

section (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.
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638a.	Modification to rules for continuation on active duty; enhanced authority for selective early retirement and early discharges.
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AMENDMENTS

2011—Pub. L. 112-81, div. A, title V, §504(a)(2), 125 Stat. 1390, added item 638b.

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).

§ 638b. Voluntary retirement incentive

(a) INCENTIVE FOR VOLUNTARY RETIREMENT FOR CERTAIN OFFICERS.—The Secretary of Defense may authorize the Secretary of a military department to provide a voluntary retirement incentive payment in accordance with this section to an officer of the armed forces under that Secretary’s jurisdiction who is specified in subsection (c) as being eligible for such a payment.

(b) LIMITATIONS.—(1) Any authority provided the Secretary of a military department under this section shall expire as specified by the Secretary of Defense, but not later than December 31, 2018.

(2) The total number of officers who may be provided a voluntary retirement incentive payment under this section may not exceed 675 officers.

(c) ELIGIBLE OFFICERS.—(1) Except as provided in paragraph (2), an officer of the armed forces is eligible for a voluntary retirement incentive payment under this section if the officer—

(A) has served on active duty for more than 20 years, but not more than 29 years, on the approved date of retirement;

(B) meets the minimum length of commissioned service requirement for voluntary retirement as a commissioned officer in accordance with section 3911, 6323, or 8911 of this title, as applicable to that officer;

(C) on the approved date of retirement, has 12 months or more remaining on active-duty service before reaching the maximum retirement years of active service for the member’s grade as specified in section 633 or 634 of this title;

(D) on the approved date of retirement, has 12 months or more remaining on active-duty service before reaching the maximum retirement age under any other provision of law; and

(E) meets any additional requirements for such eligibility as is specified by the Secretary concerned, including any requirement relating to years of service, skill rating, military specialty or competitive category, grade, any remaining period of obligated service, or any combination thereof.

(2) The following officers are not eligible for a voluntary retirement incentive payment under this section:

(A) An officer being evaluated for disability under chapter 61 of this title.

(B) An officer projected to be retired under section 1201 or 1204 of this title.

(C) An officer projected to be discharged with disability severance pay under section 1212 of this title.

(D) A member transferred to the temporary disability retired list under section 1202 or 1205 of this title.

(E) An officer subject to pending disciplinary action or subject to administrative separation or mandatory discharge under any other provision of law or regulation.

(d) AMOUNT OF PAYMENT.—The amount of the voluntary retirement incentive payment paid an officer under this section shall be an amount determined by the Secretary concerned, but not to exceed an amount equal to 12 times the amount of the officer's monthly basic pay at the time of the officer's retirement. The amount may be paid in a lump sum at the time of retirement.

(e) REPAYMENT FOR MEMBERS WHO RETURN TO ACTIVE DUTY.—(1) Except as provided in paragraph (2), a member of the armed forces who, after having received all or part of a voluntary retirement incentive 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 retirement incentive received.

(2) Members who are involuntarily recalled to active duty or full-time National Guard duty under any provision of law shall not be subject to this subsection.

(3) 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 interest of the United States. The authority in this paragraph may be delegated only to the Under Secretary of Defense for Personnel and Readiness and the Principal Deputy Under Secretary of Defense of Personnel and Readiness.

(Added Pub. L. 112-81, div. A, title V, §504(a)(1), Dec. 31, 2011, 125 Stat. 1389.)

§ 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 hos-

pitalization 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