 543.
July 28, 1945, ch. 265, § 1, 59 Stat. 386.
June 28, 1944, ch. 303, § 1, 58 Stat. 575.
July 1, 1943, ch. 185, § 1, 57 Stat. 349.
July 2, 1942, ch. 477, § 1, 56 Stat. 613.

SALARY INCREASES TO FOREIGN NATIONAL EMPLOYEES; NOTICE TO CONGRESS

Pub. L. 100–463, title VIII, § 8114, Oct. 1, 1988, 102 Stat. 2270–38, which directed Secretary of Defense to notify House and Senate Committees on Appropriations when salary increases granted to foreign national employees were at a rate in excess of the percentage pay increase authorized by law for civilian employees of Department of Defense whose pay was computed under section 5332 of title 5 or at a rate in excess of the percentage increase provided to National Government employees of the host nation, whichever was higher, was repealed and restated in subsec. (b) of this section by Pub. L. 101–510, § 1481(d)(1)(B), (4)(A).

§ 1585. Carrying of firearms

Under regulations to be prescribed by the Secretary of Defense, civilian officers and employees of the Department of Defense may carry firearms or other appropriate weapons while assigned investigative duties or such other duties as the Secretary may prescribe.

(Added Pub. L. 85–577, § 1(1), July 31, 1958, 72 Stat. 455.)

§ 1585a. Special agents of the Defense Criminal Investigative Service: authority to execute warrants and make arrests

(a) AUTHORITY.—The Secretary of Defense may authorize any DCIS special agent described in subsection (b)—

(1) to execute and serve any warrant or other process issued under the authority of the United States; and

(2) to make arrests without a warrant—

(A) for any offense against the United States committed in the presence of that agent; and

(B) for any felony cognizable under the laws of the United States if the agent has probable cause to believe that the person to be arrested has committed or is committing the felony.

(b) AGENTS TO HAVE AUTHORITY.—Subsection (a) applies to any DCIS special agent whose duties include conducting, supervising, or coordinating investigations of criminal activity in programs and operations of the Department of Defense.

(c) GUIDELINES ON EXERCISE OF AUTHORITY.—The authority provided under subsection (a) shall be exercised in accordance with guidelines prescribed by the Inspector General of the Department of Defense and approved by the Attorney General and any other applicable guidelines prescribed by the Secretary of Defense or the Attorney General.

(d) DCIS SPECIAL AGENT DEFINED.—In this section, the term ''DCIS special agent'' means an employee of the Department of Defense who is a special agent of the Defense Criminal Investigative Service (or any successor to that service).

(Added Pub. L. 105–85, div. A, title X, § 1071(a), Nov. 18, 1997, 111 Stat. 1897.)

§ 1586. Rotation of career-conditional and career employees assigned to duty outside the United States

(a) In order to advance the programs and activities of the Defense Establishment, it is hereby declared to be the policy of the Congress to facilitate the interchange of civilian employees of the Defense Establishment between posts of duty in the United States and posts of duty outside the United States through the establishment and operation of programs for the rotation, to the extent consistent with the missions of the Defense Establishment and sound principles of administration, of such employees who are assigned to duty outside the United States.

(b) Notwithstanding any other provision of law, the Secretary of Defense with respect to civilian employees of the Department of Defense other than employees of a military department, and the Secretary of each military department with respect to civilian employees of such military department, may, under such regulations as each such Secretary may prescribe with respect to the employees concerned and in accordance with the policy and other provisions of this section, establish and operate programs of rotation which provide for the granting of the right to return to a position in the United States to each civilian employee in the department concerned—

(1) who, while serving under a career-conditional or career appointment in the competitive civil service, is assigned at the request of the department concerned to duty outside the United States,

(2) who satisfactorily completes such duty, and

(3) who applies, not later than 30 days after his completion of such duty, for the right to return to a position in the United States as provided by subsection (c).

The Secretary of the department concerned may provide by regulation for the waiver of the provisions of paragraphs (2) and (3), or of either of such paragraphs, in those cases in which the application of such paragraphs, or either of them, would be against equity and good conscience or against the public interest.

(c) The right to return to a position in the United States granted under this section shall be without reduction in the seniority, status, and tenure held by the employee immediately before his assignment to duty outside the United States and the employee shall be placed, not later than 30 days after the date on which he is determined to be immediately available to exercise such right in accordance with the following provisions:

(1) The employee shall be placed in the position which he held immediately before his assignment to duty outside the United States, if such position exists.

(2) If such position does not exist, or with his consent, the employee shall be placed in a vacant existing position, or in a new continuing position, for which he is qualified, available for the purposes of this section in the department concerned, in the same geographical area as, with rights and benefits equal to the rights and benefits of, and in a grade equal to the grade of, the position which he held immediately before his assignment to duty outside the United States.

(3) If the positions described in paragraph (1) and paragraph (2) do not exist, the employee shall be placed in an additional position which shall be established by the department concerned for a period not in excess of 90 days in order to carry out the purposes of this section. Such additional position shall be in the same geographical area as, with rights and benefits not less than the rights and benefits of, and in a grade not lower than the grade of, the position held by the employee immediately before his assignment to duty outside the United States.

(4) If, within 90 days after his placement in a position under paragraph (3) a vacant existing position or new continuing position, for which the employee is qualified, is available for the purposes of this section in the department concerned, in the same geographical area as, with rights and benefits equal to the rights and benefits of, and in a grade equal to the grade of, the position which he held immediately before his assignment to duty outside the United States, the employee shall be placed in such vacant existing position or new continuing position.

(5) If, within the 90-day period referred to in paragraphs (3) and (4), the employee cannot be placed in a position under paragraph (4), he shall be reassigned or separated under the regulations prescribed by the Office of Personnel Management to carry out sections 3501–3503 of title 5.

(6) If there is a termination of or material change in the activity in which the former position of the employee (referred to in paragraph (1)) was located, he shall be placed, in the manner provided by paragraphs (2), (3), and (4), as applicable, in a position in the department concerned in a geographical area other than the geographical area in which such former position was located.

(d) Each employee who is placed in a position under paragraph (1), (2), (3), (4), or (6) of subsection (c) shall be paid at a rate of basic pay which is not less than the rate of basic pay to which he would have been entitled if he had not been assigned to duty outside the United States.

(e)(1) Each employee who is displaced from a position by reason of the exercise of a return right under subsection (c)(1) shall be placed, as of the date of such displacement, without reduction in seniority, status, and tenure, in a vacant existing position or new continuing position, for which he is qualified, available in the department concerned, in the same geographical area as, with rights and benefits equal to the rights and benefits of, in a grade equal to the grade of, and at a rate of basic pay not less than the last rate of basic pay which is not less than the last rate of basic pay to which he was entitled while in, the position from which he is displaced.

(2) If the employee cannot be placed in a position under paragraph (1), he shall be reassigned to a position other than the position from which he is displaced, or separated, under the regulations prescribed by the Office of Personnel Management to carry out sections 3501–3503 of title 5.

(f) The President may, upon his determination that such action is necessary in the national interest, declare that, for such period as he may specify, an assignment of an employee to duty in Alaska or Hawaii shall be held and considered, for the purposes of this section, to be an assignment to duty outside the United States.

(g) In this section:

(1) The term ''rotation'' means the assignment of civilian employees referred to in subsection (b) to duty outside the United States and the return of such employees to duty within the United States.

(2) The term ''grade'' means, as applicable, a grade of the General Schedule as prescribed in section 5104 of title 5 or a grade or level of the appropriate prevailing rate schedule.

(h) The Secretary of Defense may, under such regulations as he may prescribe, make the provisions of subsections (a) through (g) applicable to civilian employees of the Department of Defense who are residents of Guam, the Virgin Islands, or the Commonwealth of Puerto Rico at the time of their employment by the Department of Defense in the same manner as if the references in such subsections to the United States (when used in a geographical sense) were references to Guam, the Virgin Islands, or the Commonwealth of Puerto Rico, as the case may be.

(Added Pub. L. 86–585, § 1, July 5, 1960, 74 Stat. 325; amended Pub. L. 89–718, § 15, Nov. 2, 1966, 80 Stat. 1117; Pub. L. 90–83, § 3(3), Sept. 11, 1967, 81 Stat. 220; Pub. L. 96–513, title V, § 511(61), Dec. 12, 1980, 94 Stat. 2925; Pub. L. 96–600, § 1, Dec. 24, 1980, 94 Stat. 3493; Pub. L. 97–295, § 1(20)(A), Oct. 12, 1982, 96 Stat. 1290; Pub. L. 98–525, title XIV, § 1405(29), Oct. 19, 1984, 98 Stat. 2623; Pub. L. 101–189, div. A, title XVI, § 1622(e)(4), Nov. 29, 1989, 103 Stat. 1605.)

AMENDMENTS

1989—Subsec. (g). Pub. L. 101–189, in introductory provisions, substituted ''In this section:'' for ''For the purposes of this section—'', in par. (1), inserted ''The term'' before '' 'rotation' '' and substituted the period for ''; and'', and in par. (2), inserted ''The term'' before '' 'grade' ''.

1984—Subsec. (b). Pub. L. 98–525, § 1405(29)(A)(iii), in provisions following par. (3) struck out ''of this subsection'' after ''paragraphs (2) and (3)''.

Subsec. (b)(3). Pub. L. 98–525, § 1405(29)(A)(i), (ii), substituted ''30'' for ''thirty'' and struck out ''of this section'' after ''subsection (c)''.

Subsec. (c). Pub. L. 98–525, § 1405(29)(B)(i), in provisions preceding par. (1) substituted ''30'' for ''thirty''.

Subsec. (c)(3). Pub. L. 98–525, § 1405(29)(B)(ii), (iv), substituted ''90 days'' for ''ninety days'' and struck out ''of this subsection'' after ''paragraph (2)''.

Subsec. (c)(4). Pub. L. 98–525, § 1405(29)(B)(ii), (iv), substituted ''90 days'' for ''ninety days'' and struck out ''of this subsection'' after ''paragraph (3)''.

Subsec. (c)(5). Pub. L. 98–525, § 1405(29)(B)(iii)–(v), substituted ''90-day'' for ''ninety-day'', struck out ''of this subsection'' after ''paragraphs (3) and (4)'', and struck out ''such'' before ''paragraph (4)''.

Subsec. (c)(6). Pub. L. 98–525, § 1405(29)(B)(vi), struck out ''of this subsection'' after ''paragraph (1)'' and ''of this subsection,'' after ''as applicable,''.

Subsec. (d). Pub. L. 98–525, § 1405(29)(C), struck out ''of this section'' after ''subsection (c)''.

Subsec. (e)(1). Pub. L. 98–525, § 1405(29)(C), struck out ''of this section'' after ''subsection (c)(1)''.

Subsec. (e)(2). Pub. L. 98–525, § 1405(29)(D), struck out ''of this subsection'' after ''paragraph (1)''.

Subsec. (g)(1). Pub. L. 98–525, § 1405(29)(C), struck out ''of this section'' after ''subsection (b)''.

1982—Subsecs. (d), (e)(1). Pub. L. 97–295 substituted ''pay'' for ''compensation'' wherever appearing.

1980—Subsecs. (c)(5), (e)(2). Pub. L. 96–513 substituted ''Office of Personnel Management'' for ''United States Civil Service Commission''.

Subsec. (h). Pub. L. 96–600 added subsec. (h).

1967—Subsec. (g)(2). Pub. L. 90–83 substituted ''General Schedule as prescribed in section 5104 of title 5'' for ''compensation schedule for the General Schedule of the Classification Act of 1949, as amended,''.

1966—Pub. L. 89–718 substituted ''sections 3501–3503 of title 5'' for ''section 12 of the Act of June 27, 1944 (5 U.S.C. 861)'' wherever appearing.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EX. ORD. NO. 10895. DUTY IN ALASKA OR HAWAII

Ex. Ord. No. 10895, Nov. 25, 1960, 25 F.R. 12165, provided:

By virtue of the authority vested in me by section 1586(f) of title 10 of the United States Code, and as President of the United States, and having determined that such action is necessary in the national interest, it is ordered as follows:

SECTION 1. Assignment of an employee to duty in the State of Alaska or Hawaii under regulations prescribed pursuant to section 1586 of title 10 of the United States Code shall be held and considered for the purposes of that section, to be an assignment to duty outside the United States.

SEC. 2. The Secretary of Defense shall from time to time, and at least annually, consider the need for continuing this order in effect, and he shall recommend the revocation thereof at such time as he may deem such action advisable.

DWIGHT D. EISENHOWER.

§ 1587. Employees of nonappropriated fund instrumentalities: reprisals

(a) In this section:

(1) The term ''nonappropriated fund instrumentality employee'' means a civilian employee who is paid from nonappropriated funds of Army and Air Force Exchange Service, Navy Exchange Service Command, Marine Corps exchanges, or any other instrumentality of the United States under the jurisdiction of the armed forces which is conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the armed forces. Such term includes a civilian employee of a support organization within the Department of Defense or a military department, such as the Defense Finance and Accounting Service, who is paid from nonappropriated funds on account of the nature of the employee's duties.

(2) The term ''civilian employee'' has the meaning given the term ''employee'' by section 2105(a) of title 5.

(3) The term ''personnel action'', with respect to a nonappropriated fund instrumentality employee (or an applicant for a position as such an employee), means—

(A) an appointment;

(B) a promotion;

(C) a disciplinary or corrective action;

(D) a detail, transfer, or reassignment;

(E) a reinstatement, restoration, or reemployment;

(F) a decision concerning pay, benefits, or awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, or other action described in this paragraph; and

(G) any other significant change in duties or responsibilities that is inconsistent with the employee's salary or grade level.

(b) Any civilian employee or member of the armed forces who has authority to take, direct others to take, recommend, or approve any personnel action shall not, with respect to such authority, take or fail to take a personnel action with respect to any nonappropriated fund instrumentality employee (or any applicant for a position as such an employee) as a reprisal for—

(1) a disclosure of information by such an employee or applicant which the employee or applicant reasonably believes evidences—

(A) a violation of any law, rule, or regulation; or

(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

if such disclosure is not specifically prohibited by law and if the information is not specifi-

cally required by or pursuant to executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

(2) a disclosure by such an employee or applicant to any civilian employee or member of the armed forces designated by law or by the Secretary of Defense to receive disclosures described in clause (1), of information which the employee or applicant reasonably believes evidences—

(A) a violation of any law, rule, or regulation; or

(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(c) This section does not apply to an employee in a position excluded from the coverage of this section by the President based upon a determination by the President that the exclusion is necessary and warranted by conditions of good administration.

(d) The Secretary of Defense shall be responsible for the prevention of actions prohibited by subsection (b) and for the correction of any such actions that are taken. The authority of the Secretary to correct such actions may not be delegated to the Secretary of a military department or to the Assistant Secretary of Defense for Manpower and Logistics.

(e) The Secretary of Defense, after consultation with the Director of the Office of Personnel Management and the Special Counsel of the Merit Systems Protection Board, shall prescribe regulations to carry out this section. Such regulations shall include provisions to protect the confidentiality of employees and applicants making disclosures described in clauses (1) and (2) of subsection (b) and to permit the reporting of alleged violations of subsection (b) directly to the Inspector General of the Department of Defense.

(Added Pub. L. 98–94, title XII, § 1253(a)(1), Sept. 24, 1983, 97 Stat. 699; amended Pub. L. 100–26, § 7(k)(2), Apr. 21, 1987, 101 Stat. 284; Pub. L. 104–106, div. A, title IX, § 903(f)(3), title X, § 1040(a)–(d)(1), Feb. 10, 1996, 110 Stat. 402, 433; Pub. L. 104–201, div. A, title IX, § 901, Sept. 23, 1996, 110 Stat. 2617.)

AMENDMENTS

1996—Pub. L. 104–106, § 1040(d)(1), inserted ": reprisals" after "instrumentalities" in section catchline.

Subsec. (a)(1). Pub. L. 104–106, § 1040(c), substituted "Navy Exchange Service Command" for "Navy Resale and Services Support Office".

Pub. L. 104–106, § 1040(a), inserted at end "Such term includes a civilian employee of a support organization within the Department of Defense or a military department, such as the Defense Finance and Accounting Service, who is paid from nonappropriated funds on account of the nature of the employee's duties."

Subsec. (d). Pub. L. 104–106, § 903(a), (f)(3), which directed amendment of subsec. (d), eff. Jan. 31, 1997, by substituting "official in the Department of Defense with principal responsibility for personnel and readiness" for "Assistant Secretary of Defense for Manpower and Logistics", was repealed by Pub. L. 104–201.

Subsec. (e). Pub. L. 104–106, § 1040(b), inserted before period at end of second sentence "and to permit the reporting of alleged violations of subsection (b) directly to the Inspector General of the Department of Defense".

1987—Subsec. (a). Pub. L. 100–26 inserted "The term" after each par. designation and struck out uppercase letter of first word after first quotation marks in each par. and substituted lowercase letter.

EFFECTIVE DATE

Section 1253(b) of Pub. L. 98–94 provided that: "Section 1587 of such title [this section], as added by subsection (a), shall apply with respect to any conduct prohibited by subsection (b) of such section which occurs after the date of the enactment of this Act [Sept. 24, 1983]."

LIMITATION ON PROVISION OF OVERSEAS LIVING QUARTERS ALLOWANCES FOR NONAPPROPRIATED FUND INSTRUMENTALITY EMPLOYEES

Section 1042 of Pub. L. 104–106 provided that:

"(a) CONFORMING ALLOWANCE TO ALLOWANCES FOR OTHER CIVILIAN EMPLOYEES.—Subject to subsection (b), an overseas living quarters allowance paid from nonappropriated funds and provided to a nonappropriated fund instrumentality employee after the date of the enactment of this Act [Feb. 10, 1996] may not exceed the amount of a quarters allowance provided under subchapter III of chapter 59 of title 5 to a similarly situated civilian employee of the Department of Defense paid from appropriated funds.

"(b) APPLICATION TO CERTAIN CURRENT EMPLOYEES.—In the case of a nonappropriated fund instrumentality employee who, as of the date of the enactment of this Act [Feb. 10, 1996], receives an overseas living quarters allowance under any other authority, subsection (a) shall apply to such employee only after the earlier of—

"(1) September 30, 1997; or

"(2) the date on which the employee otherwise ceases to be eligible for such an allowance under such other authority.

"(c) NONAPPROPRIATED FUND INSTRUMENTALITY EMPLOYEE DEFINED.—For purposes of this section, the term 'nonappropriated fund instrumentality employee' has the meaning given such term in section 1587(a)(1) of title 10, United States Code."

UNIFORM HEALTH BENEFITS PROGRAM FOR EMPLOYEES OF DEPARTMENT OF DEFENSE ASSIGNED TO NONAPPROPRIATED FUND INSTRUMENTALITIES

Pub. L. 103–337, div. A, title III, § 349, Oct. 5, 1994, 108 Stat. 2727, as amended by Pub. L. 108–375, div. A, title VI, § 652, Oct. 28, 2004, 118 Stat. 1973, provided that:

"(a) IN GENERAL.—Not later than October 1, 1995, the Secretary of Defense shall take such steps as may be necessary to provide a uniform health benefits program for employees of the Department of Defense assigned to a nonappropriated fund instrumentality of the Department.

"(b) PROGRESS REPORT.—Not later than March 15, 1995, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the progress made by the Secretary in implementing subsection (a).

"(c) TREATMENT OF PROGRAM AS FEDERAL HEALTH BENEFIT PROGRAM.—(1) No State tax, fee, other monetary payment, or State health plan requirement, may be imposed, directly or indirectly, on the Nonappropriated Fund Uniform Health Benefits Program of the Department of Defense, or on a carrier or an underwriting or plan administration contractor of the Program, to the same extent as such prohibition applies to the health insurance program authorized by chapter 89 of title 5, United States Code, under section 8909(f) of such title.

"(2) Paragraph (1) shall not be construed to exempt the Nonappropriated Fund Uniform Health Benefits Program of the Department of Defense, or any carrier or underwriting or plan administration contractor of the Program from the imposition, payment, or collec-

tion of a tax, fee, or other monetary payment on the net income or profit accruing to, or realized by, the Program or by such carrier or contractor from business conducted under the Program, so long as the tax, fee, or payment is applicable to a broad range of business activity.

''(3) In this subsection, the term 'State' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and any political subdivision or other non-Federal authority thereof.''

§ 1587a. Employees of nonappropriated fund instrumentalities: senior executive pay levels

(a) AUTHORITY.—To achieve the objective stated in subsection (b), the Secretary of Defense may regulate the amount of total compensation that is provided for senior executives of nonappropriated fund instrumentalities who, for the fixing of pay by administrative action, are under the jurisdiction of the Secretary of Defense or the Secretary of a military department.

(b) PAY PARITY.—The objective of an action taken with respect to the compensation of senior executives under subsection (a) is to provide for parity between the total compensation provided for such senior executives and total compensation that is provided for Department of Defense employees in Senior Executive Service positions or other senior executive positions.

(c) STANDARDS OF COMPARABILITY.—Subject to subsection (d), the Secretary of Defense shall prescribe the standards of comparison that are to apply in the making of the determinations necessary to achieve the objective stated in subsection (b).

(d) ESTABLISHMENT OF PAY RATES.—The Secretary of Defense shall apply subsections (a) and (b) of section 5382 of title 5 in the regulation of compensation under this section.

(e) RELATIONSHIP TO PAY LIMITATION.—The Secretary of Defense may exercise the authority provided in subsection (a) without regard to section 5373 of title 5.

(f) DEFINITIONS.—In this section:

(1) The term ''compensation'' includes rate of basic pay.

(2) The term ''Senior Executive Service position'' has the meaning given such term in section 3132 of title 5.

(Added Pub. L. 108–375, div. A, title XI, § 1104(a), Oct. 28, 2004, 118 Stat. 2073.)

§ 1588. Authority to accept certain voluntary services

(a) AUTHORITY TO ACCEPT SERVICES.—Subject to subsection (b) and notwithstanding section 1342 of title 31, the Secretary concerned may accept from any person the following services:

(1) Voluntary medical services, dental services, nursing services, or other health-care related services.

(2) Voluntary services to be provided for a museum or a natural resources program.

(3) Voluntary services to be provided for programs providing services to members of the armed forces and the families of such members, including the following programs:

(A) Family support programs.

(B) Child development and youth services programs.

(C) Library and education programs.

(D) Religious programs.

(E) Housing referral programs.

(F) Programs providing employment assistance to spouses of such members.

(G) Morale, welfare, and recreation programs, to the extent not covered by another subparagraph of this paragraph.

(4) Voluntary services as a member of a funeral honors detail under section 1491 of this title.

(5) Legal services voluntarily provided as legal assistance under section 1044 of this title.

(6) Voluntary services as a proctor for administration to secondary school students of the test known as the ''Armed Services Vocational Aptitude Battery''.

(7) Voluntary translation or interpretation services offered with respect to a foreign language by a person (A) who is registered for such foreign language on the National Foreign Language Skills Registry under section 1596b of this title, or (B) who otherwise is approved to provide voluntary translation or interpretation services for national security purposes, as determined by the Secretary of Defense.

(8) Voluntary services to support programs of a committee of the Employer Support of the Guard and Reserve as authorized by the Secretary of Defense.

(b) REQUIREMENTS AND LIMITATIONS.—(1) The Secretary concerned shall notify the person of the scope of the services accepted.

(2) With respect to a person providing voluntary services accepted under subsection (a), the Secretary concerned shall—

(A) supervise the person to the same extent as the Secretary would supervise a compensated employee providing similar services; and

(B) ensure that the person is licensed, privileged, has appropriate credentials, or is otherwise qualified under applicable law or regulations to provide such services.

(3) With respect to a person providing voluntary services accepted under subsection (a), the Secretary concerned may not—

(A) place the person in a policy-making position; or

(B) except as provided in subsection (e), compensate the person for the provision of such services.

(c) AUTHORITY TO RECRUIT AND TRAIN PERSONS PROVIDING SERVICES.—The Secretary concerned may recruit and train persons to provide voluntary services accepted under subsection (a).

(d) STATUS OF PERSONS PROVIDING SERVICES.—(1) Subject to paragraph (3), while providing voluntary services accepted under subsection (a) or receiving training under subsection (c), a person, other than a person referred to in paragraph (2), shall be considered to be an employee of the Federal Government only for purposes of the following provisions of law:

(A) Subchapter I of chapter 81 of title 5 (relating to compensation for work-related injuries).

(B) Section 2733 of this title and chapter 171 of title 28 (relating to claims for damages or loss) and chapters 309 and 311 of title 46 (relating to claims for damages or loss on navigable waters).

(C) Section 552a of title 5 (relating to maintenance of records on individuals).

(D) Chapter 11 of title 18 (relating to conflicts of interest).

(E) Section 1054 of this title (relating to legal malpractice), for a person voluntarily providing legal services accepted under subsection (a)(5), as if the person were providing the services as an attorney of a legal staff within the Department of Defense.

(2) Subject to paragraph (3), while providing a nonappropriated fund instrumentality of the United States with voluntary services accepted under subsection (a), or receiving training under subsection (c) to provide such an instrumentality with services accepted under subsection (a), a person shall be considered an employee of that instrumentality only for the following purposes:

(A) Subchapter II of chapter 81 of title 5 (relating to compensation of nonappropriated fund employees for work-related injuries).

(B) Section 2733 of this title and chapter 171 of title 28 (relating to claims for damages or loss).

(3) A person providing voluntary services accepted under subsection (a) shall be considered to be an employee of the Federal Government under paragraph (1) or (2) only with respect to services that are within the scope of the services so accepted.

(4) For purposes of determining the compensation for work-related injuries payable under chapter 81 of title 5 (pursuant to this subsection) to a person providing voluntary services accepted under subsection (a), the monthly pay of the person for such services shall be deemed to be the amount determined by multiplying—

(A) the average monthly number of hours that the person provided the services, by

(B) the minimum wage determined in accordance with section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)).

(e) REIMBURSEMENT OF INCIDENTAL EXPENSES.—The Secretary concerned may provide for reimbursement of a person for incidental expenses incurred by the person in providing voluntary services accepted under subsection (a). The Secretary shall determine which expenses are eligible for reimbursement under this subsection. Any such reimbursement may be made from appropriated or nonappropriated funds.

(f) AUTHORITY TO INSTALL EQUIPMENT.—(1) The Secretary concerned may install telephone lines and any necessary telecommunication equipment in the private residences of persons, designated in accordance with the regulations prescribed under paragraph (4), who provide voluntary services accepted under paragraph (3) or (8) of subsection (a).

(2) In the case of equipment installed under the authority of paragraph (1), the Secretary concerned may pay the charges incurred for the use of the equipment for authorized purposes.

(3) To carry out this subsection, the Secretary concerned may use appropriated funds (notwithstanding section 1348 of title 31) or nonappropriated funds of the military department under the jurisdiction of the Secretary or, with respect to the Coast Guard, the department in which the Coast Guard is operating.

(4) The Secretary of Defense and, with respect to the Coast Guard when it is not operating as a service in the Navy, the Secretary of Homeland Security shall prescribe regulations to carry out this subsection.

(Added Pub. L. 98–94, title XII, § 1266(a), Sept. 24, 1983, 97 Stat. 704; amended Pub. L. 99–145, title XVI, § 1624(a), Nov. 8, 1985, 99 Stat. 778; Pub. L. 99–661, div. A, title XIII, § 1355, Nov. 14, 1986, 100 Stat. 3996; Pub. L. 100–26, § 3(9), Apr. 21, 1987, 101 Stat. 274; Pub. L. 101–189, div. A, title XVI, § 1634, Nov. 29, 1989, 103 Stat. 1608; Pub. L. 102–190, div. A, title III, § 345, Dec. 5, 1991, 105 Stat. 1346; Pub. L. 103–337, div. A, title X, § 1061(a), Oct. 5, 1994, 108 Stat. 2845; Pub. L. 104–201, div. A, title X, § 1074(a)(8), Sept. 23, 1996, 110 Stat. 2659; Pub. L. 106–65, div. A, title III, § 371(a), title V, § 578(f), Oct. 5, 1999, 113 Stat. 579, 627; Pub. L. 107–107, div. A, title V, § 583, Dec. 28, 2001, 115 Stat. 1125; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 107–314, div. A, title V, § 553, title X, § 1064(b), Dec. 2, 2002, 116 Stat. 2552, 2654; Pub. L. 108–375, div. A, title V, § 516, title X, § 1081, Oct. 28, 2004, 118 Stat. 1884, 2059; Pub. L. 110–181, div. A, title X, § 1063(a)(9), Jan. 28, 2008, 122 Stat. 322.)

AMENDMENTS

2008—Subsec. (d)(1)(B). Pub. L. 110–181 substituted ''chapters 309 and 311 of title 46'' for ''the Act of March 9, 1920, commonly known as the 'Suits in Admiralty Act' (41 Stat. 525; 46 U.S.C. App. 741 et seq.) and the Act of March 3, 1925, commonly known as the 'Public Vessels Act' (43 Stat. 1112; 46 U.S.C. App. 781 et seq.)''.

2004—Subsec. (a)(8). Pub. L. 108–375, § 516(1), added par. (8).

Subsec. (d)(1)(B). Pub. L. 108–375, § 1081, inserted before period at end ''and the Act of March 9, 1920, commonly known as the 'Suits in Admiralty Act' (41 Stat. 525; 46 U.S.C. App. 741 et seq.) and the Act of March 3, 1925, commonly known as the 'Public Vessels Act' (43 Stat. 1112; 46 U.S.C. App. 781 et seq.) (relating to claims for damages or loss on navigable waters)''.

Subsec. (f)(1). Pub. L. 108–375, § 516(2), substituted ''paragraph (3) or (8) of subsection (a)'' for ''subsection (a)(3)''.

2002—Subsec. (a)(6). Pub. L. 107–314, § 553, added par. (6).

Subsec. (a)(7). Pub. L. 107–314, § 1064(b), added par. (7).

Subsec. (f)(4). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

2001—Subsec. (a)(5). Pub. L. 107–107, § 583(a), added par. (5).

Subsec. (d)(1)(E). Pub. L. 107–107, § 583(b), added subpar. (E).

1999—Subsec. (a)(4). Pub. L. 106–65, § 578(f), added par. (4).

Subsec. (f). Pub. L. 106–65, § 371(a), added subsec. (f).

1996—Subsec. (d)(1)(C). Pub. L. 104–201 substituted ''Section 552a'' for ''Section 522a''.

1994—Pub. L. 103–337 amended section generally, substituting subsecs. (a) to (e) for former subsecs. (a) to (c) which related to acceptance by Secretary concerned of voluntary services, status of persons providing voluntary services, and reimbursement of expenses incurred by such persons.

1991—Subsec. (c). Pub. L. 102–190 substituted ''may be made from appropriated or nonappropriated funds'' for ''may only be made from nonappropriated funds''.

1989—Subsec. (a). Pub. L. 101–189 substituted ''a museum, a natural resources program, or'' for ''a museum or''.

1987—Subsec. (c). Pub. L. 100–26 made technical amendment to directory language of Pub. L. 99–661. See 1986 Amendment note below.

1986—Subsec. (c). Pub. L. 99–661, as amended by Pub. L. 100–26, added subsec. (c).

1985—Subsec. (a). Pub. L. 99–145 substituted ''Secretary concerned'' and ''operated by the military department concerned or the Coast Guard, as appropriate'' for ''Secretary of a military department'' and ''operated by that military department'', respectively.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–26 applicable as if included in Pub. L. 99–661 when enacted on Nov. 14, 1986, see section 12(a) of Pub. L. 100–26, set out as a note under section 776 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 1624(b) of Pub. L. 99–145 provided that: ''The amendments made by this section [amending this section] shall take effect on October 1, 1985.''

REPORT ON IMPLEMENTATION OF AUTHORITY TO INSTALL TELECOMMUNICATIONS EQUIPMENT FOR PERSONS PERFORMING VOLUNTARY SERVICES

Pub. L. 106–65, div. A, title III, § 371(b), Oct. 5, 1999, 113 Stat. 579, provided that: ''Not later than two years after final regulations prescribed under subsection (f)(4) of section 1588 of title 10, United States Code, as added by subsection (a), take effect, the Comptroller General shall review the exercise of authority under such subsection (f) and submit to Congress a report on the findings resulting from the review.''

ACCEPTANCE OF VOLUNTARY SERVICES PILOT PROGRAM

Section 1061(b) of Pub. L. 103–337 provided that:

''(1) The Secretary of Defense shall conduct a pilot program, for not less than six months, to accept voluntary services under the authority provided in section 1588 of title 10, United States Code, as amended by subsection (a). The purpose of the pilot program shall be to evaluate the policies and procedures of the Department of Defense for the acceptance of voluntary services under such section. The pilot program shall involve a variety of services, programs, and locations.

''(2) The Secretary may not accept voluntary services under section 1588 of title 10, United States Code (other than services that may have been accepted under such section before the date of the enactment of this Act [Oct. 5, 1994]), and may not issue regulations to implement the amendment to such section made by subsection (a), until after the termination of the pilot program.

''(3) Not later than 60 days after the termination of the pilot program, the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the results of the pilot program.''

§ 1589. Participation in management of specified non-Federal entities: authorized activities

(a) AUTHORIZATION.—(1) The Secretary concerned may authorize an employee described in paragraph (2) to serve without compensation as a director, officer, or trustee, or to otherwise participate, in the management of an entity designated under subsection (b). Any such authorization shall be made on a case-by-case basis, for a particular employee to participate in a specific capacity with a specific designated entity. Such authorization may be made only for the purpose of providing oversight and advice to, and coordination with, the designated entity, and participation of the employee in the activities of the designated entity may not extend to participation in the day-to-day operations of the entity.

(2) Paragraph (1) applies to any employee of the Department of Defense or, in the case of the Coast Guard when not operating as a service in the Navy, of the Department of Homeland Security. For purposes of this section, the term ''employee'' includes a civilian officer.

(b) DESIGNATED ENTITIES.—The Secretary of Defense, and the Secretary of Homeland Security in the case of the Coast Guard when it is not operating as a service in the Navy, shall designate those entities for which authorization under subsection (a) may be provided. The list of entities so designated may not be revised more frequently than semiannually. In making such designations, the Secretary shall designate each military welfare society named in paragraph (2) of section 1033(b) of this title and may designate any other entity described in paragraph (3) of such section. No other entities may be designated.

(c) PUBLICATION OF DESIGNATED ENTITIES AND OF AUTHORIZED PERSONS.—A designation of an entity under subsection (b), and an authorization under subsection (a) of an employee to participate in the management of such an entity, shall be published in the Federal Register.

(d) CIVILIANS OUTSIDE THE MILITARY DEPARTMENTS.—In this section, the term ''Secretary concerned'' includes the Secretary of Defense with respect to employees of the Department of Defense who are not employees of a military department.

(e) REGULATIONS.—The Secretary of Defense, and the Secretary of Homeland Security in the case of the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations to carry out this section.

(Added Pub. L. 105–85, div. A, title V, § 593(b)(1), Nov. 18, 1997, 111 Stat. 1763; amended Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

PRIOR PROVISIONS

A prior section 1589, added Pub. L. 98–525, title XIV, § 1401(f)(1), Oct. 19, 1984, 98 Stat. 2618, provided, with exceptions, for prohibition on payment of lodging expenses when adequate Government quarters were available, prior to repeal by Pub. L. 104–201, div. A, title XVI, § 1614(b)(1), Sept. 23, 1996, 110 Stat. 2739.

AMENDMENTS

2002—Subsecs. (a)(2), (b), (e). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

[§ 1590. Repealed. Pub. L. 104–201, div. A, title XVI, § 1633(a), Sept. 23, 1996, 110 Stat. 2751]

Section, added Pub. L. 99–569, title V, § 504(a), Oct. 27, 1986, 100 Stat. 3198; amended Pub. L. 100–178, title VI, § 602(b), Dec. 2, 1987, 101 Stat. 1016; Pub. L. 101–193, title

V, § 503(a), Nov. 30, 1989, 103 Stat. 1708; Pub. L. 102–496, title IV, § 402(a), Oct. 24, 1992, 106 Stat. 3184; Pub. L. 103–35, title II, § 201(g)(2), May 31, 1993, 107 Stat. 100, related to management of civilian intelligence personnel of the military departments. See sections 1601 to 1603, 1606, and 1609 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 1593 of this title.

§ 1591. Reimbursement for travel and transportation expenses when accompanying Members of Congress

(a) Subject to subsection (b), the Secretary concerned may authorize reimbursement to a civilian employee who is accompanying a Member of Congress or a congressional employee on official travel for actual travel and transportation expenses incurred for such travel.

(b) The allowance provided in subsection (a) may be paid—

(1) at a rate that does not exceed the rate approved for official congressional travel; and

(2) only when the travel of the member is directed or approved by the Secretary concerned.

(c) In this section:

(1) The term ''Member of Congress'' means a member of the Senate or the House of Representatives, a Delegate to the House of Representatives, and the Resident Commissioner from Puerto Rico.

(2) The term ''congressional employee'' means an employee of a Member of Congress or an employee of Congress.

(3) The term ''Secretary concerned'' includes the Secretary of Defense with respect to civilian employees of the Department of Defense other than a military department.

(Added Pub. L. 100–180, div. A, title VI, § 617(b)(1), Dec. 4, 1987, 101 Stat. 1097.)

EFFECTIVE DATE

Section 617(c) of Pub. L. 100–180 provided that: ''Subsection (h) of section 404 of title 37, United States Code (as added by subsection (a)), and section 1591 of title 10, United States Code (as added by subsection (b)), shall apply with respect to travel performed after the date of the enactment of this Act [Dec. 4, 1987].''

§ 1592. Prohibition on payment of severance pay to foreign nationals in the event of certain overseas base closures

Funds available to the Department of Defense (including funds in the Foreign National Employees Separation Pay Account, Defense, established under section 1581 of this title) may not be used to pay severance pay to a foreign national employed by the Department of Defense under a contract, a treaty, or a memorandum of understanding with a foreign nation that provides for payment of separation pay if the termination of the employment of the foreign national is the result of the closing of, or the curtailment of activities at, a United States military facility in that country at the request of the government of that country.

(Added Pub. L. 101–189, div. A, title III, § 311(b)(1), Nov. 29, 1989, 103 Stat. 1411; amended Pub. L. 102–190, div. A, title X, § 1003(b), Dec. 5, 1991, 105 Stat. 1456; Pub. L. 102–484, div. A, title X, § 1052(21), Oct. 23, 1992, 106 Stat. 2500.)

CODIFICATION

Another section 1592 was renumbered section 1596 of this title.

AMENDMENTS

1992—Pub. L. 102–484 inserted ''section'' after ''established under''.

1991—Pub. L. 102–190 inserted ''(including funds in the Foreign National Employees Separation Pay Account, Defense, established under 1581 of this title)'' and substituted ''a contract, a treaty, or a memorandum of understanding with a foreign nation that provides for payment of separation pay'' for ''a contract performed in a foreign country''.

EFFECTIVE DATE

Section 311(b)(3) of Pub. L. 101–189, as amended by Pub. L. 102–484, div. A, title XIII, § 1352(a), Oct. 23, 1992, 106 Stat. 2558, provided that:

''(A) Section 1592 of title 10, United States Code, as added by paragraph (1), shall take effect on the date of the enactment of this Act [Nov. 29, 1989].

''[(B) Repealed. Pub. L. 102–484, div. A, title XIII, § 1352(a), Oct. 23, 1992, 106 Stat. 2558.]''

PROHIBITION ON PAYMENT OF SEVERANCE PAY TO CERTAIN FOREIGN NATIONALS IN THE PHILIPPINES

Section 1351 of Pub. L. 102–484 provided that:

''(a) PROHIBITION.—Funds available to the Department of Defense may not be used to pay severance pay to a foreign national employed by the Department of Defense in the Republic of the Philippines if the discontinuation of the employment of the foreign national is the result of the termination of basing rights of the United States military in the Republic of the Philippines.

