

(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

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 fol-

lows: “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