

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
9841	31:493.	Mar. 2, 1907, ch. 2511 (proviso on p. 1166), 34 Stat. 1166.

The words “Secretary of the Air Force” are substituted for “Secretary of War” because of sections 205(a) and 207(a) and (f) of the Act of July 26, 1947 (ch. 343, 61 Stat. 501, 502), and sections 1 and 53 of the Act of August 10, 1956 (ch. 1041, 70A Stat. 157, 488, 676). For comparable provisions that apply to the Army, see the revision note for 10:4841.

§ 9842. Settlement of accounts of line officers

The Comptroller General shall settle the account of a line officer of the Air Force for pay due the officer even if the officer cannot account for property entrusted to the officer or cannot make a monthly report or return, when the Comptroller General is satisfied that the inability to account for property or make a report or return was the result of the officer having been a prisoner, or of an accident or casualty of war. (Added Pub. L. 97-258, §2(b)(14)(B), Sept. 13, 1982, 96 Stat. 1058.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
9842	31:44 (1st sentence).	June 10, 1921, ch. 18, §304 (1st par. 1st sentence), 42 Stat. 24. R.S. § 278.
	31:95.	

The section is made applicable to the Air Force by section 207(a) and (f) of the Act of July 26, 1947 (ch. 343, 61 Stat. 502). For comparable provisions that apply to the Army, see the revision note for 10:4842.

Subtitle E—Reserve Components

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SUBTITLE REFERRED TO IN OTHER SECTIONS

This subtitle is referred to in section 1406 of this title.

CHAPTER 1001—DEFINITIONS

Sec.	
10001.	Definition of State.

§ 10001. Definition of State

In this subtitle, the term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam.

(Added Pub. L. 103-337, div. A, title XVI, §1661(a)(1), Oct. 5, 1994, 108 Stat. 2969.)

EFFECTIVE DATE

Section 1691 of title XVI of div. A of Pub. L. 103-337 provided that:

“(a) EFFECTIVE DATE FOR AMENDMENTS.—Except as provided in subsection (b), the amendment made by section 1611 [enacting heading and analysis of this subtitle and enacting part III of this subtitle] and the amendments made by subtitles C and D [subtitles C (§§ 1661 to 1665) and D (§§ 1671 to 1677) of title XVI of div. A of Pub. L. 103-337, see Tables for classification] shall take effect on December 1, 1994.

“(b) EFFECTIVE DATE FOR NEW RESERVE OFFICER PERSONNEL POLICIES.—(1) The provisions of part III of subtitle E of title 10, United States Code, as added by section 1611, shall become effective on October 1, 1996. The amendments made by part II [part II (§§ 1621 to 1630) of subtitle A of title XVI of div. A of Pub. L. 103-337, see Tables for classification], of subtitle A, by subtitle B [subtitle B (§§ 1631 to 1641) of title XVI of div. A of Pub. L. 103-337, see Tables for classification], and by section 1671(c)(2) [amending section 113 of this title] and paragraphs (2), (3)(B), (3)(C), and (4) of section 1675(d) [amending sections 12645 to 12647 of this title] shall take effect on October 1, 1996.

“(2) Any reference in subtitle E of this title to the effective date of this title is a reference to the effective date prescribed in paragraph (1).

“(3) The personnel policies applicable to Reserve officers under the provisions of law in effect on the day before the date prescribed in subsection (a) and replaced by the Reserve officer personnel policies prescribed in part III of subtitle E of title 10, United States Code, as added by section 1611, shall, notwithstanding the provisions of subsection (a), continue in effect until the effective date prescribed in paragraph (1).

“(4) The authority to prescribe regulations under the provisions of part III of subtitle E of title 10, United States Code, as added by section 1611, shall take effect on the date of the enactment of this Act [Oct. 5, 1994].”

SHORT TITLE

Section 1601 of title XVI of div. A of Pub. L. 103-337 provided that: “This title [see Tables for classification] may be cited as the ‘Reserve Officer Personnel Management Act’.”

PRESERVATION OF SUSPENDED STATUS OF LAWS SUSPENDED ON SEPTEMBER 30, 1996

Section 1692 of title XVI of div. A of Pub. L. 103-337 provided that: “If a provision of law that is in a suspended status on the day before the effective date of this title under section 1691(b)(1) [set out above] is transferred or amended by this title [see Tables for classification], the suspended status of that provision is not affected by that transfer or amendment.”

PRESERVATION OF PRE-EXISTING RIGHTS, DUTIES, PENALTIES, AND PROCEEDINGS

Section 1693 of title XVI of div. A of Pub. L. 103-337 provided that: “Except as otherwise provided in this title [see Tables for classification], the provisions of this title and the amendments made by this title do not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this title under section 1691(b)(1) [set out above].”

CHAPTER 1003—RESERVE COMPONENTS GENERALLY

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10101.	Reserve components named.
10102.	Purpose of reserve components.
10103.	Basic policy for order of National Guard into Federal service. ¹
10104.	Army Reserve: composition.
10105.	Army National Guard of the United States: composition.
10106.	Army National Guard: when a component of the Army.

¹ So in original. Does not conform to section catchline.

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10113.	Air National Guard of the United States: status when not in Federal service.
10114.	Coast Guard Reserve.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 261 of this title.

§ 10101. Reserve components named

The reserve components of the armed forces are:

- (1) The Army National Guard of the United States.
- (2) The Army Reserve.
- (3) The Naval Reserve.
- (4) The Marine Corps Reserve.
- (5) The Air National Guard of the United States.
- (6) The Air Force Reserve.
- (7) The Coast Guard Reserve.

(Added Pub. L. 103-337, div. A, title XVI, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2970.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 261(a) of this title, prior to repeal by Pub. L. 103-337, § 1661(a)(2)(A).

EFFECTIVE DATE

Chapter 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 261 of this title; title 5 sections 6323, 8401, 8456; title 26 section 219.

§ 10102. Purpose of reserve components

The purpose of each reserve component is to provide trained units and qualified persons available for active duty in the armed forces, in time of war or national emergency, and at such other times as the national security may require, to fill the needs of the armed forces whenever, during and after the period needed to procure and train additional units and qualified persons to achieve the planned mobilization, more units and persons are needed than are in the regular components.

(Added Pub. L. 103-337, div. A, title XVI, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2970.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 262 of this title, prior to repeal by Pub. L. 103-337, § 1661(a)(2)(A).

§ 10103. Basic policy for order of the National Guard and reserve components to active duty

Whenever Congress determines that more units and organizations are needed for the national security than are in the regular components of the ground and air forces, the Army Na-

tional Guard of the United States and the Air National Guard of the United States, or such parts of them as are needed, together with units of other reserve components necessary for a balanced force, shall be ordered to active duty and retained as long as so needed.

(Added Pub. L. 103-337, div. A, title XVI, §1661(a)(1), Oct. 5, 1994, 108 Stat. 2970.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 263 of this title, prior to repeal by Pub. L. 103-337, §1661(a)(2)(A).

ORDERING READY RESERVE TO ACTIVE DUTY DURING NATIONAL EMERGENCIES

For additional provisions authorizing ordering of Ready Reserve to active duty during national emergencies, see section 12303 of this title and notes thereunder.

CROSS REFERENCES

Similar provision, see section 102 of Title 32, National Guard.

§ 10104. Army Reserve: composition

The Army Reserve includes all Reserves of the Army who are not members of the Army National Guard of the United States.

(Added Pub. L. 103-337, div. A, title XVI, §1661(a)(1), Oct. 5, 1994, 108 Stat. 2970.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3076 of this title, prior to repeal by Pub. L. 103-337, §1661(a)(3)(A).

§ 10105. Army National Guard of the United States: composition

The Army National Guard of the United States is the reserve component of the Army that consists of—

- (1) federally recognized units and organizations of the Army National Guard; and
- (2) members of the Army National Guard who are also Reserves of the Army.

(Added Pub. L. 103-337, div. A, title XVI, §1661(a)(1), Oct. 5, 1994, 108 Stat. 2970.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3077 of this title, prior to repeal by Pub. L. 103-337, §1661(a)(3)(A).

ACTIVE COMPONENT SUPPORT FOR RESERVE TRAINING

Pub. L. 103-160, div. A, title V, §515, Nov. 30, 1993, 107 Stat. 1650, provided that:

“(a) REQUIREMENT TO ESTABLISH.—The Secretary of the Army shall, not later than September 30, 1995, establish one or more active-component units of the Army with the primary mission of providing training support to reserve units. Each such unit shall be part of the active Army force structure and shall have a commander who is on the active-duty list of the Army.

“(b) IMPLEMENTATION PLAN.—The Secretary of the Army shall during fiscal year 1994 submit to the Committees on Armed Services of the Senate and House of Representatives a plan to meet the requirement in subsection (a). The plan shall include a proposal for any statutory changes that the Secretary considers to be necessary for the implementation of the plan.”

TEST PROGRAM FOR RESERVE COMBAT MANEUVER UNIT INTEGRATION

Pub. L. 103-160, div. A, title V, §516, Nov. 30, 1993, 107 Stat. 1650, directed Secretary of the Army to prepare a

plan for carrying out a test program to determine feasibility and advisability of applying the roundout and roundup models for integration of active and reserve component Army units at the battalion and company levels and submit to Congress not later than Mar. 31, 1994, a report that includes the plan for the test program.

ARMY NATIONAL GUARD COMBAT READINESS REFORM

Pub. L. 102-484, div. A, title XI, Oct. 23, 1992, 106 Stat. 2536, as amended by Pub. L. 103-35, title II, §202(a)(11), May 31, 1993, 107 Stat. 101; Pub. L. 103-160, div. A, title V, §520, Nov. 30, 1993, 107 Stat. 1651; Pub. L. 103-337, div. A, title V, §516, Oct. 5, 1994, 108 Stat. 2754, provided that:

“SEC. 1101. SHORT TITLE.

“This title may be cited as the ‘Army National Guard Combat Readiness Reform Act of 1992’.

“Subtitle A—Deployability Enhancements

“SEC. 1111. MINIMUM PERCENTAGE OF PRIOR ACTIVE-DUTY PERSONNEL.

“(a) ESTABLISHMENT OF MINIMUM PERCENTAGE.—The Secretary of the Army shall have an objective of increasing the percentage of qualified prior active-duty personnel in the Army National Guard to 65 percent, in the case of officers, and to 50 percent, in the case of enlisted members, by September 30, 1997.

“(b) INTERIM ACCESSION PERCENTAGES.—The Secretary shall prescribe regulations establishing for each of fiscal years 1994 through 1997 an accession percentage for officers, and a separate accession percentage for enlisted members, for prior active-duty personnel so as to facilitate compliance with the objectives stated in subsection (a).

“(c) QUALIFIED PRIOR ACTIVE-DUTY PERSONNEL.—For purposes of this section, qualified prior active-duty personnel are members of the Army National Guard with not less than two years of active duty.

“(d) DEADLINE FOR REGULATIONS.—The regulations required by subsection (a) shall be prescribed not later than December 15, 1993. The Secretary shall submit those regulations to the Committees on Armed Services of the Senate and House of Representatives not later than January 15, 1994.

“(e) LIST OF CERTAIN SEPARATED OFFICERS.—On a semiannual basis, the Secretary of the Army shall furnish to the Chief of the National Guard Bureau a list containing the name, home of record, and last-known mailing address of each officer of the Army who during the previous six months was honorably separated from active duty in the grade of major or below.

“SEC. 1112. SERVICE IN SELECTED RESERVE IN LIEU OF ACTIVE-DUTY SERVICE.

“(a) ACADEMY GRADUATES AND DISTINGUISHED ROTC GRADUATES TO SERVE IN SELECTED RESERVE FOR PERIOD OF ACTIVE-DUTY SERVICE OBLIGATION NOT SERVED ON ACTIVE DUTY.—(1) An officer who is a graduate of one of the service academies or who was commissioned as a distinguished Reserve Officers’ Training Corps graduate and who is permitted to be released from active duty before the completion of the active-duty service obligation applicable to that officer shall serve the remaining period of such active-duty service obligation as a member of the Selected Reserve.

“(2) The Secretary concerned may waive paragraph (1) in a case in which the Secretary determines that there is no unit position available for the officer.

“(b) ROTC GRADUATES.—The Secretary of the Army shall provide a program under which graduates of the Reserve Officers’ Training Corps program may perform their minimum period of obligated service by a combination of (A) two years of active duty, and (B) such additional period of service as is necessary to complete the remainder of such obligation, to be served in the National Guard.

“SEC. 1113. REVIEW OF OFFICER PROMOTIONS BY COMMANDER OF ASSOCIATED ACTIVE DUTY UNIT.

“(a) REVIEW.—Whenever an officer in an Army National Guard unit as defined in subsection (b) is recommended for a unit vacancy promotion to a grade above first lieutenant, the recommended promotion shall be reviewed by the commander of the active duty unit associated with the National Guard unit of that officer or another active-duty officer designated by the Secretary of the Army. The commander or other active-duty officer designated by the Secretary of the Army shall provide to the promoting authority, through the promotion board convened by the promotion authority to consider unit vacancy promotion candidates, before the promotion is made, a recommendation of concurrence or nonconcurrence in the promotion. The recommendation shall be provided to the promoting authority within 60 days after receipt of notice of the recommended promotion.

“(b) IMPLEMENTATION.—Subsection (a) shall take effect—

“(1) on April 1, 1993, for officers in Army National Guard units that on that date are designated as round-out/round-up units;

“(2) on October 1, 1993, for officers in other units of the Army National Guard in the Selected Reserve of the Ready Reserve that are designated as early deploying units; and

“(3) on April 1, 1994, for officers in all other Army National Guard combat units.

“(c) REPORT ON FEASIBILITY.—The Secretary of the Army shall submit to the Committees on Armed Services of the Senate and House of Representatives a report, not later than March 1, 1993, containing a plan for implementation of subsection (a). The Secretary may include with the report such proposals for legislation to clarify, improve, or modify the provisions of subsection (a) in order to better carry out the purposes of those provisions as the Secretary considers appropriate.

“SEC. 1114. NONCOMMISSIONED OFFICER EDUCATION REQUIREMENTS.

“(a) NONWAIVABILITY.—Any standard prescribed by the Secretary of the Army establishing a military education requirement for noncommissioned officers that must be met as a requirement for promotion to a higher noncommissioned officer grade may be waived only if the Secretary determines that the waiver is necessary in order to preserve unit leadership continuity under combat conditions.

“(b) AVAILABILITY OF TRAINING POSITIONS.—The Secretary of the Army shall ensure that there are sufficient training positions available to enable compliance with subsection (a).

“SEC. 1115. INITIAL ENTRY TRAINING AND NON-DEPLOYABLE PERSONNEL ACCOUNT.

“(a) ESTABLISHMENT OF PERSONNEL ACCOUNT.—The Secretary of the Army shall establish a personnel accounting category for members of the Army National Guard to be used for categorizing members of the National Guard who have not completed the minimum training required for deployment or who are otherwise not available for deployment. The account shall be designed so that it is compatible with the decentralized personnel systems of the Army Guard and Reserve. The account shall be used for the reporting of personnel readiness and may not be used as a factor in establishing the level of Army Guard and Reserve force structure.

“(b) USE OF ACCOUNT.—Until a member of the Army National Guard has completed the minimum training necessary for deployment, the member may not be assigned to fill a position in a National Guard unit but shall be carried in the account established under subsection (a).

“(c) TIME FOR QUALIFICATION FOR DEPLOYMENT.—(1) If at the end of 24 months after a member of the Army National Guard enters the National Guard, the member

has not completed the minimum training required for deployment, the member shall be discharged from the Army National Guard.

“(2) The Secretary of the Army may waive the requirement in paragraph (1) in the case of health care providers and in other cases determined necessary. The authority to make such a waiver may not be delegated.

“SEC. 1116. MINIMUM PHYSICAL DEPLOYABILITY STANDARDS.

“The Secretary of the Army shall transfer the personnel classification of a member of the Army National Guard from the National Guard unit of the member to the personnel account established pursuant to section 1115 if the member does not meet minimum physical profile standards required for deployment. Any such transfer shall be made not later than 90 days after the date on which the determination that the member does not meet such standards is made.

“SEC. 1117. MEDICAL ASSESSMENTS.

“The Secretary of the Army shall require that—

“(1) each member of the Army National Guard undergo a medical and dental screening on an annual basis; and

“(2) each member of the Army National Guard over the age of 40 undergo a full physical examination not less often than every two years.

“SEC. 1118. DENTAL READINESS OF MEMBERS OF EARLY DEPLOYING UNITS.

“(a) DEVELOPMENT OF PLAN.—The Secretary of the Army shall develop a plan to ensure that units of the Army National Guard scheduled for early deployment in the event of a mobilization (as determined by the Secretary) are dentally ready (as defined in regulations of the Secretary) for deployment.

“(b) REPORT.—The Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on such plan not later than December 1, 1993. The Secretary shall include in the report any legislative proposals that the Secretary considers necessary in order to implement the plan.

“SEC. 1119. COMBAT UNIT TRAINING.

“The Secretary of the Army shall establish a program to minimize the post-mobilization training time required for combat units of the Army National Guard. The program shall require—

“(1) that unit premobilization training emphasize—

“(A) individual soldier qualification and training;

“(B) collective training and qualification at the crew, section, team, and squad level; and

“(C) maneuver training at the platoon level as required of all Army units; and

“(2) that combat training for command and staff leadership include annual multi-echelon training to develop battalion, brigade, and division level skills, as appropriate.

“SEC. 1120. USE OF COMBAT SIMULATORS.

“The Secretary of the Army shall expand the use of simulations, simulators, and advanced training devices and technologies in order to increase training opportunities for members and units of the Army National Guard.

“Subtitle B—Assessment of National Guard Capability

“SEC. 1121. DEPLOYABILITY RATING SYSTEM.

“The Secretary of the Army shall modify the readiness rating system for units of the Army Reserve and Army National Guard to ensure that the rating system provides an accurate assessment of the deployability of a unit and those shortfalls of a unit that require the provision of additional resources. In making such modifications, the Secretary shall ensure that the unit readiness rating system is designed so—

“(1) that the personnel readiness rating of a unit reflects—

“(A) both the percentage of the overall personnel requirement of the unit that is manned and deployable and the fill and deployability rate for critical occupational specialties necessary for the unit to carry out its basic mission requirements; and

“(B) the number of personnel in the unit who are qualified in their primary military occupational specialty; and

“(2) that the equipment readiness assessment of a unit—

“(A) documents all equipment required for deployment;

“(B) reflects only that equipment that is directly possessed by the unit;

“(C) specifies the effect of substitute items; and

“(D) assesses the effect of missing components and sets on the readiness of major equipments items.

“SEC. 1122. INSPECTIONS.

“[Amended section 105 of Title 32, National Guard.]

“Subtitle C—Compatibility of Guard Units With Active Component Units

“SEC. 1131. ACTIVE DUTY ASSOCIATE UNIT RESPONSIBILITY.

“(a) ASSOCIATE UNITS.—The Secretary of the Army shall require that each National Guard combat unit of the Army National Guard be associated with an active-duty combat unit.

“(b) RESPONSIBILITIES.—The commander (at a brigade or higher level) of the associated active duty unit for any National Guard combat unit shall be responsible for—

“(1) approving the training program of the National Guard unit;

“(2) reviewing the readiness report of the National Guard unit;

“(3) assessing the manpower, equipment, and training resources requirements of the National Guard unit; and

“(4) validating, not less often than annually, the compatibility of the National Guard unit with the active duty forces.

“(c) IMPLEMENTATION.—The Secretary of the Army shall begin to implement subsection (a) during fiscal year 1993 and shall achieve full implementation of the plan not later than October 1, 1995.

“SEC. 1132. TRAINING COMPATIBILITY.

“[Amended section 414(c) of Pub. L. 102-190, set out as a note under section 12001 of this title.]

“SEC. 1133. SYSTEMS COMPATIBILITY.

“(a) COMPATIBILITY PROGRAM.—The Secretary of the Army shall develop and implement a program to ensure that Army personnel systems, Army supply systems, Army maintenance management systems, and Army finance systems are compatible across all Army components.

“(b) REPORT.—Not later than September 30, 1993, the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives a report describing the program under subsection (a) and setting forth a plan for implementation of the program by the end of fiscal year 1997.

“SEC. 1134. EQUIPMENT COMPATIBILITY.

“[Amended section 115b(b) [now 10541(b)] of this title.]

“SEC. 1135. DEPLOYMENT PLANNING REFORM.

“(a) REQUIREMENT FOR PRIORITY SYSTEM.—The Secretary of the Army shall develop a system for identifying the priority for mobilization of Army reserve component units. The priority system shall be based on regional contingency planning requirements and doctrine to be integrated into the Army war planning process.

“(b) UNIT DEPLOYMENT DESIGNATORS.—The system shall include the use of Unit Deployment Designators to specify the post-mobilization training days allocated to a unit before deployment. The Secretary shall speci-

fy standard designator categories in order to group units according to the timing of deployment after mobilization.

“(c) USE OF DESIGNATORS.—(1) The Secretary shall establish procedures to link the Unit Deployment Designator system to the process by which resources are provided for National Guard units.

“(2) The Secretary shall develop a plan that allocates greater funding for training, full-time support, equipment, and manpower in excess of 100 percent of authorized strength to units assigned Unit Deployment Designators that allow fewer post-mobilization training days.

“(3) The Secretary shall establish procedures to identify the command level at which combat units would, upon deployment, be integrated with active component forces consistent with the Unit Deployment Designator system.

“SEC. 1136. QUALIFICATION FOR PRIOR-SERVICE ENLISTMENT BONUS.

“[Amended section 308i(c) of Title 37, Pay and Allowances of the Uniformed Services.]

“SEC. 1137. STUDY OF IMPLEMENTATION FOR ALL RESERVE COMPONENTS.

“The Secretary of Defense shall conduct an assessment of the feasibility of implementing the provisions of this title for all reserve components. Not later than December 31, 1993, the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives a report containing a plan for such implementation.”

§ 10106. Army National Guard: when a component of the Army

The Army National Guard while in the service of the United States is a component of the Army.

(Added Pub. L. 103-337, div. A, title XVI, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2970.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3078 of this title, prior to repeal by Pub. L. 103-337, § 1661(a)(3)(A).

§ 10107. Army National Guard of the United States: status when not in Federal service

When not on active duty, members of the Army National Guard of the United States shall be administered, armed, equipped, and trained in their status as members of the Army National Guard.

(Added Pub. L. 103-337, div. A, title XVI, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2971.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3079 of this title, prior to repeal by Pub. L. 103-337, § 1661(a)(3)(A).

CROSS REFERENCES

Active duty, see section 12401 of this title.

§ 10108. Naval Reserve: administration

(a) The Naval Reserve is the reserve component of the Navy. It shall be organized, administered, trained, and supplied under the direction of the Chief of Naval Operations.

(b) The bureaus and offices of the executive part of the Department of the Navy have the same relation and responsibility to the Naval Reserve as they do to the Regular Navy.

(Added Pub. L. 103-337, div. A, title XVI, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2971.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 5251(a), (b) of this title, prior to repeal by Pub. L. 103-337, § 1661(a)(3)(A).

§ 10109. Marine Corps Reserve: administration

(a) The Marine Corps Reserve is the reserve component of the Marine Corps. It shall be organized, administered, trained, and supplied under the direction of the Commandant of the Marine Corps.

(b) The departments and offices of Headquarters, Marine Corps have the same relation and responsibilities to the Marine Corps Reserve as they do to the Regular Marine Corps.

(Added Pub. L. 103-337, div. A, title XVI, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2971.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 5252(a), (b) of this title, prior to repeal by Pub. L. 103-337, § 1661(a)(3)(A).

§ 10110. Air Force Reserve: composition

The Air Force Reserve is a reserve component of the Air Force to provide a reserve for active duty. It consists of the members of the officers' section of the Air Force Reserve and of the enlisted section of the Air Force Reserve. It includes all Reserves of the Air Force who are not members of the Air National Guard of the United States.

(Added Pub. L. 103-337, div. A, title XVI, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2971.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 8076 of this title, prior to repeal by Pub. L. 103-337, § 1661(a)(3)(A).

§ 10111. Air National Guard of the United States: composition

The Air National Guard of the United States is the reserve component of the Air Force that consists of—

- (1) federally recognized units and organizations of the Air National Guard; and
- (2) members of the Air National Guard who are also Reserves of the Air Force.

(Added Pub. L. 103-337, div. A, title XVI, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2971.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 8077 of this title, prior to repeal by Pub. L. 103-337, § 1661(a)(3)(A).

CROSS REFERENCES

Air National Guard generally, see section 101 et seq. of Title 32, National Guard.

§ 10112. Air National Guard: when a component of the Air Force

The Air National Guard while in the service of the United States is a component of the Air Force.

(Added Pub. L. 103-337, div. A, title XVI, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2971.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 8078 of this title, prior to repeal by Pub. L. 103-337, § 1661(a)(3)(A).

§ 10113. Air National Guard of the United States: status when not in Federal service

When not on active duty, members of the Air National Guard of the United States shall be administered, armed, equipped, and trained in their status as members of the Air National Guard.

(Added Pub. L. 103-337, div. A, title XVI, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2971.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 8079 of this title, prior to repeal by Pub. L. 103-337, § 1661(a)(3)(A).

CROSS REFERENCES

Air National Guard generally, see section 101 et seq. of Title 32, National Guard.

§ 10114. Coast Guard Reserve

As provided in section 701 of title 14, the Coast Guard Reserve is a component of the Coast Guard and is organized, administered, trained, and supplied under the direction of the Commandant of the Coast Guard. Laws applicable to the Coast Guard Reserve are set forth in chapter 21 of title 14 (14 U.S.C. 701 et seq.).

(Added Pub. L. 103-337, div. A, title XVI, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2971.)

CHAPTER 1005—ELEMENTS OF RESERVE COMPONENTS

Sec.

10141.	Ready Reserve; Standby Reserve; Retired Reserve: placement and status of members; training categories.
10142.	Ready Reserve generally. ¹
10143.	Ready Reserve: Selected Reserve.
10144.	Ready Reserve: Individual Ready Reserve.
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10151.	Standby Reserve: composition.
10152.	Standby Reserve: inactive status list.
10153.	Standby Reserve: status of members.
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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 261 of this title.

§ 10141. Ready Reserve; Standby Reserve; Retired Reserve: placement and status of members; training categories

(a) There are in each armed force a Ready Reserve, a Standby Reserve, and a Retired Reserve. Each Reserve shall be placed in one of those categories.

(b) Reserves who are on the inactive status list of a reserve component, or who are assigned to

¹ So in original. Does not conform to section catchline.

the inactive Army National Guard or the inactive Air National Guard, are in an inactive status. Members in the Retired Reserve are in a retired status. All other Reserves are in an active status.

(c) As prescribed by the Secretary concerned, each reserve component except the Army National Guard of the United States and the Air National Guard of the United States shall be divided into training categories according to the degrees of training, including the number and duration of drills or equivalent duties to be completed in stated periods. The designation of training categories shall be the same for all armed forces and the same within the Ready Reserve and the Standby Reserve.

(Added Pub. L. 103-337, div. A, title XVI, §1661(a)(1), Oct. 5, 1994, 108 Stat. 2972.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 267 and 2001 of this title, prior to repeal by Pub. L. 103-337, §1661(a)(2)(A), (3)(A).

EFFECTIVE DATE

Chapter 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 261 of this title.

§ 10142. Ready Reserve

(a) The Ready Reserve consists of units or Reserves, or both, liable for active duty as provided in sections 12301 and 12302 of this title.

(b) The authorized strength of the Ready Reserve is 2,900,000.

(Added Pub. L. 103-337, div. A, title XVI, §1661(a)(1), Oct. 5, 1994, 108 Stat. 2972.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 268(a) of this title, prior to repeal by Pub. L. 103-337, §1661(a)(2)(A).

§ 10143. Ready Reserve: Selected Reserve

(a) Within the Ready Reserve of each of the reserve components there is a Selected Reserve. The Selected Reserve consists of units, and, as designated by the Secretary concerned, of Reserves, trained as prescribed in section 10147(a)(1) of this title or section 502(a) of title 32, as appropriate.

(b) The organization and unit structure of the Selected Reserve shall be approved—

(1) in the case of all reserve components other than the Coast Guard Reserve, by the Secretary of Defense based upon recommendations from the military departments as approved by the Chairman of the Joint Chiefs of Staff in accordance with contingency and war plans; and

(2) in the case of the Coast Guard Reserve, by the Secretary of Transportation upon the recommendation of the Commandant of the Coast Guard.

(Added Pub. L. 103-337, div. A, title XVI, §1661(a)(1), Oct. 5, 1994, 108 Stat. 2972.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 268(b), (c) of this title, prior to repeal by Pub. L. 103-337, §1661(a)(2)(A).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12304, 16133 of this title; title 38 sections 3002, 3012, 3701.

§ 10144. Ready Reserve: Individual Ready Reserve

Within the Ready Reserve of each of the reserve components there is an Individual Ready Reserve. The Individual Ready Reserve consists of those members of the Ready Reserve who are not in the Selected Reserve or the inactive National Guard.

(Added Pub. L. 103-337, div. A, title XVI, §1661(a)(1), Oct. 5, 1994, 108 Stat. 2973.)

§ 10145. Ready Reserve: placement in

(a) Each person required under law to serve in a reserve component shall, upon becoming a member, be placed in the Ready Reserve of his armed force for his prescribed term of service, unless he is transferred to the Standby Reserve under section 10146(a) of this title.

(b) The units and members of the Army National Guard of the United States and of the Air National Guard of the United States are in the Ready Reserve of the Army and the Ready Reserve of the Air Force, respectively.

(c) All Reserves assigned to units organized to serve as units and designated as units in the Ready Reserve are in the Ready Reserve.

(d) Under such regulations as the Secretary concerned may prescribe, any qualified member of a reserve component or any qualified retired enlisted member of a regular component may, upon his request, be placed in the Ready Reserve. However, a member of the Retired Reserve entitled to retired pay or a retired enlisted member of a regular component may not be placed in the Ready Reserve unless the Secretary concerned makes a special finding that the member's services in the Ready Reserve are indispensable. The Secretary concerned may not delegate his authority under the preceding sentence.

(Added Pub. L. 103-337, div. A, title XVI, §1661(a)(1), Oct. 5, 1994, 108 Stat. 2973.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 269(a)-(d) of this title, prior to repeal by Pub. L. 103-337, §1661(a)(2)(A).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10147 of this title.

§ 10146. Ready Reserve: transfer from

(a) Subject to subsection (c) and under regulations prescribed by the Secretary of Defense, or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, a member in the Ready Reserve may be transferred to the Standby Reserve.

(b) A Reserve who is qualified and so requests may be transferred to the Retired Reserve under

regulations prescribed by the Secretary concerned and, in the case of the Secretary of a military department, approved by the Secretary of Defense.

(c) A member of the Army National Guard of the United States or the Air National Guard of the United States may be transferred to the Standby Reserve only with the consent of the governor or other appropriate authority of the State.

(Added Pub. L. 103-337, div. A, title XVI, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2973.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 269(e)-(g) of this title, prior to repeal by Pub. L. 103-337, § 1661(a)(2)(A).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10145 of this title.

§ 10147. Ready Reserve: training requirements

(a) Except as specifically provided in regulations to be prescribed by the Secretary of Defense, or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, each person who is enlisted, inducted, or appointed in an armed force, and who becomes a member of the Ready Reserve under any provision of law except section 513 or 10145(b) of this title, shall be required, while in the Ready Reserve, to—

(1) participate in at least 48 scheduled drills or training periods during each year and serve on active duty for training of not less than 14 days (exclusive of traveltime) during each year; or

(2) serve on active duty for training not more than 30 days during each year.

(b) A member who has served on active duty for one year or longer may not be required to perform a period of active duty for training if the first day of that period falls during the last 120 days of the member's required membership in the Ready Reserve.

(Added Pub. L. 103-337, div. A, title XVI, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2973.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 270(a) of this title, prior to repeal by Pub. L. 103-337, § 1661(a)(2)(A).

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.

Section 1661(a)(5)(A) of Pub. L. 103-337 provided that: "Section 10147(a) [10 U.S.C. 10147(a)], as added by paragraph (1), applies only to persons who were inducted, enlisted, or appointed in an armed force after August 9, 1955."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10143, 10148 of this title; title 5 section 5517; title 14 section 712; title 50 App. section 456.

§ 10148. Ready Reserve: failure to satisfactorily perform prescribed training

(a) A member of the Ready Reserve covered by section 10147 of this title who fails in any year

to perform satisfactorily the training duty prescribed in that section, as determined by the Secretary concerned under regulations prescribed by the Secretary of Defense, may be ordered without his consent to perform additional active duty for training for not more than 45 days. If the failure occurs during the last year of his required membership in the Ready Reserve, his membership is extended until he performs that additional active duty for training, but not for more than six months.

(b) A member of the Army National Guard of the United States or the Air National Guard of the United States who fails in any year to perform satisfactorily the training duty prescribed by or under law for members of the Army National Guard or the Air National Guard, as the case may be, as determined by the Secretary concerned, may, upon the request of the Governor of the State (or, in the case of the District of Columbia, the commanding general of the District of Columbia National Guard) be ordered, without his consent, to perform additional active duty for training for not more than 45 days. A member ordered to active duty under this subsection shall be ordered to duty as a Reserve of the Army or as a Reserve of the Air Force, as the case may be.

(Added Pub. L. 103-337, div. A, title XVI, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2974.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 270(b), (c) of this title, prior to repeal by Pub. L. 103-337, § 1661(a)(2)(A).

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.

Section 1661(a)(5)(B) of Pub. L. 103-337 provided that: "Section 10148(b) [10 U.S.C. 10148(b)], as added by paragraph (1), applies only to persons who became members of the Army National Guard of the United States or the Air National Guard of the United States after October 4, 1961."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1201, 1202, 1203 of this title.

§ 10149. Ready Reserve: continuous screening

(a) Under regulations to be prescribed by the President, the Secretary concerned shall provide a system of continuous screening of units and members of the Ready Reserve to ensure the following:

(1) That there will be no significant attrition of those members or units during a mobilization.

(2) That there is a proper balance of military skills.

(3) That except for those with military skills for which there is an overriding requirement, members having critical civilian skills are not retained in numbers beyond the need for those skills.

(4) That with due regard to national security and military requirements, recognition will be given to participation in combat.

(5) That members whose mobilization in an emergency would result in an extreme per-

sonal or community hardship are not retained in the Ready Reserve.

(b) Under regulations to be prescribed by the Secretary of Defense, and by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, a member of the Ready Reserve who is designated as a member not to be retained in the Ready Reserve as a result of screening under subsection (a) shall, as appropriate, be—

- (1) transferred to the Standby Reserve;
- (2) discharged; or
- (3) if the member is eligible and applies therefor, transferred to the Retired Reserve.

(Added Pub. L. 103-337, div. A, title XVI, §1661(a)(1), Oct. 5, 1994, 108 Stat. 2974.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 271 of this title, prior to repeal by Pub. L. 103-337, §1661(a)(2)(A).

EX. ORD. NO. 11190. SCREENING OF READY RESERVE

Ex. Ord. No. 11190, Dec. 29, 1964, 29 F.R. 19183, as amended by Ex. Ord. No. 11382, Nov. 28, 1967, 32 F.R. 16247, 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 and Commander in Chief of the Armed Forces of the United States, it is ordered as follows:

SECTION 1. There is delegated to the Secretary of Defense (and to the Secretary of Transportation with regard to the United States Coast Guard) the authority vested in the President by section 271 [see 10149] of title 10 of the United States Code to prescribe regulations for the screening of units and members of the Ready Reserve of the Armed Forces.

SEC. 2. Executive Order No. 10651 of January 6, 1956, is revoked.

LYNDON B. JOHNSON.

§ 10150. Ready Reserve: transfer back from Standby Reserve

Under regulations to be prescribed by the Secretary of Defense, and by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, a member of the Standby Reserve who has not completed his required period of service in the Ready Reserve may be transferred to the Ready Reserve when the reason for his transfer to the Standby Reserve no longer exists.

(Added Pub. L. 103-337, div. A, title XVI, §1661(a)(1), Oct. 5, 1994, 108 Stat. 2975.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 272 of this title, prior to repeal by Pub. L. 103-337, §1661(a)(2)(A).

§ 10151. Standby Reserve: composition

The Standby Reserve consists of those units or members, or both, of the reserve components, other than those in the Ready Reserve or Retired Reserve, who are liable for active duty only as provided in sections 12301 and 12306 of this title.

(Added Pub. L. 103-337, div. A, title XVI, §1661(a)(1), Oct. 5, 1994, 108 Stat. 2975.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 273(a) of this title, prior to repeal by Pub. L. 103-337, §1661(a)(2)(A).

§ 10152. Standby Reserve: inactive status list

An inactive status list shall be maintained in the Standby Reserve. Whenever an authority designated by the Secretary concerned considers that it is in the best interest of the armed force concerned, a member in the Standby Reserve who is not required to remain a Reserve, and who cannot participate in prescribed training, may, if qualified, be transferred to the inactive status list under regulations to be prescribed by the Secretary concerned. These regulations shall fix the conditions under which such a member is entitled to be returned to an active status.

(Added Pub. L. 103-337, div. A, title XVI, §1661(a)(1), Oct. 5, 1994, 108 Stat. 2975.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 273(b) of this title, prior to repeal by Pub. L. 103-337, §1661(a)(2)(A).

§ 10153. Standby Reserve: status of members

While in an inactive status, a Reserve is not eligible for pay or promotion and (as provided in section 12734(a) of this title) does not accrue credit for years of service under chapter 1223 of this title.

(Added Pub. L. 103-337, div. A, title XVI, §1661(a)(1), Oct. 5, 1994, 108 Stat. 2975.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 273(c) of this title, prior to repeal by Pub. L. 103-337, §1661(a)(2)(A).

§ 10154. Retired Reserve

The Retired Reserve consists of the following Reserves:

- (1) Reserves who are or have been retired under section 3911, 6323, or 8911 of this title or under section 291 of title 14.
- (2) Reserves who have been transferred to the Retired Reserve upon their request, retain their status as Reserves, and are otherwise qualified.

(Added Pub. L. 103-337, div. A, title XVI, §1661(a)(1), Oct. 5, 1994, 108 Stat. 2975.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 274 of this title, prior to repeal by Pub. L. 103-337, §1661(a)(2)(A).

AUTHORITY TO ISSUE MILITARY IDENTIFICATION CARDS TO SO-CALLED HONORARY RETIREES OF THE NAVAL AND MARINE CORPS RESERVES

Section 377 of Pub. L. 103-337 provided that:

“(a) AUTHORITY.—The Secretary of the Navy may issue a military identification card to a member of the Retired Reserve described in subsection (b).

“(b) COVERED MEMBERS.—A member of the Retired Reserve referred to in subsection (a) is a member of the Naval Reserve or Marine Corps Reserve who transferred to the Retired Reserve under section 274(2) [see 10154(2)] of title 10, United States Code, without having com-

pleted the years of service required under section 1331(a)(2) [see 12731(a)(2)] of such title for eligibility for retired pay under chapter 67 [see 1223] of such title.

“(c) EFFECT ON COMMISSARY AND EXCHANGE BENEFITS.—The issuance of a military identification card under subsection (a) to a member of the Retired Reserve does not confer eligibility for commissary and exchange benefits on that member.

“(d) LIMITATION ON COLOR AND FORMAT.—The Secretary shall ensure that the color and format in which a military identification card is issued under subsection (a) is not similar to the color and format in which a military identification card is issued by the Department of Defense to individuals other than members described in subsection (b).”

CHAPTER 1007—ADMINISTRATION OF RESERVE COMPONENTS

Sec.	
10201.	Assistant Secretary of Defense for Reserve Affairs.
10202.	Regulations.
10203.	Reserve affairs: designation of general or flag officer of each armed force.
10204.	Personnel records.
10205.	Members of Individual Ready Reserve: requirement of notification of change of status. ¹
10206.	Members: periodic physical examinations.
10207.	Mobilization forces: maintenance.
10208.	Annual mobilization exercise.
10209.	Regular and reserve components: discrimination prohibited.
10210.	Dissemination of information.
10211.	Policies and regulations: participation of reserve officers in preparation and administration. ¹
10212.	Gratuitous services of officers: authority to accept.
10213.	Reserve components: dual membership prohibited.
10214.	Adjutants general and assistant adjutants general: reference to other officers of National Guard.
10215.	Officers of Army National Guard of the United States and Air National Guard of the United States: authority with respect to Federal status.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 261 of this title.

§ 10201. Assistant Secretary of Defense for Reserve Affairs

As provided in section 138(b)(2) of this title, the official in the Department of Defense with responsibility for overall supervision of reserve component affairs of the Department of Defense is the Assistant Secretary of Defense for Reserve Affairs.

(Added Pub. L. 103-337, div. A, title XVI, §1661(a)(1), Oct. 5, 1994, 108 Stat. 2976.)

EFFECTIVE DATE

Chapter 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 261 of this title.

§ 10202. Regulations

(a) Subject to standards, policies, and procedures prescribed by the Secretary of Defense,

the Secretary of each military department shall prescribe such regulations as the Secretary considers necessary to carry out provisions of law relating to the reserve components under the Secretary's jurisdiction.

(b) The Secretary of Transportation, with the concurrence of the Secretary of the Navy, shall prescribe such regulations as the Secretary considers necessary to carry out all provisions of law relating to the reserve components insofar as they relate to the Coast Guard, except when the Coast Guard is operating as a service in the Navy.

(c) So far as practicable, regulations for all reserve components shall be uniform.

(Added Pub. L. 103-337, div. A, title XVI, §1661(a)(1), Oct. 5, 1994, 108 Stat. 2976.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 280 of this title, prior to repeal by Pub. L. 103-337, §1661(a)(2)(A).

§ 10203. Reserve affairs: designation of general or flag officer of each armed force

(a) The Secretary of the Army may designate a general officer of the Army to be directly responsible for reserve affairs to the Chief of Staff of the Army.

(b) The Secretary of the Navy may designate a flag officer of the Navy to be directly responsible for reserve affairs to the Chief of Naval Operations and a general officer of the Marine Corps to be directly responsible for reserve affairs to the Commandant of the Marine Corps.

(c) The Secretary of the Air Force may designate a general officer of the Air Force to be directly responsible for reserve affairs to the Chief of Staff of the Air Force.

(d) The Secretary of Transportation may designate a flag officer of the Coast Guard to be directly responsible for reserve affairs to the Commandant of the Coast Guard.

(e) This section does not affect the functions of the Chief of the National Guard Bureau, the Chief of Army Reserve, or the Chief of Air Force Reserve.

(Added Pub. L. 103-337, div. A, title XVI, §1661(a)(1), Oct. 5, 1994, 108 Stat. 2976.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 264(a) of this title, prior to repeal by Pub. L. 103-337, §1661(a)(2)(A).

§ 10204. Personnel records

(a) The Secretary concerned shall maintain adequate and current personnel records of each member of the reserve components under the Secretary's jurisdiction showing the following with respect to the member:

- (1) Physical condition.
- (2) Dependency status.
- (3) Military qualifications.
- (4) Civilian occupational skills.
- (5) Availability for service.
- (6) Such other information as the Secretary concerned may prescribe.

(b) Under regulations to be prescribed by the Secretary of Defense, the Secretary of each

¹ So in original. Does not conform to section catchline.

military department shall maintain a record of the number of members of each class of each reserve component who, during each fiscal year, have participated satisfactorily in active duty for training and inactive duty training with pay.

(Added Pub. L. 103-337, div. A, title XVI, §1661(a)(1), Oct. 5, 1994, 108 Stat. 2977.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 275 of this title, prior to repeal by Pub. L. 103-337, §1661(a)(2)(A).

§ 10205. Members of Ready Reserve: requirement of notification of change of status

(a) Each member of the Ready Reserve shall notify the Secretary concerned of any change in the member's address, marital status, number of dependents, or civilian employment and of any change in the member's physical condition that would prevent the member from meeting the physical or mental standards prescribed for the member's armed force.

(b) This section shall be administered under regulations prescribed by the Secretary of Defense and by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(Added Pub. L. 103-337, div. A, title XVI, §1661(a)(1), Oct. 5, 1994, 108 Stat. 2977.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 652 of this title, prior to repeal by Pub. L. 103-337, §1661(a)(3)(A).

§ 10206. Members: periodic physical examinations

(a) Each member of the Ready Reserve who is not on active duty shall—

(1) be examined as to his physical fitness every five years, or more often as the Secretary concerned considers necessary; and

(2) execute and submit annually to the Secretary concerned a certificate of physical condition.

Each Reserve in an active status, or on an inactive status list, who is not on active duty shall execute and submit annually to the Secretary concerned a certificate of physical condition.

(b) The kind of duty to which a Reserve ordered to active duty may be assigned shall be considered in determining physical qualifications for active duty.

(Added Pub. L. 103-337, div. A, title XVI, §1661(a)(1), Oct. 5, 1994, 108 Stat. 2977.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 1004(a), (b) of this title, prior to repeal by Pub. L. 103-337, §1661(a)(4)(A).

§ 10207. Mobilization forces: maintenance

(a) Whenever units or members of the reserve components are ordered to active duty (other than for training) during a period of partial mobilization, the Secretary concerned shall continue to maintain mobilization forces by planning and budgeting for the continued organization and training of the reserve components not

mobilized, and make the fullest practicable use of the Federal facilities vacated by mobilized units, consistent with approved joint mobilization plans.

(b) In this section, the term "partial mobilization" means the mobilization resulting from action by Congress or the President, under any law, to bring units of any reserve component, and members not assigned to units organized to serve as units, to active duty for a limited expansion of the active armed forces.

(Added Pub. L. 103-337, div. A, title XVI, §1661(a)(1), Oct. 5, 1994, 108 Stat. 2977.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 276 of this title, prior to repeal by Pub. L. 103-337, §1661(a)(2)(A).

§ 10208. Annual mobilization exercise

(a) The Secretary of Defense shall conduct at least one major mobilization exercise each year. The exercise should be as comprehensive and as realistic as possible and should include the participation of associated active component and reserve component units.

(b) The Secretary shall maintain a plan to test periodically each active component and reserve component unit based in the United States and all interactions of such units, as well as the sustenance of the forces mobilized as part of the exercise, with the objective of permitting an evaluation of the adequacy of resource allocation and planning.

(Added Pub. L. 103-337, div. A, title XVI, §1661(a)(1), Oct. 5, 1994, 108 Stat. 2978.)

PRIOR PROVISIONS

Similar provisions were contained in Pub. L. 98-525, title V, §552(e), Oct. 19, 1984, 98 Stat. 2531, which was set out in a note under section 12001 of this title, prior to repeal by Pub. L. 103-337, §1661(a)(3)(B).

§ 10209. Regular and reserve components: discrimination prohibited

Laws applying to both Regulars and Reserves shall be administered without discrimination—

(1) among Regulars;

(2) among Reserves; and

(3) between Regulars and Reserves.

(Added Pub. L. 103-337, div. A, title XVI, §1661(a)(1), Oct. 5, 1994, 108 Stat. 2978.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 277 of this title, prior to repeal by Pub. L. 103-337, §1661(a)(2)(A).

§ 10210. Dissemination of information

The Secretary of Defense shall require the complete and current dissemination, to all Reserves and to the public, of information of interest to the reserve components.

(Added Pub. L. 103-337, div. A, title XVI, §1661(a)(1), Oct. 5, 1994, 108 Stat. 2978.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 278 of this title, prior to repeal by Pub. L. 103-337, §1661(a)(2)(A).

§ 10211. Policies and regulations: participation of Reserve officers in preparation and administration

Within such numbers and in such grades and assignments as the Secretary concerned may prescribe, each armed force shall have officers of its reserve components on active duty (other than for training) at the seat of government, and at headquarters responsible for reserve affairs, to participate in preparing and administering the policies and regulations affecting those reserve components. While so serving, such an officer is an additional number of any staff with which he is serving.

(Added Pub. L. 103-337, div. A, title XVI, §1661(a)(1), Oct. 5, 1994, 108 Stat. 2978.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 265 of this title, prior to repeal by Pub. L. 103-337, §1661(a)(2)(A).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 523, 641, 3038, 8038 of this title.

§ 10212. Gratuitous services of officers: authority to accept

(a) Notwithstanding section 1342 of title 31, the Secretary of Defense may accept the gratuitous services of an officer of a reserve component (other than an officer of the Army National Guard of the United States or the Air National Guard of the United States) in consultation upon matters relating to the armed forces.

(b) Notwithstanding section 1342 of title 31, the Secretary of a military department may accept the gratuitous services of an officer of a reserve component under the Secretary's jurisdiction (other than an officer of the Army National Guard of the United States or the Air National Guard of the United States)—

(1) in the furtherance of the enrollment, organization, and training of that officer's reserve component or the Reserve Officers' Training Corps; or

(2) in consultation upon matters relating to the armed forces.

(Added Pub. L. 103-337, div. A, title XVI, §1661(a)(1), Oct. 5, 1994, 108 Stat. 2978; amended Pub. L. 103-355, title III, §3021(a), Oct. 13, 1994, 108 Stat. 3333.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 279 of this title, prior to repeal by Pub. L. 103-337, §1661(a)(2)(A), and in sections 4541 and 9541 of this title, prior to repeal by Pub. L. 103-160, §822(d)(2).

AMENDMENTS

1994—Pub. L. 103-355 added subsec. (a) and designated existing provisions as subsec. (b).

EFFECTIVE DATE OF 1994 AMENDMENT

Section 3021(b) of Pub. L. 103-355 provided that: "Notwithstanding section 10001 [set out as a note under section 251 of Title 41, Public Contracts], the amendments made by subsection (a) [amending this section] shall take effect on December 1, 1994, immediately after the amendments made by the Reserve Officer Personnel

Management Act [Pub. L. 103-337, see Tables for classification]."

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.

§ 10213. Reserve components: dual membership prohibited

Except as otherwise provided in this title, no person may be a member of more than one reserve component at the same time.

(Added Pub. L. 103-337, div. A, title XVI, §1661(a)(1), Oct. 5, 1994, 108 Stat. 2979.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 261(b) of this title, prior to repeal by Pub. L. 103-337, §1661(a)(2)(A).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14317 of this title.

§ 10214. Adjutants general and assistant adjutants general: reference to other officers of National Guard

In any case in which, under the laws of a State, an officer of the National Guard of that jurisdiction, other than the adjutant general or an assistant adjutant general, normally performs the duties of that office, the references in sections 12004(b)(1), 12215, 12642(c), 14507(b), 14508(e), and 14512 of this title to the adjutant general or the assistant adjutant general shall be applied to that officer instead of to the adjutant general or assistant adjutant general.

(Added Pub. L. 103-337, div. A, title XVI, §1661(a)(1), Oct. 5, 1994, 108 Stat. 2979.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 281 of this title, prior to repeal by Pub. L. 103-337, §1661(a)(2)(A).

§ 10215. Officers of Army National Guard of the United States and Air National Guard of the United States: authority with respect to Federal status

(a)(1) Officers of the Army National Guard of the United States who are not on active duty—

(A) may order members of the Army National Guard of the United States to active duty for training under section 12301(d) of this title; and

(B) with the approval of the Secretary of the Air Force, may order members of the Air National Guard of the United States to active duty for training under that section.

(2) Officers of the Air National Guard of the United States who are not on active duty—

(A) may order members of the Air National Guard of the United States to active duty for training under section 12301(d) of this title; and

(B) with the approval of the Secretary of the Army, may order members of the Army National Guard of the United States to active duty for training under that section.

(b) Officers of the Army National Guard of the United States or the Air National Guard of the United States who are not on active duty—

(1) may enlist, reenlist, or extend the enlistments of persons as Reserves of the Army or Reserves of the Air Force for service in the Army National Guard of the United States or the Air National Guard of the United States, as the case may be; and

(2) with respect to their Federal status, may promote or discharge persons enlisted or reenlisted as Reserves of the Army or Reserves of the Air Force for that service.

(c) This section shall be carried out under regulations prescribed by the Secretary of the Army, with respect to matters concerning the Army, and by the Secretary of the Air Force, with respect to matters concerning the Air Force.

(Added Pub. L. 103-337, div. A, title XVI, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2979.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3080 and 8080 of this title, prior to repeal by Pub. L. 103-337, § 1661(a)(3)(A).

CHAPTER 1009—RESERVE FORCES POLICY BOARDS AND COMMITTEES

Sec.

10301.	Reserve Forces Policy Board.
10302.	Army Reserve Forces Policy Committee.
10303.	Naval Reserve Policy Board.
10304.	Marine Corps Reserve Policy Board.
10305.	Air Force Reserve Forces Policy Committee.

§ 10301. Reserve Forces Policy Board

(a) There is in the Office of the Secretary of Defense a Reserve Forces Policy Board. The Board consists of the following:

(1) A civilian chairman appointed by the Secretary of Defense.

(2) The Assistant Secretary of the Army for Manpower and Reserve Affairs, the Assistant Secretary of the Navy for Manpower and Reserve Affairs, and the Assistant Secretary of the Air Force for Manpower and Reserve Affairs.

(3) An officer of the Regular Army designated by the Secretary of the Army.

(4) An officer of the Regular Navy and an officer of the Regular Marine Corps, each designated by the Secretary of the Navy.

(5) An officer of the Regular Air Force designated by the Secretary of the Air Force.

(6) Four reserve officers designated by the Secretary of Defense upon the recommendation of the Secretary of the Army, two of whom must be members of the Army National Guard of the United States, and two of whom must be members of the Army Reserve.

(7) Four reserve officers designated by the Secretary of Defense upon the recommendation of the Secretary of the Navy, two of whom must be members of the Naval Reserve, and two of whom must be members of the Marine Corps Reserve.