''(b) PROHIBITION ON ALLOWANCE OF CERTAIN SEVERANCE PAY AS CONTRACT COSTS.—Funds available to the Department of Defense may not be used to pay the costs of severance pay paid by a contractor to a foreign national employed by the contractor under a defense service contract in the Philippines if the discontinuation of the employment of the foreign national is the result of the termination of basing rights of the United States military in the Philippines.''

§ 1593. Uniform allowance: civilian employees

(a) ALLOWANCE AUTHORIZED.—(1) The Secretary of Defense may pay an allowance to each civilian employee of the Department of Defense who is required by law or regulation to wear a prescribed uniform in the performance of official duties.

(2) In lieu of providing an allowance under paragraph (1), the Secretary may provide a uniform to a civilian employee referred to in such paragraph.

(3) This subsection shall not apply with respect to a civilian employee of the Defense Intelligence Agency who is entitled to an allowance under section 1622 of this title.

(b) AMOUNT OF ALLOWANCE.—Notwithstanding section 5901(a) of title 5, the amount of an allowance paid, and the cost of uniforms provided, under subsection (a) to a civilian employee may not exceed $400 per year (or such higher maximum amount as the Secretary of Defense may by regulation prescribe).

(c) TREATMENT OF ALLOWANCE.—An allowance paid, or uniform provided, under subsection (a) shall be treated in the same manner as is pro-

vided in section 5901(c) of title 5 for an allowance paid under that section.

(d) USE OF APPROPRIATED FUNDS FOR ALLOWANCE.—Amounts appropriated annually to the Department of Defense for the pay of civilian employees may be used for uniforms, or for allowance for uniforms, as authorized by this section and section 5901 of title 5.

(Added Pub. L. 101–189, div. A, title III, § 336(a)(1), Nov. 29, 1989, 103 Stat. 1419; amended Pub. L. 101–510, div. A, title XIV, § 1481(d)(3), Nov. 5, 1990, 104 Stat. 1706; Pub. L. 104–201, div. A, title XVI, § 1633(e)(1), Sept. 23, 1996, 110 Stat. 2752; Pub. L. 110–181, div. A, title XI, § 1113, Jan. 28, 2008, 122 Stat. 360.)

PRIOR PROVISIONS

Provisions similar to those in subsec. (d) of this section were contained in Pub. L. 101–165, title IX, § 9010, Nov. 21, 1989, 103 Stat. 1131, which was set out as a note below, prior to repeal by Pub. L. 101–510, § 1481(d)(4)(B).

AMENDMENTS

2008—Subsec. (b). Pub. L. 110–181 substituted ''$400 per year (or such higher maximum amount as the Secretary of Defense may by regulation prescribe).'' for ''$400 per year.''

1996—Subsec. (a)(3). Pub. L. 104–201 substituted ''section 1622'' for ''section 1606''.

1990—Subsec. (d). Pub. L. 101–510 added subsec. (d).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1635 of Pub. L. 104–201 provided that: ''This subtitle [subtitle B (§§ 1631–1635) of title XVI of div. A of Pub. L. 104–201, enacting sections 1601 to 1603, 1606 to 1610, and 1612 to 1614 of this title, amending this section, sections 1596, 1605, 1611, and 1621 of this title, and sections 7103 and 7511 of Title 5, Government Organization and Employees, renumbering sections 1599, 1602, 1606, and 1608 of this title as sections 1611, 1621, 1622, and 1623 of this title, respectively, repealing sections 1590, 1601, 1603, and 1604 of this title and section 833 of Title 50, War and National Defense, enacting provisions set out as a note under section 1601 of this title, and repealing provisions set out as a note under section 402 of Title 50] and the amendments made by this subtitle shall take effect on October 1, 1996.''

EFFECTIVE DATE

Section 336(c) of Pub. L. 101–189 provided that: ''The amendments made by this section [enacting this section and amending section 1606 of this title] shall take effect on January 1, 1990.''

AVAILABILITY OF FUNDS FOR PAY OF CIVILIAN EMPLOYEES FOR UNIFORMS

Pub. L. 101–165, title IX, § 9010, Nov. 21, 1989, 103 Stat. 1131, which made appropriations available to Department of Defense for pay of civilian employees for uniforms, or allowances therefor, as authorized by section 5901 of title 5, was repealed and restated in subsec. (d) of this section by Pub. L. 101–510, § 1481(d)(3), (4)(B).

§ 1594. Reimbursement for financial institution charges incurred because of Government error in direct deposit of pay

(a)(1) A civilian officer or employee of the Department of Defense who, in accordance with law or regulation, participates in a program for the automatic deposit of pay to a financial institution may be reimbursed for a covered late-deposit charge.

(2) A covered late-deposit charge for purposes of paragraph (1) is a charge (including an overdraft charge or a minimum balance charge) that is levied by a financial institution and that results from an administrative or mechanical error on the part of the Government that causes the pay of the officer or employee concerned to be deposited late or in an incorrect manner or amount.

(b) Reimbursements under this section shall be made from appropriations available for the pay of the officer or employee concerned.

(c) The Secretaries concerned shall prescribe regulations to carry out this section, including regulations for the manner in which reimbursement under this section is to be made.

(d) In this section:

(1) The term ''financial institution'' means a bank, savings and loan association, or similar institution or a credit union chartered by the United States or a State.

(2) The term ''pay'' includes allowances.

(Added Pub. L. 101–189, div. A, title VI, § 664(b)(1), Nov. 29, 1989, 103 Stat. 1466; amended Pub. L. 101–510, div. A, title XIV, § 1484(k)(6), Nov. 5, 1990, 104 Stat. 1719; Pub. L. 102–25, title VII, § 701(e)(8)(A), Apr. 6, 1991, 105 Stat. 115; Pub. L. 105–261, div. A, title V, § 564(b), Oct. 17, 1998, 112 Stat. 2029.)

AMENDMENTS

1998—Subsec. (d)(1). Pub. L. 105–261 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The term 'financial institution' has the meaning given the term 'financial organization' in section 3332(a) of title 31.''

1991—Pub. L. 102–25 struck out ''mandatory'' after ''error in'' in section catchline.

1990—Subsec. (d). Pub. L. 101–510 substituted ''In this section'' for ''in this section''.

EFFECTIVE DATE

Section applicable with respect to pay and allowances deposited (or scheduled to be deposited) on or after first day of first month beginning after Nov. 29, 1989, see section 664(c) of Pub. L. 101–189, set out as an Effective Date of 1989 Amendment note under section 1053 of this title.

§ 1595. Civilian faculty members at certain Department of Defense schools: employment and compensation

(a) AUTHORITY OF SECRETARY.—The Secretary of Defense may employ as many civilians as professors, instructors, and lecturers at the institutions specified in subsection (c) as the Secretary considers necessary.

(b) COMPENSATION OF FACULTY MEMBERS.—The compensation of persons employed under this section shall be as prescribed by the Secretary.

(c) COVERED INSTITUTIONS.—This section applies with respect to the following institutions of the Department of Defense:

(1) The National Defense University.

(2) The Foreign Language Center of the Defense Language Institute.

(3) The English Language Center of the Defense Language Institute.

(4) The Western Hemisphere Institute for Security Cooperation.

(d) APPLICATION TO FACULTY MEMBERS AT NDU.—In the case of the National Defense University, this section applies with respect to per-

sons selected by the Secretary for employment as professors, instructors, and lecturers at the National Defense University after February 27, 1990.

(Added Pub. L. 101–189, div. A, title XI, § 1124(a)(1), Nov. 29, 1989, 103 Stat. 1558; amended Pub. L. 102–25, title VII, § 701(h)(1), Apr. 6, 1991, 105 Stat. 115; Pub. L. 102–190, div. A, title IX, § 911, Dec. 5, 1991, 105 Stat. 1452; Pub. L. 102–484, div. A, title IX, § 923(a)(1), (2)(A), Oct. 23, 1992, 106 Stat. 2474; Pub. L. 103–160, div. A, title IX, § 923(a)(1), Nov. 30, 1993, 107 Stat. 1731; Pub. L. 104–201, div. A, title XVI, § 1607, Sept. 23, 1996, 110 Stat. 2737; Pub. L. 105–85, div. A, title IX, §§ 921(c), 922(b), Nov. 18, 1997, 111 Stat. 1863; Pub. L. 108–136, div. A, title XI, § 1115, Nov. 24, 2003, 117 Stat. 1636; Pub. L. 109–364, div. A, title IX, § 904(b)(1), Oct. 17, 2006, 120 Stat. 2353.)

AMENDMENTS

2006—Subsec. (c)(3) to (6). Pub. L. 109–364, § 904(b)(1)(A), redesignated pars. (4) and (6) as (3) and (4), respectively, and struck out former pars. (3) and (5) which related to the George C. Marshall European Center for Security Studies and the Asia-Pacific Center for Security Studies, respectively.

Subsec. (e). Pub. L. 109–364, § 904(b)(1)(B), struck out heading and text of subsec. (e). Text read as follows: ''In addition to the persons specified in subsection (a), this section also applies with respect to the Director and the Deputy Director of the following:

''(1) The George C. Marshall European Center for Security Studies.

''(2) The Asia-Pacific Center for Security Studies.

''(3) The Center for Hemispheric Defense Studies.''

2003—Subsec. (c)(6). Pub. L. 108–136 added par. (6).

1997—Subsec. (d). Pub. L. 105–85, § 921(c), struck out ''(1)'' before ''In the case of'' and struck out par. (2) which read as follows: ''For purposes of this section, the National Defense University includes the National War College, the Armed Forces Staff College, the Institute for National Strategic Study, and the Industrial College of the Armed Forces.''

Subsecs. (e), (f). Pub. L. 105–85, § 922(b), added subsec. (e) and struck out former subsecs. (e) and (f) which read as follows:

''(e) APPLICATION TO DIRECTOR AND DEPUTY DIRECTOR AT GEORGE C. MARSHALL CENTER.—In the case of the George C. Marshall European Center for Security Studies, this section also applies with respect to the Director and the Deputy Director.

''(f) APPLICATION TO DIRECTOR AND DEPUTY DIRECTOR AT ASIA-PACIFIC CENTER FOR SECURITY STUDIES.—In the case of the Asia-Pacific Center for Security Studies, this section also applies with respect to the Director and the Deputy Director.''

1996—Subsec. (c)(4), (5). Pub. L. 104–201, § 1607(a), added pars. (4) and (5).

Subsec. (f). Pub. L. 104–201, § 1607(b), added subsec. (f).

1993—Pub. L. 103–160 substituted ''Civilian faculty members at certain Department of Defense schools: employment and compensation'' for ''National Defense University: Foreign Language Center of the Defense Language Institute: civilian faculty members'' as section catchline and amended text generally, substituting subsecs. (a) to (e) for former subsecs. (a) to (d) relating to similar subject matter but not including coverage of the George C. Marshall European Center for Security Studies.

1992—Pub. L. 102–484, § 923(a)(2)(A), substituted ''University; Foreign Language Center of the Defense Language Institute'' for ''University:'' in section catchline.

Subsec. (a). Pub. L. 102–484, § 923(a)(1)(A), inserted ''and the Foreign Language Center of the Defense Language Institute'' after ''National Defense University''.

Subsec. (c). Pub. L. 102–484, § 923(a)(1)(B), substituted ''In the case of the National Defense University, this section'' for ''This section''.

1991—Subsec. (c). Pub. L. 102–25 substituted ''after February 27, 1990'' for ''after the end of the 90-day period beginning on the date of the enactment of this section''.

Subsec. (d). Pub. L. 102–190 inserted ''the Institute for National Strategic Study,'' after ''Staff College,''.

EFFECT OF 1992 AMENDMENTS ON CURRENT EMPLOYEES

Section 923(b) of Pub. L. 102–484 provided that: ''In the case of a person who, on the day before the date of the enactment of this Act [Oct. 23, 1992], is employed as a professor, instructor, or lecturer at the Foreign Language Center of the Defense Language Institute, the Secretary of Defense shall afford the person an opportunity to elect to be paid under the compensation plan authorized by section 1595(b) of title 10, United States Code, or to continue to be paid under the General Schedule (with no reduction in pay) under section 5332 of title 5, United States Code.''

§ 1596. Foreign language proficiency: special pay for proficiency beneficial for intelligence interests

(a) The Secretary of Defense may pay special pay under this section to a civilian officer or employee of the Department of Defense who—

(1) has been certified as being proficient in a foreign language identified by the Secretary of Defense as being a language in which proficiency by civilian personnel of the Department is important for the effective collection, production, or dissemination of foreign intelligence information; and

(2) is serving in a position, or is subject to assignment to a position, in which proficiency in that language facilitates performance of officially assigned intelligence or intelligence-related duties.

(b) The annual rate of special pay under subsection (a) shall be determined by the Secretary of Defense.

(c) Special pay under this section may be paid in addition to any compensation authorized under section 1602 of this title for which an officer or employee is eligible.

(Added Pub. L. 101–193, title V, § 501(a)(1), Nov. 30, 1989, 103 Stat. 1707, § 1592; renumbered § 1596, Pub. L. 101–510, div. A, title XIV, § 1484(a), Nov. 5, 1990, 104 Stat. 1715; amended Pub. L. 104–201, div. A, title XVI, § 1633(e)(2), Sept. 23, 1996, 110 Stat. 2752; Pub. L. 106–398, § 1 [[div. A], title XI, § 1131(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–317.)

AMENDMENTS

2000—Pub. L. 106–398 substituted ''Foreign language proficiency: special pay for proficiency beneficial for intelligence interests'' for ''Foreign language proficiency: special pay'' as section catchline.

1996—Subsec. (c). Pub. L. 104–201 substituted ''section 1602'' for ''section 1604(b)''.

1990—Pub. L. 101–510 renumbered the second section 1592 of this title as this section.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as a note under section 1593 of this title.

EFFECTIVE DATE

Section 501(b) of Pub. L. 101–193 provided that: ''Section 1592 [now 1596] of title 10, United States Code, as added by subsection (a), shall take effect on the first day of the first pay period beginning on or after the later of—

''(1) October 1, 1989, or

''(2) the date of the enactment of this Act [Nov. 30, 1989].''

§ 1596a. Foreign language proficiency: special pay for proficiency beneficial for other national security interests

(a) AUTHORITY.—The Secretary of Defense may pay special pay under this section to an employee of the Department of Defense who—

(1) has been certified by the Secretary to be proficient in a foreign language identified by the Secretary as being a language in which proficiency by civilian personnel of the Department is necessary because of national security interests;

(2) is assigned duties requiring proficiency in that foreign language; and

(3) is not receiving special pay under section 1596 of this title.

(b) RATE.—The rate of special pay for an employee under this section shall be prescribed by the Secretary, but may not exceed five percent of the employee's rate of basic pay.

(c) RELATIONSHIP TO OTHER PAY AND ALLOWANCES.—Special pay under this section is in addition to any other pay or allowances to which the employee is entitled.

(d) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

(Added Pub. L. 106–398, § 1 [[div. A], title XI, § 1131(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–317; amended Pub. L. 108–375, div. A, title XI, § 1102(a), Oct. 28, 2004, 118 Stat. 2072.)

AMENDMENTS

2004—Subsec. (a)(2). Pub. L. 108–375 struck out ''during a contingency operation supported by the armed forces'' after ''foreign language''.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–375, div. A, title XI, § 1102(b), Oct. 28, 2004, 118 Stat. 2072, provided that: ''The amendment by this section [amending this section] shall take effect on the first day of the first month that begins after the date of the enactment of this Act [Oct. 28, 2004].''

§ 1596b. Foreign language proficiency: National Foreign Language Skills Registry

(a) ESTABLISHMENT.—(1) The Secretary of Defense may establish and maintain a registry of persons who—

(A) have proficiency in one or more critical foreign languages;

(B) are willing to provide linguistic services to the United States in the interests of national security during war or a national emergency; and

(C) meet the eligibility requirements of subsection (b).

(2) The registry shall be known as the ''National Foreign Language Skills Registry'' (in this section referred to as the ''Registry'').

(b) ELIGIBLE PERSONS.—To be eligible for listing on the Registry, a person—

(1) must be—

(A) a national of the United States (as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22))); or

(B) an alien lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)));

(2) shall express willingness, in a form and manner prescribed by the Secretary—

(A) to provide linguistic services for a foreign language as described in subsection (a); and

(B) to be listed on the Registry; and

(3) shall meet such language proficiency and other selection criteria as may be prescribed by the Secretary.

(c) REGISTERED INFORMATION.—The Registry shall consist of the following:

(1) The names of eligible persons selected by the Secretary for listing on the Registry.

(2) Such other information on such persons as the Secretary determines pertinent to the use of such persons to provide linguistic services as described in subsection (a).

(d) PROTECTION OF PRIVACY.—The Secretary may withhold from public disclosure the information maintained in the Registry in accordance with section 552a of title 5.

(e) DESIGNATION OF CRITICAL FOREIGN LANGUAGES.—The Secretary shall designate those languages that are critical foreign languages for the purposes of this section. The Secretary shall make such a designation for any foreign language for which there is a shortage of experts in translation or interpretation available to meet requirements of the Secretary or of the head of any other department or agency of the United States for translation or interpretation in the national security interests of the United States.

(f) LINGUISTIC SERVICES DEFINED.—In this section, the term ''linguistic services'' means translation or interpretation of communication in a foreign language.

(Added Pub. L. 107–314, div. A, title X, § 1064(a)(1), Dec. 2, 2002, 116 Stat. 2653.)

§ 1597. Civilian positions: guidelines for reductions

(a) REQUIREMENT OF GUIDELINES FOR REDUCTIONS IN CIVILIAN POSITIONS.—Reductions in the number of civilian positions of the Department of Defense during a fiscal year, if any, shall be carried out in accordance with the guidelines established pursuant to subsection (b).

(b) GUIDELINES.—The Secretary of Defense shall establish guidelines for the manner in which reductions in the number of civilian positions of the Department of Defense are made. The guidelines shall include procedures for reviewing civilian positions for reductions according to the following order:

(1) Positions filled by foreign national employees overseas.

(2) All other positions filled by civilian employees overseas.

(3) Overhead, indirect, and administrative positions in headquarters or field operating agencies in the United States.

(4) Direct operating or production positions in the United States.

(c) MASTER PLAN.—(1) The Secretary of Defense shall include in the materials submitted to

Congress in support of the budget request for the Department of Defense for each fiscal year a civilian positions master plan described in paragraph (2) for the Department of Defense as a whole and for each military department, Defense Agency, and other principal component of the Department of Defense.

(2) The master plan referred to in paragraph (1) shall include the information described in paragraph (3). Such information shall include information for each of the two fiscal years immediately preceding such fiscal year and projected information for such fiscal year and each of the two fiscal years immediately following such fiscal year.

(3) The information referred to in paragraph (2) is the following:

(A) A profile of the levels of civilian positions sufficient to establish and maintain a baseline for tracking annual accessions and losses of civilian positions and to provide for the analysis of trends in the levels of civilian positions within the Department of Defense as a whole and for each military department, major subordinate command of each military department, Defense Agency, and other principal component of the Department of Defense. The profile shall include information on the following:

(i) The total number of civilian employees.

(ii) Of the total number of civilian employees, the number of civilian employees in the United States, the number of civilian employees overseas, and the number of foreign national employees overseas.

(iii) Of the total number of civilian employees at the end of each fiscal year covered by the master plan, the number of full-time employees, the number of part-time employees, and the number of temporary and on-call employees.

(iv) Accessions and losses of civilian positions, shown in the aggregate and by the number of full-time employees, the number of part-time employees, and the number of temporary and on-call employees.

(v) The number of losses of civilian positions, by appropriation account, due to reductions in force, furloughs, or functional transfers or other significant transfers of work away from the military department, Defense Agency, or other component.

(vi) The extent to which accessions and losses of civilian positions are due to functional transfers or competitive actions that are related to the Department of Defense management review initiatives of the Secretary of Defense.

(vii) The total number of individuals employed by contractors and subcontractors of the Department of Defense under a contract or subcontract entered into pursuant to Office of Management and Budget Circular A–76 to perform commercial activities for the Department of Defense, a military department, a defense agency, or other component.

(B) For industrial-type and commercial-type activities funded through the Defense Business Operations Fund, the following information:

(i) Annual trends in the amount of funded workload for each activity, based upon the average number of months of accumulated, funded workload to be performed, or projected to be performed, by the activity.

(ii) The extent to which such workload is funded by funds that are appropriated from appropriation accounts and managed through the Defense Business Operations Fund.

(C) Information that indicates trends in the extent to which the military department, Defense Agency, or other component enters into contracts with persons outside of the Department of Defense, rather than uses civilian positions, to perform work for the military department, Defense Agency, or other component.

(D) Information that indicates the extent to which the Department of Defense management review initiatives of the Secretary of Defense and other productivity enhancement programs of the Department of Defense significantly affect the number of losses of civilian positions, particularly administrative and management positions.

(4) The Secretary of Defense shall include in the materials referred to in paragraph (1) a report on the implementation of the master plan for the fiscal year immediately preceding the fiscal year for which such materials are submitted.

(d) EXCEPTIONS.—The Secretary of Defense may permit a variation from the guidelines established under subsection (b) or a master plan prepared under subsection (c) if the Secretary determines that such variation is critical to the national security. The Secretary shall immediately notify the Congress of any such variation and the reasons for such variation.

(e) INVOLUNTARY REDUCTIONS OF CIVILIAN POSITIONS.—The Secretary of Defense may not implement any involuntary reduction or furlough of civilian positions in a military department, Defense Agency, or other component of the Department of Defense until the expiration of the 45-day period beginning on the date on which the Secretary submits to Congress a report setting forth the reasons why such reductions or furloughs are required and a description of any change in workload or positions requirements that will result from such reductions or furloughs.

(Added Pub. L. 101–510, div. A, title III, § 322(a)(1), Nov. 5, 1990, 104 Stat. 1528; amended Pub. L. 102–484, div. A, title III, § 371(a), Oct. 23, 1992, 106 Stat. 2382; Pub. L. 103–35, title II, § 201(d)(1), May 31, 1993, 107 Stat. 98; Pub. L. 103–160, div. A, title III, § 363, Nov. 30, 1993, 107 Stat. 1628.)

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–160, § 363(a)(1), substituted ''during a fiscal year'' for ''during fiscal year 1993''.

Subsec. (b). Pub. L. 103–160, § 363(a)(2), struck out ''for fiscal year 1993'' after ''establish guidelines'' in introductory provisions.

Subsec. (c)(1). Pub. L. 103–160, § 363(b)(1), substituted ''for each fiscal year'' for ''for fiscal year 1994''.

Subsec. (c)(3)(A)(v). Pub. L. 103–35, § 201(d)(1)(A)(i), substituted ''Defense Agency'' for ''defense agency''.

Subsec. (c)(3)(A)(vii). Pub. L. 103–160, § 363(b)(2), added cl. (vii).

Subsec. (c)(3)(C). Pub. L. 103–35, § 201(d)(1)(A)(ii), substituted ''Defense Agency'' for ''defense agency'' after ''to which the military department,'' and ''Defense Agency,'' for ''defense agency'' after ''for the military department,''.

Subsec. (c)(4). Pub. L. 103–160, § 363(b)(3), added par. (4).

Subsec. (e). Pub. L. 103–35, § 201(d)(1)(B), substituted ''on the date'' for ''of the date''.

1992—Pub. L. 102–484 substituted ''Civilian positions: guidelines for reductions'' for ''Employees of industrial-type or commercial-type activities: guidelines for future reductions'' as section catchline and amended text generally, substituting subsecs. (a) to (e) for former subsecs. (a) to (c).

PILOT PROGRAM FOR PAYMENT OF RETRAINING EXPENSES

Pub. L. 107–107, div. A, title XI, § 1102, Dec. 28, 2001, 115 Stat. 1235, authorized the Secretary of Defense to establish a pilot program to facilitate the reemployment of eligible employees of the Department of Defense who were involuntarily separated due to a reduction in force, relocation as a result of a transfer of function, realignment, or change of duty station, and to pay retraining incentives to encourage non-Federal employers to hire and retain such employees, and provided that no incentive could be paid under such program for training commenced after Sept. 30, 2005.

NON-FEDERAL EMPLOYMENT INCENTIVE PILOT PROGRAM

Pub. L. 103–337, div. A, title III, § 348, Oct. 5, 1994, 108 Stat. 2725, authorized the Secretary of Defense to establish a pilot program for the payment of incentives to facilitate the reemployment of eligible employees of the Department of Defense whose employment with the Department was being terminated by reason of the closure or realignment of the military installations where such persons were employed, to pay retraining and relocation incentives to encourage non-Federal employers to hire and retain such employees, and to pay a relocation incentive to an eligible employee if it was necessary for the employee to relocate in order to commence employment with a non-Federal employer under such program, and provided that no incentive could be paid under such program for training or relocations commenced after Sept. 30, 1999.

SKILL TRAINING PROGRAMS IN DEPARTMENT OF DEFENSE

Pub. L. 102–484, div. D, title XLIV, § 4435, Oct. 23, 1992, 106 Stat. 2722, authorized the Secretaries of the military departments and the Secretary of Defense, during the period beginning on Oct. 1, 1992, and ending on Sept. 30, 1995, to provide not more than one year of training in training facilities of the Department of Defense to civilian employees of the Department who were separated from employment as a result of a reduction in force or a closure or realignment of a military installation, and directed the Secretary to publish a register of the skill training programs carried out by the Department not later than Feb. 1, 1993.

INVOLUNTARY REDUCTIONS OF CIVILIAN PERSONNEL IN FISCAL YEAR 1991

Pub. L. 101–510, div. A, title III, § 322(b), Nov. 5, 1990, 104 Stat. 1529, provided that after Nov. 5, 1990, an agency or component of the Department of Defense could not implement any involuntary reductions or furloughs of civilian personnel in industrial-type or commercial-type activities in fiscal year 1991 until 45 days after the date on which the agency or component submitted a report to Congress outlining the reasons why such reductions or furloughs were required.

§ 1598. Assistance to terminated employees to obtain certification and employment as teachers or employment as teachers' aides

(a) PLACEMENT PROGRAM.—The Secretary of Defense may establish a program—

(1) to assist eligible civilian employees of the Department of Defense and the Department of Energy after the termination of their employment to obtain—

(A) certification or licensure as elementary or secondary school teachers; or

(B) the credentials necessary to serve as teachers' aides; and

(2) to facilitate the employment of such employees by local educational agencies that—

(A) are receiving grants under title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) as a result of having within their jurisdictions concentrations of children from low-income families; and

(B) are also experiencing a shortage of teachers or teachers' aides.

(b) ELIGIBLE EMPLOYEES.—(1) A civilian employee of the Department of Defense or the Department of Energy shall be eligible for selection by the Secretary of Defense to participate in the placement program authorized by subsection (a) if the employee—

(A) during the five-year period beginning October 1, 1992, is terminated from such employment as a result of reductions in defense spending or the closure or realignment of a military installation, as determined by the Secretary of Defense or the Secretary of Energy, as the case may be;

(B) has received—

(i) in the case of an employee applying for assistance for placement as an elementary or secondary school teacher, a baccalaureate or advanced degree from an accredited institution of higher education; or

(ii) in the case of an employee applying for assistance for placement as a teacher's aide in an elementary or secondary school, an associate, baccalaureate, or advanced degree from an accredited institution of higher education or a junior or community college; and

(C) satisfies such other criteria for selection as the Secretary of Defense may prescribe.

(2) The Secretary of Defense may accept an application from a civilian employee referred to in paragraph (1) who was terminated during the period beginning on October 1, 1990, and ending on October 1, 1992, if the employee otherwise satisfies the eligibility criteria specified in that paragraph.

(c) SELECTION OF PARTICIPANTS.—(1) Selection of civilian employees to participate in the placement program shall be made on the basis of applications submitted to the Secretary of Defense after the employees receive a notice of termination. An application shall be filed within such time, in such form, and contain such information as the Secretary of Defense may require.

(2) In selecting participants to receive assistance for placement as elementary or secondary school teachers, the Secretary of Defense shall give priority to civilian employees who—

(A) have educational, military, or employment experience in science, mathematics, or engineering and agree to seek employment as science, mathematics, or engineering teachers in elementary or secondary schools; or

(B) have educational, military, or employment experience in another subject area iden-

tified by the Secretary, in consultation with the Secretary of Education, as important for national educational objectives and agree to seek employment in that subject area in elementary or secondary schools.

(3) The Secretary of Defense may not select a civilian employee to participate in the program unless the Secretary has sufficient appropriations for the placement program available at the time of the selection to satisfy the obligations to be incurred by the United States under the program with respect to that member.

(d) AGREEMENT.—A civilian employee selected to participate in the placement program shall be required to enter into an agreement with the Secretary of Defense in which the employee agrees—

(1) to obtain, within such time as the Secretary may require, certification or licensure as an elementary or secondary school teacher or the necessary credentials to serve as a teacher's aide in an elementary or secondary school; and

(2) to accept—

(A) in the case of an employee selected for assistance for placement as a teacher, an offer of full-time employment as an elementary or secondary school teacher for not less than two school years with a local educational agency identified under section 1151(b)(2)[1] of this title, as in effect on October 4, 1999, to begin the school year after obtaining that certification or licensure; or

(B) in the case of an employee selected for assistance for placement as a teacher's aide, an offer of full-time employment as a teacher's aide in an elementary or secondary school for not less than two school years with a local educational agency identified under section 1151(b)(3)[1] of this title, as in effect on October 4, 1999, to begin the school year after obtaining the necessary credentials.

(e) STIPEND FOR PARTICIPANTS.—(1) Except as provided in paragraph (2), the Secretary of Defense shall pay to each participant in the placement program a stipend in an amount equal to the lesser of—

(A) $5,000; or

(B) the total costs of the type described in paragraphs (1), (2), (3), (8), and (9) of section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087*ll*) incurred by the participant while obtaining teacher certification or licensure or the necessary credentials to serve as a teacher's aide and employment as an elementary or secondary school teacher or teacher aide.

(2) A civilian employee selected to participate in the placement program who receives separation pay under section 5597 of title 5 shall not be paid a stipend under paragraph (1).

(3) A stipend paid under paragraph (1) shall be taken into account in determining the eligibility of the participant for Federal student financial assistance provided under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).

(f) PLACEMENT OF PARTICIPANTS AS TEACHERS AND TEACHERS' AIDES.—Subsections (h) through (k) of section 1151[1] of this title, as in effect on October 4, 1999, shall apply with respect to the placement program authorized by this section.

(Added Pub. L. 102–484, div. D, title XLIV, § 4442(a), Oct. 23, 1992, 106 Stat. 2730; amended Pub. L. 103–35, title II, § 201(h)(1), May 31, 1993, 107 Stat. 100; Pub. L. 103–160, div. A, title XIII, § 1331(c)(2), Nov. 30, 1993, 107 Stat. 1792; Pub. L. 103–382, title III, § 391(b)(3), Oct. 20, 1994, 108 Stat. 4021; Pub. L. 104–106, div. A, title XV, § 1503(a)(14), Feb. 10, 1996, 110 Stat. 511; Pub. L. 104–201, div. A, title V, § 576(b), Sept. 23, 1996, 110 Stat. 2535; Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(11)], Oct. 30, 2000, 114 Stat. 1654, 1654A–290.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsec. (a)(2)(A), is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27, as amended. Title I of the Act is classified generally to subchapter I (§ 6301 et seq.) of chapter 70 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

Section 1151 of this title, referred to in subsecs. (d)(2)(A), (B) and (f), was repealed by Pub. L. 106–65, div. A, title XVII, § 1707(a)(1), Oct. 5, 1999, 113 Stat. 823, and a new section 1151 of this title was subsequently added by Pub. L. 109–364, § 561(a).

The Higher Education Act of 1965, referred to in subsec. (e)(3), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended. Title IV of the Act is classified generally to subchapter IV (§ 1070 et seq.) of chapter 28 of Title 20, and part C (§ 2751 et seq.) of subchapter I of chapter 34 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

AMENDMENTS

2000—Subsec. (d)(2). Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(11)(A)], inserted "as in effect on October 4, 1999," after "of this title," in subpars. (A) and (B).

Subsec. (f). Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(11)(B)], inserted ", as in effect on October 4, 1999," after "of this title".

1996—Subsec. (a)(2)(A). Pub. L. 104–106 substituted "6301" for "2701".

Subsec. (d)(2)(A), (B). Pub. L. 104–201 substituted "two school years" for "five school years".

1994—Subsec. (a)(2)(A). Pub. L. 103–382 struck out "chapter 1 of" after "grants under".

1993—Subsec. (d)(2)(A), (B). Pub. L. 103–160 substituted "five school years" for "two school years".

Subsec. (e)(4). Pub. L. 103–35 struck out par. (4) which read as follows: "A person who receives a stipend under section 4436 of this title shall not be paid a stipend pursuant to paragraph (1)."

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–160, div. A, title XIII, § 1331(h), Nov. 30, 1993, 107 Stat. 1793, provided that: "The amendments made by subsections (c) and (d) [amending this section and sections 1151 and 2410j of this title] shall not apply with respect to—

"(1) persons selected by the Secretary of Defense before the date of the enactment of this Act [Nov. 30, 1993] to participate in the teacher and teacher's aide placement programs established pursuant to sections 1151, 1598, and 2410j of title 10, United States Code; or

"(2) agreements entered into by the Secretary before such date with local educational agencies under such sections."

SAVINGS PROVISION

Pub. L. 104–201, div. A, title V, § 576(d), Sept. 23, 1996, 110 Stat. 2535, provided that: "The amendments made

[1] See References in Text note below.

by this section [amending this section and sections 1151 and 2410j of this title] do not affect obligations under agreements entered into in accordance with section 1151, 1598, or 2410j of title 10, United States Code, before the date of the enactment of this Act [Sept. 23, 1996].''

[§ 1599. Renumbered § 1611]

§ 1599a. Financial assistance to certain employees in acquisition of critical skills

(a) TRAINING PROGRAM.—The Secretary of Defense shall establish an undergraduate training program with respect to civilian employees in the Military Department Civilian Intelligence Personnel Management System that is similar in purpose, conditions, content, and administration to the program established by the Secretary of Defense under section 16 of the National Security Act of 1959 (50 U.S.C. 402 note) for civilian employees of the National Security Agency.

(b) USE OF FUNDS FOR TRAINING PROGRAM.—Any payment made by the Secretary to carry out the program required to be established by subsection (a) may be made in any fiscal year only to the extent that appropriated funds are available for that purpose.

(Added Pub. L. 104–93, title V, § 505(a), Jan. 6, 1996, 109 Stat. 973.)

REFERENCES IN TEXT

Section 16 of the National Security Act of 1959, referred to in subsec. (a), probably means section 16 of the National Security Agency Act of 1959, Pub. L. 86–36, as amended, which is set out as a note under section 402 of Title 50, War and National Defense.

§ 1599b. Employees abroad: travel expenses; health care

(a) IN GENERAL.—The Secretary of Defense may provide civilian employees, and members of their families, abroad with benefits that are comparable to certain benefits that are provided by the Secretary of State to members of the Foreign Service and their families abroad as described in subsections (b) and (c). The Secretary may designate the employees and members of families who are eligible to receive the benefits.

(b) TRAVEL AND RELATED EXPENSES.—The Secretary of Defense may pay travel expenses and related expenses for purposes and in amounts that are comparable to the purposes for which, and the amounts in which, travel and related expenses are paid by the Secretary of State under section 901 of the Foreign Service Act of 1980 (22 U.S.C. 4081).

(c) HEALTH CARE PROGRAM.—The Secretary of Defense may establish a health care program that is comparable to the health care program established by the Secretary of State under section 904 of the Foreign Service Act of 1980 (22 U.S.C. 4084).

(d) ASSISTANCE.—The Secretary of Defense may enter into agreements with the heads of other departments and agencies of the Government in order to facilitate the payment of expenses authorized by subsection (b) and to carry out a health care program authorized by subsection (c).

(e) ABROAD DEFINED.—In this section, the term ''abroad'' means outside—

(1) the United States; and

(2) the territories and possessions of the United States.

(Added Pub. L. 104–201, div. A, title XVI, § 1604(a), Sept. 23, 1996, 110 Stat. 2735.)

§ 1599c. Health care professionals: enhanced appointment and compensation authority for personnel for care and treatment of wounded and injured members of the armed forces

(a) IN GENERAL.—(1) The Secretary of Defense may, at the discretion of the Secretary, exercise any authority for the appointment and pay of health care personnel under chapter 74 of title 38 for purposes of the recruitment, employment, and retention of civilian health care professionals for the Department of Defense if the Secretary determines that the exercise of such authority is necessary in order to provide or enhance the capacity of the Department to provide care and treatment for members of the armed forces who are wounded or injured on active duty in the armed forces and to support the ongoing patient care and medical readiness, education, and training requirements of the Department of Defense.

(2)(A) For purposes of sections 3304, 5333, and 5753 of title 5, the Secretary of Defense may—

(i) designate any category of medical or health professional positions within the Department of Defense as a shortage category occupation or critical need occupation; and

(ii) utilize the authorities in such sections to recruit and appoint qualified persons directly in the competitive service to positions so designated.

(B) In using the authority provided by this paragraph, the Secretary shall apply the principles of preference for the hiring of veterans and other persons established in subchapter I of chapter 33 of title 5.

(C) Any designation by the Secretary for purposes of subparagraph (A)(i) shall be based on an analysis of current and future Department of Defense workforce requirements.

(b) RECRUITMENT OF PERSONNEL.—(1) The Secretaries of the military departments shall each develop and implement a strategy to disseminate among appropriate personnel of the military departments authorities and best practices for the recruitment of medical and health professionals, including the authorities under subsection (a).

(2) Each strategy under paragraph (1) shall—

(A) assess current recruitment policies, procedures, and practices of the military department concerned to assure that such strategy facilitates the implementation of efficiencies which reduce the time required to fill vacant positions for medical and health professionals; and

(B) clearly identify processes and actions that will be used to inform and educate military and civilian personnel responsible for the recruitment of medical and health professionals.

(c) TERMINATION OF AUTHORITY.—(1) The authority of the Secretary of Defense under subsection (a)(1) to exercise authorities available

under chapter 74 of title 38 for purposes of the recruitment, employment, and retention of civilian health care professionals for the Department of Defense expires December 31, 2015.

(2) The Secretary may not appoint a person to a position of employment under subsection (a)(2) after December 31, 2015.

(Added Pub. L. 107–107, div. A, title XI, § 1104(a), Dec. 28, 2001, 115 Stat. 1236; amended Pub. L. 110–181, div. A, title XVI, § 1636(a), Jan. 28, 2008, 122 Stat. 463; Pub. L. 110–417, [div. A], title XI, § 1107, Oct. 14, 2008, 122 Stat. 4617; Pub. L. 111–383, div. A, title X, § 1075(b)(22), title XI, § 1104, Jan. 7, 2011, 124 Stat. 4370, 4383.)

PRIOR PROVISIONS

A prior section 1599c, added Pub. L. 104–201, div. A, title XVI, § 1615(a)(1), Sept. 23, 1996, 110 Stat. 2740; amended Pub. L. 105–85, div. A, title X, § 1073(a)(31), Nov. 18, 1997, 111 Stat. 1902, related to treatment of a Department of Defense violation of veterans' preference requirements as a prohibited personnel practice, prior to repeal by Pub. L. 105–339, § 6(c)(1)(A), Oct. 31, 1998, 112 Stat. 3188.

AMENDMENTS

2011—Subsec. (a)(2)(A)(i). Pub. L. 111–383, § 1104(a)(1)(A), substituted ''a shortage category occupation or critical need occupation'' for ''shortage category positions''.

Subsec. (a)(2)(A)(ii). Pub. L. 111–383, § 1104(a)(1)(B), substituted ''qualified persons directly in the competitive service'' for ''highly qualified persons directly''.

Subsec. (a)(2)(B). Pub. L. 111–383, § 1075(b)(22), substituted ''subchapter I'' for ''subchapter 1''.

Subsec. (a)(2)(C). Pub. L. 111–383, § 1104(a)(2), added subpar. (C).

Subsec. (c)(1). Pub. L. 111–383, § 1104(b)(1), inserted ''under subsection (a)(1)'' after ''Secretary of Defense'' and substituted ''December 31, 2015'' for ''September 30, 2012''.

Subsec. (c)(2). Pub. L. 111–383, § 1104(b)(2), substituted ''December 31, 2015'' for ''September 30, 2012''.

2008—Pub. L. 110–181 amended section generally. Prior to amendment, section related to appointment in excepted service of certain health care professionals.

Subsec. (a). Pub. L. 110–417, § 1107(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (c). Pub. L. 110–417, § 1107(b), designated existing provisions as par. (1), substituted ''September 30, 2012'' for ''September 30, 2010'', and added par. (2).

§ 1599d. Professional accounting positions: authority to prescribe certification and credential standards

(a) AUTHORITY TO PRESCRIBE PROFESSIONAL CERTIFICATION STANDARDS.—The Secretary of Defense may prescribe professional certification and credential standards for professional accounting positions within the Department of Defense. Any such standard shall be prescribed as a Department of Defense regulation.

(b) WAIVER AUTHORITY.—The Secretary may waive any standard prescribed under subsection (a) whenever the Secretary determines such a waiver to be appropriate.

(c) APPLICABILITY.—A standard prescribed under subsection (a) shall not apply to any person employed by the Department of Defense before the standard is prescribed.

(d) REPORT.—The Secretary of Defense shall submit to Congress a report on the Secretary's plans to provide training to appropriate Department of Defense personnel to meet any new professional and credential standards prescribed under subsection (a). Such report shall be prepared in conjunction with the Director of the Office of Personnel Management. Such a report shall be submitted not later than one year after the effective date of any regulations, or any revision to regulations, prescribed pursuant to subsection (a).

(e) DEFINITION.—In this section, the term ''professional accounting position'' means a position or group of positions in the 0505, 0510, 0511, or equivalent series that involves professional accounting work.

(Added Pub. L. 107–314, div. A, title XI, § 1104(a)(1), Dec. 2, 2002, 116 Stat. 2661; amended Pub. L. 110–417, [div. A], title XI, § 1110, Oct. 14, 2008, 122 Stat. 4619.)

AMENDMENTS

2008—Subsec. (e). Pub. L. 110–417 substituted ''0505, 0510, 0511, or equivalent'' for ''GS–510, GS–511, and GS–505''.

EFFECTIVE DATE

Pub. L. 107–314, div. A, title XI, § 1104(b), Dec. 2, 2002, 116 Stat. 2661, provided that: ''Standards established pursuant to section 1599d of title 10, United States Code, as added by subsection (a), may take effect no sooner than 120 days after the date of the enactment of this Act [Dec. 2, 2002].''

CHAPTER 83—CIVILIAN DEFENSE INTELLIGENCE EMPLOYEES

Subchapter		Sec.
I.	Defense-Wide Intelligence Personnel Policy	1601
II.	Defense Intelligence Agency Personnel	1621

PRIOR PROVISIONS

A prior chapter 85 of this title was repealed by Pub. L. 102–190, div. A, title X, § 1061(a)(26)(C)(i), Dec. 5, 1991, 105 Stat. 1474, effective Oct. 1, 1993. Previously, the individual sections of that chapter, sections 1621 to 1624, were repealed by Pub. L. 101–510, div. A, title XII, § 1207(c)(1), (3), (4), Nov. 5, 1990, 104 Stat. 1665.

AMENDMENTS

1996—Pub. L. 104–201, div. A, title XVI, § 1632(a)(3), Sept. 23, 1996, 110 Stat. 2745, substituted ''CIVILIAN DEFENSE INTELLIGENCE EMPLOYEES'' for ''DEFENSE INTELLIGENCE AGENCY AND CENTRAL IMAGERY OFFICE CIVILIAN PERSONNEL'' as chapter heading and added subchapter analysis.

SUBCHAPTER I—DEFENSE-WIDE INTELLIGENCE PERSONNEL POLICY

Sec.
1601. Civilian intelligence personnel: general authority to establish excepted positions, appoint personnel, and fix rates of pay.
1602. Basic pay.
1603. Additional compensation, incentives, and allowances.
[1604. Repealed.]
1605. Benefits for certain employees assigned outside the United States.
1606. Defense Intelligence Senior Executive Service.
1607. Intelligence Senior Level positions.
1608. Time-limited appointments.
1609. Termination of defense intelligence employees.
1610. Reductions and other adjustments in force.
1611. Postemployment assistance: certain terminated intelligence employees.

Sec.
1612. Merit system principles and civil service protections: applicability.
1613. Miscellaneous provisions.
1614. Definitions.

AMENDMENTS

1996—Pub. L. 104–201, div. A, title XVI, §1632(a)(3), Sept. 23, 1996, 110 Stat. 2745, added table of sections for subchapter and struck out former table of sections consisting of items 1601 ''Defense Intelligence Senior Executive Service'', 1602 ''Defense Intelligence Agency merit pay system'', 1603 ''Limit on pay'', 1604 ''Civilian personnel management'', 1605 ''Benefits for certain employees of the Defense Intelligence Agency'', 1606 ''Uniform allowance: civilian employees'', and 1608 ''Financial assistance to certain employees in acquisition of critical skills''.

1994—Pub. L. 103–359, title V, §501(b)(1)(A), Oct. 14, 1994, 108 Stat. 3428, amended chapter heading generally, inserting ''AND CENTRAL IMAGERY OFFICE''.

1989—Pub. L. 101–193, title V, §507(a)(2), Nov. 30, 1989, 103 Stat. 1710, added item 1608.

1987—Pub. L. 100–178, title VI, §601(b), Dec. 2, 1987, 101 Stat. 1015, added item 1606.

1985—Pub. L. 99–145, title XIII, §1302(a)(2), Nov. 8, 1985, 99 Stat. 737, redesignated item 192 of chapter 8 of this title as item 1605 and transferred it to this chapter.

1984—Pub. L. 98–618, title V, §501(b), Nov. 8, 1984, 98 Stat. 3302, added item 1604.

§1601. Civilian intelligence personnel: general authority to establish excepted positions, appoint personnel, and fix rates of pay

(a) GENERAL AUTHORITY.—The Secretary of Defense may—

(1) establish, as positions in the excepted service, such defense intelligence positions in the Department of Defense as the Secretary determines necessary to carry out the intelligence functions of the Department, including—

(A) Intelligence Senior Level positions designated under section 1607 of this title; and

(B) positions in the Defense Intelligence Senior Executive Service;

(2) appoint individuals to those positions (after taking into consideration the availability of preference eligibles for appointment to those positions); and

(3) fix the compensation of such individuals for service in those positions.

(b) CONSTRUCTION WITH OTHER LAWS.—The authority of the Secretary of Defense under subsection (a) applies without regard to the provisions of any other law relating to the appointment, number, classification, or compensation of employees.

(Added Pub. L. 104–201, div. A, title XVI, §1632(a)(3), Sept. 23, 1996, 110 Stat. 2746; amended Pub. L. 106–398, §1 [[div. A], title XI, §1141(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–318.)

PRIOR PROVISIONS

A prior section 1601, added Pub. L. 97–89, title VII, §701(a)(1), Dec. 4, 1981, 95 Stat. 1159; amended Pub. L. 101–194, title V, §506(c)(3), Nov. 30, 1989, 103 Stat. 1759; Pub. L. 101–280, §6(d)(4), May 4, 1990, 104 Stat. 161; Pub. L. 101–510, div. A, title XIV, §1484(*l*)(5), Nov. 5, 1990, 104 Stat. 1720; Pub. L. 103–359, title V, §501(b)(1)(B), Oct. 14, 1994, 108 Stat. 3428, related to the Defense Intelligence Senior Executive Service, prior to repeal by Pub. L. 104–201, div. A, title XVI, §§1632(a)(3), 1635, Sept. 23, 1996, 110 Stat. 2745, 2752, effective Oct. 1, 1996. See section 1606 of this title.

Provisions similar to those in this section were contained in sections 1590(a) and 1604(a) of this title prior to repeal by Pub. L. 104–201, §§1632(a)(3), 1633(a).

AMENDMENTS

2000—Subsec. (a)(1). Pub. L. 106–398, in introductory provisions, substituted ''in the Department of Defense'' for ''in the intelligence components of the Department of Defense and the military departments'' and ''of the Department'' for ''of those components and departments''.

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 1593 of this title.

SHORT TITLE OF 1996 AMENDMENT

Section 1631 of Pub. L. 104–201 provided that: ''This subtitle [subtitle B (§§1631–1635) of title XVI of div. A of Pub. L. 104–201, enacting this section and sections 1602, 1603, 1606 to 1610, and 1612 to 1614 of this title, amending sections 1593, 1596, 1605, 1611, and 1621 of this title and sections 7103 and 7511 of Title 5, Government Organization and Employees, renumbering sections 1599, 1602, 1606, and 1608 of this title as sections 1611, 1621, 1622, and 1623 of this title, respectively, repealing sections 1590, 1601, 1603, and 1604 of this title and section 833 of Title 50, War and National Defense, enacting provisions set out as a note under section 1593 of this title, and repealing provisions set out as a note under section 402 of Title 50] may be cited as the 'Department of Defense Civilian Intelligence Personnel Policy Act of 1996'.''

DELEGATION OF AUTHORITY

Section 701(b) of Pub. L. 97–89 provided that: ''The authority of the Secretary of Defense under chapter 83 of title 10, United States Code, as added by subsection (a), may be delegated in accordance with section 133(d) [now 113(d)] of title 10, United States Code.''

PROVISIONS RELATING TO THE DEFENSE CIVILIAN INTELLIGENCE PERSONNEL SYSTEM

Pub. L. 111–84, div. A, title XI, §1114, Oct. 28, 2009, 123 Stat. 2504, provided that:

''(a) SUSPENSION OF CERTAIN PAY AUTHORITY.—Effective with respect to amounts paid during the period beginning on the date of the enactment of this Act [Oct. 28, 2009] and ending on December 31, 2010, rates of basic pay for employees and positions within any element of the intelligence community (as defined by the National Security Act of 1947 [50 U.S.C. 401 et seq.])—

''(1) may not be fixed under the Defense Civilian Intelligence Personnel System; and

''(2) shall instead be fixed in accordance with the provisions of law that (disregarding DCIPS) would then otherwise apply.

The preceding sentence shall not apply with respect to the National Geospatial-Intelligence Agency.

''(b) RESPONSE TO GAO REPORT.—Not later than 3 months after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional oversight committees a written description of any actions taken or proposed to be taken by such Secretary in response to the review and recommendations of the Government Accountability Office regarding the Defense Civilian Intelligence Personnel System.

''(c) INDEPENDENT ORGANIZATION.—

''(1) IN GENERAL.—Not later than 30 days after the date of the enactment of this Act, the Secretary of Defense, the Director of the Office of Personnel Management, and the Director of National Intelligence shall jointly designate an independent organization to review the operation of the Defense Civilian Intelligence Personnel System, including—

''(A) its impact on career progression;

''(B) its appropriateness or inappropriateness in light of the complexities of the workforce affected;

''(C) its sufficiency in terms of providing protections for diversity in promotion and retention of personnel; and

''(D) the adequacy of the training, policy guidelines, and other preparations afforded in connection with transitioning to that system.

''(2) DEADLINE.—The independent organization shall, after appropriate consultation with employees and employee organizations, submit its findings and recommendations under this section to the Secretary of Defense and the congressional oversight committees, in a written report, not later than June 1, 2010.

''(d) PROPOSED ACTIONS BASED ON REPORT.—Not later than 60 days after receiving the report of the independent organization under subsection (c), the Secretary of Defense, in coordination with the Director of the Office of Personnel Management and the Director of National Intelligence, shall submit to the congressional oversight committees a written report describing any actions that the Secretary has taken or proposes to take in response to such report.

''(e) HOLD-HARMLESS PROVISION.—No employee shall suffer any loss of or decrease in pay as a result of being converted from DCIPS in compliance with subsection (a).

''(f) DEFINITIONS.—For purposes of this section—

''(1) the terms 'Defense Civilian Intelligence Personnel System' and 'DCIPS' mean the civilian personnel system established by the Secretary of Defense under regulations—

''(A) prescribed pursuant to sections 1601 through 1614 of title 10, United States Code; and

''(B) taking effect in September 2008 or thereafter; and

''(2) the term 'congressional oversight committees' means—

''(A) the Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives; and

''(B) the Committee on Armed Services and the Select Committee on Intelligence of the Senate.''

§ 1602. Basic pay

(a) AUTHORITY TO FIX RATES OF BASIC PAY.—The Secretary of Defense (subject to the provisions of this section) shall fix the rates of basic pay for positions established under section 1601 of this title in relation to the rates of pay provided for comparable positions in the Department of Defense and subject to the same limitations on maximum rates of pay established for employees of the Department of Defense by law or regulation.

(b) PREVAILING RATE SYSTEMS.—The Secretary of Defense may, consistent with section 5341 of title 5, adopt such provisions of that title as provide for prevailing rate systems of basic pay and may apply those provisions to positions for civilian employees in or under which the Department of Defense may employ individuals described by section 5342(a)(2)(A) of that title.

(Added Pub. L. 104–201, div. A, title XVI, § 1632(a)(3), Sept. 23, 1996, 110 Stat. 2746; amended Pub. L. 108–375, div. A, title XI, § 1103(a), Oct. 28, 2004, 118 Stat. 2072; Pub. L. 109–364, div. A, title X, § 1071(g)(12), Oct. 17, 2006, 120 Stat. 2403.)

PRIOR PROVISIONS

A prior section 1602 was renumbered section 1621 of this title.

Provisions similar to those in this section were contained in sections 1590(b) and (c) and 1604(b)(1) and (c) of this title prior to repeal by Pub. L. 104–201, §§ 1632(a)(3), 1633(a).

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–364 made technical correction to directory language of Pub. L. 108–375, § 1103(a)(1). See 2004 Amendment note below.

2004—Subsec. (a). Pub. L. 108–375, § 1103(a)(1), as amended by Pub. L. 109–364, substituted ''in relation to the rates of pay provided for comparable positions in the Department of Defense and subject to the same limitations on maximum rates of pay established for employees of the Department of Defense by law or regulation'' for ''in relation to the rates of basic pay provided in subpart D of part III of title 5 for positions subject to that subpart which have corresponding levels of duties and responsibilities''.

Subsecs. (b), (c). Pub. L. 108–375, § 1103(a)(2), (3), redesignated subsec. (c) as (b) and struck out heading and text of former subsec. (b). Text read as follows: ''A rate of basic pay fixed under subsection (a) for a position established under section 1601 of this title may not (except as otherwise provided by law) exceed—

''(1) in the case of a Defense Intelligence Senior Executive Service position, the maximum rate provided in section 5382 of title 5;

''(2) in the case of an Intelligence Senior Level position, the maximum rate provided in section 5382 of title 5; and

''(3) in the case of any other position, the maximum rate provided in section 5306(e) of title 5.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–364, div. A, title X, § 1071(g), Oct. 17, 2006, 120 Stat. 2402, provided that the amendment made by section 1071(g)(12) is effective as of Oct. 28, 2004, and as if included in Pub. L. 108–375 as enacted.

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 1593 of this title.

§ 1603. Additional compensation, incentives, and allowances

(a) ADDITIONAL COMPENSATION BASED ON TITLE 5 AUTHORITIES.—The Secretary of Defense may provide employees in defense intelligence positions compensation (in addition to basic pay), including benefits, incentives, and allowances, consistent with, and not in excess of the level authorized for, comparable positions authorized by title 5.

(b) ALLOWANCES BASED ON LIVING COSTS AND ENVIRONMENT.—(1) In addition to basic pay, employees in defense intelligence positions who are citizens or nationals of the United States and are stationed outside the continental United States or in Alaska may be paid an allowance, in accordance with regulations prescribed by the Secretary of Defense, while they are so stationed.

(2) An allowance under this subsection shall be based on—

(A) living costs substantially higher than in the District of Columbia;

(B) conditions of environment which (i) differ substantially from conditions of environment in the continental United States, and (ii) warrant an allowance as a recruitment incentive; or

(C) both of the factors specified in subparagraphs (A) and (B).

(3) An allowance under this subsection may not exceed the allowance authorized to be paid by section 5941(a) of title 5 for employees whose rates of basic pay are fixed by statute.

(Added Pub. L. 104–201, div. A, title XVI, § 1632(a)(3), Sept. 23, 1996, 110 Stat. 2746.)

PRIOR PROVISIONS

A prior section 1603, added Pub. L. 97–89, title VII, § 701(a)(1), Dec. 4, 1981, 95 Stat. 1160; amended Pub. L.

99–145, title XIII, §1302(a)(3), Nov. 8, 1985, 99 Stat. 738; Pub. L. 99–661, div. A, title XIII, §1343(a)(9), Nov. 14, 1986, 100 Stat. 3992, related to limits on pay to members of the Defense Intelligence Senior Executive Service, prior to repeal by Pub. L. 104–201, div. A, title XVI, §§1632(a)(3), 1635, Sept. 23, 1996, 110 Stat. 2745, 2752, effective Oct. 1, 1996.

Provisions similar to those in this section were contained in sections 1590(d) and 1604(b)(2), (d) of this title prior to repeal by Pub. L. 104–201, §§1632(a)(3), 1633(a).

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 1593 of this title.

[§1604. Repealed. Pub. L. 104–201, div. A, title XVI, §1632(a)(3), Sept. 23, 1996, 110 Stat. 2745]

Section, added Pub. L. 98–618, title V, §501(a), Nov. 8, 1984, 98 Stat. 3301; amended Pub. L. 99–569, title V, §502, Oct. 27, 1986, 100 Stat. 3198; Pub. L. 100–178, title VI, §602(a), Dec. 2, 1987, 101 Stat. 1015; Pub. L. 101–193, title V, §503(b), Nov. 30, 1989, 103 Stat. 1708; Pub. L. 102–496, title IV, §401(a), Oct. 24, 1992, 106 Stat. 3183; Pub. L. 103–359, title V, §501(b)(1)(D), title VIII, §806(b)(1), Oct. 14, 1994, 108 Stat. 3428, 3442; Pub. L. 104–93, title V, §501, Jan. 6, 1996, 109 Stat. 970, related to civilian personnel management. See sections 1601 to 1603, 1607, and 1609 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 1593 of this title.

§1605. Benefits for certain employees assigned outside the United States

(a)(1) The Secretary of Defense may provide to civilian personnel described in subsection (d) allowances and benefits comparable to those provided by the Secretary of State to officers and employees of the Foreign Service under paragraphs (2), (3), (4), (5), (6), (7), (8), and (13) of section 901 and sections 705 and 903 of the Foreign Service Act of 1980 (22 U.S.C. 4081(2), (3), (4), (5), (6), (7), (8), and (13), 4025, 4083) and under section 5924(4) of title 5.

(2) The Secretary may also provide to any such civilian personnel special retirement accrual benefits in the same manner provided for certain officers and employees of the Central Intelligence Agency in section 303 of the Central Intelligence Agency Retirement Act (50 U.S.C. 2153) and in section 18 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403r).

(b) The authority of the Secretary of Defense to make payments under subsection (a) is effective for any fiscal year only to the extent that appropriated funds are available for such purpose.

(c) Regulations prescribed under subsection (a) may not take effect until the Secretary of Defense has submitted such regulations to—

(1) the Committee on Armed Services and the Select Committee on Intelligence of the Senate; and

(2) the Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.

(d) Subsection (a) applies to civilian personnel of the Department of Defense who—

(1) are United States nationals;

(2) in the case of employees of the Defense Intelligence Agency, are assigned to duty outside the United States and, in the case of other employees, are assigned to Defense Attaché Offices or Defense Intelligence Agency Liaison Offices outside the United States; and

(3) are designated by the Secretary of Defense for the purposes of subsection (a).

(Added Pub. L. 98–215, title V, §501(a), Dec. 9, 1983, 97 Stat. 1478, §192; renumbered §1605 and amended Pub. L. 99–145, title XIII, §1302(a)(1), Nov. 8, 1985, 99 Stat. 737; Pub. L. 99–335, title V, §507(b), June 6, 1986, 100 Stat. 628; Pub. L. 99–569, title V, §501, Oct. 27, 1986, 100 Stat. 3198; Pub. L. 101–193, title V, §505(a), Nov. 30, 1989, 103 Stat. 1709; Pub. L. 102–496, title VIII, §803(d), Oct. 24, 1992, 106 Stat. 3253; Pub. L. 103–160, div. A, title XI, §1182(a)(3), Nov. 30, 1993, 107 Stat. 1771; Pub. L. 104–93, title V, §502(a), Jan. 6, 1996, 109 Stat. 972; Pub. L. 104–201, div. A, title XVI, §1633(c)(1), Sept. 23, 1996, 110 Stat. 2751; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774.)

AMENDMENTS

1999—Subsec. (c)(2). Pub. L. 106–65 substituted ''Committee on Armed Services'' for ''Committee on National Security''.

1996—Pub. L. 104–201 substituted ''assigned outside the United States'' for ''of the Defense Intelligence Agency'' in section catchline.

Subsec. (a). Pub. L. 104–93, §502(a)(1), designated first sentence of existing text as par. (1) and substituted ''described in subsection (d)'' for ''of the Department of Defense who are United States nationals, who are assigned to Defense Attaché Offices and Defense Intelligence Agency Liaison Offices outside the United States, and who are designated by the Secretary of Defense for the purposes of this subsection,'', and designated second sentence of existing text as par. (2).

Subsec. (c). Pub. L. 104–93, §502(a)(2), added subsec. (c) and struck out former subsec. (c) which read as follows: ''Regulations issued pursuant to subsection (a) shall be submitted to the Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives and the Committee on Armed Services and the Select Committee on Intelligence of the Senate before such regulations take effect.''

Subsec. (d). Pub. L. 104–93, §502(a)(3), added subsec. (d).

1993—Subsec. (a). Pub. L. 103–160 substituted ''(50 U.S.C. 2153)'' for ''(50 U.S.C. 403 note)''.

1992—Subsec. (a). Pub. L. 102–496 substituted ''the Central Intelligence Agency Retirement Act'' for ''the Central Intelligence Agency Retirement Act of 1964 for Certain Employees'' and inserted ''(50 U.S.C. 403r)'' after ''the Central Intelligence Agency Act of 1949''.

1989—Subsec. (a). Pub. L. 101–193 struck out ''who are subject to chapter 84 of title 5,'' after ''such civilian personnel'' in last sentence and inserted reference to section 18 of the Central Intelligence Agency Act of 1949.

1986—Subsec. (a). Pub. L. 99–569 inserted reference to par. (5) of section 901 of the Foreign Service Act of 1980 (22 U.S.C. 4081(5)).

Pub. L. 99–335 inserted provision authorizing the Secretary to provide to any civilian personnel subject to chapter 84 of title 5 special retirement accrual benefits in the same manner provided for certain officers and employees of the Central Intelligence Agency in section 303 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees.

1985—Subsec. (a). Pub. L. 99–145, §1302(a)(1)(A), (B), struck out references to Director of the Defense Intelligence Agency and to military personnel, substituted ''sections 705 and 903'' for ''under sections 903, 705, and 2308'', and substituted ''(22 U.S.C. 4081(2), (3), (4), (6), (7),

(8), and (13), 4025, 4083) and under section 5924(4) of title 5.'' for ''(22 U.S.C. 4025; 22 U.S.C. 4081(2), (3), (4), (6), (7), (8), and (13); 22 U.S.C. 4083; 5 U.S.C. 5924(4)).''

Subsec. (b). Pub. L. 99–145, § 1302(a)(1)(A), struck out reference to Director of the Defense Intelligence Agency.

Subsecs. (c), (d). Pub. L. 99–145, § 1302(a)(1)(C), struck out subsec. (c) which read as follows: ''Members of the Armed Forces may not receive benefits under both subsection (a) and title 37, United States Code, for the same purpose. The Secretary of Defense shall prescribe such regulations as may be necessary to carry out this subsection.'', and redesignated former subsec. (d) as (c).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as a note under section 1593 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–496 effective on first day of fourth month beginning after Oct. 24, 1992, see section 805 of Pub. L. 102–496, set out as a note under section 2001 of Title 50, War and National Defense.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99–335, set out as an Effective Date note under section 8401 of Title 5, Government Organization and Employees.

§ 1606. Defense Intelligence Senior Executive Service

(a) ESTABLISHMENT.—The Secretary of Defense may establish a Defense Intelligence Senior Executive Service for defense intelligence positions established pursuant to section 1601(a) of this title that are equivalent to Senior Executive Service positions. The number of positions in the Defense Intelligence Senior Executive Service may not exceed 594.

(b) REGULATIONS CONSISTENT WITH TITLE 5 PROVISIONS.—The Secretary of Defense shall prescribe regulations for the Defense Intelligence Senior Executive Service which are consistent with the requirements set forth in sections 3131, 3132(a)(2), 3396(c), 3592, 3595(a), 5384, and 6304 of title 5, subsections (a), (b), and (c) of section 7543 of such title (except that any hearing or appeal to which a member of the Defense Intelligence Senior Executive Service is entitled shall be held or decided pursuant to those regulations), and subchapter II of chapter 43 of such title. To the extent that the Secretary determines it practicable to apply to members of, or applicants for, the Defense Intelligence Senior Executive Service other provisions of title 5 that apply to members of, or applicants for, the Senior Executive Service, the Secretary shall also prescribe regulations to implement those provisions with respect to the Defense Intelligence Senior Executive Service.

(c) AWARD OF RANK TO MEMBERS OF THE DEFENSE INTELLIGENCE SENIOR EXECUTIVE SERVICE.—The President, based on the recommendations of the Secretary of Defense, may award a rank referred to in section 4507 of title 5 to members of the Defense Intelligence Senior Executive Service. The award of such rank shall be made in a manner consistent with the provisions of that section.

(d) PERFORMANCE APPRAISALS.—(1) The Defense Intelligence Senior Executive Service shall be subject to a performance appraisal system which, as designed and applied, is certified by the Secretary of Defense under section 5307 of title 5 as making meaningful distinctions based on relative performance.

(2) The performance appraisal system applicable to the Defense Intelligence Senior Executive Service under paragraph (1) may be the same performance appraisal system that is established and implemented within the Department of Defense for members of the Senior Executive Service.

(Added Pub. L. 104–201, div. A, title XVI, § 1632(b), Sept. 23, 1996, 110 Stat. 2747; amended Pub. L. 106–398, § 1 [[div. A], title XI, § 1142], Oct. 30, 2000, 114 Stat. 1654, 1654A–319; Pub. L. 107–107, div. A, title XI, § 1121, Dec. 28, 2001, 115 Stat. 1242; Pub. L. 108–375, div. A, title XI, § 1103(b), Oct. 28, 2004, 118 Stat. 2073; Pub. L. 109–163, div. A, title XI, § 1125, Jan. 6, 2006, 119 Stat. 3454.)

PRIOR PROVISIONS

A prior section 1606 was renumbered section 1622 of this title.

Provisions similar to those in this section were contained in sections 1590(f), (g) and 1601(a)–(c) of this title prior to repeal by Pub. L. 104–201, §§ 1632(a)(3), 1633(a).

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–163 substituted ''594'' for ''544''.

2004—Subsec. (d). Pub. L. 108–375 added subsec. (d).

2001—Subsec. (a). Pub. L. 107–107 substituted ''544'' for ''517''.

2000—Subsec. (a). Pub. L. 106–398 substituted ''517'' for ''492''.

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 1593 of this title.

§ 1607. Intelligence Senior Level positions

(a) DESIGNATION OF POSITIONS.—The Secretary of Defense may designate as an Intelligence Senior Level position any defense intelligence position that, as determined by the Secretary—

(1) is classifiable above grade GS–15 of the General Schedule;

(2) does not satisfy functional or program management criteria for being designated a Defense Intelligence Senior Executive Service position; and

(3) has no more than minimal supervisory responsibilities.

(b) REGULATIONS.—Subsection (a) shall be carried out in accordance with regulations prescribed by the Secretary of Defense.

(c) AWARD OF RANK TO EMPLOYEES IN INTELLIGENCE SENIOR LEVEL POSITIONS.—The President, based on the recommendations of the Secretary of Defense, may award a rank referred to in section 4507a of title 5 to employees in Intelligence Senior Level positions designated under subsection (a). The award of such rank shall be made in a manner consistent with the provisions of that section.

(Added Pub. L. 104–201, div. A, title XVI, § 1632(b), Sept. 23, 1996, 110 Stat. 2747; amended Pub. L. 107–306, title V, § 503, Nov. 27, 2002, 116 Stat. 2407.)

REFERENCES IN TEXT

Grade GS–15 of the General Schedule, referred to in subsec. (a)(1), is set out under section 5332 of Title 5, Government Organization and Employees.

PRIOR PROVISIONS

A prior section 1607 was renumbered section 424 of this title.

Provisions similar to those in this section were contained in section 1604(f)(1), (3) of this title prior to repeal by Pub. L. 104–201, § 1632(a)(3).

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–306 added subsec. (c).

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 1593 of this title.

§ 1608. Time-limited appointments

(a) AUTHORITY FOR TIME-LIMITED APPOINTMENTS.—The Secretary of Defense may by regulation authorize appointing officials to make time-limited appointments to defense intelligence positions specified in the regulations.

(b) REVIEW OF USE OF AUTHORITY.—The Secretary of Defense shall review each time-limited appointment in a defense intelligence position at the end of the first year of the period of the appointment and determine whether the appointment should be continued for the remainder of the period. The continuation of a time-limited appointment after the first year shall be subject to the approval of the Secretary.

(c) CONDITION ON PERMANENT APPOINTMENT TO DEFENSE INTELLIGENCE SENIOR EXECUTIVE SERVICE.—An employee serving in a defense intelligence position pursuant to a time-limited appointment is not eligible for a permanent appointment to a Defense Intelligence Senior Executive Service position (including a position in which the employee is serving) unless the employee is selected for the permanent appointment on a competitive basis.

(d) TIME-LIMITED APPOINTMENT DEFINED.—In this section, the term ''time-limited appointment'' means an appointment (subject to the condition in subsection (b)) for a period not to exceed two years.

(Added Pub. L. 104–201, div. A, title XVI, § 1632(b), Sept. 23, 1996, 110 Stat. 2748.)

PRIOR PROVISIONS

A prior section 1608 was renumbered section 1623 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 1593 of this title.

§ 1609. Termination of defense intelligence employees

(a) TERMINATION AUTHORITY.—Notwithstanding any other provision of law, the Secretary of Defense may terminate the employment of any employee in a defense intelligence position if the Secretary—

(1) considers that action to be in the interests of the United States; and

(2) determines that the procedures prescribed in other provisions of law that authorize the termination of the employment of such employee cannot be invoked in a manner consistent with the national security.

(b) FINALITY.—A decision by the Secretary of Defense to terminate the employment of an employee under this section is final and may not be appealed or reviewed outside the Department of Defense.

(c) NOTIFICATION TO CONGRESSIONAL COMMITTEES.—Whenever the Secretary of Defense terminates the employment of an employee under the authority of this section, the Secretary shall promptly notify the congressional oversight committees of such termination.

(d) PRESERVATION OF RIGHT TO SEEK OTHER EMPLOYMENT.—Any termination of employment under this section does not affect the right of the employee involved to seek or accept employment with any other department or agency of the United States if that employee is declared eligible for such employment by the Director of the Office of Personnel Management.

(e) LIMITATION ON DELEGATION.—The authority of the Secretary of Defense under this section may be delegated only to the Deputy Secretary of Defense, the head of an intelligence component of the Department of Defense (with respect to employees of that component), or the Secretary of a military department (with respect to employees of that department). An action to terminate employment of such an employee by any such official may be appealed to the Secretary of Defense.

(Added Pub. L. 104–201, div. A, title XVI, § 1632(b), Sept. 23, 1996, 110 Stat. 2748.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 1590(e) and 1604(e) of this title prior to repeal by Pub. L. 104–201, §§ 1632(a)(3), 1633(a).

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 1593 of this title.

§ 1610. Reductions and other adjustments in force

(a) IN GENERAL.—The Secretary of Defense shall prescribe regulations for the separation of employees in defense intelligence positions, including members of the Defense Intelligence Senior Executive Service and employees in Intelligence Senior Level positions, during a reduction in force or other adjustment in force. The regulations shall apply to such a reduction in force or other adjustment in force notwithstanding sections 3501(b) and 3502 of title 5.

(b) MATTERS TO BE GIVEN EFFECT.—The regulations shall give effect to the following:

(1) Tenure of employment.

(2) Military preference, subject to sections 3501(a)(3) and 3502(b) of title 5.

(3) The veteran's preference under section 3502(b) of title 5.

(4) Performance.

(5) Length of service computed in accordance with the second sentence of section 3502(a) of title 5.

(c) REGULATIONS RELATING TO DEFENSE INTELLIGENCE SES.—The regulations relating to removal from the Defense Intelligence Senior Executive Service in a reduction in force or other adjustment in force shall be consistent with section 3595(a) of title 5.

(d) RIGHT OF APPEAL.—(1) The regulations shall provide a right of appeal regarding a personnel action under the regulations. The appeal shall be determined within the Department of Defense. An appeal determined at the highest level provided in the regulations shall be final and not subject to review outside the Department of Defense. A personnel action covered by the regulations is not subject to any other provision of law that provides appellate rights or procedures.

(2) Notwithstanding paragraph (1), a preference eligible referred to in section 7511(a)(1)(B) of title 5 may elect to have an appeal of a personnel action taken against the preference eligible under the regulation determined by the Merit Systems Protection Board instead of having the appeal determined within the Department of Defense. Section 7701 of title 5 shall apply to any such appeal to the Merit Systems Protection Board.

(e) CONSULTATION WITH OPM.—Regulations under this section shall be prescribed in consultation with the Director of the Office of Personnel Management.

(Added Pub. L. 104–201, div. A, title XVI, § 1632(b), Sept. 23, 1996, 110 Stat. 2749.)

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 1593 of this title.

§ 1611. Postemployment assistance: certain terminated intelligence employees

(a) AUTHORITY.—Subject to subsection (c), the Secretary of Defense may, in the case of any individual who is a qualified former intelligence employee, use appropriated funds—

(1) to assist that individual in finding and qualifying for employment other than in a defense intelligence position;

(2) to assist that individual in meeting the expenses of treatment of medical or psychological disabilities of that individual; and

(3) to provide financial support to that individual during periods of unemployment.

(b) QUALIFIED FORMER INTELLIGENCE EMPLOYEES.—For purposes of this section, a qualified former intelligence employee is an individual who was employed as a civilian employee of the Department of Defense in a sensitive defense intelligence position—

(1) who has been found to be ineligible for continued access to information designated as ''Sensitive Compartmented Information'' and employment in a defense intelligence position; or

(2) whose employment in a defense intelligence position has been terminated.

(c) CONDITIONS.—Assistance may be provided to a qualified former intelligence employee under subsection (a) only if the Secretary determines that such assistance is essential to—

(1) maintain the judgment and emotional stability of the qualified former intelligence employee; and

(2) avoid circumstances that might lead to the unlawful disclosure of classified information to which the qualified former intelligence employee had access.

(d) DURATION OF ASSISTANCE.—Assistance may not be provided under this section in the case of any individual after the end of the five-year period beginning on the date of the termination of the employment of the individual in a defense intelligence position.

(Added Pub. L. 103–359, title VIII, § 806(a)(1), Oct. 14, 1994, 108 Stat. 3441, § 1599; amended Pub. L. 104–106, div. A, title XV, § 1502(a)(11), Feb. 10, 1996, 110 Stat. 503; renumbered § 1611 and amended Pub. L. 104–201, div. A, title XVI, § 1632(c), Sept. 23, 1996, 110 Stat. 2749; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 106–398, § 1 [[div. A], title XI, § 1141(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–318; Pub. L. 107–107, div. A, title X, § 1048(a)(15), Dec. 28, 2001, 115 Stat. 1223; Pub. L. 107–306, title VIII, § 811(b)(4)(B), Nov. 27, 2002, 116 Stat. 2423; Pub. L. 108–177, title III, § 361(h), Dec. 13, 2003, 117 Stat. 2625.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 1604(e)(4) of this title and in section 17 of Pub. L. 86–36 as added by Pub. L. 102–88, title V, § 503, Aug. 14, 1991, 105 Stat. 436, set out as a note under section 402 of Title 50, War and National Defense, prior to repeal by Pub. L. 103–359, § 806(b).

AMENDMENTS

2003—Subsec. (e). Pub. L. 108–177 struck out heading and text of subsec. (e). Text read as follows:

''(1) The Secretary of Defense shall submit to the congressional committees specified in paragraph (3) an annual report with respect to any expenditure made under this section.

''(2) In the case of a report required to be submitted under paragraph (1) to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives, the date for the submittal of such report shall be as provided in section 507 of the National Security Act of 1947.

''(3) The committees referred to in paragraph (1) are the following:

''(A) The Committee on Armed Services, the Committee on Appropriations, and the Permanent Select Committee on Intelligence of the House of Representatives.

''(B) The Committee on Armed Services, the Committee on Appropriations, and the Select Committee on Intelligence of the Senate.''

2002—Subsec. (e)(1). Pub. L. 107–306, § 811(b)(4)(B)(i), substituted ''paragraph (3)'' for ''paragraph (2)''.

Subsec. (e)(2), (3). Pub. L. 107–306, § 811(b)(4)(B)(ii), (iii), added par. (2) and redesignated former par. (2) as (3).

2001—Subsec. (d). Pub. L. 107–107 struck out ''with'' before ''in a defense intelligence position''.

2000—Subsec. (a)(1). Pub. L. 106–398, § 1 [[div. A], title XI, § 1141(b)(1)], substituted ''a defense intelligence position'' for ''an intelligence component of the Department of Defense''.

Subsec. (b). Pub. L. 106–398, § 1 [[div. A], title XI, § 1141(b)(2)], substituted ''sensitive defense intelligence position'' for ''sensitive position in an intelligence component of the Department of Defense'' in introductory provisions and ''in a defense intelligence position''

for ''with the intelligence component'' in pars. (1) and (2).

Subsec. (d). Pub. L. 106–398, § 1 [[div. A], title XI, § 1141(b)(3)], substituted ''in a defense intelligence position'' for ''an intelligence component of the Department of Defense''.

Subsec. (f). Pub. L. 106–398, § 1 [[div. A], title XI, § 1141(b)(4)], struck out heading and text of subsec. (f). Text read as follows: ''In this section, the term 'intelligence component of the Department of Defense' includes the National Reconnaissance Office and any intelligence component of a military department.''

1999—Subsec. (e)(2)(A). Pub. L. 106–65 substituted ''Committee on Armed Services'' for ''Committee on National Security''.

1996—Pub. L. 104–201 renumbered section 1599 of this title as this section.

Subsec. (e)(2)(A). Pub. L. 104–106, § 1502(a)(11)(A), substituted ''The Committee on National Security, the Committee on Appropriations,'' for ''The Committees on Armed Services and Appropriations''.

Subsec. (e)(2)(B). Pub. L. 104–106, § 1502(a)(11)(B), substituted ''The Committee on Armed Services, the Committee on Appropriations,'' for ''The Committees on Armed Services and Appropriations''.

Subsec. (f). Pub. L. 104–201 substituted ''includes the National Reconnaissance Office and any intelligence component of a military department.'' for ''means any of the following:

''(1) The National Security Agency.

''(2) The Defense Intelligence Agency.

''(3) The National Reconnaissance Office.

''(4) The Central Imagery Office.

''(5) The intelligence components of any of the military departments.''

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–177, title III, § 361(n), Dec. 13, 2003, 117 Stat. 2626, provided that: ''The amendments made by this section [amending this section, section 1681b of Title 15, Commerce and Trade, and sections 402a, 403–5, 404g, 404i, 415b, and 2366 of Title 50, War and National Defense, repealing section 540C of Title 28, Judiciary and Judicial Procedure, and section 404n–3 of Title 50, and repealing provisions set out as a note under section 402a of Title 50] shall take effect on December 31, 2003.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as a note under section 1593 of this title.