(8) Four reserve officers designated by the Secretary of Defense upon the recommendation of the Secretary of the Air Force, two of

whom must be members of the Air National Guard of the United States, and two of whom must be members of the Air Force Reserve.

(9) A reserve officer of the Army, Navy, Air Force, or Marine Corps who is a general officer or flag officer designated by the Chairman of the Board with the approval of the Secretary of Defense, and who serves without vote as military adviser to the Chairman and as executive officer of the Board.

(10) An officer of the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps serving in a position on the Joint Staff who is designated by the Chairman of the Joint Chiefs of Staff.

(b) Whenever the Coast Guard is not operating as a service in the Navy, the Secretary of Transportation may designate two officers of the Coast Guard, Regular or Reserve, to serve as voting members of the Board.

(c) The Board, acting through the Assistant Secretary of Defense for Reserve Affairs, is the principal policy adviser to the Secretary of Defense on matters relating to the reserve components.

(d) This section does not affect the committees on reserve policies prescribed within the military departments by sections 10302 through 10305 of this title.

(e) A member of a committee or board prescribed under a section listed in subsection (d) may, if otherwise eligible, be a member of the Reserve Forces Policy Board.

(f) The Board shall act on those matters referred to it by the Chairman and, in addition, on any matter raised by a member of the Board.

(Added Pub. L. 103-337, div. A, title XVI, § 1661(b)(1), Oct. 5, 1994, 108 Stat. 2980.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 175 of this title, prior to amendment by Pub. L. 103-337, § 1661(b)(3).

EFFECTIVE DATE

Chapter 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 175, 641 of this title.

§ 10302. Army Reserve Forces Policy Committee

(a) There is in the Office of the Secretary of the Army an Army Reserve Forces Policy Committee. The Committee shall review and comment upon major policy matters directly affecting the reserve components and the mobilization preparedness of the Army. The Committee's comments on such policy matters shall accompany the final report regarding any such matters submitted to the Secretary of the Army and the Chief of Staff.

(b) The Committee consists of officers in the grade of colonel or above, as follows:

(1) five members of the Regular Army on duty with the Army General Staff;

(2) five members of the Army National Guard of the United States not on active duty; and

(3) five members of the Army Reserve not on active duty.

(c) The members of the Committee shall select the Chairman from among the members on the Committee not on active duty.

(d) A majority of the members of the Committee shall act whenever matter affecting both the Army National Guard of the United States and Army Reserve are being considered. However, when any matter solely affecting one of the reserve components of the Army is being considered, it shall be acted upon only by the Subcommittee on Army National Guard Policy or the Subcommittee on Army Reserve Policy, as appropriate.

(e) The Subcommittee on Army National Guard Policy consists of the members of the Committee other than the Army Reserve members.

(f) The Subcommittee on Army Reserve Policy consists of the members of the Committee other than the Army National Guard members.

(g) Membership on the Committee is determined by the Secretary of the Army and is for a minimum period of three years. Except in the case of members of the Committee from the Regular Army, the Secretary of the Army, when appointing new members, shall insure that among the officers of each component on the Committee there will at all times be two or more members with more than one year of continuous service on the Committee.

(h) There shall be not less than 10 officers of the Army National Guard of the United States and the Army Reserve on duty with the Army Staff, one-half of whom shall be from each of those components. These officers shall be considered as additional members of the Army Staff while on that duty.

(Aug. 10, 1956, ch. 1041, 70A Stat. 161, § 3033; Sept. 2, 1958, Pub. L. 85-861, § 33(a)(17), 72 Stat. 1565; Dec. 1, 1967, Pub. L. 90-168, § 2(18), 81 Stat. 524; renumbered § 3021 and amended Oct. 1, 1986, Pub. L. 99-433, title V, § 501(a)(8), 100 Stat. 1039; renumbered § 10302, Oct. 5, 1994, Pub. L. 103-337, div. A, title XVI, § 1661(b)(2)(A), 108 Stat. 2981.)

HISTORICAL AND REVISION NOTES 1956 ACT

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
3033(a)	10:38 (1st par., less last 37 words).	June 3, 1916, ch. 134, § 5 (less last par.); June 4, 1920, ch. 227, subch. I, § 5 (1st 7 pars.); Sept. 22, 1922, ch. 423, § 1;
3033(b).	10:38 (last 37 words of 1st par.).	July 2, 1926, ch. 721, § 5; May 21, 1928, ch. 647;
3033(c).	10:38 (1st sentence, less proviso of 2d par.).	added June 15, 1933, ch. 87, § 2 (less last par.), 48 Stat. 153; June 3, 1938, ch. 319; July 14, 1939, ch. 269; June 28, 1950, ch. 383, § 401(b), 64 Stat. 271.
3033(d).	10:38 (proviso of 1st sentence of 2d par.).	
3033(e).	10:38 (2d sentence, and 3d sentence less proviso, of 2d par.).	
3033(f).	10:38 (proviso of 3d sentence, and last sentence, of 2d par.).	

In subsection (a), the words “the following subjects” are inserted for clarity.

In subsections (a) and (c), the words “of officers”, after the word “committee”, are inserted for clarity. The words “and of” are substituted for the words “to which shall be added”.

In subsection (e), the words “For the purpose specified herein” are omitted as surplusage. The words “on that duty” are substituted for the words “so serving”.

1958 ACT

The change is necessary to make subsection (d) coextensive with subsection (c), to which it was a proviso in the source law, the Act of June 3, 1916, chapter 134, section 5 (1st sentence of 2d par.) (formerly 10 U.S.C. 38 (1st sentence of 2d par.)).

AMENDMENTS

1994—Pub. L. 103-337 renumbered section 3021 of this title as this section.

1986—Pub. L. 99-433, § 501(a)(8)(C), renumbered section 3033 of this title as this section, and substituted “Army Reserve Forces Policy Committee” for “Reserve components of Army; policies and regulations for government of” in section catchline.

Subsec. (a). Pub. L. 99-433, § 501(a)(8)(A), substituted “Office” for “office” and “Committee. The Committee” for “Committee which”, inserted “and the mobilization preparedness”, and substituted “Army. The” for “Army, and the” and “Secretary of the Army and the Chief of Staff” for “Chief of Staff and the Assistant Secretary responsible for reserve affairs”.

Subsec. (h). Pub. L. 99-433, § 501(a)(8)(B), struck out “General” before “Staff” in two places.

1967—Pub. L. 90-168 amended section generally, and restated with certain changes the existing authority relating to the Army Reserve Forces Policy Committee within the Office of the Secretary of the Army, reduced the membership of the Committee from 21 to 15, reduced the grade requirements so as to permit inclusion of colonels, and provided that the Committee review and comment upon all major policies affecting Army Reserve matters and that the Committee comments accompany any final submission to the Chief of Staff and Assistant Secretary responsible for Reserve Affairs.

1958—Subsec. (d). Pub. L. 85-861 substituted “affecting the organization, distribution, training, appointment, assignment, promotion, or discharge of members of the Army Reserve and those of either” for “affecting the Army Reserve and either”.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90-168 effective on first day of first calendar month following date of enactment of Pub. L. 90-168, which was approved Dec. 1, 1967, see section 7 of Pub. L. 90-168, set out as a note under section 138 of this title.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 523, 641, 3021, 10301 of this title; title 37 section 204.

§ 10303. Naval Reserve Policy Board

A Naval Reserve Policy Board shall be convened at least once annually at the seat of government to consider, recommend, and report to the Secretary of the Navy on reserve policy matters. At least half of the members of the Board must be officers of the Naval Reserve.

(Added Pub. L. 103-337, div. A, title XVI, § 1661(b)(1), Oct. 5, 1994, 108 Stat. 2981.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 5251(c) of this title, prior to repeal by Pub. L. 103-337, § 1661(a)(3)(A).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 523, 641, 10301 of this title.

§ 10304. Marine Corps Reserve Policy Board

A Marine Corps Reserve Policy Board shall be convened at least once annually at the seat of government to consider, recommend, and report to the Secretary of the Navy on reserve policy matters. At least half of the members of the Board must be officers of the Marine Corps Reserve.

(Added Pub. L. 103-337, div. A, title XVI, §1661(b)(1), Oct. 5, 1994, 108 Stat. 2981.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 5252(c) of this title, prior to repeal by Pub. L. 103-337, §1661(a)(3)(A).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 523, 641, 10301 of this title.

§ 10305. Air Force Reserve Forces Policy Committee

(a) There is in the Office of the Secretary of the Air Force an Air Reserve Forces Policy Committee on Air National Guard and Air Force Reserve Policy. The Committee shall review and comment upon major policy matters directly affecting the reserve components and the mobilization preparedness of the Air Force. The Committee's comments on such policy matters shall accompany the final report regarding any such matters submitted to the Secretary of the Air Force and the Chief of Staff.

(b) The committee consists of officers in the grade of colonel or above, as follows:

- (1) five members of the Regular Air Force on duty with the Air Staff;
- (2) five members of the Air National Guard of the United States not on active duty; and
- (3) five members of the Air Force Reserve not on active duty.

(c) The members of the Committee shall select the Chairman from among the members on the Committee not on active duty.

(d) A majority of the members of the Committee shall act whenever matters affecting both the Air National Guard of the United States and Air Force Reserve are being considered. However, when any matter solely affecting one of the Air Force Reserve components is being considered, it shall be acted upon only by the Subcommittee on Air National Guard Policy or the Subcommittee on Air Force Reserve Policy, as appropriate.

(e) The Subcommittee on Air National Guard Policy consists of the members of the Committee other than the Air Force Reserve members.

(f) The Subcommittee on Air Force Reserve Policy consists of the members of the Committee other than the Air National Guard members.

(g) Membership on the Air Staff Committee is determined by the Secretary of the Air Force and is for a minimum period of three years. Except in the case of members of the Committee from the Regular Air Force, the Secretary of the Air Force, when appointing new members, shall insure that among the officers of each component on the Committee there will at all times be two or more members with more than one year of continuous service on the Committee.

(h) There shall be not less than 10 officers of the Air National Guard of the United States and the Air Force Reserve on duty with the Air Staff, one-half of whom shall be from each of those components. These officers shall be considered as additional members of the Air Staff while on that duty.

(Aug. 10, 1956, ch. 1041, 70A Stat. 491, §8033; Sept. 2, 1958, Pub. L. 85-861, §33(a)(17), 72 Stat. 1565; Dec. 1, 1967, Pub. L. 90-168, §2(21), 81 Stat. 525; renumbered §8021 and amended Pub. L. 99-433, title V, §521(a)(6), Oct. 1, 1986, 100 Stat. 1059; renumbered §10305, Oct. 5, 1994, Pub. L. 103-337, div. A, title XVI, §1661(b)(2)(B), 108 Stat. 2981.)

HISTORICAL AND REVISION NOTES
1956 ACT

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8033(a)	10:38 (1st par., less last 37 words).	June 3, 1916, ch. 134, § 5 (less last par.); June 4, 1920, ch. 227, subch. I, § 5 (1st 7 pars.); Sept. 22, 1922, ch. 423, § 1.
8033(b).	10:38 (last 37 words of 1st par.).	July 2, 1926, ch. 721, § 5; May 21, 1928, ch. 647; added June 15, 1933, ch. 87, § 2 (less last par.).
8033(c).	10:38 (1st sentence, less proviso, of 2d par.).	48 Stat. 153; June 3, 1938, ch. 319; July 14, 1939, ch. 269; June 28, 1950, ch. 383, § 401(b), 64 Stat. 271.
8033(d).	10:38 (proviso of 1st sentence of 2d par.).	
8033(e).	10:38 (2d sentence, and 3d sentence less proviso, of 2d par.).	
8033(f).	10:38 (proviso of 3d sentence, and last sentence, of 2d par.).	
8033(g)	5:626(f).	July 26, 1947, ch. 343, § 207(f), 61 Stat. 503.

In subsection (a), the words "the following subjects" are inserted for clarity.

In subsections (a) and (c), the words "of officers", after the word "committee", are inserted for clarity. The words "and of" are substituted for the words "to which shall be added".

In subsection (e), the words "For the purpose specified herein" are omitted as surplusage. The words "on that duty" are substituted for the words "so serving".

In subsection (g), the word "perform" is substituted for the words "be charged with". All of 5:626(f) except the first proviso of the first sentence is omitted as executed. The words "Territories, Puerto Rico, the Canal Zone, and the District of Columbia" are inserted to conform to other sections of this title which, in describing the National Guard, also include these jurisdictions.

1958 ACT

The change is necessary to make subsection (d) coextensive with subsection (c), to which it was a proviso in the source law, the Act of June 3, 1916, chapter 134, section 5 (1st sentence of 2d par.) (formerly 10 U.S.C. 38 (1st sentence of 2d par.)).

AMENDMENTS

1994—Pub. L. 103-337 renumbered section 8021 of this title as this section.

1986—Pub. L. 99-433, §521(a)(6)(C), renumbered section 8033 of this title as this section, and substituted "Air Force Reserve Forces Policy Committee" for "Reserve components of Air Force; policies and regulations for government of: functions of National Guard Bureau with respect to Air National Guard" in section catchline.

Subsec. (a). Pub. L. 99-433, §521(a)(6)(A), substituted "Policy. The Committee" for "Policy which", inserted "and the mobilization preparedness", and substituted "Air Force. The" for "Air Force and the" and "Secretary of the Air Force and the Chief of Staff" for "Chief of Staff, and the Assistant Secretary responsible for reserve affairs".

Subsec. (b)(2). Pub. L. 99-433, §521(a)(6)(B), inserted "and" after the semicolon.

1967—Pub. L. 90-168 amended section generally, and among other changes, redesignated subsec. (e) as (h) and increased from seven to eight the number of subsecs. in the section and in such subsecs. (a)–(h) restated with certain changes the existing authority relating to the Staff Committee on Air Force Reserve Policy within the Office of the Secretary of the Air Force, reduced the membership of the Committee from 21 to 15, reduced the grade requirements so as to permit inclusion of colonels, and provided that the Committee review and comment on all major policies affecting Air Force Reserve matters and that the Committee comments accompany any final submission to the Chief of Staff and Assistant Secretary responsible for Reserve matters.

1958—Subsec. (d). Pub. L. 85-861 substituted “affecting the organization, distribution, training, appointment, assignment, promotion, or discharge of members of the Air Force Reserve and those of either” for “affecting the Air Force Reserve and either”.

EFFECTIVE DATE OF 1967 AMENDMENT

For effective date of amendment by Pub. L. 90-168, see section 7 of Pub. L. 90-168, set out as a note under section 138 of this title.

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.

CROSS REFERENCES

Air National Guard, see section 101 et seq. of Title 32, National Guard.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 523, 641, 8021, 10301 of this title; title 37 section 204.

CHAPTER 1011—NATIONAL GUARD BUREAU

Sec.¹

- 10501. National Guard Bureau.
- 10502. Chief of the National Guard Bureau: appointment; adviser on National Guard matters; grade.
- 10503. Functions of National Guard Bureau: charter from Secretaries of the Army and Air Force.
- 10504. Chief of National Guard Bureau: annual report.
- 10505. Vice Chief of the National Guard Bureau.
- 10506. Other senior National Guard Bureau officers.
- 10507. National Guard Bureau: assignment of officers of regular or reserve components.
- 10508. Definition.

AMENDMENTS

1994—Pub. L. 103-337, div. A, title XVI, §1661(c)(1)(B), Oct. 5, 1994, 108 Stat. 2982, added item 10507.

§ 10501. National Guard Bureau

(a) NATIONAL GUARD BUREAU.—There is in the Department of Defense the National Guard Bureau, which is a joint bureau of the Department of the Army and the Department of the Air Force.

(b) PURPOSES.—The National Guard Bureau is the channel of communications on all matters pertaining to the National Guard, the Army National Guard of the United States, and the Air National Guard of the United States between (1) the Department of the Army and Department of the Air Force, and (2) the several States.

(Added Pub. L. 103-337, div. A, title IX, §904(a), Oct. 5, 1994, 108 Stat. 2824.)

¹ Editorially supplied.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3040(a) of this title, prior to repeal by Pub. L. 103-337, §904(b)(1).

EFFECTIVE DATE

Section 904(d) of Pub. L. 103-337 provided that: “The provisions of chapter 1011 of title 10, United States Code, as added by subsection (a), shall become effective, and the repeal made by subsection (c) [probably means subsec. (b) which repealed section 3040 of this title] and the amendment made by subsection (c) [amending section 108 of Title 32, National Guard] shall take effect, at the end of the 90-day period beginning on the date of the enactment of this Act [Oct. 5, 1994].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 641 of this title.

§ 10502. Chief of the National Guard Bureau: appointment; adviser on National Guard matters; grade

(a) APPOINTMENT.—There is a Chief of the National Guard Bureau, who is responsible for the organization and operations of the National Guard Bureau. The Chief of the National Guard Bureau is appointed by the President, by and with the advice and consent of the Senate. Such appointment shall be made from officers of the Army National Guard of the United States or the Air National Guard of the United States who—

(1) are recommended for such appointment by their respective Governors or, in the case of the District of Columbia, the commanding general of the District of Columbia National Guard;

(2) have had at least 10 years of federally recognized commissioned service in an active status in the National Guard; and

(3) are in a grade above the grade of brigadier general.

(b) TERM OF OFFICE.—An officer appointed as Chief of the National Guard Bureau serves at the pleasure of the President for a term of four years. An officer may not hold that office after becoming 64 years of age. An officer may be reappointed as Chief of the National Guard Bureau. While holding that office, the Chief of the National Guard Bureau may not be removed from the reserve active-status list, or from an active status, under any provision of law that otherwise would require such removal due to completion of a specified number of years of service or a specified number of years of service in grade.

(c) ADVISER ON NATIONAL GUARD MATTERS.—The Chief of the National Guard Bureau is the principal adviser to the Secretary of the Army and the Chief of Staff of the Army, and to the Secretary of the Air Force and the Chief of Staff of the Air Force, on matters relating to the National Guard, the Army National Guard of the United States, and the Air National Guard of the United States.

(d) GRADE.—The Chief of the National Guard Bureau shall be appointed to serve in the grade of lieutenant general.

(Added Pub. L. 103-337, div. A, title IX, §904(a), Oct. 5, 1994, 108 Stat. 2824.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3040(a)–(c) of this title, prior to repeal by Pub. L. 103–337, §904(b)(1).

CROSS REFERENCES

National Guard Bureau—
 Appropriations, see section 107 of Title 32, National Guard.
 Chief's issuance of certificate of eligibility for Federal recognition of officers, see section 307 of Title 32.
 President's appointing power, see Const. Art. II, §2, cl. 2.
 Provisions respecting responsibility for reserve affairs as not affecting functions of Chief of National Guard Bureau, see section 10203 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 37 section 204.

§ 10503. Functions of National Guard Bureau: charter from Secretaries of the Army and Air Force

The Secretary of the Army and the Secretary of the Air Force shall jointly develop and prescribe a charter for the National Guard Bureau. The charter shall cover the following matters:

- (1) Allocating unit structure, strength authorizations, and other resources to the Army National Guard of the United States and the Air National Guard of the United States.
- (2) Prescribing the training discipline and training requirements for the Army National Guard and the Air National Guard and the allocation of Federal funds for the training of the Army National Guard and the Air National Guard.
- (3) Ensuring that units and members of the Army National Guard and the Air National Guard are trained by the States in accordance with approved programs and policies of, and guidance from, the Chief, the Secretary of the Army, and the Secretary of the Air Force.
- (4) Monitoring and assisting the States in the organization, maintenance, and operation of National Guard units so as to provide well-trained and well-equipped units capable of augmenting the active forces in time of war or national emergency.
- (5) Planning and administering the budget for the Army National Guard of the United States and the Air National Guard of the United States.
- (6) Supervising the acquisition and supply of, and accountability of the States for, Federal property issued to the National Guard through the property and fiscal officers designated, detailed, or appointed under section 708 of title 32.
- (7) Granting and withdrawing, in accordance with applicable laws and regulations, Federal recognition of (A) National Guard units, and (B) officers of the National Guard.
- (8) Establishing policies and programs for the employment and use of National Guard technicians under section 709 of title 32.
- (9) Supervising and administering the Active Guard and Reserve program as it pertains to the National Guard.
- (10) Issuing directives, regulations, and publications consistent with approved policies of the Army and Air Force, as appropriate.

(11) Facilitating and supporting the training of members and units of the National Guard to meet State requirements.

(12) Such other functions as the Secretaries may prescribe.

(Added Pub. L. 103–337, div. A, title IX, §904(a), Oct. 5, 1994, 108 Stat. 2825.)

§ 10504. Chief of National Guard Bureau: annual report

(a) ANNUAL REPORT.—The Chief of the National Guard Bureau shall submit to the Secretary of Defense, through the Secretaries of the Army and the Air Force, an annual report on the state of the National Guard and the ability of the National Guard to meet its missions. The report shall be prepared in conjunction with the Secretary of the Army and the Secretary of the Air Force and may be submitted in classified and unclassified versions.

(b) SUBMISSION OF REPORT TO CONGRESS.—The Secretary of Defense shall transmit the annual report of the Chief of the National Guard Bureau to Congress, together with such comments on the report as the Secretary considers appropriate. The report shall be transmitted at the same time each year that the annual report of the Secretary under section 113(c) of this title is submitted to Congress.

(Added Pub. L. 103–337, div. A, title IX, §904(a), Oct. 5, 1994, 108 Stat. 2825.)

§ 10505. Vice Chief of the National Guard Bureau

(a) APPOINTMENT.—(1) There is a Vice Chief of the National Guard Bureau, selected by the Secretary of Defense from officers of the Army National Guard of the United States or the Air National Guard of the United States who—

(A) are recommended for such appointment by their respective Governors or, in the case of the District of Columbia, the commanding general of the District of Columbia National Guard;

(B) have had at least 10 years of federally recognized commissioned service in an active status in the National Guard; and

(C) are in a grade above the grade of colonel.

(2) The Chief and Vice Chief of the National Guard Bureau may not both be members of the Army or of the Air Force.

(3)(A) Except as provided in subparagraph (B), an officer appointed as Vice Chief of the National Guard Bureau serves for a term of four years, but may be removed from office at any time for cause.

(B) The term of the Vice Chief of the National Guard Bureau shall end upon the appointment of a Chief of the National Guard Bureau who is a member of the same armed force as the Vice Chief.

(4) The Secretary of Defense may waive the restrictions in paragraph (2) and the provisions of paragraph (3)(B) for a limited period of time to provide for the orderly transition of officers appointed to serve in the positions of Chief and Vice Chief of the National Guard Bureau.

(b) DUTIES.—The Vice Chief of the National Guard Bureau performs such duties as may be prescribed by the Chief of the National Guard Bureau.

(c) **GRADE.**—The Vice Chief of the National Guard Bureau shall be appointed to serve in the grade of major general.

(d) **FUNCTIONS AS ACTING CHIEF.**—When there is a vacancy in the office of the Chief of the National Guard Bureau or in the absence or disability of the Chief, the Vice Chief of the National Guard Bureau acts as Chief and performs the duties of the Chief until a successor is appointed or the absence or disability ceases.

(e) **SUCCESSION AFTER CHIEF AND VICE CHIEF.**—When there is a vacancy in the offices of both Chief and Vice Chief of the National Guard Bureau or in the absence or disability of both the Chief and Vice Chief of the National Guard Bureau, or when there is a vacancy in one such office and in the absence or disability of the officer holding the other, the senior officer of the Army National Guard of the United States or the Air National Guard of the United States on duty with the National Guard Bureau shall perform the duties of the Chief until a successor to the Chief or Vice Chief is appointed or the absence or disability of the Chief or Vice Chief ceases, as the case may be.

(Added Pub. L. 103-337, div. A, title IX, §904(a), Oct. 5, 1994, 108 Stat. 2826.)

PRIOR PROVISIONS

Provisions similar to those in subsecs. (d) and (e) of this section were contained in section 3040(d) of this title, prior to repeal by Pub. L. 103-337, §904(b)(1).

§ 10506. Other senior National Guard Bureau officers

(a) **ADDITIONAL GENERAL OFFICERS.**—(1) In addition to the Chief and Vice Chief of the National Guard Bureau, there shall be assigned to the National Guard Bureau—

(A) two general officers selected by the Secretary of the Army from officers of the Army National Guard of the United States who have been nominated by their respective Governors or, in the case of the District of Columbia, the commanding general of the District of Columbia National Guard, the senior of whom while so serving shall hold the grade of major general and serve as Director, Army National Guard, with the other serving as Deputy Director, Army National Guard; and

(B) two general officers selected by the Secretary of the Air Force from officers of the Air National Guard of the United States who have been nominated by their respective Governors or, in the case of the District of Columbia, the commanding general of the District of Columbia National Guard, the senior of whom while so serving shall hold the grade of major general and serve as Director, Air National Guard, with the other serving as Deputy Director, Air National Guard.

(2) The officers so selected shall assist the Chief of the National Guard Bureau in carrying out the functions of the National Guard Bureau as they relate to their respective branches.

(b) **OTHER OFFICERS.**—There are in the National Guard Bureau a legal counsel, a comptroller, and an inspector general, each of whom shall be appointed by the Chief of the National Guard Bureau. They shall perform such duties as the Chief may prescribe.

(Added Pub. L. 103-337, div. A, title IX, §904(a), Oct. 5, 1994, 108 Stat. 2827.)

§ 10507. National Guard Bureau: assignment of officers of regular or reserve components

Except as provided in section 124402(b)¹ of this title, the President may assign to duty in the National Guard Bureau as many regular or reserve officers of the Army or Air Forces² as he considers necessary.

(Added Pub. L. 103-337, div. A, title XVI, §1661(c)(1)(A), Oct. 5, 1994, 108 Stat. 2982.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3541 and 8541 of this title, prior to repeal by Pub. L. 103-337, §1661(c)(2).

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.

§ 10508. Definition

In this chapter, the term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, and Guam and the Virgin Islands.

(Added Pub. L. 103-337, div. A, title IX, §904(a), Oct. 5, 1994, 108 Stat. 2827.)

CHAPTER 1013—BUDGET INFORMATION AND ANNUAL REPORTS TO CONGRESS

Sec.

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|--------|--|
| 10541. | National Guard and reserve component equipment: annual report to Congress. |
| 10542. | Army National Guard combat readiness: annual report. |

§ 10541. National Guard and reserve component equipment: annual report to Congress

(a) The Secretary of Defense shall submit to the Congress each year, not later than February 15, a written report concerning the equipment of the National Guard and the reserve components of the armed forces for each of the three succeeding fiscal years.

(b) Each report under this section shall include the following:

(1) Recommendations as to the type and quantity of each major item of equipment which should be in the inventory of the Selected Reserve of the Ready Reserve of each reserve component of the armed forces.

(2) A statement of the quantity and average age of each type of major item of equipment which is expected to be physically available in the inventory of the Selected Reserve of the Ready Reserve of each reserve component as of the beginning of each fiscal year covered by the report.

(3) A statement of the quantity and cost of each type of major item of equipment which is expected to be procured for the Selective Reserve of the Ready Reserve of each reserve component from commercial sources or to be transferred to each such Selected Reserve from the active-duty components of the armed forces.

¹ So in original. Probably should be section “12402(b)”.

² So in original. Probably should be “Force”.

(4) A statement of the quantity of each type of major item of equipment which is expected to be retired, decommissioned, transferred, or otherwise removed from the physical inventory of the Selected Reserve of the Ready Reserve of each reserve component and the plans for replacement of that equipment.

(5) A listing of each major item of equipment required by the Selected Reserve of the Ready Reserve of each reserve component indicating—

(A) the full war-time requirement of that component for that item, shown in accordance with deployment schedules and requirements over successive 30-day periods following mobilization;

(B) the number of each such item in the inventory of the component;

(C) a separate listing of each such item in the inventory that is a deployable item and is not the most desired item;

(D) the number of each such item projected to be in the inventory at the end of the third succeeding fiscal year; and

(E) the number of nondeployable items in the inventory as a substitute for a required major item of equipment.

(6) A narrative explanation of the plan of the Secretary concerned to provide equipment needed to fill the war-time requirement for each major item of equipment to all units of the Selected Reserve, including an explanation of the plan to equip units of the Selected Reserve that are short of major items of equipment at the outset of war.

(7) For each item of major equipment reported under paragraph (3) in a report for one of the three previous years under this section as an item expected to be procured for the Selected Reserve or to be transferred to the Selected Reserve, the quantity of such equipment actually procured for or transferred to the Selected Reserve.

(8) A statement of the current status of the compatibility of equipment between the Army reserve components and active forces of the Army, the effect of that level of incompatibility on combat effectiveness, and a plan to achieve full equipment compatibility.

(c) Each report under this section shall be expressed in the same format and with the same level of detail as the information presented in the annual Five Year Defense Program Procurement Annex prepared by the Department of Defense.

(Added Pub. L. 101-510, div. A, title XIV, §1483(a), Nov. 5, 1990, 104 Stat. 1714, §115b; amended Pub. L. 102-484, div. A, title XI, §1134, Oct. 23, 1992, 106 Stat. 2541; renumbered §10541 and amended Pub. L. 103-337, div. A, title XVI, §1661(d)(2), Oct. 5, 1994, 108 Stat. 2982.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 115(a)(2), (3) of this title, prior to repeal by Pub. L. 101-510, §1483(a).

AMENDMENTS

1994—Pub. L. 103-337 renumbered section 115b of this title as this section and substituted “National Guard

and reserve component equipment: annual report to Congress” for “Annual report on National Guard and reserve component equipment” as section catchline. 1992—Subsec. (b)(8). Pub. L. 102-484 added par. (8).

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.

§ 10542. Army National Guard combat readiness: annual report

(a) IN GENERAL.—The Secretary of the Army shall include in the annual report of the Secretary to Congress known as the Army Posture Statement a detailed presentation concerning the Army National Guard, including particularly information relating to the implementation of the Army National Guard Combat Readiness Reform Act of 1992 (title XI of Public Law 102-484; 106 Stat. 2536) (hereinafter in this section referred to as “ANGCRRA”).

(b) MATTERS TO BE INCLUDED IN REPORT.—Each presentation under subsection (a) shall include, with respect to the period covered by the report, the following information concerning the Army National Guard:

(1) The number and percentage of officers with at least two years of active-duty before becoming a member of the Army National Guard.

(2) The number and percentage of enlisted personnel with at least two years of active-duty before becoming a member of the Army National Guard.

(3) The number of officers who are graduates of one of the service academies and were released from active duty before the completion of their active-duty service obligation and, of those officers—

(A) the number who are serving the remaining period of their active-duty service obligation as a member of the Selected Reserve pursuant to section 1112(a)(1) of ANGCRRRA; and

(B) the number for whom waivers were granted by the Secretary under section 1112(a)(2) of ANGCRRRA, together with the reason for each waiver.

(4) The number of officers who were commissioned as distinguished Reserve Officers' Training Corps graduates and were released from active duty before the completion of their active-duty service obligation and, of those officers—

(A) the number who are serving the remaining period of their active-duty service obligation as a member of the Selected Reserve pursuant to section 1112(a)(1) of ANGCRRRA; and

(B) the number for whom waivers were granted by the Secretary under section 1112(a)(2) of ANGCRRRA, together with the reason for each waiver.

(5) The number of officers who are graduates of the Reserve Officers' Training Corps program and who are performing their minimum period of obligated service in accordance with section 1112(b) of ANGCRRRA by a combination of (A) two years of active duty, and (B) such

additional period of service as is necessary to complete the remainder of such obligation served in the National Guard and, of those officers, the number for whom permission to perform their minimum period of obligated service in accordance with that section was granted during the preceding fiscal year.

(6) The number of officers for whom recommendations were made during the preceding fiscal year for a unit vacancy promotion to a grade above first lieutenant and, of those recommendations, the number and percentage that were concurred in by an active-duty officer under section 1113(a) of ANGCRRRA, shown separately for each of the three categories of officers set forth in section 1113(b) of ANGCRRRA.

(7) The number of waivers during the preceding fiscal year under section 1114(a) of ANGCRRRA of any standard prescribed by the Secretary establishing a military education requirement for noncommissioned officers and the reason for each such waiver.

(8) The number and distribution by grade, shown for each State, of personnel in the initial entry training and nondeployability personnel accounting category established under section 1115 of ANGCRRRA for members of the Army National Guard who have not completed the minimum training required for deployment or who are otherwise not available for deployment.

(9) The number of members of the Army National Guard, shown for each State, that were discharged during the previous fiscal year pursuant to section 1115(c)(1) of ANGCRRRA for not completing the minimum training required for deployment within 24 months after entering the National Guard.

(10) The number of waivers, shown for each State, that were granted by the Secretary during the previous fiscal year under section 1115(c)(2) of ANGCRRRA of the requirement in section 1115(c)(1) of ANGCRRRA described in paragraph (9), together with the reason for each waiver.

(11) The number of members, shown for each State, who were screened during the preceding fiscal year to determine whether they meet minimum physical profile standards required for deployment and, of those members—

(A) the number and percentage who did not meet minimum physical profile standards required for deployment; and

(B) the number and percentage who were transferred pursuant to section 1116 of ANGCRRRA to the personnel accounting category described in paragraph (8).

(12) The number of members, and the percentage of the total membership, of the Army National Guard, shown for each State, who underwent a medical screening during the previous fiscal year as provided in section 1117 of ANGCRRRA.

(13) The number of members, and the percentage of the total membership, of the Army National Guard, shown for each State, who underwent a dental screening during the previous fiscal year as provided in section 1117 of ANGCRRRA.

(14) The number of members, and the percentage of the total membership, of the Army

National Guard, shown for each State, over the age of 40 who underwent a full physical examination during the previous fiscal year for purposes of section 1117 of ANGCRRRA.

(15) The number of units of the Army National Guard that are scheduled for early deployment in the event of a mobilization and, of those units, the number that are dentally ready for deployment in accordance with section 1118 of ANGCRRRA.

(16) The estimated post-mobilization training time for each Army National Guard combat unit, and a description, displayed in broad categories and by State, of what training would need to be accomplished for Army National Guard combat units in a post-mobilization period for purposes of section 1119 of ANGCRRRA.

(17) A description of the measures taken during the preceding fiscal year to comply with the requirement in section 1120 of ANGCRRRA to expand the use of simulations, simulators, and advanced training devices and technologies for members and units of the Army National Guard.

(18) Summary tables of unit readiness, shown for each State, and drawn from the unit readiness rating system as required by section 1121 of ANGCRRRA, including the personnel readiness rating information and the equipment readiness assessment information required by that section, together with—

(A) explanations of the information shown in the table; and

(B) based on the information shown in the tables, the Secretary's overall assessment of the deployability of units of the Army National Guard, including a discussion of personnel deficiencies and equipment shortfalls in accordance with such section 1121.

(19) Summary tables, shown for each State, of the results of inspections of units of the Army National Guard by inspectors general or other commissioned officers of the Regular Army under the provisions of section 105 of title 32, together with explanations of the information shown in the tables, and including display of—

(A) the number of such inspections;

(B) identification of the entity conducting each inspection;

(C) the number of units inspected; and

(D) the overall results of such inspections, including the inspector's determination for each inspected unit of whether the unit met deployability standards and, for those units not meeting deployability standards, the reasons for such failure and the status of corrective actions.

(20) A listing, for each Army National Guard combat unit, of the active-duty combat unit associated with that Army National Guard unit in accordance with section 1131(a) of ANGCRRRA, shown by State and to be accompanied, for each such National Guard unit, by—

(A) the assessment of the commander of that associated active-duty unit of the manpower, equipment, and training resource requirements of that National Guard unit in

accordance with section 1131(b)(3) of ANGCRRRA; and

(B) the results of the validation by the commander of that associated active-duty unit of the compatibility of that National Guard unit with active duty forces in accordance with section 1131(b)(4) of ANGCRRRA.

(21) A specification of the active-duty personnel assigned to units of the Selected Reserve pursuant to section 414(c) of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (10 U.S.C. 261¹ note), shown (A) by State, (B) by rank of officers, warrant officers, and enlisted members assigned, and (C) by unit or other organizational entity of assignment.

[(c) Repealed. Pub. L. 103-337, div. A, title XVI, § 1661(d)(3), Oct. 5, 1994, 108 Stat. 2982.]

(d) DEFINITION.—In this section, the term “State” includes the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

(Added Pub. L. 103-160, div. A, title V, § 521(a), Nov. 30, 1993, 107 Stat. 1652, § 3082; renumbered § 10542 and amended Pub. L. 103-337, div. A, title XVI, § 1661(d)(3), Oct. 5, 1994, 108 Stat. 2982.)

REFERENCES IN TEXT

The Army National Guard Combat Readiness Reform Act of 1992, referred to in text, is title XI (§§1101-1137) of div. A of Pub. L. 102-484, Oct. 23, 1992, 106 Stat. 2536, as amended, which is set out as a note under section 10105 of this title.

Section 414(c) of the National Defense Authorization Act for Fiscal Years 1992 and 1993, referred to in subsec. (b)(21), is section 414(c) of Pub. L. 102-190, which is set out as a note under section 12001 of this title.

AMENDMENTS

1994—Pub. L. 103-337 renumbered section 3082 of this title as this section, struck out “reform” after “readiness” in section catchline, and struck out heading and text of subsec. (c). Text read as follows: “The requirement to include in a presentation required by subsection (a) information under any paragraph of subsection (b) shall take effect with respect to the year following the year in which the provision of ANGCRRRA to which that paragraph pertains has taken effect. Before then, in the case of any such paragraph, the Secretary shall include any information that may be available concerning the topic covered by that paragraph.”

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.

PART II—PERSONNEL GENERALLY

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¹ See References in Text note below.

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CHAPTER 1201—AUTHORIZED STRENGTHS AND DISTRIBUTION IN GRADE

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12012.	Authorized strengths: senior enlisted members on active duty or on full-time National Guard duty for administration of the reserves or the National Guard. ¹

§ 12001. Authorized strengths: reserve components

(a) Whenever the authorized strength of a reserve component (other than the Coast Guard Reserve) is not prescribed by law, it shall be prescribed by the President.

(b) Subject to the authorized strength of the reserve component concerned, the authorized strength of each reserve component (other than the Coast Guard Reserve) in members in each grade is that which the Secretary concerned determines to be necessary to provide for mobilization requirements. The Secretary shall review these determinations at least once each year and revise them if he considers it necessary. However, a member of the reserve component concerned may not, as a result of such a determination, be reduced in the member's reserve grade without the member's consent.

(Added Pub. L. 103-337, div. A, title XVI, § 1662(a)(1), Oct. 5, 1994, 108 Stat. 2983.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3221, 3224, 5413, 5456, 8221, and 8224 of this title, prior to repeal by Pub. L. 103-337, § 1662(a)(3).

EFFECTIVE DATE

Chapter 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.

¹ So in original. Does not conform to section catchline.

END STRENGTHS FOR SELECTED RESERVE AND FOR RESERVES ON ACTIVE DUTY IN SUPPORT OF RESERVES

Sections 411 and 412 of Pub. L. 103-337 provided that: “SEC. 411. END STRENGTHS FOR SELECTED RESERVE.

“(a) IN GENERAL.—The Armed Forces are authorized strengths for Selected Reserve personnel of the reserve components as of September 30, 1995, as follows:

“(1) The Army National Guard of the United States, 400,000.

“(2) The Army Reserve, 242,000.

“(3) The Naval Reserve, 102,960[.]

“(4) The Marine Corps Reserve, 42,000.

“(5) The Air National Guard of the United States, 115,581.

“(6) The Air Force Reserve, 78,706.

“(7) The Coast Guard Reserve, 8,000.

“(b) WAIVER AUTHORITY.—The Secretary of Defense may increase the end strength authorized by subsection (a) by not more than 2 percent.

“(c) ADJUSTMENTS.—The end strengths prescribed by subsection (a) for the Selected Reserve of any reserve component shall be reduced proportionately by—

“(1) the total authorized strength of units organized to serve as units of the Selected Reserve of such component which are on active duty (other than for training) at the end of the fiscal year, and

“(2) the total number of individual members not in units organized to serve as units of the Selected Reserve of such component who are on active duty (other than for training or for unsatisfactory participation in training) without their consent at the end of the fiscal year.

Whenever such units or such individual members are released from active duty during any fiscal year, the end strength prescribed for such fiscal year for the Selected Reserve of such reserve component shall be increased proportionately by the total authorized strengths of such units and by the total number of such individual members.

“SEC. 412. END STRENGTHS FOR RESERVES ON ACTIVE DUTY IN SUPPORT OF THE RESERVES.

“Within the end strengths prescribed in section 411(a), the reserve components of the Armed Forces are authorized, as of September 30, 1995, the following number of Reserves to be serving on full-time active duty or, in the case of members of the National Guard, full-time National Guard duty for the purpose of organizing, administering, recruiting, instructing, or training the reserve components:

“(1) The Army National Guard of the United States, 23,650.

“(2) The Army Reserve, 11,940.

“(3) The Naval Reserve, 17,510.

“(4) The Marine Corps Reserve, 2,285.

“(5) The Air National Guard of the United States, 9,098.

“(6) The Air Force Reserve, 648.”

Similar provisions were contained in the following prior authorization acts:

Pub. L. 103-160, div. A, title IV, §§ 411, 412, Nov. 30, 1993, 107 Stat. 1641, 1642.

Pub. L. 102-484, div. A, title IV, §§ 411, 412, Oct. 23, 1992, 106 Stat. 2399.

Pub. L. 102-190, div. A, title IV, §§ 411, 412, Dec. 5, 1991, 105 Stat. 1351.

Pub. L. 101-510, div. A, title IV, §§ 411(a)-(c), 412, Nov. 5, 1990, 104 Stat. 1546, 1547; Pub. L. 102-25, title II, §§ 201(a), 202, 205(a), Apr. 6, 1991, 105 Stat. 79, 80; Pub. L. 102-190, div. A, title IV, § 414(e), Dec. 5, 1991, 105 Stat. 1353; Pub. L. 103-160, div. A, title V, § 513, Nov. 30, 1993, 107 Stat. 1649.

Pub. L. 101-189, div. A, title IV, §§ 411, 412, Nov. 29, 1989, 103 Stat. 1432, as amended by Pub. L. 101-510, div. A, title IV, § 411(d), Nov. 5, 1990, 104 Stat. 1547.

Pub. L. 100-456, div. A, title IV, §§ 411(a), 412, Sept. 29, 1988, 102 Stat. 1964.

Pub. L. 100-180, div. A, title IV, §§ 411, 412, Dec. 4, 1987, 101 Stat. 1082, 1083, as amended by Pub. L. 100-456, div. A, title IV, § 411(b), Sept. 29, 1988, 102 Stat. 1964.

Pub. L. 99-661, div. A, title IV, §§ 411(a)-(c), 412(a), Nov. 14, 1986, 100 Stat. 3860, 3861.

Pub. L. 99-145, title IV, §§ 411, 412, Nov. 8, 1985, 99 Stat. 618, 619.

Pub. L. 98-525, title IV, §§ 411, 412, Oct. 19, 1984, 98 Stat. 2516, 2517.

Pub. L. 98-94, title V, §§ 501, 502, Sept. 24, 1983, 97 Stat. 630, 631.

Pub. L. 97-252, title V, §§ 501, 502, Sept. 8, 1982, 96 Stat. 726, as amended by Pub. L. 98-94, title V, § 504(a), Sept. 24, 1983, 97 Stat. 631.

Pub. L. 97-86, title V, §§ 501, 502, Dec. 1, 1981, 95 Stat. 1107.

Pub. L. 96-342, title IV, § 401, Sept. 8, 1980, 94 Stat. 1084.

Pub. L. 96-107, title IV, § 401, Nov. 9, 1979, 93 Stat. 807.

Pub. L. 95-485, title IV, § 401, Oct. 20, 1978, 92 Stat. 1613.

Pub. L. 95-79, title IV, § 401, July 30, 1977, 91 Stat. 327.

Pub. L. 94-361, title IV, § 401, July 14, 1976, 90 Stat. 926.

Pub. L. 94-106, title IV, § 401, Oct. 7, 1975, 89 Stat. 532.

Pub. L. 93-365, title IV, §§ 401, 402, Aug. 5, 1974, 88 Stat. 402, 403.

Pub. L. 93-155, title IV, §§ 401, 402, Nov. 16, 1973, 87 Stat. 608.

Pub. L. 92-436, title IV, §§ 401, 402, Sept. 26, 1972, 86 Stat. 736.

Pub. L. 92-156, title III, §§ 301, 302, Nov. 17, 1971, 85 Stat. 425.

Pub. L. 91-441, title III, §§ 301, 302, Oct. 7, 1970, 84 Stat. 908.

Pub. L. 91-121, title III, §§ 301, 302, Nov. 19, 1969, 83 Stat. 206.

Pub. L. 90-500, title III, §§ 301, 302, Sept. 20, 1968, 82 Stat. 850.

RESERVE COMPONENT FORCE STRUCTURE

Pub. L. 102-484, div. A, title IV, § 413, Oct. 23, 1992, 106 Stat. 2400, provided that:

“(a) REQUIREMENT TO PRESCRIBE RESERVE COMPONENT FORCE STRUCTURE.—The Secretary of each military department shall prescribe a force structure allowance for each reserve component under the jurisdiction of the Secretary. Each such force structure allowance for a reserve component—

“(1) shall be consistent with, but in no case include a number of personnel spaces that is less than, the authorized end strength for that component; and

“(2) shall be prescribed in accordance with historic service policies.

“(b) DEFINITION.—For purposes of this section, the term ‘force structure allowance’ means the number and types of units and organizations, and the number of authorized personnel spaces allocated to those units and organizations, in a military force.”

LIMITATION ON REDUCTION IN NUMBER OF RESERVE COMPONENT MEDICAL PERSONNEL

Pub. L. 102-484, div. A, title V, § 518, Oct. 23, 1992, 106 Stat. 2407, as amended by Pub. L. 103-337, div. A, title VII, § 716, Oct. 5, 1994, 108 Stat. 2803, provided that:

“(a) LIMITATION.—The Secretary of Defense may not reduce the number of medical personnel in any reserve component below the number of such personnel in that reserve component on September 30, 1992, unless the Secretary certifies to Congress that the number of such personnel to be reduced in a particular military department is excess to the current and projected needs for personnel in the Selected Reserve of that military department. The assessment of current and projected personnel needs under this subsection shall be consistent with the wartime requirements for Selected Reserve personnel identified in the final report on the comprehensive study of the military medical care system prepared pursuant to section 733 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102-190; 10 U.S.C. 1071 note).

“(b) DEFINITION.—In subsection (a), the term ‘medical personnel’ has the meaning given that term in section 115a(g)(2) of title 10, United States Code.”

PILOT PROGRAM FOR ACTIVE COMPONENT SUPPORT OF
RESERVES

Pub. L. 103-160, div. A, title V, § 517(b), Nov. 30, 1993, 107 Stat. 1651, provided that:

“(1) The Secretary of the Army shall include in the annual report of the Secretary to Congress known as the Army Posture Statement a presentation relating to the implementation of the Pilot Program for Active Component Support of the Reserves under section 414 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102-190; 10 U.S.C. 261 note [now set out below]), as amended by subsection (a).

“(2) Each such presentation shall include, with respect to the period covered by the report, the following information:

“(A) The promotion rate for officers considered for promotion from within the promotion zone who are serving as active component advisers to units of the Selected Reserve of the Ready Reserve (in accordance with that program) 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, shown for all officers of the Army.

“(B) The promotion rate for officers considered for promotion from below the promotion zone who are serving as active component advisers to units of the Selected Reserve of the Ready Reserve (in accordance with that program) compared in the same manner as specified in subparagraph (A).”

Pub. L. 102-190, div. A, title IV, § 414(a)-(d), Dec. 5, 1991, 105 Stat. 1352, 1353, as amended by Pub. L. 102-484, div. A, title V, § 511(b), title XI, § 1132, Oct. 23, 1992, 106 Stat. 2405, 2541; Pub. L. 103-160, div. A, title V, § 517(a), Nov. 30, 1993, 107 Stat. 1650; Pub. L. 103-337, div. A, title IV, § 413, Oct. 5, 1994, 108 Stat. 2747, provided that:

“(a) **PILOT PROGRAM REQUIRED.**—During fiscal years 1992 and 1993, the Secretary of the Army shall institute a pilot program to provide active component advisers to combat units, combat support units, and combat service support units in the Selected Reserve of the Ready Reserve that have a high priority for deployment on a time-phased troop deployment list or have another contingent high priority for deployment. The advisers shall be assigned to full-time duty in connection with organizing, administering, recruiting, instructing, or training such units.

“(b) **OBJECTIVES OF PROGRAM.**—The objectives of the program are as follows:

“(1) To improve the readiness of units in the reserve components of the Army.

“(2) To increase substantially the number of active component personnel directly advising reserve component unit personnel.

“(3) To provide a basis for determining the most effective mix of reserve component personnel and active component personnel in organizing, administering, recruiting, instructing, or training reserve component units.

“(4) To provide a basis for determining the most effective mix of active component officer and enlisted personnel in advising reserve component units regarding organizing, administering, recruiting, instructing, or training reserve component units.

“(c) **PERSONNEL TO BE ASSIGNED.**—The Secretary shall assign not less than 2,000 active component personnel to serve as advisers under the program. After September 30, 1996, the number under the preceding sentence shall be increased to not less than 5,000.

“(d) **ACTION ON THE BASIS OF PROGRAM RESULTS.**—Based on the experience under the pilot program, the Secretary of the Army shall by April 1, 1993, submit to the Committees on Armed Services of the Senate and House of Representatives a report containing the Secretary's evaluation of the program to that date. As part of the budget submission for fiscal year 1995, the Secretary shall submit any recommendations for expansion or modification of the program, together with a

proposal for any statutory changes that the Secretary considers necessary to implement the program on a permanent basis. In no case may the number of active duty personnel assigned to the program decrease below the number specified for the pilot program.”

RESERVE FORCES READINESS

Pub. L. 98-525, title V, § 552(a)-(e), (g), Oct. 19, 1984, 98 Stat. 2530, as amended by Pub. L. 103-337, div. A, title XVI, § 1661(a)(3)(B), Oct. 5, 1994, 108 Stat. 2980, provided that:

“(a)(1) The Secretary of Defense shall conduct a review of the various systems used to measure the readiness of reserve units of the Armed Forces and shall implement a measurement system for the active and reserve components of the Armed Forces to provide an objective and uniform evaluation of the readiness of all units of the Armed Forces. The measurement system should be designed to produce information adequate to provide comparisons concerning the readiness of all units. The system for evaluation of the readiness of a unit of an active component should incorporate the performance of any unit of a reserve component affiliated with the active component unit, including the effect of the reserve component unit on the mobilization capability of the active component unit.

“(2) Not later than March 31, 1985, the Secretary shall submit a report to the Committees on Armed Services of the Senate and House of Representatives describing the results of the review under paragraph (1) and the measurement system implemented in accordance with that paragraph.

“(b)(1) The Secretary of Defense, acting through the Assistant Secretary of Defense for Reserve Affairs, shall conduct a study to evaluate the feasibility of allocating equipment to units of reserve components based on a measure of effectiveness of such units. The study should consider the effects of allocating equipment by comparing units with similar deployment times and similar capabilities in terms of training and equipment rather than by comparing all reserve component units with each other. The study should be integrated with an evaluation of the system for measuring unit effectiveness to be implemented in accordance with subsection (a).

“(2) As part of the report under subsection (a)(2), the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the study carried out under paragraph (1).

“(c) It is the sense of Congress that the number of members of the Army Reserve and of the Army National Guard assigned to full-time manning duty should be increased to 14 percent of the total membership of the Army Reserve and of the Army National Guard, respectively, by fiscal year 1989.

“(d)(1)(A) The Secretary of Defense, acting through the Assistant Secretary of Defense for Reserve Affairs, shall conduct a study of the benefits of a longer training program for certain units of the reserve components and shall conduct a test of such a program. The test program should begin at the earliest realistic date.

“(B) In developing training programs for the reserve components, the Secretary shall give increased attention to innovative training technologies, techniques, and schedules that recognize the limitations on time and the geographic dispersion of the reserve components.

“(2) Not later than March 31, 1985, the Secretary shall submit a report to the Committees on Armed Services of the Senate and House of Representatives describing the study under paragraph (1).

“(e) [Repealed. Pub. L. 103-337, div. A, title XVI, § 1661(a)(3)(B), Oct. 5, 1994, 108 Stat. 2980.]

“(g) This section does not apply to the Coast Guard.”

CROSS REFERENCES

Authorization of end strength of Selected Reserve of each reserve component of the armed forces, pre-

requisite to appropriation of funds to or for use of Selected Reserve, see section 115 of this title.

§ 12002. Authorized strengths: Army and Air Force reserve components, exclusive of members on active duty

(a) The authorized strengths of the National Guard and the reserve components of the Army and the Air Force, exclusive of members who are included in the strengths authorized for members of the Army and Air Force, respectively, on active duty, are as follows:

Army National Guard and the Army National Guard of the United States	600,000
Army Reserve	980,000
Air National Guard and the Air National Guard of the United States	150,000
Air Force Reserve	500,000.

(b) The strength authorized by this section for the Army National Guard and the Army National Guard of the United States, and the strength authorized by this section for the Air National Guard and the Air National Guard of the United States, shall be allocated among the States.

(Added Pub. L. 103-337, div. A, title XVI, § 1662(a)(1), Oct. 5, 1994, 108 Stat. 2983.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3222, 3225, 8222, and 8225 of this title, prior to repeal by Pub. L. 103-337, § 1662(a)(3).

§ 12003. Authorized strengths: commissioned officers in an active status

(a) The authorized strengths of the Army, Navy, Air Force, and Marine Corps in reserve commissioned officers, other than commissioned warrant officers and officers on an active-duty list, in an active status are as follows:

Army	275,000
Air Force	200,000
Navy	150,000
Marine Corps	24,500.