§ 1612. Merit system principles and civil service protections: applicability

(a) APPLICABILITY OF MERIT SYSTEM PRINCIPLES.—Section 2301 of title 5 shall apply to the exercise of authority under this subchapter (other than sections 1605 and 1611).

(b) CIVIL SERVICE PROTECTIONS.—(1) If, in the case of a position established under authority other than section 1601(a)(1) of this title that is reestablished as an excepted service position under that section, the provisions of law referred to in paragraph (2) applied to the person serving in that position immediately before the position is so reestablished and such provisions of law would not otherwise apply to the person while serving in the position as so reestablished, then such provisions of law shall, subject to paragraph (3), continue to apply to the person with respect to service in that position for as long as the person continues to serve in the position without a break in service.

(2) The provisions of law referred to in paragraph (1) are the following provisions of title 5:

(A) Section 2302, relating to prohibited personnel practices.

(B) Chapter 75, relating to adverse actions.

(3)(A) Notwithstanding any provision of chapter 75 of title 5, an appeal of an adverse action by an individual employee covered by paragraph (1) shall be determined within the Department of Defense if the employee so elects.

(B) The Secretary of Defense shall prescribe the procedures for initiating and determining appeals of adverse actions pursuant to elections made under subparagraph (A).

(Added Pub. L. 104–201, div. A, title XVI, § 1632(d), Sept. 23, 1996, 110 Stat. 2750.)

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 1593 of this title.

§ 1613. Miscellaneous provisions

(a) COLLECTIVE BARGAINING AGREEMENTS.—Nothing in sections 1601 through 1603 and 1606 through 1610 may be construed to impair the continued effectiveness of a collective bargaining agreement with respect to an agency or office that is a successor to an agency or office covered by the agreement before the succession.

(b) NOTICE TO CONGRESS OF REGULATIONS.—The Secretary of Defense shall notify Congress of any regulations prescribed to carry out this subchapter (other than sections 1605 and 1611). Such notice shall be provided by submitting a copy of the regulations to the congressional oversight committees not less than 60 days before such regulations take effect.

(Added Pub. L. 104–201, div. A, title XVI, § 1632(d), Sept. 23, 1996, 110 Stat. 2750; amended Pub. L. 105–85, div. A, title X, § 1073(a)(32), Nov. 18, 1997, 111 Stat. 1902.)

AMENDMENTS

1997—Subsec. (a). Pub. L. 105–85 substituted ''1603'' for ''1604''.

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 1593 of this title.

§ 1614. Definitions

In this subchapter:

(1) The term ''defense intelligence position'' means a civilian position as an intelligence officer or intelligence employee of the Department of Defense.

(2) The term ''intelligence component of the Department of Defense'' means any of the following:

(A) The National Security Agency.

(B) The Defense Intelligence Agency.

(C) The National Geospatial-Intelligence Agency.

(D) Any other component of the Department of Defense that performs intelligence functions and is designated by the Secretary of Defense as an intelligence component of the Department of Defense.

(E) Any successor to a component specified in, or designated pursuant to, this paragraph.

(3) The term ''congressional oversight committees'' means—

(A) the Committee on Armed Services and the Select Committee on Intelligence of the Senate; and

(B) the Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.

(4) The term ''excepted service'' has the meaning given such term in section 2103 of title 5.

(5) The term ''preference eligible'' has the meaning given such term in section 2108(3) of title 5.

(6) The term ''Senior Executive Service position'' has the meaning given such term in section 3132(a)(2) of title 5.

(7) The term ''collective bargaining agreement'' has the meaning given such term in section 7103(8) of title 5.

(Added Pub. L. 104–201, div. A, title XVI, § 1632(d), Sept. 23, 1996, 110 Stat. 2750; amended Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 106–398, § 1 [[div. A], title XI, § 1141(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–319; Pub. L. 108–136, div. A, title IX, § 921(d)(7), Nov. 24, 2003, 117 Stat. 1569.)

AMENDMENTS

2003—Par. (2)(C). Pub. L. 108–136 substituted ''National Geospatial-Intelligence Agency'' for ''National Imagery and Mapping Agency''.

2000—Par. (1). Pub. L. 106–398 substituted ''of the Department of Defense'' for ''of an intelligence component of the Department of Defense or of a military department''.

1999—Par. (3)(B). Pub. L. 106–65 substituted ''Committee on Armed Services'' for ''Committee on National Security''.

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 1593 of this title.

SUBCHAPTER II—DEFENSE INTELLIGENCE AGENCY PERSONNEL

Sec.
1621. Defense Intelligence Agency merit pay system.
1622. Uniform allowance: civilian employees.
1623. Financial assistance to certain employees in acquisition of critical skills.

§ 1621. Defense Intelligence Agency merit pay system

The Secretary of Defense may by regulation establish a merit pay system for such employees of the Defense Intelligence Agency as the Secretary considers appropriate. The merit pay system shall be designed to carry out purposes consistent with those set forth in section 5401 of title 5, as in effect on October 31, 1993.

(Added Pub. L. 97–89, title VII, § 701(a)(1), Dec. 4, 1981, 95 Stat. 1160, § 1602; amended Pub. L. 98–615, title II, § 204(b), Nov. 8, 1984, 98 Stat. 3216; Pub. L. 103–89, § 3(b)(3)(A), Sept. 30, 1993, 107 Stat. 982; Pub. L. 103–359, title V, § 501(b)(1)(C), Oct. 14, 1994, 108 Stat. 3428; renumbered § 1621 and amended Pub. L. 104–201, div. A, title XVI, §§ 1632(a)(1), 1633(d), Sept. 23, 1996, 110 Stat. 2745, 2752.)

REFERENCES IN TEXT

Section 5401 of title 5, referred to in text, was repealed by Pub. L. 103–89, § 3(a)(1), (c), Sept. 30, 1993, 107 Stat. 981, eff. Nov. 1, 1993.

PRIOR PROVISIONS

A prior section 1621, added Pub. L. 99–145, title IX, § 924(a)(1), Nov. 8, 1985, 99 Stat. 697; amended Pub. L. 99–433, title I, § 110(g)(2), Oct. 1, 1986, 100 Stat. 1004; Pub. L. 100–26, § 7(c)(2), (k)(2), Apr. 21, 1987, 101 Stat. 280, 284; Pub. L. 101–189, div. A, title VIII, § 853(c)(1), Nov. 29, 1989, 103 Stat. 1518, defined ''program manager'', ''procurement command'', and ''major defense acquisition program'', prior to repeal by Pub. L. 101–510, div. A, title XII, § 1207(c)(4), Nov. 5, 1990, 104 Stat. 1665; Pub. L. 102–190, div. A, title X, § 1061(a)(26)(C)(i), Dec. 5, 1991, 105 Stat. 1474, effective Oct. 1, 1993.

AMENDMENTS

1996—Pub. L. 104–201 renumbered section 1602 of this title as this section and struck out ''and Central Imagery Office'' after ''Intelligence Agency''.

1994—Pub. L. 103–359 inserted ''and Central Imagery Office'' after ''Defense Intelligence Agency''.

1993—Pub. L. 103–89 inserted '', as in effect on October 31, 1993''.

1984—Pub. L. 98–615 substituted ''section 5401 of title 5'' for ''section 5401(a) of title 5''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as a note under section 1593 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–89 effective Nov. 1, 1993, see section 3(c) of Pub. L. 103–89, set out as a note under section 3372 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 205 of Pub. L. 98–615 provided that amendment by Pub. L. 98–615 was effective Oct. 1, 1984, and applicable with respect to pay periods commencing on or after that date, with certain exceptions and qualifications.

EFFECTIVE DATE

Section 806 of Pub. L. 97–89 provided that: ''The amendments made by titles V, VI, and VII and by this title [enacting this chapter and section 403m of Title 50, War and National Defense, amending sections 2108, 6304, and 8336 of Title 5, Government Organization and Employees, and sections 403e, 403f, and 405 of Title 50, enacting provisions set out as notes under this section and section 402 of Title 50, and amending provisions set out as notes under section 402 of Title 50] shall take effect as of October 1, 1981.''

§ 1622. Uniform allowance: civilian employees

(a) The Secretary of Defense may pay an allowance under this section to any civilian employee of the Defense Intelligence Agency who—

(1) is assigned to a Defense Attaché Office outside the United States; and

(2) is required by regulation to wear a prescribed uniform in performance of official duties.

(b) Notwithstanding section 5901(a) of title 5, the amount of any such allowance shall be the greater of the following:

(1) The amount provided for employees of the Department of State assigned to positions outside the United States and required by regulation to wear a prescribed uniform in performance of official duties.

(2) The maximum allowance provided under section 1593(b) of this title.

(c) An allowance paid under this section shall be treated in the same manner as is provided in

subsection (c) of section 5901 of title 5 for an allowance paid under that section.

(Added Pub. L. 100–178, title VI, § 601(a), Dec. 2, 1987, 101 Stat. 1015, § 1606; amended Pub. L. 101–189, div. A, title III, § 336(b), Nov. 29, 1989, 103 Stat. 1419; renumbered § 1622, Pub. L. 104–201, div. A, title XVI, § 1632(a)(2), Sept. 23, 1996, 110 Stat. 2745.)

PRIOR PROVISIONS

A prior section 1622, added Pub. L. 99–145, title IX, § 924(a)(1), Nov. 8, 1985, 99 Stat. 698; amended Pub. L. 99–500, § 101(c) [title X, § 933], Oct. 18, 1986, 100 Stat. 1783–82, 1783–161; Pub. L. 99–591, § 101(c) [title X, § 933], Oct. 30, 1986, 100 Stat. 3341–82, 3341–161; Pub. L. 99–661, div. A, title IX, formerly title IV, § 933, Nov. 14, 1986, 100 Stat. 3940, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 101–189, div. A, title VIII, § 853(c)(2), Nov. 29, 1989, 103 Stat. 1518, related to education, training, and experience requirements for persons assigned as program managers of major defense acquisition programs, prior to repeal by Pub. L. 101–510, div. A, title XII, § 1207(c)(1), Nov. 5, 1990, 104 Stat. 1665, effective Oct. 1, 1991.

AMENDMENTS

1996—Pub. L. 104–201 renumbered section 1606 of this title as this section.

1989—Subsec. (b)(2). Pub. L. 101–189 substituted ''The maximum allowance provided under section 1593(b) of this title'' for ''$360 per year''.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–189 effective Jan. 1, 1990, see section 336(c) of Pub. L. 101–189, set out as an Effective Date note under section 1593 of this title.

§ 1623. Financial assistance to certain employees in acquisition of critical skills

(a) The Secretary of Defense shall establish an undergraduate training program with respect to civilian employees of the Defense Intelligence Agency that is similar in purpose, conditions, content, and administration to the program which the Secretary of Defense is authorized to establish under section 16 of the National Security Agency Act of 1959 (50 U.S.C. 402 note) for civilian employees of the National Security Agency.

(b) Any payments made by the Secretary to carry out the program required to be established by subsection (a) may be made in any fiscal year only to the extent that appropriated funds are available for that purpose.

(Added Pub. L. 101–193, title V, § 507(a)(1), Nov. 30, 1989, 103 Stat. 1709, § 1608; renumbered § 1623, Pub. L. 104–201, div. A, title XVI, § 1632(a)(2), Sept. 23, 1996, 110 Stat. 2745.)

PRIOR PROVISIONS

A prior section 1623, added Pub. L. 99–145, title IX, § 924(a)(1), Nov. 8, 1985, 99 Stat. 698; amended Pub. L. 99–661, div. A, title XIII, § 1343(a)(10), Nov. 14, 1986, 100 Stat. 3993; Pub. L. 100–26, § 7(j)(4), Apr. 21, 1987, 101 Stat. 283; Pub. L. 101–189, div. A, title VIII, § 853(c)(3), Nov. 29, 1989, 103 Stat. 1519, related to education, training, and experience requirements for general and flag officers assigned to a procurement command, prior to repeal by Pub. L. 101–510, div. A, title XII, § 1207(c)(3), Nov. 5, 1990, 104 Stat. 1665, effective Oct. 1, 1992.

A prior section 1624, added Pub. L. 99–145, title IX, § 924(a)(1), Nov. 8, 1985, 99 Stat. 698, required a training program for quality assurance personnel, prior to repeal by Pub. L. 101–510, div. A, title XII, § 1207(c)(4), Nov. 5, 1990, 104 Stat. 1665; Pub. L. 102–190, div. A, title X, § 1061(a)(26)(C)(i), Dec. 5, 1991, 105 Stat. 1474, effective Oct. 1, 1993.

AMENDMENTS

1996—Pub. L. 104–201 renumbered section 1608 of this title as this section.

EFFECTIVE DATE

Section 507(b) of Pub. L. 101–193 provided that: ''Section 1608 [now 1623] of title 10, United States Code, as added by subsection (a), shall take effect on the date of enactment of this Act [Nov. 30, 1989].''

CHAPTER 87—DEFENSE ACQUISITION WORKFORCE

Subchapter		Sec.
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AMENDMENTS

1991—Pub. L. 102–25, title VII, § 704(b)(1), Apr. 6, 1991, 105 Stat. 119, made technical amendment to directory language of Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1638, which enacted this chapter.

SUBCHAPTER I—GENERAL AUTHORITIES AND RESPONSIBILITIES

Sec.
1701. Management policies.
1701a. Management for acquisition workforce excellence.
1702. Under Secretary of Defense for Acquisition, Technology, and Logistics: authorities and responsibilities.
[1703. Repealed.]
1704. Service acquisition executives: authorities and responsibilities.
1705. Department of Defense Acquisition Workforce Development Fund.
[1706, 1707. Repealed.]

AMENDMENTS

2011—Pub. L. 111–383, div. A, title VIII, § 871(b), Jan. 7, 2011, 124 Stat. 4300, added item 1701a.

2008—Pub. L. 110–181, div. A, title VIII, § 852(a)(2), Jan. 28, 2008, 122 Stat. 250, added item 1705.

2003—Pub. L. 108–136, div. A, title VIII, § 836(1), Nov. 24, 2003, 117 Stat. 1551, struck out items 1703 ''Director of Acquisition Education, Training, and Career Development'', 1705 ''Directors of Acquisition Career Management in the military departments'', 1706 ''Acquisition career program boards'', and 1707 ''Personnel in the Office of the Secretary of Defense and in the Defense Agencies''.

2001—Pub. L. 107–107, div. A, title X, § 1048(b)(3)(B), Dec. 28, 2001, 115 Stat. 1225, substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics: authorities and responsibilities'' for ''Under Secretary of Defense for Acquisition and Technology: authorities and responsibilities'' in item 1702.

1993—Pub. L. 103–160, div. A, title IX, § 904(d)(2), Nov. 30, 1993, 107 Stat. 1728, inserted ''and Technology'' after ''Acquisition'' in item 1702.

§ 1701. Management policies

(a) POLICIES AND PROCEDURES.—The Secretary of Defense shall establish policies and procedures for the effective management (including accession, education, training, and career development) of persons serving in acquisition positions in the Department of Defense.

(b) UNIFORM IMPLEMENTATION.—The Secretary shall ensure that, to the maximum extent practicable, acquisition workforce policies and procedures established in accordance with this chapter are uniform in their implementation throughout the Department of Defense.

(Added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1638.)

EFFECTIVE DATE

Section 1211 of title XII of Pub. L. 101–510 provided that: ''Except as otherwise provided in this title [see Short Title note below], this title and the amendments made by this title, including chapter 87 of title 10, United States Code (as added by section 1202), shall take effect on the date of the enactment of this Act [Nov. 5, 1990].''

SHORT TITLE

Section 1201 of title XII of Pub. L. 101–510 provided that: ''This title [enacting this chapter, sections 5379 and 5380 of Title 5, Government Organization and Employees, and section 317 of Title 37, Pay and Allowances of the Uniformed Services, amending sections 101 and 2435 of this title and sections 4107, 4301, 5102, 5532, 5724, 5742, 5924, 5942, 8344, and 8468 of Title 5, repealing sections 1621 to 1624 of this title, enacting provisions set out as notes under this section and sections 1621 to 1623, 1705, 1721, 1722, 1724, 1733, 1734, 1746, 1761, 1762, and 2435 of this title, sections 3326, 5380, and 5532 of Title 5, and section 317 of Title 37, and repealing provisions set out as a note under section 2304 of this title] may be cited as the 'Defense Acquisition Workforce Improvement Act'.''

REGULATIONS

Section 1210(a) of title XII of Pub. L. 101–510 provided that: ''Unless otherwise provided in this title [see Short Title note above] and in subsection (b) [set out below], the Secretary of Defense shall promulgate regulations to implement this title and the amendments made by this title not later than one year after the date of the enactment of this Act [Nov. 5, 1990].''

COORDINATION OF HUMAN SYSTEMS INTEGRATION ACTIVITIES RELATED TO ACQUISITION PROGRAMS

Pub. L. 110–181, div. A, title II, § 231, Jan. 28, 2008, 122 Stat. 45, provided that:

''(a) IN GENERAL.—The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall coordinate and manage human systems integration activities throughout the acquisition programs of the Department of Defense.

''(b) ADMINISTRATION.—In carrying out subsection (a), the Secretary shall designate a senior official to be responsible for the effort.

''(c) RESPONSIBILITIES.—In carrying out this section, the senior official designated in subsection (b) shall—

''(1) coordinate the planning, management, and execution of such activities; and

''(2) identify and recommend, as appropriate, resource requirements for human systems integration activities.

''(d) DESIGNATION.—The designation required by subsection (b) shall be made not later than 60 days after the date of the enactment of this Act [Jan. 28, 2008].''

REQUIREMENTS FOR SENIOR DEPARTMENT OF DEFENSE OFFICIALS SEEKING EMPLOYMENT WITH DEFENSE CONTRACTORS

Pub. L. 110–181, div. A, title VIII, § 847, Jan. 28, 2008, 122 Stat. 243, provided that:

''(a) REQUIREMENT TO SEEK AND OBTAIN WRITTEN OPINION.—

''(1) REQUEST.—An official or former official of the Department of Defense described in subsection (c) who, within two years after leaving service in the Department of Defense, expects to receive compensation from a Department of Defense contractor, shall, prior to accepting such compensation, request a written opinion regarding the applicability of post-employment restrictions to activities that the official or former official may undertake on behalf of a contractor.

''(2) SUBMISSION OF REQUEST.—A request for a written opinion under paragraph (1) shall be submitted in writing to an ethics official of the Department of Defense having responsibility for the organization in which the official or former official serves or served and shall set forth all information relevant to the request, including information relating to government positions held and major duties in those positions, actions taken concerning future employment, positions sought, and future job descriptions, if applicable.

''(3) WRITTEN OPINION.—Not later than 30 days after receiving a request by an official or former official of the Department of Defense described in subsection (c), the appropriate ethics counselor shall provide such official or former official a written opinion regarding the applicability or inapplicability of post-employment restrictions to activities that the official or former official may undertake on behalf of a contractor.

''(4) CONTRACTOR REQUIREMENT.—A Department of Defense contractor may not knowingly provide compensation to a former Department of Defense official described in subsection (c) within two years after such former official leaves service in the Department of Defense, without first determining that the former official has sought and received (or has not received after 30 days of seeking) a written opinion from the appropriate ethics counselor regarding the applicability of post-employment restrictions to the activities that the former official is expected to undertake on behalf of the contractor.

''(5) ADMINISTRATIVE ACTIONS.—In the event that an official or former official of the Department of Defense described in subsection (c), or a Department of Defense contractor, knowingly fails to comply with the requirements of this subsection, the Secretary of Defense may take any of the administrative actions set forth in section 27(e) of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 423(e)) [now 41 U.S.C. 2105] that the Secretary of Defense determines to be appropriate.

''(b) RECORDKEEPING REQUIREMENT.—

''(1) DATABASE.—Each request for a written opinion made pursuant to this section, and each written opinion provided pursuant to such a request, shall be retained by the Department of Defense in a central database or repository for not less than five years beginning on the date on which the written opinion was provided.

''(2) INSPECTOR GENERAL REVIEW.—The Inspector General of the Department of Defense shall conduct periodic reviews to ensure that written opinions are being provided and retained in accordance with the requirements of this section. The first such review shall be conducted no later than two years after the date of the enactment of this Act [Jan. 28, 2008].

''(c) COVERED DEPARTMENT OF DEFENSE OFFICIALS.—An official or former official of the Department of Defense is covered by the requirements of this section if such official or former official—

''(1) participated personally and substantially in an acquisition as defined in section 4(16) of the Office of Federal Procurement Policy Act [now 41 U.S.C. 131] with a value in excess of $10,000,000 and serves or served—

''(A) in an Executive Schedule position under subchapter II of chapter 53 of title 5, United States Code;

''(B) in a position in the Senior Executive Service under subchapter VIII of chapter 53 of title 5, United States Code; or

''(C) in a general or flag officer position compensated at a rate of pay for grade O–7 or above under section 201 of title 37, United States Code; or

''(2) serves or served as a program manager, deputy program manager, procuring contracting officer, administrative contracting officer, source selection authority, member of the source selection evaluation board, or chief of a financial or technical evaluation team for a contract in an amount in excess of $10,000,000.

''(d) DEFINITION.—In this section, the term 'post-employment restrictions' includes—

''(1) section 27 of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 423) [now 41 U.S.C. 2101 et seq.];

''(2) section 207 of title 18, United States Code; and

''(3) any other statute or regulation restricting the employment or activities of individuals who leave government service in the Department of Defense.''

GOVERNMENT PERFORMANCE OF CRITICAL ACQUISITION FUNCTIONS

Pub. L. 109–364, div. A, title VIII, §820, Oct. 17, 2006, 120 Stat. 2330, as amended by Pub. L. 111–84, div. A, title VIII, §805(c), Oct. 28, 2009, 123 Stat. 2403, provided that:

''(a) GOAL.—It shall be the goal of the Department of Defense and each of the military departments to ensure that, within five years after the date of the enactment of this Act [Oct. 17, 2006], for each major defense acquisition program and each major automated information system program, each of the following positions is performed by a properly qualified member of the Armed Forces or full-time employee of the Department of Defense:

''(1) Program manager.

''(2) Deputy program manager.

''(3) Product support manager.

''(4) Chief engineer.

''(5) Systems engineer.

''(6) Cost estimator.

''(b) PLAN OF ACTION.—Not later than six months after the date of enactment of this Act [Oct. 17, 2006], the Secretary of Defense shall develop and begin implementation of a plan of action for recruiting, training, and ensuring appropriate career development of military and civilian personnel to achieve the objective established in subsection (a). The plan of action required by this subsection shall include specific, measurable interim milestones.

''(c) REPORTS.—Not later than one year after the date of the enactment of this Act [Oct. 17, 2006] and each year thereafter, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the progress made by the Department of Defense and the military departments toward achieving the goal established in subsection (a).

''(d) DEFINITIONS.—In this section:

''(1) The term 'major defense acquisition program' has the meaning given such term in section 2430(a) of title 10, United States Code.

''(2) The term 'major automated information system program' has the meaning given such term in section 2445a(a) of title 10, United States Code (as added by section 816 of this Act).''

DEMONSTRATION PROJECT RELATING TO CERTAIN PERSONNEL MANAGEMENT POLICIES AND PROCEDURES

Pub. L. 104–106, div. D, title XLIII, §4308, Feb. 10, 1996, 110 Stat. 669, as amended by Pub. L. 105–85, div. A, title VIII, §845, Nov. 18, 1997, 111 Stat. 1845; Pub. L. 107–314, div. A, title VIII, §813(b), Dec. 2, 2002, 116 Stat. 2609; Pub. L. 108–136, div. A, title XI, §1112, Nov. 24, 2003, 117 Stat. 1634, which encouraged the Secretary of Defense to commence a demonstration project relating to improving the personnel management policies or procedures that apply to the acquisition workforce of the Department of Defense and supporting personnel, was repealed and restated as section 1762 of this title by Pub. L. 111–383, div. A, title VIII, §872(a)(1), (b), Jan. 17, 2011, 124 Stat. 4300, 4302.

EVALUATION BY COMPTROLLER GENERAL

Section 1208 of title XII of Pub. L. 101–510, as amended by Pub. L. 102–25, title VII, §704(b)(2), Apr. 6, 1991, 105 Stat. 119; Pub. L. 102–484, div. A, title VIII, §812(g), Oct. 23, 1992, 106 Stat. 2452; Pub. L. 104–106, div. A, title XV, §1502(c)(4)(A), Feb. 10, 1996, 110 Stat. 507, provided for evaluation by Comptroller General of actions taken by Secretary of Defense to carry out requirements of Defense Acquisition Workforce Improvement Act and submission of annual reports to Congress, prior to repeal by Pub. L. 104–66, title I, §1031(b)(1), Dec. 21, 1995, 109 Stat. 714.

DEADLINES FOR QUALIFICATION REQUIREMENTS

Section 1210(b) of Pub. L. 101–510 provided that: ''Not later than October 1, 1992, the Secretary of Defense shall prescribe regulations to implement sections 1723, 1724, and 1732 of title 10, United States Code (as added by section 1202).''

§1701a. Management for acquisition workforce excellence

(a) PURPOSE.—The purpose of this chapter is to require the Department of Defense to develop and manage a highly skilled professional acquisition workforce—

(1) in which excellence and contribution to mission is rewarded;

(2) which has the technical expertise and business skills to ensure the Department receives the best value for the expenditure of public resources;

(3) which serves as a model for performance management of employees of the Department; and

(4) which is managed in a manner that complements and reinforces the management of the defense acquisition system pursuant to chapter 149 of this title.

(b) PERFORMANCE MANAGEMENT.—In order to achieve the purpose set forth in subsection (a), the Secretary of Defense shall—

(1) use the full authorities provided in subsections (a) through (d) of section 9902 of title 5, including flexibilities related to performance management and hiring and to training of managers;

(2) require managers to develop performance plans for individual members of the acquisition workforce in order to give members an understanding of how their performance contributes to their organization's mission and the success of the defense acquisition system (as defined in section 2545 of this title);

(3) to the extent appropriate, use the lessons learned from the acquisition demonstration project carried out under section 1762 of this title related to contribution-based compensation and appraisal, and how those lessons may be applied within the General Schedule system;

(4) develop attractive career paths;

(5) encourage continuing education and training;

(6) develop appropriate procedures for warnings during performance evaluations for members of the acquisition workforce who consistently fail to meet performance standards;

(7) take full advantage of the Defense Civilian Leadership Program established under section 1112 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2496; 10 U.S.C. 1580 note prec.);

(8) use the authorities for highly qualified experts under section 9903 of title 5, to hire experts who are skilled acquisition professionals to—

(A) serve in leadership positions within the acquisition workforce to strengthen management and oversight;

(B) provide mentors to advise individuals within the acquisition workforce on their career paths and opportunities to advance and excel within the acquisition workforce; and

(C) assist with the design of education and training courses and the training of individuals in the acquisition workforce; and

(9) use the authorities for expedited security clearance processing pursuant to section 1564 of this title.

(c) NEGOTIATIONS.—Any action taken by the Secretary under this section, or to implement this section, shall be subject to the requirements of chapter 71 of title 5.

(d) REGULATIONS.—Any rules or regulations prescribed pursuant to this section shall be deemed an agency rule or regulation under section 7117(a)(2) of title 5, and shall not be deemed a Government-wide rule or regulation under section 7117(a)(1) of such title.

(Added Pub. L. 111–383, div. A, title VIII, § 871(a), Jan. 7, 2011, 124 Stat. 4299.)

§ 1702. Under Secretary of Defense for Acquisition, Technology, and Logistics: authorities and responsibilities

Subject to the authority, direction, and control of the Secretary of Defense, the Under Secretary of Defense for Acquisition, Technology, and Logistics shall carry out all powers, functions, and duties of the Secretary of Defense with respect to the acquisition workforce in the Department of Defense. The Under Secretary shall ensure that the policies of the Secretary of Defense established in accordance with this chapter are implemented throughout the Department of Defense. The Under Secretary shall prescribe policies and requirements for the educational programs of the defense acquisition university structure established under section 1746 of this title.

(Added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1638; amended Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 105–261, div. A, title VIII, § 815, Oct. 17, 1998, 112 Stat. 2088; Pub. L. 107–107, div. A, title X, § 1048(b)(2), (3)(A), Dec. 28, 2001, 115 Stat. 1225.)

AMENDMENTS

2001—Pub. L. 107–107 substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology'' in section catchline and in text.

1998—Pub. L. 105–261 inserted at end ''The Under Secretary shall prescribe policies and requirements for the educational programs of the defense acquisition university structure established under section 1746 of this title.''

1993—Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition'' in section catchline and in text.

QUICK-REACTION SPECIAL PROJECTS ACQUISITION TEAM

Pub. L. 107–314, div. A, title VIII, § 807, Dec. 2, 2002, 116 Stat. 2608, provided that:

''(a) ESTABLISHMENT.—The Under Secretary of Defense for Acquisition, Technology, and Logistics shall establish a team of highly qualified acquisition professionals who shall be available to advise the Under Secretary on actions that can be taken to expedite the acquisition of urgently needed systems.

''(b) DUTIES.—The issues on which the team may provide advice shall include the following:

''(1) Industrial base issues, including the limited availability of suppliers.

''(2) Technology development and technology transition issues.

''(3) Issues of acquisition policy, including the length of the acquisition cycle.

''(4) Issues of testing policy and ensuring that weapon systems perform properly in combat situations.

''(5) Issues of procurement policy, including the impact of socio-economic requirements.

''(6) Issues relating to compliance with environmental requirements.''

[§ 1703. Repealed. Pub. L. 108–136, div. A, title VIII, § 831(a), Nov. 24, 2003, 117 Stat. 1549]

Section, added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1639; amended Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 107–107, div. A, title X, § 1048(b)(2), Dec. 28, 2001, 115 Stat. 1225, related to Director of Acquisition Education, Training, and Career Development.

§ 1704. Service acquisition executives: authorities and responsibilities

Subject to the authority, direction, and control of the Secretary of the military department concerned, the service acquisition executive for each military department shall carry out all powers, functions, and duties of the Secretary concerned with respect to the acquisition workforce within the military department concerned and shall ensure that the policies of the Secretary of Defense established in accordance with this chapter are implemented in that department.

(Added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1639.)

§ 1705. Department of Defense Acquisition Workforce Development Fund

(a) ESTABLISHMENT.—The Secretary of Defense shall establish a fund to be known as the ''Department of Defense Acquisition Workforce Development Fund'' (in this section referred to as the ''Fund'') to provide funds, in addition to other funds that may be available, for the recruitment, training, and retention of acquisition personnel of the Department of Defense.

(b) PURPOSE.—The purpose of the Fund is to ensure that the Department of Defense acquisition workforce has the capacity, in both personnel and skills, needed to properly perform its mission, provide appropriate oversight of contractor performance, and ensure that the Department receives the best value for the expenditure of public resources.

(c) MANAGEMENT.—The Fund shall be managed by a senior official of the Department of Defense designated by the Under Secretary of Defense for Acquisition, Technology, and Logistics for that purpose, from among persons with an ex-

tensive background in management relating to acquisition and personnel.

(d) ELEMENTS.—

(1) IN GENERAL.—The Fund shall consist of amounts as follows:

(A) Amounts credited to the Fund under paragraph (2).

(B) Amounts transferred to the Fund pursuant to paragraph (3).

(C) Any other amounts appropriated to, credited to, or deposited into the Fund by law.

(2) CREDITS TO THE FUND.—(A) There shall be credited to the Fund an amount equal to the applicable percentage for a fiscal year of all amounts expended by the Department of Defense in such fiscal year for contract services from amounts available for contract services for operation and maintenance.

(B) Subject to paragraph (4), not later than 30 days after the end of the first quarter of each fiscal year, the head of each military department and Defense Agency shall remit to the Secretary of Defense, from amounts available to such military department or Defense Agency, as the case may be, for contract services for operation and maintenance, an amount equal to the applicable percentage for such fiscal year of the amount expended by such military department or Defense Agency, as the case may be, during such fiscal year for services covered by subparagraph (A). Any amount so remitted shall be credited to the Fund under subparagraph (A).

(C) For purposes of this paragraph, the applicable percentage for a fiscal year is the percentage that results in the credit to the Fund in such fiscal year of an amount as follows:

(i) For fiscal year 2010, $100,000,000.

(ii) For fiscal year 2011, $770,000,000.

(iii) For fiscal year 2012, $900,000,000.

(iv) For fiscal year 2013, $1,180,000,000.

(v) For fiscal year 2014, $1,330,000,000.

(vi) For fiscal year 2015, $1,470,000,000.

(D) The Secretary of Defense may reduce an amount specified in subparagraph (C) for a fiscal year if the Secretary determines that the amount is greater than is reasonably needed for purposes of the Fund for such fiscal year. The Secretary may not reduce the amount for a fiscal year to an amount that is less than 80 percent of the amount otherwise specified in subparagraph (C) for such fiscal year.

(3) TRANSFER OF CERTAIN UNOBLIGATED BALANCES.—To the extent provided in appropriations Acts, the Secretary of Defense may, during the 24-month period following the expiration of availability for obligation of any appropriations made to the Department of Defense for procurement, research, development, test, and evaluation, or operation and maintenance, transfer to the Fund any unobligated balance of such appropriations. Any amount so transferred shall be credited to the Fund.

(4) ADDITIONAL REQUIREMENTS AND LIMITATIONS ON REMITTANCES.—(A) In the event amounts are transferred to the Fund during a fiscal year pursuant to paragraph (1)(B) or appropriated to the Fund for a fiscal year pursuant to paragraph (1)(C), the aggregate amount otherwise required to be remitted to the Fund for that fiscal year pursuant to paragraph (2)(B) shall be reduced by the amount equal to the amounts so transferred or appropriated to the Fund during or for that fiscal year. Any reduction in the aggregate amount required to be remitted to the Fund for a fiscal year under this subparagraph shall be allocated as provided in applicable provisions of appropriations Acts or, absent such provisions, on a pro rata basis among the military departments and Defense Agencies required to make remittances to the Fund for that fiscal year under paragraph (2)(B), subject to any exclusions the Secretary of Defense determines to be necessary in the best interests of the Department of Defense.

(B) Any remittance of amounts to the Fund for a fiscal year under paragraph (2) shall be subject to the availability of appropriations for that purpose.

(e) AVAILABILITY OF FUNDS.—

(1) IN GENERAL.—Subject to the provisions of this subsection, amounts in the Fund shall be available to the Secretary of Defense for expenditure, or for transfer to a military department or Defense Agency, for the recruitment, training, and retention of acquisition personnel of the Department of Defense for the purpose of the Fund, including for the provision of training and retention incentives to the acquisition workforce of the Department.

(2) PROHIBITION.—Amounts in the Fund may not be obligated for any purpose other than purposes described in paragraph (1) or otherwise in accordance with this subsection.

(3) GUIDANCE.—The Under Secretary of Defense for Acquisition, Technology, and Logistics, acting through the senior official designated to manage the Fund, shall issue guidance for the administration of the Fund. Such guidance shall include provisions—

(A) identifying areas of need in the acquisition workforce for which amounts in the Fund may be used, including—

(i) changes to the types of skills needed in the acquisition workforce;

(ii) incentives to retain in the acquisition workforce qualified, experienced acquisition workforce personnel; and

(iii) incentives for attracting new, high-quality personnel to the acquisition workforce;

(B) describing the manner and timing for applications for amounts in the Fund to be submitted;

(C) describing the evaluation criteria to be used for approving or prioritizing applications for amounts in the Fund in any fiscal year; and

(D) describing measurable objectives of performance for determining whether amounts in the Fund are being used in compliance with this section.

(4) LIMITATION ON PAYMENTS TO OR FOR CONTRACTORS.—Amounts in the Fund shall not be available for payments to contractors or contractor employees, other than for the purpose of providing advanced training to Department of Defense employees.

(5) PROHIBITION ON PAYMENT OF BASE SALARY OF CURRENT EMPLOYEES.—Amounts in the Fund may not be used to pay the base salary of any person who was an employee of the Department serving in a position in the acquisition workforce as of January 28, 2008.

(6) DURATION OF AVAILABILITY.—Amounts credited to the Fund under subsection (d)(2) shall remain available for expenditure in the fiscal year for which credited and the two succeeding fiscal years.

(f) ANNUAL REPORT.—Not later than 60 days after the end of each fiscal year, the Secretary of Defense shall submit to the congressional defense committees a report on the operation of the Fund during such fiscal year. Each report shall include, for the fiscal year covered by such report, the following:

(1) A statement of the amounts remitted to the Secretary for crediting to the Fund for such fiscal year by each military department and Defense Agency, and a statement of the amounts credited to the Fund for such fiscal year.

(2) A description of the expenditures made from the Fund (including expenditures following a transfer of amounts in the Fund to a military department or Defense Agency) in such fiscal year, including the purpose of such expenditures.

(3) A description and assessment of improvements in the Department of Defense acquisition workforce resulting from such expenditures.

(4) Recommendations for additional authorities to fulfill the purpose of the Fund.

(5) A statement of the balance remaining in the Fund at the end of such fiscal year.

(g) ACQUISITION WORKFORCE DEFINED.—In this section, the term ''acquisition workforce'' means personnel in positions designated under section 1721 of this title as acquisition positions for purposes of this chapter.

(h) EXPEDITED HIRING AUTHORITY.—

(1) For purposes of sections 3304, 5333, and 5753 of title 5, the Secretary of Defense may—

(A) designate any category of acquisition workforce positions as positions for which there exists a shortage of candidates or there is a critical hiring need; and

(B) utilize the authorities in such sections to recruit and appoint qualified persons directly to positions so designated.

(2) The Secretary may not appoint a person to a position of employment under this subsection after September 30, 2015.

(Added Pub. L. 110–181, div. A, title VIII, § 852(a)(1), Jan. 28, 2008, 122 Stat. 248; amended Pub. L. 110–417, [div. A], title VIII, § 833, Oct. 14, 2008, 122 Stat. 4535; Pub. L. 111–84, div. A, title VIII, §§ 831, 832(a)–(g), Oct. 28, 2009, 123 Stat. 2414, 2415.)

PRIOR PROVISIONS

A prior section 1705, added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1639, related to Directors of Acquisition Career Management in the military departments, prior to repeal by Pub. L. 108–136, div. A, title VIII, § 831(a), Nov. 24, 2003, 117 Stat. 1549.

AMENDMENTS

2009—Subsec. (a). Pub. L. 111–84, § 832(g)(1), inserted ''Development'' after ''Workforce''.

Subsec. (d)(1)(B), (C). Pub. L. 111–84, § 832(a)(1), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (d)(2)(A). Pub. L. 111–84, § 832(b), substituted ''from amounts available for contract services for operation and maintenance.'' for '', other than services relating to research and development and services relating to military construction.''

Subsec. (d)(2)(B). Pub. L. 111–84, § 832(d)(1), (2)(A), substituted ''Subject to paragraph (4), not later than'' for ''Not later than'' and ''the first quarter of each fiscal year'' for ''the third fiscal year quarter of fiscal year 2008, and 30 days after the end of each fiscal year quarter thereafter'' and struck out ''quarter'' before ''for services''.

Pub. L. 111–84, § 832(c), inserted '', from amounts available to such military department or Defense Agency, as the case may be, for contract services for operation and maintenance,'' after ''remit to the Secretary of Defense''.

Subsec. (d)(2)(C), (D). Pub. L. 111–84, § 832(e), added subpars. (C) and (D) and struck out former subpars. (C) and (D), which established applicable percentages for fiscal years 2008 to 2010 and thereafter and authorized the Secretary of Defense to reduce such percentages under certain circumstances and to a certain limit.

Subsec. (d)(3). Pub. L. 111–84, § 832(a)(2), added par. (3).

Subsec. (d)(4). Pub. L. 111–84, § 832(d)(2)(B), added par. (4).

Subsec. (e)(5). Pub. L. 111–84, § 832(f), substituted ''serving in a position in the acquisition workforce as of January 28, 2008'' for ''as of the date of the enactment of the National Defense Authorization Act for Fiscal Year 2008''.

Subsec. (f). Pub. L. 111–84, § 832(g)(2), struck out ''beginning with fiscal year 2008'' after ''each fiscal year'' in introductory provisions.

Subsec. (h)(1). Pub. L. 111–84, § 831(c), struck out ''United States Code,'' after ''title 5,'' in introductory provisions.

Subsec. (h)(1)(A). Pub. L. 111–84, § 831(a)(1), substituted ''acquisition workforce positions as positions for which there exists a shortage of candidates or there is a critical hiring need'' for ''acquisition positions within the Department of Defense as shortage category positions''.

Subsec. (h)(1)(B). Pub. L. 111–84, § 831(a)(2), struck out ''highly'' after ''appoint''.

Subsec. (h)(2). Pub. L. 111–84, § 831(b), substituted ''September 30, 2015'' for ''September 30, 2012''.

2008—Subsec. (h). Pub. L. 110–417 added subsec. (h).

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–84, div. A, title VIII, § 832(h), Oct. 28, 2009, 123 Stat. 2416, provided that:

''(1) FUNDING AMENDMENTS.—The amendments made by subsections (a) through (c) [amending this section] shall take effect as of October 1, 2009.

''(2) TECHNICAL AMENDMENTS.—The amendments made by subsections (f) and (g) [amending this section] shall take effect on the date of the enactment of this Act [Oct. 28, 2009].''

EFFECTIVE DATE

Pub. L. 110–181, div. A, title VIII, § 852(b), Jan. 28, 2008, 122 Stat. 250, provided that: ''Section 1705 of title 10, United States Code, as added by subsection (a), shall take effect on the date of the enactment of this Act [Jan. 28, 2008].''

[§§ 1706, 1707. Repealed. Pub. L. 108–136, div. A, title VIII, § 831(a), Nov. 24, 2003, 117 Stat. 1549]

Section 1706, added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1639, related to acquisition career program boards.

Section 1707, added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1639; amended Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 107–107, div. A, title X, § 1048(b)(2), Dec. 28, 2001, 115 Stat. 1225, related to personnel in the Office of the Secretary of Defense and in the Defense Agencies.

SUBCHAPTER II—DEFENSE ACQUISITION POSITIONS

Sec.
1721. Designation of acquisition positions.
1722. Career development.
1722a. Special requirements for military personnel in the acquisition field.
1722b. Special requirements for civilian employees in the acquisition field.
1723. General education, training, and experience requirements.
1724. Contracting positions: qualification requirements.
[1725. Repealed.]

AMENDMENTS

2011—Pub. L. 111–383, div. A, title VIII, § 873(a)(2), Jan. 7, 2011, 124 Stat. 4303, added item 1722b.

2009—Pub. L. 111–84, div. A, title X, § 1073(c)(6), Oct. 28, 2009, 123 Stat. 2474, amended Pub. L. 110–417, § 834(a)(2). See 2008 Amendment note below.

2008—Pub. L. 110–417, [div. A], title VIII, § 834(a)(2), Oct. 14, 2008, 122 Stat. 4537, as amended by Pub. L. 111–84, div. A, title X, § 1073(c)(6), Oct. 28, 2009, 123 Stat. 2474, added item 1722a.

2003—Pub. L. 108–136, div. A, title VIII, § 836(2), Nov. 24, 2003, 117 Stat. 1551, struck out item 1725 ''Office of Personnel Management approval''.

§ 1721. Designation of acquisition positions

(a) DESIGNATION.—The Secretary of Defense shall designate in regulations those positions in the Department of Defense that are acquisition positions for purposes of this chapter.

(b) REQUIRED POSITIONS.—In designating the positions under subsection (a), the Secretary shall include, at a minimum, all acquisition-related positions in the following areas:

(1) Program management.

(2) Systems planning, research, development, engineering, and testing.

(3) Procurement, including contracting.

(4) Industrial property management.

(5) Logistics.

(6) Quality control and assurance.

(7) Manufacturing and production.

(8) Business, cost estimating, financial management, and auditing.

(9) Education, training, and career development.

(10) Construction.

(11) Joint development and production with other government agencies and foreign countries.

(c) MANAGEMENT HEADQUARTERS ACTIVITIES.—The Secretary also shall designate as acquisition positions under subsection (a) those acquisition-related positions which are in management headquarters activities and in management headquarters support activities. For purposes of this subsection, the terms ''management headquarters activities'' and ''management headquarters support activities'' have the meanings given those terms in Department of Defense Directive 5100.73, entitled ''Department of Defense Management Headquarters and Headquarters Support Activities'', dated November 12, 1996.

(Added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1640; amended Pub. L. 102–25, title VII, § 701(j)(1), Apr. 6, 1991, 105 Stat. 116; Pub. L. 105–85, div. A, title IX, § 912(f), Nov. 18, 1997, 111 Stat. 1862.)

AMENDMENTS

1997—Subsec. (c). Pub. L. 105–85 substituted ''November 12, 1996'' for ''November 25, 1988''.

1991—Subsec. (c). Pub. L. 102–25 substituted ''Activities', dated'' for ''Activities,' dated'' in last sentence.

TWENTY PERCENT REDUCTION IN DEFENSE ACQUISITION WORKFORCE

Section 905 of Pub. L. 101–510, required Secretary of Defense to reduce number of employees in Department of Defense acquisition workforce on last day of each of fiscal years 1991 through 1995 below number of employees in such workforce on last day of preceding fiscal year by not less than number equal to 4 percent of number of employees in such workforce on Sept. 30, 1990, and which defined ''Department of Defense acquisition workforce'', prior to repeal by Pub. L. 102–190, div. A, title IX, § 904, Dec. 5, 1991, 105 Stat. 1451.

DEADLINE FOR DESIGNATION OF ACQUISITION POSITIONS

Pub. L. 101–510, div. A, title XII, § 1209(b), Nov. 5, 1990, 104 Stat. 1666, as amended by Pub. L. 102–25, title VII, § 704(b)(3)(B), Apr. 6, 1991, 105 Stat. 119; Pub. L. 103–160, div. A, title IX, § 904(f), Nov. 30, 1993, 107 Stat. 1729, provided that the designation of acquisition positions required by this section was to be made by the Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Technology, not later than Oct. 1, 1991.

§ 1722. Career development

(a) CAREER PATHS.—The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall ensure that appropriate career paths for civilian and military personnel who wish to pursue careers in acquisition are identified in terms of the education, training, experience, and assignments necessary for career progression of civilians and members of the armed forces to the most senior acquisition positions. The Secretary shall make available published information on such career paths.

(b) LIMITATION ON PREFERENCE FOR MILITARY PERSONNEL.—(1) The Secretary of Defense shall ensure that no requirement or preference for a member of the armed forces is used in the consideration of persons for acquisition positions, except as provided in the policy established under paragraph (2).

(2)(A) The Secretary shall establish a policy permitting a particular acquisition position to be specified as available only to members of the armed forces if a determination is made, under criteria specified in the policy, that a member of the armed forces is required for that position by law, is essential for performance of the duties of the position, or is necessary for another compelling reason.

(B) Not later than December 15 of each year, the Under Secretary of Defense for Acquisition, Technology, and Logistics shall submit to the Secretary a report that lists each acquisition position that is restricted to members of the

armed forces under such policy and the recommendation of the Under Secretary as to whether such position should remain so restricted.

(c) OPPORTUNITIES FOR CIVILIANS TO QUALIFY.—The Secretary of Defense shall ensure that civilian personnel are provided the opportunity to acquire the education, training, and experience necessary to qualify for senior acquisition positions.

(d) BEST QUALIFIED.—The Secretary of Defense shall ensure that the policies established under this chapter are designed to provide for the selection of the best qualified individual for a position, consistent with other applicable law.

[(e) Repealed. Pub. L. 107–107, div. A, title X, § 1048(e)(3), Dec. 28, 2001, 115 Stat. 1227.]

(f) ASSIGNMENTS POLICY.—(1) The Secretary of Defense shall establish a policy on assigning military personnel to acquisition positions that provides for a balance between (A) the need for personnel to serve in career broadening positions, and (B) the need for requiring service in each such position for sufficient time to provide the stability necessary to effectively carry out the duties of the position and to allow for the establishment of responsibility and accountability for actions taken in the position.

(2) In implementing the policy established under paragraph (1), the Secretaries of the military departments shall provide, as appropriate, for longer lengths of assignments to acquisition positions than assignments to other positions.

(g) PERFORMANCE APPRAISALS.—The Secretary of each military department, acting through the service acquisition executive for that department, shall provide an opportunity for review and inclusion of any comments on any appraisal of the performance of a person serving in an acquisition position by a person serving in an acquisition position in the same acquisition career field.

(h) BALANCED WORKFORCE POLICY.—In the development of defense acquisition workforce policies under this chapter with respect to any civilian employees or applicants for employment, the Secretary of Defense or the Secretary of a military department (as applicable) shall, consistent with the merit system principles set out in paragraphs (1) and (2) of section 2301(b) of title 5, take into consideration the need to maintain a balanced workforce in which women and members of racial and ethnic minority groups are appropriately represented in Government service.

(Added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1641; amended Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 107–107, div. A, title X, § 1048(b)(2), (e)(3), Dec. 28, 2001, 115 Stat. 1225, 1227.)

AMENDMENTS

2001—Subsecs. (a), (b)(2)(B). Pub. L. 107–107, § 1048(b)(2), substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

Subsec. (e). Pub. L. 107–107, § 1048(e)(3), struck out heading and text of subsec. (e). Text read as follows: ''The Secretary of Defense shall ensure that the acquisition workforce is managed such that, for each fiscal year from October 1, 1991, through September 30, 1996, there is a substantial increase in the proportion of civilians (as compared to armed forces personnel) serving in critical acquisition positions in general, in program manager positions, and in division head positions over the proportion of civilians (as compared to armed forces personnel) in such positions on October 1, 1990.''

1993—Subsecs. (a), (b)(2)(B). Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

MILITARY POSITIONS AND ASSIGNMENTS POLICY DEADLINES

Section 1209(c), (d) of Pub. L. 101–510 provided that:

''(c) MILITARY POSITIONS POLICY DEADLINES.—(1) The policy required by paragraph (2) of section 1722(b) of title 10, United States Code (as added by section 1202), shall be established by the Secretary of Defense not later than October 1, 1991.

''(2) The first report required by section 1722(b)(2)(B) of title 10, United States Code (as added by section 1202), shall be submitted to the Secretary of Defense not later than September 30, 1993.

''(d) ASSIGNMENTS POLICY DEADLINE.—Not later than October 1, 1991, the Secretary of Defense shall establish, and require commencement of implementation of, an assignments policy pursuant to section 1722(f) of title 10, United States Code (as added by section 1202).''

§ 1722a. Special requirements for military personnel in the acquisition field

(a) REQUIREMENT FOR POLICY AND GUIDANCE REGARDING MILITARY PERSONNEL IN ACQUISITION.—The Secretary of Defense shall require the Secretary of each military department (with respect to such military department) and the Under Secretary of Defense for Acquisition, Technology, and Logistics (with respect to the Office of the Secretary of Defense, the unified combatant commands, the Defense Agencies, and the Defense Field Activities) to establish policies and issue guidance to ensure the proper development, assignment, and employment of members of the armed forces in the acquisition field to achieve the objectives of this section as specified in subsection (b).

(b) OBJECTIVES.—Policies established and guidance issued pursuant to subsection (a) shall ensure, at a minimum, the following:

(1) A career path in the acquisition field that attracts the highest quality officers and enlisted personnel.

(2) A number of command positions and senior noncommissioned officer positions, including acquisition billets reserved for general officers and flag officers under subsection (c), sufficient to ensure that members of the armed forces have opportunities for promotion and advancement in the acquisition field.

(3) A number of qualified, trained members of the armed forces eligible for and active in the acquisition field sufficient to ensure the optimum management of the acquisition functions of the Department of Defense and the appropriate use of military personnel in contingency contracting.

(c) RESERVATION OF ACQUISITION BILLETS FOR GENERAL OFFICERS AND FLAG OFFICERS.—(1) The Secretary of Defense shall—

(A) establish for each military department a sufficient number of billets coded or classified for acquisition personnel that are reserved for general officers and flag officers that are needed for the purpose of ensuring the optimum

management of the acquisition functions of the Department of Defense; and

(B) ensure that the policies established and guidance issued pursuant to subsection (a) by the Secretary of each military department reserve at least that minimum number of billets and fill the billets with qualified and trained general officers and flag officers who have significant acquisition experience.

(2) The Secretary of Defense shall ensure—

(A) a sufficient number of billets for acquisition personnel who are general officers or flag officers exist within the Office of the Secretary of Defense, the unified combatant commands, the Defense Agencies, and the Defense Field Activities to ensure the optimum management of the acquisition functions of the Department of Defense; and

(B) that the policies established and guidance issued pursuant to subsection (a) by the Secretary reserve within the Office of the Secretary of Defense, the unified combatant commands, the Defense Agencies, and the Defense Field Activities at least that minimum number of billets and fill the billets with qualified and trained general officers and flag officers who have significant acquisition experience.

(3) The Secretary of Defense shall ensure that a portion of the billets referred to in paragraphs (1) and (2) involve command of organizations primarily focused on contracting and are reserved for general officers and flag officers who have significant contracting experience.

(d) RELATIONSHIP TO LIMITATION ON PREFERENCE FOR MILITARY PERSONNEL.—Any designation or reservation of a position for a member of the armed forces as a result of a policy established or guidance issued pursuant to this section shall be deemed to meet the requirements for an exception under paragraph (2) of section 1722(b) of this title from the limitation in paragraph (1) of such section.

(e) REPORT.—Not later than January 1 of each year, the Secretary of each military department shall submit to the Under Secretary of Defense for Acquisition, Technology, and Logistics a report describing how the Secretary fulfilled the objectives of this section in the preceding calendar year. The report shall include information on the reservation of acquisition billets for general officers and flag officers within the department concerned.

(Added Pub. L. 110–417, [div. A], title VIII, § 834(a)(1), Oct. 14, 2008, 122 Stat. 4535.)

§ 1722b. Special requirements for civilian employees in the acquisition field

(a) REQUIREMENT FOR POLICY AND GUIDANCE REGARDING CIVILIAN PERSONNEL IN ACQUISITION.—The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall establish policies and issue guidance to ensure the proper development, assignment, and employment of civilian members of the acquisition workforce to achieve the objectives specified in subsection (b).

(b) OBJECTIVES.—Policies established and guidance issued pursuant to subsection (a) shall ensure, at a minimum, the following:

(1) A career path in the acquisition field that attracts the highest quality civilian personnel, from either within or outside the Federal Government.

(2) A deliberate workforce development strategy that increases attainment of key experiences that contribute to a highly qualified acquisition workforce.

(3) Sufficient opportunities for promotion and advancement in the acquisition field.

(4) A sufficient number of qualified, trained members eligible for and active in the acquisition field to ensure adequate capacity, capability, and effective succession for acquisition functions, including contingency contracting, of the Department of Defense.

(5) A deliberate workforce development strategy that ensures diversity in promotion, advancement, and experiential opportunities commensurate with the general workforce outlined in this section.

(c) INCLUSION OF INFORMATION IN ANNUAL REPORT.—The Secretary of Defense shall include in the report to Congress required under section 115b(d) of this title the following information related to the acquisition workforce for the period covered by the report (which shall be shown for the Department of Defense as a whole and separately for the Army, Navy, Air Force, Marine Corps, Defense Agencies, and Office of the Secretary of Defense):

(1) The total number of persons serving in the Acquisition Corps, set forth separately for members of the armed forces and civilian employees, by grade level and by functional specialty.

(2) The total number of critical acquisition positions held, set forth separately for members of the armed forces and civilian employees, by grade level and by other appropriate categories (including by program manager, deputy program manager, and division head positions), including average length of time served in each position. For each such category, the report shall specify the number of civilians holding such positions compared to the total number of positions filled.

(3) The number of employees to whom the requirements of subsections (b)(2)(A) and (b)(2)(B)[1] of section 1732 of this title did not apply because of the exceptions provided in paragraphs (1) and (2) of section 1732(c) of this title, set forth separately by type of exception.

(4) The number of times a waiver authority was exercised under section 1724(d), 1732(d), 1734(d), or 1736(c)[2] of this title or any other provision of this chapter (or other provision of law) which permits the waiver of any requirement relating to the acquisition workforce, and in the case of each such authority, the reasons for exercising the authority. The Secretary may present the information provided under this paragraph by category or grouping of types of waivers and reasons.

(Added Pub. L. 111–383, div. A, title VIII, § 873(a)(1), Jan. 7, 2011, 124 Stat. 4302.)

[1] So in original. Probably should be "subsections (b)(1)(A) and (b)(1)(B)".

[2] See References in Text note below.

REFERENCES IN TEXT

Section 1736 of this title, referred to in subsec. (c)(4), was repealed by Pub. L. 107–107, div. A, title X, § 1048(e)(6)(A), Dec. 28, 2001, 115 Stat. 1227.

§ 1723. General education, training, and experience requirements

(a) QUALIFICATION REQUIREMENTS.—(1) The Secretary of Defense shall establish education, training, and experience requirements for each acquisition position, based on the level of complexity of duties carried out in the position. In establishing such requirements, the Secretary shall ensure the availability and sufficiency of training in all areas of acquisition, including additional training courses with an emphasis on services contracting, market research strategies (including assessments of local contracting capabilities), long-term sustainment strategies, information technology, and rapid acquisition.

(2) In establishing such requirements for positions other than critical acquisition positions designated pursuant to section 1733 of this title, the Secretary may state the requirements by categories of positions.

(3) The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall establish requirements for continuing education and periodic renewal of an individual's certification. Any requirement for a certification renewal shall not require a renewal more often than once every five years.

(b) CAREER PATH REQUIREMENTS.—For each career path, the Secretary of Defense, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall establish requirements for the completion of course work and related on-the-job training and demonstration of qualifications in the critical acquisition-related duties and tasks of the career path. The Secretary of Defense, acting through the Under Secretary, shall also—

(1) encourage individuals in the acquisition workforce to maintain the currency of their acquisition knowledge and generally enhance their knowledge of related acquisition management disciplines through academic programs and other self-developmental activities; and

(2) develop key work experiences, including the creation of a program sponsored by the Department of Defense that facilitates the periodic interaction between individuals in the acquisition workforce and the end user in such end user's environment to enhance the knowledge base of such workforce, for individuals in the acquisition workforce so that the individuals may gain in-depth knowledge and experience in the acquisition process and become seasoned, well-qualified members of the acquisition workforce.

(c) LIMITATION ON CREDIT FOR TRAINING OR EDUCATION.—Not more than one year of a period of time spent pursuing a program of academic training or education in acquisition may be counted toward fulfilling any requirement established under this chapter for a certain period of experience.

(Added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1642; amended Pub. L. 104–201, div. A, title X, § 1074(a)(9)(A), Sept. 23, 1996, 110 Stat. 2659; Pub. L. 111–383, div. A, title VIII, §§ 873(b), 874(a), Jan. 7, 2011, 124 Stat. 4303, 4304.)

AMENDMENTS

2011—Subsec. (a). Pub. L. 111–383, § 874(a), amended subsec. (a) generally. Prior to amendment, text read as follows: "The Secretary of Defense shall establish education, training, and experience requirements for each acquisition position, based on the level of complexity of duties carried out in the position. In establishing such requirements for positions other than critical acquisition positions designated pursuant to section 1733 of this title, the Secretary may state the requirements by categories of positions."

Subsecs. (b), (c). Pub. L. 111–383, § 873(b), added subsec. (b) and redesignated former subsec. (b) as (c).

1996—Subsec. (a). Pub. L. 104–201 struck out "Unless otherwise provided in this chapter, such requirements shall take effect not later than October 1, 1993." after first sentence.

INFORMATION TECHNOLOGY ACQUISITION WORKFORCE

Pub. L. 111–383, div. A, title VIII, § 875, Jan. 7, 2011, 124 Stat. 4305, provided that:

"(a) PLAN REQUIRED.—The Secretary of Defense shall develop and carry out a plan to strengthen the part of the acquisition workforce that specializes in information technology. The plan shall include the following:

"(1) Defined targets for billets devoted to information technology acquisition.

"(2) Specific certification requirements for individuals in the acquisition workforce who specialize in information technology acquisition.

"(3) Defined career paths for individuals in the acquisition workforce who specialize in information technology acquisitions.

"(b) DEFINITIONS.—In this section:

"(1) The term 'information technology' has the meaning provided such term in section 11101 of title 40, United States Code, and includes information technology incorporated into a major weapon system.

"(2) The term 'major weapon system' has the meaning provided such term in section 2379(f) of title 10, United States Code.

"(c) DEADLINE.—The Secretary of Defense shall develop the plan required under this section not later than 270 days after the date of the enactment of this Act [Jan. 7, 2011]."

GUIDANCE AND STANDARDS FOR DEFENSE ACQUISITION WORKFORCE TRAINING REQUIREMENTS

Pub. L. 105–85, div. A, title VIII, § 853, Nov. 18, 1997, 111 Stat. 1851, which related to guidance and standards for defense acquisition workforce training requirements, was repealed and restated as section 1748 of this title by Pub. L. 111–383, div. A, title VIII, § 874(b)(1), (4), Jan. 7, 2011, 124 Stat. 4304, 4305.

FULFILLMENT STANDARDS FOR MANDATORY TRAINING

Pub. L. 102–484, div. A, title VIII, § 812(c), Oct. 23, 1992, 106 Stat. 2451, as amended by Pub. L. 105–85, div. A, title X, § 1073(d)(2)(A), Nov. 18, 1997, 111 Stat. 1905, provided that the Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Technology, was to develop, not later than 90 days after Oct. 23, 1992, fulfillment standards, and implement a program, for purposes of the training requirements of sections 1723, 1724, and 1735 of this title, and that the standards were to take effect as of Nov. 5, 1990, and cease to be in effect on Oct. 1, 1997.

§ 1724. Contracting positions: qualification requirements

(a) CONTRACTING OFFICERS.—The Secretary of Defense shall require that, in order to qualify to

serve in an acquisition position as a contracting officer with authority to award or administer contracts for amounts above the simplified acquisition threshold referred to in section 2304(g) of this title, an employee of the Department of Defense or member of the armed forces (other than the Coast Guard) must, except as provided in subsections (c) and (d)—

(1) have completed all contracting courses required for a contracting officer (A) in the case of an employee, serving in the position within the grade of the General Schedule in which the employee is serving, and (B) in the case of a member of the armed forces, in the member's grade;

(2) have at least two years of experience in a contracting position;

(3)(A) have received a baccalaureate degree from an accredited educational institution authorized to grant baccalaureate degrees, and (B) have completed at least 24 semester credit hours (or the equivalent) of study from an accredited institution of higher education in any of the following disciplines: accounting, business, finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, and organization and management; and

(4) meet such additional requirements, based on the dollar value and complexity of the contracts awarded or administered in the position, as may be established by the Secretary of Defense for the position.

(b) GS–1102 SERIES POSITIONS AND SIMILAR MILITARY POSITIONS.—(1) The Secretary of Defense shall require that in order to qualify to serve in a position in the Department of Defense that is in the GS–1102 occupational series an employee or potential employee of the Department of Defense meet the requirements set forth in paragraph (3) of subsection (a). The Secretary may not require that in order to serve in such a position an employee or potential employee meet any of the requirements of paragraphs (1) and (2) of that subsection.

(2) The Secretary of Defense shall require that in order for a member of the armed forces to be selected for an occupational specialty within the armed forces that (as determined by the Secretary) is similar to the GS–1102 occupational series a member of the armed forces meet the requirements set forth in paragraph (3) of subsection (a). The Secretary may not require that in order to be selected for such an occupational specialty a member meet any of the requirements of paragraphs (1) and (2) of that subsection.

(c) EXCEPTIONS.—The qualification requirements imposed by the Secretary of Defense pursuant to subsections (a) and (b) shall not apply to an employee of the Department of Defense or member of the armed forces who—

(1) served as a contracting officer with authority to award or administer contracts in excess of the simplified acquisition threshold on or before September 30, 2000;

(2) served, on or before September 30, 2000, in a position either as an employee in the GS–1102 series or as a member of the armed forces in a similar occupational specialty;

(3) is in the contingency contracting force; or

(4) is described in subsection (e)(1)(B).

(d) WAIVER.—The Secretary of Defense may waive any or all of the requirements of subsections (a) and (b) with respect to an employee of the Department of Defense or member of the armed forces if the Secretary determines that the individual possesses significant potential for advancement to levels of greater responsibility and authority, based on demonstrated job performance and qualifying experience. With respect to each waiver granted under this subsection, the Secretary shall set forth in a written document the rationale for the decision of the Secretary to waive such requirements.

(e) DEVELOPMENTAL OPPORTUNITIES.—(1) The Secretary of Defense may—

(A) establish or continue one or more programs for the purpose of recruiting, selecting, appointing, educating, qualifying, and developing the careers of individuals to meet the requirements in subparagraphs (A) and (B) of subsection (a)(3);

(B) appoint individuals to developmental positions in those programs; and

(C) separate from the civil service after a three-year probationary period any individual appointed under this subsection who fails to meet the requirements described in subsection (a)(3).

(2) To qualify for any developmental program described in paragraph (1)(B), an individual shall have—

(A) been awarded a baccalaureate degree, with a grade point average of at least 3.0 (or the equivalent), from an accredited institution of higher education authorized to grant baccalaureate degrees; or

(B) completed at least 24 semester credit hours or the equivalent of study from an accredited institution of higher education in any of the disciplines of accounting, business, finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, or organization and management.

(f) CONTINGENCY CONTRACTING FORCE.—The Secretary shall establish qualification requirements for the contingency contracting force consisting of members of the armed forces whose mission is to deploy in support of contingency operations and other operations of the Department of Defense, including—

(1) completion of at least 24 semester credit hours or the equivalent of study from an accredited institution of higher education or similar educational institution in any of the disciplines of accounting, business, finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, or organization and management; or

(2) passing an examination that demonstrates skills, knowledge, or abilities comparable to that of an individual who has completed at least 24 semester credit hours or the equivalent of study in any of the disciplines described in paragraph (1).

(Added Pub. L. 101–510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1642; amended Pub. L. 103–35, title I, §101, May 31, 1993, 107 Stat. 97;

Pub. L. 104–201, div. A, title X, § 1074(a)(9)(B), Sept. 23, 1996, 110 Stat. 2659; Pub. L. 106–398, § 1 [[div. A], title VIII, § 808(a)–(d)], Oct. 30, 2000, 114 Stat. 1654, 1654A–208; Pub. L. 107–107, div. A, title VIII, § 824(a), Dec. 28, 2001, 115 Stat. 1183; Pub. L. 108–136, div. A, title VIII, § 831(b)(1), Nov. 24, 2003, 117 Stat. 1549; Pub. L. 108–375, div. A, title X, § 1084(d)(14), (h)(1), Oct. 28, 2004, 118 Stat. 2062, 2064.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (a)(1)(A), is set out under section 5332 of Title 5, Government Organization and Employees.

AMENDMENTS

2004—Subsec. (a)(3)(B). Pub. L. 108–375, § 1084(h)(1), amended directory language of Pub. L. 107–107, § 824(a)(1)(C). See 2001 Amendment note below.

Subsec. (d). Pub. L. 108–375, § 1084(d)(14), substituted ''the decision of the Secretary'' for ''its decision'' before ''to waive such requirements''.

2003—Subsec. (d). Pub. L. 108–136 substituted ''The Secretary of Defense may waive any or all of the requirements of subsections (a) and (b) with respect to an employee of the Department of Defense or member of the armed forces if the Secretary determines'' for ''The acquisition career program board concerned may waive any or all of the requirements of subsections (a) and (b) with respect to an employee of the Department of Defense or member of the armed forces if the board certifies'' in first sentence and ''the Secretary'' for ''the board'' in second sentence, and struck out third sentence which read ''Such document shall be submitted to and retained by the Director of Acquisition Education, Training, and Career Development.''

2001—Subsec. (a). Pub. L. 107–107, § 824(a)(1)(A), reenacted heading without change and substituted introductory provisions for provisions which read ''The Secretary of Defense shall require that in order to qualify to serve in an acquisition position as a contracting officer with authority to award or administer contracts for amounts above the simplified acquisition threshold referred to in section 2304(g) of this title, a person must—''.

Subsec. (a)(1). Pub. L. 107–107, § 824(a)(1)(B), struck out ''mandatory'' before ''contracting courses'' and substituted cls. (A) and (B) for ''at the grade level, or in the position within the grade of the General Schedule (in the case of an employee), that the person is serving in;''.

Subsec. (a)(3)(B). Pub. L. 107–107, § 824(a)(1)(C), as amended by Pub. L. 108–375, § 1084(h)(1), inserted comma after ''business''.

Subsec. (b). Pub. L. 107–107, § 824(a)(2), added subsec. (b) and struck out former subsec. (b) which read as follows:

''(b) GS–1102 SERIES POSITIONS AND SIMILAR MILITARY POSITIONS.—The Secretary of Defense shall require that a person meet the requirements set forth in paragraph (3) of subsection (a), but not the other requirements set forth in that subsection, in order to qualify to serve in a position in the Department of Defense in—

''(1) the GS–1102 occupational series; or

''(2) a similar occupational specialty if the position is to be filled by a member of the armed forces.''

Subsecs. (c) to (f). Pub. L. 107–107, § 824(a)(3), added subsecs. (c) to (f) and struck out former subsecs. (c) and (d) which related to exception to requirements of subsecs. (a) and (b) and waiver of such requirements, respectively.

2000—Subsec. (a). Pub. L. 106–398, § 1 [[div. A], title VIII, § 808(d)], struck out ''(except as provided in subsections (c) and (d))'' after ''a person must'' in introductory provisions.

Subsec. (a)(3). Pub. L. 106–398, § 1 [[div. A], title VIII, § 808(b)(1)], inserted ''and'' before ''(B) have completed'' and struck out '', or (C) have passed an examination considered by the Secretary of Defense to demonstrate skills, knowledge, or abilities comparable to that of an individual who has completed at least 24 semester credit hours (or the equivalent) of study from an accredited institution of higher education in any of the disciplines listed in subparagraph (B)'' after ''organization and management''.

Subsec. (b). Pub. L. 106–398, § 1 [[div. A], title VIII, § 808(b)(2)], amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: ''The Secretary of Defense shall require that a person may not be employed by the Department of Defense in the GS–1102 occupational series unless the person (except as provided in subsections (c) and (d)) meets the requirements set forth in subsection (a)(3).''

Subsec. (c). Pub. L. 106–398, § 1 [[div. A], title VIII, § 808(c)], amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows:

''(1) The requirements set forth in subsections (a)(3) and (b) shall not apply to any employee who, on October 1, 1991, has at least 10 years of experience in acquisition positions, in comparable positions in other government agencies or the private sector, or in similar positions in which an individual obtains experience directly relevant to the field of contracting.

''(2) The requirements of subsections (a) and (b) shall not apply to any employee for purposes of qualifying to serve in the position in which the employee is serving on October 1, 1993, or any other position in the same or lower grade and involving the same or lower level of responsibilities as the position in which the employee is serving on such date.''

Subsec. (d). Pub. L. 106–398, § 1 [[div. A], title VIII, § 808(a)], in first sentence, substituted ''employee or member of'' for ''employee of'' and ''employee or member possesses'' for ''employee possesses''.

1996—Subsec. (a). Pub. L. 104–201, in introductory provisions, struck out '', beginning on October 1, 1993,'' after ''require that'' and substituted ''simplified acquisition threshold'' for ''small purchase threshold''.

Subsec. (b). Pub. L. 104–201, § 1074(a)(9)(B)(ii), struck out '', beginning on October 1, 1993,'' after ''require that''.

1993—Subsec. (c)(2). Pub. L. 103–35 inserted ''or lower'' before ''grade'' and before ''level''.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–375, div. A, title X, § 1084(h), Oct. 28, 2004, 118 Stat. 2064, provided that the amendment made by section 1084(h) [amending this section, section 1732 of this title, and provisions set out as a note under section 5949 of Title 5, Government Organization and Employees] is effective as of Dec. 28, 2001, and as if included in Pub. L. 107–107 as enacted.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, § 1 [[div. A], title VIII, § 808(e)], Oct. 30, 2000, 114 Stat. 1654, 1654A–208, provided that: ''This section [amending this section], and the amendments made by this section, shall take effect on October 1, 2000, and shall apply to appointments and assignments to contracting positions made on or after that date.''

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.

FULFILLMENT STANDARDS FOR MANDATORY TRAINING

For provisions relating to development of fulfillment standards for purposes of the training requirements of this section, see section 812(c) of Pub. L. 102–484, set out as a note under section 1723 of this title.

CREDIT FOR EXPERIENCE IN CERTAIN POSITIONS

Section 1209(i) of Pub. L. 101–510, as amended by Pub. L. 102–25, title VII, § 704(b)(3)(D), Apr. 6, 1991, 105 Stat. 119, provided that: ''For purposes of meeting any requirement under chapter 87 of title 10, United States Code (as added by section 1202), for a period of experience (such as requirements for experience in acquisition positions or in critical acquisition positions) and for purposes of coverage under the exceptions established by section 1724(c)(1) and section 1732(c)(1) of such title, any period of time spent serving in a position later designated as an acquisition position or a critical acquisition position under such chapter may be counted as experience in such a position for such purposes.''

[§ 1725. Repealed. Pub. L. 108–136, div. A, title VIII, § 832(a), Nov. 24, 2003, 117 Stat. 1550; amended Pub. L. 108–375, div. A, title X, § 1084(f)(1), Oct. 28, 2004, 118 Stat. 2064]

Section, added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1643, related to Office of Personnel Management approval.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–375, div. A, title X, § 1084(f), Oct. 28, 2004, 118 Stat. 2064, provided that the amendment made by section 1084(f) (amending section 832(a) of Pub. L. 108–136, which repealed this section, and sections 1742 and 2611 of this title) is effective as of Nov. 24, 2003, and as if included in Pub. L. 108–136 as enacted.

SUBCHAPTER III—ACQUISITION CORPS

Sec.
1731. Acquisition Corps: in general.
1732. Selection criteria and procedures.
1733. Critical acquisition positions.
1734. Career development.
1735. Education, training, and experience requirements for critical acquisition positions.
[1736. Repealed.]
1737. Definitions and general provisions.

AMENDMENTS

2001—Pub. L. 107–107, div. A, title X, § 1048(e)(6)(B), Dec. 28, 2001, 115 Stat. 1227, struck out item 1736 ''Applicability''.

§ 1731. Acquisition Corps: in general

(a) ACQUISITION CORPS.—The Secretary of Defense shall ensure that an Acquisition Corps is established for the Department of Defense.

(b) PROMOTION RATE FOR OFFICERS IN ACQUISITION CORPS.—The Secretary of Defense shall ensure that the qualifications of commissioned officers selected for the Acquisition Corps are such that those officers are expected, as a group, to be promoted at a rate not less than the rate for all line (or the equivalent) officers of the same armed force (both in the zone and below the zone) in the same grade.

(Added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1644; amended Pub. L. 108–136, div. A, title VIII, §§ 832(b)(1), 833(1), Nov. 24, 2003, 117 Stat. 1550.)

AMENDMENTS

2003—Subsec. (a). Pub. L. 108–136, § 833(1)(A), struck out ''each of the military departments and one or more Corps, as he considers appropriate, for the other components of'' after ''established for'' in first sentence, and struck out last sentence which read ''A separate Acquisition Corps may be established for each of the Navy and the Marine Corps.''

Subsec. (b). Pub. L. 108–136, § 833(1)(B), substituted ''the Acquisition Corps'' for ''an Acquisition Corps''.

Subsec. (c). Pub. L. 108–136, § 832(b)(1), struck out heading and text of subsec. (c). Text read as follows: ''The Secretary of Defense shall submit any requirement with respect to civilian employees established under section 1732 of this title to the Director of the Office of Personnel Management for approval. If the Director does not disapprove the requirement within 30 days after the date on which the Director receives the requirement, the requirement is deemed to be approved by the Director.''

PROMOTION RATE FOR OFFICERS IN AN ACQUISITION CORPS

Pub. L. 105–85, div. A, title VIII, § 849, Nov. 18, 1997, 111 Stat. 1846, as amended by Pub. L. 106–65, div. A, title IX, § 911(a)(1), title X, § 1067(4), Oct. 5, 1999, 113 Stat. 717, 774, directed the Secretary of a military department, upon approval, to submit to the Under Secretary of Defense for Acquisition, Technology, and Logistics a copy for review of the report of a selection board which had considered members of an Acquisition Corps of a military department for promotion to a grade above O–4, directed such Under Secretary to submit to committees of Congress a report containing the Under Secretary's assessment of the extent to which each military department was complying with the requirement set forth in section 1731(b) of this title, and provided that this section would cease to be effective on Oct. 1, 2000.

§ 1732. Selection criteria and procedures

(a) SELECTION CRITERIA AND PROCEDURES.—Selection for membership in the Acquisition Corps shall be made in accordance with criteria and procedures established by the Secretary of Defense.

(b) ELIGIBILITY CRITERIA.—Except as provided in subsections (c) and (d), only persons who meet all of the following requirements may be considered for service in the Corps:

(1) The person must meet the educational requirements prescribed by the Secretary of Defense. Such requirements, at a minimum, shall include both of the following:

(A) A requirement that the person—

(i) has received a baccalaureate degree at an accredited educational institution authorized to grant baccalaureate degrees, or

(ii) possess significant potential for advancement to levels of greater responsibility and authority, based on demonstrated analytical and decisionmaking capabilities, job performance, and qualifying experience.

(B) A requirement that the person has completed—

(i) at least 24 semester credit hours (or the equivalent) of study from an accredited institution of higher education from among the following disciplines: accounting, business finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, and organization and management; or

(ii) at least 24 semester credit hours (or the equivalent) from an accredited institution of higher education in the person's career field and 12 semester credit hours (or the equivalent) from such an institution from among the disciplines listed in clause (i) or equivalent training as prescribed by the Secretary to ensure proficiency in the disciplines listed in clause (i).

(2) The person must meet experience requirements prescribed by the Secretary of Defense.

Such requirements shall, at a minimum, include a requirement for at least four years of experience in an acquisition position in the Department of Defense or in a comparable position in industry or government.

(3) The person must meet such other requirements as the Secretary of Defense or the Secretary of the military department concerned prescribes by regulation.

(c) EXCEPTIONS.—(1) The requirements of subsections (b)(1)(A) and (b)(1)(B) shall not apply to any employee who, on October 1, 1991, has at least 10 years of experience in acquisition positions or in comparable positions in other government agencies or the private sector.

(2) The requirements of subsections (b)(1)(A) and (b)(1)(B) shall not apply to any employee who is serving in an acquisition position on October 1, 1991, and who does not have 10 years of experience as described in paragraph (1) if the employee passes an examination considered by the Secretary of Defense to demonstrate skills, knowledge, or abilities comparable to that of an individual who has completed at least 24 semester credit hours (or the equivalent) of study from an accredited institution of higher education from among the following disciplines: accounting, business, finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, and organization and management.

(d) WAIVER.—(1) Except as provided in paragraph (2), the Secretary of Defense may waive any or all of the requirements of subsection (b) with respect to an employee if the Secretary determines that the employee possesses significant potential for advancement to levels of greater responsibility and authority, based on demonstrated analytical and decisionmaking capabilities, job performance, and qualifying experience. With respect to each waiver granted under this subsection, the Secretary shall set forth in a written document the rationale for the decision of the Secretary to waive such requirements.

(2) The Secretary may not waive the requirements of subsection (b)(1)(A)(ii).

(e) MOBILITY STATEMENTS.—(1) The Secretary of Defense is authorized to require civilians in the Acquisition Corps to sign mobility statements.

(2) The Secretary of Defense shall identify which categories of civilians in the Acquisition Corps, as a condition of serving in the Corps, shall be required to sign mobility statements. The Secretary shall make available published information on such identification of categories.