(b) The authorized strengths prescribed by subsection (a) may not be exceeded unless—

(1) the Secretary concerned determines that a greater number is necessary for planned mobilization requirements; or

(2) the excess results directly from the operation of a nondiscretionary provision of law.

(Added Pub. L. 103-337, div. A, title XVI, § 1662(a)(1), Oct. 5, 1994, 108 Stat. 2984.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3217, 5414, and 8217 of this title, prior to repeal by Pub. L. 103-337, § 1662(a)(3).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12005, 12006 of this title.

§ 12004. Strength in grade: reserve general and flag officers in an active status

(a) The authorized strengths of the Army, Air Force, and Marine Corps in reserve general officers in an active status, and the authorized strength of the Navy in reserve officers in the

grades of rear admiral (lower half) and rear admiral in an active-status, are as follows:

Army	207
Air Force	157
Navy	48
Marine Corps	10.

(b) The following Army and Air Force reserve officers shall not be counted for purposes of this section:

(1) Those serving as adjutants general or assistant adjutants general of a State.

(2) Those serving in the National Guard Bureau.

(3) Those counted under section 526 of this title.

(c)(1) The authorized strength of the Navy under subsection (a) is exclusive of officers counted under section 526 of this title. Of the number authorized under subsection (a), 39 are distributed among the line and the staff corps as follows:

Line	28
Medical Corps	5
Chaplain Corps	1
Judge Advocate General's Corps	1
Dental Corps	2
Nurse Corps	1
Medical Service Corps	1

(2) The remaining authorizations for the Navy under subsection (a) shall be distributed among such other staff corps as are established by the Secretary of the Navy under the authority provided by section 5150(b) of this title, except that—

(A) if the Secretary has established a Supply Corps, the authorized strength for the Supply Corps shall be seven; and

(B) if the Secretary has established a Civil Engineering Corps, the authorized strength for the Civil Engineering Corps shall be two.

(3) Not more than 50 percent of the officers in an active status authorized under this section for the Navy may serve in the grade of rear admiral.

(d) The authorized strength of the Marine Corps under subsection (a) is exclusive of those counted under section 526 of this title.

(e)(1) A reserve general officer of the Army or Air Force may not be reduced in grade because of a reduction in the number of general officers authorized under subsection (a).

(2) An officer of the Naval Reserve or the Marine Corps Reserve may not be reduced in permanent grade because of a reduction in the number authorized by this section for his grade.

(Added Pub. L. 103-337, div. A, title XVI, § 1662(a)(1), Oct. 5, 1994, 108 Stat. 2984.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3218, 5457(a), 5458(a), and 8218 of this title, prior to repeal by Pub. L. 103-337, § 1662(a)(3).

CROSS REFERENCES

Adjutants general and assistant adjutants general, reference as applicable to other officers of National Guard, see section 10214 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10214, 12005, 12006 of this title.

§ 12005. Strength in grade: commissioned officers in grades below brigadier general or rear admiral (lower half) in an active status

(a)(1) Subject to paragraph (2), the authorized strength of the Army and the Air Force in reserve commissioned officers in an active status in each grade named in paragraph (2) is as prescribed by the Secretary of the Army or the Secretary of the Air Force, respectively. A vacancy in any grade may be filled by an authorized appointment in any lower grade.

(2) A strength prescribed by the Secretary concerned under paragraph (1) for a grade may not be higher than the percentage of the strength authorized for the Army or the Air Force, as the case may be, under section 12003 of this title that is specified for that grade as follows:

Grade	Army percentage	Air Force percentage
Colonel	2	1.8
Lieutenant colonel	6	4.6
Major	13	14.0
Captain	35	32.0
First lieutenant and second lieutenant (when combined with the number authorized for general officer grades under section 12004 of this title)	44	47.6

(b)(1) The authorized strengths of the Naval Reserve in line officers in an active status in the grades of captain, commander, lieutenant commander, and lieutenant, and in the grades of lieutenant (junior grade) and ensign combined, are the following percentages of the total authorized number of those officers:

Captain	1.5 percent
Commander	7 percent
Lieutenant commander	22 percent
Lieutenant	37 percent
Lieutenant (junior grade) and ensign (when combined with the number authorized for flag officer grades under section 12004 of this title)	32.5 percent.

(2) When the actual number of line officers in an active status in any grade is less than the number authorized by paragraph (1) for that grade, the difference may be applied to increase the number authorized by that paragraph for any lower grade or grades.

(c)(1) The authorized strengths of the Marine Corps Reserve in officers in an active status in the grades of colonel, lieutenant colonel, major, and captain, and in the grades of first lieutenant and second lieutenant combined, are the following percentages of the total authorized number of those officers:

Colonel	2 percent
Lieutenant colonel	6 percent
Major	12 percent
Captain	35 percent
First lieutenant and second lieutenant (when combined with the number authorized for general officer grades under section 12004 of this title)	32.5 percent.

(2) When the actual number of officers in an active status in any grade is less than the number authorized by paragraph (1) for that grade,

the difference may be applied to increase the number authorized by that paragraph for any lower grade or grades.

(d)(1) An officer of the Army or Air Force may not be reduced in grade because of a reduction in the number of commissioned officers authorized for the officer's grade under this section.

(2) An officer of the Naval Reserve or the Marine Corps Reserve may not be reduced in permanent grade because of a reduction in the number authorized by this section for his grade.

(Added Pub. L. 103-337, div. A, title XVI, §1662(a)(1), Oct. 5, 1994, 108 Stat. 2985.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3219, 5457(b)-(d), 5458(b)-(d), and 8219 of this title, prior to repeal by Pub. L. 103-337, §1662(a)(3).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12006 of this title.

§ 12006. Strength limitations: authority to waive in time of war or national emergency

(a) In time of war, or of national emergency declared by Congress or the President, the President may suspend the operation of any provision of section 12003, 12004, or 12005 of this title. So long as any such war or national emergency continues, any such suspension may be extended by the President.

(b) Any suspension under subsection (a) 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 termination of the emergency.

(Added Pub. L. 103-337, div. A, title XVI, §1662(a)(1), Oct. 5, 1994, 108 Stat. 2986.)

REFERENCES IN TEXT

The National Emergencies Act, referred to in subsec. (b), is Pub. L. 94-412, Sept. 14, 1976, 90 Stat. 1255, as amended. Title II of the 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.

§ 12007. Reserve officers of the Army: distribution

The Secretary of the Army shall distribute the number of reserve commissioned officers, other than commissioned warrant officers, authorized in each commissioned grade between those assigned to reserve units organized to serve as units and those not assigned to such units. The Secretary shall distribute the number who are assigned to reserve units organized to serve as units among the units of each reserve component by prescribing appropriate tables of organi-

zation and tables of distribution. The Secretary shall distribute the number who are not assigned to such units between—

- (1) each special branch; and
- (2) all other branches taken together.

(Added Pub. L. 103-337, div. A, title XVI, §1662(a)(1), Oct. 5, 1994, 108 Stat. 2986.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3220 of this title, prior to repeal by Pub. L. 103-337, §1662(a)(3).

§ 12008. Army Reserve and Air Force Reserve: warrant officers

The Secretary of the Army may prescribe the authorized strength of the Army Reserve in warrant officers. The Secretary of the Air Force may prescribe the authorized strength of the Air Force Reserve in warrant officers.

(Added Pub. L. 103-337, div. A, title XVI, §1662(a)(1), Oct. 5, 1994, 108 Stat. 2987.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3223 and 8223 of this title, prior to repeal by Pub. L. 103-337, §1662(a)(3).

§ 12009. Army and Air Force reserve components: temporary increases

(a) The authorized strength in any reserve grade, as prescribed under this chapter, for any reserve component under the jurisdiction of the Secretary of the Army or the Secretary of the Air Force is automatically increased to the minimum extent necessary to give effect to each appointment made in that grade under section 1211(a), 3036, 14304(b), 14314, or 14317 of this title.

(b) An authorized strength so increased is increased for no other purpose. While an officer holds that grade, the officer whose appointment caused the increase is counted for the purpose of determining when other appointments, not under those sections, may be made in that grade.

(Added Pub. L. 103-337, div. A, title XVI, §1662(a)(1), Oct. 5, 1994, 108 Stat. 2987.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3212 and 8212 of this title, prior to repeal by Pub. L. 103-337, §1662(a)(3).

§ 12010. Computations for Naval Reserve and Marine Corps Reserve: rule when fraction occurs in final result

When there is a fraction in the final result of any computation under this chapter for the Naval Reserve or the Marine Corps Reserve, a fraction of one-half or more is counted as one, and a fraction of less than one-half is disregarded.

(Added Pub. L. 103-337, div. A, title XVI, §1662(a)(1), Oct. 5, 1994, 108 Stat. 2987.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 5454 of this title, prior to repeal by Pub. L. 103-337, §1662(a)(3).

§ 12011. Authorized strengths: reserve officers on active duty or on full-time National Guard duty for administration of the reserves or the National Guard

(a) The number of reserve officers of the Army, Air Force, and Marine Corps who may be on active duty or full-time National Guard duty in each of the grades of major, lieutenant colonel, and colonel, and of the Navy who may be on active duty in each of the grades of lieutenant commander, commander, and captain, as of the end of any fiscal year for duty described in subclauses (B) and (C) of section 523(b)(1) of this title or full-time National Guard duty (other than for training) under section 502(f) of title 32 may not exceed the number for that grade and armed force in the following table:

Grade	Army	Navy	Air Force	Marine Corps
Major or Lieutenant Commander	3,219	1,071	575	110
Lieutenant Colonel or Commander	1,524	520	636	75
Colonel or Navy Captain	372	188	274	25

(b) 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.

(Added Pub. L. 96-513, title I, §103, Dec. 12, 1980, 94 Stat. 2844, §524; amended Pub. L. 97-86, title V, §503(b), Dec. 1, 1981, 95 Stat. 1108; Pub. L. 97-252, title V, §503(b), Sept. 8, 1982, 96 Stat. 727; Pub. L. 98-94, title V, §503(b), Sept. 24, 1983, 97 Stat. 631; Pub. L. 98-525, title IV, §§413(b), 414(a)(4)(A), (B)(i), Oct. 19, 1984, 98 Stat. 2518, 2519; Pub. L. 99-145, title IV, §413(b), Nov. 8, 1985, 99 Stat. 619; Pub. L. 100-180, div. A, title IV, §413(b), Dec. 4, 1987, 101 Stat. 1083; Pub. L. 101-189, div. A, title IV, §413(b), Nov. 29, 1989, 103 Stat. 1433; Pub. L. 102-190, div. A, title IV, §413(b), Dec. 5, 1991, 105 Stat. 1352; Pub. L. 103-160, div. A, title IV, §413(b), Nov. 30, 1993, 107 Stat. 1642; renumbered §12011 and amended Pub. L. 103-337, div. A, title XVI, §1662(a)(2), Oct. 5, 1994, 108 Stat. 2988.)

AMENDMENTS

1994—Pub. L. 103-337 renumbered section 524 of this title as this section and amended section catchline generally striking out at end “in grades of major, lieutenant colonel, and colonel and Navy grades of lieutenant commander, commander, and captain”.

1993—Subsec. (a). Pub. L. 103-160, in table, increased fiscal year limitation on number of reserve officers in the Air Force in grade of Lieutenant Colonel or Commander from 595 to 636 and in grade of Colonel or Navy Captain from 227 to 274. Army, Navy, and Marine Corps figures remained unchanged.

1991—Subsec. (a). Pub. L. 102-190, in table, increased fiscal year limitation on number of reserve officers in the Army in grade of Colonel or Navy Captain from 364 to 372, and increased such limitation on number of reserve officers in the Air Force in grade of Lieutenant Colonel or Commander from 532 to 595 and in grade of Colonel or Navy Captain from 194 to 227. Navy and Marine Corps figures remained unchanged.

1989—Subsec. (a). Pub. L. 101-189, §413(b)(2), in table, increased fiscal year limitation on number of reserve

officers in grade of Major or Lieutenant Commander, Lieutenant Colonel or Commander, and Colonel or Navy Captain who may be on active duty to, respectively: Army, to 3,219, 1,524, and 364 from 3,030, 1,448, and 351; Navy, to 1,071, 520, and 188 from 1,065, 520, and 188; Air Force, to 575, 532, and 194 from 575, 476, and 190. Marine Corps figures remained unchanged.

Pub. L. 101-189, §413(b)(1), in table, increased fiscal year limitation on number of reserve officers in grade of Major or Lieutenant Commander, Lieutenant Colonel or Commander, and Colonel or Navy Captain who may be on active duty to, respectively: Army, to 3,030, 1,448, and 351 from 2,600, 1,250, and 348; Navy, to 1,065, 520, and 188 from 875, 520, and 185; Air Force, to 575, 476, and 190 from 575, 322, and 190. Marine Corps figures remained unchanged.

1987—Subsec. (a). Pub. L. 100-180, §413(b)(2), in table, increased fiscal year limitation on number of reserve officers in grade of Major or Lieutenant Commander, Lieutenant Colonel or Commander, and Colonel or Navy Captain who may be on active duty to, respectively: Army, to 2,600, 1,250, and 348 from 2,550, 1,152, and 348; Navy, to 875, 520, and 185 from 850, 520, and 185; Air Force, to 575, 322, and 190 from 575, 322, and 184; and Marine Corps, to 110, 75, and 25 from 105, 70, and 25.

Pub. L. 100-180, §413(b)(1), in table, changed fiscal year limitation on number of reserve officers in grade of Major or Lieutenant Commander, Lieutenant Colonel or Commander, and Colonel or Navy Captain who may be on active duty to, respectively: Army, to 2,550, 1,152, and 348 from 2,317, 1,152, and 348; Navy, to 850, 520, and 185 from 850, 520, and 177; Air Force, to 575, 322, and 184 from 476, 318, and 189; and Marine Corps, to 105, 70, and 25 from 100, 60, and 25.

1985—Subsec. (a). Pub. L. 99-145 increased fiscal year limitation on number of reserve officers in grade of Major or Lieutenant Commander, Lieutenant Colonel or Commander, and Colonel or Navy Captain who may be on active duty to, respectively: Army, to 2,317, 1,152, and 348 from 2,261, 1,121, and 345; Navy, to 850, 520, and 177 from 823, 520, and 177; Air Force, to 476, 318, and 189, from 471, 293, and 172; and Marine Corps, to 100, 60, and 25 from 100, 50, and 25.

1984—Pub. L. 98-525, §414(a)(4)(B)(i), inserted references to National Guard and to full-time National Guard duty in section catchline.

Subsec. (a). Pub. L. 98-525, §414(a)(4)(A), inserted “or full-time National Guard duty” after “Marine Corps who may be on active duty” and inserted “or full-time National Guard duty (other than for training) under section 502(f) of title 32”.

Pub. L. 98-525, §413(b), increased fiscal year limitation on number of reserve officers in grade of major or lieutenant commander, lieutenant colonel or commander, and colonel or Navy captain who may be on active duty to, respectively: Army, to 2,261, 1,121, and 345 from 1,948, 967, and 338; Air Force, to 471, 293, and 172 from 408, 303, and 171; Marine Corps, to 100, 50, and 25 from 95, 48, and 23. Figures for the Navy remained unchanged.

1983—Subsec. (a). Pub. L. 98-94 increased fiscal year limitation on number of reserve officers in grade major or lieutenant commander; lieutenant colonel or commander; and colonel or Navy captain who may be on active duty to, respectively: Army, to 1,948, 967, and 338 from 1,351, 671, and 234; Navy, to 823, 520, and 177 from 823, 425, and 177; Air Force, to 408, 303, and 171 from 281, 267, and 170; Marine Corps, to 95, 48, and 23 from 95, 40, and 21.

1982—Subsec. (a). Pub. L. 97-252 increased numbers in columns headed “Army”, “Air Force”, and “Marine Corps” from 1,105, 189, and 51 in line for major or lieutenant commander to 1,351, 281, and 95, respectively, from 551, 194, and 35 in line for lieutenant colonel or commander to 671, 267, and 40, respectively, and from 171, 147, and 19 in line for colonel or Navy captain to 234, 170, and 21, respectively.

1981—Subsec. (a). Pub. L. 97-86 increased numbers in columns headed “Army” and “Air Force” from 821 and 170 in line for major or lieutenant commander to 1,105

and 189, respectively, from 503 and 183 in line for lieutenant colonel or commander to 551 and 194, respectively, and from 163 and 146 in line for colonel or Navy captain to 171 and 147, respectively.

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 1989 AMENDMENT

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

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-145 effective Oct. 1, 1985, see section 413(c) of Pub. L. 99-145, set out as a note under section 517 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-525 effective Oct. 1, 1984, see section 413(c) of Pub. L. 98-525, set out as a note under section 517 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-94 effective Oct. 1, 1983, see section 503(c) of Pub. L. 98-94, set out as a note under section 517 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3380, 8380, 14304, 14311 of this title; title 32 section 112.

§ 12012. Authorized strengths: senior enlisted members on active duty or on full-time National Guard duty for administration of the reserves or National Guard

(a) The number of enlisted members in pay grades E-8 and E-9 who may 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 may not exceed the number for that grade and armed force in the following table:

Grade	Army	Navy	Air Force	Marine Corps
E-9	569	202	328	14
E-8	2,585	429	840	74

(b) Whenever the number of members serving in pay grade E-9 for duty described in subsection (a) 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.

(Added Pub. L. 103-337, div. A, title XVI, §1662(a)(1), Oct. 5, 1994, 108 Stat. 2987.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 517(b), (c) of this title, prior to amendment by Pub. L. 103-337, §1662(a)(4).

CHAPTER 1203—ENLISTED MEMBERS

Sec.	
12101.	Definition.
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12104.	Reserve components: transfers.
12105.	Army Reserve and Air Force Reserve: transfer from Guard components.
12106.	Army and Air Force Reserve: transfer to upon withdrawal as member of National Guard.
12107.	Army National Guard of United States; Air National Guard of the United States: enlistment in.

§ 12101. Definition

In this chapter, the term “enlistment” means original enlistment or reenlistment.

(Added Pub. L. 103-337, div. A, title XVI, §1662(b)(1), Oct. 5, 1994, 108 Stat. 2988.)

EFFECTIVE DATE

Chapter 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.

§ 12102. Reserve components: qualifications

(a) To become an enlisted member of a reserve component a person must be enlisted as a Reserve of an armed force and subscribe to the oath prescribed by section 502 of this title, or be transferred to that component according to law. In addition, to become an enlisted member of the Army National Guard of the United States or the Air National Guard of the United States, he must meet the requirements of section 12107 of this title.

(b) Except as otherwise provided by law, the Secretary concerned shall prescribe physical, mental, moral, professional, and age qualifications for the enlistment of persons as Reserves of the armed forces under his jurisdiction. However, no person may be enlisted as a Reserve unless—

(1) he is a citizen of the United States or has been lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.); or

(2) he has previously served in the armed forces or in the National Security Training Corps.

(c) Women may be enlisted as Reserves of the armed forces. Women are enlisted in the grades and ratings authorized for enlisted women of the regular component of the armed force concerned. Any female former enlisted member of an armed force may, if otherwise qualified, be enlisted as a Reserve of that armed force in the highest grade or rating in which she previously served satisfactorily on active duty (other than for training).

(d) A person who is otherwise qualified, but who has a physical defect that the Secretary concerned determines will not interfere with the performance of the duties to which that person may be assigned, may be enlisted as a Reserve of any armed force under the jurisdiction of that Secretary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 17, §510; Dec. 23, 1963, Pub. L. 88-236, 77 Stat. 474; Nov. 8, 1967,

Pub. L. 90-130, §1(2), 81 Stat. 374; Oct. 22, 1968, Pub. L. 90-623, §2(3), 82 Stat. 1314; Dec. 12, 1980, Pub. L. 96-513, title V, §511(13), 94 Stat. 2921; renumbered §12102 and amended Oct. 5, 1994, Pub. L. 103-337, div. A, title XVI, §§1631(a), 1662(b)(2), 1675(a), 108 Stat. 2964, 2989, 3017.)

AMENDMENT OF SUBSECTIONS (c) AND (d)

Pub. L. 103-337, div. A, title XVI, §§1631(a), 1691(b)(1), Oct. 5, 1994, 108 Stat. 2964, 3026, provided that, effective Oct. 1, 1996, this section is amended by striking out subsection (c) and redesignating subsection (d) as subsection (c).

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
510(a)	50:952 (less proviso).	July 9, 1952, ch. 608, §217
510(b)	50:941(a) (as applicable to enlistments).	(less (c), as applicable to enlistments), 228
510(c).	50:941(b) (as applicable to enlistments).	(less proviso), 232 (as applicable to enlistments), 66 Stat. 486, 488, 489.
510(d).	50:956 (as applicable to enlistments).	

In subsection (a), the last sentence is inserted to reflect sections 3261 and 8261 of this title.

In subsection (b), the word “However” is substituted for the words “Subject to the limitation that”. The words “as Reserves in the armed forces under his jurisdiction” are substituted for the words “of Reserve members of the Armed Forces of the United States”. The words “its Territories” are omitted as surplusage, since citizens of the Territories are citizens of the United States.

In subsection (c), the words “armed force concerned” are substituted for the words “of the appropriate Armed Force of the United States”. The words “in which she previously served satisfactorily” are substituted for the words “satisfactorily held by her”.

In subsection (d), the words “under the jurisdiction of that Secretary” are inserted for clarity. The words “general or special” are omitted as surplusage.

REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in subsec. (b)(1), 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

1994—Pub. L. 103-337, §1662(b)(2), renumbered section 510 of this title as this section.

Subsec. (a). Pub. L. 103-337, §1675(a), substituted “12107” for “3261 or 8261”.

1980—Subsec. (b)(1). Pub. L. 96-513 substituted “the Immigration and Nationality Act (8 U.S.C. 1101 et seq.)” for “chapter 12 of title 8”.

1968—Subsec. (a). Pub. L. 90-623 substituted “section 502” for “section 501”.

1967—Subsec. (c). Pub. L. 90-130 struck out provision limiting the reserve components in which women may be enlisted as Reserves of the armed forces to the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, and Coast Guard Reserve.

1963—Subsec. (b)(1). Pub. L. 88-236 substituted “he is a citizen of the United States or has been lawfully admitted to the United States for permanent residence under chapter 12 of title 8” for “he is, or has made a declaration of intention to become, a citizen of the United States or of a possession thereof”.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by sections 1662(b)(2) and 1675(a) of Pub. L. 103-337 effective Dec. 1, 1994, except as otherwise pro-

vided, and amendment by section 1631(a) 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 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.

TREATMENT OF SINGLE PARENTS ENLISTING IN RESERVE COMPONENTS OF THE ARMED FORCES

Pub. L. 99-661, div. A, title V, §523, Nov. 14, 1986, 100 Stat. 3871, as amended by Pub. L. 100-180, div. A, title V, §503, Dec. 4, 1987, 101 Stat. 1085; Pub. L. 101-189, div. A, title V, §504, Nov. 29, 1989, 103 Stat. 1437, which provided that, in determining under section 510 [now 12102] of title 10 whether a person who is applying to enlist in a reserve component of the Armed Forces upon discharge or release from active duty is qualified for enlistment as a Reserve of an Armed Force, the Secretary concerned may not disqualify the person because the person is a single parent if the person is otherwise qualified for enlistment, the person became a single parent while serving on active duty, and the person's status as a single parent was not a factor in the person's discharge or release from active duty, with provision that the requirements imposed with respect to parenthood not be more stringent than those imposed on a member who becomes a single parent during the term of the member's enlistment, and with provision defining "single parent" as a person who is not married and who has custody of a child under the age of 18 pursuant to a court order, expired on Sept. 30, 1991.

CROSS REFERENCES

National Security Training Corps, see section 454 of Title 50, Appendix, War and National Defense.

§ 12103. Reserve components: terms

(a) Except as otherwise prescribed by law, enlistments as Reserves are for terms prescribed by the Secretary concerned. However, an enlistment that is in effect at the beginning of a war or of a national emergency declared by Congress, or entered into during such a war or emergency, and that would otherwise expire, continues in effect until the expiration of six months after the end of that war or emergency, whichever is later, unless sooner terminated by the Secretary concerned.

(b) Under regulations to be prescribed by the Secretary of Defense, and by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, a person who is qualified for enlistment for active duty in an armed force, and who is not under orders to report for induction into an armed force under the Military Selective Service Act (50 U.S.C. App. 451 et seq.), may be enlisted as a Reserve for service in the Army Reserve, Naval 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. Each person enlisted under this subsection shall serve—

(1) on active duty for a period of not less than two years; and

(2) the rest of his period of enlistment as a member of the Ready Reserve.

(c) In time of war or of national emergency declared by Congress the term of service of an enlisted member transferred to a reserve component according to law, that would otherwise expire, continues until the expiration of six months after the end of that war or emergency, whichever is later, unless sooner terminated by the Secretary concerned.

(d) Under regulations to be prescribed by the Secretary of Defense, or the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, a non-prior-service person who is qualified for induction for active duty in an armed force and who is not 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 section 6(c)(2)(A)(ii) and (iii) of such Act, may be enlisted in the Army National Guard or the Air National Guard, or as a Reserve for service in the Army Reserve, Naval 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. Each person enlisted under this subsection shall perform an initial period of active duty for training of not less than twelve weeks to commence insofar as practicable within 270 days after the date of that enlistment.

(Aug. 10, 1956, ch. 1041, 70A Stat. 18, §511; Sept. 2, 1958, Pub. L. 85-861, §1(8), 72 Stat. 1439; Sept. 3, 1963, Pub. L. 88-110, §3, 77 Stat. 135; Dec. 1, 1967, Pub. L. 90-168, §2(11), 81 Stat. 523; Oct. 7, 1975, Pub. L. 94-106, title VIII, §802(a), 89 Stat. 537; Oct. 20, 1978, Pub. L. 95-485, title IV, §405(c)(1), 92 Stat. 1615; Nov. 9, 1979, Pub. L. 96-107, title VIII, §805(a), 93 Stat. 812; Dec. 12, 1980, Pub. L. 96-513, title V, §511(14), 94 Stat. 2921; Sept. 8, 1982, Pub. L. 97-252, title XI, §1115(a), 96 Stat. 750; Oct. 12, 1982, Pub. L. 97-295, §1(6), 96 Stat. 1289; Sept. 24, 1983, Pub. L. 98-94, title X, §1022(a)(1), 97 Stat. 670; renumbered §12103, Oct. 5, 1994, Pub. L. 103-337, div. A, title XVI, §1662(b)(2), 108 Stat. 2989.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
511(a)	50:951 (less (c)).	July 9, 1952, ch. 608, §227, 66 Stat. 488.
511(b)	50:951(c).	

In subsection (a), the first sentence is substituted for 50:951(a). The words "as Reserves in the Armed Forces of the United States" and "the existence of" are omitted as surplusage.

In subsections (a) and (b), the word "hereafter" is omitted as surplusage. The words "the expiration of" are inserted for clarity.

In subsection (b), the word "continues" is substituted for the words "shall * * * be extended".

1958 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
511(b)	50:1012.	Aug. 9, 1955, ch. 665, §2(i) (1st 2 pars.), 69 Stat. 600.

In subsection (b), the words "respectively, pursuant to the provisions of this section" are omitted as sur-

plusage. The words “as a Reserve for service” are inserted to reflect section 510 of this title. The last six words of the first sentence are substituted for 50:1012(b) (1st sentence).

REFERENCES IN TEXT

The Military Selective Service Act, referred to in subsecs. (b) and (d), 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.

AMENDMENTS

1994—Pub. L. 103-337 renumbered section 511 of this title as this section.

1983—Subsec. (b). Pub. L. 98-94, §1022(a)(1)(A), substituted “not less than six years nor more than eight years” for “six years”.

Subsec. (d). Pub. L. 98-94, §1022(a)(1)(B), substituted “not less than six years nor more than eight years” for “six years”.

1982—Subsec. (b). Pub. L. 97-295 substituted “(50 U.S.C. App. 451 et seq.)” for “(50 U.S.C. App. 451-473)” after “Military Selective Service Act”.

Subsec. (d). Pub. L. 97-252 extended to 270 from 180 days requirement for commencement of initial period of active duty for training after date of enlistment.

1980—Subsec. (d). Pub. L. 96-513 substituted “Military Selective Service Act (50 U.S.C. App. 451 et seq.)” for “Military Selective Service Act of 1967 (50 App. U.S.C. 451-473)”.

1979—Subsec. (d). Pub. L. 96-107 struck out requirement that a non-prior-service person be under 26 years of age.

1978—Subsec. (b). Pub. L. 95-485, in provision preceding cl. (1), substituted “the Secretary of Defense, and by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy” for “the Secretary concerned” and “the Military Selective Service Act (50 U.S.C. App. 451-473)” for “sections 451-473 of title 50, appendix”, in cl. (1), substituted “not less than two years; and” for “two years;”, struck out former cl. (2), requiring a person enlisted under this subsec. to serve satisfactorily as a member of the Ready Reserve for a period which when added to his active duty under cl. (1) totals five years, redesignated former cl. (3) as (2), and in cl. (2) as so redesignated, substituted “Ready Reserve” for “Standby Reserve”.

1975—Subsec. (d). Pub. L. 94-106 reduced initial period of active duty for training for persons enlisted under this subsection from four months to twelve weeks.

1967—Subsec. (d). Pub. L. 90-168 substituted the Secretary of Transportation for the Secretary of the Treasury as the prescribing authority for regulations covering the Coast Guard when not operating as part of the Navy, inserted exception as provided in section 6(c)(2)(A)(ii) and (iii) of the Military Selective Service Act of 1967, added requirement that the initial period of four months’ service commence insofar as practicable within 180 days after the date of enlistment, and struck out provision that the remainder of the period of service after the initial period of four months be served, subject to section 269(e)(4) of this title, as a member of the Ready Reserve.

1963—Subsec. (d). Pub. L. 88-110 added subsec. (d).

1958—Subsecs. (b), (c). Pub. L. 85-861, §1(8)(A), added subsec. (b) and redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 1983 AMENDMENT

Section 1022(a)(2) of Pub. L. 98-94 provided that: “The amendments made by paragraph (1) [amending this section] shall apply only with respect to persons who enlist under the authority of subsection (b) or (d) of section 511 [now 12103] of title 10, United States Code, 60 or more days after the date of the enactment of this Act [Sept. 24, 1983].”

EFFECTIVE DATE OF 1982 AMENDMENT

Section 1115(b) of Pub. L. 97-252 provided that: “The amendment made by this section [amending this section] shall be effective with respect to persons enlisting in a reserve component of the Armed Forces after the end of the ninety-day period beginning on the date of the enactment of this Act [Sept. 8, 1982].”

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

Section 805(c) of Pub. L. 96-107 provided that: “The amendments made by this section [amending this section and section 651 of this title] shall apply only to individuals who become members of an Armed Force after the date of the enactment of this Act [Nov. 9, 1979].”

EFFECTIVE DATE OF 1978 AMENDMENT

Section 405(c)(2) of Pub. L. 95-485 provided that: “The amendments made by paragraph (1) [amending this section] shall not apply with respect to a person who enlisted as a Reserve for service in the Armed Forces under section 511(b) [now 12103(b)] of title 10, United States Code, before the date of the enactment of this Act [Oct. 20, 1978].”

EFFECTIVE DATE OF 1967 AMENDMENT

For effective date of amendment by Pub. L. 90-168, see section 7 of Pub. L. 90-168, set out as a note under section 138 of this title.

CROSS REFERENCES

Extension of enlistment term of officer candidates, see section 12209 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 2108; title 14 section 713; title 37 section 205; title 38 sections 3002, 3202, 3452, 3501; title 50 App. section 456.

§ 12104. Reserve components: transfers

(a) A person who would otherwise be required to be transferred to a reserve component under section 651 of this title or under the Military Selective Service Act (50 U.S.C. App. 451 et seq.), is entitled, if he is qualified and accepted, to be enlisted in any armed force that he chooses and to participate in the programs authorized for that armed force. However, unless the two Secretaries concerned consent, he may not be enlisted as a Reserve of an armed force other than that from which he is transferred. All periods of his participation shall be credited against the total period of service required of him under section 651 of this title or under the Military Selective Service Act (50 U.S.C. App. 451 et seq.). However, no period may be credited more than once.

(b) A person covered by subsection (a) shall perform the rest of his required term of service in the armed force in which he is so enlisted or in any other armed force in which he is later enlisted or appointed.

(c) This section does not change any term of service under an appointment, enlistment, or agreement, including an agreement made before or at the time when the member entered upon a program authorized by an armed force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 18, §512; Dec. 12, 1980, Pub. L. 96-513, title V, §511(15), 94 Stat.

2921; renumbered §12104, Oct. 5, 1994, Pub. L. 103-337, div. A, title XVI, §1662(b)(2), 108 Stat. 2989.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
512(a)	50:929(a) (less 2d sentence, as applicable to enlistments).	July 9, 1952, ch. 608, §209 (as applicable to enlistments), 66 Stat. 484.
512(b).	50:929(a) (2d sentence, as applicable to enlistments).	
512(c)	50:929(b) (as applicable to enlistments).	

In subsection (a), the words “is entitled * * * to be enlisted in any armed force that he chooses” are substituted for the words “shall * * * be permitted to enlist * * * in such Armed Force of the United States as he may elect”. The second sentence is substituted for 50:929(a) (words within parentheses). The words “of an Armed Force of the United States” are omitted as surplusage.

In subsection (b), the word “rest” is substituted for the words “remaining period”. The words “be required to” are omitted as surplusage.

In subsection (c), the words “This section does not” are substituted for the words “Nothing in this section shall be construed”. The word “change” is substituted for the words “reduce, limit, or modify”. The words “which any person may undertake to perform” are omitted as surplusage.

REFERENCES IN TEXT

The Military Selective Service Act, referred to in subsec. (a), 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

1994—Pub. L. 103-337 renumbered section 512 of this title as this section.

1980—Subsec. (a). Pub. L. 96-513 substituted “the Military Selective Service Act (50 U.S.C. App. 451 et seq.)” for “sections 451-473 of title 50, appendix” 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.

CROSS REFERENCES

Active duty agreements, see sections 12311, 12312 of this title.

§ 12105. Army Reserve and Air Force Reserve: transfer from Guard components

(a) Under such regulations as the Secretary concerned may prescribe—

(1) an enlisted member of the Army National Guard of the United States may be transferred in grade to the Army Reserve; and

(2) an enlisted member of the Air National Guard of the United States may be transferred in grade to the Air Force Reserve.

(b) Upon such a transfer, the member transferred is eligible for promotion to the highest regular or reserve grade ever held by him in the Army, if transferred under subsection (a)(1), or the Air Force, if transferred under subsection (a)(2), if his service has been honorable.

(c) A transfer under this section may only be made with the consent of the governor or other appropriate authority of the State concerned.

(Added Pub. L. 103-337, div. A, title XVI, §1662(b)(1), Oct. 5, 1994, 108 Stat. 2988.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3259 and 8259 of this title, prior to repeal by Pub. L. 103-337, §1662(b)(3).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 32 section 323.

§ 12106. Army and Air Force Reserve: transfer to upon withdrawal as member of National Guard

(a) An enlisted member of the Army National Guard of the United States who ceases to be a member of the Army National Guard becomes a member of the Army Reserve unless he is also discharged from his enlistment as a Reserve.

(b) An enlisted member of the Air National Guard of the United States who ceases to be a member of the Air National Guard becomes a member of the Air Force Reserve unless he is also discharged from his enlistment as a Reserve.

(c) An enlisted member who becomes a member of the Army Reserve or the Air Force Reserve under this section ceases to be a member of the Army National Guard of the United States or the Air National Guard of the United States, as the case may be.

(Added Pub. L. 103-337, div. A, title XVI, §1662(b)(1), Oct. 5, 1994, 108 Stat. 2989.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3260 and 8260 of this title, prior to repeal by Pub. L. 103-337, §1662(b)(3).

§ 12107. Army National Guard of United States; Air National Guard of the United States: enlistment in

(a) Except as provided in subsection (c), to become an enlisted member of the Army National Guard of the United States or the Air National Guard of the United States, a person must—

(1) be enlisted in the Army National Guard or the Air National Guard, as the case may be;

(2) subscribe to the oath set forth in section 304 of title 32; and

(3) be a member of a federally recognized unit or organization of the Army National Guard or the Air National Guard, as the case may be, in the grade in which he is to be enlisted as a Reserve.

(b)(1) Under regulations to be prescribed by the Secretary of the Army, a person who enlists in the Army National Guard, or whose term of enlistment in the Army National Guard is extended, shall be concurrently enlisted, or his term of enlistment shall be concurrently extended, as the case may be, as a Reserve of the Army for service in the Army National Guard of the United States.

(2) Under regulations to be prescribed by the Secretary of the Air Force, a person who enlists in the Air National Guard, or whose term of en-

listment in the Air National Guard is extended, shall be concurrently enlisted, or his term of enlistment shall be concurrently extended, as the case may be, as a Reserve of the Air Force for service in the Air National Guard of the United States.

(c)(1) A member of the Army Reserve who enlists in the Army National Guard in his reserve grade, and is a member of a federally recognized unit or organization of the Army National Guard, becomes a member of the Army National Guard of the United States and ceases to be a member of the Army Reserve.

(2) A member of the Air Force Reserve who enlists in the Air National Guard in his reserve grade, and is a member of a federally recognized unit or organization of the Air National Guard, becomes a member of the Air National Guard of the United States and ceases to be a member of the Air Force Reserve.

(Added Pub. L. 103-337, div. A, title XVI, §1662(b)(1), Oct. 5, 1994, 108 Stat. 2989.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3261 and 3261 of this title, prior to repeal by Pub. L. 103-337, §1662(b)(3).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12102 of this title.

CHAPTER 1205—APPOINTMENT OF RESERVE OFFICERS

Sec.	
12201.	Qualifications for appointment. ¹
12202.	Commissioned officer grades.
12203.	Commissioned officers: appointment, how made; term.
12204.	Commissioned officers: original appointment; limitation.
12205.	Commissioned officers: appointment; educational requirement.
12206.	Commissioned officers: appointment of former commissioned officers.
12207.	Commissioned officers: service credit upon original appointment.
12208.	Officers: appointment upon transfer.
12209.	Officer candidates: enlisted Reserves. ¹
12210.	Attending Physician to the Congress: reserve grade while so serving. ¹
12211.	Officers: Army National Guard of United States.
12212.	Officers: Air National Guard of United States.
12213.	Officers; Army Reserve: transfer from Army National Guard of United States.
12214.	Officers; Air Force Reserve: transfer from Air National Guard of United States.
12215.	Commissioned officers: reserve grade of adjutants general and assistant adjutants general.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 591 of this title.

§ 12201. Reserve components: qualifications

(a) To become an officer of a reserve component a person must be appointed as a Reserve of an armed force in a grade corresponding to a grade authorized for the regular component of the armed force concerned and subscribe to the

oath prescribed by section 3331 of title 5. In addition, to become an officer of the Army National Guard of the United States or the Air National Guard of the United States, he must first be appointed to, and be federally recognized in, the same grade in the Army National Guard or the Air National Guard, as the case may be.

(b) Except as otherwise provided by law, the Secretary concerned shall prescribe physical, mental, moral, professional, and age qualifications for the appointment of persons as Reserves of the armed forces under his jurisdiction. However, no person may be appointed as a Reserve unless he is at least 18 years of age and—

(1) he is a citizen of the United States or has been lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.); or

(2) he has previously served in the armed forces or in the National Security Training Corps.

(c) Women may be appointed as Reserves of the armed forces for service in the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, and Coast Guard Reserve. Women who are otherwise qualified may be appointed as Reserves of the armed forces with a view to serving in the Army National Guard of the United States or the Air National Guard of the United States. Women are appointed in grades corresponding to the grades authorized for female officers of the regular component of the armed force concerned. Any female former officer of an armed force may, if otherwise qualified, be appointed as a Reserve of that armed force in the highest grade in which she previously served satisfactorily on active duty (other than for training).

(d) A person who is otherwise qualified, but who has a physical defect that the Secretary concerned determines will not interfere with the performance of the duties to which that person may be assigned, may be appointed as a Reserve of any armed force under the jurisdiction of that Secretary.

(e) In prescribing age qualifications under subsection (b) for the appointment of persons as Reserves of the armed forces under his jurisdiction, the Secretary concerned may not prescribe a maximum age qualification of less than 47 years of age for the initial appointment of a person as a Reserve to serve in a health profession specialty which has been designated by the Secretary concerned as a specialty critically needed in wartime.

(Aug. 10, 1956, ch. 1041, 70A Stat. 24, §591; Sept. 2, 1958, Pub. L. 85-861, §1(10)(A), 72 Stat. 1440; Dec. 23, 1963, Pub. L. 88-236, 77 Stat. 474; Nov. 2, 1966, Pub. L. 89-718, §4, 80 Stat. 1115; Nov. 8, 1967, Pub. L. 90-130, §1(3), 81 Stat. 374; Dec. 12, 1980, Pub. L. 96-513, title V §511(16), 94 Stat. 2921; Dec. 4, 1987, Pub. L. 100-180, div. A, title VII, §718(a), 101 Stat. 1115; renumbered §12201 and amended Oct. 5, 1994, Pub. L. 103-337, div. A, title XVI, §§1631(b), 1662(c)(2), 108 Stat. 2964, 2990.)

AMENDMENT OF SECTION

Pub. L. 103-337, div. A, title XVI, §§1631(b), 1691(b)(1), Oct. 5, 1994, 108 Stat. 2964, 3026, pro-

¹ So in original. Does not conform to section catchline.

vided that, effective Oct. 1, 1996, this section is amended by striking out subsection (c) and redesignating subsections (d) and (e) as subsections (c) and (d), respectively.

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
591(a)	50:946.	July 9, 1952, ch. 608, §§217
591(b)	50:941(a) (less applicability to enlistments).	(less (c), and less applicability to enlistments), 222, 232 (less applicability to enlistments), 66 Stat. 486, 487, 489.
591(c).	50:941(b) (less applicability to enlistments).	
591(d).	50:956 (less applicability to enlistments).	

In subsection (a), 50:946(a) (last 12 words of proviso) is omitted as covered by section 312 of title 32, 50:946(b) is omitted as covered by the revised subsection.

In subsection (b), the word "However" is substituted for the words "Subject to the limitation that". The exception as to section 4(i)(7) of the Universal Military Training and Service Act is inserted for clarity. The words "as Reserves of the armed forces under his jurisdiction" are substituted for the words "of Reserve members of the Armed Forces of the United States". The words "unless he is at least 18 years of age" are substituted for 50:941(a) (last sentence). The words "its Territories" are omitted as surplusage, since citizens of the Territories are citizens of the United States.

In subsection (c), the words "armed force concerned" are substituted for the words "of the appropriate Armed Force of the United States". The words "in the grades corresponding to the grades authorized for female officers of the" are substituted for the words "in the same grades * * * as are authorized for women in the", to conform to subsection (a). The words "in which she previously served satisfactorily" are substituted for the words "satisfactorily held by her".

In subsection (d), the words "under the jurisdiction of that Secretary" are inserted for clarity. The words "general or special" are omitted as surplusage.

1958 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
591(c)	50:941(b).	July 30, 1956, ch. 789, §4(a), 70 Stat. 729.

The words "Subject to section 946(a) of this title" are omitted, since that section is restated in subsection (a) of the revised section and is applicable to all reserve appointments. 50:941(b) (last 2 sentences) is omitted as covered by sections 510 and 591 of this title.

REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in subsec. (b)(1), 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

1994—Pub. L. 103-337, §1662(c)(2), renumbered section 591 of this title as this section.

1987—Subsec. (e). Pub. L. 100-180 added subsec. (e).

1980—Subsec. (b). Pub. L. 96-513 substituted "the Immigration and Nationality Act (8 U.S.C. 1101 et seq.," for "chapter 12 of title 8", and struck out reference to section 454(i)(7) of title 50, appendix.

1967—Subsec. (c). Pub. L. 90-130 struck out provision limiting areas of service of women in Army National Guard of the United States and Air National Guard of the United States to service as nurses or medical specialists.

1966—Subsec. (a). Pub. L. 89-718 substituted "3331" for "16".

1963—Subsec. (b) (1). Pub. L. 88-236 substituted "he is a citizen of the United States or has been lawfully admitted to the United States for permanent residence under chapter 12 of title 8" for "he is, or has made a declaration of intention to become, a citizen of the United States or of a possession thereof".

1958—Subsec. (c). Pub. L. 85-861 permitted appointment of women as Reserves of armed forces with a view to serving as nurses or medical specialists in Army National Guard of the United States or Air National Guard of the United States.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 1631(b) of 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 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.

BACCALAUREATE DEGREE REQUIRED FOR APPOINTMENT OR PROMOTION OF RESERVE COMPONENT OFFICERS TO GRADES ABOVE FIRST LIEUTENANT OR LIEUTENANT (JUNIOR GRADE)

Pub. L. 102-190, div. A, title V, §523, Dec. 5, 1991, 105 Stat. 1363, provided that after Sept. 30, 1995, no person could be appointed to a grade above grade of first lieutenant in Army Reserve, Air Force Reserve, or Marine Corps Reserve or to a grade above grade of lieutenant (junior grade) in Naval Reserve, or be federally recognized in a grade above grade of first lieutenant as a member of Army National Guard or Air National Guard, unless that person had been awarded a baccalaureate degree by an accredited educational institution, prior to repeal by Pub. L. 103-35, title II, §203(a), May 31, 1993, 107 Stat. 102. See section 12205 of this title.

PRIORITY IN MAKING ORIGINAL APPOINTMENTS IN GUARD AND RESERVE COMPONENTS FOR ROTC SCHOLARSHIP PROGRAM GRADUATES

Pub. L. 102-190, div. A, title V, §524, Dec. 5, 1991, 105 Stat. 1363, provided that: "In making appointments of persons as second lieutenants in the Army Reserve, Air Force Reserve, or Marine Corps Reserve or to the grade of ensign in the Naval Reserve, or in granting federal recognition in the grade of second lieutenant to members of the Army National Guard or Air National Guard, the Secretary of the military department concerned shall give preference to persons who have completed a post-secondary program of education pursued under a ROTC scholarship program at a college or university accredited to award baccalaureate degrees or pursued under a ROTC scholarship program at an accredited two-year or four-year military college."

REPORT ON INITIAL APPOINTMENT OF ALL OFFICERS AS RESERVE OFFICERS AND ON APPROPRIATE ACTIVE DUTY OBLIGATION OF GRADUATES OF SERVICE ACADEMIES

Pub. L. 101-510, div. A, title V, §524, Nov. 5, 1990, 104 Stat. 1562, directed Secretary of Defense to submit to Congress a report on advantages, disadvantages, and desirability of initially appointing all persons commissioned as officers in the Army, Navy, Air Force, or Marine Corps as Reserve officers, and the appropriate active duty service obligation for graduates of the service academies, directed Secretary to submit report not later than 60 days after Nov. 5, 1990, and provided that if the report was not submitted by that date, all persons initially appointed as commissioned officers in the Army, Navy, Air Force, and Marine Corps after that date would be appointed as commissioned officers in a Reserve component of the Armed Forces, and all persons entering the service academies after that date would incur an obligation to serve on active duty for a period of five years.

DEADLINE FOR REGULATIONS IMPLEMENTING SUBSECTION (e) OF THIS SECTION

Section 718(b) of Pub. L. 100-180 provided that: “The Secretary concerned shall prescribe regulations implementing subsection (e) of section 591 [now 12201] of title 10, United States Code, as added by subsection (a), not later than 90 days after the date of the enactment of this Act [Dec. 4, 1987].”

CROSS REFERENCES

National Guard, Federal recognition of commissioned officers, see section 305 et seq. of Title 32, National Guard.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 591, 2130a of this title.

§ 12202. Commissioned officer grades

Except for commissioned warrant officers, the reserve commissioned officer grades in each armed force are those authorized for regular commissioned officers of that armed force.

(Added Pub. L. 85-861, §1(10)(B), Sept. 2, 1958, 72 Stat. 1440, §592; renumbered §12202, Pub. L. 103-337, div. A, title XVI, §1662(c)(2), Oct. 5, 1994, 108 Stat. 2990.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
592	50:1181(1) (as applicable to 50:1201). 50:1201.	Sept. 3, 1954, ch. 1257, §§102(1) (as applicable to §211), 211, 68 Stat. 1149, 1153.

The words “including those heretofore or hereafter transferred to the Retired Reserve”, “permanent”, and “pursuant to the Officer Personnel Act of 1947, as amended” are omitted as surplusage. The rule as to the Coast Guard is consolidated with the rule applicable to the other armed forces, since 14:754 prescribes the same substantive result as that prescribed by 50:1201 for the other armed forces.

AMENDMENTS

1994—Pub. L. 103-337 renumbered section 592 of this title as this section.

§ 12203. Commissioned officers: appointment, how made; term

(a) Appointments of Reserves in commissioned grades below lieutenant colonel and commander, except commissioned warrant officer, shall be made by the President alone. Appointments of Reserves in commissioned grades above major and lieutenant commander shall be made by the President, by and with the advice and consent of the Senate, except as provided in section 624, 12213, or 12214 of this title.

(b) Appointments of Reserves in commissioned grades are for an indefinite term and are held during the pleasure of the President.

(Aug. 10, 1956, ch. 1041, 70A Stat. 25, §593; Sept. 2, 1958, Pub. L. 85-861, §1(10)(C), 72 Stat. 1440; Sept. 28, 1971, Pub. L. 92-129, title VI, §601, 85 Stat. 361; Dec. 12, 1980, Pub. L. 96-513, title V, §501(7), 94 Stat. 2907; renumbered §12203 and amended Oct. 5, 1994, Pub. L. 103-337, div. A, title XVI, §§1632, 1662(c)(2), 1675(b)(1), 108 Stat. 2965, 2990, 3017.)

AMENDMENT OF SUBSECTION (a)

Pub. L. 103-337, div. A, title XVI, §§1632, 1691(b)(1), Oct. 5, 1994, 108 Stat. 2965, 3026, pro-

vided that, effective Oct. 1, 1996, subsection (a) of this section is amended—

(1) in the first sentence, by striking out “Reserves in commissioned grades below lieutenant colonel and commander” and inserting in lieu thereof “reserve officers in commissioned grades of lieutenant colonel and commander or below”; and

(2) in the second sentence, by striking out “Reserves in commissioned grades above major and lieutenant commander” and inserting in lieu thereof “reserve officers in commissioned grades above lieutenant colonel and commander”.

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
593(a)	50:942. 50:943.	July 9, 1952, ch. 608, §§218, 219, 221, 224 (less 3d and 4th sentences, as applicable to commissioned officers), 66 Stat. 487.
593(b).	50:945. 50:948 (less 3d and 4th sentences, as applicable to commissioned officers).	

In subsection (a), the word “alone” is inserted for clarity. The exception as to commissioned warrant officers is inserted to reflect section 597 of this title, since reserve chief warrant officers of the Navy, Marine Corps, and Coast Guard are appointed by commission by the Secretary concerned.

In subsection (b), 50:948 (2d and last sentences) is omitted as executed.

1958 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
593(a)	[No source].	[No source].

The exception is inserted to reflect section 3352(b) of title 10, United States Code.

AMENDMENTS

1994—Pub. L. 103-337, §1662(c)(2), renumbered section 593 of this title as this section.

Subsec. (a). Pub. L. 103-337, §1675(b), substituted “12213, or 12214” for “3352, or 8352”.

1980—Subsec. (a). Pub. L. 96-513 inserted reference to section 624 of this title.

1971—Subsec. (a). Pub. L. 92-129 substituted “below lieutenant colonel and commander” for “below general officer and flag officer”, “in commissioned grades above major and lieutenant commander” for “as general and flag officers”, and “section 3352 or 8352 of this title” for “section 3352 of this title”.

1958—Subsec. (a). Pub. L. 85-861 inserted “, except as provided in section 3352 of this title” after “consent of the Senate”.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by sections 1662(c)(2) and 1675(b)(1) of Pub. L. 103-337 effective Dec. 1, 1994, except as otherwise provided, and amendment by section 1632 of Pub. L. 103-337 effective Oct. 1, 1996, see section 1691 of Pub. L. 103-337, set out as a note under section 10001 of this title.

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.

INDEFINITE APPOINTMENTS FOR CERTAIN RESERVE OFFICERS

Section 41 of act Aug. 10, 1956, provided that: “Each person who was a reserve officer on July 9, 1952, and

who did not hold an appointment for an indefinite term on that date, shall be given an appointment for an indefinite term in place of the appointment he then held, if after written notification by competent authority before July 2, 1953, the officer agrees in writing to have that appointment continued for an indefinite term. In the event such officer does not agree in writing, the term of his current appointment shall not be changed by this section."

CROSS REFERENCES

Coast Guard Reserve officers, appointment as prescribed in this section, see section 271 of Title 14, Coast Guard.

Reserve warrant officers, appointment, see section 12241 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12213, 14308 of this title; title 14 section 271.

§ 12204. Commissioned officers: original appointment; limitation

(a) No person may be appointed as a Reserve in a commissioned grade above major or lieutenant commander, unless—

(1) he was formerly a commissioned officer of an armed force; or

(2) such an appointment is recommended by a board of officers convened by the Secretary concerned.

(b) This section does not apply to adjutants general and assistant adjutants general of the several States and Territories, Puerto Rico, and the District of Columbia.

(Aug. 10, 1956, ch. 1041, 70A Stat. 25, § 594; Sept. 29, 1988, Pub. L. 100-456, div. A, title XII, § 1234(a)(1), 102 Stat. 2059; renumbered § 12204, Oct. 5, 1994, Pub. L. 103-337, div. A, title XVI, § 1662(c)(2), 108 Stat. 2990.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
594(a)	50:941(c) (less 1st 21 words).	July 9, 1952, ch. 608 § 217(c), 66 Stat. 487.
594(b)	50:941(c) (1st 21 words).	