(Added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1644; amended Pub. L. 102–484, div. A, title VIII, § 812(e)(1), Oct. 23, 1992, 106 Stat. 2451; Pub. L. 103–89, § 3(b)(3)(B), Sept. 30, 1993, 107 Stat. 982; Pub. L. 105–261, div. A, title VIII, § 811, Oct. 17, 1998, 112 Stat. 2086; Pub. L. 107–107, div. A, title VIII, § 824(b), title X, § 1048(e)(4), Dec. 28, 2001, 115 Stat. 1185, 1227; Pub. L. 108–136, div. A, title VIII, §§ 831(b)(2), (3), 832(b)(2), 833(2), Nov. 24, 2003, 117 Stat. 1549, 1550; Pub. L. 108–375, div. A, title VIII, § 812(a)(1), title X, § 1084(d)(14), (h)(2), Oct. 28, 2004, 118 Stat. 2013, 2062, 2064; Pub. L. 109–163, div. A, title X, § 1056(c)(3), Jan. 6, 2006, 119 Stat. 3439.)

AMENDMENTS

2006—Subsec. (c)(1), (2). Pub. L. 109–163, § 1056(c)(3)(A)(i), substituted ''(b)(1)(A) and (b)(1)(B)'' for ''(b)(2)(A) and (b)(2)(B)''.

Subsec. (c)(3). Pub. L. 109–163, § 1056(c)(3)(A)(ii), struck out par. (3) which read as follows: ''Paragraph (1) of subsection (b) shall not apply to an employee who—

''(A) having previously served in a position within a grade referred to in subparagraph (A) of that paragraph, is currently serving in the same position within a grade below GS–13 of the General Schedule, or in another position within that grade, by reason of a reduction in force or the closure or realignment of a military installation, or for any other reason other than by reason of an adverse personnel action for cause; and

''(B) except as provided in paragraphs (1) and (2), satisfies the educational, experience, and other requirements prescribed under paragraphs (2), (3), and (4) of that subsection.''

Subsec. (d)(2). Pub. L. 109–163, § 1056(c)(3)(B), substituted ''(b)(1)(A)(ii)'' for ''(b)(2)(A)(ii)''.

2004—Subsec. (a). Pub. L. 108–375, § 1084(h)(2), amended directory language of Pub. L. 107–107, § 1048(e)(4). See 2001 Amendment note below.

Subsec. (b). Pub. L. 108–375, § 812(a)(1), redesignated pars. (2) to (4) as pars. (1) to (3), respectively, and struck out former par. (1) which read as follows:

''(1)(A) In the case of an employee, the person must be currently serving in a position within grade GS–13 or above of the General Schedule.

''(B) In the case of a member of the armed forces, the person must be currently serving in the grade of major or, in the case of the Navy, lieutenant commander, or a higher grade.

''(C) In the case of an applicant for employment, the person must have experience in government or industry equivalent to the experience of a person in a position described in subparagraph (A) or (B).''

Subsec. (d)(1). Pub. L. 108–375, § 1084(d)(14), substituted ''the decision of the Secretary'' for ''its decision'' before ''to waive such requirements.''

2003—Subsec. (a). Pub. L. 108–136, § 833(2), substituted ''the Acquisition Corps'' for ''an Acquisition Corps''.

Subsec. (b)(1)(C). Pub. L. 108–136, § 831(b)(2)(A), struck out '', as validated by the appropriate career program management board'' after ''subparagraph (A) or (B)''.

Subsec. (b)(2)(A)(ii). Pub. L. 108–136, § 831(b)(2)(B), substituted ''possess'' for ''has been certified by the acquisition career program board of the employing military department as possessing''.

Subsec. (c)(2). Pub. L. 108–136, § 832(b)(2), struck out at end ''The Secretary of Defense shall submit examinations to be given to civilian employees under this paragraph to the Director of the Office of Personnel Management for approval. If the Director does not disapprove an examination within 30 days after the date on which the Director receives the examination, the examination is deemed to be approved by the Director.''

Subsec. (d)(1). Pub. L. 108–136, § 831(b)(3)(A), substituted ''the Secretary of Defense may waive any or all of the requirements of subsection (b) with respect to an employee if the Secretary determines'' for ''the acquisition career program board of a military department may waive any or all of the requirements of subsection (b) with respect to an employee of that military department if the board certifies'' in first sentence, substituted ''the Secretary'' for ''the board'' in second sentence, and struck out third sentence which read ''The document shall be submitted to and retained by the Director of Acquisition Education, Training, and Career Development.''

Subsec. (d)(2). Pub. L. 108–136, § 831(b)(3)(B), substituted ''The Secretary'' for ''The acquisition career program board of a military department''.

Subsec. (e). Pub. L. 108–136, § 833(2), substituted ''the Acquisition Corps'' for ''an Acquisition Corps'' in pars. (1) and (2).

2001—Subsec. (a). Pub. L. 107–107, § 1048(e)(4), as amended by Pub. L. 108–375, § 1084(h)(2), struck out at

end ''Such criteria and procedures shall be in effect on and after October 1, 1993.''

Subsec. (c)(2). Pub. L. 107–107, § 824(b), inserted a comma after ''business''.

1998—Subsec. (c)(3). Pub. L. 105–261 added par. (3).

1993—Subsec. (b)(1)(A). Pub. L. 103–89 substituted ''Schedule'' for ''Schedule (including any employee covered by chapter 54 of title 5)''.

1992—Subsec. (b)(2)(B)(ii). Pub. L. 102–484 inserted before period at end ''or equivalent training as prescribed by the Secretary to ensure proficiency in the disciplines listed in clause (i)''.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–375, div. A, title X, § 1084(h), Oct. 28, 2004, 118 Stat. 2064, provided that the amendment made by section 1084(h)(1) is effective as of Dec. 28, 2001, and as if included in Pub. L. 107–107 as enacted.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–89 effective Nov. 1, 1993, see section 3(c) of Pub. L. 103–89, set out as a note under section 3372 of Title 5, Government Organization and Employees.

EQUIVALENT TRAINING UNDER SUBSECTION (b)(2)(B)(ii)

Section 812(e)(2) of Pub. L. 102–484 provided that: ''The Secretary of Defense shall prescribe equivalent training for purposes of clause (ii) of section 1732(b)(2)(B) of title 10, United States Code (as amended by paragraph (1)), not later than 120 days after the date of the enactment of this Act [Oct. 23, 1992].''

§ 1733. Critical acquisition positions

(a) REQUIREMENT FOR CORPS MEMBER.—A critical acquisition position may be filled only by a member of the Acquisition Corps.

(b) DESIGNATION OF CRITICAL ACQUISITION POSITIONS.—(1) The Secretary of Defense shall designate the acquisition positions in the Department of Defense that are critical acquisition positions. Such positions shall include the following:

(A) Any acquisition position which—

(i) in the case of employees, is required to be filled by an employee in a senior position in the National Security Personnel System, as determined in accordance with guidelines prescribed by the Secretary, or in the Senior Executive Service; or

(ii) in the case of members of the armed forces, is required to be filled by a commissioned officer of the Army, Navy, Air Force, or Marine Corps who is serving in the grade of lieutenant colonel, or, in the case of the Navy, commander, or a higher grade.

(B) Other selected acquisition positions not covered by subparagraph (A), including the following:

(i) Program executive officer.

(ii) Program manager of a major defense acquisition program (as defined in section 2430 of this title) or of a significant nonmajor defense acquisition program (as defined in section 1737(a)(3) of this title).

(iii) Deputy program manager of a major defense acquisition program.

(C) Any other acquisition position of significant responsibility in which the primary duties are supervisory or management duties.

(2) The Secretary shall periodically publish a list of the positions designated under this subsection.

(Added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1646; amended Pub. L. 102–484, div. A, title X, § 1052(22), Oct. 23, 1992, 106 Stat. 2500; Pub. L. 103–89, § 3(b)(3)(C), Sept. 30, 1993, 107 Stat. 983; Pub. L. 104–201, div. A, title X, § 1074(a)(9)(C), Sept. 23, 1996, 110 Stat. 2659; Pub. L. 108–136, div. A, title VIII, § 833(2), Nov. 24, 2003, 117 Stat. 1550; Pub. L. 108–375, div. A, title VIII, § 812(a)(2), Oct. 28, 2004, 118 Stat. 2013.)

AMENDMENTS

2004—Subsec. (b)(1)(A)(i). Pub. L. 108–375 substituted ''in a senior position in the National Security Personnel System, as determined in accordance with guidelines prescribed by the Secretary,'' for ''in a position within grade GS–14 or above of the General Schedule,''.

2003—Subsec. (a). Pub. L. 108–136 substituted ''the Acquisition Corps'' for ''an Acquisition Corps''.

1996—Subsec. (a). Pub. L. 104–201 substituted ''A critical'' for ''On and after October 1, 1993, a critical''.

1993—Subsec. (b)(1)(A)(i). Pub. L. 103–89 substituted ''Schedule'' for ''Schedule (including an employee covered by chapter 54 of title 5)''.

1992—Subsec. (b)(1)(B)(ii). Pub. L. 102–484 substituted ''1737(a)(3)'' for ''1736(a)(3)''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–89 effective Nov. 1, 1993, see section 3(c) of Pub. L. 103–89, set out as a note under section 3372 of Title 5, Government Organization and Employees.

EFFECTIVE DATE FOR REQUIREMENT FOR CORPS MEMBERS TO FILL CRITICAL ACQUISITION POSITIONS

Pub. L. 101–510, div. A, title XII, § 1209(f), Nov. 5, 1990, 104 Stat. 1666, as amended by Pub. L. 102–25, title VII, § 704(b)(3)(C), Apr. 6, 1991, 105 Stat. 119; Pub. L. 103–160, div. A, title IX, § 904(f), Nov. 30, 1993, 107 Stat. 1729, provided that the Secretaries of the military departments were to make every effort to fill critical acquisition positions by Acquisition Corps members as soon as possible after Nov. 5, 1990, and that for each of the first three years after Nov. 5, 1990, the report of the Under Secretary of Defense for Acquisition and Technology to the Secretary of Defense under section 1762 of this title was to include the number of critical acquisition positions filled by Acquisition Corps members.

PUBLICATION OF LIST OF CRITICAL ACQUISITION POSITIONS

Pub. L. 101–510, div. A, title XII, § 1209(g), Nov. 5, 1990, 104 Stat. 1666, directed the Secretary of Defense to publish the first list of positions designated as critical acquisition positions under subsec. (b)(2) of this section not later than Oct. 1, 1992.

§ 1734. Career development

(a) THREE-YEAR ASSIGNMENT PERIOD.—(1) Except as provided under subsection (b) and paragraph (3), the Secretary of each military department, acting through the service acquisition executive for that department, shall provide that any person who is assigned to a critical acquisition position shall be assigned to the position for not fewer than three years. Except as provided in subsection (d), the Secretary concerned may not reassign a person from such an assignment before the end of the three-year period.

(2) A person may not be assigned to a critical acquisition position unless the person executes a written agreement to remain on active duty (in the case of a member of the armed forces) or to remain in Federal service (in the case of an employee) in that position for at least three years. The service obligation contained in such a writ-

ten agreement shall remain in effect unless and until waived by the Secretary concerned under subsection (b).

(3) The assignment period requirement of the first sentence of paragraph (1) is waived for any individual serving as a deputy program manager if the individual is assigned to a critical acquisition position upon completion of the individual's assignment as a deputy program manager.

(b) ASSIGNMENT PERIOD FOR PROGRAM MANAGERS.—(1) The Secretary of Defense shall prescribe in regulations—

(A) a requirement that a program manager and a deputy program manager (except as provided in paragraph (3)) of a major defense acquisition program be assigned to the position at least until completion of the major milestone that occurs closest in time to the date on which the person has served in the position for four years; and

(B) a requirement that, to the maximum extent practicable, a program manager who is the replacement for a reassigned program manager arrive at the assignment location before the reassigned program manager leaves.

Except as provided in subsection (d), the Secretary concerned may not reassign a program manager or deputy program manager from such an assignment until after such major milestone has occurred.

(2) A person may not be assigned to a critical acquisition position as a program manager or deputy program manager of a major defense acquisition program unless the person executes a written agreement to remain on active duty (in the case of a member of the armed forces) or to remain in Federal service (in the case of an employee) in that position at least until completion of the first major milestone that occurs closest in time to the date on which the person has served in the position for four years. The service obligation contained in such a written agreement shall remain in effect unless and until waived by the Secretary concerned under subsection (d).

(3) The assignment period requirement under subparagraph (A) of paragraph (1) is waived for any individual serving as a deputy program manager if the individual is assigned to a critical acquisition position upon completion of the individual's assignment as a deputy program manager.

(c) MAJOR MILESTONE REGULATIONS.—(1) The Secretary of Defense shall issue regulations defining what constitutes major milestones for purposes of this section. The service acquisition executive of each military department shall establish major milestones at the beginning of a major defense acquisition program consistent with such regulations and shall use such milestones to determine the assignment period for program managers and deputy program managers under subsection (b).

(2) The regulations shall require that major milestones be clearly definable and measurable events that mark the completion of a significant phase in a major defense acquisition program and that such milestones be the same as the milestones contained in the baseline description established for the program pursuant to section 2435(a) of this title. The Secretary shall require that the major milestones as defined in the regulations be included in the Selected Acquisition Report required for such program under section 2432 of this title.

(d) WAIVER OF ASSIGNMENT PERIOD.—(1) With respect to a person assigned to a critical acquisition position, the Secretary concerned may waive the prohibition on reassignment of that person (in subsection (a)(1) or (b)(1)) and the service obligation in an agreement executed by that person (under subsection (a)(2) or (b)(2)), but only in exceptional circumstances in which a waiver is necessary for reasons permitted in regulations prescribed by the Secretary of Defense.

(2) With respect to each waiver granted under this subsection, the service acquisition executive (or his delegate) shall set forth in a written document the rationale for the decision to grant the waiver.

(e) ROTATION POLICY.—(1) The Secretary of Defense shall establish a policy encouraging the rotation of members of the Acquisition Corps serving in critical acquisition positions to new assignments after completion of five years of service in such positions, or, in the case of a program manager, after completion of a major program milestone, whichever is longer. Such rotation policy shall be designed to ensure opportunities for career broadening assignments and an infusion of new ideas into critical acquisition positions.

(2) The Secretary of Defense shall establish a procedure under which the assignment of each person assigned to a critical acquisition position shall be reviewed on a case-by-case basis for the purpose of determining whether the Government and such person would be better served by a reassignment to a different position. Such a review shall be carried out with respect to each such person not later than five years after that person is assigned to a critical position.

(f) CENTRALIZED JOB REFERRAL SYSTEM.—The Secretary of Defense shall prescribe regulations providing for the use of centralized lists to ensure that persons are selected for critical positions without regard to geographic location of applicants for such positions.

(g) EXCHANGE PROGRAM.—The Secretary of Defense shall establish, for purposes of broadening the experience of members of the Acquisition Corps, a test program in which members of the Corps serving in a military department or Defense Agency are assigned or detailed to an acquisition position in another department or agency. Under the test program, the Secretary of Defense shall ensure that, to the maximum extent practicable, at least 5 percent of the members of the Acquisition Corps shall serve in such exchange assignments each year. The test program shall operate for not less than a period of three years.

(h) RESPONSIBILITY FOR ASSIGNMENTS.—The Secretary of each military department, acting through the service acquisition executive for that department, is responsible for making assignments of civilian and military personnel of that military department who are members of the Acquisition Corps to critical acquisition positions.

(Added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1646; amended Pub. L.

102–484, div. A, title VIII, § 812(a), (b), Oct. 23, 1992, 106 Stat. 2450; Pub. L. 104–201, div. A, title X, § 1074(a)(9)(D), Sept. 23, 1996, 110 Stat. 2659; Pub. L. 107–107, div. A, title X, § 1048(e)(5), Dec. 28, 2001, 115 Stat. 1227; Pub. L. 108–136, div. A, title VIII, §§ 831(b)(4), 832(b)(3), 833(2), (3), Nov. 24, 2003, 117 Stat. 1549, 1550.)

AMENDMENTS

2003—Subsec. (d)(2). Pub. L. 108–136, § 831(b)(4)(A)(ii), redesignated par. (3) as (2) and struck out at end ''The document shall be submitted to the Director of Acquisition Education, Training, and Career Development.''

Pub. L. 108–136, § 831(b)(4)(A)(i), struck out par. (2) which read as follows: ''The authority to grant such waivers may be delegated by the service acquisition executive of a military department only to the Director of Acquisition Career Management for the military department.''

Subsec. (d)(3). Pub. L. 108–136, § 831(b)(4)(A)(ii), redesignated par. (3) as (2).

Subsec. (e)(1). Pub. L. 108–136, § 833(2), substituted ''the Acquisition Corps'' for ''an Acquisition Corps''

Subsec. (e)(2). Pub. L. 108–136, § 831(b)(4)(B), struck out '', by the acquisition career program board of the department concerned,'' after ''case-by-case basis''.

Subsec. (g). Pub. L. 108–136, § 833(3)(A), substituted ''the Acquisition Corps, a test program in which members of the Corps'' for ''each Acquisition Corps, a test program in which members of a Corps''.

Pub. L. 108–136, § 832(b)(3), substituted ''The Secretary'' for ''(1) The Secretary'' and struck out par. (2) which read as follows: ''The Secretary of Defense shall submit the portion of the test program applicable to civilian employees to the Director of the Office of Personnel Management for approval. If the Director does not disapprove that portion of the test program within 30 days after the date on which the Director receives it, that portion of the test program is deemed to be approved by the Director.''

Subsec. (h). Pub. L. 108–136, § 833(3)(B), substituted ''making assignments of civilian and military personnel of that military department who are members of the Acquisition Corps'' for ''making assignments of civilian and military members of the Acquisition Corps of that military department''.

2001—Subsec. (b)(1)(B). Pub. L. 107–107, § 1048(e)(5)(A), struck out ''on and after October 1, 1991,'' before ''to the maximum extent practicable''.

Subsec. (e)(2). Pub. L. 107–107, § 1048(e)(5)(B), struck out at end ''Reviews under this subsection shall be carried out after October 1, 1995, but may be carried out before that date.''

1996—Subsec. (a)(1). Pub. L. 104–201, § 1074(a)(9)(D)(i), struck out '', on and after October 1, 1993,'' after ''provide that''.

Subsec. (b)(1)(A). Pub. L. 104–201, § 1074(a)(9)(D)(ii), struck out '', on and after October 1, 1991,'' after ''requirement that''.

1992—Subsec. (a)(1). Pub. L. 102–484, § 812(b)(1)(A), inserted before first comma ''and paragraph (3)''.

Subsec. (a)(3). Pub. L. 102–484, § 812(b)(1)(B), added par. (3).

Subsec. (b)(1)(A). Pub. L. 102–484, § 812(b)(2)(A), inserted ''(except as provided in paragraph (3))'' after ''deputy program manager''.

Subsec. (b)(3). Pub. L. 102–484, § 812(b)(2)(B), added par. (3).

Subsec. (e)(2). Pub. L. 102–484, § 812(a), inserted at end ''Reviews under this subsection shall be carried out after October 1, 1995, but may be carried out before that date.''

JOB REFERRAL SYSTEM DEADLINE

Section 1209(e) of Pub. L. 101–510 provided that: ''Not later than October 1, 1991, the Secretary of Defense shall prescribe regulations required under section 1734(f) of title 10, United States Code (as added by section 1202).''

§ 1735. Education, training, and experience requirements for critical acquisition positions

(a) QUALIFICATION REQUIREMENTS.—In establishing the education, training, and experience requirements under section 1723 of this title for critical acquisition positions, the Secretary of Defense shall, at a minimum, include the requirements set forth in subsections (b) through (e).

(b) PROGRAM MANAGERS AND DEPUTY PROGRAM MANAGERS.—Before being assigned to a position as a program manager or deputy program manager of a major defense acquisition program or a significant nonmajor defense acquisition program, a person—

(1) must have completed the program management course at the Defense Systems Management College or a management program at an accredited educational institution determined to be comparable by the Secretary of Defense;

(2) must have executed a written agreement as required in section 1734(b)(2); and

(3) in the case of—

(A) a program manager of a major defense acquisition program, must have at least eight years of experience in acquisition, at least two years of which were performed in a systems program office or similar organization;

(B) a program manager of a significant nonmajor defense acquisition program, must have at least six years of experience in acquisition;

(C) a deputy program manager of a major defense acquisition program, must have at least six years of experience in acquisition, at least two years of which were performed in a systems program office or similar organization; and

(D) a deputy program manager of a significant nonmajor defense acquisition program, must have at least four years of experience in acquisition.

(c) PROGRAM EXECUTIVE OFFICERS.—Before being assigned to a position as a program executive officer, a person—

(1) must have completed the program management course at the Defense Systems Management College or a management program at an accredited educational institution in the private sector determined to be comparable by the Secretary of Defense, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics;

(2) must have at least 10 years experience in an acquisition position, at least four years of which were performed while assigned to a critical acquisition position; and

(3) must have held a position as a program manager or a deputy program manager.

(d) GENERAL AND FLAG OFFICERS AND CIVILIANS IN EQUIVALENT POSITIONS.—Before a general or flag officer, or a civilian serving in a position equivalent in grade to the grade of such an officer, may be assigned to a critical acquisition position, the person must have at least 10 years experience in an acquisition position, at least four years of which were performed while assigned to a critical acquisition position.

(e) SENIOR CONTRACTING OFFICIALS.—Before a person may be assigned to a critical acquisition position as a senior contracting official, the person must have at least four years experience in contracting.

(Added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1648; amended Pub. L. 102–484, div. A, title VIII, § 812(d), Oct. 23, 1992, 106 Stat. 2451; Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 107–107, div. A, title X, § 1048(b)(2), Dec. 28, 2001, 115 Stat. 1225.)

AMENDMENTS

2001—Subsec. (c)(1). Pub. L. 107–107 substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

1993—Subsec. (c)(1). Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

1992—Subsec. (b)(3). Pub. L. 102–484 struck out ''or deputy program manager'' after ''program manager'' in subpars. (A) and (B), struck out ''and'' at end of subpar. (A), substituted semicolon for period at end of subpar. (B), and added subpars. (C) and (D).

FULFILLMENT STANDARDS FOR MANDATORY TRAINING

For provisions relating to development of fulfillment standards for purposes of the training requirements of this section, see section 812(c) of Pub. L. 102–484, set out as a note under section 1723 of this title.

[§ 1736. Repealed. Pub. L. 107–107, div. A, title X, § 1048(e)(6)(A), Dec. 28, 2001, 115 Stat. 1227]

Section, added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1649, related to applicability of the qualification requirements.

§ 1737. Definitions and general provisions

(a) DEFINITIONS.—In this subchapter:

(1) The term ''program manager'' means, with respect to a defense acquisition program, the member of the Acquisition Corps responsible for managing the program, regardless of the title given the member.

(2) The term ''deputy program manager'' means the person who has authority to act on behalf of the program manager in the absence of the program manager.

(3) The term ''significant nonmajor defense acquisition program'' means a Department of Defense acquisition program that is not a major defense acquisition program (as defined in section 2430 of this title) and that is estimated by the Secretary of Defense to require an eventual total expenditure for research, development, test, and evaluation of more than the dollar threshold set forth in section 2302(5)(A) of this title for such purposes for a major system or an eventual total expenditure for procurement of more than the dollar threshold set forth in section 2302(5)(A) of this title for such purpose for a major system.

(4) The term ''program executive officer'' has the meaning given such term in regulations prescribed by the Secretary of Defense.

(5) The term ''senior contracting official'' means a director of contracting, or a principal deputy to a director of contracting, serving in the office of the Secretary of a military department, the headquarters of a military department, the head of a Defense Agency, a subordinate command headquarters, or in a major systems or logistics contracting activity in the Department of Defense.

(b) LIMITATION.—Any civilian or military member of the Corps who does not meet the education, training, and experience requirements for a critical acquisition position established under this subchapter may not carry out the duties or exercise the authorities of that position, except for a period not to exceed six months, unless a waiver of the requirements is granted under subsection (c).

(c) WAIVER.—The Secretary of each military department (acting through the service acquisition executive for that department) or the Secretary of Defense (acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics) for Defense Agencies and other components of the Department of Defense may waive, on a case-by-case basis, the requirements established under this subchapter with respect to the assignment of an individual to a particular critical acquisition position. Such a waiver may be granted only if unusual circumstances justify the waiver or if the Secretary concerned (or official to whom the waiver authority is delegated) determines that the individual's qualifications obviate the need for meeting the education, training, and experience requirements established under this subchapter.

(Added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1650; amended Pub. L. 102–190, div. A, title X, § 1061(a)(8), (c), Dec. 5, 1991, 105 Stat. 1472, 1475; Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 107–107, div. A, title X, § 1048(b)(2), Dec. 28, 2001, 115 Stat. 1225; Pub. L. 108–136, div. A, title VIII, §§ 831(b)(5), 832(b)(4), 833(2), Nov. 24, 2003, 117 Stat. 1549, 1550.)

AMENDMENTS

2003—Subsec. (a)(1). Pub. L. 108–136, § 833(2), substituted ''the Acquisition Corps'' for ''an Acquisition Corps''.

Subsec. (c). Pub. L. 108–136, § 831(b)(5), substituted ''The Secretary'' for ''(1) The Secretary'' and struck out par. (2) which read as follows: ''The authority to grant such waivers may be delegated—

''(A) in the case of the service acquisition executives of the military departments, only to the Director of Acquisition Career Management for the military department concerned; and

''(B) in the case of the Under Secretary of Defense for Acquisition, Technology, and Logistics, only to the Director of Acquisition Education, Training, and Career Development.''

Subsec. (d). Pub. L. 108–136, § 832(b)(4), struck out heading and text of subsec. (d). Text read as follows: ''The Secretary of Defense shall submit any requirement with respect to civilian employees established under this subchapter to the Director of the Office of Personnel Management for approval. If the Director does not disapprove the requirement within 30 days after the date on which the Director receives the requirement, the requirement is deemed to be approved by the Director.''

2001—Subsec. (c)(1), (2)(B). Pub. L. 107–107 substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

1993—Subsec. (c)(1), (2)(B). Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Tech-

nology'' for ''Under Secretary of Defense for Acquisition''.

1991—Subsec. (a)(3). Pub. L. 102–190, § 1061(c), substituted ''the dollar threshold set forth in section 2302(5)(A) of this title for such purposes for a major system'' for ''$50,000,000 (based on fiscal year 1980 constant dollars)'' and ''the dollar threshold set forth in section 2302(5)(A) of this title for such purpose for a major system'' for ''$250,000,000 (based on fiscal year 1980 constant dollars)''.

Subsec. (c)(2)(B). Pub. L. 102–190, § 1061(a)(8), struck out comma after ''Director of Acquisition''.

SUBCHAPTER IV—EDUCATION AND TRAINING

Sec.
1741. Policies and programs: establishment and implementation.
1742. Internship, cooperative education, and scholarship programs.
[1743, 1744. Repealed.]
1745. Additional education and training programs available to acquisition personnel.
1746. Defense Acquisition University.
1747. Acquisition fellowship program.
1748. Fulfillment standards for acquisition workforce training.

AMENDMENTS

2011—Pub. L. 111–383, div. A, title VIII, §§ 874(b)(2), 877(c)(2)(B), Jan. 7, 2011, 124 Stat. 4305, 4306, substituted ''Defense Acquisition University'' for ''Defense acquisition university structure'' in item 1746 and added item 1748.

2003—Pub. L. 108–136, div. A, title VIII, § 836(3), Nov. 24, 2003, 117 Stat. 1552, substituted ''Internship, cooperative education, and scholarship programs'' for ''Intern program'' in item 1742 and struck out items 1743 ''Cooperative education program'' and 1744 ''Scholarship program''.

2002—Pub. L. 107–314, div. A, title X, § 1062(a)(10)(B), Dec. 2, 2002, 116 Stat. 2650, transferred former item 2410h from chapter 141 to this subchapter and redesignated it as item 1747.

§ 1741. Policies and programs: establishment and implementation

(a) POLICIES AND PROCEDURES.—The Secretary of Defense shall establish policies and procedures for the establishment and implementation of the education and training programs authorized by this subchapter.

(b) FUNDING LEVELS.—The Under Secretary of Defense for Acquisition, Technology, and Logistics each year shall recommend to the Secretary of Defense the funding levels to be requested in the defense budget to implement the education and training programs under this subchapter. The Secretary of Defense shall set forth separately the funding levels requested for such programs in the Department of Defense budget justification documents submitted in support of the President's budget submitted to Congress under section 1105 of title 31.

(c) PROGRAMS.—The Secretary of each military department, acting through the service acquisition executive for that department, shall establish and implement the education and training programs authorized by this subchapter. In carrying out such requirement, the Secretary concerned shall ensure that such programs are established and implemented throughout the military department concerned and, to the maximum extent practicable, uniformly with the programs of the other military departments.

(Added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1651; amended Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 107–107, div. A, title X, § 1048(b)(2), Dec. 28, 2001, 115 Stat. 1225.)

AMENDMENTS

2001—Subsec. (b). Pub. L. 107–107 substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

1993—Subsec. (b). Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

§ 1742. Internship, cooperative education, and scholarship programs

(a) PROGRAMS.—The Secretary of Defense shall conduct the following education and training programs:

(1) An intern program for purposes of providing highly qualified and talented individuals an opportunity for accelerated promotions, career broadening assignments, and specified training to prepare them for entry into the Acquisition Corps.

(2) A cooperative education credit program under which the Secretary arranges, through cooperative arrangements entered into with one or more accredited institutions of higher education, for such institutions to grant undergraduate credit for work performed by students who are employed by the Department of Defense in acquisition positions.

(3) A scholarship program for the purpose of qualifying personnel for acquisition positions in the Department of Defense.

(b) SCHOLARSHIP PROGRAM REQUIREMENTS.—Each recipient of a scholarship under a program conducted under subsection (a)(3) shall be required to sign a written agreement that sets forth the terms and conditions of the scholarship. The agreement shall be in a form prescribed by the Secretary and shall include terms and conditions, including terms and conditions addressing reimbursement in the event that a recipient fails to fulfill the requirements of the agreement, that are comparable to those set forth as a condition for providing advanced education assistance under section 2005. The obligation to reimburse the United States under an agreement under this subsection is, for all purposes, a debt owing the United States.

(Added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1651; amended Pub. L. 108–136, div. A, title VIII, § 834(a), Nov. 24, 2003, 117 Stat. 1550; Pub. L. 108–375, div. A, title VIII, § 812(b), title X, § 1084(f)(1), Oct. 28, 2004, 118 Stat. 2013, 2064.)

AMENDMENTS

2004—Pub. L. 108–375, § 1084(f)(1), amended directory language of Pub. L. 108–136, § 834(a). See 2003 Amendment note below.

Pub. L. 108–375, § 812(b), designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

2003—Pub. L. 108–136, § 834(a), as amended by Pub. L. 108–375, § 1084(f)(1), amended section catchline and text generally. Prior to amendment, text read as follows: ''The Secretary of Defense shall require that each military department conduct an intern program for purposes of providing highly qualified and talented indi-

viduals an opportunity for accelerated promotions, career broadening assignments, and specified training to prepare them for entry into the Acquisition Corps.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–375, div. A, title X, § 1084(f), Oct. 28, 2004, 118 Stat. 2064, provided that the amendment made by section 1084(f)(1) is effective as of Nov. 24, 2003, and as if included in Pub. L. 108–136 as enacted.

[§§ 1743, 1744. Repealed. Pub. L. 108–136, div. A, title VIII, § 834(b), Nov. 24, 2003, 117 Stat. 1551]

Section 1743, added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1651, related to cooperative education program.

Section 1744, added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1652; amended Pub. L. 102–484, div. A, title VIII, § 812(f), Oct. 23, 1992, 106 Stat. 2451; Pub. L. 108–136, div. A, title VIII, § 832(c), Nov. 24, 2003, 117 Stat. 1550, related to scholarship program.

§ 1745. Additional education and training programs available to acquisition personnel

(a) TUITION REIMBURSEMENT AND TRAINING.—(1) The Secretary of Defense shall provide for tuition reimbursement and training (including a full-time course of study leading to a degree) for acquisition personnel in the Department of Defense.

(2) For civilian personnel, the reimbursement and training shall be provided under section 4107(b) of title 5 for the purposes described in that section. For purposes of such section 4107(b), there is deemed to be, until September 30, 2010, a shortage of qualified personnel to serve in acquisition positions in the Department of Defense.

(3) In the case of members of the armed forces, the limitation in section 2007(a) of this title shall not apply to tuition reimbursement and training provided for under this subsection.

(b) REPAYMENT OF STUDENT LOANS.—The Secretary of Defense may repay all or part of a student loan under section 5379 of title 5 for an employee of the Department of Defense appointed to an acquisition position.

(Added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1653; amended Pub. L. 104–106, div. A, title XV, § 1503(a)(15), Feb. 10, 1996, 110 Stat. 511; Pub. L. 106–65, div. A, title IX, § 925(a), Oct. 5, 1999, 113 Stat. 726; Pub. L. 106–398, § 1 [[div. A], title XI, § 1123], Oct. 30, 2000, 114 Stat. 1654, 1654A–317.)

AMENDMENTS

2000—Subsec. (a)(2). Pub. L. 106–398 substituted ''September 30, 2010'' for ''September 30, 2001''.

1999—Subsec. (a). Pub. L. 106–65 amended heading and text of subsec. (a) generally. Text read as follows: ''The Secretary of Defense shall provide for tuition reimbursement and training (including a full-time course of study leading to a degree) under section 4107(b) of title 5 for acquisition personnel in the Department of Defense for the purposes described in that section. For purposes of such section 4107(b), there is deemed to be, until September 30, 2001, a shortage of qualified personnel to serve in acquisition positions in the Department of Defense.''

1996—Subsec. (a). Pub. L. 104–106 substituted ''section 4107(b)'' for ''section 4107(d)'' in two places.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–65, div. A, title IX, § 925(b), Oct. 5, 1999, 113 Stat. 726, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to charges for tuition or expenses incurred after the date of the enactment of this Act [Oct. 5, 1999].''

§ 1746. Defense Acquisition University

(a) DEFENSE ACQUISITION UNIVERSITY STRUCTURE.—The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall establish and maintain a defense acquisition university structure to provide for—

(1) the professional educational development and training of the acquisition workforce; and

(2) research and analysis of defense acquisition policy issues from an academic perspective.

(b) CIVILIAN FACULTY MEMBERS.—(1) The Secretary of Defense may employ as many civilians as professors, instructors, and lecturers in the defense acquisition university structure as the Secretary considers necessary.

(2) The compensation of persons employed under this subsection shall be as prescribed by the Secretary.

(3) In this subsection, the term ''defense acquisition university'' includes the Defense Systems Management College.

(c) CURRICULUM DEVELOPMENT.—The President of the Defense Acquisition University shall work with the relevant professional schools and degree-granting institutions of the Department of Defense and military departments to ensure that best practices are used in curriculum development to support acquisition workforce positions.

(Added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1653; amended Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 104–106, div. A, title XV, § 1503(a)(16), Feb. 10, 1996, 110 Stat. 512; Pub. L. 107–107, div. A, title X, § 1048(b)(2), Dec. 28, 2001, 115 Stat. 1225; Pub. L. 111–383, div. A, title VIII, § 877(c)(1), (2)(A), Jan. 7, 2011, 124 Stat. 4306.)

AMENDMENTS

2011—Pub. L. 111–383, § 877(c)(2)(A), substituted ''Defense Acquisition University'' for ''Defense acquisition university structure'' in section catchline.

Subsec. (c). Pub. L. 111–383, § 877(c)(1), added subsec. (c).

2001—Subsec. (a). Pub. L. 107–107 substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology'' in introductory provisions.

1996—Subsec. (a). Pub. L. 104–106 struck out ''(1)'' before ''The Secretary of Defense'' and redesignated subpars. (A) and (B) as pars. (1) and (2), respectively.

1993—Subsec. (a)(1). Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

EFFECTIVE DATE

Section 1209(h)(1) of Pub. L. 101–510 provided that: ''Subsection (b) of section 1746 of title 10, United States Code (as added by section 1202), shall take effect with respect to the Defense Systems Management College on the date of the enactment of this Act [Nov. 5, 1990].''

ESTABLISHMENT OF INITIAL DEFENSE ACQUISITION UNIVERSITY STRUCTURE

Pub. L. 101–510, div. A, title XII, § 1205, Nov. 5, 1990, 104 Stat. 1658, as amended by Pub. L. 105–85, div. A, title X,

§ 1073(d)(4)(A), Nov. 18, 1997, 111 Stat. 1905, provided that, not later than Oct. 1, 1991, the Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Technology, was to prescribe regulations for the initial structure for a defense acquisition university under this section and to prescribe and submit to the Committees on Armed Services of the Senate and House of Representatives an implementation plan, including a charter, for the university structure, and not later than Aug. 1, 1992, the Secretary was to carry out the implementation plan.

§ 1747. Acquisition fellowship program

(a) ESTABLISHMENT.—The Secretary of Defense shall establish and carry out an acquisition fellowship program in accordance with this section in order to enhance the ability of the Department of Defense to recruit employees who are highly qualified in fields of acquisition.

(b) NUMBER OF FELLOWSHIPS.—The Secretary of Defense may designate up to 25 prospective employees of the Department of Defense as acquisition fellows.

(c) ELIGIBILITY.—In order to be eligible for designation as an acquisition fellow, an employee—

(1) must complete at least 2 years of Federal Government service as an employee in an acquisition position in the Department of Defense; and

(2) must be serving in an acquisition position in the Department of Defense that involves the performance of duties likely to result in significant restrictions under law on the employment activities of that employee after leaving Government service.

(d) TWO-YEAR PERIOD OF RESEARCH AND TEACHING.—Under the fellowship program, the Secretary of Defense shall pay designated acquisition fellows to engage in research or teaching for a 2-year period in a field related to Federal Government acquisition policy. Such research or teaching may be conducted in the defense acquisition university structure of the Department of Defense, any other institution of professional education of the Federal Government, or a nonprofit institution of higher education. Each fellow shall be paid at a rate equal to the rate of pay payable for the level of the position in which the fellow served in the Department of Defense before undertaking such research or teaching.

(Added Pub. L. 102–484, div. A, title VIII, § 841(a), Oct. 23, 1992, 106 Stat. 2468, § 2410h; renumbered § 1747, Pub. L. 107–314, div. A, title X, § 1062(a)(10)(A), Dec. 2, 2002, 116 Stat. 2650.)

AMENDMENTS

2002—Pub. L. 107–314 renumbered section 2410h of this title as this section.

§ 1748. Fulfillment standards for acquisition workforce training

The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall develop fulfillment standards, and implement and maintain a program, for purposes of the training requirements of sections 1723, 1724, and 1735 of this title. Such fulfillment standards shall consist of criteria for determining whether an individual has demonstrated competence in the areas that would be taught in the training courses required under those sections. If an individual meets the appropriate fulfillment standard, the applicable training requirement is fulfilled.

(Added Pub. L. 111–383, div. A, title VIII, § 874(b)(1), Jan. 7, 2011, 124 Stat. 4304.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 105–85, div. A, title VIII, § 853, Nov. 18, 1997, 111 Stat. 1851, which was set out as a note under section 1723 of this title, prior to repeal by Pub. L. 111–383, § 874(b)(4).

DEADLINE FOR FULFILLMENT STANDARDS

Pub. L. 111–383, div. A, title VIII, § 874(b)(3), Jan. 7, 2011, 124 Stat. 4305, provided that: "The fulfillment standards required under section 1748 of title 10, United States Code, as added by paragraph (1), shall be developed not later than 270 days after the date of the enactment of this Act [Jan. 7, 2011]."

SUBCHAPTER V—GENERAL MANAGEMENT PROVISIONS

Sec.
1761. Management information system.
1762. Demonstration project relating to certain acquisition personnel management policies and procedures.
[1763. Repealed.]
1764. Authority to establish different minimum requirements.

AMENDMENTS

2011—Pub. L. 111–383, div. A, title VIII, § 872(a)(2), Jan. 7, 2011, 124 Stat. 4302, added item 1762.

2003—Pub. L. 108–136, div. A, title VIII, § 836(4), Nov. 24, 2003, 117 Stat. 1552, added item 1764 and struck out item 1763 "Reassignment of authority".

2001—Pub. L. 107–107, div. A, title X, § 1048(e)(7)(B), Dec. 28, 2001, 115 Stat. 1228, struck out items 1762 "Report to Secretary of Defense" and 1764 "Authority to establish different minimum experience requirements".

§ 1761. Management information system

(a) IN GENERAL.—The Secretary of Defense shall prescribe regulations to ensure that the military departments and Defense Agencies establish a management information system capable of providing standardized information to the Secretary on persons serving in acquisition positions.

(b) MINIMUM INFORMATION.—The management information system shall, at a minimum, provide for the following:

(1) The collection and retention of information concerning the qualifications, assignments, and tenure of persons in the acquisition workforce.

(2) Any exceptions and waivers granted with respect to the application of qualification, assignment, and tenure policies, procedures, and practices to such persons.

(3) Relative promotion rates for military personnel in the acquisition workforce.

(Added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1653; amended Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 107–107, div. A, title X, § 1048(b)(2), Dec. 28, 2001, 115 Stat. 1225; Pub. L. 108–375, div. A, title X, § 1084(d)(15), Oct. 28, 2004, 118 Stat. 2062.)

AMENDMENTS

2004—Subsec. (b). Pub. L. 108–375 substituted ''provide for the following:'' for ''provide for—'' in introductory provisions, capitalized first letter of first word in pars. (1) to (3), substituted period for semicolon at end in pars. (1) and (2), substituted period for ''; and'' at end in par. (3), and struck out par. (4) which read as follows: ''collection of the information necessary for the Under Secretary of Defense for Acquisition, Technology, and Logistics and the Secretary of Defense to comply with the requirements of section 1762 for the years in which that section is in effect.''

2001—Subsec. (b)(4). Pub. L. 107–107 substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

1993—Subsec. (b)(4). Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

ESTABLISHMENT OF MANAGEMENT INFORMATION SYSTEM

Section 1209(k) of Pub. L. 101–510 provided that:

''(1) Not later than October 1, 1991, the Secretary of Defense shall prescribe in regulations the requirements under section 1761 of title 10, United States Code (as added by section 1202), including data elements, for the uniform management information system.

''(2) The Secretary of Defense shall ensure that the requirements prescribed pursuant to paragraph (1) are implemented not later than October 1, 1992.''

§ 1762. Demonstration project relating to certain acquisition personnel management policies and procedures

(a) COMMENCEMENT.—The Secretary of Defense is authorized to carry out a demonstration project, the purpose of which is to determine the feasibility or desirability of one or more proposals for improving the personnel management policies or procedures that apply with respect to the acquisition workforce of the Department of Defense and supporting personnel assigned to work directly with the acquisition workforce.

(b) TERMS AND CONDITIONS.—(1) Except as otherwise provided in this subsection, any demonstration project described in subsection (a) shall be subject to section 4703 of title 5 and all other provisions of such title that apply with respect to any demonstration project under such section.

(2) Subject to paragraph (3), in applying section 4703 of title 5 with respect to a demonstration project described in subsection (a)—

(A) ''180 days'' in subsection (b)(4) of such section shall be deemed to read ''120 days'';

(B) ''90 days'' in subsection (b)(6) of such section shall be deemed to read ''30 days''; and

(C) subsection (d)(1) of such section shall be disregarded.

(3) Paragraph (2) shall not apply with respect to a demonstration project unless—

(A) for each organization or team participating in the demonstration project—

(i) at least one-third of the workforce participating in the demonstration project consists of members of the acquisition workforce; and

(ii) at least two-thirds of the workforce participating in the demonstration project consists of members of the acquisition workforce and supporting personnel assigned to work directly with the acquisition workforce; and

(B) the demonstration project commences before October 1, 2007.

(c) LIMITATION ON NUMBER OF PARTICIPANTS.—The total number of persons who may participate in the demonstration project under this section may not exceed 120,000.

(d) EFFECT OF REORGANIZATIONS.—The applicability of paragraph (2) of subsection (b) to an organization or team shall not terminate by reason that the organization or team, after having satisfied the conditions in paragraph (3) of such subsection when it began to participate in a demonstration project under this section, ceases to meet one or both of the conditions set forth in subparagraph (A) of such paragraph (3) as a result of a reorganization, restructuring, realignment, consolidation, or other organizational change.

(e) ASSESSMENTS.—(1) The Secretary of Defense shall designate an independent organization to conduct two assessments of the acquisition workforce demonstration project described in subsection (a).

(2) Each such assessment shall include the following:

(A) A description of the workforce included in the project.

(B) An explanation of the flexibilities used in the project to appoint individuals to the acquisition workforce and whether those appointments are based on competitive procedures and recognize veteran's preferences.

(C) An explanation of the flexibilities used in the project to develop a performance appraisal system that recognizes excellence in performance and offers opportunities for improvement.

(D) The steps taken to ensure that such system is fair and transparent for all employees in the project.

(E) How the project allows the organization to better meet mission needs.

(F) An analysis of how the flexibilities in subparagraphs (B) and (C) are used, and what barriers have been encountered that inhibit their use.

(G) Whether there is a process for—

(i) ensuring ongoing performance feedback and dialogue among supervisors, managers, and employees throughout the performance appraisal period; and

(ii) setting timetables for performance appraisals.

(H) The project's impact on career progression.

(I) The project's appropriateness or inappropriateness in light of the complexities of the workforce affected.

(J) The project's sufficiency in terms of providing protections for diversity in promotion and retention of personnel.

(K) The adequacy of the training, policy guidelines, and other preparations afforded in connection with using the project.

(L) Whether there is a process for ensuring employee involvement in the development and improvement of the project.

(3) The first assessment under this subsection shall be completed not later than September 30, 2012. The second and final assessment shall be

completed not later than September 30, 2016. The Secretary shall submit to the covered congressional committees a copy of each assessment within 30 days after receipt by the Secretary of the assessment.

(f) COVERED CONGRESSIONAL COMMITTEES.—In this section, the term ''covered congressional committees'' means—

(1) the Committees on Armed Services of the Senate and the House of Representatives;

(2) the Committee on Homeland Security and Governmental Affairs of the Senate; and

(3) the Committee on Oversight and Government Reform of the House of Representatives.

(g) TERMINATION OF AUTHORITY.—The authority to conduct a demonstration program under this section shall terminate on September 30, 2017.

(h) CONVERSION.—Within 6 months after the authority to conduct a demonstration project under this section is terminated as provided in subsection (g), employees in the project shall convert to the civilian personnel system created pursuant to section 9902 of title 5.

(Added Pub. L. 111–383, div. A, title VIII, §872(a)(1), Jan. 7, 2011, 124 Stat. 4300.)

PRIOR PROVISIONS

A prior section 1762, added Pub. L. 101–510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1654; amended Pub. L. 103–160, div. A, title IX, §904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 106–65, div. A, title IX, §911(a)(1), Oct. 5, 1999, 113 Stat. 717, related to report by the Under Secretary of Defense for Acquisition, Technology, and Logistics to the Secretary of Defense on the status of the defense acquisition workforce, prior to repeal by Pub. L. 107–107, div. A, title X, §1048(e)(7)(A), Dec. 28, 2001, 115 Stat. 1227.

Provisions similar to those in this section were contained in Pub. L. 104–106, div. D, title XLIII, §4308, Feb. 10, 1996, 110 Stat. 669, which was set out as a note under section 1701 of this title, prior to repeal by Pub. L. 111–383, §872(b).

[§1763. Repealed. Pub. L. 108–136, div. A, title VIII, §835(1), Nov. 24, 2003, 117 Stat. 1551]

Section, added Pub. L. 101–510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1656; amended Pub. L. 103–160, div. A, title IX, §904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 105–85, div. A, title X, §1073(a)(33), Nov. 18, 1997, 111 Stat. 1902; Pub. L. 107–107, div. A, title X, §1048(b)(2), Dec. 28, 2001, 115 Stat. 1225, related to reassignment of authority by Secretary of Defense.

§1764. Authority to establish different minimum requirements

(a) AUTHORITY.—(1) The Secretary of Defense may prescribe a different minimum number of years of experience, different minimum education qualifications, and different tenure of service qualifications to be required for eligibility for appointment or advancement to an acquisition position referred to in subsection (b) than is required for such position under or pursuant to any provision of this chapter.

(2) Any requirement prescribed under paragraph (1) for a position referred to in any paragraph of subsection (b) shall be applied uniformly to all positions referred to in such paragraph.

(b) APPLICABILITY.—This section applies to the following acquisition positions in the Department of Defense:

(1) Contracting officer, except a position referred to in paragraph (6).

(2) Program executive officer.

(3) Senior contracting official.

(4) Program manager.

(5) Deputy program manager.

(6) A position in the contract contingency force of an armed force that is filled by a member of that armed force.

(c) DEFINITION.—In this section, the term ''contract contingency force'', with respect to an armed force, has the meaning given such term in regulations prescribed by the Secretary concerned.

(Added Pub. L. 108–136, div. A, title VIII, §835(2), Nov. 24, 2003, 117 Stat. 1551; amended Pub. L. 108–375, div. A, title VIII, §812(c), Oct. 28, 2004, 118 Stat. 2013.)

PRIOR PROVISIONS

A prior section 1764, added Pub. L. 101–510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1656, related to authority to establish different minimum experience requirements, prior to repeal by Pub. L. 107–107, div. A, title X, §1048(e)(7)(A), Dec. 28, 2001, 115 Stat. 1227.

AMENDMENTS

2004—Subsec. (b)(1). Pub. L. 108–375, §812(c)(2), substituted ''in paragraph (6)'' for ''in paragraph (5)''.

Subsec. (b)(5), (6). Pub. L. 108–375, §812(c)(1), added par. (5) and redesignated former par. (5) as (6).

CHAPTER 88—MILITARY FAMILY PROGRAMS AND MILITARY CHILD CARE

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SUBCHAPTER I—MILITARY FAMILY PROGRAMS

Sec.
1781. Office of Family Policy.
1781a. Department of Defense Military Family Readiness Council.
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1781c. Office of Community Support for Military Families With Special Needs.
1782. Surveys of military families.
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1785. Youth sponsorship program.
1786. Dependent student travel within the United States.
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1789. Chaplain-led programs: authorized support.

AMENDMENTS

2009—Pub. L. 111–84, div. A, title V, §563(a)(2), Oct. 28, 2009, 123 Stat. 2307, added item 1781c.

2008—Pub. L. 110–417, [div. A], title V, §582(b), Oct. 14, 2008, 122 Stat. 4474, added item 1784a.

Pub. L. 110–181, div. A, title V, §581(d), Jan. 28, 2008, 122 Stat. 122, added items 1781a and 1781b.

2003—Pub. L. 108–136, div. A, title V, §582(a)(2), Nov. 24, 2003, 117 Stat. 1490, added item 1789.

2002—Pub. L. 107–314, div. A, title VI, §652(a)(2), Dec. 2, 2002, 116 Stat. 2581, added item 1788.

§ 1781. Office of Family Policy

(a) ESTABLISHMENT.—There is in the Director[1] of the Secretary of Defense an Office of Family Policy (hereinafter in this section referred to as the ''Office''). The office[2] shall be headed by the Director of Family Policy, who shall serve within the office[2] of the Under Secretary of Defense for Personnel and Readiness.

(b) DUTIES.—The Office—

(1) shall coordinate programs and activities of the military departments to the extent that they relate to military families; and

(2) shall make recommendations to the Secretaries of the military departments with respect to programs and policies regarding military families.

(c) STAFF.—The Office shall have not less than five professional staff members.

(Added Pub. L. 104–106, div. A, title V, § 568(a)(1), Feb. 10, 1996, 110 Stat. 330; amended Pub. L. 111–383, div. A, title IX, § 901(h), Jan. 7, 2011, 124 Stat. 4323.)

PRIOR PROVISIONS

Provisions similar to those in this subchapter were contained in Pub. L. 99–145, title VIII, Nov. 8, 1985, 99 Stat. 678, as amended, which was set out as a note under section 113 of this title, prior to repeal by Pub. L. 104–106, § 568(e)(1).

AMENDMENTS

Subsec. (a). Pub. L. 111–383 substituted ''the Director'' for ''the Office'' before ''of the Secretary'' and ''The office shall be headed by the Director of Family Policy, who shall serve within the office of the Under Secretary of Defense for Personnel and Readiness.'' for ''The Office shall be under the Assistant Secretary of Defense for Force Management and Personnel.''

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 111–383 effective Jan. 1, 2011, see section 901(p) of Pub. L. 111–383, set out as a note under section 131 of this title.

ESTABLISHMENT OF ONLINE RESOURCES TO PROVIDE INFORMATION ABOUT BENEFITS AND SERVICES AVAILABLE TO MEMBERS OF THE ARMED FORCES AND THEIR FAMILIES

Pub. L. 111–84, div. A, title V, § 561, Oct. 28, 2009, 123 Stat. 2302, provided that:

''(a) INTERNET OUTREACH WEBSITE.—

''(1) ESTABLISHMENT.—The Secretary of Defense shall establish an Internet website or other online resources for the purpose of providing comprehensive information to members of the Armed Forces and their families about the benefits and services described in subsection (b) that are available to members of the Armed Forces and their families.

''(2) CONTACT INFORMATION.—The online resources shall provide contact information, both telephone and e-mail, that a member of the Armed Forces or dependent of the member can use to get specific information about benefits and services that may be available for the member or dependent.

''(b) COVERED BENEFITS AND SERVICES.—The information provided through the online resources established pursuant to subsection (a) shall include information regarding the following benefits and services that may be available to a member of the Armed Forces and dependents of the member:

''(1) Financial compensation, including financial counseling.

''(2) Health care and life insurance programs.

''(3) Death benefits.

''(4) Entitlements and survivor benefits for dependents, including offsets in the receipt of such benefits under the Survivor Benefit Plan and in connection with the receipt of dependency and indemnity compensation.

''(5) Educational assistance benefits, including limitations on and the transferability of such assistance.

''(6) Housing assistance benefits, including counseling.

''(7) Relocation planning and preparation.

''(8) Maintaining military records.

''(9) Legal assistance.

''(10) Quality of life programs.

''(11) Family and community programs.

''(12) Employment assistance upon separation or retirement of a member or for the spouse of the member.

''(13) Reserve component service for members completing service in a regular component.

''(14) Disability benefits, including offsets in connection with the receipt of such benefits.

''(15) Benefits and services provided under laws administered by the Secretary of Veterans Affairs.

''(16) Such other benefits and services as the Secretary of Defense considers appropriate.

''(c) DISSEMINATION OF INFORMATION ON AVAILABILITY ON ONLINE RESOURCES.—The Secretaries of the military departments shall use public service announcements, publications, and such other announcements through the general media as the Secretaries consider appropriate to inform members of the Armed Forces and their families and the general public about the information available through the online resources established pursuant to subsection (a).

''(d) IMPLEMENTATION REPORT.—Not later than one year after the date of the enactment of this Act [Oct. 28, 2009], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the quality and scope of the online resources established pursuant to subsection (a) to provide information about benefits and services for members of the Armed Forces and their families.''

EDUCATION AND TREATMENT SERVICES FOR MILITARY DEPENDENT CHILDREN WITH AUTISM

Pub. L. 110–181, div. A, title V, § 587, Jan. 28, 2008, 122 Stat. 133, which related to comprehensive assessment of the availability of Federal, State, and local education and treatment services for military dependent children with autism, was repealed by Pub. L. 111–84, div. A, title V, § 563(a)(3), Oct. 28, 2009, 123 Stat. 2307.

JOINT FAMILY SUPPORT ASSISTANCE PROGRAM

Pub. L. 109–364, div. A, title VI, § 675, Oct. 17, 2006, 120 Stat. 2273, as amended by Pub. L. 111–383, div. A, title V, § 584, Jan. 7, 2011, 124 Stat. 4228, provided that:

''(a) PROGRAM REQUIRED.—The Secretary of Defense shall carry out a joint family support assistance program for the purpose of providing to families of members of the Armed Forces the following types of assistance:

''(1) Financial and material assistance.

''(2) Mobile support services.

''(3) Sponsorship of volunteers and family support professionals for the delivery of support services.

''(4) Coordination of family assistance programs and activities provided by Military OneSource, Military Family Life Consultants, counselors, the Department of Defense, other Federal agencies, State and local agencies, and non-profit entities.

''(5) Facilitation of discussion on military family assistance programs, activities, and initiatives between and among the organizations, agencies, and entities referred to in paragraph (4).

''(6) Such other assistance that the Secretary considers appropriate.

[1] So in original. Probably should be ''Office''.

[2] So in original. Probably should be capitalized.

''(b) LOCATIONS.—The Secretary of Defense shall carry out the program in not less than six areas of the United States selected by the Secretary. At least three of the areas selected for the program shall be areas that are geographically isolated from military installations.

''(c) RESOURCES AND VOLUNTEERS.—The Secretary of Defense shall provide personnel and other resources of the Department of Defense necessary for the implementation and operation of the program and may accept and utilize the services of non-Government volunteers and non-profit entities under the program.

''(d) PROCEDURES.—The Secretary of Defense shall establish procedures for the operation of the program and for the provision of assistance to families of members of the Armed Forces under the program.

''(e) RELATION TO FAMILY SUPPORT CENTERS.—The program is not intended to operate in lieu of existing family support centers, but is instead intended to augment the activities of the family support centers.

''(f) IMPLEMENTATION PLAN.—

''(1) PLAN REQUIRED.—Not later than 90 days after the date on which funds are first obligated for the program, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report setting forth a plan for the implementation of the program.

''(2) ELEMENTS.—The plan required under paragraph (1) shall include the following:

''(A) A description of the actions taken to select the areas in which the program will be conducted.

''(B) A description of the procedures established under subsection (d).

''(C) A review of proposed actions to be taken under the program to improve coordination of family assistance program and activities between and among the Department of Defense, other Federal agencies, State and local agencies, and non-profit entities.

''(g) REPORT.—

''(1) REPORT REQUIRED.—Not later than 270 days after the date on which funds are first obligated for the program, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the program.

''(2) ELEMENTS.—The report shall include the following:

''(A) A description of the program, including the areas in which the program is conducted, the procedures established under subsection (d) for operation of the program, and the assistance provided through the program for families of members of the Armed Forces.

''(B) An assessment of the effectiveness of the program in providing assistance to families of members of the Armed Forces.

''(C) An assessment of the advisability of extending the program or making it permanent.

''(h) DURATION.—The authority to carry out the program shall expire on December 31, 2012.''

RECOGNITION OF MILITARY FAMILIES

Pub. L. 108–136, div. A, title V, §581, Nov. 24, 2003, 117 Stat. 1489, provided that:

''(a) FINDINGS.—Congress makes the following findings:

''(1) The families of both active and reserve component members of the Armed Forces, through their sacrifices and their dedication to the Nation and its values, contribute immeasurably to the readiness of the Armed Forces.

''(2) Without the continued support of military families, the Nation's ability to sustain a high quality all-volunteer military force would be undermined.

''(3) In the perilous and challenging times of the global war on terrorism, with hundreds of thousands of active and reserve component military personnel deployed overseas in places of combat and other imminent danger, military families are making extraordinary sacrifices and will be required to do so for the foreseeable future.

''(4) Beginning in 1997, military family service and support centers have responded to the encouragement and support of private, non-profit organizations to recognize and honor the American military family during the Thanksgiving period each November.

''(b) MILITARY FAMILY RECOGNITION.—In view of the findings in subsection (a), Congress determines that it is appropriate that special measures be taken annually to recognize and honor the American military family.

''(c) DEPARTMENT OF DEFENSE PROGRAMS AND ACTIVITIES.—The Secretary of Defense shall—

''(1) implement and sustain programs, including appropriate ceremonies and activities, to recognize and honor the contributions and sacrifices of the American military family, including families of both active and reserve component military personnel;

''(2) focus the celebration of the American military family during a specific period of each year to give full and proper recognition to those families; and

''(3) seek the assistance and support of appropriate civilian organizations, associations, and other entities (A) in carrying out the annual celebration of the American military family, and (B) in sustaining other, longer-term efforts to support the American military family.''

§1781a. Department of Defense Military Family Readiness Council

(a) IN GENERAL.—There is in the Department of Defense the Department of Defense Military Family Readiness Council (in this section referred to as the ''Council'').

(b) MEMBERS.—(1) The Council shall consist of the following members:

(A) The Under Secretary of Defense for Personnel and Readiness, who shall serve as chair of the Council.

(B) One representative of each of the Army, Navy, Marine Corps, and Air Force.

(C) In addition to the representatives appointed under subparagraph (B)—

(i) one representative from the Army National Guard or Air National Guard; and

(ii) one representative from the Army Reserve, Navy Reserve, Marine Corps Reserve, or Air Force Reserve.

(D) Three individuals appointed from among representatives of military family organizations, including military family organizations of families of members of the regular components and of families of members of the reserve components.

(E) The spouse of a general or flag officer.

(F) In addition to the representatives appointed under subparagraphs (B) and (C), the senior enlisted advisor, or the spouse of a senior enlisted member, from each of the Army, Navy, Marine Corps, and Air Force.

(G) The Director of the Office of Community Support for Military Families With Special Needs.

(2) The term on the Council of the members appointed under subparagraphs (C), (D), and (E) of paragraph (1) shall be three years. Representation on the Council required by clause (i) of paragraph (1)(C) shall rotate between the Army National Guard and Air National Guard. Representation required by clause (ii) of such paragraph shall rotate among the reserve components specified in such clause.

(3) The Secretary of Defense shall appoint the members of the Council required by subparagraphs (B) through (F) of paragraph (1).

(c) MEETINGS.—The Council shall meet not less often than twice each year.

(d) DUTIES.—The duties of the Council shall include the following:

(1) To review and make recommendations to the Secretary of Defense regarding the policy and plans required under section 1781b of this title.

(2) To monitor requirements for the support of military family readiness by the Department of Defense.

(3) To evaluate and assess the effectiveness of the military family readiness programs and activities of the Department of Defense.

(e) ANNUAL REPORTS.—(1) Not later than February 1 each year, the Council shall submit to the Secretary of Defense and the congressional defense committees a report on military family readiness.

(2) Each report under this subsection shall include the following:

(A) An assessment of the adequacy and effectiveness of the military family readiness programs and activities of the Department of Defense during the preceding fiscal year in meeting the needs and requirements of military families.

(B) Recommendations on actions to be taken to improve the capability of the military family readiness programs and activities of the Department of Defense to meet the needs and requirements of military families, including actions relating to the allocation of funding and other resources to and among such programs and activities.

(Added Pub. L. 110–181, div. A, title V, § 581(a), Jan. 28, 2008, 122 Stat. 120; amended Pub. L. 111–84, div. A, title V, § 562, Oct. 28, 2009, 123 Stat. 2303; Pub. L. 111–383, div. A, title V, § 581, Jan. 7, 2011, 124 Stat. 4226.)

AMENDMENTS

2011—Subsec. (b)(1)(B). Pub. L. 111–383, § 581(d)(1)(A), struck out ", who shall be appointed by the Secretary of Defense" after "Air Force".

Subsec. (b)(1)(C). Pub. L. 111–383, § 581(d)(1)(B), struck out ", who shall be appointed by the Secretary of Defense" after "Air National Guard" in cl. (i) and after "Air Force Reserve" in cl. (ii).

Subsec. (b)(1)(D). Pub. L. 111–383, § 581(d)(1)(C), struck out "by the Secretary of Defense" after "appointed".

Subsec. (b)(1)(E). Pub. L. 111–383, § 581(a)(1)(B), added subpar. (E). Former subpar. (E) redesignated (F).

Subsec. (b)(1)(F). Pub. L. 111–383, § 581(c), amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: "In addition to the representatives appointed under subparagraphs (B) and (C), the senior enlisted advisors of the Army, Navy, Marine Corps, and Air Force, or the spouse of a senior enlisted member from each of the Army, Navy, Marine Corps, and Air Force."

Pub. L. 111–383, § 581(a)(1)(A), redesignated subpar. (E) as (F).

Subsec. (b)(1)(G). Pub. L. 111–383, § 581(b), added subpar. (G).

Subsec. (b)(2). Pub. L. 111–383, § 581(a)(2), substituted "subparagraphs (C), (D), and (E)" for "subparagraphs (C) and (D)".

Subsec. (b)(3). Pub. L. 111–383, § 581(d)(2), added par. (3).

2009—Subsec. (b)(1)(C) to (E). Pub. L. 111–84, § 562(a), added subpar. (C), redesignated former subpars. (C) and (D) as (D) and (E), respectively, and substituted "subparagraphs (B) and (C)" for "subparagraph (B)" in subpar. (E).

Subsec. (b)(2). Pub. L. 111–84, § 562(b), substituted "subparagraphs (C) and (D) of paragraph (1)" for "paragraph (1)(C)" and inserted at end "Representation on the Council required by clause (i) of paragraph (1)(C) shall rotate between the Army National Guard and Air National Guard. Representation required by clause (ii) of such paragraph shall rotate among the reserve components specified in such clause."

§ 1781b. Department of Defense policy and plans for military family readiness

(a) POLICY AND PLANS REQUIRED.—The Secretary of Defense shall develop a policy and plans for the Department of Defense for the support of military family readiness.

(b) PURPOSES.—The purposes of the policy and plans required under subsection (a) are as follows:

(1) To ensure that the military family readiness programs and activities of the Department of Defense are comprehensive, effective, and properly supported.

(2) To ensure that support is continuously available to military families in peacetime and in war, as well as during periods of force structure change and relocation of military units.

(3) To ensure that the military family readiness programs and activities of the Department of Defense are available to all military families, including military families of members of the regular components and military families of members of the reserve components.

(4) To make military family readiness an explicit element of applicable Department of Defense plans, programs, and budgeting activities, and that achievement of military family readiness is expressed through Department-wide goals that are identifiable and measurable.

(5) To ensure that the military family readiness programs and activities of the Department of Defense undergo continuous evaluation in order to ensure that resources are allocated and expended for such programs and activities to achieve Department-wide family readiness goals.

(c) ELEMENTS OF POLICY.—The policy required under subsection (a) shall include the following elements:

(1) A list of military family readiness programs and activities.

(2) Department of Defense-wide goals for military family support, including joint programs, both for military families of members of the regular components and military families of members of the reserve components.

(3) Policies on access to military family support programs and activities based on military family populations served and geographical location.

(4) Metrics to measure the performance and effectiveness of the military family readiness programs and activities of the Department of Defense.

(5) A summary, by fiscal year, of the allocation of funds (including appropriated funds

and nonappropriated funds) for major categories of military family readiness programs and activities of the Department of Defense, set forth for each of the military departments and for the Office of the Secretary of Defense.

(d) ANNUAL REPORT.—Not later than March 1 each year, the Secretary of Defense shall submit to the congressional defense committees a report on the plans required under subsection (a) for the five-fiscal year period beginning with the fiscal year in which the report is submitted. Each report shall include the plans covered by the report and an assessment of the discharge by the Department of Defense of the previous plans submitted under this section.

(Added Pub. L. 110–181, div. A, title V, § 581(a), Jan. 28, 2008, 122 Stat. 121; amended Pub. L. 111–383, div. A, title X, § 1075(b)(23), Jan. 7, 2011, 124 Stat. 4370.)

AMENDMENTS

2011—Subsec. (d). Pub. L. 111–383 substituted ''March 1 each year'' for ''March 1, 2008, and each year thereafter''.

§ 1781c. Office of Community Support for Military Families With Special Needs

(a) ESTABLISHMENT.—There is in the Office of the Under Secretary of Defense for Personnel and Readiness the Office of Community Support for Military Families With Special Needs (in this section referred to as the ''Office'').

(b) PURPOSE.—The purpose of the Office is to enhance and improve Department of Defense support around the world for military families with special needs (whether medical or educational needs) through the development of appropriate policies, enhancement and dissemination of appropriate information throughout the Department of Defense, support for such families in obtaining referrals for services and in obtaining service, and oversight of the activities of the military departments in support of such families.

(c) DIRECTOR.—(1) The head of the Office shall be the Director of the Office of Community Support for Military Families With Special Needs, who shall be a member of the Senior Executive Service or a general officer or flag officer.

(2) In the discharge of the responsibilities of the Office, the Director shall be subject to the supervision, direction, and control of the Under Secretary of Defense for Personnel and Readiness.

(d) RESPONSIBILITIES.—The Office shall have the responsibilities as follows:

(1) To develop and implement a comprehensive policy on support for military families with special needs as required by subsection (e).

(2) To establish and oversee the programs required by subsection (f).

(3) To identify gaps in services available through the Department of Defense for military families with special needs.

(4) To develop plans to address gaps identified under paragraph (3) through appropriate mechanisms, such as enhancing resources and training and ensuring the provision of special assistance to military families with special needs and military parents of individuals with special needs (including through the provision of training and seminars to members of the armed forces).

(5) To monitor the programs of the military departments for the assignment of members of the armed forces who are members of military families with special needs, and the programs for the support of such military families, and to advise the Secretary of Defense on the adequacy of such programs in conjunction with the preparation of future-years defense programs and other budgeting and planning activities of the Department of Defense.

(6) To monitor the availability and accessibility of programs provided by other Federal, State, local, and non-governmental agencies to military families with special needs.

(7) To conduct periodic reviews of best practices in the United States in the provision of medical and educational services for children with special needs.

(8) To carry out such other matters with respect to the programs and activities of the Department of Defense regarding military families with special needs as the Under Secretary of Defense for Personnel and Readiness shall specify.

(e) POLICY.—(1) The Office shall develop, and update from time to time, a uniform policy for the Department of Defense regarding military families with special needs. The policy shall apply with respect to members of the armed forces without regard to their location, whether within or outside the continental United States.

(2) The policy developed under this subsection shall include elements regarding the following:

(A) The assignment of members of the armed forces who are members of military families with special needs.

(B) Support for military families with special needs.

(3) In addressing the assignment of members of the armed forces under paragraph (2)(A), the policy developed under this subsection shall, in a manner consistent with the needs of the armed forces and responsive to the career development of members of the armed forces on active duty, provide for such members each of the following:

(A) Assignment to locations where care and support for family members with special needs are available.

(B) Stabilization of assignment for a minimum of 4 years.

(4) In addressing support for military families under paragraph (2)(B), the policy developed under this subsection shall provide the following:

(A) Procedures to identify members of the armed forces who are members of military families with special needs.

(B) Mechanisms to ensure timely and accurate evaluations of members of such families who have special needs.

(C) Procedures to facilitate the enrollment of such members of the armed forces and their families in programs of the military department for the support of military families with special needs.

(D) Procedures to ensure the coordination of Department of Defense health care programs

and support programs for military families with special needs, and the coordination of such programs with other Federal, State, local, and non-governmental health care programs and support programs intended to serve such families.

(E) Requirements for resources (including staffing) to ensure the availability through the Department of Defense of appropriate numbers of case managers to provide individualized support for military families with special needs.

(F) Requirements regarding the development and continuous updating of an individualized services plan (medical and educational) for each military family with special needs.

(G) Requirements for record keeping, reporting, and continuous monitoring of available resources and family needs under individualized services support plans for military families with special needs, including the establishment and maintenance of a central or various regional databases for such purposes.

(f) PROGRAMS.—(1) The Office shall establish, maintain, and oversee a program to provide information and referral services on special needs matters to military families with special needs on a continuous basis regardless of the location of the member's assignment. The program shall provide for timely access by members of such military families to individual case managers and counselors on matters relating to special needs.

(2) The Office shall establish, maintain, and oversee a program of outreach on special needs matters for military families with special needs. The program shall—

(A) assist military families in identifying whether or not they have a member with special needs; and

(B) provide military families with special needs with information on the services, support, and assistance available through the Department of Defense regarding such members with special needs, including information on enrollment in programs of the military departments for such services, support, and assistance.

(3)(A) The Office shall provide support to the Secretary of each military department in the establishment and sustainment by such Secretary of a program for the support of military families with special needs under the jurisdiction of such Secretary. Each program shall be consistent with the policy developed by the Office under subsection (e).

(B) Each program under this paragraph shall provide for appropriate numbers of case managers for the development and oversight of individualized services plans for educational and medical support for military families with special needs.

(C) Services under a program under this paragraph may be provided by contract or other arrangements with non-Department of Defense entities qualified to provide such services.

(g) RESOURCES.—The Secretary of Defense shall assign to the Office such resources, including personnel, as the Secretary considers necessary for the discharge of the responsibilities of the Office, including a sufficient number of members of the armed forces to ensure appropriate representation by the military departments in the personnel of the Office.

(h) REPORTS.—(1) Not later than April 30 each year, the Secretary of Defense shall submit to the congressional defense committees a report on the activities of the Office.

(2) Each report under this subsection shall include the following:

(A) A description of any gaps in services available through the Department of Defense for military families with special needs that were identified under subsection (d)(3).

(B) A description of the actions being taken, or planned, to address such gaps, including any plans developed under subsection (d)(4).

(C) Such recommendations for legislative action as the Secretary considers appropriate to provide for the continuous improvement of support and services for military families with special needs.

(i) MILITARY FAMILY WITH SPECIAL NEEDS.—For purposes of this section, a military family with special needs is any military family with one or more members who has a medical or educational special need (as defined by the Secretary in regulations for purposes of this section), including a condition covered by the Extended Health Care Option Program under section 1079f of this title.

(Added Pub. L. 111–84, div. A, title V, § 563(a)(1), Oct. 28, 2009, 123 Stat. 2304; amended Pub. L. 111–383, div. A, title V, § 582(a), (b), title X, § 1075(b)(24), Jan. 7, 2011, 124 Stat. 4226, 4227, 4370.)

AMENDMENTS

2011—Subsec. (c). Pub. L. 111–383, § 582(a), amended subsec. (c) generally. Prior to amendment, text read as follows:

''(1) The head of the Office shall be the Director of the Office of Community Support for Military Families With Special Needs, who shall be appointed by the Secretary of Defense from among civilian employees of the Department of Defense who are members of the Senior Executive Service or members of the armed forces in a general or flag grade.

''(2) The Director shall be subject to the supervision, direction, and control of the Under Secretary of Defense for Personnel and Readiness in the discharge of the responsibilities of the Office, and shall report directly to the Under Secretary regarding the discharge of such responsibilities.''

Subsec. (d)(7), (8). Pub. L. 111–383, § 582(b), added par. (7) and redesignated former par. (7) as (8).

Subsec. (h)(1). Pub. L. 111–383, § 1075(b)(24), substituted ''April 30 each year'' for ''180 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2010, and annually thereafter''.

FOUNDATION FOR SUPPORT OF MILITARY FAMILIES WITH SPECIAL NEEDS

Pub. L. 111–84, div. A, title V, § 563(b), Oct. 28, 2009, 123 Stat. 2307, provided that:

''(1) ESTABLISHMENT AUTHORIZED.—The Secretary of Defense may establish a foundation for the provision of assistance to the Department of Defense in providing support to military families with special needs.

''(2) PURPOSES.—The purposes of the foundation shall be to assist the Department of Defense as follows:

''(A) In conducting outreach to identify military families with special needs.

''(B) In developing programs to support and provide services to military families with special needs.

''(C) In developing educational curricula for the training of professional and paraprofessional personnel providing support and services on special needs to military families with special needs.

''(D) In conducting research on the following:

''(i) The unique factors associated with a military career (including deployments of members of the Armed Forces) and their effects on families and individuals with special needs.

''(ii) Evidence-based therapeutic and medical services for members of military families with special needs, including research in conjunction with non-Department of Defense entities such as the National Institutes of Health.

''(E) In providing vocational education and training for adolescent and adult members of military families with special needs.

''(F) In carrying out other initiatives to contribute to improved support for military families with special needs.

''(3) DEPARTMENT OF DEFENSE FUNDING.—The Secretary may provide the foundation such financial support as the Secretary considers appropriate, including the provision to the foundation of appropriated funds and non-appropriated funds available to the Department of Defense.

''(4) ANNUAL REPORT.—The foundation shall submit to the Secretary, and to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], each year a report on its activities under this subsection during the preceding year. Each report shall include, for the year covered by such report, the following:

''(A) A description of the programs and activities of the foundation.

''(B) The budget of the foundation, including the sources of any funds provided to the foundation.

''(5) MILITARY FAMILY WITH SPECIAL NEEDS DEFINED.—In this subsection, the term 'military family with special needs' has the meaning given such term in section 1781c(i) of title 10, United States Code (as added by subsection (a)).''

MILITARY DEPARTMENT SUPPORT FOR LOCAL CENTERS TO ASSIST MILITARY CHILDREN WITH SPECIAL NEEDS

Pub. L. 111–84, div. A, title V, § 563(c), as added Pub. L. 111–383, div. A, title V, § 582(c)(2), Jan. 7, 2011, 124 Stat. 4227, provided that: ''The Secretary of a military department may establish or support centers on or in the vicinity of military installations under the jurisdiction of such Secretary to coordinate and provide medical and educational services for children with special needs of members of the Armed Forces who are assigned to such installations.''

ADVISORY PANEL ON COMMUNITY SUPPORT FOR MILITARY FAMILIES WITH SPECIAL NEEDS

Pub. L. 111–84, div. A, title V, § 563(d), as added Pub. L. 111–383, div. A, title V, § 582(c)(2), Jan. 7, 2011, 124 Stat. 4227, provided that:

''(1) ESTABLISHMENT.—Not later than 90 days after the date of the enactment of this subsection [Jan. 7, 2011], the Secretary of Defense shall establish an advisory panel on community support for military families with special needs.

''(2) MEMBERS.—The advisory panel shall consist of seven individuals who are a member of a military family with special needs. The Secretary of Defense shall appoint the members of the advisory panel.

''(3) DUTIES.—The advisory panel shall—

''(A) provide informed advice to the Director of the Office of Community Support for Military Families With Special Needs on the implementation of the policy required by subsection (e) of section 1781c of title 10, United States Code, and on the discharge of the programs required by subsection (f) of such section;

''(B) assess and provide information to the Director on services and support for children with special needs that is available from other departments and agencies of the Federal Government and from State and local governments; and

''(C) otherwise advise and assist the Director in the discharge of the duties of the Office of Community Support for Military Families With Special Needs in such manner as the Secretary of Defense and the Director jointly determine appropriate.

''(4) MEETINGS.—The Director shall meet with the advisory panel at such times, and with such frequency, as the Director considers appropriate. The Director shall meet with the panel at least once each year. The Director may meet with the panel through teleconferencing or by other electronic means.''

§ 1782. Surveys of military families

(a) AUTHORITY.—The Secretary of Defense, in order to determine the effectiveness of Federal programs relating to military families and the need for new programs, may conduct surveys of—

(1) members of the armed forces who are on active duty, in an active status, or retired;

(2) family members of such members; and

(3) survivors of deceased retired members and of members who died while on active duty.

(b) RESPONSES TO BE VOLUNTARY.—Responses to surveys conducted under this section shall be voluntary.

(c) FEDERAL RECORDKEEPING REQUIREMENTS.—With respect to a survey authorized under subsection (a) that includes a person referred to in that subsection who is not an employee of the United States or is not otherwise considered an employee of the United States for the purposes of section 3502(3)(A)(i) of title 44, the person shall be considered as being an employee of the United States for the purposes of that section.

(d) SURVEY REQUIRED FOR FISCAL YEAR 2010.—Notwithstanding subsection (a), during fiscal year 2010, the Secretary of Defense shall conduct a survey otherwise authorized under such subsection. Thereafter, additional surveys may be conducted not less often than once every three fiscal years.

(Added Pub. L. 104–106, div. A, title V, § 568(a)(1), Feb. 10, 1996, 110 Stat. 330; amended Pub. L. 107–107, div. A, title V, § 572, Dec. 28, 2001, 115 Stat. 1122; Pub. L. 110–181, div. A, title V, § 581(c), Jan. 28, 2008, 122 Stat. 122.)

AMENDMENTS

2008—Subsec. (d). Pub. L. 110–181 added subsec. (d).

2001—Subsec. (a). Pub. L. 107–107, § 572(a), reenacted heading without change and amended text generally. Text read as follows: ''The Secretary of Defense may conduct surveys of members of the armed forces on active duty or in an active status, members of the families of such members, and retired members of the armed forces to determine the effectiveness of Federal programs relating to military families and the need for new programs.''