In subsection (a), the words "unless * * * he was formerly" are substituted for the words "has not held an appointment as". The words "or any component thereof" are omitted as surplusage.

AMENDMENTS

1994—Pub. L. 103-337 renumbered section 594 of this title as this section.

1988—Subsec. (b). Pub. L. 100-456 struck out "the Canal Zone," after "Puerto Rico,".

CROSS REFERENCES

Adjutants general, see section 314 of Title 32, National Guard.

§ 12205. Commissioned officers: appointment; educational requirement

(a) IN GENERAL.—After September 30, 1995, no person may be appointed to a grade above the grade of first lieutenant in the Army Reserve, Air Force Reserve, or Marine Corps Reserve or to a grade above the grade of lieutenant (junior grade) in the Naval Reserve, or be federally recognized in a grade above the grade of first lieutenant as a member of the Army National Guard

or Air National Guard, unless that person has been awarded a baccalaureate degree by a qualifying educational institution.

(b) EXCEPTIONS.—Subsection (a) does not apply to the following:

(1) The appointment to or recognition in a higher grade of a person who is appointed in or assigned for service in a health profession for which a baccalaureate degree is not a condition of original appointment or assignment.

(2) The appointment in the Naval Reserve or Marine Corps Reserve of a person appointed for service as an officer designated as a limited duty officer.

(3) The appointment in the Naval Reserve of a person appointed for service under the Naval Aviation Cadet (NAVCAD) program.

(4) The appointment to or recognition in a higher grade of any person who was appointed to, or federally recognized in, the grade of captain or, in the case of the Navy, lieutenant before October 1, 1995.

(5) Recognition in the grade of captain or major in the Alaska Army National Guard of a person who resides permanently at a location in Alaska that is more than 50 miles from each of the cities of Anchorage, Fairbanks, and Juneau, Alaska, by paved road and who is serving in a Scout unit or a Scout supporting unit.

(c) QUALIFYING EDUCATIONAL INSTITUTIONS.—(1) A qualifying educational institution for purposes of this section is an educational institution that is accredited or that meets the requirements of paragraph (2).

(2)(A) An unaccredited educational institution shall be considered to be a qualifying educational institution for purposes of the appointment or recognition of a person who is a graduate of that institution if the Secretary concerned determines that (as of the year of the graduation of that person from that institution) at least three educational institutions that are accredited and that maintain Reserve Officers' Training Corps programs each generally grant baccalaureate degree credit for completion of courses of the unaccredited institution equivalent to the baccalaureate degree credit granted by the unaccredited institution for the completion of those courses.

(B) In order to assist the Secretary concerned in making determinations under subparagraph (A), any unaccredited institution that seeks to be considered to be a qualifying educational institution for purposes of this paragraph shall submit to the Secretary of Defense each year such information as the Secretary may require concerning the program of instruction at that institution.

(C) In the case of a person with a degree from an unaccredited institution that is a qualifying educational institution under this paragraph, the degree may not have been awarded more than three years before the date on which the person is to be appointed to, or recognized in, the grade of captain or, in the case of the Naval Reserve, lieutenant, in order for that person to be considered for purposes of subsection (a) to have been awarded a baccalaureate degree by a qualifying educational institution.

(Added Pub. L. 102-484, div. A, title V, § 515(a), Oct. 23, 1992, 106 Stat. 2406, § 596; renumbered § 12205 and amended Pub. L. 103-337, div. A, title V, §§ 519, 520, title XVI, § 1662(c)(2), Oct. 5, 1994, 108 Stat. 2755, 2990.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 102-190, div. A, title V, § 523, Dec. 5, 1991, 105 Stat. 1363, which was set out as a note under section 591 [now 12201] of this title, prior to repeal by Pub. L. 103-35, § 203(a).

AMENDMENTS

1994—Pub. L. 103-337, § 1662(c)(2), renumbered section 596 of this title as this section.

Subsec. (a). Pub. L. 103-337, § 519(1), substituted “a qualifying educational institution” for “an accredited educational institution”.

Subsec. (b)(2), (3). Pub. L. 103-337, § 520(b), substituted “a person” for “an individual”.

Subsec. (b)(5). Pub. L. 103-337, § 520(a), added par. (5).

Subsec. (c). Pub. L. 103-337, § 519(2), added subsec. (c).

§ 12206. Commissioned officers: appointment of former commissioned officers

Under regulations prescribed by the Secretary of Defense, a person who is a former commissioned officer may, if otherwise qualified, be appointed as a reserve officer of the Army, Navy, Air Force, or Marine Corps. A person so appointed—

(1) may be placed on the reserve active-status list of that armed force in the grade equivalent to the permanent regular or reserve grade, and in the same competitive category, in which the person previously served satisfactorily on active duty or in an active status; and

(2) may be credited for the purpose of determining date of rank under section 741(d) of this title with service in grade equal to that held by that person when discharged or separated.

(Added § 596a and renumbered § 12206, Pub. L. 103-337, div. A, title XVI, §§ 1633, 1662(c)(2), Oct. 5, 1994, 108 Stat. 2965, 2990.)

AMENDMENTS

1994—Pub. L. 103-337, § 1662(c)(2), renumbered section 596a of this title as this section.

EFFECTIVE DATE

Section 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.

§ 12207. Commissioned officers: service credit upon original appointment

(a)(1) For the purpose of determining the grade and the rank within grade of a person receiving an original appointment as a reserve commissioned officer (other than a commissioned warrant officer) in the Army, Navy, Air Force, or Marine Corps, the person shall be credited at the time of the appointment with any commissioned service (other than service as a commissioned warrant officer) performed before such appointment as a regular officer, or as a reserve officer in an active status, in any armed force, the National Oceanic and Atmospheric Administration, or the Public Health Service.

(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 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, a person who is receiving an original appointment as a reserve commissioned officer (other than a commissioned warrant officer) of the Army, Navy, Air Force, or Marine Corps, or a designation in, or an assignment to, an officer category in which advanced education or training is required and who has advanced education or training, shall be credited 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 or designated in, or assigned to, 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 subparagraph 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 such 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 health 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 speciality required by the armed force concerned.

(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, assigned, or designated as a medical or dental officer.

(2) If the Secretary of Defense determines that the number of medical or dental officers serving in an active status in a reserve component of the Army, Navy, or Air Force in grades below major or lieutenant commander is critically below the number needed by such reserve component in such grades, the Secretary of Defense

may authorize the Secretary of the military department concerned to credit any person who is receiving an original appointment for service as a medical or dental officer with a period of constructive credit in such amount (in addition to any amount credited such person under subsection (b)) as will result in the grade of such person being that of captain or, in the case of the Naval Reserve, lieutenant.

(3) 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 as a reserve officer of the Army, Air Force, or Marine Corps in the grade of major or as a reserve officer of the Navy in the grade of lieutenant commander.

(4) 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 or assignment to or designation in an officer category in which advanced education or training or special experience is required.

(c) 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.

(d) If the Secretary of Defense determines that the number of qualified judge advocates serving on the active-duty list of the Army, Navy, Air Force, or Marine Corps in grades below lieutenant commander or major is critically below the number needed by that armed force in those grades, the Secretary of Defense may authorize the Secretary of the military department concerned to credit any person who is receiving an original appointment with a view to assignment to the Judge Advocate General's Corps of the Army or appointment to the Judge Advocate General's Corps of the Navy, or who is 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 amount credited such person under subsection (b)) as will result in the grade of such person being that of captain or, in the case 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 the active-duty list.

(e) Constructive service credited an officer under subsection (b) or (d) shall be used only for determining the officer's—

- (1) initial grade as a reserve officer;
- (2) rank in grade; and
- (3) service in grade for promotion eligibility.

(f) The grade and position on the reserve active-status list of a person receiving an appointment as a reserve officer who at the time of appointment is credited with service under this section shall be determined under regulations prescribed by the Secretary of Defense based upon the amount of service credited.

(Added §596b and renumbered §12207, Pub. L. 103-337, div. A, title XVI, §§1634, 1662(c)(2), Oct. 5, 1994, 108 Stat. 2965, 2990.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3353, 5600, and 8353 of this title, prior to repeal by Pub. L. 103-337, §1629(a)(1), (c)(1).

AMENDMENTS

1994—Pub. L. 103-337, §1662(c)(2), renumbered section 596b of this title as this section.

EFFECTIVE DATE

Section 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.

CROSS REFERENCES

Commissioned officers in Navy and Marine Corps, service credit upon original appointment, see section 5600 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12320 of this title.

§ 12208. Officers: appointment upon transfer

(a) A person who would otherwise be required to be transferred to a reserve component under section 651 of this title or under the Military Selective Service Act (50 U.S.C. App. 451 et seq.), is entitled, if he is qualified and accepted, to be appointed as an officer of any armed force that he chooses and to participate in the programs authorized for that armed force. However, unless the two Secretaries concerned consent, he may not be appointed as a Reserve of an armed force other than that from which he is transferred. All periods of his participation shall be credited against the total period of service required of him under section 651 of this title or under the Military Selective Service Act (50 U.S.C. App. 451 et seq.). However, no period may be credited more than once.

(b) A person covered by subsection (a) shall perform the rest of his required term of service in the armed force in which he is so appointed or in any other armed force in which he is later appointed or enlisted.

(c) This section does not change any term of service under an appointment, enlistment, or agreement, including an agreement made before or at the time when the member entered upon a program authorized by an armed force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 25, §595; Dec. 12, 1980, Pub. L. 96-513, title V, §511(17), 94 Stat. 2921; renumbered §12208, Oct. 5, 1994, Pub. L.

103–337, div. A, title XVI, §1662(c)(2), 108 Stat. 2990.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
595(a)	50:929(a) (less 2d sentence, less applicability to enlistments).	July 9, 1952, ch. 608, §209 (less applicability to enlistments), 66 Stat. 484.
595(b).	50:929(a) (2d sentence, and less applicability to enlistments).	
595(c)	50:929(b) (less applicability to enlistments).	

In subsection (a), the words “is entitled * * * to be appointed as an officer of any armed force that he chooses” are substituted for the words “shall be permitted to * * * accept an appointment in such armed force of the United States as he may elect”. The last sentence is substituted for 50:929(a) (words within parentheses). The words “of an armed force of the United States” are omitted as surplusage.

In subsection (b), the word “rest” is substituted for the words “remaining period”. The words “be required to” are omitted as surplusage.

In subsection (c), the words “This section does not” are substituted for the words “Nothing in this section shall be construed”. The word “change” is substituted for the words “reduce, limit, or modify”. The words “which any person may undertake to perform” are omitted as surplusage.

REFERENCES IN TEXT

The Military Selective Service Act, referred to in subsec. (a), 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 note set out under section 451 of Title 50, Appendix, and Tables.

AMENDMENTS

1994—Pub. L. 103–337 renumbered section 595 of this title as this section.

1980—Subsec. (a). Pub. L. 96–513 substituted “the Military Selective Service Act (50 U.S.C. App. 451 et seq.)” for “sections 451–473 of title 50, appendix” 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.

CROSS REFERENCES

Active duty agreements, see sections 12311, 12312 of this title.

§ 12209. Officer candidates

(a) Within such numbers as the Secretary concerned may prescribe, enlisted Reserves may, with their consent, be selected for training as officer candidates. Enlisted Reserves so selected shall be designated as officer candidates during that training. However, no member of the Army National Guard of the United States or the Air National Guard of the United States may be so selected or designated unless—

- (1) he is on active duty; or
- (2) the governor or other appropriate authority of the jurisdiction concerned consents.

(b) The enlistment or term of service of a Reserve who is designated as an officer candidate under this section is extended to include any period, beyond its normal expiration date, during which he is an officer candidate.

(c) While he is on active duty, other than active duty for training without pay, or performing authorized travel to and from that duty, an officer candidate designated under this section is entitled to the pay and allowances of his enlisted grade, but not less than those prescribed for pay grade E–2.

(d) An officer candidate designated under this section may not participate in the program of a reserve officer training corps of any armed force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 26, § 600; renumbered §12209, Oct. 5, 1994, Pub. L. 103–337, div. A, title XVI, §1662(c)(3), 108 Stat. 2990.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
600(a)	50:935(a).	July 9, 1952, ch. 608, §215(a), 230, 242, 66 Stat. 486, 489, 492.
600(b)	50:954(a).	
600(c)	50:973.	
600(d)	50:954(b).	

In subsection (a), the words “who is not in active Federal service” are substituted for the words “when not in the active military service of the United States”. The word “during” is substituted for the words “for the period of”.

In subsection (c), the words “active duty other than active duty for training without pay” are substituted for the words “active duty or active duty for training with pay”. The words “enlisted members of the reserve components designated as”, “enlisted”, and “under the Career Compensation Act of 1949, as amended” are omitted as surplusage.

AMENDMENTS

1994—Pub. L. 103–337 renumbered section 600 of this title as this section.

CROSS REFERENCES

Basic pay and allowances, see sections 203, 402 of Title 37, Pay and Allowances of the Uniformed Services.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 14 section 705.

§ 12210. Attending Physician to the Congress

While serving as Attending Physician to the Congress, a Reserve who holds a reserve grade lower than major general or rear admiral shall hold the reserve grade of major general or rear admiral, as appropriate, if appointed to that grade by the President, by and with the advice and consent of the Senate.

(Added Pub. L. 99–661, div. A, title V, §508(d)(1)(A), Nov. 14, 1986, 100 Stat. 3867, §600a; renumbered §12210, Pub. L. 103–337, div. A, title XVI, §1662(c)(3), Oct. 5, 1994, 108 Stat. 2990.)

AMENDMENTS

1994—Pub. L. 103–337 renumbered section 600a of this title as this section.

EFFECTIVE DATE

Section 508(f) of Pub. L. 99–661 provided that: “The amendments made by this section [enacting this section and amending sections 1374, 4335, 5149, and 9335 of this title] shall apply only with respect to appointments or details made on or after the date of the enactment of this Act [Nov. 14, 1986].”

§ 12211. Officers: Army National Guard of United States

(a) Upon being federally recognized, an officer of the Army National Guard shall be appointed as a Reserve for service as a member of the Army National Guard of the United States in the grade that he holds in the Army National Guard. However, an officer of the Army Reserve who is federally recognized as an officer of the Army National Guard becomes an officer of the Army National Guard of the United States and ceases to be an officer of the Army Reserve. The acceptance of an appointment as a Reserve for service as a member of the Army National Guard of the United States by an officer of the Army National Guard does not vacate his office in the Army National Guard.

(b) When an officer of the Army National Guard to whom temporary Federal recognition has been extended is appointed as a Reserve for service as a member of the Army National Guard of the United States, his appointment shall bear the date of the temporary recognition and shall be considered to have been accepted and effective on that date.

(c) When the Army National Guard of the United States is ordered to active duty, any officer of the Army National Guard who is not a Reserve of the Army may be appointed by the President as a Reserve for service as a member of the Army National Guard of the United States in the grade that he holds in the Army National Guard.

(Aug. 10, 1956, ch. 1041, 70A Stat. 193, §3351; renumbered §12211, Oct. 5, 1994, Pub. L. 103-337, div. A, title XVI, §1662(c)(3), 108 Stat. 2990.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
3351(a)	50:1113 (less (a)). 50:1115(a) (last 39 words). 50:1114 (2d sentence).	July 9, 1952, ch. 608, §§703 (less (a)), 704 (2d sentence), 705(a) (last 39 words), 713 (less (a)), 66 Stat. 502-504.
3351(b)	50:1123 (less (a)).	
3351(c)		

In subsection (a), the words “as a Reserve” are substituted for the words “as Reserve officers of the appropriate Armed Force of the United States” and “as a Reserve officer of the Armed Force of the United States concerned”, in 50:1113(b). The words “federally recognized appointments” and “in the same grade and branch”, in 50:1113(b), are omitted as surplusage. The words “those officers who do not hold appointments as Reserve officers of the appropriate Armed Force of the United States”, in 50:1113(b), are omitted as covered by the second sentence of the revised subsection.

In subsection (c), the words “active duty” are substituted for the words “active military service of the United States”. The words “and branch” are omitted as surplusage. The words “of the Army National Guard of the United States” are inserted for clarity.

AMENDMENTS

1994—Pub. L. 103-337 renumbered section 3351 of this title as this section.

§ 12212. Officers: Air National Guard of United States

(a) Upon being federally recognized, an officer of the Air National Guard shall be appointed as a Reserve for service as a member of the Air National Guard of the United States in the grade

that he holds in the Air National Guard. However, an officer of the Air Force Reserve who is federally recognized as an officer of the Air National Guard becomes an officer of the Air National Guard of the United States and ceases to be an officer of the Air Force Reserve. The acceptance of an appointment as a Reserve for service as a member of the Air National Guard of the United States by an officer of the Air National Guard does not vacate his office in the Air National Guard.

(b) When an officer of the Air National Guard to whom temporary Federal recognition has been extended is appointed as a Reserve for service as a member of the Air National Guard of the United States, his appointment shall bear the date of the temporary recognition and shall be considered to have been accepted and effective on that date.

(c) When the Air National Guard of the United States is ordered to active duty, any officer of the Air National Guard who is not a Reserve of the Air Force may be appointed by the President as a Reserve for service as a member of the Air National Guard of the United States in the grade that he holds in the Air National Guard.

(Aug. 10, 1956, ch. 1041, 70A Stat. 519, §8351; renumbered §12212, Oct. 5, 1994, Pub. L. 103-337, div. A, title XVI, §1662(c)(3), 108 Stat. 2990.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
8351(a)	50:1113 (less (a)). 50:1115(a) (last 39 words). 50:1114 (2d sentence).	July 9, 1952, ch. 608, §§703 (less (a)), 704 (2d sentence), 705(a) (last 39 words), 713 (less (a)), 66 Stat. 502-504.
8351(b)	50:1123 (less (a)).	
8351(c)		

In subsection (a), the words “as a Reserve” are substituted for the words “as Reserve officers of the appropriate Armed Force of the United States” and “as a Reserve officer of the Armed Force of the United States concerned” in 50:1113(b). The words “federally recognized appointments” and “in the same grade and branch”, in 50:1113(b), are omitted as surplusage. The words “those officers who do not hold appointments as reserve officers of the appropriate Armed Force of the United States”, in 50:1113(b), are omitted as covered by the second sentence of the revised subsection.

In subsection (c), the words “active duty” are substituted for the words “active military service of the United States”. The words “and branch” are omitted as surplusage. The words “of the Air National Guard of the United States” are inserted for clarity.

AMENDMENTS

1994—Pub. L. 103-337 renumbered section 8351 of this title as this section.

§ 12213. Officers; Army Reserve: transfer from Army National Guard of United States

(a) Under such regulations as the Secretary of the Army may prescribe, and with the consent of the governor or other appropriate authority of the State concerned, an officer of the Army National Guard of the United States may be transferred in grade to the Army Reserve. Notwithstanding any other provision of this chapter or section 593¹ of this title, an officer who is transferred under this section shall be advanced

¹ See References in Text note below.

to the highest temporary, regular, or reserve grade ever held by him in the Army, unless the Secretary determines that it is not in the best interests of the service.

(b) Unless discharged from his appointment as a Reserve, an officer of the Army National Guard of the United States whose Federal recognition as a member of the Army National Guard is withdrawn becomes a member of the Army Reserve. An officer who so becomes a member of the Army Reserve ceases to be a member of the Army National Guard of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 194, §3352; Sept. 2, 1958, Pub. L. 85-861, §1(80)(A), 72 Stat. 1468; June 30, 1960, Pub. L. 86-559, §1(7), 74 Stat. 265; Sept. 29, 1988, Pub. L. 100-456, div. A, title XII, §1234(a)(1), 102 Stat. 2059; renumbered §12213 and amended Oct. 5, 1994, Pub. L. 103-337, div. A, title XVI, §§1636(a), 1662(c)(3), 1675(b)(2), 108 Stat. 2968, 2990, 3017.)

AMENDMENT OF SUBSECTION (a)

Pub. L. 103-337, div. A, title XVI, §§1636(a), 1691(b)(1), Oct. 5, 1994, 108 Stat. 2968, 3026, provided that, effective Oct. 1, 1996, subsection (a) of this section is amended by striking out the second sentence.

HISTORICAL AND REVISION NOTES 1956 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
3352(a)	50:1116 (less last 15 words of 1st sentence, and less applicability to enlistments).	July 9, 1952, ch. 608, §§706 (less last 15 words of 1st sentence, and less applicability to enlistments), 707 (less applicability to enlistments), 66 Stat. 503.
3352(b).	50:1117 (less applicability to enlistments).	

In subsection (a), the words “at any time”, “of any person”, and “from the National Guard of the United States or from the Air National Guard of the United States” are omitted as surplusage. The words “highest regular or reserve grade ever held by him in the Army” are substituted for the words “highest permanent grade previously held in the Army or any component thereof”, since “permanent” grades are held only in a component and there are no “non-permanent” grades held in a component.

In subsection (b), the words “appointment as a Reserve” are substituted for the words “appointment or * * * as a Reserve officer or”. The words “whose Federal recognition as a member * * * is withdrawn” are substituted for the words “ceases to hold a status as a federally recognized member”.

1958 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
3352(a)	50:1254.	Sept. 3, 1954, ch. 1257, §322, 68 Stat. 1161.

REFERENCES IN TEXT

Section 593 of this title, referred to in subsec. (a), was renumbered section 12203 of this title by Pub. L. 103-337, div. A, title XVI, §1662(c)(2), Oct. 5, 1994, 108 Stat. 2990.

AMENDMENTS

1994—Pub. L. 103-337, §1662(c)(3), renumbered section 3352 of this title as this section.

Subsec. (a). Pub. L. 103-337, §1675(b), struck out “or Territory, Puerto Rico, or the District of Columbia, whichever is” after “authority of the State”.

1988—Subsec. (a). Pub. L. 100-456 struck out “the Canal Zone,” after “Puerto Rico.”.

1960—Subsec. (a). Pub. L. 86-559 authorized officers transferred under this section to be advanced to the highest temporary grade ever held in the Army.

1958—Subsec. (a). Pub. L. 85-861 substituted “Notwithstanding any other provision of this chapter or section 593 of this title, an officer who is transferred under this section shall be advanced to the highest regular or reserve grade ever held by him in the Army, unless the Secretary determines that it is not in the best interests of the service” for “Upon transfer, he is eligible for promotion to the highest regular or reserve grade ever held by him in the Army, if his service has been honorable”.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by sections 1662(c)(3) and 1675(b)(2) of Pub. L. 103-337 effective Dec. 1, 1994, except as otherwise provided, and amendment by section 1636(a) 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 12203, 12683 of this title; title 32 section 323.

§ 12214. Officers; Air Force Reserve: transfer from Air National Guard of United States

(a) Under such regulations as the Secretary of the Air Force may prescribe, and with the consent of the governor or other appropriate authority of the State concerned, an officer of the Air National Guard of the United States may be transferred in grade to the Air Force Reserve.

(b) Unless discharged from his appointment as a Reserve, an officer of the Air National Guard of the United States whose Federal recognition as a member of the Air National Guard is withdrawn becomes a member of the Air Force Reserve. An officer who so becomes a member of the Air Force Reserve ceases to be a member of the Air National Guard of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 520, §8352; Sept. 7, 1962, Pub. L. 87-651, title I, §126, 76 Stat. 514; Sept. 29, 1988, Pub. L. 100-456, div. A, title XII, §1234(a)(1), 102 Stat. 2059; renumbered §12214 and amended Oct. 5, 1994, Pub. L. 103-337, div. A, title XVI, §§1662(c)(3), 1675(b)(2), 108 Stat. 2990, 3017.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
8352(a)	50:1116 (less last 15 words of 1st sentence, and less applicability to enlistments).	July 9, 1952, ch. 608, §§706 (less last 15 words of 1st sentence, and less applicability to enlistments), 707 (less applicability to enlistments), 66 Stat. 503.
8352(b).	50:1117 (less applicability to enlistments).	

In subsection (a), the words “at any time”, “of any person”, and “from the National Guard of the United States or from the Air National Guard of the United States” are omitted as surplusage. The words “highest regular or reserve grade ever held by him in the Air Force” are substituted for the words “highest permanent grade previously held in * * * the Air Force or any component thereof”, since “permanent” grades are held only in a component and there are no “nonpermanent” grades held in a component.

In subsection (b), the words “appointment as a Reserve” are substituted for the words “appointment or * * * as a Reserve officer or”. The words “whose Federal recognition as a member * * * is withdrawn” are

substituted for the words “ceases to hold a status as a federally recognized member”.

1962 ACT

The change reflects the implied repeal of the second sentence of section 8352(a) by section 502(a) of the Reserve Officer Personnel Act of 1954 (68 Stat. 1172).

AMENDMENTS

1994—Pub. L. 103-337, §1662(c)(3), renumbered section 8352 of this title as this section.

Subsec. (a). Pub. L. 103-337, §1675(b)(2), struck out “or Territory, Puerto Rico, or the District of Columbia, whichever is” after “authority of the State”.

1988—Subsec. (a). Pub. L. 100-456 struck out “the Canal Zone,” after “Puerto Rico.”

1962—Subsec. (a). Pub. L. 87-651 struck out sentence which provided that upon transfer, an officer is eligible for promotion to the highest regular or reserve grade ever held by him in the Air Force, if his service has been honorable.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12203, 12683 of this title; title 32 section 323.

§ 12215. Commissioned officers: reserve grade of adjutants general and assistant adjutants general

(a) The adjutant general or an assistant adjutant general of the Army National Guard of a State may, upon being extended Federal recognition, be appointed as a reserve officer of the Army as of the date on which he is so recognized.

(b) The adjutant general or an assistant adjutant general of the Air National Guard of a State may be appointed in the reserve commissioned grade in which Federal recognition in the Air National Guard is extended to him.

(Added Pub. L. 103-337, div. A, title XVI, §1662(c)(1), Oct. 5, 1994, 108 Stat. 2990.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3392 and 8392 of this title, prior to repeal by Pub. L. 103-337, §1629(a)(1), (c)(1).

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.

CROSS REFERENCES

Adjutants general and assistant adjutants general, reference as applicable to other officers of National Guard, see section 10214 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10214 of this title.

CHAPTER 1207—WARRANT OFFICERS

Sec.

- 12241. Warrant officers: grades; appointment, how made; term.
- 12242. Warrant officers: promotion.

- 12243. Warrant officers: suspension of laws for promotions or mandatory retirement or separation during war or emergency.¹

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 591 of this title.

§ 12241. Warrant officers: grades; appointment, how made; term

(a) The permanent reserve warrant officer grades in each armed force are those prescribed for regular warrant officers by section 571(a) of this title.

(b) Appointments made in the permanent reserve grade of warrant officer, W-1, shall be made by warrant by the Secretary concerned. Appointments made in a permanent reserve grade of chief warrant officer shall be made by commission by the Secretary concerned.

(c) Appointments as Reserves in permanent warrant officer grades are for an indefinite term and are held during the pleasure of the Secretary concerned.

(Aug. 10, 1956, ch. 1041, 70A Stat. 26, §597; Nov. 8, 1985, Pub. L. 99-145, title V, §531(b), 99 Stat. 633; Dec. 5, 1991, Pub. L. 102-190, div. A, title XI, §1131(2), 105 Stat. 1505; renumbered §12241, Oct. 5, 1994, Pub. L. 103-337, div. A, title XVI, §1662(d)(2), 108 Stat. 2991.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
597(a)	10:600a(a) (less 3d and last sentences, as applicable to permanent reserve appointments). 34:135a(a) (less last sentence, as applicable to permanent reserve appointments).	May 29, 1954, ch. 249, §§3(a) (less last sentence, as applicable to permanent reserve appointments), 5(a) (last sentence, as applicable to permanent reserve appointments), 68 Stat. 157, 159.
597(b)	10:600a(a) (3d sentence, as applicable to permanent reserve appointments). 10:600c(a) (last sentence, as applicable to permanent reserve appointments). 34:135a(a) (last sentence, as applicable to permanent reserve appointments). 34:135c(a) (last sentence, as applicable to permanent reserve appointments).	July 9, 1952, ch. 608, §§220, 223, 224 (less 3d and 4th sentences, and less applicability to commissioned officers), 66 Stat. 487.
597(c)	50:944. 50:947. 50:948 (less 3d and 4th sentences, and less applicability to commissioned officers).	

In subsection (b), the words “W-4, W-3, and W-2” and “persons” are omitted as surplusage.

In subsection (c), the words “After July 9, 1952” are omitted as executed. 50:948 (2d and last sentence) is omitted as executed.

AMENDMENTS

1994—Pub. L. 103-337 renumbered section 597 of this title as this section.

1991—Subsec. (a). Pub. L. 102-190 substituted “section 571(a)” for “section 555(a)”.

1985—Subsec. (b). Pub. L. 99-145 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “Reserve chief warrant officers of the Army and the Air Force shall be appointed in those grades, by

¹ So in original. Does not conform to section catchline.

warrant, by the Secretary concerned. Permanent reserve chief warrant officers of the Navy, Marine Corps, and Coast Guard shall be appointed in those grades, by commission, by the Secretary concerned. Permanent reserve warrant officers, W-1, shall be appointed in those grades, by warrant, by the Secretary concerned.”

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 1985 AMENDMENT

Section 531(d) of Pub. L. 99-145 provided that: “This section [amending this section and section 555 of this title and enacting provisions set out below] takes effect six months after the date of the enactment of this Act [Nov. 8, 1985].”

TRANSITION PROVISIONS FOR 1985 AMENDMENT

Section 531(c) of Pub. L. 99-145 provided that: “(1) The amendments made by subsections (a) and (b) [amending this section and section 555 of this title] apply to any appointment of a warrant officer or chief warrant officer on or after the effective date of this section [see Effective Date of 1985 Amendment note above].

“(2) An officer who on the effective date of this section is serving in a chief warrant officer grade under an appointment by warrant may be appointed in that grade by commission under section 555(b) or 597(b) [now 12241(b)] of title 10, United States Code, as appropriate. The date of rank of an officer who receives an appointment under this paragraph is the date of rank for the officer’s appointment by warrant to that grade.”

CROSS REFERENCES

Regular warrant officers, appointment, see section 571 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 591 of this title.

§ 12242. Warrant officers: promotion

The promotion of permanent reserve warrant officers not on the warrant officer active-duty list to permanent reserve warrant officer grades shall be governed by such regulations as the Secretary concerned may prescribe.

(Aug. 10, 1956, ch. 1041, 70A Stat. 26, § 598; Dec. 5, 1991, Pub. L. 102-190, div. A, title XI, § 1131(3), 105 Stat. 1505; renumbered § 12242, Oct. 5, 1994, Pub. L. 103-337, div. A, title XVI, § 1662(d)(2), 108 Stat. 2991.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
598	10:600e (last sentence, less applicability to temporary promotions). 34:330 (last sentence, less applicability to temporary promotions).	May 29, 1954, ch. 249, § 7 (last sentence, less applicability to temporary promotions), 68 Stat. 159.

AMENDMENTS

1994—Pub. L. 103-337 renumbered section 598 of this title as this section.

1991—Pub. L. 102-190 inserted “not on the warrant officer active-duty list” after “reserve warrant officers”.

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.

§ 12243. Warrant officers: suspension of laws for promotion or mandatory retirement or separation during war or emergency

In time of war, or of emergency declared after May 29, 1954, by Congress or the President, the President may suspend the operation of any provision of law relating to promotion, or mandatory retirement or separation, of permanent reserve warrant officers of any armed force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 26, § 599; renumbered § 12243, Oct. 5, 1994, Pub. L. 103-337, div. A, title XVI, § 1662(d)(2), 108 Stat. 2991.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
599	10:600p (as applicable to reserve warrant officers). 34:330g (as applicable to reserve warrant officers). 34:430d (as applicable to reserve warrant officers).	May 29, 1954, ch. 249, § 18 (as applicable to reserve warrant officers), 68 Stat. 165.

The word “may” is substituted for the words “is authorized, in his discretion”. The words “any provision of law” are substituted for the words “all or any part or parts of the several provisions of law”.

AMENDMENTS

1994—Pub. L. 103-337 renumbered section 599 of this title as this section.

DELEGATION OF FUNCTIONS

Functions of the President under this section delegated to the Secretary of Defense, see section 1(4) of Ex. Ord. No. 11390, Jan. 22, 1968, 33 F.R. 841, set out as a note under section 301 of Title 3, The President.

CHAPTER 1209—ACTIVE DUTY

Sec.	Reserve components generally.
12301.	Ready Reserve.
12302.	Ready Reserve: members not assigned to, or participating satisfactorily in, units.
12303.	Selected Reserve: order to active duty other than during war or national emergency. ¹
12304.	Authority of President to suspend certain laws relating to promotion, retirement, and separation.
12305.	Standby Reserve.
12306.	Retired Reserve.
12307.	Retention on active duty after becoming qualified for retired pay. ¹
12308.	Reserve officers: use of in expansion of armed forces.
12309.	Reserves: for organizing, administering, etc., reserve components.
12310.	Active duty agreements.
12311.	Active duty agreements: release from duty.
12312.	Reserves: release from active duty.
12313.	Reserves: kinds of duty.
12314.	Reserves: duty with or without pay.
12315.	Payment of certain Reserves while on duty.
12316.	Reserves: theological students; limitations.
12317.	Reserves on active duty: duties; funding.
12318.	Ready Reserve: muster duty.
12319.	Reserve officers: grade in which ordered to active duty.
12320.	Reserve Officer Training Corps units: limitation on number of Reserves assigned.
12321.	

CROSS REFERENCES

Non-regular service, recall to active status of member on inactive status list, see section 12735 of this title.

¹ So in original. Does not conform to section catchline.

Particular provisions relating to active duty—
 Air Force, see section 8491 et seq. of this title.
 Army, see section 3491 et seq. of this title.
 Retired pay for non-regular service, limitation on active duty, see section 12737 of this title.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 672 of this title; title 37 section 205.

§ 12301. Reserve components generally

(a) In time of war or of national emergency declared by Congress, or when otherwise authorized by law, an authority designated by the Secretary concerned may, without the consent of the persons affected, order any unit, and any member not assigned to a unit organized to serve as a unit, of a reserve component under the jurisdiction of that Secretary to active duty (other than for training) for the duration of the war or emergency and for six months thereafter. However a member on an inactive status list or in a retired status may not be ordered to active duty under this subsection unless the Secretary concerned, with the approval of the Secretary of Defense in the case of the Secretary of a military department, determines that there are not enough qualified Reserves in an active status or in the inactive National Guard in the required category who are readily available.

(b) At any time, an authority designated by the Secretary concerned may, without the consent of the persons affected, order any unit, and any member not assigned to a unit organized to serve as a unit, in an active status in a reserve component under the jurisdiction of that Secretary to active duty for not more than 15 days a year. However, units and members of the Army National Guard of the United States or the Air National Guard of the United States may not be ordered to active duty under this subsection without the consent of the governor of the State (or, in the case of the District of Columbia National Guard, the commanding general of the District of Columbia National Guard).

(c) So far as practicable, during any expansion of the active armed forces that requires that units and members of the reserve components be ordered to active duty (other than for training), members of units organized and trained to serve as units who are ordered to that duty without their consent shall be so ordered with their units. However, members of those units may be reassigned after being ordered to active duty (other than for training).

(d) At any time, an authority designated by the Secretary concerned may order a member of a reserve component under his jurisdiction to active duty, or retain him on active duty, with the consent of that member. However, a member of the Army National Guard of the United States or the Air National Guard of the United States may not be ordered to active duty under this subsection without the consent of the governor or other appropriate authority of the State concerned.

(e) The period of time allowed between the date when a Reserve ordered to active duty (other than for training) is alerted for that duty and the date when the Reserve is required to

enter upon that duty shall be determined by the Secretary concerned based upon military requirements at that time.

(f) The consent of a Governor described in subsections (b) and (d) may not be withheld (in whole or in part) with regard to active duty outside the United States, its territories, and its possessions, because of any objection to the location, purpose, type, or schedule of such active duty.

(g)(1) A member of a reserve component may be ordered to active duty without his consent if the Secretary concerned determines that the member is in a captive status. A member ordered to active duty under this section may not be retained on active duty, without his consent, for more than 30 days after his captive status is terminated.

(2) The Secretary of Defense shall prescribe regulations to carry out this section. Such regulations shall apply uniformly among the armed forces under the jurisdiction of the Secretary. A determination for the purposes of this subsection that a member is in a captive status shall be made pursuant to such regulations.

(3) In this section, the term "captive status" means the status of a member of the armed forces who is in a missing status (as defined in section 551(2) of title 37) which occurs as the result of a hostile action and is related to the member's military status.

(Aug. 10, 1956, ch. 1041, 70A Stat. 27, §672; Sept. 2, 1958, Pub. L. 85-861, §§1(13), 33(a)(5), 72 Stat. 1440, 1564; Sept. 24, 1980, Pub. L. 96-357, §6, 94 Stat. 1182; Dec. 23, 1980, Pub. L. 96-584, §1, 94 Stat. 3377; Oct. 18, 1986, Pub. L. 99-500, §101(c) [title IX, §9122], 100 Stat. 1783-82, 1783-127, and Oct. 30, 1986, Pub. L. 99-591, §101(c) [title IX, §9122], 100 Stat. 3341-82, 3341-127; Nov. 14, 1986, Pub. L. 99-661, div. A, title V, §§522, 524(a), 100 Stat. 3871; Sept. 29, 1988, Pub. L. 100-456, div. A, title XII, §1234(a)(1), (2), 102 Stat. 2059; renumbered §12301 and amended Oct. 5, 1994, Pub. L. 103-337, div. A, title XVI, §§1662(e)(2), 1675(c)(1), 108 Stat. 2992, 3017.)

HISTORICAL AND REVISION NOTES
 1956 ACT

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
672(a)	50:961(a).	July 9, 1952, ch. 608, §§233
672(b)	50:961(c).	(less (b) and (f)), 234
672(c)	50:961(g).	(1st sentence), 66 Stat.
672(d)	50:961(d).	489, 490.
	50:962 (1st sentence).	
672(e)	50:961(e).	

In subsection (a), the word "hereafter" is omitted as surplusage. The words "there are not enough * * * who are" are substituted for the words "adequate numbers of * * * are not". The words "without the consent of the persons affected" and "under the jurisdiction of that Secretary" are inserted for clarity. The words "and the members thereof" are omitted as surplusage.

In subsection (b), the words "without the consent of the persons affected" are substituted for the words "without his consent", since units as well as individuals are covered by the revised subsection. The words "and the members thereof", "and required to perform", "or required to serve on", and "in the service of the United States" are omitted as surplusage.

In subsections (b) and (d), the words "active duty for training" are omitted as covered by the words "active duty".

In subsection (c), the words “to active duty” are substituted for the words “into the active military service of the United States”, in 50:961(g) (1st and last sentences). The words “to serve” are substituted for the words “for the purpose of serving”. The words “without their consent” are substituted for the word “involuntarily”. The words “to that duty” are substituted for the words “into active duty”. The last sentence of the revised subsection is substituted for 50:961(g) (last sentence).

In subsection (d), the words “the consent of that member” are substituted for the words “his consent”. The words “under his jurisdiction” are inserted for clarity. 50:962 (last 15 words of 1st sentence) is omitted as covered by 50:961(d).

In subsection (e), the words “to active duty (other than for training)” are substituted for the words “into the active military service of the United States”. The words “period of” are omitted as surplusage. The word “requirements” is substituted for the word “condition” for clarity.

1958 ACT

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
672(a)	50:961(a).	Aug. 9, 1955, ch. 665, §2(e), 69 Stat. 599.

The word “hereafter” is omitted as surplusage. The words “there are not enough . . . who are” are substituted for the words “adequate numbers of . . . are not”. The words “without the consent of the persons affected” and “under the jurisdiction of that Secretary” are inserted for clarity.

The changes are necessary to reflect section 101(b) of the Armed Forces Reserve Act of 1952 (50 U.S.C. 901(b)), which defines the term “active duty” to exclude active duty for training. This definition applied to the source law for these sections [sections 672 and 673], section 233(a), (b)(1), and (c) of the Armed Forces Reserve Act of 1952 (50 U.S.C. 961(a), (b)(1), (c)).

CODIFICATION

Pub. L. 99-591 is a corrected version of Pub. L. 99-500.

AMENDMENTS

1994—Pub. L. 103-337, §1662(e)(2), renumbered section 672 of this title as this section.

Subsec. (b). Pub. L. 103-337, §1675(c)(1)(A), substituted “(or, in the case of the District of Columbia National Guard, the commanding general of the District of Columbia National Guard)” for “or Territory or Puerto Rico or the commanding general of the District of Columbia National Guard, as the case may be”.

Subsec. (d). Pub. L. 103-337, §1675(c)(1)(B), struck out “or Territory, Puerto Rico, or the District of Columbia, whichever is” after “authority of the State”.

1988—Subsec. (b). Pub. L. 100-456, §1234(a)(2), substituted “or Puerto Rico” for “, Puerto Rico, or the Canal Zone,”.

Subsec. (d). Pub. L. 100-456, §1234(a)(1), struck out “the Canal Zone,” after “Puerto Rico,”.

1986—Subsec. (f). Pub. L. 99-500 and Pub. L. 99-591, §101(c) [§9122], Pub. L. 99-661, §522, amended section identically adding subsec. (f).

Subsec. (g). Pub. L. 99-661, §524(a), added subsec. (g).

1980—Subsec. (a). Pub. L. 96-357 struck out cl. (1) designation for second sentence and cl. (2) prohibition against ordering a member of the Standby Reserve to active duty unless the Director of Selective Service determined that the member was available for active duty.

Subsec. (e). Pub. L. 96-584 substituted provisions respecting determination of the allowable time in terms of military requirements for provisions authorizing a reasonable time.

1958—Subsec. (a). Pub. L. 85-861, §§1(13), 33(a)(5), inserted “(other than for training)” after “active duty”, substituted “inactive National Guard” for “inactive

Army National Guard or in the inactive Air National Guard”, and inserted provisions prohibiting a member of the Standby Reserve from being ordered to active duty under this subsection unless the Director of Selective Service determines that the member is available for active duty.

Subsec. (c). Pub. L. 85-861, §33(a)(5), inserted “(other than for training)” after “active duty”.

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 1986 AMENDMENT

Section 524(b) of Pub. L. 99-661 provided that: “Section 672(g) [now 12301(g)] of title 10, United States Code, as added by subsection (a), does not authorize a member of a reserve component to be ordered to active duty for a period before the date of the enactment of this Act [Nov. 14, 1986].”

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 33(a)(5) of 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.

RULE OF CONSTRUCTION FOR DUPLICATE AUTHORIZATION AND APPROPRIATION PROVISIONS OF PUBLIC LAWS 99-500, 99-591, AND 99-661

For rule of construction for certain duplicate provisions of Public Laws 99-500, 99-591, and 99-661, see Pub. L. 100-26, §6, Apr. 21, 1987, 101 Stat. 274, set out as a note under section 2302 of this title.

CROSS REFERENCES

Ready Reserve, composition and authorized strength of, see section 10142 of this title.

Standby Reserve, composition of, see section 10151 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 101, 523, 582, 641, 672, 10142, 10151, 10215, 12305, 12306, 12307, 12310, 16131, 16133 of this title; title 38 sections 3011, 3013, 3231, 3511, 4211; title 50 App. section 592.

§ 12302. Ready Reserve

(a) In time of national emergency declared by the President after January 1, 1953, or when otherwise authorized by law, an authority designated by the Secretary concerned may, without the consent of the persons concerned, order any unit, and any member not assigned to a unit organized to serve as a unit, in the Ready Reserve under the jurisdiction of that Secretary to active duty (other than for training) for not more than 24 consecutive months.

(b) To achieve fair treatment as between members in the Ready Reserve who are being considered for recall to duty without their consent, consideration shall be given to—

- (1) the length and nature of previous service, to assure such sharing of exposure to hazards as the national security and military requirements will reasonably allow;
- (2) family responsibilities; and
- (3) employment necessary to maintain the national health, safety, or interest.

The Secretary of Defense shall prescribe such policies and procedures as he considers necessary to carry out this subsection. He shall report on those policies and procedures at least

once a year to the Committees on Armed Services of the Senate and the House of Representatives.

(c) Not more than 1,000,000 members of the Ready Reserve may be on active duty (other than for training), without their consent, under this section at any one time.

(d) Whenever one or more units of the Ready Reserve are ordered to active duty, the President shall, on the first day of the second fiscal year quarter immediately following the quarter in which the first unit or units are ordered to active duty and on the first day of each succeeding six-month period thereafter, so long as such unit is retained on active duty, submit a report to the Congress regarding the necessity for such unit or units being ordered to and retained on active duty. The President shall include in each such report a statement of the mission of each such unit ordered to active duty, an evaluation of such unit's performance of that mission, where each such unit is being deployed at the time of the report, and such other information regarding each unit as the President deems appropriate.

(Aug. 10, 1956, ch. 1041, 70A Stat. 28, §673; Sept. 2, 1958, Pub. L. 85-861, §§1(14), 33(a)(5), 72 Stat. 1441, 1564; Nov. 16, 1973, Pub. L. 93-155, title III, §303(a), 87 Stat. 607; renumbered §12302, Oct. 5, 1994, Pub. L. 103-337, div. A, title XVI, §1662(e)(2), 108 Stat. 2992.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
673(a)	50:961(b)(1).	July 9, 1952, ch. 608.
673(b)	50:961(b)(2).	§ 233(b), 66 Stat. 489.

In subsection (a), the words "after January 1, 1953" are substituted for the word "hereafter", to reflect the effective date of the source statute. The words "without the consent of the persons concerned" are substituted for the word "involuntarily".

The words "under the jurisdiction of that Secretary" are inserted for clarity. The last sentence of the revised subsection is substituted for 50:961(b)(1) (proviso). The words "and the members thereof" and "and required to perform" are omitted as surplusage.

In subsection (b), the words "to achieve" are substituted for the words "in the interest of". The words "without their consent" are substituted for the word "involuntarily". The words "who are being considered for" are inserted for clarity. The words "prescribe such policies and procedures" are substituted for the words "promulgate such policies and establish such procedures". The words "as he considers necessary" are substituted for the words "as may be required in his opinion". The words "this subsection" are substituted for the words "our intent here declared". The words "at least once a year" are substituted for the words "from time to time, and at least annually". The words "Senate and the House of Representatives" are substituted for the word "Congress". 50:961(b)(2) (1st 18 words) is omitted as surplusage. The words "with the objective" and "found to be" are omitted as surplusage.

1958 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
673(a)	50:961(b)(1) (less proviso).	Aug. 9, 1955, ch. 665, §2(f), 69 Stat. 599.
673(c)	50:961(b)(1) (proviso)	

In subsection (c), the words "on active duty (other than for training)" are substituted for the words "may

be required to perform active duty" for clarity. The words "without their consent" are substituted for the word "involuntarily". The words "of all reserve components" and "unless the Congress shall have authorized the exercise of the authority contained in this subsection" are omitted as surplusage.

The changes are necessary to reflect section 101(b) of the Armed Forces Reserve Act of 1952 (50 U.S.C. 901(b)), which defines the term "active duty" to exclude active duty for training. This definition applied to the source law for these sections [sections 672 and 673], section 233(a), (b)(1), and (c) of the Armed Forces Reserve Act of 1952 (50 U.S.C. 961(a), (b)(1), (c)).

AMENDMENTS

1994—Pub. L. 103-337 renumbered section 673 of this title as this section.

1973—Subsec. (d). Pub. L. 93-155 added subsec. (d).

1958—Subsec. (a). Pub. L. 85-861, §§1(14)(A), 33(a)(5), inserted "(other than for training)" after "active duty", and struck out provisions that made subsection inapplicable unless Congress determined how many members of the reserve components were necessary, in the interest of national security, to be ordered to active duty.

Subsec. (c). Pub. L. 85-861, §1(14)(B), added subsec. (c).

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE OF 1973 AMENDMENT

Section 303(b) of Pub. L. 93-155 provided that: "The amendment made by subsection (a) of this section [amending this section] shall be effective with respect to any unit of the Ready Reserve ordered to active duty on or after the date of enactment of this Act [Nov. 16, 1973]."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 33(a)(5) of 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.

EX. ORD. NO. 12743. ORDERING READY RESERVE OF ARMED FORCES TO ACTIVE DUTY

Ex. Ord. No. 12743, Jan. 18, 1991, 56 F.R. 2661, 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 of the United States Code; in furtherance of Executive Order No. 12722, dated August 2, 1990 [50 U.S.C. 1701 note], which declared a national emergency to address the threat to the national security and foreign policy of the United States posed by the invasion of Kuwait by Iraq; and, in accordance with the requirements contained in section 301 of the National Emergencies Act, 50 U.S.C. 1631, I hereby order as follows:

SECTION 1. To provide additional authority to the Department of Defense and the Department of Transportation to respond to the continuing threat posed by Iraq's invasion of Kuwait, the authority under section 673 [now 12302] of title 10, United States Code, to order any unit, and any member not assigned to a unit organized to serve as a unit, in the Ready Reserve to active duty (other than for training) for not more than 24 consecutive months, is invoked and made available, according to its terms, to the Secretary concerned, subject, in the case of the Secretaries of the Army, Navy, and Air Force, to the direction of the Secretary of Defense. The term "Secretary concerned" is defined in section 101(8) [now 101(9)] of title 10, United States Code, to mean the Secretary of the Army with respect to the Army; the Secretary of the Navy with respect to the Navy, the Marine Corps, and the Coast Guard when it is operating as a service in the Navy; the Secretary

of the Air Force with respect to the Air Force; and, the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

SEC. 2. To allow for the orderly administration of personnel within the armed forces, the authority vested in the President by section 527 of title 10, United States Code, to suspend the operation of sections 523-526 [524 now 12011] of title 10, United States Code, regarding officer strength and officer distribution in grade, is invoked to the full extent provided by the terms thereof.

SEC. 3. To allow for the orderly administration of personnel within the armed forces, the authority vested in the President by section 644 of title 10, United States Code, to suspend the operation of any provision of law relating to the promotion, involuntary retirement, or separation of commissioned officers of the Army, Navy, Air Force, or Marine Corps, is invoked to the full extent provided by the terms thereof.

SEC. 4. The Secretary of Defense is hereby designated and empowered, without the approval, ratification, or other action by the President, to exercise the authority vested in the President by sections 527 and 644 of title 10, United States Code, as invoked by sections 2 and 3 of this order, to suspend the operation of certain provisions of law.

SEC. 5. The authorities delegated by sections 1 and 4 of this order may be redelegated and further subdelegated to civilian subordinates who are appointed to their offices by the President, by and with the advice and consent of the Senate.

SEC. 6. This order is intended to improve the internal management of the executive branch, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

SEC. 7. This order is effective immediately, and shall be transmitted to the Congress and published in the Federal Register.

GEORGE BUSH.

CROSS REFERENCES

Ready Reserve—

Composition and authorized strength, see section 10142 of this title.

Ordering to active duty during national emergencies, see section 10103 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 101, 115, 10142, 12304, 12305, 12318, 16131, 16133 of this title; title 38 sections 3011, 3013, 3231, 3511, 4211; title 50 App. section 592.

§ 12303. Ready Reserve; members not assigned to, or participating satisfactorily in, units

(a) Notwithstanding any other provision of law, the President may order to active duty any member of the Ready Reserve of an armed force who—

(1) is not assigned to, or participating satisfactorily in, a unit of the Ready Reserve;

(2) has not fulfilled his statutory reserve obligation; and

(3) has not served on active duty for a total of 24 months.

(b) A member who is ordered to active duty under this section may be required to serve on active duty until his total service on active duty equals 24 months. If his enlistment or other period of military service would expire before he has served the required period under this section, it may be extended until he has served the required period.

(c) To achieve fair treatment among members of the Ready Reserve who are being considered for active duty under this section, appropriate consideration shall be given to—

(1) family responsibilities; and

(2) employment necessary to maintain the national health, safety, or interest.

(Added Pub. L. 90-40, §6(1), June 30, 1967, 81 Stat. 105, §673a; renumbered §12303, Pub. L. 103-337, div. A, title XVI, §1662(e)(2), Oct. 5, 1994, 108 Stat. 2992.)

AMENDMENTS

1994—Pub. L. 103-337 renumbered section 673a of this title as this section.

EX. ORD. NO. 11366. AUTHORIZATION TO ORDER READY RESERVE TO ACTIVE DUTY; EXTENSION OF MILITARY SERVICE

Ex. Ord. No. 11366, Aug. 4, 1967, 32 F.R. 11411, provided: By virtue of the authority vested in me by section 673a [now 12303] of title 10 of the United States Code, and by section 301 of title 3 of the United States Code, and as President of the United States, it is hereby ordered as follows:

SECTION 1. (a) The Secretary of Defense is hereby authorized and empowered to exercise the authority vested in the President by section 673a [now 12303] of title 10 of the United States Code, to order to active duty any member of the Ready Reserve of an armed force (except the Coast Guard when not operating as a service in the Navy) who—

(1) is not assigned to, or participating satisfactorily in, a unit of the Ready Reserve;

(2) has not fulfilled his statutory reserve obligation; and

(3) has not served on active duty for a total of 24 months.

(b) In pursuance of the provisions of section 673a [now 12303] of title 10 of the United States Code, the Secretary of Defense is hereby authorized to require a member ordered to active duty under the authority of this Order to serve on active duty until his total service on active duty equals 24 months. If the enlistment or period of military service of a member of the Ready Reserve ordered to active duty under this authority would expire before he has served the required period of active duty prescribed herein, his enlistment or period of military service may be extended until he has served the required period.

(c) In pursuance of the provisions of section 673a [now 12303] of title 10 of the United States Code, and in order to achieve fair treatment among members of the Ready Reserve who are being considered for active duty under this authority, appropriate consideration shall be given to—

(1) family responsibilities; and

(2) employment necessary to maintain the national health, safety, or interest.

SEC. 2. The Secretary of Transportation is hereby authorized and empowered to exercise the authority vested in the President by section 673a [now 12303] of the title 10 of the United States Code, with respect to any member of the Ready Reserve of the Coast Guard when it is not operating as a service in the Navy, under the same conditions as such authority may be exercised by the Secretary of Defense under this Order with respect to any member of the Ready Reserve of any other armed force.

SEC. 3. (a) The Secretary of Defense may designate any of the Secretaries of the military departments of the Department of Defense to exercise the authority vested in him by section 1 of this Order.

(b) The Secretary of Transportation may designate the Commandant of the United States Coast Guard to exercise the authority vested in him by section 2 of this Order.

SEC. 4. Executive Order No. 11327 of February 15, 1967, is superseded except with respect to members of the Ready Reserve ordered to active duty under the authority of that Order.

LYNDON B. JOHNSON.

EX. ORD. NO. 11406. ASSIGNING AUTHORITY TO ORDER
READY RESERVE TO ACTIVE DUTY

Ex. Ord. No. 11406, Apr. 10, 1968, 33 F.R. 5735, authorized Secretary of Defense and, when designated by him, any of Secretaries of military departments of Department of Defense to exercise authority vested in President until June 30, 1968 by paragraph (e) of title I of the Department of Defense Appropriation Act, 1967 (80 Stat. 981) to order any unit in the Ready Reserve to active duty for a period not to exceed 24 months.

**§ 12304. Selected Reserve; order to active duty
other than during war or national emer-
gency**

(a) Notwithstanding the provisions of section 12302(a) or any other provision of law, when the President determines that it is necessary to augment the active forces for any operational mission, he may authorize the Secretary of Defense and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, without the consent of the members concerned, to order any unit, and any member not assigned to a unit organized to serve as a unit of the Selected Reserve (as defined in section 10143(a) of this title), under their respective jurisdictions, to active duty (other than for training) for not more than 270 days.

(b) No unit or member of a reserve component may be ordered to active duty under this section to perform any of the functions authorized by chapter 15 or section 12406 of this title, or to provide assistance to either the Federal Government or a State in time of a serious natural or manmade disaster, accident, or catastrophe.

(c) Not more than 200,000 members of the Selected Reserve may be on active duty under this section at any one time.

(d) Members ordered to active duty under this section shall not be counted in computing authorized strength in members on active duty or members in grade under this title or any other law.

(e) The Secretary of Defense and the Secretary of Transportation shall prescribe such policies and procedures for the armed forces under their respective jurisdictions as they consider necessary to carry out this section.

(f) Whenever the President authorizes the Secretary of Defense or the Secretary of Transportation to order any unit or member of the Selected Reserve to active duty, under the authority of subsection (a), he shall, within 24 hours after exercising such authority, submit to Congress a report, in writing, setting forth the circumstances necessitating the action taken under this section and describing the anticipated use of these units or members.

(g) Whenever any unit of the Selected Reserve or any member of the Selected Reserve not assigned to a unit organized to serve as a unit is ordered to active duty under authority of subsection (a), the service of all units or members so ordered to active duty may be terminated by—

- (1) order of the President, or
- (2) law.

(h) Nothing contained in this section shall be construed as amending or limiting the application of the provisions of the War Powers Resolution (50 U.S.C. 1541 et seq.).

(Added Pub. L. 94-286, §1, May 14, 1976, 90 Stat. 517, §673b; amended Pub. L. 96-584, §2, Dec. 23, 1980, 94 Stat. 3377; Pub. L. 97-295, §1(9), Oct. 12, 1982, 96 Stat. 1289; Pub. L. 99-661, div. A, title V, §521, Nov. 14, 1986, 100 Stat. 3870; renumbered §12304 and amended, Pub. L. 103-337, div. A, title V, §511(a), title XVI, §§1662(e)(2), 1675(c)(2), Oct. 5, 1994, 108 Stat. 2752, 2992, 3017.)

REFERENCES IN TEXT

The War Powers Resolution, referred to in subsec. (h), is Pub. L. 93-148, Nov. 7, 1973, 87 Stat. 555, which is classified generally to chapter 33 (§1541 et seq.) of Title 50, War and National Defense. For complete classification of this Resolution to the Code, see Short Title note set out under section 1541 of Title 50 and Tables.

AMENDMENTS

1994—Pub. L. 103-337, §1662(e)(2), renumbered section 673b of this title as this section.

Subsec. (a). Pub. L. 103-337, §1675(c)(2)(A), (B), substituted “12302(a)” for “673(a)” and “10143(a)” for “268(b)”.

Pub. L. 103-337, §511(a)(1), substituted “270 days” for “90 days”.

Subsec. (b). Pub. L. 103-337, §1675(c)(2)(C), substituted “12406” for “3500 or 8500”.

Subsec. (i). Pub. L. 103-337, §511(a)(2), struck out subsec. (i) which read as follows: “When a unit of the Selected Reserve, or a member of the Selected Reserve not assigned to a unit organized to serve as a unit of the Selected Reserve, is ordered to active duty under this section and the President determines that an extension of the service of such unit or member on active duty is necessary in the interests of national security, he may authorize the Secretary of Defense and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy to extend the period of such order to active duty for a period of not more than 90 additional days. Whenever the President exercises his authority under this subsection, he shall immediately notify Congress of such action and shall include in the notification a statement of reasons for the action. Nothing in this subsection shall be construed as limiting the authorities to terminate the service of units or members ordered to active duty under this section under subsection (g).”

1986—Subsec. (b). Pub. L. 99-661, §521(c)(1), substituted “reserve component” for “Reserve component”.

Subsec. (c). Pub. L. 99-661, §521(a), substituted “200,000” for “100,000”.

Subsec. (e). Pub. L. 99-661, §521(c)(2), substituted “armed forces” for “Armed Forces”.

Subsec. (f). Pub. L. 99-661, §521(c)(3), substituted “Congress” for “the Speaker of the House of Representatives and to the President pro tempore of the Senate”.

Subsec. (g)(2). Pub. L. 99-661, §521(c)(4), substituted “law” for “a concurrent resolution of the Congress”.

Subsec. (i). Pub. L. 99-661, §521(b), added subsec. (i).
1982—Subsec. (h). Pub. L. 97-295 inserted “(50 U.S.C. 1541 et seq.)” after “the War Powers Resolution”.

1980—Subsec. (c). Pub. L. 96-584 substituted “100,000” for “50,000”.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by sections 1662(e)(2) and 1675(c)(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.

ORDERS TO ACTIVE DUTY FOR SELECTED RESERVE COM-
BAT UNITS INVOLVED IN OPERATION DESERT SHIELD;
EXTENSIONS OF TIME FOR FISCAL YEAR 1991

Pub. L. 101-511, title VIII, §8132, Nov. 5, 1990, 104 Stat. 1908, provided that, during fiscal year 1991, the President, in authorizing under this section the order to ac-

tive duty of units and members of the Selected Reserve, could use that authority in the case of orders to active duty in support of operations in and around the Arabian Peninsula and Operation Desert Shield as if “180” were substituted for “90” in subsecs. (a) and (i) of this section.

EX. ORD. NO. 12727. ORDERING SELECTED RESERVE OF ARMED FORCES TO ACTIVE DUTY

Ex. Ord. No. 12727, Aug. 22, 1990, 55 F.R. 35027, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 121 and 673b [now 12304] of title 10 of the United States Code, I hereby determine that it is necessary to augment the active armed forces of the United States for the effective conduct of operational missions in and around the Arabian Peninsula. Further, under the stated authority, I hereby authorize the Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when the latter is not operating as a service in the Department of the Navy, to order to active duty units and individual members not assigned to units, of the Selected Reserve.

This order is intended only to improve the internal management of the executive branch, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

This order shall be published in the Federal Register and transmitted promptly to the Congress.

GEORGE BUSH.

EX. ORD. NO. 12733. AUTHORIZING EXTENSION OF PERIOD OF ACTIVE DUTY OF PERSONNEL OF SELECTED RESERVE OF ARMED FORCES

Ex. Ord. No. 12733, Nov. 13, 1990, 55 F.R. 47837, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 121 and 673b(i) [673b now 12304] of title 10 of the United States Code, I hereby determine that, in the interests of national security, extending the period of active duty is necessary for the following: units of the Selected Reserve, and members of the Selected Reserve not assigned to a unit organized to serve as a unit of the Selected Reserve, now serving on or hereafter ordered to active duty pursuant to section 673b(a) [now 12304(a)] of title 10 of the United States Code and Executive Order No. 12727 of August 22, 1990 [set out above]. Further, under the stated authority, I hereby authorize the Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when the latter is not operating as a service in the Department of the Navy, to extend the period of active duty of such units and members of the Selected Reserve.

This order is intended only to improve the internal management of the executive branch, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

This order shall be published in the Federal Register and transmitted promptly to the Congress.

GEORGE BUSH.

EX. ORD. NO. 12927. ORDERING SELECTED RESERVE OF ARMED FORCES TO ACTIVE DUTY

Ex. Ord. No. 12927, Sept. 15, 1994, 59 F.R. 47781, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 121 and 673b [now 12304] of title 10 of the United States Code, I hereby determine that it is necessary to augment the active armed forces of the United States for the effective conduct of operational missions to restore the civilian government in Haiti. Further, under the stated authority, I hereby authorize the Secretary of Defense, and the Secretary of

Transportation with respect to the Coast Guard when it is not operating as a service in the Department of the Navy, to order to active duty any units, and any individual members not assigned to a unit organized to serve as a unit, of the Selected Reserve.

This order is intended only to improve the internal management of the executive branch, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

This order is effective immediately and shall be published in the Federal Register and transmitted to the Congress.

WILLIAM J. CLINTON.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 101, 115, 523, 582, 641, 12305, 12318, 16131, 16133 of this title; title 38 sections 3011, 3013, 3231, 3511, 4211, 4304; title 50 App. section 592.

§ 12305. Authority of President to suspend certain laws relating to promotion, retirement, and separation

(a) Notwithstanding any other provision of law, during any period members of a reserve component are serving on active duty pursuant to an order to active duty under authority of section 12301, 12302, or 12304 of this title, the President may suspend any provision of law relating to promotion, retirement, or separation applicable to any member of the armed forces who the President determines is essential to the national security of the United States.

(b) A suspension made under the authority of subsection (a) shall terminate (1) upon release from active duty of members of the reserve component ordered to active duty under the authority of section 12301, 12302, or 12304 of this title, as the case may be, or (2) at such time as the President determines the circumstances which required the action of ordering members of the reserve component to active duty no longer exist, whichever is earlier.

(Added Pub. L. 98-94, title X, § 1021(a), Sept. 24, 1983, 97 Stat. 670, § 673c; amended Pub. L. 98-525, title XIV, § 1405(16), Oct. 19, 1984, 98 Stat. 2622; renumbered § 12305 and amended Pub. L. 103-337, div. A, title XVI, §§ 1662(e)(2), 1675(c)(3), Oct. 5, 1994, 108 Stat. 2992, 3017.)

AMENDMENTS

1994—Pub. L. 103-337, § 1662(e)(2), renumbered section 673c of this title as this section.

Subsecs. (a), (b). Pub. L. 103-337, § 1675(c)(3), substituted “12301, 12302, or 12304” for “672, 673, or 673b”.

1984—Subsec. (b)(1). Pub. L. 98-525 inserted “of this title” after “673b”.

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.

EX. ORD. NO. 12728. DELEGATING PRESIDENT'S AUTHORITY TO SUSPEND ANY PROVISION OF LAW RELATING TO PROMOTION, RETIREMENT, OR SEPARATION OF MEMBERS OF ARMED FORCES

Ex. Ord. No. 12728, Aug. 22, 1990, 55 F.R. 35029, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 673c [now 12305] of title 10 of the United States Code and section 301 of title 3 of the United States Code, I hereby order:

SECTION 1. The Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Department of the Navy, are hereby designated and empowered to exercise, without the approval, ratification, or other action of the President, the authority vested in the President by section 673c [now 12305] of title 10 of the United States Code (1) to suspend any provision of law relating to promotion, retirement, or separation applicable to any member of the armed forces determined to be essential to the national security of the United States, and (2) to determine, for the purposes of said section, that members of the armed forces are essential to the national security of the United States.

SEC. 2. The authority delegated to the Secretary of Defense and the Secretary of Transportation by this order may be redelegated and further subdelegated to subordinates who are appointed to their offices by the President, by and with the advice and consent of the Senate.

SEC. 3. This order is intended only to improve the internal management of the executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

GEORGE BUSH.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 101, 1074b of this title; title 37 section 302f.

§ 12306. Standby Reserve

(a) Units and members in the Standby Reserve may be ordered to active duty (other than for training) only as provided in section 12301 of this title.

(b) In time of emergency—

(1) no unit in the Standby Reserve organized to serve as a unit or any member thereof may be ordered to active duty (other than for training), unless the Secretary concerned, with the approval of the Secretary of Defense in the case of a Secretary of a military department, determines that there are not enough of the required kinds of units in the Ready Reserve that are readily available; and

(2) no other member in the Standby Reserve may be ordered to active duty (other than for training) as an individual without his consent, unless the Secretary concerned, with the approval of the Secretary of Defense in the case of a Secretary of a military department, determines that there are not enough qualified members in the Ready Reserve in the required category who are readily available.

(Aug. 10, 1956, ch. 1041, 70A Stat. 29, §674; Sept. 7, 1962, Pub. L. 87-651, title I, §130, 76 Stat. 514; renumbered §12306 and amended Oct. 5, 1994, Pub. L. 103-337, div. A, title XVI, §§1662(e)(2), 1675(c)(4), 108 Stat. 2992, 3017.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
674(a)	50:926(a) (less 1st 28 words).	July 9, 1952, ch. 608, §206 (less 1st 28 words of (a)), 66 Stat. 483.
674(b).	50:926(b).	

In subsection (b), the words “to serve” are substituted for the words “for the purpose of serving”. The words “there are not enough * * * that are” are substituted for the words “adequate numbers of * * * are not”. The words “(other than for training)” are in-

serted, since the words “active duty” were defined in the source statute cited above to exclude “active duty for training”.

1962 ACT

The change is made to conform section 674(a) more closely to the source law for that section, section 206(a) of the Armed Forces Reserve Act of 1952 (66 Stat. 483). Section 206(a) of that Act defined the Standby Reserve in terms of units and members of the reserve components according to their liability to be ordered to active duty. It did not provide authority to order units and members of the Standby Reserve to active duty. This authority was provided by section 233(a) of the Armed Forces Reserve Act of 1952 (66 Stat. 489), which is restated in section 672(a) of title 10. Since the present language of section 674(a) may be interpreted to provide independent authority to order units and members of the Standby Reserve to active duty, it is revised to make clear that this is not the case and that section 672 is the authority for that action.

AMENDMENTS

1994—Pub. L. 103-337, §1662(e)(2), renumbered section 674 of this title as this section.

Subsec. (a). Pub. L. 103-337, §1675(c)(4), substituted “12301” for “672”.

1962—Subsec. (a). Pub. L. 87-651 substituted “only as provided in section 672 of this title” for “only in time of war, of national emergency declared by Congress, or when otherwise authorized by law”.

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.

CROSS REFERENCES

Standby Reserve, composition of, see section 10151 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10151 of this title; title 38 section 3011; title 50 App. section 592.

§ 12307. Retired Reserve

A member in the Retired Reserve may, if qualified, be ordered to active duty without his consent, but only as provided in section 688 or 12301(a) of this title. A member of the Ready Reserve (other than a member transferred to the Retired Reserve under section 12641(b) of this title) who is ordered to active duty or other appropriate duty in a retired status may be credited under chapter 1223 of this title with service performed pursuant to such order. A member in a retired status is not eligible for promotion (or for consideration for promotion) as a Reserve.

(Aug. 10, 1956, ch. 1041, 70A Stat. 29, §675; Sept. 24, 1983, Pub. L. 98-94, title X, §1017(a), 97 Stat. 669; Nov. 29, 1989, Pub. L. 101-189, div. A, title VI, §651(d), 103 Stat. 1461; renumbered §12307 and amended Oct. 5, 1994, Pub. L. 103-337, div. A, title XVI, §§1662(e)(2), 1675(c)(5), 108 Stat. 2992, 3017.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
675	50:927(c).	July 9, 1952, ch. 608, §207(c), 66 Stat. 483.

AMENDMENTS

1994—Pub. L. 103-337, §1675(c)(5), substituted “688 or 12301(a)” for “672(a) or 688”, “12641(b)” for “1001(b)”, and “1223” for “67”.

Pub. L. 103-337, § 1662(e)(2), renumbered section 675 of this title as this section.

1989—Pub. L. 101-189 inserted at end “A member of the Ready Reserve (other than a member transferred to the Retired Reserve under section 1001(b) of this title) who is ordered to active duty or other appropriate duty in a retired status may be credited under chapter 67 of this title with service performed pursuant to such order. A member in a retired status is not eligible for promotion (or for consideration for promotion) as a Reserve.”

1983—Pub. L. 98-94 inserted reference to section 688.

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.

CROSS REFERENCES

Retired lists, see section 12774 of this title.

Retired Reserve, composition of, see section 10154 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 38 section 3011; title 50 App. section 592.

§ 12308. Retention after becoming qualified for retired pay

Any person who has qualified for retired pay under chapter 1223 of this title may, with his consent and by order of the Secretary concerned, be retained on active duty, or in service in a reserve component other than that listed in section 12732(b) of this title. A member so retained shall be credited with that service for all purposes.

(Aug. 10, 1956, ch. 1041, 70A Stat. 29, § 676; renumbered § 12308 and amended Oct. 5, 1994, Pub. L. 103-337, div. A, title XVI, §§ 1662(e)(2), 1675(c)(6), 108 Stat. 2992, 3017.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
676	10:1036a(e). 34:440i(e).	June 29, 1948, ch. 708, § 302(e), 62 Stat. 1088.

The words “active duty, or in service, in a reserve component other than that listed in section 1332(b) of this title” are inserted to reflect the words “Federal service”, as used in Title III of the source statute. The words “that service for all purposes” are substituted for 10:1036a(e) (last 11 words) and 34:440i(e) (last 11 words). The words “upon attaining the age of sixty years” are omitted as surplusage.

AMENDMENTS

1994—Pub. L. 103-337, § 1675(c)(6), substituted “1223” for “67” and “12732(b)” for “1332(b)”.

Pub. L. 103-337, § 1662(e)(2), renumbered section 676 of this title as this section.

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.

§ 12309. Reserve officers: use of in expansion of armed forces

When an expansion of the active armed forces requires that officers of the reserve components

who are not members of units organized to serve as such be ordered as individuals to active duty (other than for training) without their consent, the services of qualified and available reserve officers in all grades shall be used, so far as practicable, according to the needs of the branches, grades, or specialties concerned.

(Aug. 10, 1956, ch. 1041, 70A Stat. 29, § 677; renumbered § 12309, Oct. 5, 1994, Pub. L. 103-337, div. A, title XVI, § 1662(e)(2), 108 Stat. 2992.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
677	50:961(f).	July 9, 1952, ch. 608, § 233(f), 66 Stat. 490.

The words “without their consent” are substituted for the word “involuntarily”. The words “it shall be the policy” are omitted as surplusage. The words “to active duty (other than for training)” are substituted for the words “into the active military service”.

AMENDMENTS

1994—Pub. L. 103-337 renumbered section 677 of this title as this section.

§ 12310. Reserves: for organizing, administering, etc., reserve components

(a) A Reserve ordered to active duty under section 12301(d) of this title in connection with organizing, administering, recruiting, instructing, or training the reserve components shall be ordered in his reserve grade. While so serving he continues to be eligible for promotion as a Reserve, if he is otherwise qualified.

(b) To assure that a Reserve on duty under subsection (a) receives periodic refresher training in the categories for which he is qualified, the Secretary concerned may detail him to duty with any armed force, or otherwise as the Secretary sees fit.

(Aug. 10, 1956, ch. 1041, 70A Stat. 30, § 678; renumbered § 12310 and amended Oct. 5, 1994, Pub. L. 103-337, div. A, title XVI, §§ 1662(e)(2), 1675(c)(7), 108 Stat. 2992, 3017.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
678(a)	50:962 (2d sentence).	July 9, 1952, ch. 608, § 234, (less 1st sentence), 66 Stat. 490.
678(b)	50:962 (less 1st and 2d sentences).	

In subsection (a), the words “to active duty under section 672(d) of this title in connection with organizing, administering, recruiting, instructing, or training the reserve components” are substituted for the words “into the active military service of the United States under the provisions of this section”. The words “his reserve grade” are substituted for the words “held by them in the Reserve of their Armed Force”. The words “as a Reserve”, in the last sentence of the revised subsection, are substituted for the words “in the Reserve of their Armed Force”. The word “Hereafter” is omitted as surplusage.

Subsection (b) is substituted for 50:962 (less 1st and 2d sentences).

AMENDMENTS

1994—Pub. L. 103-337, § 1662(e)(2), renumbered section 678 of this title as this section.

Subsec. (a). Pub. L. 103-337, § 1675(c)(7), substituted “12301(d)” for “672(d)”.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12318 of this title.

§ 12311. Active duty agreements

(a) To provide definite terms of active duty (other than for training) for Reserves with their consent, the Secretary concerned may make a standard written agreement with any member of a reserve component under his jurisdiction requiring the member to serve for a period of active duty (other than for training) of not more than five years. When such an agreement expires, a new one may be made. This subsection does not apply in time of war declared by Congress.

(b) An agreement may not be made under subsection (a) unless the specified period of duty is at least 12 months longer than any period of active duty that the member is otherwise required to perform.

(c) Agreements made under subsection (a) shall be uniform so far as practicable, and are subject to such standards and policies as may be prescribed by the Secretary of Defense for the armed forces under his jurisdiction or by the Secretary of Transportation for the Coast Guard when the Coast Guard is not operating as a service in the Navy.

(d) If an agreement made under subsection (a) expires during a war or during a national emergency declared by Congress or the President after January 1, 1953, the Reserve concerned may be kept on active duty, without his consent, as otherwise prescribed by law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 30, § 679; Dec. 12, 1980, Pub. L. 96-513, title V, § 511(19), 94 Stat. 2921; renumbered § 12311, Oct. 5, 1994, Pub. L. 103-337, div. A, title XVI, § 1662(e)(2), 108 Stat. 2992.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
679(a)	50:963(a) (less last sentence). 50:963(c). 50:963(f).	July 9, 1952, ch. 608, §§ 235 (less last sentence of (a), and less (b)), 236, 66 Stat. 491.
679(b)	50:963(d).	
679(c)	50:963(e).	
679(d)	50:964.	

In subsection (a), the words “To provide definite terms of active duty for” are substituted for the words “In order that * * * may remain on or be ordered to active duty * * * for terms of service of definite duration”. The words “with their consent” are substituted for the word “voluntarily”. The words “requiring the member to serve” are substituted for 50:963(c). The words “more than” are substituted for the words “to exceed”. The second sentence is substituted for 50:963(a) (2d sentence). The word “hereafter” is omitted as surplusage. 50:963(f) is omitted as executed. The words “under his jurisdiction” are inserted for clarity.

In subsection (b), the words “is at least * * * longer” are substituted for the words “exceeds by at least”. The words “active duty that the member is otherwise required to perform” are substituted for the words “ob-

ligated or involuntary active duty to which he is otherwise liable”.

In subsection (c), the words “for the armed forces under his jurisdiction” are inserted for clarity.

AMENDMENTS

1994—Pub. L. 103-337 renumbered section 679 of this title as this section.

1980—Subsec. (c). Pub. L. 96-513 substituted “Secretary of Transportation” for “Secretary of the Treasury”.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12312 of this title; title 14 section 41a.

§ 12312. Active duty agreements: release from duty

(a) Each agreement made under section 12311(a) of this title shall provide that the member may not be released from active duty without his consent during the period of the agreement—

(1) because of a reduction in the actual personnel strength of the armed force concerned, unless the release is in accordance with the recommendation of a board of officers appointed by an authority designated by the Secretary concerned to determine the members to be released from active duty under regulations prescribed by the Secretary; or

(2) for any other reason, without an opportunity to be heard by a board of officers before the release, unless he is (A) dismissed or discharged under the sentence of a court-martial, (B) released because of an unexplained absence without leave for at least three months, (C) released because he is convicted and sentenced to confinement in a Federal or State penitentiary or correctional institution and the sentence has become final, or (D) released because he has been considered at least twice and has not been recommended for promotion to the next higher grade or because he is considered as having failed of selection for promotion to the next higher grade and has not been recommended for promotion to that grade, under conditions that would require the release or separation of a reserve officer who is not serving under such an agreement.

(b) A member who is released from active duty without his consent before the end of his agreement made under section 12311(a) of this title is entitled to an amount computed by multiplying the number of years and fractions of a year of his unexpired period of service under the agreement by the sum of one month’s basic pay, special pay, and allowances to which he is entitled on the day of his release. The amount to which a member is entitled under this subsection is in addition to any pay and allowances to which he is otherwise entitled. For the purposes of this subsection, a fraction of a month of 15 days or more is counted as a whole month, and a fraction of a month of less than 15 days is disregarded. This subsection does not apply to a member if he is—

(1) released for a reason described in subsection (a)(2)(A)–(C);

(2) released because of a physical disability resulting from his intentional misconduct or wilful neglect;

(3) eligible for retired pay, separation pay, or severance pay under another provision of law;

(4) placed on a temporary disability retired list; or

(5) released to accept an appointment, or to be enlisted, in a regular component of an armed force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 30, § 680; June 28, 1962, Pub. L. 87–509, § 2, 76 Stat. 121; Oct. 19, 1984, Pub. L. 98–525, title V, § 533(b), title XIV, § 1405(17), 98 Stat. 2528, 2622; renumbered § 12312 and amended Oct. 5, 1994, Pub. L. 103–337, div. A, title XVI, §§ 1662(e)(2), 1675(c)(8), 108 Stat. 2992, 3017.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
680(a)	50:963(a) (last sentence).	July 9, 1952, ch. 608, § 235(a) (last sentence), (b), 66 Stat. 491.
680(b)	50:963(b).	

In subsections (a) and (b), the words “without his consent” are substituted for the word “involuntary”.

In subsection (a)(1), the word “because” is substituted for the words “by reason”. The words “actual personnel strength” are substituted for the words “numerical strength of the military personnel”.

In subsection (a)(2), the words “for any other reason” are substituted for the words “for reasons other than that prescribed in paragraph (1)”. The words “dismissed or discharged” are inserted for clarity. The words “at least” are substituted for the word “duration”. The words “is convicted and sentenced * * * and the sentence has become final” are substituted for the words “final conviction and sentence”. The words “from active duty” are omitted as surplusage.

In subsection (b), the words “before the end of” are substituted for the words “prior to the expiration of the period of service under”. The words “computed by multiplying * * * and fractions of a year of his unexpired period of service under the agreement by the sum of one month’s * * * pay, and allowances” are substituted for the words “equal to one month’s pay and allowances multiplied by * * * (including any pro rata part thereof) remaining as the unexpired period of his agreement for active duty”. The words “basic * * * special pay * * * to which he is entitled on the day of his release” are substituted for 50:963(b) (2d sentence). The third sentence is substituted for 50:963(b) (last sentence). The last sentence is substituted for 50:963(b) (words within 1st parentheses).

In subsection (b)(2), the words “because of” are substituted for the words “when such release is due to”.

In subsection (b)(5), the words “to accept” are substituted for the words “for the purpose of accepting”. The words “of an armed force” are inserted for clarity.

AMENDMENTS

1994—Pub. L. 103–337, § 1662(e)(2), renumbered section 680 of this title as this section.

Subsecs. (a), (b). Pub. L. 103–337, § 1675(c)(8), substituted “12311(a)” for “679(a)”.

1984—Subsec. (a)(2)(D). Pub. L. 98–525, § 1405(17), substituted “reserve officer” for “Reserve Officer”.

Subsec. (b)(3). Pub. L. 98–525, § 533(b), inserted “, separation pay,” after “retired pay”.

1962—Subsec. (a)(2)(D). Pub. L. 87–509 added cl. (D).

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.

CROSS REFERENCES

Basic pay, special pay, and allowances, see section 203 et seq. of Title 37, Pay and Allowances of the Uniformed Services.

Disability from intentional misconduct or willful neglect, separation, see section 1207 of this title.

Temporary disability retired lists, see sections 1202, 1205 of this title.

§ 12313. Reserves: release from active duty

(a) Except as otherwise provided in this title, the Secretary concerned may at any time release a Reserve under his jurisdiction from active duty.

(b) In time of war or of national emergency declared by Congress or the President after January 1, 1953, a member of a reserve component may be released from active duty (other than for training) only if—

(1) a board of officers convened at his request by an authority designated by the Secretary concerned recommends the release and the recommendation is approved;

(2) the member does not request that a board be convened; or

(3) his release is otherwise authorized by law.

This subsection does not apply to an armed force during a period of demobilization or reduction in strength of that armed force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 31, § 681; renumbered § 12313, Oct. 5, 1994, Pub. L. 103–337, div. A, title XVI, § 1662(e)(2), 108 Stat. 2992.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
681(a)	50:967(a).	July 9, 1952, ch. 608, § 239, 66 Stat. 492.
681(b)	50:967 (less (a)).	

In subsection (a), the word “title” is substituted for the word “chapter”. The provisions of this title relating to active duty of Reserves are based on the Armed Forces Reserve Act of 1952. The words “under his jurisdiction” are inserted for clarity. The words “or active duty for training” are omitted as covered by the words “active duty”.

Subsection (b) is substituted for 50:967(b). Clause (3) is inserted, since other provisions of law are necessarily exceptions to the general rule here stated.

AMENDMENTS

1994—Pub. L. 103–337 renumbered section 681 of this title as this section.

§ 12314. Reserves: kinds of duty

Notwithstanding any other provision of law, a member of a reserve component who is on active duty other than for training may, under regulations prescribed by the Secretary concerned, be detailed or assigned to any duty authorized by law for members of the regular component of the armed force concerned.

(Aug. 10, 1956, ch. 1041, 70A Stat. 31, § 682; renumbered § 12314, Oct. 5, 1994, Pub. L. 103–337, div. A, title XVI, § 1662(e)(2), 108 Stat. 2992.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
682	50:965.	July 9, 1952, ch. 608, §237, 66 Stat. 492.

The words “armed force concerned” are substituted for the words “Armed Forces of the United States”. The words “now or hereafter” and “officers and enlisted” are omitted as surplusage. The words “other than for training” are inserted, since the words “active duty” were defined in the source statute cited above to exclude active duty for training.

AMENDMENTS

1994—Pub. L. 103-337 renumbered section 682 of this title as this section.

§ 12315. Reserves: duty with or without pay

(a) Subject to other provisions of this title, any Reserve may be ordered to active duty or other duty—

- (1) with the pay and allowances provided by law; or
- (2) with his consent, without pay.

Duty without pay shall be considered for all purposes as if it were duty with pay.

(b) A Reserve who is kept on active duty after his term of service expires is entitled to pay and allowances while on that duty, except as they may be forfeited under the approved sentence of a court-martial or by non-judicial punishment by a commanding officer or when he is otherwise in a non-pay status.

(Aug. 10, 1956, ch. 1041, 70A Stat. 31, §683; renumbered §12315, Oct. 5, 1994, Pub. L. 103-337, div. A, title XVI, §1662(e)(2), 108 Stat. 2992.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
683(a)	50:971.	July 9, 1952, ch. 608,
683(b)	50:972.	§§ 240, 241, 66 Stat. 492.

In subsection (a), the word “title” is substituted for the word “chapter”. The provisions of this title relating to active duty of reservists are based on the Armed Forces Reserve Act of 1952. The words “shall be considered * * * as if it were” are substituted for the words “shall be counted * * * the same as like”.

In subsections (a) and (b), the words “active duty for training” are omitted as covered by the words “active duty”.

In subsection (b), the word “kept” is substituted for the words “retained or continued”. The words “pursuant to law” are omitted as surplusage.

AMENDMENTS

1994—Pub. L. 103-337 renumbered section 683 of this title as this section.

CROSS REFERENCES

Pay and allowances, see section 101 et seq. of Title 37, Pay and Allowances of the Uniformed Services.

§ 12316. Payment of certain Reserves while on duty

(a) Except as provided by subsection (b), a Reserve of the Army, Navy, Air Force, Marine Corps, or Coast Guard who because of his earlier military service is entitled to a pension, retired or retainer pay, or disability compensation, and

who performs duty for which he is entitled to compensation, may elect to receive for that duty either—

- (1) the payments to which he is entitled because of his earlier military service; or
- (2) if he specifically waives those payments, the pay and allowances authorized by law for the duty that he is performing.

(b) Unless the payments because of his earlier military service are greater than the compensation prescribed by subsection (a)(2), a Reserve of the Army, Navy, Air Force, Marine Corps, or Coast Guard who because of his earlier military service is entitled to a pension, retired or retainer pay, or disability compensation, and who upon being ordered to active duty for a period of more than 30 days in time of war or national emergency is found physically qualified to perform that duty, ceases to be entitled to the payments because of his earlier military service until the period of active duty ends. While on that active duty, he is entitled to the compensation prescribed by subsection (a)(2). Other rights and benefits of the member or his dependents are unaffected by this subsection.

(Added Pub. L. 85-861, §1(15), Sept. 2, 1958, 72 Stat. 1441, §684; amended Pub. L. 93-586, §1, Jan. 2, 1975, 88 Stat. 1920; renumbered §12316, Pub. L. 103-337, div. A, title XVI, §1662(e)(2), Oct. 5, 1994, 108 Stat. 2992.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
684(a)	10 App.:369b (less proviso and last 3 sentences). 34 App.:853e-1 (less provisos and last 3 sentences).	Aug. 2, 1946, ch. 756, §10; restated Sept. 27, 1950, ch. 1053, §1, 64 Stat. 1067; July 12, 1955, ch. 337, §§1, 4, 69 Stat. 300, 301.
684(b)	10 App.:369b (proviso and last 3 sentences). 34 App.:853e-1 (provisos and last 3 sentences).	Sept. 27, 1950, ch. 1053, §2, 64 Stat. 1067; July 12, 1955, ch. 337, §§2, 4, 69 Stat. 301.

In subsections (a) and (b), the words “retirement pay” are omitted as covered by the words “retired pay”.

In subsection (a), the words “Except as provided by subsection (b)” are inserted for clarity. The words “who performs duty for which he is entitled to compensation, may elect to receive for that duty” are substituted for the words “may elect, with reference to periods of active duty, active duty for training, drill, training, instruction, or other duty for which they may be entitled to receive compensation pursuant to any provisions of law”. The words “Notwithstanding the provisions of any other law”, in 10 App.:369b, and “or relinquish” are omitted as surplusage.

Subsection (a)(1) is substituted for clause (2) of 10 App.:369b, and clause (2) of 34 App.:853e-1.

In subsection (a)(2), the words “pay and allowances authorized by law for the duty that he is performing” are substituted for clause (1) of 10 App.:369b and 34 App.:853e-1.

In subsection (b), the word “extended”, the next to the last sentence of 10 App.: 369b and of 34 App.: 853e-1, and the first proviso of 34 App.:853e-1, are omitted as surplusage.

AMENDMENTS

1994—Pub. L. 103-337 renumbered section 684 of this title as this section.

1975—Subsecs. (a), (b). Pub. L. 93-586 inserted reference to Coast Guard.

§ 12317. Reserves: theological students; limitations

A Reserve may not be required to serve on active duty, or to participate in inactive duty training, while preparing for the ministry in a recognized theological or divinity school.

(Added Pub. L. 85-861, §1(15), Sept. 2, 1958, 72 Stat. 1441, §685; renumbered §12317, Pub. L. 103-337, div. A, title XVI, §1662(e)(2), Oct. 5, 1994, 108 Stat. 2992.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
686	50:961(h) (last sentence).	Aug. 9, 1955, ch. 665, §2(g) (last sentence), 69 Stat. 599.

The words “active training and service, active duty for training” are omitted as covered by the words “active duty” as defined in section 101(22) of this title.

AMENDMENTS

1994—Pub. L. 103-337 renumbered section 685 of this title as this section.

§ 12318. Reserves on active duty: duties; funding

(a) During a period that members of a reserve component are serving on active duty pursuant to an order under section 12302 or 12304 of this title, members of reserve components serving on active duty may perform duties in connection with either such section.

(b) Funds available for the pay and allowances of Reserves referred to section 12310 of this title shall be available for the pay and allowances of such Reserves who perform duties in connection with section 12302 or 12304 of this title under the authority of subsection (a).

(Added Pub. L. 99-661, div. A, title IV, §412(b)(1), Nov. 14, 1986, 100 Stat. 3861, §686; renumbered §12318 and amended Pub. L. 103-337, div. A, title XVI, §§1662(e)(2), 1675(c)(9), Oct. 5, 1994, 108 Stat. 2992, 3017.)

AMENDMENTS

1994—Pub. L. 103-337, §1662(e)(2), renumbered section 686 of this title as this section.

Pub. L. 103-337, §1675(c)(9), substituted “12302 or 12304” for “673 or 673b” in subsecs. (a) and (b) and “12310” for “678” in subsec. (b).

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.

§ 12319. Ready Reserve: muster duty

(a) Under regulations prescribed by the Secretary of Defense, a member of the Ready Reserve may be ordered without his consent to muster duty one time each year. A member ordered to muster duty under this section shall be required to perform a minimum of two hours of muster duty on the day of muster.

(b) The period which a member may be required to devote to muster duty under this section, including round-trip travel to and from the location of that duty, may not total more than one day each calendar year.

(c) Except as specified in subsection (d), muster duty (and travel directly to and from that duty) under this section shall be treated as the equivalent of inactive-duty training (and travel directly to and from that training) for the purposes of this title and the provisions of title 37 (other than section 206(a)) and title 38, including provisions relating to the determination of eligibility for and the receipt of benefits and entitlements provided under those titles for Reserves performing inactive-duty training and for their dependents and survivors.

(d) Muster duty under this section shall not be credited in determining entitlement to, or in computing, retired pay under chapter 1223 of this title.

(Added Pub. L. 101-189, div. A, title V, §502(a)(1), Nov. 29, 1989, 103 Stat. 1436, §687; renumbered §12319 and amended Pub. L. 103-337, div. A, title XVI, §§1662(e)(2), 1675(c)(10), Oct. 5, 1994, 108 Stat. 2992, 3018.)

AMENDMENTS

1994—Pub. L. 103-337, §1662(e)(2), renumbered section 687 of this title as this section.

Subsec. (d). Pub. L. 103-337, §1675(c)(10), substituted “1223” for “67”.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 37 section 433.

§ 12320. Reserve officers: grade in which ordered to active duty

A reserve officer who is ordered to active duty shall be ordered to active duty in his reserve grade, except that a reserve officer who is credited with service under section 12207 of this title and is ordered to active duty may be ordered to active duty in a reserve grade and with a date of rank and position on the active-duty list determined under regulations prescribed by the Secretary of Defense based upon the amount of service credited.

(Added Pub. L. 96-513, title I, §106, Dec. 12, 1980, 94 Stat. 2868, §689; amended Pub. L. 97-22, §4(g), July 10, 1981, 95 Stat. 127; renumbered §12320 and amended Pub. L. 103-337, div. A, title XVI, §§1625, 1662(e)(2), 1675(c)(11), Oct. 5, 1994, 108 Stat. 2962, 2992, 3018.)

AMENDMENT OF SECTION

Pub. L. 103-337, div. A, title XVI, §§1625, 1691(b)(1), Oct. 5, 1994, 108 Stat. 2962, 3026, provided that, effective Oct. 1, 1996, this section is amended—

(1) by inserting “or full-time National Guard duty” after “active duty” the first two places it appears; and

(2) by inserting “and placed on the active-duty list” after “active duty” the third place it appears.

AMENDMENTS

1994—Pub. L. 103-337, §1675(c)(11), substituted “12207” for “3353, 5600, or 8353”.

Pub. L. 103-337, § 1662(e)(2), renumbered section 689 of this title as this section.

1981—Pub. L. 97-22 inserted provision relating to a reserve officer who is credited with service under section 3353, 5600, or 8353 of this title and is ordered to active duty.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by sections 1662(e)(2) and 1675(c)(11) of Pub. L. 103-337 effective Dec. 1, 1994, except as otherwise provided, and amendment by section 1625 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.

§ 12321. Reserve Officer Training Corps units: limitation on number of Reserves assigned

The number of members of the reserve components serving on active duty or full-time National Guard duty for the purpose of organizing, administering, recruiting, instructing, or training the reserve components who are assigned to duty with a unit of the Reserve Officer Training Corps program may not exceed 275.

(Added Pub. L. 101-510, div. A, title V, § 559(a)(1), Nov. 5, 1990, 104 Stat. 1571, § 687; renumbered § 690 and amended Pub. L. 102-25, title VII, § 704(a)(3)(A), (B), Apr. 6, 1991, 105 Stat. 118; Pub. L. 102-190, div. A, title X, § 1061(a)(4)(A), Dec. 5, 1991, 105 Stat. 1472; Pub. L. 102-484, div. A, title V, § 512, Oct. 23, 1992, 106 Stat. 2405; Pub. L. 103-160, div. A, title V, § 512, Nov. 30, 1993, 107 Stat. 1649; renumbered § 12321 and amended Pub. L. 103-337, div. A, title XVI, § 1662(e)(2), (3), Oct. 5, 1994, 108 Stat. 2992.)

AMENDMENTS

1994—Pub. L. 103-337 renumbered section 690 of this title as this section and substituted “Reserve Officer Training Corps units: limitation on number of Reserves assigned” for “Limitation on duty with Reserve Officer Training Corps units” as section catchline.

1993—Pub. L. 103-160 substituted “may not exceed 275” for “may not exceed 200”.

1992—Pub. L. 102-484 substituted “The number of members of the reserve components” for “A member of a reserve component”, “who are assigned” for “may not be assigned”, and “may not exceed 200.” for period at end.

1991—Pub. L. 102-190 substituted “Corps” for “Corp” in section catchline.

Pub. L. 102-25, § 704(a)(3)(B), renumbered section 687 of this title as this section.

Pub. L. 102-25, § 704(a)(3)(A), made technical correction to directory language of Pub. L. 101-510, § 559(a)(1), which enacted this section.

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

Section 704(e) of Pub. L. 102-25 provided that: “The amendments made by this section [amending this section and sections 6686 and 7381b of Title 42, The Public Health and Welfare, and amending provisions set out as

notes under this section, sections 1701, 1705, 1721, 1724, 1733, 2302, 2306a, 2432, and 3074 of this title, and section 1928 of Title 22, Foreign Relations and Intercourse] shall apply as if included in the enactment of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510).”

EFFECTIVE DATE

Section 559(b) of Pub. L. 101-510, as amended by Pub. L. 102-25, title VII, § 704(a)(3)(C), Apr. 6, 1991, 105 Stat. 118, provided that: “Section 690 [now 12321] of title 10, United States Code, as added by subsection (a), shall take effect on September 30, 1991.”

WAIVER OF PROHIBITION ON CERTAIN RESERVE SERVICE WITH ROTC PROGRAM

Section 525 of Pub. L. 102-190 provided that: “The Secretary of the military department concerned may waive the prohibition in section 690 [now 12321] of title 10, United States Code, in the case of a member of a reserve component of the Armed Forces referred to in that section who is serving in an assignment to duty with a unit of the Reserve Officer Training Corps program on September 30, 1991, if the Secretary determines that the removal of the member from that assignment will cause a financial hardship for that member.”

CHAPTER 1211—NATIONAL GUARD MEMBERS IN FEDERAL SERVICE

Sec.

12401.	Army and Air National Guard of United States: status. ¹
12402.	Army and Air National Guard of United States: commissioned officers; duty in National Guard Bureau.
12403.	Army and Air National Guard of United States: members; status in which ordered into Federal service.
12404.	Army and Air National Guard of United States: mobilization; maintenance of organization.
12405.	National Guard in Federal service: status.
12406.	National Guard in Federal service: call.
12407.	National Guard in Federal service: period of service; apportionment.
12408.	National Guard in Federal service: physical examination.

§ 12401. Army and Air National Guard of the United States: status

Members of the Army National Guard of the United States and the Air National Guard of the United States are not in active Federal service except when ordered thereto under law.

(Added Pub. L. 103-337, div. A, title XVI, § 1662(f)(1), Oct. 5, 1994, 108 Stat. 2993.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3495 and 8495 of this title, prior to repeal by Pub. L. 103-337, § 1662(f)(2).

EFFECTIVE DATE

Chapter 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.

CROSS REFERENCES

Call into Federal service, see section 12406 of this title.

Status when not in Federal service, see section 10107 of this title.

¹ So in original. Does not conform to section catchline.

§ 12402. Army and Air National Guard of United States: commissioned officers; duty in National Guard Bureau

(a) The President may, with their consent, order commissioned officers of the Army National Guard of the United States and the Air National Guard of the United States to active duty in the National Guard Bureau.

(b)(1) The number of officers of the Army National Guard of the United States in grades below brigadier general who are ordered to active duty in the National Guard Bureau may not be more than 40 percent of the number of officers of the Army authorized for duty in that Bureau and, to the extent practicable, shall not exceed 40 percent of the number of officers of the Army serving in that Bureau in any grade below brigadier general.

(2) The number of officers of the Air National Guard of the United States in grades below brigadier general who are ordered to active duty in the National Guard Bureau may not be more than 40 percent of the number of officers of the Air Force authorized for duty in that Bureau and, to the extent practicable, shall not exceed 40 percent of the number of officers of the Air Force serving in that Bureau in any grade below brigadier general.

(Added Pub. L. 103-337, div. A, title XVI, § 1662(f)(1), Oct. 5, 1994, 108 Stat. 2993.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3496 and 8496 of this title, prior to repeal by Pub. L. 103-337, § 1662(f)(2).

CROSS REFERENCES

National Guard Bureau, assignment of officers of regular or reserve components, see section 10507 of this title.

Payment of pay and allowances for the Chief of the National Guard Bureau and officers ordered to active duty under this section, see section 107 of Title 32, National Guard.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 523, 641, 10507 of this title; title 32 section 107; title 37 section 204.

§ 12403. Army and Air National Guard of United States: members; status in which ordered into Federal service

Members of the Army National Guard of the United States ordered to active duty shall be ordered to duty as Reserves of the Army. Members of the Air National Guard of the United States ordered to active duty shall be ordered to duty as Reserves of the Air Force.

(Added Pub. L. 103-337, div. A, title XVI, § 1662(f)(1), Oct. 5, 1994, 108 Stat. 2993.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3497 and 8497 of this title, prior to repeal by Pub. L. 103-337, § 1662(f)(2).

§ 12404. Army and Air National Guard of United States: mobilization; maintenance of organization

During an initial mobilization, the organization of a unit of the Army National Guard of the

United States or of the Air National Guard of the United States ordered into active Federal service shall, so far as practicable, be maintained as it existed on the date of the order to duty.

(Added Pub. L. 103-337, div. A, title XVI, § 1662(f)(1), Oct. 5, 1994, 108 Stat. 2993.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3498 and 8498 of this title, prior to repeal by Pub. L. 103-337, § 1662(f)(2).

§ 12405. National Guard in Federal service: status

Members of the National Guard called into Federal service are, from the time when they are required to respond to the call, subject to the laws and regulations governing the Army or the Air Force, as the case may be, except those applicable only to members of the Regular Army or Regular Air Force, as the case may be.

(Added Pub. L. 103-337, div. A, title XVI, § 1662(f)(1), Oct. 5, 1994, 108 Stat. 2993.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3499 and 8499 of this title, prior to repeal by Pub. L. 103-337, § 1662(f)(2).

§ 12406. National Guard in Federal service: call

Whenever—

(1) the United States, or any of the Territories, Commonwealths, or possessions, is invaded or is in danger of invasion by a foreign nation;

(2) there is a rebellion or danger of a rebellion against the authority of the Government of the United States; or

(3) the President is unable with the regular forces to execute the laws of the United States;

the President may call into Federal service members and units of the National Guard of any State in such numbers as he considers necessary to repel the invasion, suppress the rebellion, or execute those laws. Orders for these purposes shall be issued through the governors of the States or, in the case of the District of Columbia, through the commanding general of the National Guard of the District of Columbia.

(Added Pub. L. 103-337, div. A, title XVI, § 1662(f)(1), Oct. 5, 1994, 108 Stat. 2994.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3500 and 8500 of this title, prior to repeal by Pub. L. 103-337, § 1662(f)(2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 101, 12304 of this title; title 5 section 6323.

§ 12407. National Guard in Federal service: period of service; apportionment

(a) Whenever the President calls the National Guard of a State into Federal service, he may specify in the call the period of the service. Members and units called shall serve inside or outside the territory of the United States during

the term specified, unless sooner relieved by the President. However, no member of the National Guard may be kept in Federal service beyond the term of his commission or enlistment.

(b) When the National Guard of a State is called into Federal service with the National Guard of another of those jurisdictions, the President may apportion the total number called from the Army National Guard or from the Air National Guard, as the case may be, on the basis of the populations of the jurisdictions affected by the call.

(Added Pub. L. 103-337, div. A, title XVI, §1662(f)(1), Oct. 5, 1994, 108 Stat. 2994.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3501 and 8501 of this title, prior to repeal by Pub. L. 103-337, §1662(f)(2).

§ 12408. National Guard in Federal service: physical examination

(a) Under regulations prescribed by the President, each member of the National Guard called into Federal service shall be examined as to physical fitness, without further commission or enlistment.

(b) Immediately before such a member is mustered out of Federal service, he shall be examined as to physical fitness. The record of this examination shall be retained by the United States.

(Added Pub. L. 103-337, div. A, title XVI, §1662(f)(1), Oct. 5, 1994, 108 Stat. 2994.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3502 and 8502 of this title, prior to repeal by Pub. L. 103-337, §1662(f)(2).

CHAPTER 1213—SPECIAL APPOINTMENTS, ASSIGNMENTS, DETAILS, AND DUTIES

Sec.	
12501.	Reserve components: detail of members of regular and reserve components to assist.
12502.	Chief and assistant chief of staff of National Guard divisions and wings in Federal service: detail.

§ 12501. Reserve components: detail of members of regular and reserve components to assist

The Secretary concerned shall detail such members of the regular and reserve components under his jurisdiction as are necessary to effectively develop, train, instruct, and administer those reserve components.

(Added Pub. L. 103-337, div. A, title XVI, §1662(g)(1), Oct. 5, 1994, 108 Stat. 2995.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 715 of this title, prior to repeal by Pub. L. 103-337, §1662(g)(2).

EFFECTIVE DATE

Chapter 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.

CROSS REFERENCES

Detail of regular members of Army and Air Force to duty with National Guard, see section 315 of Title 32, National Guard.

§ 12502. Chief and assistant chief of staff of National Guard divisions and wings in Federal service: detail

(a) The President may detail a regular or reserve officer of the Army as chief of staff, and a regular or reserve officer or an officer of the Army National Guard as assistant to the chief of staff, of any division of the Army National Guard that is in Federal service as an Army National Guard organization.

(b) The President may detail a regular or reserve officer of the Air Force as chief of staff, and a regular or reserve officer or an officer of the Air National Guard as assistant to the chief of staff, of any wing of the Air National Guard that is in Federal service as an Air National Guard organization.

(Added Pub. L. 103-337, div. A, title XVI, §1662(g)(1), Oct. 5, 1994, 108 Stat. 2995.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3542 and 8542 of this title, prior to repeal by Pub. L. 103-337, §1662(g)(2).

CROSS REFERENCES

Air Staff, see section 8031 et seq. of this title.
Army Staff, see section 3031 et seq. of this title.
Organization of National Guard, see section 104 of Title 32, National Guard.

CHAPTER 1215—MISCELLANEOUS PROHIBITIONS AND PENALTIES

[No present sections]

CHAPTER 1217—MISCELLANEOUS RIGHTS AND BENEFITS

Sec.	
12601.	Compensation: Reserve on active duty accepting from any person.
12602.	Members of Army National Guard of United States and Air National Guard of United States: credit for service as members of National Guard.

§ 12601. Compensation: Reserve on active duty accepting from any person

Any Reserve who, before being ordered to active duty, was receiving compensation from any person may, while he is on that duty, receive compensation from that person.

(Added Pub. L. 103-337, div. A, title XVI, §1662(g)(1), Oct. 5, 1994, 108 Stat. 2995.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 1033 of this title, prior to repeal by Pub. L. 103-337, §1662(g)(2).

EFFECTIVE DATE

Chapter 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.

§ 12602. Members of Army National Guard of United States and Air National Guard of United States: credit for service as members of National Guard

(a) For the purposes of laws providing benefits for members of the Army National Guard of the

United States and their dependents and beneficiaries—

(1) military training, duty, or other service performed by a member of the Army National Guard of the United States in his status as a member of the Army National Guard for which he is entitled to pay from the United States shall be considered military training, duty, or other service, as the case may be, in Federal service as a Reserve of the Army;

(2) full-time National Guard duty performed by a member of the Army National Guard of the United States shall be considered active duty in Federal service as a Reserve of the Army; and

(3) inactive-duty training performed by a member of the Army National Guard of the United States in his status as a member of the Army National Guard, in accordance with regulations prescribed under section 502 of title 32 or other express provision of law, shall be considered inactive-duty training in Federal service as a Reserve of the Army.

(b) For the purposes of laws providing benefits for members of the Air National Guard of the United States and their dependents and beneficiaries—

(1) military training, duty, or other service performed by a member of the Air National Guard of the United States in his status as a member of the Air National Guard for which he is entitled to pay from the United States shall be considered military training, duty, or other service, as the case may be, in Federal service as a Reserve of the Air Force;

(2) full-time National Guard duty performed by a member of the Air National Guard of the United States shall be considered active duty in Federal service as a Reserve of the Air Force; and

(3) inactive-duty training performed by a member of the Air National Guard of the United States in his status as a member of the Air National Guard, in accordance with regulations prescribed under section 502 of title 32 or other express provision of law, shall be considered inactive-duty training in Federal service as a Reserve of the Air Force.