Subsec. (c). Pub. L. 107–107, § 572(b), reenacted heading without change and amended text generally. Text read as follows: ''With respect to such surveys, family members of members of the armed forces and reserve and retired members of the armed forces shall be considered to be employees of the United States for purposes of section 3502(3)(A)(i) of title 44.''

§ 1783. Family members serving on advisory committees

A committee within the Department of Defense which advises or assists the Department in

the performance of any function which affects members of military families and which includes members of military families in its membership shall not be considered an advisory committee under section 3(2) of the Federal Advisory Committee Act (5 U.S.C. App.) solely because of such membership.

(Added Pub. L. 104–106, div. A, title V, § 568(a)(1), Feb. 10, 1996, 110 Stat. 330.)

REFERENCES IN TEXT

Section 3(2) of the Federal Advisory Committee Act, referred to in text, is section 3(2) of Pub. L. 92–463, which is set out in the Appendix to Title 5, Government Organization and Employees.

§ 1784. Employment opportunities for military spouses

(a) AUTHORITY.—The President shall order such measures as the President considers necessary to increase employment opportunities for spouses of members of the armed forces. Such measures may include—

(1) excepting, pursuant to section 3302 of title 5, from the competitive service positions in the Department of Defense located outside of the United States to provide employment opportunities for qualified spouses of members of the armed forces in the same geographical area as the permanent duty station of the members; and

(2) providing preference in hiring for positions in nonappropriated fund activities to qualified spouses of members of the armed forces stationed in the same geographical area as the nonappropriated fund activity for positions in wage grade UA–8 and below and equivalent positions and for positions paid at hourly rates.

(b) REGULATIONS.—The Secretary of Defense shall prescribe regulations—

(1) to implement such measures as the President orders under subsection (a);

(2) to provide preference to qualified spouses of members of the armed forces in hiring for any civilian position in the Department of Defense if the spouse is among persons determined to be best qualified for the position and if the position is located in the same geographical area as the permanent duty station of the member;

(3) to ensure that notice of any vacant position in the Department of Defense is provided in a manner reasonably designed to reach spouses of members of the armed forces whose permanent duty stations are in the same geographic area as the area in which the position is located; and

(4) to ensure that the spouse of a member of the armed forces who applies for a vacant position in the Department of Defense shall, to the extent practicable, be considered for any such position located in the same geographic area as the permanent duty station of the member.

(c) STATUS OF PREFERENCE ELIGIBLES.—Nothing in this section shall be construed to provide a spouse of a member of the armed forces with preference in hiring over an individual who is a preference eligible.

(d) SPACE-AVAILABLE USE OF FACILITIES FOR SPOUSE TRAINING PURPOSES.—Under regulations prescribed by the Secretary of Defense, the Secretary of a military department may make available to a non-Department of Defense entity space in non-excess facilities controlled by that Secretary for the purpose of the non-Department of Defense entity providing employment-related training for military spouses.

(e) EMPLOYMENT BY OTHER FEDERAL AGENCIES.—The Secretary of Defense shall work with the Director of the Office of Personnel Management and the heads of other Federal departments and agencies to expand and facilitate the use of existing Federal programs and resources in support of military spouse employment.

(f) PRIVATE-SECTOR EMPLOYMENT.—The Secretary of Defense—

(1) shall seek to develop partnerships with firms in the private sector to enhance employment opportunities for spouses of members of the armed forces and to provide for improved job portability for such spouses, especially in the case of the spouse of a member of the armed forces accompanying the member to a new geographical area because of a change of permanent duty station of the member; and

(2) shall work with the United States Chamber of Commerce and other appropriate private-sector entities to facilitate the formation of such partnerships.

(g) EMPLOYMENT WITH DOD CONTRACTORS.—The Secretary of Defense shall examine and seek ways for incorporating hiring preferences for qualified spouses of members of the armed forces into contracts between the Department of Defense and private-sector entities.

(Added Pub. L. 104–106, div. A, title V, § 568(a)(1), Feb. 10, 1996, 110 Stat. 330; amended Pub. L. 107–107, div. A, title V, § 571(c), Dec. 28, 2001, 115 Stat. 1121.)

AMENDMENTS

2001—Subsecs. (d) to (g). Pub. L. 107–107 added subsecs. (d) to (g).

PILOT PROGRAM TO SECURE INTERNSHIPS FOR MILITARY SPOUSES WITH FEDERAL AGENCIES

Pub. L. 111–84, div. A, title V, § 564, Oct. 28, 2009, 123 Stat. 2308, provided that:

''(a) COST-REIMBURSEMENT AGREEMENTS WITH FEDERAL AGENCIES.—The Secretary of Defense may enter into an agreement with the head of an executive department or agency that has an established internship program to reimburse the department or agency for authorized costs associated with the first year of employment of an eligible military spouse who is selected to participate in the internship program of the department or agency.

''(b) ELIGIBLE MILITARY SPOUSES.—

''(1) ELIGIBILITY.—Except as provided in paragraph (2), any person who is married to a member of the Armed Forces on active duty is eligible for selection to participate in an internship program under a reimbursement agreement entered into under subsection (a).

''(2) EXCLUSIONS.—Reimbursement may not be provided with respect to the following persons:

''(A) A person who is legally separated from a member of the Armed Forces under court order or statute of any State, the District of Columbia, or possession of the United States when the person begins the internship.

''(B) A person who is also a member of the Armed Forces on active duty.

''(C) A person who is a retired member of the Armed Forces.

''(c) FUNDING SOURCE.—Amounts authorized to be appropriated for operation and maintenance, for Defense-wide activities, shall be available to carry out this section.

''(d) DEFINITIONS.—In this section:

''(1) The term 'authorized costs' includes the costs of the salary, benefits and allowances, and training for an eligible military spouse during the first year of the participation of the military spouse in an internship program pursuant to an agreement under subsection (a).

''(2) The term 'internship' means a professional, analytical, or administrative position in the Federal Government that operates under a developmental program leading to career advancement.

''(e) TERMINATION OF AGREEMENT AUTHORITY.—No agreement may be entered into under subsection (a) after September 30, 2011. Authorized costs incurred after that date may be reimbursed under an agreement entered into before that date in the case of eligible military spouses who begin their internship by that date.

''(f) REPORTING REQUIREMENT.—Not later than January 1, 2012, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report that provides information on how many eligible military spouses received internships pursuant to agreements entered into under subsection (a) and the types of internship positions they occupied. The report shall specify the number of interns who subsequently obtained permanent employment with the department or agency administering the internship program or with another department or agency. The Secretary shall include a recommendation regarding whether, given the investment of Department of Defense funds, the authority to enter into agreements should be extended, modified, or terminated.''

CONTINUATION OF DELEGATION OF AUTHORITY WITH RESPECT TO HIRING PREFERENCE FOR QUALIFIED MILITARY SPOUSES

Section 568(d) of Pub. L. 104–106 provided that: ''The provisions of Executive Order No. 12568, issued October 2, 1986 (10 U.S.C. 113 note) [set out below], shall apply as if the reference in that Executive order to section 806(a)(2) of the Department of Defense Authorization Act of 1986 refers to section 1784 of title 10, United States Code, as added by subsection (a).''

EX. ORD. NO. 12568. EMPLOYMENT OPPORTUNITIES FOR MILITARY SPOUSES AT NONAPPROPRIATED FUND ACTIVITIES

Ex. Ord. No. 12568, Oct. 2, 1986, 51 F.R. 35497, provided:

By the authority vested in me as President by the laws of the United States of America, including section 301 of Title 3 of the United States Code, it is ordered that the Secretary of Defense and, as designated by him for this purpose, any of the Secretaries, Under Secretaries, and Assistant Secretaries of the Military Departments, are hereby empowered to exercise the discretionary authority granted to the President by subsection 806(a)(2) of the Department of Defense Authorization Act of 1986, Public Law No. 99–145 [formerly set out as a note under section 113 of this title, now deemed to refer to this section, see above], to give preference in hiring for positions in nonappropriated fund activities to qualified spouses of members of the Armed Forces stationed in the same geographical area as the nonappropriated fund activity for positions in wage grade UA–8 and below and equivalent positions and for positions paid at hourly rates.

RONALD REAGAN.

§ 1784a. Education and training opportunities for military spouses to expand employment and portable career opportunities

(a) PROGRAMS AND TUITION ASSISTANCE.—(1) The Secretary of Defense may establish programs to assist the spouse of a member of the armed forces described in subsection (b) in achieving—

(A) the education and training required for a degree or credential at an accredited college, university, or technical school in the United States that expands employment and portable career opportunities for the spouse; or

(B) the education prerequisites and professional licensure or credential required, by a government or government sanctioned licensing body, for an occupation that expands employment and portable career opportunities for the spouse.

(2) As an alternative to, or in addition to, establishing a program under this subsection, the Secretary may provide tuition assistance to an eligible spouse who is pursuing education, training, or a license or credential to expand the spouse's employment and portable career opportunities.

(b) ELIGIBLE SPOUSES.—Assistance under this section is limited to a spouse of a member of the armed forces who is serving on active duty.

(c) EXCEPTIONS.—Subsection (b) does not include—

(1) a person who is married to, but legally separated from, a member of the armed forces under court order or statute of any State or territorial possession of the United States; and

(2) a spouse of a member of the armed forces who is also a member of the armed forces.

(d) PORTABLE CAREER OPPORTUNITIES DEFINED.—In this section, the term ''portable career'' includes an occupation identified by the Secretary of Defense, in consultation with the Secretary of Labor, as requiring education and training that results in a credential that is recognized nationwide by industry or specific businesses.

(e) REGULATIONS.—The Secretary of Defense shall prescribe regulations to govern the availability and use of assistance under this section. The Secretary shall ensure that programs established under this section do not result in inequitable treatment for spouses of members of the armed forces who are also members, since they are excluded from participation in the programs under subsection (c)(2).

(Added Pub. L. 110–417, [div. A], title V, § 582(a), Oct. 14, 2008, 122 Stat. 4473.)

§ 1785. Youth sponsorship program

(a) REQUIREMENT.—The Secretary of Defense shall require that there be at each military installation a youth sponsorship program to facilitate the integration of dependent children of members of the armed forces into new surroundings when moving to that military installation as a result of a parent's permanent change of station.

(b) DESCRIPTION OF PROGRAMS.—The program at each installation shall provide for involve-

ment of dependent children of members presently stationed at the military installation and shall be directed primarily toward children in their preteen and teenage years.

(Added Pub. L. 104–106, div. A, title V, § 568(a)(1), Feb. 10, 1996, 110 Stat. 331.)

§ 1786. Dependent student travel within the United States

Funds available to the Department of Defense for the travel and transportation of dependent students of members of the armed forces stationed overseas may be obligated for transportation allowances for travel within or between the contiguous States.

(Added Pub. L. 104–106, div. A, title V, § 568(a)(1), Feb. 10, 1996, 110 Stat. 331.)

§ 1787. Reporting of child abuse

(a) IN GENERAL.—The Secretary of Defense shall request each State to provide for the reporting to the Secretary of any report the State receives of known or suspected instances of child abuse and neglect in which the person having care of the child is a member of the armed forces (or the spouse of the member).

(b) DEFINITION.—In this section, the term ''child abuse and neglect'' has the meaning provided in section 3(1) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5102).[1]

(Added Pub. L. 104–106, div. A, title V, § 568(a)(1), Feb. 10, 1996, 110 Stat. 331.)

REFERENCES IN TEXT

Section 3(1) of the Child Abuse Prevention and Treatment Act, referred to in subsec. (b), is section 3(1) of Pub. L. 93–247, which was amended generally by Pub. L. 100–294 and renumbered section 102 by Pub. L. 101–126. As so amended and renumbered, section 102 of Pub. L. 93–247 no longer defines ''child abuse and neglect''. However, such term is defined in section 111 of Pub. L. 93–247, which is classified to section 5106g of Title 42, The Public Health and Welfare.

PLAN FOR IMPLEMENTATION OF ACCREDITATION REQUIREMENT

Section 568(c) of Pub. L. 104–106 directed Secretary of Defense to submit to Congress, not later than Apr. 1, 1997, a plan for carrying out the requirements of this section.

§ 1788. Additional family assistance

(a) AUTHORITY.—The Secretary of Defense may provide for the families of members of the armed forces serving on active duty, in addition to any other assistance available for such families, any assistance that the Secretary considers appropriate to ensure that the children of such members obtain needed child care, education, and other youth services.

(b) PRIMARY PURPOSE OF ASSISTANCE.—The assistance authorized by this section should be directed primarily toward providing needed family support, including child care, education, and other youth services, for children of members of the armed forces who are deployed, assigned to duty, or ordered to active duty in connection with a contingency operation.

[1] See References in Text note below.

(Added Pub. L. 107–314, div. A, title VI, § 652(a)(1), Dec. 2, 2002, 116 Stat. 2581; amended Pub. L. 111–383, div. A, title X, § 1075(b)(25), Jan. 7, 2011, 124 Stat. 4370.)

AMENDMENTS

2011—Subsec. (b). Pub. L. 111–383 substituted ''armed forces'' for ''Armed Forces''.

EFFECTIVE DATE

Pub. L. 107–314, div. A, title VI, § 652(b), Dec. 2, 2002, 116 Stat. 2581, provided that: ''Section 1788 of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 2002.''

PILOT PROGRAM ON PARENT EDUCATION TO PROMOTE EARLY CHILDHOOD EDUCATION FOR DEPENDENT CHILDREN AFFECTED BY MILITARY DEPLOYMENT OR RELOCATION OF MILITARY UNITS

Pub. L. 109–364, div. A, title V, § 575, Oct. 17, 2006, 120 Stat. 2227, provided that:

''(a) PILOT PROGRAM AUTHORIZED.—Using such funds as may be appropriated for this purpose, the Secretary of Defense may carry out a pilot program on the provision of educational and support tools to the parents of preschool-age children—

''(1) whose parent or parents serve as members of the Armed Forces on active duty (including members of the Selected Reserve on active duty pursuant to a call or order to active duty of 180 days or more); and

''(2) who are affected by the deployment of their parent or parents or the relocation of the military unit of which their parent or parents are a member.

''(b) PURPOSE.—The purpose of the pilot program is to develop models for improving the capability of military child and youth programs on or near military installations to provide assistance to military parents with young children through a program of activities focusing on the unique needs of children described in subsection (a).

''(c) LIMITS ON COMMENCEMENT AND DURATION OF PROGRAM.—The Secretary of Defense may not commence the pilot program before October 1, 2007, and shall conclude the pilot program not later than the end of the three-year period beginning on the date on which the Secretary commences the program.

''(d) SCOPE OF PROGRAM.—Under the pilot program, the Secretary of Defense shall utilize one or more models, demonstrated through research, of universal access of parents of children described in subsection (a) to assistance under the pilot program to achieve the following goals:

''(1) The identification and mitigation of specific risk factors for such children related to military life.

''(2) The maximization of the educational readiness of such children.

''(e) LOCATIONS AND GOALS.—

''(1) SELECTION OF PARTICIPATING INSTALLATIONS.—In selecting military installations to participate in the pilot program, the Secretary of Defense shall limit selection to those military installations whose military personnel are experiencing significant transition or deployment or which are undergoing transition as a result of the relocation or activation of military units or activities relating to defense base closure and realignment.

''(2) SELECTION OF CERTAIN INSTALLATIONS.—At least one of the installations selected under paragraph (1) shall be a military installation that will permit, under the pilot program, the meaningful evaluation of a model under subsection (d) that provides outreach to parents in families with a parent who is a member of the National Guard or Reserve, which families live more than 40 miles from the installation.

''(3) GOALS OF PARTICIPATING INSTALLATIONS.—If a military installation is selected under paragraph (1), the Secretary shall require appropriate personnel at the military installation to develop goals, and spe-

cific outcome measures with respect to such goals, for the conduct of the pilot program at the installation.

''(4) EVALUATION REQUIRED.—Upon completion of the pilot program at a military installation, the personnel referred to in paragraph (3) at the installation shall be required to conduct an evaluation and assessment of the success of the pilot program at the installation in meeting the goals developed for that installation.

''(f) GUIDELINES.—As part of conducting the pilot program, the Secretary of Defense shall issue guidelines regarding—

''(1) the goals to be developed under subsection (e)(3);

''(2) specific outcome measures; and

''(3) the selection of curriculum and the conduct of developmental screening under the pilot program.

''(g) REPORT.—Upon completion of the pilot program, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on all of the evaluations prepared under subsection (e)(4) for the military installations participating in the pilot program. The report shall describe the results of the evaluations, and may include such recommendations for legislative or administrative action as the Secretary considers appropriate in light of the evaluations, including recommendations for the continuation of the pilot program.''

§ 1789. Chaplain-led programs: authorized support

(a) AUTHORITY.—The Secretary of a military department may provide support services described in subsection (b) to support chaplain-led programs to assist members of the armed forces on active duty and their immediate family members, and members of reserve components in an active status and their immediate family members, in building and maintaining a strong family structure.

(b) AUTHORIZED SUPPORT SERVICES.—The support services referred to in subsection (a) are costs of transportation, food, lodging, child care, supplies, fees, and training materials for members of the armed forces and their family members while participating in programs referred to in that subsection, including participation at retreats and conferences.

(c) IMMEDIATE FAMILY MEMBERS.—In this section, the term ''immediate family members'', with respect to a member of the armed forces, means—

(1) the member's spouse; and

(2) any child (as defined in section 1072(6) of this title) of the member who is described in subparagraph (D) of section 1072(2) of this title.

(Added Pub. L. 108–136, div. A, title V, § 582(a)(1), Nov. 24, 2003, 117 Stat. 1489.)

EFFECTIVE DATE

Pub. L. 108–136, div. A, title V, § 582(b), Nov. 24, 2003, 117 Stat. 1490, provided that: ''Section 1789 of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 2003.''

SUBCHAPTER II—MILITARY CHILD CARE

Sec.
1791. Funding for military child care.
1792. Child care employees.
1793. Parent fees.
1794. Child abuse prevention and safety at facilities.
1795. Parent partnerships with child development centers.
1796. Subsidies for family home day care.
1797. Early childhood education program.
1798. Child care services and youth program services for dependents: financial assistance for providers.
1799. Child care services and youth program services for dependents: participation by children and youth otherwise ineligible.
1800. Definitions.

AMENDMENTS

1999—Pub. L. 106–65, div. A, title V, § 584(a)(2), Oct. 5, 1999, 113 Stat. 636, added items 1798, 1799, and 1800 and struck out former item 1798 ''Definitions''.

§ 1791. Funding for military child care

It is the policy of Congress that the amount of appropriated funds available during a fiscal year for operating expenses for military child development centers and programs shall be not less than the amount of child care fee receipts that are estimated to be received by the Department of Defense during that fiscal year.

(Added Pub. L. 104–106, div. A, title V, § 568(a)(1), Feb. 10, 1996, 110 Stat. 332.)

PRIOR PROVISIONS

Provisions similar to those in this subchapter were contained in Pub. L. 101–189, div. A, title XV, Nov. 29, 1989, 103 Stat. 1589, which was set out as a note under section 113 of this title, prior to repeal by Pub. L. 104–106, § 568(e)(2).

REPORTS ON CHILD DEVELOPMENT CENTERS AND FINANCIAL ASSISTANCE FOR CHILD CARE FOR MEMBERS OF THE ARMED FORCES

Pub. L. 111–383, div. A, title V, § 587, Jan. 7, 2011, 124 Stat. 4230, provided that:

''(a) REPORTS REQUIRED.—Not later than six months after the date of the enactment of this Act [Jan. 7, 2011], and every two years thereafter, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on Department of Defense child development centers and financial assistance for child care provided by the Department of Defense off-installation to members of the Armed Forces.

''(b) ELEMENTS.—Each report required by subsection (a) shall include the following, current as of the date of such report:

''(1) The number of child development centers currently located on military installations.

''(2) The number of dependents of members of the Armed Forces utilizing such child development centers.

''(3) The number of dependents of members of the Armed Forces that are unable to utilize such child development centers due to capacity limitations.

''(4) The types of financial assistance available for child care provided by the Department of Defense off-installation to members of the Armed Forces (including eligible members of the reserve components).

''(5) The extent to which members of the Armed Forces are utilizing such financial assistance for child care off-installation.

''(6) The methods by which the Department of Defense reaches out to eligible military families to increase awareness of the availability of such financial assistance.

''(7) The formulas used to calculate the amount of such financial assistance provided to members of the Armed Forces.

''(8) The funding available for such financial assistance in the Department of Defense and in the military departments.

''(9) The barriers to access, if any, to such financial assistance faced by members of the Armed Forces, including whether standards and criteria of the Department of Defense for child care off-installation may affect access to child care.

''(10) Any other matters the Secretary considers appropriate in connection with such report, including with respect to the enhancement of access to Department of Defense child care development centers and financial assistance for child care off-installation for members of the Armed Forces.''

§ 1792. Child care employees

(a) REQUIRED TRAINING.—(1) The Secretary of Defense shall prescribe regulations implementing a training program for child care employees. Those regulations shall apply uniformly among the military departments. Subject to paragraph (2), satisfactory completion of the training program shall be a condition of employment of any person as a child care employee.

(2) Under those regulations, the Secretary shall require that each child care employee complete the training program not later than six months after the date on which the employee is employed as a child care employee.

(3) The training program established under this subsection shall cover, at a minimum, training in the following:

(A) Early childhood development.

(B) Activities and disciplinary techniques appropriate to children of different ages.

(C) Child abuse prevention and detection.

(D) Cardiopulmonary resuscitation and other emergency medical procedures.

(b) TRAINING AND CURRICULUM SPECIALISTS.—(1) The Secretary of Defense shall require that at least one employee at each military child development center be a specialist in training and curriculum development. The Secretary shall ensure that such employees have appropriate credentials and experience.

(2) The duties of such employees shall include the following:

(A) Special teaching activities at the center.

(B) Daily oversight and instruction of other child care employees at the center.

(C) Daily assistance in the preparation of lesson plans.

(D) Assistance in the center's child abuse prevention and detection program.

(E) Advising the director of the center on the performance of other child care employees.

(3) Each employee referred to in paragraph (1) shall be an employee in a competitive service position.

(c) COMPETITIVE RATES OF PAY.—For the purpose of providing military child development centers with a qualified and stable civilian workforce, employees at a military installation who are directly involved in providing child care and are paid from nonappropriated funds—

(1) in the case of entry-level employees, shall be paid at rates of pay competitive with the rates of pay paid to other entry-level employees at that installation who are drawn from the same labor pool; and

(2) in the case of other employees, shall be paid at rates of pay substantially equivalent to the rates of pay paid to other employees at that installation with similar training, seniority, and experience.

(d) COMPETITIVE SERVICE POSITION DEFINED.—In this section, the term ''competitive service position'' means a position in the competitive service, as defined in section 2102(a)(1) of title 5.

(Added Pub. L. 104–106, div. A, title V, § 568(a)(1), Feb. 10, 1996, 110 Stat. 332; amended Pub. L. 105–85, div. A, title X, § 1073(a)(34), Nov. 18, 1997, 111 Stat. 1902; Pub. L. 105–261, div. A, title XI, § 1106, Oct. 17, 1998, 112 Stat. 2142.)

AMENDMENTS

1998—Subsecs. (d), (e). Pub. L. 105–261 redesignated subsec. (e) as (d) and struck out former subsec. (d) which read as follows:

''(d) EMPLOYMENT PREFERENCE PROGRAM FOR MILITARY SPOUSES.—(1) The Secretary of Defense shall conduct a program under which qualified spouses of members of the armed forces shall be given a preference in hiring for the position of child care employee in a position paid from nonappropriated funds if the spouse is among persons determined to be best qualified for the position.

''(2) A spouse who is provided a preference under this subsection at a military child development center may not be precluded from obtaining another preference, in accordance with section 1784 of this title, in the same geographic area as the military child development center.''

1997—Subsec. (a)(1). Pub. L. 105–85, § 1073(a)(34)(A), struck out comma after ''implementing''.

Subsec. (d)(2). Pub. L. 105–85, § 1073(a)(34)(B), substituted ''section 1784'' for ''section 1794''.

§ 1793. Parent fees

(a) IN GENERAL.—The Secretary of Defense shall prescribe regulations establishing fees to be charged parents for the attendance of children at military child development centers. Those regulations shall be uniform for the military departments and shall require that, in the case of children who attend the centers on a regular basis, the fees shall be based on family income.

(b) LOCAL WAIVER AUTHORITY.—The Secretary of Defense may provide authority to installation commanders, on a case-by-case basis, to establish fees for attendance of children at child development centers at rates lower than those prescribed under subsection (a) if the rates prescribed under subsection (a) are not competitive with rates at local non-military child development centers.

(Added Pub. L. 104–106, div. A, title V, § 568(a)(1), Feb. 10, 1996, 110 Stat. 333.)

§ 1794. Child abuse prevention and safety at facilities

(a) CHILD ABUSE TASK FORCE.—The Secretary of Defense shall maintain a special task force to respond to allegations of widespread child abuse at a military installation. The task force shall be composed of personnel from appropriate disciplines, including, where appropriate, medicine, psychology, and childhood development. In the case of such allegations, the task force shall provide assistance to the commander of the installation, and to parents at the installation, in helping them to deal with such allegations.

(b) NATIONAL HOTLINE.—(1) The Secretary of Defense shall maintain a national telephone number for persons to use to report suspected child abuse or safety violations at a military

child development center or family home day care site. The Secretary shall ensure that such reports may be made anonymously if so desired by the person making the report. The Secretary shall establish procedures for following up on complaints and information received over that number.

(2) The Secretary shall publicize the existence of the number.

(c) ASSISTANCE FROM LOCAL AUTHORITIES.—The Secretary of Defense shall prescribe regulations requiring that, in a case of allegations of child abuse at a military child development center or family home day care site, the commander of the military installation or the head of the task force established under subsection (a) shall seek the assistance of local child protective authorities if such assistance is available.

(d) SAFETY REGULATIONS.—The Secretary of Defense shall prescribe regulations on safety and operating procedures at military child development centers. Those regulations shall apply uniformly among the military departments.

(e) INSPECTIONS.—The Secretary of Defense shall require that each military child development center be inspected not less often than four times a year. Each such inspection shall be unannounced. At least one inspection a year shall be carried out by a representative of the installation served by the center, and one inspection a year shall be carried out by a representative of the major command under which that installation operates.

(f) REMEDIES FOR VIOLATIONS.—(1) Except as provided in paragraph (2), any violation of a safety, health, or child welfare law or regulation (discovered at an inspection or otherwise) at a military child development center shall be remedied immediately.

(2) In the case of a violation that is not life threatening, the commander of the major command under which the installation concerned operates may waive the requirement that the violation be remedied immediately for a period of up to 90 days beginning on the date of the discovery of the violation. If the violation is not remedied as of the end of that 90-day period, the military child development center shall be closed until the violation is remedied. The Secretary of the military department concerned may waive the preceding sentence and authorize the center to remain open in a case in which the violation cannot reasonably be remedied within that 90-day period or in which major facility reconstruction is required.

(Added Pub. L. 104–106, div. A, title V, § 568(a)(1), Feb. 10, 1996, 110 Stat. 333.)

§ 1795. Parent partnerships with child development centers

(a) PARENT BOARDS.—The Secretary of Defense shall require that there be established at each military child development center a board of parents, to be composed of parents of children attending the center. The board shall meet periodically with staff of the center and the commander of the installation served by the center for the purpose of discussing problems and concerns. The board, together with the staff of the center, shall be responsible for coordinating the parent participation program described in subsection (b).

(b) PARENT PARTICIPATION PROGRAMS.—The Secretary of Defense shall require the establishment of a parent participation program at each military child development center. As part of such program, the Secretary of Defense may establish fees for attendance of children at such a center, in the case of parents who participate in the parent participation program at that center, at rates lower than the rates that otherwise apply.

(Added Pub. L. 104–106, div. A, title V, § 568(a)(1), Feb. 10, 1996, 110 Stat. 334.)

§ 1796. Subsidies for family home day care

The Secretary of Defense may use appropriated funds available for military child care purposes to provide assistance to family home day care providers so that family home day care services can be provided to members of the armed forces at a cost comparable to the cost of services provided by military child development centers. The Secretary shall prescribe regulations for the provision of such assistance.

(Added Pub. L. 104–106, div. A, title V, § 568(a)(1), Feb. 10, 1996, 110 Stat. 334.)

§ 1797. Early childhood education program

The Secretary of Defense shall require that all military child development centers meet standards of operation necessary for accreditation by an appropriate national early childhood programs accrediting body.

(Added Pub. L. 104–106, div. A, title V, § 568(a)(1), Feb. 10, 1996, 110 Stat. 335.)

§ 1798. Child care services and youth program services for dependents: financial assistance for providers

(a) AUTHORITY.—The Secretary of Defense may provide financial assistance to an eligible civilian provider of child care services or youth program services that furnishes such services for members of the armed forces and employees of the United States if the Secretary determines that providing such financial assistance—

(1) is in the best interest of the Department of Defense;

(2) enables supplementation or expansion of furnishing of child care services or youth program services for military installations, while not supplanting or replacing such services; and

(3) ensures that the eligible provider is able to comply, and does comply, with the regulations, policies, and standards of the Department of Defense that are applicable to the furnishing of such services.

(b) ELIGIBLE PROVIDERS.—A provider of child care services or youth program services is eligible for financial assistance under this section if the provider—

(1) is licensed to provide those services under applicable State and local law;

(2) has previously provided such services for members of the armed forces or employees of the United States; and

(3) either—

(A) is a family home day care provider; or

(B) is a provider of family child care services that—

(i) otherwise provides federally funded or sponsored child development services;

(ii) provides the services in a child development center owned and operated by a private, not-for-profit organization;

(iii) provides before-school or after-school child care program in a public school facility;

(iv) conducts an otherwise federally funded or federally sponsored school age child care or youth services program;

(v) conducts a school age child care or youth services program that is owned and operated by a not-for-profit organization; or

(vi) is a provider of another category of child care services or youth services determined by the Secretary of Defense as appropriate for meeting the needs of members of the armed forces or employees of the Department of Defense.

(c) FUNDING.—To provide financial assistance under this subsection, the Secretary of Defense may use any funds appropriated to the Department of Defense for operation and maintenance.

(Added Pub. L. 106–65, div. A, title V, § 584(a)(1)(B), Oct. 5, 1999, 113 Stat. 634; amended Pub. L. 107–314, div. A, title X, § 1041(a)(6), Dec. 2, 2002, 116 Stat. 2645.)

PRIOR PROVISIONS

A prior section 1798 was renumbered section 1800 of this title.

AMENDMENTS

2002—Subsec. (d). Pub. L. 107–314 struck out heading and text of subsec. (d). Text read as follows:

''(1) Every two years the Secretary of Defense shall submit to Congress a report on the exercise of authority under this section. The report shall include an evaluation of the effectiveness of that authority for meeting the needs of members of the armed forces or employees of the Department of Defense for child care services and youth program services. The report may include any recommendations for legislation that the Secretary considers appropriate to enhance the capability of the Department of Defense to meet those needs.

''(2) A biennial report under this subsection may be combined with the biennial report under section 1799(d) of this title into a single report for submission to Congress.''

FIRST BIENNIAL REPORTS

Pub. L. 106–65, div. A, title V, § 584(b), Oct. 5, 1999, 113 Stat. 636, provided that the first biennial reports under former sections 1798(d) and 1799(d) of this title were to be submitted not later than Mar. 31, 2002, and were to cover fiscal years 2000 and 2001.

§ 1799. Child care services and youth program services for dependents: participation by children and youth otherwise ineligible

(a) AUTHORITY.—The Secretary of Defense may authorize participation in child care or youth programs of the Department of Defense, to the extent of the availability of space and services, by children and youth under the age of 19 who are not dependents of members of the armed forces or of employees of the Department of Defense and are not otherwise eligible for participation in those programs.

(b) LIMITATION.—Authorization of participation in a program under subsection (a) shall be limited to situations in which that participation promotes the attainment of the objectives set forth in subsection (c), as determined by the Secretary.

(c) OBJECTIVES.—The objectives for authorizing participation in a program under subsection (a) are as follows:

(1) To support the integration of children and youth of military families into civilian communities.

(2) To make more efficient use of Department of Defense facilities and resources.

(3) To establish or support a partnership or consortium arrangement with schools and other youth services organizations serving children of members of the armed forces.

(Added Pub. L. 106–65, div. A, title V, § 584(a)(1)(B), Oct. 5, 1999, 113 Stat. 634; amended Pub. L. 107–314, div. A, title X, § 1041(a)(7), Dec. 2, 2002, 116 Stat. 2645.)

AMENDMENTS

2002—Subsec. (d). Pub. L. 107–314 struck out heading and text of subsec. (d). Text read as follows:

''(1) Every two years the Secretary of Defense shall submit to Congress a report on the exercise of authority under this section. The report shall include an evaluation of the effectiveness of that authority for achieving the objectives set out under subsection (c). The report may include any recommendations for legislation that the Secretary considers appropriate to enhance the capability of the Department of Defense to attain those objectives.

''(2) A biennial report under this subsection may be combined with the biennial report under section 1798(d) of this title into a single report for submission to Congress.''

§ 1800. Definitions

In this subchapter:

(1) The term ''military child development center'' means a facility on a military installation (or on property under the jurisdiction of the commander of a military installation) at which child care services are provided for members of the armed forces or any other facility at which such child care services are provided that is operated by the Secretary of a military department.

(2) The term ''family home day care'' means home-based child care services that are provided for members of the armed forces by an individual who (A) is certified by the Secretary of the military department concerned as qualified to provide those services, and (B) provides those services on a regular basis for compensation.

(3) The term ''child care employee'' means a civilian employee of the Department of Defense who is employed to work in a military child development center (regardless of whether the employee is paid from appropriated funds or nonappropriated funds).

(4) The term ''child care fee receipts'' means those nonappropriated funds that are derived from fees paid by members of the armed forces

for child care services provided at military child development centers.

(Added Pub. L. 104–106, div. A, title V, § 568(a)(1), Feb. 10, 1996, 110 Stat. 335, § 1798; renumbered § 1800, Pub. L. 106–65, div. A, title V, § 584(a)(1)(A), Oct. 5, 1999, 113 Stat. 634.)

AMENDMENTS

1999—Pub. L. 106–65 renumbered section 1798 of this title as this section.

[CHAPTER 89—REPEALED]

[§§ 1801 to 1805. Repealed. Pub. L. 104–106, div. A, title X, § 1061(a)(1), Feb. 10, 1996, 110 Stat. 442]

Section 1801, added Pub. L. 102–484, div. A, title XIII, § 1322(a)(1), Oct. 23, 1992, 106 Stat. 2551, related to volunteer program to assist independent states of former Soviet Union.

Section 1802, added Pub. L. 102–484, div. A, title XIII, § 1322(a)(1), Oct. 23, 1992, 106 Stat. 2551; amended Pub. L. 103–35, title II, § 201(f)(3), (g)(3), May 31, 1993, 107 Stat. 99, 100, set out criteria to be used in selecting volunteers.

Section 1803, added Pub. L. 102–484, div. A, title XIII, § 1322(a)(1), Oct. 23, 1992, 106 Stat. 2552, related to determining needs for volunteers and role of Secretary of State.

Section 1804, added Pub. L. 102–484, div. A, title XIII, § 1322(a)(1), Oct. 23, 1992, 106 Stat. 2553; amended Pub. L. 103–160, div. A, title XI, § 1182(a)(4), Nov. 30, 1993, 107 Stat. 1771, related to the compensation and benefits of volunteers.

Section 1805, added Pub. L. 102–484, div. A, title XIII, § 1322(a)(1), Oct. 23, 1992, 106 Stat. 2553, provided that selection of volunteers to participate in program under this chapter terminate Sept. 30, 1995.

PART III—TRAINING AND EDUCATION

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AMENDMENTS

2004—Pub. L. 108–375, div. A, title V, § 532(e), Oct. 28, 2004, 118 Stat. 1900, added item for chapter 107 and redesignated former item for chapter 107 as 106A.

2000—Pub. L. 106–398, § 1 [[div. A], title IX, § 922(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–236, added item for chapter 112.

1991—Pub. L. 102–25, title VII, § 701(e)(2), Apr. 6, 1991, 105 Stat. 114, inserted ''2161'' in item for chapter 108.

1990—Pub. L. 101–510, div. A, title II, § 247(a)(2)(B), title IX, § 911(b)(3), Nov. 5, 1990, 104 Stat. 1523, 1626, substituted ''Department of Defense Schools'' for ''Granting of Advanced Degrees at Department of Defense Schools'' in item for chapter 108 and ''Support of Science, Mathematics, and Engineering Education'' for ''National Defense Science and Engineering Graduate Fellowships'' in item for chapter 111.

1989—Pub. L. 101–189, div. A, title VIII, § 843(d)(2), title XVI, § 1622(d)(1), Nov. 29, 1989, 103 Stat. 1517, 1604, substituted ''TRAINING AND EDUCATION'' for ''TRAINING'' in heading for part III and added item for chapter 111.

1987—Pub. L. 100–180, div. A, title VII, § 711(b), Dec. 4, 1987, 101 Stat. 1111, substituted ''Financial Assistance Programs'' for ''Scholarship Program'' in item for chapter 105.

1986—Pub. L. 99–399, title VIII, § 806(d)(2), Aug. 27, 1986, 100 Stat. 888, added item for chapter 110.

1985—Pub. L. 99–145, title VI, § 671(a)(2), Nov. 8, 1985, 99 Stat. 663, added item for chapter 109.

1984—Pub. L. 98–525, title VII, § 705(a)(2), Oct. 19, 1984, 98 Stat. 2567, substituted ''Members of the Selected Reserve'' for ''Enlisted Members of the Selected Reserve of the Ready Reserve'' in item for chapter 106.

1980—Pub. L. 96–513, title V, § 511(99), Dec. 12, 1980, 94 Stat. 2929, capitalized ''Assistance'', ''Persons'', ''Enlisting'', ''Active'', and ''Duty'' in item for chapter 107.

Pub. L. 96–450, title IV, § 406(b), Oct. 14, 1980, 94 Stat. 1981, added item for chapter 108.

Pub. L. 96–342, title IX, § 901(b), Sept. 8, 1980, 94 Stat. 1114, added item for chapter 107.

1977—Pub. L. 95–79, title IV, § 402(b), July 30, 1977, 91 Stat. 330, added item for chapter 106.

1972—Pub. L. 92–426, § 2(b), Sept. 21, 1972, 86 Stat. 719, added items for chapters 104 and 105.

1964—Pub. L. 88–647, title I, § 101(2), title II, § 201(2), Oct. 13, 1964, 78 Stat. 1064, 1069, added items for chapters 102 and 103.

CHAPTER 101—TRAINING GENERALLY

Sec.	
[2001.	Repealed.]
2002.	Dependents of members of armed forces: language training.
2003.	Aeronautical rating as pilot: qualifications.
2004.	Detail of commissioned officers as students at law schools.
2004a.	Detail of commissioned officers as students at medical schools.
2004b.	Detail of commissioned officers as students at schools of psychology.
2005.	Advanced education assistance: active duty agreement; reimbursement requirements.
2006.	Department of Defense Education Benefits Fund.
2007.	Payment of tuition for off-duty training or education.
2008.	Authority to use funds for certain educational purposes.
2009.	Military colleges: female students.
2010.	Participation of developing countries in combined exercises: payment of incremental expenses.
2011.	Special operations forces: training with friendly foreign forces.
2012.	Support and services for eligible organizations and activities outside Department of Defense.
2013.	Training at non-Government facilities.
2014.	Administrative actions adversely affecting military training or other readiness activities.
2015.	Payment of expenses to obtain professional credentials.
2016.	Undergraduate nurse training program: establishment through agreement with academic institution.

AMENDMENTS

2009—Pub. L. 111–84, div. A, title V, §§ 521(b), 525(b)(2), Oct. 28, 2009, 123 Stat. 2285, 2287, added items 2004b and 2016.