(Added Pub. L. 103-337, div. A, title XVI, §1662(g)(1), Oct. 5, 1994, 108 Stat. 2995.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3686 and 8686 of this title, prior to repeal by Pub. L. 103-337, §1662(g)(2).

CHAPTER 1219—STANDARDS AND PROCEDURES FOR RETENTION AND PROMOTION

Sec.	
12641.	Standards and procedures: Secretary to prescribe.
12642.	Standards and qualifications: result of failure to comply with.
12643.	Boards for appointment, promotion, and certain other purposes: composition.
12644.	Members physically not qualified for active duty: discharge or transfer to retired status.
12645.	Commissioned officers: retention until completion of required service.
12646.	Commissioned officers: retention of after completing 18 or more, but less than 20, years of service.

Sec.	
12647.	Commissioned officers: retention in active status while assigned to Selective Service System or serving as United States property and fiscal officers.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 113, 1001 of this title.

§ 12641. Standards and procedures: Secretary to prescribe

(a) The Secretary concerned shall, by regulation, prescribe—

(1) standards and qualifications for the retention and promotion of members of the reserve components under his jurisdiction; and

(2) equitable procedures for the periodic determination of the compliance of each such Reserve with those standards and qualifications.

(b) If a Reserve fails to comply with the standards and qualifications prescribed under subsection (a), he shall—

(1) if qualified, be transferred to an inactive reserve status;

(2) if qualified, be retired without pay; or

(3) have his appointment or enlistment terminated.

(Aug. 10, 1956, ch. 1041, 70A Stat. 79, §1001; renumbered §12641 and amended Oct. 5, 1994, Pub. L. 103-337, div. A, title XVI, §1662(h)(2), (4)(A), 108 Stat. 2996.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1001(a)	10:1036c (1st sentence). 34:440k (1st sentence).	June 29, 1948, ch. 708, §304 (less last sentence), 62 Stat. 1088.
1001(b).	10:1036c (2d sentence). 34:440k (2d sentence).	

In subsection (a), the words “As soon as may be practicable after the effective date of sections 1036-1036i [440h-440q] of this title” are omitted as executed. The words “not inconsistent with said sections or any other Act” and “appropriate” are omitted as surplusage.

AMENDMENTS

1994—Pub. L. 103-337 renumbered section 1001 of this title as this section and substituted “Standards and procedures: Secretary to prescribe” for “Secretary to prescribe” as section catchline.

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.

CROSS REFERENCES

Qualifications—

Enlisted members, see section 12102 of this title.
Officers, see section 12201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1001, 12307, 12734 of this title.

§ 12642. Standards and qualifications: result of failure to comply with

(a) To be retained in an active status, a reserve commissioned officer must, in any applica-

ble yearly period, attain the number of points under section 12732(a)(2) of this title prescribed by the Secretary concerned, with the approval of the Secretary of Defense in the case of a Secretary of a military department, and must conform to such other standards and qualifications as the Secretary concerned may prescribe. The Secretary may not prescribe a minimum of more than 50 points under this subsection.

(b) Subject to section 12645 of this title, a reserve commissioned officer who fails to attain the number of points, or to conform to the standards and qualifications, prescribed in subsection (a) shall—

(1) be transferred to the Retired Reserve if he is qualified and applies therefor;

(2) if he is not qualified or does not apply for transfer to the Retired Reserve, be transferred to an inactive status, if he is qualified therefor; or

(3) if he is not transferred to the Retired Reserve or an inactive status, be discharged from his reserve appointment.

(c) This section does not apply to commissioned warrant officers or to adjutants general or assistant adjutants general of States and Territories, Puerto Rico, and the District of Columbia.

(Added Pub. L. 85-861, §1(22)(A), Sept. 2, 1958, 72 Stat. 1443, §1002; amended Pub. L. 100-456, div. A, title XII, §1234(a)(1), Sept. 29, 1988, 102 Stat. 2059; renumbered §12642 and amended Pub. L. 103-337, div. A, title XVI, §§1662(h)(2), 1675(d)(1), Oct. 5, 1994, 108 Stat. 2996, 3018.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1002(a)	50:1192(b) (1st sentence, less 11th through 29th words).	Sept. 3, 1954, ch. 1257, §§102(1) (as applicable to §202(b)), 102(4), 202(b), 68 Stat. 1149, 1150.
1002(b).	50:1181(4). 50:1192(b) (less 1st sentence).	
1002(c)	50:1181(1) (as applicable to 50:1192(b)). 50:1192(b) (11th through 29th words of 1st sentence).	

In subsection (a), the word “minimum” is omitted as surplusage. The last sentence is substituted for the words “(not to exceed fifty)”.

AMENDMENTS

1994—Pub. L. 103-337, §1662(h)(2), renumbered section 1002 of this title as this section.

Subsec. (a). Pub. L. 103-337, §1675(d)(1)(A), substituted “12732(a)(2)” for “1332(a)(2)”.

Subsec. (b). Pub. L. 103-337, §1675(d)(1)(B), substituted “12645” for “1005”.

1988—Subsec. (c). Pub. L. 100-456 struck out “the Canal Zone,” after “Puerto Rico,”.

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.

CROSS REFERENCES

Adjutants general and assistant adjutants general, reference as applicable to other officers of National Guard, see section 10214 of this title.

Grade of reserve commissioned officer on transfer to Retired Reserve, see sections 12771 and 12772 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8360, 10214 of this title.

§ 12643. Boards for appointment, promotion, and certain other purposes: composition

(a) Except as provided in section 612(a)(3) of this title and except for boards that may be convened to select Reserves for appointment in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps, each board convened for the appointment, promotion, demotion, involuntary release from active duty, discharge, or retirement of Reserves shall include at least one member of the Reserves, with the exact number of Reserves determined by the Secretary concerned in his discretion.

(b) Each member of a board convened for the selection for promotion, or for the demotion or discharge, of Reserves must be senior in rank to the persons under consideration by that board. However, a member serving in a legal advisory capacity may be junior in rank to any person, other than a judge advocate or law specialist, being considered by that board; and a member serving in a medical advisory capacity may be junior in rank to any person, other than a medical officer, being considered by that board.

(Aug. 10, 1956, ch. 1041, 70A Stat. 11, §266; Dec. 12, 1980, Pub. L. 96-513, title V, §501(4), 94 Stat. 2907; July 10, 1981, Pub. L. 97-22, §2(c), 95 Stat. 124; renumbered §12643, Oct. 5, 1994, Pub. L. 103-337, div. A, title XVI, §1662(h)(2), 108 Stat. 2996.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
266(a)	50:1005(a).	July 9, 1952, ch. 608, §254, 66 Stat. 496.
266(b)	50:1005(b).	

In subsection (a), the words “under * * * prescribed” are substituted for the words “in accordance * * * established”.

In subsection (b), the words “in rank” and “by that board” are inserted for clarity.

AMENDMENTS

1994—Pub. L. 103-337 renumbered section 266 of this title as this section.

1981—Subsec. (a). Pub. L. 97-22 substituted “Except as provided in section 612(a)(3) of this title and except for Boards that may be convened to select Reserves for appointment in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps, each board convened for the appointment, promotion, demotion, involuntary release from active duty, discharge, or retirement of Reserves shall include at least one member of the Reserves, with the exact number of Reserves determined by the Secretary concerned in his discretion” for “Except as provided in section 612(a)(3) of this title, each board convened for the appointment, promotion, demotion, involuntary release from active duty, discharge, or retirement of Reserves shall include an appropriate number of Reserves, as prescribed by the Secretary concerned under standards and policies prescribed by the Secretary of Defense”.

1980—Subsec. (a). Pub. L. 96-513 substituted “Except as provided in section 612(a)(3) of this title, each” for “Each”.

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.

§ 12644. Members physically not qualified for active duty: discharge or transfer to retired status

Except as otherwise provided by law, the Secretary concerned may provide for the honorable discharge or the transfer to a retired status of members of the reserve components under his jurisdiction who are found to be not physically qualified for active duty. However, no member of the Army National Guard of the United States or the Air National Guard of the United States may be transferred under this subsection without the consent of the governor or other appropriate authority of the jurisdiction concerned.

(Aug. 10, 1956, ch. 1041, 70A Stat. 79, §1004; July 7, 1960, Pub. L. 86-603, §1(1), 74 Stat. 357; Nov. 30, 1993, Pub. L. 103-160, div. A, title V, §519, 107 Stat. 1651; renumbered §12644 and amended Oct. 5, 1994, Pub. L. 103-337, div. A, title XVI, §§1661(a)(4), 1662(h)(2), (4)(B), 108 Stat. 2980, 2996, 2997.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1004(a)	50:949.	July 9, 1952, ch. 608,
1004(b)	50:950 (last sentence).	§§ 225, 226, 66 Stat. 488.
1004(c)	50:950 (less last sentence).	

In subsection (a), the words “Each * * * who is not on active duty” are substituted for the words “when not on active duty all”. The words “examined as to his physical fitness” are substituted for the words “given physical examinations”. The words “be required to” are omitted as surplusage. The words “execute and” are inserted for clarity.

In subsection (c), the words “under his jurisdiction” are inserted for clarity.

AMENDMENTS

1994—Pub. L. 103-337, §1662(h)(2), (4)(B), renumbered section 1004 of this title as this section and substituted “Members physically not qualified for active duty: discharge or transfer to retired status” for “Physical examination” as section catchline.

Pub. L. 103-337, §1661(a)(4), struck out “(c)” before “Except as otherwise provided” and struck out subsecs. (a) and (b) which read as follows:

“(a) Each member of the Ready Reserve who is not on active duty shall—

“(1) be examined as to his physical fitness every five years, or more often as the Secretary concerned considers necessary; and

“(2) execute and submit annually a certificate of physical condition.

Each Reserve in an active status, or on an inactive status list, who is not on active duty shall execute and submit annually a certificate of physical condition.

“(b) The kind of duty to which a Reserve ordered to active duty may be assigned shall be considered in determining physical qualifications for active duty.”

1993—Subsec. (a)(1). Pub. L. 103-160 substituted “five years” for “four years”.

1960—Subsec. (a). Pub. L. 86-603 limited the requirement for a physical examination every four years, and for the annual execution of a certificate of physical condition, to the Ready Reserve, and also required each Reserve in an active status, or on an inactive status list, who is not on active duty to execute and submit annually a certificate of physical condition.

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.

CROSS REFERENCES

Discharge of reserves, see sections 12681 and 12682 of this title.

Suspension of laws during war or emergency as to warrant officers, see section 12243 of this title.

§ 12645. Commissioned officers: retention until completion of required service

(a) Except as provided in subsection (b), a reserve commissioned officer who has not completed the period of service required of him by section 651 of this title or any other provision of law may not be discharged or transferred from an active status under chapter 337, 361, 363, 573, 837, 861, or 863 of this title or chapter 21 of title 14. Unless, under regulations prescribed by the Secretary concerned, he is promoted to a higher reserve grade, he shall be retained in an active status in his reserve grade for the rest of his period of required service and shall be an additional number to the authorized strength of his grade.

(b) Subsection (a) does not prevent the discharge or transfer from an active status of—

(1) a commissioned warrant officer; or

(2) an officer on the active-duty list who is found not qualified for promotion to the grade of first lieutenant, in the case of an officer of the Army, Air Force, or Marine Corps, or lieutenant (junior grade), in the case of an officer of the Navy.

(Added Pub. L. 85-861, §1(22)(B), Sept. 2, 1958, 72 Stat. 1444, §1005; amended Pub. L. 93-586, §2, Jan. 2, 1975, 88 Stat. 1920; Pub. L. 98-525, title V, §528(a), Oct. 19, 1984, 98 Stat. 2525; renumbered §12645 and amended Pub. L. 103-337, div. A, title XVI, §§1627, 1662(h)(2), 1675(d)(2), Oct. 5, 1994, 108 Stat. 2962, 2996, 3018.)

AMENDMENT OF SECTION

Pub. L. 103-337, div. A, title XVI, §§1627, 1675(d)(2), 1691(b)(1), Oct. 5, 1994, 108 Stat. 2962, 3018, 3026, provided that, effective Oct. 1, 1996, this section is amended as follows:

(1) Subsection (a) is amended—by striking out “chapter 337, 361, 363, 573, 837, 861, or 863” and inserting in lieu thereof “chapter 573, 1407, 1409, or 1411”.

(2) Subsection (b) is amended—

(A) by striking out “or” at the end of paragraph (1);

(B) by striking out the period at the end of paragraph (2) and inserting in lieu thereof a semicolon; and

(C) by adding at the end the following:

(3) an officer on the active-duty list or reserve active-status list who has failed of selection for promotion for the second time to the grade of captain, in the case of an officer of the Army, Air Force, or Marine Corps, or to the grade of lieutenant, in the case of an officer of the Navy; or

(4) an officer whose discharge or transfer from an active status is required by law.

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1005	50:1181(1) (as applicable to 50:1194). 50:1194.	Sept. 3, 1954, ch. 1257, §§102(1) (as applicable to §204), 204, 68 Stat. 1149, 1151.

The word “subsequently” is omitted as surplusage.

AMENDMENTS

1994—Pub. L. 103-337, §1662(h)(2), renumbered section 1005 of this title as this section.

1984—Pub. L. 98-525 substituted “(a) Except as provided in subsection (b), a reserve commissioned officer” for “A reserve commissioned officer, other than a commissioned warrant officer,” struck out the comma before “may”, and added subsec. (b).

1975—Pub. L. 93-586 inserted reference to chapter 21 of title 14.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by sections 1627 and 1675(d)(2) of 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3819, 3846, 6389, 6410, 8819, 8846, 12642, 14503, 14901 of this title; title 32 section 323.

§ 12646. Commissioned officers: retention of after completing 18 or more, but less than 20, years of service

(a) If on the date prescribed for the discharge or transfer from an active status of a reserve commissioned officer he is entitled to be credited with at least 18, but less than 19, years of service computed under section 12732 of this title, he may not be discharged or transferred from an active status under chapter 337, 361, 363, 573, 837, 861, or 863 of this title or chapter 21 of title 14, without his consent before the earlier of the following dates—

(1) the date on which he is entitled to be credited with 20 years of service computed under section 12732 of this title; or

(2) the third anniversary of the date on which he would otherwise be discharged or transferred from an active status.

(b) If on the date prescribed for the discharge or transfer from an active status of a reserve commissioned officer he is entitled to be credited with at least 19, but less than 20, years of service computed under section 12732 of this title, he may not be discharged or transferred from an active status under chapter 337, 361, 363, 573, 837, 861, or 863 of this title or chapter 21 of title 14, without his consent before the earlier of the following dates—

(1) the date on which he is entitled to be credited with 20 years of service computed under section 12732 of this title; or

(2) the second anniversary of the date on which he would otherwise be discharged or transferred from an active status.

(c) An officer who is retained in an active status under subsection (a) or (b) is an additional number to those otherwise authorized.

(d) Subsections (a) and (b) do not apply to—

(1) officers who are discharged or transferred from an active status for physical disability,

for cause, or because they have reached the age at which transfer from an active status or discharge is required by law; or

(2) commissioned warrant officers.

(e) A reserve commissioned officer on active duty (other than for training) who, on the date on which he would otherwise be removed from an active status under section 3846, 3848, 3851, 3852, 6389, 6397, 6403, 6410, 8846, 8848, 8851, or 8852 of this title or section 740 of title 14, and who is within two years of qualifying for retirement under section 3911, 6323, or 8911 of this title, may, in the discretion of the Secretary concerned, be retained on active duty for a period of not more than two years, if at the end of that period he will be qualified for retirement under one of those sections and will not, before the end of that period, reach the age at which transfer from an active status or discharge is required by this title or title 14. An officer who is retained on active duty under this section may not be removed from an active status while he is on that duty. For officers covered by section 3846, 3848, 3851, or 3852 of this title, the ages at which transfer from an active status or discharge is required are those set forth in section 3843, 3844, or 3845 of this title, or section 21(e) of Public Law 85-861, as the case may be.

(Added Pub. L. 85-861, §1(22)(B), Sept. 2, 1958, 72 Stat. 1444, §1006; amended Pub. L. 86-559, §1(3)(A), June 30, 1960, 74 Stat. 264; Pub. L. 87-651, title I, §105, Sept. 7, 1962, 76 Stat. 508; Pub. L. 90-130, §1(4), Nov. 8, 1967, 81 Stat. 374; Pub. L. 93-586, §3, Jan. 2, 1975, 88 Stat. 1920; Pub. L. 96-322, §2, Aug. 4, 1980, 94 Stat. 1015; Pub. L. 96-513, title V, §511(30), Dec. 12, 1980, 94 Stat. 2922; renumbered §12646 and amended Pub. L. 103-337, div. A, title XVI, §§1662(h)(2), 1675(d)(3), Oct. 5, 1994, 108 Stat. 2996, 3018.)

AMENDMENT OF SECTION

Pub. L. 103-337, div. A, title XVI, §§1675(d)(3)(B), (C), 1691(b)(1), Oct. 5, 1994, 108 Stat. 3018, 3026, provided that, effective Oct. 1, 1996, this section is amended—

(1) by striking out “chapter 337, 361, 363, 573, 837, 861, or 863” in subsections (a) and (b) and inserting in lieu thereof “chapter 573, 1407, or 1409”; and

(2) by striking out subsection (e) and inserting in lieu thereof the following:

(e)(1) A reserve commissioned officer on active duty (other than for training) or full-time National Guard duty (other than full-time National Guard duty for training only) who, on the date on which the officer would otherwise be removed from an active status under section 6389, 14513, or 14514 of this title or section 740 of title 14, is within two years of qualifying for retirement under section 3911, 6323, or 8911 of this title may, in the discretion of the Secretary concerned and subject to paragraph (2), be retained on that duty for a period of not more than two years.

(2) An officer may be retained on active duty or full-time National Guard duty under paragraph (1) only if—

(A) at the end of the period for which the officer is retained the officer will be qualified for retirement under section 3911, 6323, or 8911 of this title; and

(B) the officer will not, before the end of that period, reach the age at which transfer from an active status or discharge is required by this title or title 14.

(3) An officer who is retained on active duty or full-time National Guard duty under this section may not be removed from an active status while on that duty.

HISTORICAL AND REVISION NOTES
1958 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1006(a)	50:1195(a) (less last 30 words).	Sept. 3, 1954, ch. 1257, §§102(1) (as applicable to §205), 205, 307(c).
1006(b).	50:1195(b) (less last 30 words).	503(c), 68 Stat. 1149, 1151, 1155, 1173; June 30, 1955, ch. 247, §1(b), 69 Stat. 218.
1006(c).	50:1227(c).	
	50:1333(c).	
1006(d).	50:1181(1) (as applicable to 50:1195).	
	50:1195(a) (last 30 words).	
	50:1195(b) (last 30 words).	
1006(e)	50:1195(c).	

In subsections (a) and (b), the words “Notwithstanding any other provisions of this chapter, except as provided in sections 1265 and 1279 of this title” and “has been credited with, or” are omitted as surplusage. The words “entitled to be” in clause (1) are inserted for clarity.

In subsection (e), the words “at the end of that period” are substituted for the word “then” for clarity. The words “before the end of that period” are substituted for the word “earlier” for clarity.

1962 ACT

The change reflects the repeal of section 611 of the Reserve Officer Personnel Act of 1954, ch. 1257 (68 Stat. 1186), formerly section 1391 of title 50, and its restatement in section 787 of title 14 (see sections 5(2) and 36A of the Act of September 2, 1958, Pub. L. 85-861 (72 Stat. 1547 and 1569)).

REFERENCES IN TEXT

Section 21(e) of Public Law 85-861, referred to in subsec. (e), is section 21(e) of Pub. L. 85-861, Sept. 2, 1958, 72 Stat. 1560, which is set out as a note under section 3843 of this title.

AMENDMENTS

1994—Pub. L. 103-337, §1662(h)(2), renumbered section 1006 of this title as this section.

Subsecs. (a), (b). Pub. L. 103-337, §1675(d)(3)(A), substituted “12732” for “1332” wherever appearing.

1980—Subsec. (e). Pub. L. 96-513 substituted “Public Law 85-861” for “the Act enacting this section”.

Pub. L. 96-322 substituted “section 740 of title 14” for “section 787 of title 14”.

1975—Subsecs. (a), (b). Pub. L. 93-586, §3(1), inserted reference to chapter 21 of title 14.

Subsec. (c). Pub. L. 93-586, §3(2), substituted “An officer who is retained” for “An officer of the Army or the Air Force who is retained”.

Subsec. (e). Pub. L. 93-586, §3(3), substituted “discharge is required by this title or title 14” for “discharge is required by this title”.

1967—Subsec. (e). Pub. L. 90-130 struck out references to sections 3847 and 8847 of this title.

1962—Subsec. (e). Pub. L. 87-651 substituted “section 787 of title 14” for “section 1391 of title 50”.

1960—Subsec. (e). Pub. L. 86-559 struck out references to sections 3849 and 8849 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by sections 1662(h)(2) and 1675(d)(3)(A) of Pub. L. 103-337 effective Dec. 1, 1994, except as otherwise provided, and amendment by section 1675(d)(3)(B), (C) 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 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3819, 3846, 8819, 8846, 14504, 14505, 14506, 14507 of this title; title 14 sections 740, 741; title 32 section 323.

§ 12647. Commissioned officers: retention in active status while assigned to Selective Service System or serving as United States property and fiscal officers

Notwithstanding chapters 337, 363, 573, 837, and 863 of this title, a reserve commissioned officer, other than a commissioned warrant officer, who is assigned to the Selective Service System or who is a property and fiscal officer appointed, designated, or detailed under section 708 of title 32, may be retained in an active status in that assignment or position until he becomes 60 years of age.

(Added Pub. L. 85-861, §1(22)(B), Sept. 2, 1958, 72 Stat. 1445, §1007; amended Pub. L. 86-559, §1(3)(B), June 30, 1960, 74 Stat. 265; renumbered §12647 and amended Pub. L. 103-337, div. A, title XVI, §§1662(h)(2), 1675(d)(4), Oct. 5, 1994, 108 Stat. 2996, 3018.)

AMENDMENT OF SECTION

Pub. L. 103-337, div. A, title XVI, §§1675(d)(4), 1691(b)(1), Oct. 5, 1994, 108 Stat. 3018, 3026, provided that, effective Oct. 1, 1996, this section is amended by striking out “chapters 337, 363, 573, 837, and 863” and inserting in lieu thereof “chapters 573, 1407, and 1409”.

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1007	50:1181(1) (as applicable to 50:1202).	Sept. 3, 1954, ch. 1257, §§102(1) (as applicable to §212), 212, 68 Stat. 1149, 1153.

The words “this title” are substituted for the words “this chapter”, since the provisions of this title requiring transfer from an active status are based on the source statute for this section (the Reserve Officer Personnel Act of 1954).

AMENDMENTS

1994—Pub. L. 103-337, §1662(h)(2), renumbered section 1007 of this title as this section.

1960—Pub. L. 86-559 inserted “or serving as United States property and fiscal officers” in section catchline, and inserted provisions in text authorizing retention of reserve commissioned officers who are property and fiscal officers, appointed, designated, or detailed under section 708 of title 32.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 1675(d)(4) of 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.

CHAPTER 1221—SEPARATION

Sec.

12681. Reserves: discharge authority.

Sec.	
12682.	Reserves: discharge upon becoming ordained minister of religion.
12683.	Reserve officers: limitation on involuntary separation.
12684.	Reserves: separation for absence without authority or sentence to imprisonment.
12685.	Reserves separated for cause: character of discharge.
12686.	Reserves on active duty within two years of retirement eligibility: limitation on release from active duty.

§ 12681. Reserves: discharge authority

Subject to other provisions of this title, reserve commissioned officers may be discharged at the pleasure of the President. Other Reserves may be discharged under regulations prescribed by the Secretary concerned.

(Added Pub. L. 103-337, div. A, title XVI, §1662(i)(1), Oct. 5, 1994, 108 Stat. 2997.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 1162(a) of this title, prior to repeal by Pub. L. 103-337, §1662(i)(2).

EFFECTIVE DATE

Chapter 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.

IMPLEMENTATION OF AGREEMENT ON RESTRUCTURING OF ARMY NATIONAL GUARD AND ARMY RESERVE

Pub. L. 103-335, title VIII, §8129, Sept. 30, 1994, 108 Stat. 2652, provided that:

“(a) FINDING.—Congress finds that the implementation of the off-site agreement may result in the loss to the Armed Forces of military personnel who have significant military experience and expertise.

“(b) REASSIGNMENT OF MEMBERS.—(1) To the maximum extent practicable, the Secretary of the Army shall ensure that members of the Armed Forces who would otherwise be separated from service as a result of the deactivation of military units of the Army National Guard and the Army Reserve under the off-site agreement be reassigned instead to units that are not being deactivated.

“(2) The reassignment of a member under paragraph (1) shall not affect the grade or rank in grade of the member.

“(c) REPORTS.—Not later than April 15 and October 15 of each calendar year while the off-site agreement is in effect, the Secretary of the Army shall submit to the congressional defense committees a semi-annual report on the number of members of the Armed Forces who were reassigned under subsection (b)(1) during the preceding six months.

“(d) DEFINITIONS.—In this section:

“(1) The term ‘congressional defense committees’ means the Committees on Armed Services and the Committees on Appropriations of the Senate and the House of Representatives [Committee on Armed Services of the House of Representatives now Committee on National Security].

“(2) The term ‘off-site agreement’ means the agreement on the restructuring of the Army National Guard and the Army Reserve.”

GUARD AND RESERVE TRANSITION INITIATIVES

Pub. L. 102-484, div. D, title XLIV, subtitle B, Oct. 23, 1992, 106 Stat. 2712, as amended by Pub. L. 103-35, title II, §202(a)(17), May 31, 1993, 107 Stat. 102; Pub. L. 103-160, div. A, title V, §561(f)(1)-(3), Nov. 30, 1993, 107 Stat. 1667, 1668; Pub. L. 103-337, div. A, title V, §518(a), (b), Oct. 5, 1994, 108 Stat. 2754, provided that:

“SEC. 4411. FORCE REDUCTION TRANSITION PERIOD DEFINED.

“In this subtitle [subtitle B (§§ 4411-4422) of title XLIV of div. D of Pub. L. 102-484], the term ‘force reduction transition period’ means the period beginning on October 1, 1991, and ending on September 30, 1999.

“SEC. 4412. MEMBER OF SELECTED RESERVE DEFINED.

“In this subtitle, the term ‘member of the Selected Reserve’ means—

“(1) a member of a unit in the Selected Reserve of the Ready Reserve; and

“(2) a Reserve designated pursuant to section 268(b) [see 10143(a)] of title 10, United States Code, who is assigned to an authorized position the performance of the duties of which qualify the member for basic pay or compensation for inactive-duty training or both.

“SEC. 4413. RESTRICTION ON RESERVE FORCE REDUCTION.

“(a) IN GENERAL.—During the force reduction transition period, a member of the Selected Reserve may not be involuntarily discharged from a reserve component of the Armed Forces, or involuntarily transferred from the Selected Reserve, before the Secretary of Defense has prescribed and implemented regulations that govern the treatment of members of the Selected Reserve assigned to such units and members of the Selected Reserve that are being subjected to such actions and a copy of such regulations has been transmitted to the Committees on Armed Services of the Senate and House of Representatives [now Committee on Armed Services of the Senate and Committee on National Security of the House of Representatives].

“(b) SAVINGS PROVISION.—Subsection (a) shall not apply to actions completed before the date of the enactment of this Act [Oct. 23, 1992].

“SEC. 4414. TRANSITION PLAN REQUIREMENTS.

“(a) PURPOSE OF PLAN.—The purpose of the regulations referred to in section 4413 shall be to ensure that the members of the Selected Reserve are treated with fairness, with respect for their service to their country, and with attention to the adverse personal consequences of Selected Reserve unit inactivations, involuntary discharges of such members from the reserve components of the Armed Forces, and involuntary transfers of such members from the Selected Reserve.

“(b) SCOPE OF PLAN.—The regulations shall include—

“(1) such provisions as are necessary to implement the provisions of this subtitle and the amendments made by this subtitle; and

“(2) such other policies and procedures for the recruitment of personnel for service in the Selected Reserve of the Ready Reserve, and for the reassignment, retraining, separation, and retirement of members of the Selected Reserve, as are appropriate for satisfying the needs of the Selected Reserve together with the purpose set out in subsection (a).

“(c) MINIMUM REQUIREMENTS FOR PLAN.—The regulations shall include the following:

“(1) The giving of a priority for enrollment in, or reassignment to, Selected Reserve units not being inactivated to—

“(A) personnel being separated from active-duty or full-time National Guard duty; and

“(B) members of the Selected Reserve whose units are inactivated.

“(2) The giving of a priority to such personnel for transfer among the reserve components of the Armed Forces in order to facilitate reassignment to such units.

“(3) A requirement that the Secretaries of the military departments take diligent actions to ensure that members of the reserve components of the Armed Forces are informed in easily understandable terms of the rights and benefits conferred upon such personnel by this subtitle, by the amendments made by this subtitle, and by such regulations.

“(4) Such other protections, preferences, and benefits as the Secretary of Defense considers appropriate.

“(d) UNIFORM APPLICABILITY.—The regulations shall apply uniformly to the Army, Navy, Air Force, and Marine Corps.

“SEC. 4415. INAPPLICABILITY TO CERTAIN DISCHARGES AND TRANSFERS.

“The protections, preferences, and benefits provided for in regulations prescribed in accordance with this subtitle do not apply with respect to a member of the Selected Reserve who is discharged from a reserve component of the Armed Forces or is transferred from the Selected Reserve to another category of the Ready Reserve, to the Standby Reserve, or to the Retired Reserve—

“(1) at the request of the member unless such request was made and approved under a provision of this subtitle or section 1331a [now 12731a] of title 10, United States Code (as added by section 4417);

“(2) because the member no longer meets the qualifications for membership in the Selected Reserve set forth in any provision of law as in effect on the day before the date of the enactment of this Act [Oct. 23, 1992];

“(3) under adverse conditions, as characterized by the Secretary of the military department concerned; or

“(4) if the member—

“(A) is immediately eligible for retired pay based on military service under any provision of law;

“(B) is serving as a military technician, as defined in section 8401(30) of title 5, United States Code, and would be immediately eligible for an un-reduced annuity under the provisions of subchapter III of chapter 83 of such title, relating to the Civil Service Retirement and Disability System, or the provisions of chapter 84 of such title, relating to the Federal Employees' Retirement System; or

“(C) is eligible for separation pay under section 1174 of title 10, United States Code.

“SEC. 4416. FORCE REDUCTION PERIOD RETIREMENTS.

“(a) TEMPORARY SPECIAL AUTHORITY FOR ELIMINATION OF OFFICERS FROM ACTIVE STATUS.—(1) During the force reduction transition period, the Secretary of the Army and the Secretary of the Air Force may, whenever the Secretary determines that such action is necessary, convene a board to recommend an appropriate number of officers in the reserve components of the Army or the Air Force, as the case may be, who (A) have met the age and service requirements specified in section 1331 [now 12731] of title 10, United States Code, for entitlement to retired pay for nonregular service except for not being at least 60 years of age, or (B) are immediately eligible for retired pay based on military service under any provision of law, for elimination from an active status.

“(2) An officer who is to be eliminated from an active status under this section, shall, if qualified, be given an opportunity to request transfer to the appropriate Retired Reserve and, if the officer requests it, shall be so transferred. If the officer is not transferred to the Retired Reserve, the officer shall, in the discretion of the Secretary concerned, be transferred to the appropriate inactive status list or be discharged.

“(3) A member of the Army National Guard of the United States or the Air National Guard of the United States may not be eliminated from an active status under this section without the consent of the Governor or other appropriate authority of the State or territory, Puerto Rico, or the District of Columbia, whichever is concerned.

“(b) TEMPORARY SPECIAL AUTHORITY.—During the force reduction transition period, the Secretary concerned may grant a member of the Selected Reserve under the age of 60 years the annual payments provided for under this section if—

“(1) as of October 1, 1991, that member has completed at least 20 years of service computed under section 1332 [now 12732] of title 10, United States Code, or after that date and before October 1, 1999,

such member completes 20 years of service computed under that section;

“(2) the member satisfies the requirements of paragraphs (3) and (4) of section 1331(a) [now 12731(a)] of title 10, United States Code; and

“(3) the member applies for transfer to the Retired Reserve.

“(c) [Repealed. Pub. L. 103-160, div. A, title V, § 561(f)(2)(B), Nov. 30, 1993, 107 Stat. 1667.]

“(d) ANNUAL PAYMENT PERIOD.—An annual payment granted to a member under this section shall be paid for a period of years prescribed by the Secretary concerned, except that if the member attains 60 years of age during that period the entitlement to the annual payment shall terminate on the member's 60th birthday. A period prescribed for purposes of this subsection may not be less than one year nor more than five years.

“(e) COMPUTATION OF ANNUAL PAYMENT.—(1) The annual payment for a member shall be equal to the amount determined by multiplying the product of 12 and the applicable percent under paragraph (2) by the monthly basic pay to which the member would be entitled if the member were serving on active duty as of the date the member is transferred to the Retired Reserve.

“(2)(A) Subject to subparagraph (B) the percent applicable to a member for purposes of paragraph (1) is 5 percent plus 0.5 percent for each full year of service, computed under section 1332 [now 12732] of title 10, United States Code, that a member has completed in excess of 20 years before transfer to the Retired Reserve.

“(B) The maximum percent applicable under this paragraph is 10 percent.

“(3) In the case of a member who will attain 60 years of age during the 12-month period following the date on which an annual payment is due, the payment shall be paid on a prorated basis of one-twelfth of the annual payment for each full month between the date on which the payment is due and the date on which the member attains age 60.

“(f) APPLICABILITY SUBJECT TO NEEDS OF THE SERVICE.—(1) Subject to regulations prescribed by the Secretary of Defense, the Secretary concerned may limit the applicability of this section to any category of personnel defined by the Secretary concerned in order to meet a need of the armed force under the jurisdiction of the Secretary concerned to reduce the number of members in certain grades, the number of members who have completed a certain number of years of service, or the number of members who possess certain military skills or are serving in designated competitive categories.

“(2) A limitation under paragraph (1) shall be consistent with the purpose set forth in section 4414(a).

“(g) NONDUPLICATION OF BENEFITS.—A member transferred to the Retired Reserve under the authority of section 1331a [now 12731a] of title 10, United States Code (as added by section 4417), may not be paid annual payments under this section.

“(h) FUNDING.—To the extent provided in appropriations Acts, payments under this section in a fiscal year shall be made out of amounts available to the Department of Defense for that fiscal year for the pay of reserve component personnel.

“SEC. 4417. RETIREMENT WITH 15 YEARS OF SERVICE.

“(a) AUTHORITY.—[Enacted section 1331a [now 12731a] of this title.]

“(b) CLERICAL AMENDMENT.—[Amended analysis of chapter 67 [now 1223] of this title.]

“SEC. 4418. SEPARATION PAY.

“(a) ELIGIBILITY.—Subject to section 4415, a member of the Selected Reserve who, after completing at least 6 years of service computed under section 1332 [now 12732] of title 10, United States Code, and before completing 15 years of service computed under that section, is involuntarily discharged from a reserve component of the Armed Forces or is involuntarily transferred from the Selected Reserve during the force reduction transition period is entitled to separation pay.

“(b) AMOUNT OF SEPARATION PAY.—(1) The amount of separation pay which may be paid to a person under this section is 15 percent of the product of—

“(A) the years of service credited to that person under section 1333 [now 12733] of title 10, United States Code; and

“(B) 62 times the daily equivalent of the monthly basic pay to which the person would have been entitled had the person been serving on active duty at the time of the person’s discharge or transfer.

“(2) In the case of a person who receives separation pay under this section and who later receives basic pay, compensation for inactive duty training, or retired pay under any provision of law, such basic pay, compensation, or retired pay, as the case may be, shall be reduced by 75 percent until the total amount withheld through such reduction equals the total amount of the separation pay received by that person under this section.

“(c) RELATIONSHIP TO OTHER SERVICE-RELATED PAY.—Subsections (g) and (h) of section 1174 of title 10, United States Code, shall apply to separation pay under this section.

“(d) REGULATIONS.—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.

“SEC. 4419. WAIVER OF CONTINUED SERVICE REQUIREMENT FOR CERTAIN RESERVISTS FOR MONTGOMERY GI BILL BENEFITS.

“(a) CHAPTER 106.—[Amended section 2133(b)(1) [now 16133(b)(1)] of this title.]

“(b) CHAPTER 30.—[Amended section 3012(b)(1)(B) of Title 38, Veterans’ Benefits.]

“SEC. 4420. COMMISSARY AND EXCHANGE PRIVILEGES.

“The Secretary of Defense shall prescribe regulations to authorize a person who involuntarily ceases to be a member of the Selected Reserve during the force reduction transition period to continue to use commissary and exchange stores in the same manner as a member of the Selected Reserve for a period of two years beginning on the later of—

“(1) the date on which that person ceases to be a member of the Selected Reserve; or

“(2) the date of the enactment of this Act [Oct. 23, 1992].

“SEC. 4421. APPLICABILITY AND TERMINATION OF BENEFITS.

“(a) APPLICABILITY SUBJECT TO NEEDS OF THE SERVICE.—(1) Subject to regulations prescribed by the Secretary of Defense, the Secretary of the military department concerned may limit the applicability of a benefit provided under sections 4418 through 4420 to any category of personnel defined by the Secretary concerned in order to meet a need of the armed force under the jurisdiction of the Secretary concerned to reduce the number of members in certain grades, the number of members who have completed a certain number of years of service, or the number of members who possess certain military skills or are serving in designated competitive categories.

“(2) A limitation under paragraph (1) shall be consistent with the purpose set forth in section 4414(a).

“(b) INAPPLICABILITY TO CERTAIN SEPARATIONS AND REASSIGNMENTS.—Sections 4418 through 4420 do not apply with respect to personnel who cease to be members of the Selected Reserve under adverse conditions, as characterized by the Secretary of the military department concerned.

“(c) TERMINATION OF BENEFITS.—The eligibility of a member of a reserve component of the Armed Forces (after having involuntarily ceased to be a member of the Selected Reserve) to receive benefits and privileges under sections 4418 through 4420 terminates upon the involuntary separation of such member from the Armed Forces under adverse conditions, as characterized by the Secretary of the military department concerned.

“SEC. 4422. READJUSTMENT BENEFITS FOR CERTAIN VOLUNTARILY SEPARATED MEMBERS OF THE RESERVE COMPONENTS.

“(a) SPECIAL SEPARATION BENEFITS.—[Amended section 1174a of this title.]

“(b) VOLUNTARY SEPARATION INCENTIVE.—[Amended section 1175 of this title.]”

[Section 518(c) of Pub. L. 103-337 provided that: “The amendments made by this section [amending section 4416 of Pub. L. 102-484, set out above] shall apply only to payments to a member of the Armed Forces under subsection (b) of section 4416 of the Defense Conversion, Reinvestment, and Transition Assistance Act of 1992 (division D of Public Law 102-484) that are granted by the Secretary of Defense to that member after the date of the enactment of this Act [Oct. 5, 1994].”]

CROSS REFERENCES

Discharge of members not physically qualified, see section 12644 of this title.

§ 12682. Reserves: discharge upon becoming ordained minister of religion

Under regulations to be prescribed by the Secretary of Defense, a Reserve who becomes a regular or ordained minister of religion is entitled upon his request to a discharge from his reserve enlistment or appointment.

(Added Pub. L. 103-337, div. A, title XVI, § 1662(i)(1), Oct. 5, 1994, 108 Stat. 2997.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 1162(b) of this title, prior to repeal by Pub. L. 103-337, § 1662(i)(2).

§ 12683. Reserve officers: limitation on involuntary separation

(a) An officer of a reserve component who has at least five years of service as a commissioned officer may not be separated from that component without his consent except—

(1) under an approved recommendation of a board of officers convened by an authority designated by the Secretary concerned; or

(2) by the approved sentence of a court-martial.

(b) Subsection (a) does not apply—

(1) to a separation under section 12684, 14901, or 14907 of this title;

(2) to a dismissal under section 1161(a) of this title; or

(3) to a transfer under section 12213, 12214, 14514, or 14515 of this title.

(Added Pub. L. 103-337, div. A, title XVI, § 1662(i)(1), Oct. 5, 1994, 108 Stat. 2997.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 1163(a) of this title, prior to repeal by Pub. L. 103-337, § 1662(i)(2).

§ 12684. Reserves: separation for absence without authority or sentence to imprisonment

The President or the Secretary concerned may drop from the rolls of the armed force concerned any Reserve—

(1) who has been absent without authority for at least three months; or

(2) 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.

(Added Pub. L. 103-337, div. A, title XVI, §1662(i)(1), Oct. 5, 1994, 108 Stat. 2998.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 1163(b) of this title, prior to repeal by Pub. L. 103-337, §1662(i)(2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12683, 12685 of this title.

§ 12685. Reserves separated for cause: character of discharge

A member of a reserve component who is separated for cause, except under section 12684 of this title, is entitled to a discharge under honorable conditions unless—

(1) the member is discharged under conditions other than honorable under an approved sentence of a court-martial or under the approved findings of a board of officers convened by an authority designated by the Secretary concerned; or

(2) the member consents to a discharge under conditions other than honorable with a waiver of proceedings of a court-martial or a board.

(Added Pub. L. 103-337, div. A, title XVI, §1662(i)(1), Oct. 5, 1994, 108 Stat. 2998.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 1163(c) of this title, prior to repeal by Pub. L. 103-337, §1662(i)(2).

§ 12686. Reserves on active duty within two years of retirement eligibility: limitation on release from active duty

Under regulations to be prescribed by the Secretary concerned, which shall be as uniform as practicable, a member of a reserve component who is on active duty (other than for training) and is within two years of becoming eligible for retired pay or retainer pay under a purely military retirement system, may not be involuntarily released from that duty before he becomes eligible for that pay, unless the release is approved by the Secretary.

(Added Pub. L. 103-337, div. A, title XVI, §1662(i)(1), Oct. 5, 1994, 108 Stat. 2998.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 1163(d) of this title, prior to repeal by Pub. L. 103-337, §1662(i)(2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14504, 14505, 14506, 14507 of this title.

CHAPTER 1223—RETIRED PAY FOR NON-REGULAR SERVICE

Sec. 12731. 12731a.	Age and service requirements. Temporary special retirement qualification authority.
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Sec. 12732. 12733. 12734. 12735. 12736. 12737. 12738. 12739.	Entitlement to retired pay: computation of years of service. Computation of retired pay: computation of years of service. Time not creditable toward years of service. Inactive status list. Service credited for retired pay benefits not excluded for other benefits. Limitation on active duty. Limitations on revocation of retired pay. Computation of retired pay.
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AMENDMENTS

1994—Pub. L. 103-337, div. A, title XVI, §1662(j)(1), Oct. 5, 1994, 108 Stat. 2998, renumbered chapter 67 of this title as this chapter and amended analysis generally, renumbering items 1331 to 1338 as items 12731 to 12738, respectively, substituting “Entitlement to retired pay: computation of years of service” for “Computation of years of service in determining entitlement to retired pay” in item 12732 and “Computation of retired pay: computation of years of service” for “Computation of years of service in computing retired pay” in item 12733, and adding item 12739.

1992—Pub. L. 102-484, div. D, title XLIV, §4417(b), Oct. 23, 1992, 106 Stat. 2717, added item 1331a.

1986—Pub. L. 99-348, title III, §304(b)(1), July 1, 1986, 100 Stat. 703, added item 1338.

CROSS REFERENCES

Creditable service for civil service retirement, see sections 8332, 8411 of Title 5, Government Organization and Employees.

Retention after qualifications for retired pay, see section 12308 of this title.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1053, 1064, 1065, 1076, 1331, 1370, 1407, 1409, 1447, 1451, 1452, 1463, 3961, 8961, 10153, 12307, 12308, 12319, 14901, 14905 of this title; title 5 sections 8332, 8411; title 38 sections 1965, 1968, 2301, 2306; title 50 section 2082.

§ 12731. Age and service requirements

(a) Except as provided in subsection (c), a person is entitled, upon application, to retired pay computed under section 12739 of this title, if the person—

(1) is at least 60 years of age;

(2) has performed at least 20 years of service computed under section 12732 of this title;

(3) performed the last eight years of qualifying service while a member of any category named in section 12732(a)(1) of this title, but not while a member of a regular component, the Fleet Reserve, or the Fleet Marine Corps Reserve; and

(4) is not entitled, under any other provision of law, to retired pay from an armed force or retainer pay as a member of the Fleet Reserve or the Fleet Marine Corps Reserve.

(b) Application for retired pay under this section must be made to the Secretary of the military department, or the Secretary of Transportation, as the case may be, having jurisdiction at the time of application over the armed force in which the applicant is serving or last served.

(c)(1) A person who, before August 16, 1945, was a Reserve of an armed force, or a member of the Army without component or other category covered by section 12732(a)(1) of this title except a regular component, is not eligible for retired pay under this chapter unless—

(A) the person performed active duty during World War I or World War II; or

(B) the person performed active duty (other than for training) during the Korean conflict, the Berlin crisis, or the Vietnam era.

(2) In this subsection:

(A) The term "World War I" means the period beginning on April 6, 1917, and ending on November 11, 1918.

(B) The term "World War II" means the period beginning on September 9, 1940, and ending on December 31, 1946.

(C) The term "Korean conflict" means the period beginning on June 27, 1950, and ending on July 27, 1953.

(D) The term "Berlin crisis" means the period beginning on August 14, 1961, and ending on May 30, 1963.

(E) The term "Vietnam era" means the period beginning on August 5, 1964, and ending on March 27, 1973.

(d) The Secretary concerned shall notify each person who has completed the years of service required for eligibility for retired pay under this chapter. The notice shall be sent, in writing, to the person concerned within one year after the person completes that service. The notice shall include notice of the elections available to such person under the Survivor Benefit Plan established under subchapter II of chapter 73 of this title and the Supplemental Survivor Benefit Plan established under subchapter III of that chapter, and the effects of such elections.

(e) Notwithstanding section 8301 of title 5, the date of entitlement to retired pay under this section shall be the date on which the requirements of subsection (a) have been completed.

(f) In the case of a person who completes the service requirements of subsection (a)(2) during the period beginning on the date of the enactment of this subsection and ending on September 30, 1999, the provisions of subsection (a)(3) shall be applied by substituting "the last six years" for "the last eight years".

(Aug. 10, 1956, ch. 1041, 70A Stat. 102, §1331; Aug. 21, 1958, Pub. L. 85-704, 72 Stat. 702; Sept. 2, 1958, Pub. L. 85-861, §33(a)(8), 72 Stat. 1564; Oct. 14, 1966, Pub. L. 89-652, §1, 80 Stat. 902; Aug. 13, 1968, Pub. L. 90-485, §2, 82 Stat. 754; Sept. 30, 1978, Pub. L. 95-397, title II, §206, 92 Stat. 847; Dec. 12, 1980, Pub. L. 96-513, title V, §511(47), 94 Stat. 2924; Sept. 24, 1983, Pub. L. 98-94, title IX, §924(a), 97 Stat. 644; Nov. 29, 1989, Pub. L. 101-189, div. A, title XIV, §1404(b)(1), 103 Stat. 1586; renumbered §12731 and amended Oct. 5, 1994, Pub. L. 103-337, div. A, title VI, §636, title XVI, §1662(j)(1), 108 Stat. 2790, 2999.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1331(a)	10:1036a(a) (less last proviso), 10:1036d (1st sentence), 34:440i(a) (less last proviso), 34:440j (1st sentence).	June 29, 1948, ch. 708, §§302(a), (d), 305 (1st sentence), 62 Stat. 1087-1089; July 12, 1952, ch. 698, 66 Stat. 590.
1331(b)	10:1036a(d), 34:440i(d).	
1331(c)	10:1036a(a) (last proviso), 34:440i(a) (last proviso).	

In subsection (a), the words "is entitled" are substituted for the words "shall * * * be granted". The words "in the status of a commissioned officer, warrant officer, flight officer, or enlisted person" and the references to reserve components are omitted as surplusage. Reference to the Army and the Air Force without component is inserted, since the words "reserve component", as used in 10:1036a(a), include all members of the Army and the Air Force except members of the regular components thereof. The words "service, computed under section 1332 of this title" are substituted for the words "satisfactory Federal service" to make it clear that some service that is not normally covered by the latter term may be counted in determining rights to retired pay under this chapter. Section 311 of the source statute, which made title III of that act applicable to the Coast Guard, was expressly repealed by the Act of August 4, 1949, ch. 393, §20, 63 Stat. 565, the act which codified Title 14 of the United States Code. 14 U.S.C. 755(e) provides for Coast Guard Reservists the same retirement benefits as those prescribed by law for the Naval Reserve, and, for this purpose, confers upon the Secretary of the Treasury the same authority as that conferred upon the Secretary of the Navy, when the Coast Guard is operating under the Treasury Department. Accordingly, the revised chapter is made expressly applicable to the Coast Guard.

In subsection (c), the words "the Army without component or other category covered by section 1332(a)(1) of this title" are inserted, since the words "reserve component", as used in 10:1036a(a), also cover members without component and members of the other special categories listed. The words "annual training duty, or attendance at a school designated as a service school by law or by the Secretary of the appropriate military department" are inserted since the words "active Federal service", as used in 10:1036a(a), also cover the additional service listed. The words "active duty" are substituted for the words "active Federal service" for uniformity.

1958 ACT

The change makes clear that in the determination of eligibility for retired pay for non-regular service, the service of a Regular serving in a temporary grade (that is, without component) may not be counted. See opinion of the Judge Advocate General of the Army, JAGA 1957/4463, May 13, 1957.

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (f), means the date of enactment of Pub. L. 103-337 which added subsec. (f) and which was approved Oct. 5, 1994.

AMENDMENTS

1994—Pub. L. 103-337, §1662(j)(1), renumbered section 1331 of this title as this section and amended text generally, making changes in style and in references to other sections.

Subsec. (f). Pub. L. 103-337, §636, added subsec. (f) which read as follows: "In the case of a person who completes the service requirements of subsection (a)(2) during the period beginning on the date of the enactment of this subsection and ending on September 30, 1999, the provisions of subsection (a)(3) shall be applied by substituting 'the last six years' for 'the last eight years'."

1989—Subsec. (d). Pub. L. 101-189 inserted "and the Supplemental Survivor Benefit Plan established under subchapter III of that chapter," after "this title".

1983—Subsec. (c). Pub. L. 98-94 substituted "unless—
"(1) he performed active duty after April 5, 1917, and before November 12, 1918, or after September 8, 1940, and before January 1, 1947; or

"(2) he performed active duty (other than for training) after June 26, 1950, and before July 28, 1953, after August 13, 1961, and before May 31, 1963, or after August 4, 1964, and before March 28, 1973."

for “unless he performed active duty after April 5, 1917, and before November 12, 1918, or after September 8, 1940, and before January 1, 1947, or unless he performed active duty (other than for training) after June 26, 1950, and before July 28, 1953”.

1980—Subsec. (b). Pub. L. 96-513, §511(47)(A), substituted “Secretary of Transportation” for “Secretary of the Treasury”.

Subsec. (e). Pub. L. 96-513, §511(47)(B), struck out “United States Code,” after “title 5.”

1978—Subsec. (d). Pub. L. 95-397 inserted provisions requiring that notice include notification of elections available under the Survivor Benefit Plan and the effects thereof.

1968—Subsec. (e). Pub. L. 90-485 added subsec. (e).

1966—Subsec. (d). Pub. L. 89-652 added subsec. (d).

1958—Subsec. (a)(3). Pub. L. 85-861 struck out provisions which related to service as a member of the Army or the Air Force without component.

Subsec. (c). Pub. L. 85-704 made persons who performed active duty (other than for training) after June 26, 1950, and before July 28, 1953, eligible for retired pay under this chapter.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 1662(j)(1) 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 1404(b)(3) of Pub. L. 101-189, as amended by Pub. L. 101-510, div. A, title VI, §631(1), Nov. 5, 1990, 104 Stat. 1580, provided that: “The amendments made by paragraphs (1) and (2) [amending this section and section 3101 [now 5301] of Title 38, Veterans’ Benefits] shall take effect on April 1, 1992.”

EFFECTIVE DATE OF 1983 AMENDMENT

Section 924(b) of Pub. L. 98-94 provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to retired pay payable for months beginning after September 30, 1983, or the date of the enactment of this Act [Sept. 24, 1983], whichever is later.”

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

Amendment by Pub. L. 95-397 applicable to notifications after Sept. 30, 1978, see section 210(b) of Pub. L. 95-397, set out as a note under section 1447 of this title.

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 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.

RESERVE RETIREMENT SYSTEM; REPORT TO CONGRESS

Pub. L. 99-348, title III, §302, July 1, 1986, 100 Stat. 702, directed Secretary of Defense to submit to Congress, not later than Feb. 1, 1988, a report on the retirement system provided under chapter 67 of this title for members of Armed Forces performing non-regular-service, including in the report any proposals of the Secretary for modifications to such system.

SURVIVOR ANNUITIES; EFFECTIVE DATE

Pub. L. 94-448, §1, Oct. 1, 1976, 90 Stat. 1499, provided: “That for the purposes of survivor annuities under sub-

chapter I of chapter 73 of title 10, United States Code [section 1431 et seq. of this title], and under prior corresponding provisions of law, the provisions of section 1331(e) [now 12731(e)] of such title 10, relating to the date of entitlement to retired pay under chapter 67 [now 1223] of such title 10, shall be effective as of November 1, 1953.”

PAYMENT OF SURVIVOR ANNUITIES BENEFITS PRIOR TO OCTOBER 1, 1976

Pub. L. 94-448, §2, Oct. 1, 1976, 90 Stat. 1499, provided that: “No benefits shall be paid to any person for any period prior to the date of enactment of this Act [Oct. 1, 1976] as a result of the enactment of this Act.”

ENTITLEMENT TO RETIREMENT PAY AFTER OCTOBER 14, 1966; CONCLUSIVENESS

Notification of completion of requisite years of service as conclusive for entitlement to retirement pay if made after Oct. 14, 1966, see section 3 of Pub. L. 89-652, set out as a note under section 1406 of this title.

CROSS REFERENCES

Cadets at Military, Air Force, and Naval Academies, appointment of children of members granted retired pay, see sections 4342, 6954, and 9342 of this title.

Computation of retired pay, see section 1401 of this title.

Years of service, computation of, see section 1405 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1331, 1370, 1405, 1406, 1407, 1408, 1447, 1448, 1482, 4342, 6954, 9342, 12731a, 12732, 12738 of this title.

§ 12731a. Temporary special retirement qualification authority

(a) RETIREMENT WITH AT LEAST 15 YEARS OF SERVICE.—For the purposes of section 12731 of this title, the Secretary concerned may—

(1) during the period described in subsection (b), determine to treat a member of the Selected Reserve of a reserve component of the armed force under the jurisdiction of that Secretary as having met the service requirements of subsection (a)(2) of that section and provide the member with the notification required by subsection (d) of that section if the member—

(A) as of October 1, 1991, has completed at least 15, and less than 20, years of service computed under section 12732 of this title; or
(B) after that date and before October 1, 1999, completes 15 years of service computed under that section; and

(2) upon the request of the member submitted to the Secretary, transfer the member to the Retired Reserve.

(b) PERIOD OF AUTHORITY.—The period referred to in subsection (a)(1) is the period beginning on October 23, 1992, and ending on October 1, 1999.

(c) APPLICABILITY SUBJECT TO NEEDS OF THE SERVICE.—(1) The Secretary concerned may limit the applicability of subsection (a) to any category of personnel defined by the Secretary in order to meet a need of the armed force under the jurisdiction of the Secretary to reduce the number of members in certain grades, the number of members who have completed a certain number of years of service, or the number of members who possess certain military skills or are serving in designated competitive categories.

(2) A limitation under paragraph (1) shall be consistent with the purpose set forth in section 4414(a) of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102-484; 106 Stat. 2713).

(3) Notwithstanding the provisions of section 4415(2) of the Defense Conversion¹ Reinvestment, and Transition Assistance Act of 1992 (division D of Public Law 102-484; 106 Stat. 2714), the Secretary concerned may, consistent with the other provisions of this section, provide the notification required by section 12731(d) of this title to a member who no longer meets the qualifications for membership in the Selected Reserve solely because the member is unfit because of physical disability. Such notification may not be made if the disability is the result of the member's intentional misconduct, willful neglect, or willful failure to comply with standards and qualifications for retention established by the Secretary concerned or was incurred during a period of unauthorized absence.

(d) EXCLUSION.—This section does not apply to persons referred to in section 12731(c) of this title.

(e) REGULATIONS.—The authority provided in this section shall be subject to regulations prescribed by the Secretary of Defense and by the Secretary of Transportation with respect to the Coast Guard.

(Added Pub. L. 102-484, div. D, title XLIV, §4417(a), Oct. 23, 1992, 106 Stat. 2716, §1331a; amended Pub. L. 103-35, title II, §201(f)(2), May 31, 1993, 107 Stat. 99; Pub. L. 103-160, div. A, title V, §§561(f)(4), 564(c), Nov. 30, 1993, 107 Stat. 1668, 1670; renumbered §12731a and amended Pub. L. 103-337, div. A, title V, §517, title XVI, §1662(j)(1), Oct. 5, 1994, 108 Stat. 2754, 2998, 3000.)

REFERENCES IN TEXT

Section 4414(a) of the National Defense Authorization Act for Fiscal Year 1993 and section 4415(2) of the Defense Conversion[,] Reinvestment, and Transition Assistance Act of 1992, referred to in subsec. (c)(2), (3), are sections 4414(a) and 4415(2) of Pub. L. 102-484, which are set out in a note under section 12681 of this title.

AMENDMENTS

1994—Pub. L. 103-337, §1662(j)(1), renumbered section 1331a of this title as this section and amended text generally, changing references to other sections.

Subsec. (c)(3). Pub. L. 103-337, §517, added par. (3) which read as follows: “Notwithstanding the provisions of section 4415(2) of the Defense Conversion Reinvestment, and Transition Assistance Act of 1992 (division D of Public Law 102-484; 106 Stat. 2714), the Secretary concerned may, consistent with the other provisions of this section, provide the notification required by section 1331(d) of this title to a member who no longer meets the qualifications for membership in the Selected Reserve solely because the member is unfit because of physical disability. Such notification may not be made if the disability is the result of the member's intentional misconduct, willful neglect, or willful failure to comply with standards and qualifications for retention established by the Secretary concerned or was incurred during a period of unauthorized absence.”

1993—Subsec. (a). Pub. L. 103-160, §564(c)(1), substituted “Secretary concerned” for “Secretary of a military department” in introductory provisions.

Subsec. (a)(1)(B). Pub. L. 103-160, §561(f)(4)(A), substituted “October 1, 1999” for “October 1, 1995”.

Subsec. (a)(2). Pub. L. 103-160, §561(f)(4)(B), struck out “within one year after the date of the notification referred to in paragraph (1)” after “to the Secretary”.

Subsec. (b). Pub. L. 103-160, §561(f)(4)(C), substituted “October 1, 1999” for “October 1, 1995”.

Pub. L. 103-35 substituted “October 23, 1992.” for “the date of the enactment of the National Defense Authorization Act for Fiscal Year 1993”.

Subsec. (c)(1). Pub. L. 103-160, §564(c)(2), struck out “of the military department” after “The Secretary”.

Subsec. (e). Pub. L. 103-160, §564(c)(3), inserted before period at end “and by the Secretary of Transportation with respect to the Coast Guard”.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 1662(j)(1) 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 38 sections 1965, 1968.

§ 12732. Entitlement to retired pay: computation of years of service

(a) Except as provided in subsection (b), for the purpose of determining whether a person is entitled to retired pay under section 12731 of this title, the person's years of service are computed by adding the following:

(1) The person's years of service, before July 1, 1949, in the following:

(A) The armed forces.

(B) The federally recognized National Guard before June 15, 1933.

(C) A federally recognized status in the National Guard before June 15, 1933.

(D) The National Guard after June 14, 1933, if his service therein was continuous from the date of his enlistment in the National Guard, or his Federal recognition as an officer therein, to the date of his enlistment or appointment, as the case may be, in the National Guard of the United States, the Army National Guard of the United States, or the Air National Guard of the United States.

(E) The Naval Reserve Force.

(F) The Naval Militia that conformed to the standards prescribed by the Secretary of the Navy.

(G) The National Naval Volunteers.

(H) The Army Nurse Corps, the Navy Nurse Corps, the Nurse Corps Reserve of the Army, or the Nurse Corps Reserve of the Navy, as it existed at any time after February 2, 1901.

(I) The Army under an appointment under the Act of December 22, 1942 (ch. 805, 56 Stat. 1072).

(J) An active full-time status, except as a student or apprentice, with the Medical Department of the Army as a civilian employee—

(i) in the dietetic or physical therapy categories, if the service was performed after April 6, 1917, and before April 1, 1943; or

(ii) in the occupational therapy category, if the service was performed before appointment in the Army Nurse Corps or the Women's Medical Specialist Corps and before January 1, 1949, or before appointment in the Air Force before January 1,

¹ So in original. Probably should be followed by a comma.

1949, with a view to designation as an Air Force nurse or medical specialist.

(2) Each one-year period, after July 1, 1949, in which the person has been credited with at least 50 points on the following basis:

(A) One point for each day of—

- (i) active service; or
- (ii) full-time service under sections 316, 502, 503, 504, and 505 of title 32 while performing annual training duty or while attending a prescribed course of instruction at a school designated as a service school by law or by the Secretary concerned;

if that service conformed to required standards and qualifications.

(B) One point for each attendance at a drill or period of equivalent instruction that was prescribed for that year by the Secretary concerned and conformed to the requirements prescribed by law, including attendance under section 502 of title 32.

(C) Points at the rate of 15 a year for membership—

- (i) in a reserve component of an armed force,
- (ii) in the Army or the Air Force without component, or
- (iii) in any other category covered by subsection (a)(1) except a regular component.

For the purpose of clauses (A), (B), and (C), service in the National Guard shall be treated as if it were service in a reserve component, if the person concerned was later appointed in the National Guard of the United States, the Army National Guard of the United States, the Air National Guard of the United States, or as a Reserve of the Army or the Air Force, and served continuously in the National Guard from the date of his Federal recognition to the date of that appointment.

(3) The person's years of active service in the Commissioned Corps of the Public Health Service.

(4) The person's years of active commissioned service in the National Oceanic and Atmospheric Administration (including active commissioned service in the Environmental Science Services Administration and in the Coast and Geodetic Survey).

(b) The following service may not be counted under subsection (a):

(1) Service (other than active service) in an inactive section of the Organized Reserve Corps or of the Army Reserve, or in an inactive section of the officers' section of the Air Force Reserve.

(2) Service (other than active service) after June 30, 1949, while on the Honorary Retired List of the Naval Reserve or of the Marine Corps Reserve.

(3) Service in the inactive National Guard.

(4) Service in a non-federally recognized status in the National Guard.

(5) Service in the Fleet Reserve or the Fleet Marine Corps Reserve.

(6) Service as an inactive Reserve nurse of the Army Nurse Corps established by the Act of February 2, 1901 (ch. 192, 31 Stat. 753), as

amended, and service before July 1, 1938, as an inactive Reserve nurse of the Navy Nurse Corps established by the Act of May 13, 1908 (ch. 166, 35 Stat. 146).

(7) Service in any status other than that as commissioned officer, warrant officer, nurse, flight officer, aviation midshipman, appointed aviation cadet, or enlisted member, and that described in clauses (I) and (J) of subsection (a)(1).

(Aug. 10, 1956, ch. 1041, 70A Stat. 102, § 1332; Sept. 2, 1958, Pub. L. 85-861, § 33(a)(9), 72 Stat. 1565; Aug. 25, 1959, Pub. L. 86-197, § 1(1)-(3), 73 Stat. 425; Oct. 8, 1964, Pub. L. 88-636, § 1, 78 Stat. 1034; Dec. 26, 1974, Pub. L. 93-545, § 1, 88 Stat. 1741; Dec. 12, 1980, Pub. L. 96-513, title V, § 511(48), 94 Stat. 2924; renumbered § 12732 and amended Oct. 5, 1994, Pub. L. 103-337, div. A, title XVI, § 1662(j)(1), 108 Stat. 2998, 3000.)

HISTORICAL AND REVISION NOTES
1956 ACT

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1332(a)	10:1036a(b). 10:1036a(c). 10:1036e(a). 10:1036e(b). 10:1036e(c) (less applicability to determination of retired pay). 10:1036e(d) (less applicability to determination of retired pay). 34:440i(b). 34:440i(c). 34:440m(a). 34:440m(b). 34:440m(c) (less applicability to determination of retired pay). 34:440m(d) (less applicability to determination of retired pay).	June 29, 1948, ch. 708, § 302(b), (c), 62 Stat. 1089; Sept. 7, 1949, ch. 547, § 1, 2, 63 Stat. 693. June 29, 1948, ch. 708, § 306 (less (c) and (d), as applicable to determination of retired pay), 62 Stat. 1088.
1332(b)	10:1036e(e). 10:1036e(f). 34:440m(e). 34:440m(f).	

Subsection (a) consolidates the provisions of 10:1036a and 1036e(b)-(d), and 34:440i and 440m(b)-(d), relating to service that may be counted in determining eligibility for retired pay under this chapter. 10:1036e(a) and 34:440m(a) are omitted as covered by the enumeration of the service that may be counted for the purposes of the revised section.

In subsection (a)(1)(A)-(F), the requirement that the service must have been satisfactory is omitted as executed, since all service before July 1, 1949, has been found to have been satisfactory by the Secretaries concerned.

In subsection (a)(1)(A), the words "the armed forces" are substituted for clauses (1), (2), (5)-(7), (9), (10), and (13)-(16), of 10:1036e(c) and 34:440m(c), and so much of clause (8) of 10:1036e(c) and 34:440m(c) as relates to the Naval Reserve and the Naval Reserve Force as constituted after February 28, 1925, since the service covered by those clauses when added to service in the regular components, comprises all service in the armed forces.

In subsection (a)(1)(B)-(C), the words "June 15" are inserted to reflect the exact date of the change in National Guard status made by section 5 of the Act of June 15, 1933, ch. 87, 48 Stat. 155, which established the National Guard of the United States as a reserve component of the Army.

In subsection (a)(1)(D), 10:1036e(c)(8) (last 25 words), 10:1036e(c)(9) (last 22 words), 34:440m(c)(8) (last 25 words), and 34:440m(c)(9) (last 22 words) are omitted as covered by subsection (b)(5).

In subsection (a)(2)(A), the words "service that conformed to required standards and qualifications" are

substituted for 10:1036e(b) and 34:440m(b). In clause (a)(2)(A), 10:1036e(d) and 34:440m(d), which make it clear that “active Federal service”, in the sense in which that term is used in 10:1036a-e and 34:440i-m, includes annual training duty and attendance at service schools, are omitted as covered by sections 101(22) and 101(24) of this title.

In subsection (a)(2)(A) and (B), specific reference is made to National Guard service to reflect the opinion of the Judge Advocate General of the Army (JAGA, 1956/1908, 13 Feb. 1956).

In subsection (a)(2)(C), the words “other than active Federal service” are omitted, since the points for membership are not reduced by active duty (see opinion of the Judge Advocate General of the Army (JAGA, 1953/2016, 3 Mar. 1953)).

In subsections (a) and (b), the words “active service” are substituted for the words “active Federal service” for uniformity of expression. In clause (5), the words “transferred thereto after completion of 16 or more years of active naval service” are omitted, since other authorized fleet reserve categories have not been used and authority for them is omitted from this revised title as unnecessary.

Subsection (b)(1)–(4) is inserted because of 10:1036e(e) and (f) and 34:440m(e) and (f), which state that the service enumerated in those clauses may not be considered in determining eligibility for retired pay under this chapter. Clause (5) is based on the exclusions in 34:440m(c)(8)–(9).

Subsection (b)(6) is inserted for clarity since 10:1036a and 34:440i were limited in applicability to service in the status of a “commissioned officer, warrant officer, flight officer, or enlisted person.”

1958 ACT

The word “full-time” is inserted for clarity. The other change reflects the opinion of the Judge Advocate General of the Army (JAGA 1956/1908, Feb. 13, 1956) that duty performed under section 92 of the National Defense Act, the source statute for section 502 of title 32, was creditable in determining entitlement to retired pay under section 302 of the Army and Air Force Vitalization and Retirement Equalization Act of 1948 (62 Stat. 1087), the source statute for section 1332 of title 10.

REFERENCES IN TEXT

Act of December 22, 1942, referred to in subsec. (a)(1)(I), is act Dec. 22, 1942, ch. 805, 56 Stat. 1072, which amended section 164 of former Title 10, Army and Air Force, and enacted provisions set out as notes under section 81 of former Title 10 and section 113 of former Title 37, Pay and Allowances, and was repealed as executed, by section 53 of act Aug. 10, 1956, ch. 1041 70A Stat. 641.

Women’s Medical Specialist Corps, referred to in subsec. (a)(1)(J)(ii), redesignated Army Medical Specialist Corps by Pub. L. 85-155, Aug. 21, 1957, 71 Stat. 375. See section 3070 of this title. See, also, act Aug. 9, 1955, ch. 654, 69 Stat. 579.

AMENDMENTS

1994—Pub. L. 103-337 renumbered section 1332 of this title as this section, substituted “Entitlement to retired pay: computation of years of service” for “Computation of years of service in determining entitlement to retired pay” as section catchline, and amended text generally, making changes in style, references to other sections and Acts, and the service in the Public Health Service and the National Oceanic and Atmospheric Administration that may be included in the computation of years of service in subsec. (a).

1980—Subsec. (a)(4). Pub. L. 96-513 inserted provisions relating to applicability to service in National Oceanic and Atmospheric Administration and Environmental Science Services Administration.

1974—Subsec. (b)(7). Pub. L. 93-545 inserted “aviation midshipman,” after “flight officer.”

1964—Subsec. (a)(3), (4). Pub. L. 88-636 added cls. (3) and (4).

1959—Subsec. (a). Pub. L. 86-197, §§(1), (2), redesignated cls. (D) to (F) as (E) to (G), and added cls. (D), (H), (I), and (J), and provisions requiring, for the purpose of cls. (A), (B), and (C), service in the National Guard to be treated as if it were service in a reserve component, if the person concerned was later appointed in the National Guard of the United States, the Army National Guard of the United States, the Air National Guard of the United States, or as a Reserve of the Army or the Air Force, and served continuously in the National Guard from the date of his Federal recognition to the date of that appointment.

Subsec. (b)(6), (7). Pub. L. 86-197, §1(3), added par. (6), redesignated former par. (6) as (7), and prohibited the counting of service as a nurse, as an appointed aviation cadet, and that service described in cls. (I) and (J) of subsec. (a)(1) of this section.

1958—Subsec. (a). Pub. L. 85-861 substituted “full-time service under” for “service under”, and inserted reference to section 502 of this title in cl. (2)(A)(ii).

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 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 1964 AMENDMENT

Section 2 of Pub. L. 88-636 provided that: “The amendments made by this Act [amending this section] shall apply to any period before enactment of this Act [Oct. 8, 1964] during which the Commissioned Corps of the Public Health Service has had the status of a military service, and to any period before enactment of this Act during which commissioned personnel of the Coast and Geodetic Survey were transferred to the service and jurisdiction of a military department.”

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.

SAVINGS PROVISION

Section 3 of Pub. L. 86-197 provided that: “This Act [amending this section and sections 3683, 3926, 6324, 8683 and 8926 of this title and enacting provisions set out as notes under sections 1431 and 3441 of this title] does not deprive any person of any service credit to which he was entitled on the day before the effective date of this Act [Aug. 25, 1959].”

COAST GUARD WOMEN’S RESERVE; CONSTRUCTIVE SERVICE CREDIT; RETIREMENT BENEFITS; RETROACTIVE PAY

Pub. L. 87-482, June 12, 1962, 76 Stat. 95, provided: “That any person who was a member of the Coast Guard Women’s Reserve and who served on active duty therein for at least one year prior to July 25, 1947; who was separated therefrom under honorable conditions; and who also had membership therein for any period between November 1, 1949, and July 1, 1956, shall be deemed to have served on inactive duty with the Coast Guard Women’s Reserve from July 25, 1947, to November 1, 1949, in the grade or rating satisfactorily held on active duty prior to July 25, 1947.

“SEC. 2. Creditable constructive service for a person qualified under section 1 hereof shall be applied when providing retirement benefits under the Army and Air Force Vitalization and Retirement Equalization Act of 1948, as amended, or any other Act under which the in-

dividual may be entitled to retirement from the Armed Forces.

“SEC. 3. Additional pay accruing to any person by virtue of increased creditable service resulting from the inclusion of constructive service creditable by application of section 1 hereof shall not be made for active or inactive duty for which pay is authorized by competent authority which is performed prior to the first day of the calendar quarter next succeeding the calendar quarter in which this Act becomes effective.”

ADDITIONAL CLERICAL SERVICE CREDITABLE UNDER
THIS CHAPTER

Section 15 of Pub. L. 85-861 provided that:

“(a) Notwithstanding section 1332(b)(6) [now 12732(b)(7)] of title 10, United States Code, a person is entitled to count his service as an Army field clerk or as a field clerk, Quartermaster Corps, as active service in determining his entitlement to retired pay under chapter 67 [now 1223] of title 10, United States Code, and in computing his retired pay under that chapter.

“(b) notwithstanding section 1332(b)(6) [now 12732(b)(7)] of title 10, United States Code, a warrant officer is entitled to count classified service as an Army headquarters clerk or as a clerk of the Army Quartermaster Corps that he performed under any law in effect before August 29, 1916, as active service in determining his entitlement to retired pay under chapter 67 [now 1223] of title 10, United States Code, and in computing his retired pay under that chapter.”

CROSS REFERENCES

Active duty, retention after becoming qualified for retired pay, see section 12308 of this title.

Deferment of retirement of certain officers twice failing selection for promotion, see section 6389 of this title.

Standards and qualifications for reserve commissioned officer to be retained in active status, see section 12642 of this title.

Transfer to inactive status list instead of separation, see section 1209 of this title.

Uniform allowance, see section 416 of Title 37, Pay and Allowances of the Uniformed Services.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1063, 1176, 1209, 1482, 3850, 6389, 6391, 8850, 12308, 12642, 12646, 12731, 12731a, 12733, 14704 of this title; title 5 section 3329.

§ 12733. Computation of retired pay: computation of years of service

For the purpose of computing the retired pay of a person under this chapter, the person's years of service and any fraction of such a year are computed by dividing 360 into the sum of the following:

(1) The person's days of active service.

(2) The person's days of full-time service under sections 316, 502, 503, 504, and 505 of title 32 while performing annual training duty or while attending a prescribed course of instruction at a school designated as a service school by law or by the Secretary concerned.

(3) One day for each point credited to the person under clause (B) or (C) of section 12732(a)(2) of this title, but not more than 60 days in any one year.

(4) 50 days for each year before July 1, 1949, and proportionately for each fraction of a year, of service (other than active service) in a reserve component of an armed force, in the Army or the Air Force without component, or in any other category covered by section 12732(a)(1) of this title, except a regular component.

(Aug. 10, 1956, ch. 1041, 70A Stat. 103, § 1333; Sept. 2, 1958, Pub. L. 85-861, § 33(a)(10), 72 Stat. 1565; renumbered § 12733 and amended Oct. 5, 1994, Pub. L. 103-337, div. A, title XVI, § 1662(j)(1), 108 Stat. 2998, 3002.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1333	10:1036b (less 1st 91 words, and less 1st proviso). 10:1036e(c) (as applicable to determination of retired pay). 10:1036e(d) (as applicable to determination of retired pay). 34:440j (less 1st 91 words, and less 1st proviso). 34:440m(c) (as applicable to determination of retired pay). 34:440m(d) (as applicable to determination of retired pay).	June 29, 1948, ch. 708, §§ 303 (less 1st 91 words, and less 1st proviso), 306 ((c) and (d), as applicable to determination of retired pay), 62 Stat. 1088-1090; Sept. 7, 1949, ch. 547, § 3, 63 Stat. 693.

The revised section consolidates provisions of 10:1036b and 1036e, and 34:440j and 440m, relating to the years of service that may be counted in determining retired pay for persons entitled to that pay under this chapter.

Clause (1) is substituted for 10:1036b(i). In clause (3), the words “and proportionately for each fraction of a year” are inserted to make clear that parts of years must be counted. 10:1036e(d) and 34:440m(d) are omitted as covered by sections 101(22) and 101(24) of this title.

1958 ACT

The change is necessary so that active service and service described in section 1332(a)(2)(A)(ii) that was performed on or before July 1, 1949, may be counted in computing retired pay, as provided by the source law, section 303(i) of the Army and Air Force Vitalization and Retirement Equalization Act of 1948 (62 Stat. 1088) and in accordance with the opinion of the Judge Advocate General of the Army (JAGA 1956/1908, Feb. 13, 1956).

AMENDMENTS

1994—Pub. L. 103-337 renumbered section 1333 of this title as this section, substituted “Computation of retired pay: computation of years of service” for “Computation of years of service in computing retired pay” as section catchline, and amended text generally, changing style and references to other sections.

1958—Pub. L. 85-861 added cls. (1) and (2), struck out former cl. (1) which permitted the addition of the days of service credited under section 1332(a)(2)(A) of this title, and redesignated former cls. (2) and (3) as (3) and (4), respectively.

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 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.

CROSS REFERENCES

Computation of years of service, see section 1405 of this title.

Retirement or separation for physical disability, computation of service, see section 1208 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1208, 1405, 12739 of this title.

§ 12734. Time not creditable toward years of service

(a) Service in an inactive status may not be counted in any computation of years of service under this chapter.

(b) Time spent after retirement (without pay) for failure to conform to standards and qualifications prescribed under section 12641 of this title may not be credited in a computation of years of service under this chapter.

(Aug. 10, 1956, ch. 1041, 70A Stat. 104, § 1334; Sept. 7, 1962, Pub. L. 87-651, title I, § 108, 76 Stat. 509; renumbered § 12734 and amended Oct. 5, 1994, Pub. L. 103-337, div. A, title XVI, § 1662(j)(1), 108 Stat. 2998, 3003.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1334(a)	10:1036c (last sentence, as applicable to inactive status). 10:1036g (last 41 words of 2d sentence). 34:440k (last sentence, as applicable to inactive status). 34:440o (last 41 words of 2d sentence). 50:931(b) (less 1st 16 words).	June 29, 1948, ch. 708, §§ 304 (last sentence), 308 (last 41 words of 2d sentence), 62 Stat. 1088, 1090. July 9, 1952, ch. 608, § 211(b) (less 1st 16 words), 66 Stat. 485.
1334(b)	10:1036c (last sentence, less applicability to inactive status). 34:440k (last sentence, less applicability to inactive status).	

Subsection (a) is substituted for 10:1036c (1st 17 words of last sentence, as applicable to inactive status), 10:1036g (last 41 words of 2d sentence), 34:440k (last 17 words of last sentence, as applicable to inactive status), and 34:440o (last 41 words of 2d sentence). 10:1036c (proviso of last sentence, as applicable to inactive status) and 34:440k (proviso of last sentence, as applicable to inactive status) are omitted as executed. 10:1036c (last sentence, less 1st 17 words and less proviso, as applicable to inactive status) and 34:440k (last sentence, less 1st 17 words and less proviso, as applicable to inactive status) are omitted as surplusage.

In subsection (b), 10:1036c (proviso of last sentence, less applicability to inactive status) and 34:440k (proviso of last sentence, less applicability to inactive status) are omitted as executed. 10:1036c (last sentence, less 1st 17 words and less proviso, less applicability to inactive status) and 34:440k (last sentence, less 1st 17 words and less proviso, less applicability to inactive status) are omitted as surplusage.

1962 ACT

The change conforms section 1334(b) of title 10 to the source law, the last sentence of section 304 of the Army and Air Force Vitalization and Retirement Equalization Act of 1948 (62 Stat. 1089). Section 305 makes the change retroactive to August 10, 1956, the date of repeal of the source law by the original military codification act of that date.

AMENDMENTS

1994—Pub. L. 103-337 renumbered section 1334 of this title as this section and amended text generally, changing one section reference.

1962—Subsec. (b). Pub. L. 87-651 substituted “retirement (without pay) for failure to conform to standards and qualifications prescribed under section 1001 of this title may not be credited in a computation” for “retirement or transfer to the Retired Reserve may not be credited in any computation.”

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 1962 AMENDMENT

Section 305 of Pub. L. 87-651 provided that: “Section 108 of this Act [amending this section] is effective as of August 10, 1956, for all purposes. Section 304 of this Act is effective as of February 6, 1959.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10153 of this title.

§ 12735. Inactive status list

(a) A member who would be eligible for retired pay under this chapter but for the fact that that member is under 60 years of age may be transferred, at his request and by direction of the Secretary concerned, to such inactive status list as may be established for members of his armed force, other than members of a regular component.

(b) While on an inactive status list under subsection (a), a member is not required to participate in any training or other program prescribed for his component.

(c) The Secretary may at any time recall to active status a member who is on an inactive status list under subsection (a).

(Aug. 10, 1956, ch. 1041, 70A Stat. 104, § 1335; renumbered § 12735 and amended Oct. 5, 1994, Pub. L. 103-337, div. A, title XVI, § 1662(j)(1), 108 Stat. 2998, 3003.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1335(a)	10:1036g (1st sentence). 34:440o (1st sentence).	June 29, 1948, ch. 708, § 308 (less last 41 words of 2d sentence), 62 Stat. 1090.
1335(b).	10:1036g (2d sentence, less last 41 words). 34:440o (2d sentence, less last 41 words).	
1335(c)	10:1036g (less 1st and 2d sentences). 34:440o (less 1st and 2d sentences).	

In subsection (a), the words “would be eligible but for the fact that he is under 60 years of age” are substituted for the words “has not attained the age of sixty years but is eligible in all other respects”. The words “for members of his armed force, other than members of a regular component” are substituted for the words “for the reserve components of the Army of the United States or Air Force of the United States”, since the source statute applied to all members except members of the regular components. The words “as has been, or” and “by law or regulation” are omitted as surplusage.

In subsection (b), the words “after the effective date of such transfer” are omitted as surplusage.

In subsection (c), 10:1036g (last 32 words of last sentence) and 34:440o (last 32 words of last sentence) are omitted as surplusage.

AMENDMENTS

1994—Pub. L. 103-337 renumbered section 1335 of this title as this section and amended text generally, making changes in style.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1209 of this title.

§ 12736. Service credited for retired pay benefits not excluded for other benefits

No period of service included wholly or partly in determining a person's right to, or the amount of, retired pay under this chapter may be excluded in determining his eligibility for any annuity, pension, or old-age benefit, under any other law, on account of civilian employment by the United States or otherwise, or in determining the amount payable under that law, if that service is otherwise properly credited under it.

(Aug. 10, 1956, ch. 1041, 70A Stat. 104, §1336; renumbered §12736 and amended Oct. 5, 1994, Pub. L. 103-337, div. A, title XVI, §1662(j)(1), 108 Stat. 2998, 3003.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1336	10:1036d (less 1st sentence). 34:440f (less 1st sentence).	June 29, 1948, ch. 708, §305 (less 1st sentence), 62 Stat. 1089.

AMENDMENTS

1994—Pub. L. 103-337 renumbered section 1336 of this title as this section and restated catchline and text without change.

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.

§ 12737. Limitation on active duty

A member of the armed forces may not be ordered to active duty solely for the purpose of qualifying the member for retired pay under this chapter.

(Aug. 10, 1956, ch. 1041, 70A Stat. 104, §1337; renumbered §12737 and amended Oct. 5, 1994, Pub. L. 103-337, div. A, title XVI, §1662(j)(1), 108 Stat. 2998, 3003.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1337	10:1036h. 34:440p.	June 29, 1948, ch. 708, §309, 62 Stat. 1090.

10:1036h (1st sentence) and 34:440p (1st sentence) are omitted as surplusage. The words "member of the armed forces" are substituted for the word "person", since only a member may be "ordered to active duty".

AMENDMENTS

1994—Pub. L. 103-337 renumbered section 1337 of this title as this section and amended text generally, substituting "the member" for "him".

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.

§ 12738. Limitations on revocation of retired pay

(a) After a person is granted retired pay under this chapter, or is notified in accordance with section 12731(d) of this title that the person has completed the years of service required for eligibility for retired pay under this chapter, the person's eligibility for retired pay may not be denied or revoked on the basis of any error, miscalculation, misinformation, or administrative determination of years of service performed as required by section 12731(a)(2) of this title, unless it resulted directly from the fraud or misrepresentation of the person.

(b) The number of years of creditable service upon which retired pay is computed may be adjusted to correct any error, miscalculation, misinformation, or administrative determination and when such a correction is made the person is entitled to retired pay in accordance with the number of years of creditable service, as corrected, from the date the person is granted retired pay.

(Added Pub. L. 89-652, §2(1), Oct. 14, 1966, 80 Stat. 902, §1406; renumbered §1338 and amended Pub. L. 99-348, title I, §104(a), July 1, 1986, 100 Stat. 686; renumbered §12738 and amended Pub. L. 103-337, div. A, title XVI, §1662(j)(1), Oct. 5, 1994, 108 Stat. 2998, 3003.)

AMENDMENTS

1994—Pub. L. 103-337 renumbered section 1338 of this title as this section and amended text generally, making changes in style and references to other sections.

1986—Pub. L. 99-348 renumbered section 1406 of this title as this section, designated first sentence as subsec. (a) and substituted "this chapter" for "chapter 67 of this title" in two places, and designated second sentence as subsec. (b).

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.

ENTITLEMENT TO RETIREMENT PAY AFTER OCTOBER 14, 1966; CONCLUSIVENESS

Section 3 of Pub. L. 89-652 provided that: "Notwithstanding section 1406 [now 12738] of title 10, United States Code, as added by this Act—

"(1) the granting of retired pay to a person under chapter 67 [now 1223] of that title is conclusive as to that person's entitlement to such pay only if the payment of that retired pay is begun after the effective date of this Act [Oct. 14, 1966]; and

"(2) a notification that a person has completed the years of service required for eligibility for retired pay under chapter 67 [now 1223] of that title is conclusive as to the person's subsequent entitlement to such pay only if the notification is made after the effective date of this Act."

§ 12739. Computation of retired pay

(a) The monthly retired pay of a person entitled to that pay under this chapter is the product of—

(1) the retired pay base for that person as computed under section 1406(b)(2) or 1407 of this title; and

(2) 2½ percent of the years of service credited to that person under section 12733 of this title.

(b) The amount computed under subsection (a) may not exceed 75 percent of the retired pay base upon which the computation is based.

(c) Amounts computed under this section, if not a multiple of \$1, shall be rounded down to the next lower multiple of \$1.

(Added Pub. L. 103-337, div. A, title XVI, §1662(j)(1), Oct. 5, 1994, 108 Stat. 3004.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in formula 3 of the table in section 1401(a) of this title, prior to amendment by Pub. L. 103-337, §1662(j)(2).

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12731 of this title.

CHAPTER 1225—RETIRED GRADE

- Sec. 12771. Reserve officers: grade on transfer to Retired Reserve.
- 12772. Reserve commissioned officers who have served as Attending Physician to the Congress: grade on transfer to Retired Reserve.
- 12773. Limitation on accrual of increased pay or benefits.
- 12774. Retired lists.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 1370 of this title.

§ 12771. Reserve officers: grade on transfer to Retired Reserve

Unless entitled to a higher grade under another provision of law, a reserve commissioned officer, other than a commissioned warrant officer, who is transferred to the Retired Reserve is entitled to be placed on the retired list established by section 12774(a) of this title in the highest grade in which he served satisfactorily, as determined by the Secretary concerned and in accordance with section 1370(d), in the armed force in which he is serving on the date of transfer.

(Added Pub. L. 103-337, div. A, title XVI, §1662(k)(1), Oct. 5, 1994, 108 Stat. 3005.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 1374(b), (f) of this title, prior to repeal by Pub. L. 103-337, §1662(k)(2).

EFFECTIVE DATE

Chapter 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12773 of this title.

§ 12772. Reserve commissioned officers who have served as Attending Physician to the Congress: grade on transfer to Retired Reserve

Unless entitled to a higher grade under another provision of law, a reserve commissioned

officer who is transferred to the Retired Reserve after having served in the position of Attending Physician to the Congress is entitled to be placed on the retired list established by section 12774(a) of this title in the grade held by the officer while serving in that position.

(Added Pub. L. 103-337, div. A, title XVI, §1662(k)(1), Oct. 5, 1994, 108 Stat. 3005.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 1374(e) of this title, prior to repeal by Pub. L. 103-337, §1662(k)(2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12773 of this title.

§ 12773. Limitation on accrual of increased pay or benefits

Unless otherwise provided by law, no person is entitled to increased pay or other benefits because of sections 12771 and 12772 of this title.

(Added Pub. L. 103-337, div. A, title XVI, §1662(k)(1), Oct. 5, 1994, 108 Stat. 3005.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 1374(d) of this title, prior to repeal by Pub. L. 103-337, §1662(k)(2).

§ 12774. Retired lists

(a) Under regulations prescribed by the Secretary concerned, there shall be maintained retired lists containing the names of the Reserves of the armed forces under the Secretary's jurisdiction who are in the Retired Reserve.

(b) The Secretary of the Navy shall maintain a United States Naval Reserve Retired List containing the names of members of the Naval Reserve and the Marine Corps Reserve entitled to retired pay.

(Added Pub. L. 103-337, div. A, title XVI, §1662(k)(1), Oct. 5, 1994, 108 Stat. 3006.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 1376(a) and 6017 of this title, prior to repeal by Pub. L. 103-337, §1662(k)(2), (3)(A)(i).

CROSS REFERENCES

Army and Air Force retirement lists, see sections 3966 and 8966 of this title.

Grade of retired members recalled to active duty, see section 6483 of this title.

Naval Reserve and Marine Corps Reserve; administration, see sections 10108, 10109 of this title.

Temporary disability retired lists, see section 1376 of this title.

Voluntary retirement after 30 years or 20 years of active service, retired pay, see section 6327 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12771, 12772 of this title.

PART III—PROMOTION AND RETENTION OF OFFICERS ON THE RESERVE ACTIVE-STATUS LIST

Chap.		Sec.
1401.	Applicability and Reserve Active-Status Lists	14001

Chap.	Sec.
1403.	Selection Boards
1405.	Promotions
1407.	Failure of Selection for Promotion and Involuntary Separation
1409.	Continuation of Officers on the Reserve Active-Status List and Selective Early Removal
1411.	Additional Provisions Relating to Involuntary Separation

CHAPTER 1401—APPLICABILITY AND RESERVE ACTIVE-STATUS LISTS

Sec.	
14001.	Applicability of this part.
14002.	Reserve active-status lists: requirement for each armed force.
14003.	Reserve active-status lists: position of officers on the list. ¹
14004.	Reserve active-status lists: eligibility for Reserve promotion.
14005.	Competitive categories.
14006.	Determination of years in grade.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 113 of this title.

§ 14001. Applicability of this part

This chapter and chapters 1403 through 1411 of this title apply, as appropriate, to all reserve officers of the Army, Navy, Air Force, and Marine Corps except warrant officers.

(Added Pub. L. 103-337, div. A, title XVI, § 1611, Oct. 5, 1994, 108 Stat. 2922.)

EFFECTIVE DATE OF SECTION

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

EFFECTIVE DATE

Chapter 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.

EFFECTS OF SELECTION FOR PROMOTION AND FAILURE OF SELECTION FOR ARMY AND AIR FORCE OFFICERS

Section 1682 of title XVI of div. A of Pub. L. 103-337 provided that:

“(a) PROMOTIONS TO FILL VACANCIES.—A reserve commissioned officer of the Army or Air Force (other than a commissioned warrant officer) who, on the day before the effective date of this title [Oct. 1, 1996, see section 1691(b)(1), (2) of Pub. L. 103-337, set out as an Effective Date note under section 10001 of this title], is recommended for promotion to fill a vacancy in the Army Reserve or the Air Force Reserve under section 3383, 3384, 8372, or 8373 of title 10, United States Code, as in effect on the day before the effective date of this title, in the next higher reserve grade shall be considered to have been recommended for promotion to that grade by a vacancy promotion board under section 14101(a)(2) of title 10, United States Code, as added by this title.

“(b) PROMOTIONS OTHER THAN TO FILL VACANCIES.—A reserve officer of the Army or Air Force who, on the day before the effective date of this title, is recommended for promotion under section 3366, 3367, 3370, 3371, 8366, or 8371 of title 10, United States Code, as in effect on the day before the effective date of this title, to a reserve grade higher than the grade in which the officer is serving shall be considered to have been recommended for promotion by a mandatory promotion board convened under section 14101(a)(1) of title 10, United States Code, as added by this title.

“(c) OFFICERS FOUND QUALIFIED FOR PROMOTION TO FIRST LIEUTENANT.—A reserve officer of the Army or Air Force who, on the effective date of this title, holds the grade of second lieutenant and has been found qualified for promotion to the grade of first lieutenant in accordance with section 3365, 3382, or 8365 of title 10, United States Code, as in effect on the day before the effective date of this title, shall be promoted to that grade on the date on which the officer would have been promoted under the provisions of chapter 337 or 837 of such title, as in effect on the day before the effective date of this title, unless sooner promoted under regulations prescribed by the Secretary of the Army or the Secretary of the Air Force under section 14308(b) of title 10, United States Code, as added by this title.

“(d) OFFICERS ONCE FAILED OF SELECTION.—(1) A reserve officer of the Army in the grade of first lieutenant, captain, or major who, on the day before the effective date of this title, has been considered once but not recommended for promotion to the next higher reserve grade under section 3366 or 3367 of title 10, United States Code, or a reserve officer of the Air Force in the grade of first lieutenant, captain, or major who, on the day before the effective date of this title, is a deferred officer within the meaning of section 8368 of such title, shall be considered to have been considered once but not selected for promotion by a board convened under section 14101(a)(1) of title 10, United States Code, as added by this title. If the officer is later considered for promotion by a selection board convened under that section and is not selected for promotion (or is selected for promotion but declines to accept the promotion), the officer shall be considered for all purposes to have twice failed of selection for promotion.

“(2) In the case of a reserve officer of the Army or Air Force in an active status who, on the day before the effective date of this title, is in the grade of first lieutenant, captain, or major and whose name has been removed, under the provisions of section 3363(f) of title 10, United States Code, from a list of officers recommended for promotion or who has previously not been promoted because the President declined to appoint the officer in the next higher grade under section 8377 of such title as in effect on the day before the effective date of this title, or whose name was removed from a list of officers recommended for promotion to the next higher grade because the Senate did not consent to the officer's appointment, if the officer is later considered for promotion by a selection board convened by section 14101(a)(1) of title 10, United States Code, as added by this title, and (A) is not selected for promotion, (B) is selected for promotion but removed from the list of officers recommended or approved for promotion, or (C) is selected for promotion but declines to accept the promotion, the officer shall be considered for all purposes to have twice failed of selection for promotion.

“(e) OFFICERS TWICE FAILED OF SELECTION.—A reserve officer of the Army or Air Force in an active status who, on the day before the effective date of this title, is in the grade of first lieutenant, captain, or major and on that date is subject to be treated as prescribed in section 3846 or 8846 of title 10, United States Code, shall continue to be governed by that section as in effect on the day before the effective date of this title.

“(f) OFFICERS WITH APPROVED PROMOTION DECLINATIONS IN EFFECT.—A reserve officer of the Army who, on the day before the effective date of this title, has declined a promotion under subsection (f) or (g) of section 3364 of title 10, United States Code, shall while carried on the reserve active status list be subject to the provisions of subsections (h), (i), and (j) of such section, as in effect on the day before the effective date of this title, except that the name of an officer to whom this section applies shall be placed on a promotion list under section 14308(a) of title 10, United States Code (as added by this title), and, at the end of the approved period of declination, shall be considered to have failed of promotion if the officer again declines to accept the promotion.

¹ So in original. Does not conform to section catchline.

“(g) COVERED OFFICERS.—This section applies to reserve officers of the Army and Air Force who—

“(1) on the day before the effective date of this title are in an active status; and

“(2) on the effective date of this title are subject to placement on the reserve active-status list of the Army or the Air Force.”

EFFECTS OF SELECTION FOR PROMOTION AND FAILURE OF SELECTION FOR NAVY AND MARINE CORPS OFFICERS

Section 1683 of title XVI of div. A of Pub. L. 103-337 provided that:

“(a) RECOMMENDATIONS FOR PROMOTION.—An officer covered by this section who, on the day before the effective date of this title [Oct. 1, 1996, see section 1691(b)(1), (2) of Pub. L. 103-337, set out as an Effective Date note under section 10001 of this title], has been recommended for promotion to a reserve grade higher than the grade in which the officer is serving shall be considered to have been recommended for promotion to that grade under section 14101(a) of title 10, United States Code, as added by this title.

“(b) FAILURES OF SELECTION.—An officer covered by this section who, on the day before the effective date of this title is considered to have failed of selection for promotion one or more times under chapter 549 of title 10, United States Code, to a grade below captain, in the case of a reserve officer of the Navy, or to a grade below colonel, in the case of a reserve officer of the Marine Corps, shall be subject to chapters 1405 and 1407 of title 10, United States Code, as added by this title, as if such failure or failures had occurred under the provisions of those chapters.

“(c) OFFICERS OTHER THAN COVERED OFFICERS RECOMMENDED FOR PROMOTION.—A reserve officer of the Navy or Marine Corps who on the day before the effective date of this title (1) has been recommended for promotion in the approved report of a selection board convened under chapter 549 of title 10, United States Code, and (2) was on the active-duty list of the Navy or Marine Corps may be promoted under that chapter, as in effect on the day before the effective date of this title.

“(d) OFFICERS FOUND QUALIFIED FOR PROMOTION TO LIEUTENANT (JUNIOR GRADE) OR FIRST LIEUTENANT.—A covered officer who, on the effective date of this title, holds the grade of second lieutenant and has been found qualified for promotion in accordance with section 5908 or 5910 of title 10, United States Code, as in effect on the day before the effective date of this title, shall be promoted on the date on which the officer would have been promoted under the provisions of chapter 549 of such title, as in effect on the day before the effective date of this title, unless sooner promoted under regulations prescribed by the Secretary of the Navy under section 14307(b) of such title, as added by this title.

“(e) OFFICERS WHOSE NAMES HAVE BEEN OMITTED FROM A LIST FURNISHED TO A SELECTION BOARD.—A covered officer whose name, as of the effective date of this title, had been omitted by administrative error from the list of officers furnished the most recent selection board to consider officers of the same grade and component, shall be considered by a special selection board established under section 14502 of title 10, United States Code, as added by this title. If the officer is selected for promotion by that board, the officer shall be promoted as specified in section 5904 of title 10, United States Code, as in effect on the day before the effective date of this title.

“(f) COVERED OFFICERS.—Except as provided in subsection (c), this section applies to any reserve officer of the Navy or Marine Corps who (1) before the effective date of this title is in an active status, and (2) on the effective date of this title is subject to placement on the reserve active-status list of the Navy or Marine Corps.”

§ 14002. Reserve active-status lists: requirement for each armed force

(a) The Secretary of each military department shall maintain a single list, to be known as the

reserve active-status list, for each armed force under the Secretary's jurisdiction. That list shall include the names of all reserve officers of that armed force who are in an active status other than those on an active-duty list described in section 620 of this title or warrant officers (including commissioned warrant officers).

(b) The reserve active-status list for the Army shall include officers in the Army Reserve and the Army National Guard of the United States. The reserve active-status list for the Air Force shall include officers in the Air Force Reserve and the Air National Guard of the United States. The Secretary of the Navy shall maintain separate lists for the Naval Reserve and the Marine Corps Reserve.

(Added Pub. L. 103-337, div. A, title XVI, § 1611, Oct. 5, 1994, 108 Stat. 2922.)

EFFECTIVE DATE OF SECTION

Section 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.

ESTABLISHMENT OF RESERVE ACTIVE-STATUS LIST

Section 1686 of title XVI of div. A of Pub. L. 103-337 provided that:

“(a) SIX-MONTH DEADLINE.—Not later than six months after the effective date of this title [Oct. 1, 1996, see section 1691(b)(1), (2) of Pub. L. 103-337, set out as an Effective Date note under section 10001 of this title], the Secretary of the military department concerned shall ensure that—

“(1) all officers of the Army, Navy, Air Force, and Marine Corps who are required to be placed on the reserve active-status list of their Armed Force under section 14002 of title 10, United States Code, as added by this title, shall be placed on the list for their armed force and in their competitive category; and

“(2) the relative seniority of those officers on each such list shall be established.

“(b) REGULATIONS.—The Secretary concerned shall prescribe regulations for the establishment of relative seniority. The Secretary of the Army and the Secretary of the Air Force shall, in prescribing such regulations, provide for the consideration of both promotion service established under section 3360(b) or 8360(e) of title 10, United States Code, as in effect on the day before the effective date of this title, and total commissioned service established under section 3360(c) or 8366(e) of such title, as in effect on the day before the effective date of this title. An officer placed on a reserve active-status list in accordance with this section shall be considered to have been on the list as of the effective date of this title.”

PRESERVATION OF RELATIVE SENIORITY UNDER INITIAL ESTABLISHMENT OF RESERVE ACTIVE-STATUS LIST

Section 1687 of title XVI of div. A of Pub. L. 103-337 provided that: “In order to maintain the relative seniority among reserve officers of the Army, Navy, Air Force, or Marine Corps as determined under section 1686 [set out above], the Secretary of the military department concerned may, during the one-year period beginning on the effective date of this title [Oct. 1, 1996, see section 1691(b)(1), (2) of Pub. L. 103-337, set out as an Effective Date note under section 10001 of this title], adjust the date of rank of any reserve officer of such Armed Force who was in an active status but not on the active-duty list on such effective date.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 101 of this title.

§ 14003. Reserve active-status: position of officers on the list

(a) POSITION ON LIST.—Officers shall be carried on the reserve active-status list of the armed force of which they are members in the order of seniority of the grade in which they are serving in an active status. Officers serving in the same grade shall be carried in the order of their rank in that grade.

(b) EFFECT ON POSITION HELD BY REASON OF TEMPORARY APPOINTMENT OR ASSIGNMENT.—An officer whose position on the reserve active-status 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 that list that the officer would have held if the officer had not received that appointment or assignment.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2923.)

EFFECTIVE DATE OF SECTION

Section 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.

§ 14004. Reserve active-status lists: eligibility for Reserve promotion

Except as otherwise provided by law, an officer must be on a reserve active-status list to be eligible under chapter 1405 of this title for consideration for selection for promotion or for promotion.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2923.)

EFFECTIVE DATE OF SECTION

Section 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.

§ 14005. Competitive categories

Each officer whose name appears on a reserve active-status list shall be placed in a competitive category. The competitive categories for each armed force shall be specified by the Secretary of the military department concerned under regulations prescribed by the Secretary of Defense. Officers in the same competitive category shall compete among themselves for promotion.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2923.)

EFFECTIVE DATE OF SECTION

Section 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.

§ 14006. Determination of years in grade

For the purpose of chapters 1403 through 1411 of this title, an officer's years of service in a grade are computed from the officer's date of rank in grade as determined under section 741(d) of this title.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2923.)

EFFECTIVE DATE OF SECTION

Section 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.

CHAPTER 1403—SELECTION BOARDS

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 113, 14001, 14006, 14502 of this title.

§ 14101. Convening of selection boards

(a) PROMOTION BOARDS.—(1) Whenever the needs of the Army, Navy, Air Force, or Marine Corps require, the Secretary concerned shall convene a selection board to recommend for promotion to the next higher grade, under chapter 1405 of this title, officers on the reserve active-status list of that armed force in a permanent grade from first lieutenant through brigadier general or, in the case of the Naval Reserve, lieutenant (junior grade) through rear admiral (lower half). A selection board convened under this subsection shall be known as a "promotion board".

(2) A promotion board convened to recommend reserve officers of the Army or reserve officers of the Air Force for promotion (A) to fill a position vacancy under section 14315 of this title, or (B) to the grade of brigadier general or major general, shall (except in the case of a board convened to consider officers as provided in section 14301(e) of this title) be known as a "vacancy promotion board". Any other promotion board convened under this subsection shall be known as a "mandatory promotion board".

(b) CONTINUATION BOARDS.—Whenever the needs of the Army, Navy, Air Force, or Marine Corps require, the Secretary concerned may convene a selection board to recommend officers of that armed force—

(1) for continuation on the reserve active-status list under section 14701 of this title;

(2) for selective early removal from the reserve active-status list under section 14704 of this title; or

(3) for selective early retirement under section 14705 of this title.

A selection board convened under this subsection shall be known as a "continuation board".

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2924.)

¹ So in original. Does not conform to section catchline.

EFFECTIVE DATE OF SECTION

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

EFFECTIVE DATE

Chapter 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14102, 14103, 14104, 14105, 14106, 14107, 14108, 14109, 14110, 14301, 14304, 14305, 14306, 14307, 14308, 14312, 14315, 14316, 14317, 14501, 14502, 14701, 14704, 14705 of this title.

§ 14102. Selection boards: appointment and composition

(a) APPOINTMENT.—Members of selection boards convened under section 14101 of this title shall be appointed by the Secretary of the military department concerned in accordance with this section. Promotion boards and special selection boards shall consist of five or more officers. Continuation boards shall consist of three or more officers. All of the officers of any such selection board shall be of the same armed force as the officers under consideration by the board.

(b) COMPOSITION.—At least one-half of the members of such a selection board shall be reserve officers, to include at least one reserve officer from each reserve component from which officers are to be considered by the board. Each member of a selection board must hold a permanent grade higher than the grade of the officers under consideration by the board, and no member of a board may hold a grade below major or lieutenant commander.

(c) REPRESENTATION OF COMPETITIVE CATEGORIES.—(1) Except as provided in paragraph (2), a selection board shall include at least one officer from each competitive category of officers to be considered by the board.

(2) A selection board need not include an officer from a competitive category to be considered by the board if there is no officer of that competitive category on the reserve active-status list or the active-duty list in a permanent grade higher than the grade of the officers to be considered by the board and otherwise 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 a retired officer of that competitive category who is in the same armed force as the officers under consideration by the board who holds a higher grade than the grade of the officers under consideration.

(d) PROHIBITION OF SERVICE ON CONSECUTIVE PROMOTION BOARDS.—No officer may be a member of two successive promotion boards convened under section 14101(a) of this title for the consideration of officers of the same competitive category and grade if the second of the two boards is to consider any officer who was considered and not recommended for promotion to the next higher grade by the first of the two boards.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2924.)

EFFECTIVE DATE OF SECTION

Section 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.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3362(b), (c), 5893(a), (b), and 8362(b), (c) of this title, prior to repeal by Pub. L. 103-337, §1629(a)(1), (b)(2), (c)(1).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14502 of this title.

§ 14103. Oath of members

Each member of a selection board convened under section 14101 of this title shall take an oath to perform the duties of a member of the board without prejudice or partiality, having in view both the special fitness of officers and the efficiency of the member's armed force.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2925.)

EFFECTIVE DATE OF SECTION

Section 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.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3362(d), 5894, and 8362(d) of this title, prior to repeal by Pub. L. 103-337, §1629(a)(1), (b)(2), (c)(1).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14502 of this title.

§ 14104. Confidentiality of board proceedings

Except as otherwise authorized or required by law, the proceedings of a selection board convened under section 14101 of this title may not be disclosed to any person not a member of the board.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2925.)

EFFECTIVE DATE OF SECTION

Section 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.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 5898(e) of this title, prior to repeal by Pub. L. 103-337, §1629(b)(2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14502 of this title.

§ 14105. Notice of convening of promotion board

(a) REQUIRED NOTICE.—At least 30 days before a promotion board is convened under section 14101(a) of this title to consider officers in a grade and competitive category for promotion to the next higher grade, the Secretary concerned shall either (1) notify in writing the officers eligible for consideration by the board for

promotion regarding the convening of the board, or (2) issue a general written notice to the armed force concerned regarding the convening of the board.

(b) **CONTENT OF NOTICE.**—A notice under subsection (a) shall include the date on which the board is to convene and (except in the case of a vacancy promotion board) 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 notice.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2925.)

EFFECTIVE DATE OF SECTION

Section 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.

§ 14106. Communication with board by officers under consideration

Subject to regulations prescribed by the Secretary of the military department concerned, an officer eligible for consideration by a promotion board convened under section 14101(a) of this title who is in the promotion zone or above the promotion zone, or who is to be considered by a vacancy promotion board, may send a written communication to the board calling attention to any matter concerning the officer which the officer considers important to the officer's case. Any such communication shall be sent so as to arrive not later than the date on which the board convenes. The board shall give consideration to any timely communication under this section.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2925.)

EFFECTIVE DATE OF SECTION

Section 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.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3362(f), 5900, and 8362(f) of this title, prior to repeal by Pub. L. 103-337, §1629(a)(1), (b)(2), (c)(1).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14107 of this title.

§ 14107. Information furnished by the Secretary concerned to promotion boards

(a) **INTEGRITY OF THE PROMOTION SELECTION BOARD PROCESS.**—(1) The Secretary of Defense shall prescribe regulations governing information furnished to selection boards convened under section 14101(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 promotion 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 14106 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) Information provided to a promotion board in accordance with paragraph (2) 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 promotion board.

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

(5) Information furnished to a promotion board that is described in subparagraph (B), (C), or (D) of paragraph (2) may not be furnished to a later promotion 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).

(6)(A) Before information described in paragraph (2)(B) 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 promotion 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 an appropriate summary of the information.

(b) **INFORMATION TO BE FURNISHED.**—The Secretary of the military department concerned

shall furnish to a promotion board convened under section 14101(a) of this title the following:

(1) In the case of a mandatory promotion board, the maximum number (as determined in accordance with section 14307 of this title) of officers in each competitive category under consideration that the board is authorized to recommend for promotion to the next higher grade.

(2) The name of each officer in each competitive category under consideration who is 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 (except in the case of a vacancy promotion board) guidelines or information relating to either a minimum number or a maximum number of officers with particular skills within a competitive category.

(5) Such other information or guidelines as the Secretary concerned may determine to be necessary to enable the board to perform its functions.

(c) **LIMITATION ON MODIFYING FURNISHED INFORMATION.**—Information or guidelines furnished to a selection board under subsection (a) may not be modified, withdrawn, or supplemented after the board submits its report to the Secretary of the military department concerned pursuant to section 14109(a) of this title. However, in the case of a report returned to a board pursuant to section 14110(a) 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.

(d) **OFFICERS IN HEALTH-PROFESSIONS COMPETITIVE CATEGORIES.**—The Secretary of each military department, under uniform regulations prescribed by the Secretary of Defense, shall include in guidelines furnished to a promotion board convened under section 14101(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 officers of the Naval Reserve, 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. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2926.)

EFFECTIVE DATE OF SECTION

Section 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.

PRIOR PROVISIONS

Provisions similar to those in subsec. (b) of this section were contained in sections 5895 and 5901 of this title, prior to repeal by Pub. L. 103-337, §1629(b)(2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14108, 14109, 14110 of this title.

§ 14108. Recommendations by promotion boards

(a) **RECOMMENDATION OF BEST QUALIFIED OFFICERS.**—A promotion board convened under section 14101(a) of this title shall recommend for promotion to the next higher grade those officers considered by the board whom the board considers best qualified for promotion within each competitive category considered by the board or, in the case of a vacancy promotion board, among those officers considered to fill a vacancy. In determining those officers who are best qualified for promotion, the board shall give 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 14107 of this title).

(b) **MAJORITY REQUIRED.**—A promotion board convened under section 14101(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; and

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

(c) **BOARD RECOMMENDATION REQUIRED FOR PROMOTION.**—Except as otherwise provided by law, an officer on the reserve active-status list may not be promoted to a higher grade under chapter 1405 of this title unless the officer is considered and recommended for promotion to that grade by a promotion board convened under section 14101(a) of this title (or by a special selection board convened under section 14502 of this title).

(d) **DISCLOSURE OF BOARD RECOMMENDATIONS.**—The recommendations of a promotion 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 14109 of this title, is signed by each member of the board.

(e) **PROHIBITION OF COERCION AND UNAUTHORIZED INFLUENCE OF ACTIONS OF BOARD MEMBERS.**—The Secretary convening a promotion board under section 14101(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 promotion board or any member of a promotion board in the formulation of the board's recommendations.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2928.)

EFFECTIVE DATE OF SECTION

Section 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.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3362(e), 5893(c), 5896, and 8362(e) of this title, prior to repeal by Pub. L. 103-337, §1629(a)(1), (b)(2), (c)(1).

§ 14109. Reports of promotion boards: in general

(a) REPORT OF OFFICERS RECOMMENDED FOR PROMOTION.—Each promotion board convened under section 14101(a) of this title shall submit to the Secretary of the military department concerned a report in writing containing a list of the names of the officers recommended by the board for promotion. The report shall be signed by each member of the board.

(b) CERTIFICATION.—Each report under subsection (a) shall include a certification—

(1) that the board has carefully considered the record of each officer whose name was furnished to the board; and

(2) that, in the case of a promotion board convened under section 14101(a) of this title, 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 14107 of this title) among those officers whose names were furnished to the selection board.

(c) SHOW-CAUSE RECOMMENDATIONS.—(1) A promotion board convened under section 14101(a) of this title shall include in its report to the Secretary concerned the name of any 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 to show cause for retention in an active status.

(2) If such a report names an officer as having a record which indicates that the officer should be required to show cause for retention, the Secretary concerned may provide for the review of the record of that officer as provided under regulations prescribed under section 14902 of this title.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2928.)

EFFECTIVE DATE OF SECTION

Section 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.

PRIOR PROVISIONS

Provisions similar to those in subsecs. (a) and (b) of this section were contained in section 5897 of this title, prior to repeal by Pub. L. 103-337, §1629(b)(2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14107, 14108, 14110, 14502 of this title.

§ 14110. Reports of promotion boards: review by Secretary

(a) REVIEW OF REPORT.—Upon receipt of the report of a promotion board submitted under sec-

tion 14109(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 14107(a) of this title. Following that review, unless the Secretary concerned makes a determination as described in subsection (b), the Secretary shall submit the report as required by section 14111 of this title.

(b) RETURN OF REPORT FOR FURTHER PROCEEDINGS.—If, on the basis of a review of the report under subsection (a), 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 14107(a) 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 subsection, the selection board (or a subsequent selection board convened under section 14101(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 14109 of this title.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2929.)

EFFECTIVE DATE OF SECTION

Section 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.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 5898(a) of this title, prior to repeal by Pub. L. 103-337, §1629(b)(2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14107, 14111, 14502 of this title.

§ 14111. Reports of selection boards: transmittal to President

(a) TRANSMITTAL TO PRESIDENT.—The Secretary concerned, after final review of the report of a selection board under section 14110 of this title, shall submit the report with the Secretary's recommendations, to the Secretary of Defense for transmittal by the Secretary to the President for approval or disapproval. If the authority of the President to approve or disapprove the report of a promotion board is delegated to the Secretary of Defense, that authority may not be redelegated except to an official in the Office of the Secretary of Defense.

(b) REMOVAL OF NAME FROM BOARD REPORT.—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.

(c) RECOMMENDATIONS FOR REMOVAL OF SELECTED OFFICERS FROM REPORT.—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 the report of a promotion board and the recommendation is accompanied by information that was not presented to that promotion 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. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2929.)

EFFECTIVE DATE OF SECTION

Section 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.

PRIOR PROVISIONS

Provisions similar to those in subsecs. (a) and (b) of this section were contained in section 5898(b) and (c) of this title, prior to repeal by Pub. L. 103-337, §1629(b)(2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14110, 14501, 14502 of this title.

§ 14112. Dissemination of names of officers selected

Upon approval by the President of the report of a promotion board, the names of the officers recommended for promotion by the promotion board (other than any name removed by the President) may be disseminated to the armed force concerned. If those names have not been sooner disseminated, those 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.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2930.)

EFFECTIVE DATE OF SECTION

Section 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.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 5898(d) of this title, prior to repeal by Pub. L. 103-337, §1629(b)(2).

CHAPTER 1405—PROMOTIONS

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 113, 14001, 14004, 14006, 14101, 14108 of this title; title 32 section 310; title 37 section 905.

§ 14301. Eligibility for consideration for promotion: general rules

(a) ONE-YEAR RULE.—An officer is eligible under this chapter for consideration for promotion by a promotion board convened under section 14101(a) of this title only if—

(1) the officer is on the reserve active-status list of the Army, Navy, Air Force, or Marine Corps; and

(2) during the one-year period ending on the date of the convening of the promotion board the officer has continuously performed service on either the reserve active-status list or the active-duty list (or on a combination of both lists).

(b) REQUIREMENT FOR CONSIDERATION OF ALL OFFICERS IN AND ABOVE THE ZONE.—Whenever a promotion board (other than a vacancy promotion board) is convened under section 14101(a) of this title for consideration of officers in a competitive category who are eligible under this chapter for consideration for promotion to the next higher grade, each officer in the promotion zone, and each officer above the promotion zone, for that grade and competitive category shall be considered for promotion.

(c) PREVIOUSLY SELECTED OFFICERS NOT ELIGIBLE TO BE CONSIDERED.—A promotion board convened under section 14101(a) of this title may not consider for promotion to the next higher grade—

(1) an officer whose name is on a promotion list for that grade as a result of recommendation for promotion to that grade by an earlier selection board convened under that section or section 14502 of this title or under chapter 36 of this title;

(2) an officer who has been approved for Federal recognition by a board convened under section 307 of title 32 and nominated by the President for promotion to the next higher grade as a reserve of the Army or of the Air Force as the case may be; or

(3) an officer who has been nominated by the President for promotion to the next higher grade under any other provision of law.

¹ So in original. Does not conform to section catchline.

(d) **OFFICERS BELOW THE ZONE.**—The Secretary of the military department concerned may, by regulation, prescribe procedures to 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. The regulations shall include criteria for determining which officers below the promotion zone are exceptionally well qualified for promotion.

(e) **RESERVE OFFICERS OF THE ARMY; CONSIDERATION FOR BRIGADIER GENERAL AND MAJOR GENERAL.**—In the case of officers of the Army, if the Secretary of the Army determines that vacancies are authorized or anticipated in the reserve grades of major general or brigadier general for officers who are on the reserve active-status list and who are not assigned to units organized to serve as a unit and the Secretary convenes a mandatory promotion board under section 14101(a) of this title to consider officers for promotion to fill such vacancies, the Secretary may limit the officers to be considered by that board to those determined to be exceptionally well qualified for promotion under such criteria and procedures as the Secretary may by regulation prescribe.

(f) **CERTAIN RESERVE OFFICERS OF THE AIR FORCE.**—A reserve officer of the Air Force who (1) is in the Air National Guard of the United States and holds the grade of lieutenant colonel, colonel, or brigadier general, or (2) is in the Air Force Reserve and holds the grade of colonel or brigadier general, is not eligible for consideration for promotion by a mandatory promotion board convened under section 14101(a) of this title.

(g) **NONCONSIDERATION OF OFFICERS SCHEDULED FOR REMOVAL FROM RESERVE ACTIVE-STATUS LIST.**—The Secretary of the military department concerned may, by regulation, provide for the exclusion from consideration for promotion by a promotion board of any officer otherwise eligible to be considered by the board who has an established date for removal from the reserve active-status list that is not more than 90 days after the date on which the selection board for which the officer would otherwise be eligible is to be convened.

(Added Pub. L. 103-337, div. A, title XVI, § 1611, Oct. 5, 1994, 108 Stat. 2931.)

EFFECTIVE DATE OF SECTION

Section 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

Chapter 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14101, 14304 of this title.

§ 14302. Promotion zones

(a) **PROMOTION ZONES GENERALLY.**—For purposes of this chapter, a promotion zone is an eligibility category for the consideration of officers by a mandatory promotion board. A pro-

motion zone consists of those officers on the reserve active-status list who are in the same grade and competitive category and who meet the requirements of both paragraphs (1) and (2) or the requirements of paragraph (3), as follows:

(1)(A) In the case of officers in grades below colonel, for reserve officers of the Army, Air Force, and Marine Corps, or captain, for officers of the Naval Reserve, those who 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.

(B) In the case of officers in the grade of colonel or brigadier general, for reserve officers of the Army and Marine Corps, or in the grade of captain or rear admiral (lower half), for reserve officers of the Navy, those who have neither (i) 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.

(2) Those officers who 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 and the officer so designated.

(3) Those officers who—

(A) have been selected from below the zone for promotion to the next higher grade or by a vacancy promotion board, but whose names were removed from the list of officers recommended for promotion to that next higher grade resulting from that selection;

(B) have not failed of selection for promotion to that next higher grade; and

(C) 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 that next higher grade and the officer so designated.

(b) **OFFICERS ABOVE THE ZONE.**—Officers on the reserve active-status list are considered to be above the promotion zone for a grade and competitive category if they—

(1) are eligible for consideration for promotion to the next higher grade;

(2) are in the same grade as those officers in the promotion zone for that competitive category; and

(3) are senior to the senior officer in the promotion zone for that competitive category.

(c) **OFFICERS BELOW THE ZONE.**—Officers on the reserve active-status list are considered to be below the promotion zone for a grade and competitive category if they—

(1) are eligible for consideration for promotion to the next higher grade;

(2) are in the same grade as those officers in the promotion zone for that competitive category; and

(3) are junior to the junior officer in the promotion zone for that competitive category.

(Added Pub. L. 103-337, div. A, title XVI, § 1611, Oct. 5, 1994, 108 Stat. 2932.)

EFFECTIVE DATE OF SECTION

Section 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.

§ 14303. Eligibility for consideration for promotion: minimum years of service in grade

(a) OFFICERS IN PAY GRADES O-1 AND O-2.—An officer who is on the reserve active-status list of the Army, Navy, Air Force, or Marine Corps and holds a permanent appointment in the grade of second lieutenant or first lieutenant as a reserve officer of the Army, Air Force, or Marine Corps, or in the grade of ensign or lieutenant (junior grade) as a reserve officer of the Navy, may not be promoted to the next higher grade, or granted Federal recognition in that grade, until the officer has completed the following years of service in grade:

- (1) Eighteen months, in the case of an officer holding a permanent appointment in the grade of second lieutenant or ensign.
- (2) Two years, in the case of an officer holding a permanent appointment in the grade of first lieutenant or lieutenant (junior grade).

(b) OFFICERS IN PAY GRADES O-3 AND ABOVE.—Subject to subsection (d), an officer who is on the reserve active-status list of the Army, Air Force, or Marine Corps and holds a permanent appointment in a grade above first lieutenant, or who is on the reserve active-status list of the Navy in a grade above lieutenant (junior grade), may not be considered for selection for promotion to the next higher grade, or examined for Federal recognition in the next higher grade, until the officer has completed the following years of service in grade:

- (1) 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 in the case of a reserve officer of the Navy holding a permanent appointment in the grade of lieutenant, lieutenant commander, or commander.
- (2) 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 in the case of a reserve officer of the Navy holding a permanent appointment in the grade of captain or rear admiral (lower half).

This subsection does not apply to an adjutant general or assistant adjutant general of a State or to an appointment in a higher grade which is based upon a specific provision of law.

(c) AUTHORITY TO LENGTHEN MINIMUM PERIOD IN GRADE.—The Secretary concerned may prescribe a period of service in grade for eligibility for promotion, in the case of officers to whom subsection (a) applies, or for eligibility for consideration for promotion, in the case of officers to whom subsection (b) applies, that is longer than the applicable period specified in that subsection.

(d) WAIVERS TO ENSURE TWO BELOW-THE-ZONE CONSIDERATIONS.—Subject to section 14307(b) of this title, the Secretary of the military department concerned may waive subsection (b) to the

extent necessary to ensure that officers described in paragraph (1) of that subsection have at least two opportunities for consideration for promotion to the next higher grade as officers below the promotion zone.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2933.)

EFFECTIVE DATE OF SECTION

Section 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14305, 14315 of this title; title 32 sections 309, 310.

§ 14304. Eligibility for consideration for promotion: maximum years of service in grade

(a) CONSIDERATION FOR PROMOTION WITHIN SPECIFIED TIMES.—(1) Officers described in paragraph (3) shall be placed in the promotion zone for that officer's grade and competitive category, and shall be considered for promotion to the next higher grade by a promotion board convened under section 14101(a) of this title, far enough in advance of completing the years of service in grade specified in the following table so that, if the officer is recommended for promotion, the promotion may be effective on or before the date on which the officer will complete those years of service.

Current Grade	Maximum years of service in grade
First lieutenant or Lieutenant (junior grade)	5 years
Captain or Navy Lieutenant	7 years
Major or Lieutenant commander ..	7 years

(2) Paragraph (1) is subject to subsections (a), (b), and (c) of section 14301 of this title and applies without regard to vacancies.

(3) Paragraph (1) applies to an officer who is on the reserve active-status list of the Army, Navy, Air Force, or Marine Corps and who holds a permanent appointment in the grade of first lieutenant, captain, or major as a reserve of the Army, Air Force, or Marine Corps, or to an officer on the reserve active-status list of the Navy in the grade of lieutenant (junior grade), lieutenant, or lieutenant commander as a reserve of the Navy, and who, while holding that appointment, has not been considered by a selection board convened under section 14101(a) or 14502 of this title for promotion to the next higher grade.

(b) PROMOTION DATE.—An officer holding a permanent grade specified in the table in subsection (a) who is recommended for promotion to the next higher grade by a selection board the first time the officer is considered for promotion while in or above the promotion zone and who is placed on an approved promotion list established under section 14308(a) of this title shall (if not promoted sooner or removed from that list by the President or by reason of declination) be promoted, without regard to the existence of a vacancy, on the date on which the officer completes the maximum years of service in grade

specified in subsection (a). The preceding sentence is subject to the limitations of section 12011 of this title.

(c) **WAIVER AUTHORITY FOR NAVY AND MARINE CORPS RUNNING MATE SYSTEM.**—If the Secretary of the Navy establishes promotion zones for officers on the reserve active-status list of the Navy or the Marine Corps Reserve in accordance with a running mate system under section 14306 of this title, the Secretary may waive the requirements of subsection (a) to the extent the Secretary considers necessary in any case in which the years of service for promotion, or for consideration for promotion, within those zones will exceed the maximum years of service in grade specified in subsection (a).

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2934.)

EFFECTIVE DATE OF SECTION

Section 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.

MINIMUM SERVICE QUALIFICATIONS FOR PROMOTION

Section 1685 of title XVI of div. A of Pub. L. 103-337 provided that: "During the five-year period beginning on the effective date of this title [Oct. 1, 1996, see section 1691(b)(1), (2) of Pub. L. 103-337, set out as an Effective Date note under section 10001 of this title], the Secretary of the Army and the Secretary of the Air Force may waive the provisions of section 14304 of title 10, United States Code, as added by this title. The Secretary may, in addition, during any period in which such a waiver is in effect, establish minimum periods of total years of commissioned service an officer must have served to be eligible for consideration for promotion to the grade of captain, major, or lieutenant colonel by boards convened under section 14101(a) of title 10, United States Code, as added by this title."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12009, 14305 of this title.

§ 14305. Establishment of promotion zones: mandatory consideration for promotion

(a) **ESTABLISHMENT OF ZONE.**—Before convening a mandatory promotion board under section 14101(a) of this title, 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) **NUMBER IN THE ZONE.**—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 under the provisions of sections 14303 and 14304 of this title and who are otherwise eligible for promotion.

(c) **FACTORS IN DETERMINING NUMBER IN THE ZONE.**—The Secretary's determination under subsection (b) shall be made on the basis of an estimate of the following:

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

(2) In the case of a promotion zone for officers to be promoted to a grade to which the maximum years of in grade criteria estab-

lished in section 14304 of this title apply, the number of officers in that competitive category who are required to be considered for selection for promotion to the next higher grade under that section.

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

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2935.)

EFFECTIVE DATE OF SECTION

Section 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14306 of this title.

§ 14306. Establishment of promotion zones: Naval Reserve and Marine Corps Reserve running mate system

(a) **AUTHORITY OF SECRETARY OF THE NAVY.**—The Secretary of the Navy may by regulation implement section 14305 of this title by requiring that the promotion zone for consideration of officers on the reserve active-status list of the Navy or the Marine Corps for promotion to the next higher grade be determined in accordance with a running mate system as provided in subsection (b).

(b) **ASSIGNMENT OF RUNNING MATES.**—An officer to whom a running mate system applies shall be assigned as a running mate an officer of the same grade on the active-duty list of the same armed force. The officer on the reserve active-status list is in the promotion zone and is eligible for consideration for promotion to the next higher grade by a selection board convened under section 14101(a) of this title when that officer's running mate is in or above the promotion zone established for that officer's grade under chapter 36 of this title.

(c) **CONSIDERATION OF OFFICERS BELOW THE ZONE UNDER A RUNNING MATE SYSTEM.**—If the Secretary of the Navy authorizes the selection of officers for promotion from below the promotion zone in accordance with section 14307 of this title, the number of officers to be considered from below the zone may be established through the application of the running mate system or otherwise as the Secretary determines to be appropriate to meet the needs of the Navy or Marine Corps.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2935.)

EFFECTIVE DATE OF SECTION

Section 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.

PRIOR PROVISIONS

Provisions similar to those in subsec. (b) of this section were contained in section 5899 of this title, prior to repeal by Pub. L. 103-337, §1629(b)(2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14304, 14308 of this title.

§ 14307. Number of officers to be recommended for promotion

(a) DETERMINATION OF MAXIMUM NUMBER.—Before convening a promotion board under section 14101(a) of this title for a grade and competitive category (other than a vacancy promotion board), the Secretary of the military department concerned, under regulations prescribed by the Secretary of Defense, shall determine the maximum number of officers in that grade and competitive category that the board may recommend for promotion. The Secretary shall make the determination under the preceding sentence of the maximum number that may be recommended with a view to having on the reserve active-status list a sufficient number of officers in each grade and competitive category to meet the needs of the armed force concerned for officers on that list. In order to make that determination, the Secretary 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, (3) the number of officers authorized by the Secretary of the military department concerned to serve on the reserve active-status list in the grade and competitive category under consideration, and (4) any statutory limitation on the number of officers in any grade or category (or combination thereof) authorized to be on the reserve active-status list.

(b) BELOW-THE-ZONE SELECTIONS.—(1) The Secretary of the military department concerned may, when the needs of the armed force concerned require, authorize the consideration of officers in the grade of captain, major, or lieutenant colonel on the reserve active-status list of the Army or Air Force, in a grade above first lieutenant on the reserve active-status list of the Marine Corps, or in a grade above lieutenant (junior grade) on the reserve active-status list of the Navy, for promotion to the next higher grade from below the promotion zone.

(2) When selection from below the promotion zone is authorized, the Secretary shall establish the number of officers that may be recommended for promotion from below the promotion zone in each competitive category to be considered. That 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 armed force concerned so require. If the maximum number determined under this paragraph is less than one, the board may recommend one officer for promotion from below the promotion zone.

(3) The number of officers recommended for promotion from below the promotion zone does not increase the maximum number of officers

that the board is authorized to recommend for promotion under subsection (a).

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2936.)

EFFECTIVE DATE OF SECTION

Section 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14107, 14303, 14306 of this title.

§ 14308. Promotions: how made

(a) PROMOTION LIST.—When the report of a selection board convened under section 14101(a) or 14502 of this title is approved by the President, the Secretary of the military department concerned shall place the names of all officers selected 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 seniority of those officers on the reserve active-status list.

(b) PROMOTION; HOW MADE; ORDER.—(1) Officers on a promotion list for a competitive category shall be promoted in the manner specified in section 12203 of this title.

(2) Officers on a promotion list for a competitive category shall be promoted to the next higher grade in accordance with regulations prescribed by the Secretary of the military department concerned. Except as provided in section 14311, 14312, or 14502(e) of this title or in subsection (d) or (e), 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.

(3) 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 of the military department concerned.

(c) DATE OF RANK.—(1) The date of rank of an officer appointed to a higher grade under this section is determined under section 741(d)(2) of this title.

(2) Except as specifically authorized by law, a reserve officer is not entitled to additional pay or allowances if the effective date of the officer's promotion is adjusted to reflect a date earlier than the actual date of the officer's promotion.

(d) OFFICERS WITH RUNNING MATES.—An officer to whom a running mate system applies under section 14306 of this title and who is selected for promotion is eligible for promotion to the grade for which selected when the officer who is that officer's running mate becomes eligible for promotion under chapter 36 of this title. The effective date of the promotion of that officer shall be the same as that of the officer's running mate in the grade to which the running mate is promoted.

(e) ARMY RESERVE AND AIR FORCE RESERVE PROMOTIONS TO FILL VACANCIES.—Subject to this section and to section 14311(e) of this title, and under regulations prescribed by the Secretary of the military department concerned—

(1) an officer in the Army Reserve or the Air Force Reserve who is on a promotion list as a result of selection for promotion by a mandatory promotion board convened under section 14101(a) of this title or a board convened under section 14502 or chapter 36 of this title may be promoted at any time to fill a vacancy in a position to which the officer is assigned; and

(2) an officer in the Army Reserve or the Air Force Reserve who is on a promotion list as a result of selection for promotion by a vacancy promotion board convened under section 14101(a) of this title may be promoted at any time to fill the vacancy for which the officer was selected.

(f) EFFECTIVE DATE OF PROMOTION AFTER FEDERAL RECOGNITION.—The effective date of a promotion of a reserve commissioned officer of the Army or the Air Force who is extended Federal recognition in the next higher grade in the Army National Guard or the Air National Guard under section 307 or 310 of title 32 shall be the date on which such Federal recognition in that grade is so extended.

(g) ARMY AND AIR FORCE GENERAL OFFICER PROMOTIONS.—A reserve officer of the Army who is on a promotion list for promotion to the grade of brigadier general or major general as a result of selection by a vacancy promotion board may be promoted to that grade only to fill a vacancy in that grade in a unit of the Army Reserve that is organized to serve as a unit and that has attained the strength prescribed by the Secretary of the Army. A reserve officer of the Air Force who is on a promotion list for promotion to the grade of brigadier general or major general as a result of selection by a vacancy promotion board may be promoted to that grade only to fill a vacancy in the Air Force Reserve in that grade.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2937.)

EFFECTIVE DATE OF SECTION

Section 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.

PRIOR PROVISIONS

Provisions similar to those in subsecs. (a), (d), and (f) of this section were contained in sections 3385, 5902(a) to (c), and 8374 of this title, prior to repeal by Pub. L. 103-337, §1629(a)(1), (b)(2), (c)(1).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14304 of this title; title 32 section 310; title 37 section 905.

§ 14309. Acceptance of promotion; oath of office

(a) ACCEPTANCE.—An officer who is appointed to a higher grade under this chapter shall be considered to have accepted the appointment on the date on which the appointment is made unless the officer expressly declines the appointment or is granted a delay of promotion under section 14312 of this title.

(b) OATH.—An officer who has served continuously since taking 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 chapter.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2938.)

EFFECTIVE DATE OF SECTION

Section 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.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3394 and 8394 of this title, prior to repeal by Pub. L. 103-337, §1629(a)(1), (c)(1).

§ 14310. Removal of officers from a list of officers recommended for promotion

(a) REMOVAL BY PRESIDENT.—The President may remove the name of any officer from a promotion list at any time before the date on which the officer is promoted.

(b) REMOVAL FOR WITHHOLDING OF SENATE ADVICE AND CONSENT.—If the Senate does not give its advice and consent to the appointment to the next higher grade of an officer whose name is on a list of officers approved by the President for promotion (except in the case of promotions to a reserve grade to which appointments may be made by the President alone), the name of that officer shall be removed from the list.

(c) CONTINUED ELIGIBILITY FOR PROMOTION.—An officer whose name is removed from a list under subsection (a) or (b) continues to be eligible for consideration for promotion. If that officer is recommended for promotion by the next selection board convened for that officer's grade and competitive category and the officer is promoted, the Secretary of the military department concerned may, upon the promotion, grant the officer 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 reserve active-status list, as the officer would have had if the officer's name had not been removed from the list.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2938.)

EFFECTIVE DATE OF SECTION

Section 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.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 5905 of this title, prior to repeal by Pub. L. 103-337, §1629(b)(2).

REMOVALS FROM PROMOTION LIST

Section 1684(b) of title XVI of div. A of Pub. L. 103-337 provided that: "An action that was initiated before the effective date of this title [Oct. 1, 1996, see section 1691(b)(1), (2) of Pub. L. 103-337, set out as an Effective Date note under section 10001 of this title] under the laws and regulations in effect before that date to remove the name of an officer from a promotion list or from a list of officers recommended or approved for promotion shall continue on and after such date as if such action had been initiated under section 14110(d) [14111(c)] or 14310, as appropriate, of title 10, United States Code, as added by this title."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14501 of this title.

§ 14311. Delay of promotion: involuntary

(a) DELAY DURING INVESTIGATIONS AND PROCEEDINGS.—(1) Under regulations prescribed by the Secretary of the military department concerned, the appointment of an officer to a higher grade may be delayed if any of the following applies before the date on which the appointment would otherwise be made:

(A) Sworn charges against the officer have been received by an officer exercising general court-martial jurisdiction over the officer and the 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 section 14903 of this title to review the record of the officer.

(D) A criminal proceeding in a Federal or State court of competent jurisdiction is pending against the officer.

(2) If disciplinary action is not taken against the officer, if the charges against the officer are withdrawn or dismissed, if the officer is not separated by the Secretary of the military department concerned as the result of having been required to show cause for retention, or if the officer is acquitted of the charges, as the case may be, then (unless action to delay the officer's appointment to the higher grade has been taken under subsection (b)) the officer shall be retained on the promotion list, list of officers found qualified for Federal recognition, or list of officers nominated by the President to the Senate for appointment in a higher reserve grade 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 reserve active-status list as the officer 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 reserve active-status list as the Secretary considers appropriate under the circumstances.

(b) DELAY FOR LACK OF QUALIFICATIONS.—Under regulations prescribed by the Secretary of the military department concerned, the appointment of an officer to a higher grade may also be delayed if there is cause to believe that the officer is mentally, physically, morally, or professionally unqualified to perform the duties of the grade to which selected. If the Secretary concerned later determines that the officer is qualified for promotion to the higher grade, the officer shall be retained on the promotion list, the list of officers found qualified for Federal recognition, or list of officers nominated by the President to the Senate for appointment in a higher reserve grade, and shall, upon promotion to that grade, have the same date of rank, the same effective date for pay and allowances of that grade, and the same position on the reserve active-status list as the officer would have had if no delay had intervened, unless the Secretary concerned determines that the officer was un-

qualified 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 reserve active-status list as the Secretary considers appropriate under the circumstances.

(c) NOTICE TO OFFICER.—(1) The appointment of an officer to a higher grade may not be delayed under subsection (a) or (b) unless the officer is given written notice of the grounds for the delay. The preceding sentence does not apply if it is impracticable to give the officer written notice before the date on which the appointment to the higher grade would otherwise take effect, but in such a case the written notice shall be given as soon as practicable.

(2) An officer whose promotion is delayed under subsection (a) or (b) shall be given an opportunity to make a written statement to the Secretary of the military department concerned in response to the action taken. The Secretary shall give consideration to any such statement.

(d) MAXIMUM LENGTH OF DELAY IN PROMOTION.—The appointment of an officer to a higher grade may not be delayed under subsection (a) or (b) for more than six months after the date on which the officer would otherwise have been promoted 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 the officer in a Federal or State court of competent jurisdiction or more than 90 days after final action has been taken in any court-martial case against the officer. Except for court action, a promotion may not be delayed more than 18 months after the date on which the officer would otherwise have been promoted.

(e) DELAY BECAUSE OF LIMITATIONS ON OFFICER STRENGTH IN GRADE OR DUTIES TO WHICH ASSIGNED.—(1) Under regulations prescribed by the Secretary of Defense, the promotion of a reserve officer on the reserve active-status list who is serving on active duty, or who is on full-time National Guard duty for administration of the reserves or the National Guard, to a grade to which the strength limitations of section 12011 of this title apply shall be delayed if necessary to ensure compliance with those strength limitations. The delay shall expire when the Secretary determines that the delay is no longer required to ensure such compliance.

(2) The promotion of an officer described in paragraph (1) shall also be delayed while the officer is on duty described in that paragraph unless the Secretary of the military department concerned, under regulations prescribed by the Secretary of Defense, determines that the duty assignment of the officer requires a higher grade than the grade currently held by the officer.

(3) The date of rank and position on the reserve active-status list of a reserve officer whose promotion to or Federal recognition in the next higher grade was delayed under paragraph (1) or (2) solely as the result of the limitations imposed under the regulations prescribed by the Secretary of Defense or contained in section 12011 of this title shall be the date on which the officer would have been promoted to or recog-

nized in the higher grade had such limitations not existed.

(4) If an officer whose promotion is delayed under paragraph (1) or (2) completes the period of active duty or full-time National Guard duty that the officer is required by law or regulation to perform as a member of a reserve component, the officer may request release from active duty or full-time National Guard duty. If the request is granted, the officer's promotion shall be effective upon the officer's release from such duty. The date of rank and position on the reserve active-status list of the officer shall be the date the officer would have been promoted to or recognized in the higher grade had the limitations imposed under regulations prescribed by the Secretary of Defense contained in section 12011 of this title not existed. If an officer whose promotion is delayed under paragraph (1) or (2) has not completed the period of active duty or full-time National Guard duty that the officer is required by law or regulation to perform as a member of a reserve component, the officer may be retained on active duty or on full-time National Guard duty in the grade in which the officer was serving before the officer's being found qualified for Federal recognition or the officer's selection for the promotion until the officer completes that required period of duty.

(Added Pub. L. 103-337, div. A, title XVI, § 1611, Oct. 5, 1994, 108 Stat. 2939.)

EFFECTIVE DATE OF SECTION

Section 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.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3363(e), 3380(b), 5902(d), 8363(g), and 8380(b) of this title, prior to repeal by Pub. L. 103-337, § 1629(a)(1), (b)(2), (c)(1).

DELAYS IN PROMOTIONS

Section 1684(a) of title XVI of div. A of Pub. L. 103-337 provided that:

“(1) A delay in a promotion that is in effect on the day before the effective date of this title [Oct. 1, 1996, see section 1691(b)(1), (2) of Pub. L. 103-337, set out as an Effective Date note under section 10001 of this title] under the laws and regulations in effect on that date shall continue in effect on and after that date as if the promotion had been delayed under section 14311 of title 10, United States Code, as added by this title.

“(2) The delay of the promotion of a reserve officer of the Army or the Air Force which was in effect solely to achieve compliance with limitations set out in section 524 of title 10, United States Code, or with regulations prescribed by the Secretary of Defense with respect to sections 3380(c) and 8380(c) of title 10, United States Code, as in effect on the day before the effective date of this title, shall continue in effect as if the promotion had been delayed under section 14311(e) of such title, as added by this title.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14308, 14316 of this title.

§ 14312. Delay of promotion: voluntary

(a) **AUTHORITY FOR VOLUNTARY DELAYS.**—(1) The Secretary of the military department concerned may, by regulation, permit delays of a

promotion of an officer who is recommended for promotion by a mandatory selection board convened under section 14101(a) or a special selection board convened under section 14502 of this title at the request of the officer concerned. Such delays, in the case of any promotion, may extend for any period not to exceed three years from the date on which the officer would otherwise be promoted.

(2) Regulations under this section shall provide that—

(A) a request for such a delay of promotion must be submitted by the officer concerned before the delay may be approved; and

(B) denial of such a request shall not be considered to be a failure of selection for promotion unless the officer declines to accept a promotion under circumstances set forth in subsection (c).

(b) **EFFECT OF APPROVAL OF REQUEST.**—If a request for delay of a promotion under subsection (a) is approved, the officer's name shall remain on the promotion list during the authorized period of delay (unless removed under any other provision of law). Upon the end of the period of the authorized delay, or at any time during such period, the officer may accept the promotion, which shall be effective on the date of acceptance. Such an acceptance of a promotion shall be made in accordance with regulations prescribed under this section.

(c) **EFFECT OF DECLINING A PROMOTION.**—An officer's name shall be removed from the promotion list and, if the officer is serving in a grade below colonel or, in the case of the Navy, captain, the officer shall be considered to have failed of selection for promotion if any of the following applies:

(1) The Secretary concerned has not authorized voluntary delays of promotion under subsection (a) to the grade concerned and the officer declines to accept an appointment to a higher grade.

(2) The Secretary concerned has authorized voluntary delays of promotion under subsection (a), but has denied the request of the officer for a delay of promotion and the officer then declines to accept an appointment to a higher grade.

(3) The Secretary concerned has approved the request of an officer for a delay of promotion and, upon the end of the period of delay authorized in accordance with regulations prescribed under subsection (a), the officer then declines to accept an appointment to a higher grade.

(Added Pub. L. 103-337, div. A, title XVI, § 1611, Oct. 5, 1994, 108 Stat. 2941.)

EFFECTIVE DATE OF SECTION

Section 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14308, 14309 of this title.

§ 14313. Authority to vacate promotions to grade of brigadier general or rear admiral (lower half)

(a) **AUTHORITY.**—The President may vacate the appointment of a reserve officer to the grade of brigadier general or rear admiral (lower half) if the period of time during which the officer has served in that grade after promotion to that grade is less than 18 months.

(b) **EFFECT OF PROMOTION BEING VACATED.**—Except as provided in subsection (c), an officer whose promotion to the grade of brigadier general is vacated under this section holds the grade of colonel as a reserve of the armed force of which the officer is a member. An officer whose promotion to the grade of rear admiral (lower half) is vacated under this section holds the grade of captain in the Naval Reserve. Upon assuming the lower grade, the officer shall have the same position on the reserve active-status list as the officer would have had if the officer had not served in the higher grade.

(c) **SPECIAL RULE FOR OFFICERS SERVING AS ADJUTANT GENERAL.**—In the case of an officer serving as an adjutant general or assistant adjutant general whose promotion to the grade of brigadier general is vacated under this section, the officer then holds the reserve grade held by that officer immediately before the officer's appointment as adjutant general or assistant adjutant general.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2942.)

EFFECTIVE DATE OF SECTION

Section 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.

§ 14314. Army and Air Force commissioned officers: generals ceasing to occupy positions commensurate with grade; State adjutants general

(a) **GENERAL OFFICERS.**—Within 30 days after a reserve officer of the Army or the Air Force on the reserve active-status list in a general officer grade ceases to occupy a position commensurate with that grade (or commensurate with a higher grade), the Secretary concerned shall transfer or discharge the officer in accordance with whichever of the following the officer elects:

(1) Transfer the officer in grade to the Retired Reserve, if the officer is qualified and applies for the transfer.

(2) Transfer the officer in grade to the inactive status list of the Standby Reserve, if the officer is qualified.

(3) Discharge the officer from the officer's reserve appointment and, if the officer is qualified and applies therefor, appoint the officer in the reserve grade held by the officer as a reserve officer before the officer's appointment in a general officer grade.

(4) Discharge the officer from the officer's reserve appointment.

(b) **ADJUTANTS GENERAL.**—If a reserve officer who is federally recognized in the Army National Guard or the Air National Guard solely because of the officer's appointment as adjutant

general or assistant adjutant general of a State ceases to occupy that position, the Secretary concerned, not later than 30 days after the date on which the officer ceases to occupy that position, shall—

(1) withdraw that officer's Federal recognition; and

(2) require that the officer—

(A) be transferred in grade to the Retired Reserve, if the officer is qualified and applies for the transfer;

(B) be discharged from the officer's reserve appointment and appointed in the reserve grade held by the officer as a reserve officer of the Air Force immediately before the appointment of that officer as adjutant general or assistant adjutant general, if the officer is qualified and applies for that appointment; or

(C) be discharged from the officer's reserve appointment.

(c) **CREDIT FOR SERVICE IN GRADE.**—An officer who is appointed under subsection (a)(3) or (b)(2)(B) shall be credited with an amount of service in the grade in which appointed that is equal to the amount of prior service in an active status in that grade and in any higher grade.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2942.)

EFFECTIVE DATE OF SECTION

Section 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.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3375, 8375, and 8381 of this title, prior to repeal by Pub. L. 103-337, §1629(a)(1), (c)(1).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12009, 14317 of this title.

§ 14315. Position vacancy promotions: Army and Air Force officers

(a) **OFFICERS ELIGIBLE FOR CONSIDERATION FOR VACANCY PROMOTIONS BELOW BRIGADIER GENERAL.**—A reserve officer of the Army who is in the Army Reserve, or a Reserve¹ officer of the Air Force who is in the Air Force Reserve, who is on the reserve active-status list in the grade of first lieutenant, captain, major, or lieutenant colonel is eligible for consideration for promotion to the next higher grade under this section if each of the following applies:

(1) The officer is occupying or, as determined by the Secretary concerned, is available to occupy a position in the same competitive category as the officer and for which a grade higher than the one held by that officer is authorized.

(2) The officer is fully qualified to meet all requirements for the position as established by the Secretary of the military department concerned.

(3) The officer has held the officer's present grade for the minimum period of service pre-

¹ So in original. Probably should not be capitalized.

scribed in section 14303 of this title for eligibility for consideration for promotion to the higher grade.

(b) CONSIDERATION FOR VACANCY PROMOTION TO BRIGADIER GENERAL OR MAJOR GENERAL.—(1) A reserve officer of the Army who is in the Army Reserve and on the reserve active-status list in the grade of colonel or brigadier general may be considered for promotion to the next higher grade under this section if the officer (A) is assigned to the duties of a general officer of the next higher reserve grade in a unit of the Army Reserve organized to serve as a unit, (B) has held the officer's present grade for the minimum period of service prescribed in section 14303 of this title for eligibility for consideration for promotion to the higher grade, and (C) meets the standards for consideration prescribed by the Secretary of the Army.

(2) A reserve officer of the Air Force who is in the Air Force Reserve and on the reserve active-status list in the grade of colonel or brigadier general may be considered for promotion to the next higher grade under this section if the officer (A) is assigned to the duties of a general officer of the next higher reserve grade, and (B) meets the standards for consideration prescribed by the Secretary of the Air Force.

(c) VACANCY PROMOTION BOARDS.—Consideration for promotion under this section shall be by a vacancy promotion board convened under section 14101(a) of this title.

(d) EFFECT OF NONSELECTION.—An officer who is considered for promotion under this section and is not selected shall not be considered to have failed of selection for promotion.

(e) SPECIAL RULE FOR OFFICERS FAILED OF SELECTION.—A reserve officer of the Army or the Air Force who is considered as failed of selection for promotion under section 14501 of this title to a grade may be considered for promotion under this section or, if selected, promoted to that grade only if the Secretary of the military department concerned finds that the officer is the only qualified officer available to fill the vacancy. The Secretary concerned may not delegate the authority under the preceding sentence.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2943.)

EFFECTIVE DATE OF SECTION

Section 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.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3384 and 8373 of this title, prior to repeal by Pub. L. 103-337, §1629(a)(1), (c)(1).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14101 of this title.

§ 14316. Army National Guard and Air National Guard: appointment to and Federal recognition in a higher reserve grade after selection for promotion

(a) OPPORTUNITY FOR PROMOTION TO FILL A VACANCY IN THE GUARD.—If an officer of the Army

National Guard of the United States or the Air National Guard of the United States is recommended by a mandatory selection board convened under section 14101(a) or a special selection board convened under section 14502 of this title for promotion to the next higher grade, an opportunity shall be given to the appropriate authority of the State to promote that officer to fill a vacancy in the Army National Guard or the Air National Guard of that jurisdiction.

(b) AUTOMATIC FEDERAL RECOGNITION.—An officer of the Army National Guard of the United States or the Air National Guard of the United States who is on a promotion list for promotion to the next higher grade as a result of selection for promotion as described in subsection (a) and who before the date of promotion is appointed in that higher grade to fill a vacancy in the Army National Guard or Air National Guard shall—

(1) be extended Federal recognition in that grade, without the examination prescribed in section 307 of title 32; and

(2) subject to section 14311(e) of this title, be promoted to that reserve grade effective on the date of the officer's appointment in that grade in the Army National Guard or Air National Guard.

(c) NATIONAL GUARD OFFICERS FAILED OF SELECTION.—An officer who is considered as failed of selection for promotion under section 14501 of this title to a grade may be extended Federal recognition in that grade only if the Secretary of the military department concerned finds that the officer is the only qualified officer available to fill a vacancy. The Secretary concerned may not delegate the authority under the preceding sentence.

(d) TRANSFER TO ARMY RESERVE OR AIR FORCE RESERVE.—If, on the date on which an officer of the Army National Guard of the United States or of the Air National Guard of the United States who is on a promotion list as described in subsection (a) is to be promoted, the officer has not been promoted to fill a vacancy in the higher grade in the Army National Guard or the Air National Guard, the officer's Federal recognition in the officer's reserve grade shall be withdrawn and the officer shall be promoted and transferred to the Army Reserve or the Air Force Reserve as appropriate.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2944.)

EFFECTIVE DATE OF SECTION

Section 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.

§ 14317. Officers in transition to and from the active-status list or active-duty list

(a) EFFECT OF TRANSFER TO INACTIVE STATUS OR RETIRED STATUS.—If a reserve officer on the reserve active-status list is transferred to an inactive status or to a retired status after having been recommended for promotion to a higher grade under this chapter or chapter 36 of this title, or after having been found qualified for Federal recognition in the higher grade under title 32, but before being promoted, the officer—

(1) shall be treated as if the officer had not been considered and recommended for pro-

motion by the selection board or examined and been found qualified for Federal recognition; and

(2) may not be placed on a promotion list or promoted to the higher grade after returning to an active status,

unless the officer is again recommended for promotion by a selection board convened under chapter 36 of this title or section 14101(a) or 14502 of this title or examined for Federal recognition under title 32.

(b) EFFECT OF PLACEMENT ON ACTIVE-DUTY LIST.—A reserve officer who is on a promotion list as a result of selection for promotion by a mandatory promotion board convened under section 14101(a) or a special selection board convened under section 14502 of this title and who before being promoted is placed on the active-duty list of the same armed force and placed in the same competitive category shall, under regulations prescribed by the Secretary of Defense, be placed on an appropriate promotion list for officers on the active-duty list established under chapter 36 of this title.

(c) OFFICERS ON A PROMOTION LIST REMOVED FROM ACTIVE-DUTY LIST.—An officer who is on the active-duty list and is on a promotion list as the result of selection for promotion by a selection board convened under chapter 36 of this title and who before being promoted is removed from the active-duty list and placed on the reserve active-status list of the same armed force and in the same competitive category (including a regular officer who on removal from the active-duty list is appointed as a reserve officer and placed on the reserve active-status list) shall, under regulations prescribed by the Secretary of Defense, be placed on an appropriate promotion list established under this chapter.

(d) OFFICERS SELECTED FOR POSITION VACANCIES.—If a reserve officer is ordered to active duty (other than active duty for training) or full-time National Guard duty (other than full-time National Guard duty for training only) after being recommended for promotion under section 14314 of this title to fill a position vacancy or examined for Federal recognition under title 32, and before being promoted to fill that vacancy, the officer shall not be promoted while serving such active duty or full-time National Guard duty unless the officer is ordered to active duty as a member of the unit in which the vacancy exists when that unit is ordered to active duty. If, under this subsection, the name of an officer is removed from a list of officers recommended for promotion, the officer shall be treated as if the officer had not been considered for promotion or examined for Federal recognition.

(e) Under regulations prescribed by the Secretary of the military department concerned, a reserve officer who is not on the active-duty list and who is ordered to active duty in time of war or national emergency may, if eligible, be considered for promotion by a mandatory promotion board convened under section 14101(a) or a special selection board convened under section 14502 of this title for not more than two years from the date the officer is ordered to active duty unless the President suspends the oper-

ation of this section under the provisions of section 10213 or 644¹ of this title.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2945.)

EFFECTIVE DATE OF SECTION

Section 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.

REFERENCES IN TEXT

Section 644 of this title, referred to in subsec. (e), was repealed by Pub. L. 103-337, div. A, title XVI, §1622(b), Oct. 5, 1994, 108 Stat. 2961, effective Oct. 1, 1996. See section 123 of this title.

PRIOR PROVISIONS

Provisions similar to those in subsec. (a) of this section were contained in sections 3378, 5906, and 8378 of this title, prior to repeal by Pub. L. 103-337, §1629(a)(1), (b)(2), (c)(1).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 741, 12009 of this title.

CHAPTER 1407—FAILURE OF SELECTION FOR PROMOTION AND INVOLUNTARY SEPARATION

Sec.	
14501.	Failure of selection for promotion.
14502.	Special selection boards: correction of errors.
14503.	Discharge of officers with less than five years of commissioned service or found not qualified for promotion to first lieutenant or lieutenant (junior grade).
14504.	Effect of failure of selection for promotion: reserve first lieutenants of the Army, Air Force, and Marine Corps and reserve lieutenants (junior grade) of the Navy.
14505.	Effect of failure of selection for promotion: reserve captains of the Army, Air Force, and Marine Corps and reserve lieutenants of the Navy.
14506.	Effect of failure of selection for promotion: reserve majors of the Army, Air Force, and Marine Corps and lieutenant commanders of the Navy. ¹
14507.	Removal from the active-status list for years of service: reserve lieutenant colonels and colonels of the Army, Air Force, and Marine Corps and reserve commanders and captains of the Navy.
14508.	Removal from the reserve active-status list for years of service: reserve general and flag officers.
14509.	Separation at age 60: reserve officers below brigadier general or rear admiral (lower half). ¹
14510.	Separation at age 60: reserve brigadier generals and rear admirals (lower half).
14511.	Separation at age 62: major generals and rear admirals.
14512.	Separation at age 64: officers holding certain offices.
14513.	Separation for failure of selection of promotion.
14514.	Discharge or retirement for years of service or after selection for early removal.
14515.	Discharge or retirement for age.
14516.	Separation to be considered involuntary.
14517.	Entitlement of officers discharged under this chapter to separation pay.

¹ See References in Text note below.

¹ So in original. Does not conform to section catchline.

CROSS REFERENCES

Reserves, discharge, see sections 12681 and 12682 of this title.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 113, 12645, 12646, 12647, 14001, 14006, 14703, 14706 of this title; title 32 section 323.

§ 14501. Failure of selection for promotion

(a) An officer on the reserve active-status list in a grade below the grade of colonel or, in the case of an officer in the Naval Reserve, captain who is in or above the promotion zone established for that officer's grade and competitive category and who (1) is considered but not recommended for promotion (other than by a vacancy promotion board), or (2) declines to accept a promotion for which selected (other than by a vacancy promotion board), shall be considered to have failed of selection for promotion.

(b) OFFICERS TWICE FAILED OF SELECTION.—An officer shall be considered for all purposes to have twice failed of selection for promotion if any of the following applies:

(1) The officer is considered but not recommended for promotion a second time by a mandatory promotion board convened under section 14101(a) or a special selection board convened under section 14502(a) of this title.

(2) The officer declines to accept a mandatory promotion board convened under section 14101(a) or a special selection board convened under section 14502(a) or 14502(b) of this title after previously failing of selection or after the officer's name was removed from the report of a selection board under section 14111(b) or from a promotion list under section 14310 of this title after recommendation by an earlier selection board described in subsection (a).

(3) The officer's name has been removed from the report of a selection board under section 14111(b) or from a promotion list under section 14310 of this title after recommendation by a mandatory promotion board convened under section 14101(a) or by a special selection board convened under section 14502(a) or 14502(b) of this title and—

(A) the officer is not recommended for promotion by the next mandatory promotion board convened under section 14101(a) or special selection board convened under section 14502(a) of this title for that officer's grade and competitive category; or

(B) the officer's name is again removed from the report of a selection board under section 14111(b) or from a promotion list under section 14310 of this title.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2946.)

EFFECTIVE DATE OF SECTION

Section 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

Chapter 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.

CONTINUATION ON RESERVE ACTIVE-STATUS LIST OF CERTAIN RESERVE COLONELS OF ARMY AND AIR FORCE

Section 1681 of title XVI of div. A of Pub. L. 103-337 provided that:

“(a) CONTINUATION UNDER OLD LAW.—Except as provided in subsection (b), a reserve officer of the Army or the Air Force who, on the effective date of this title [Oct. 1, 1996, see section 1691(b)(1), (2) of Pub. L. 103-337, set out as an Effective Date note under section 10001 of this title]—

“(1) is subject to placement on the reserve active-status list of the Army or the Air Force; and

“(2)(A) holds the reserve grade of colonel, (B) is on a list of officers recommended for promotion to the reserve grade of colonel, or (C) has been nominated by the President for appointment in the reserve grade of colonel,

shall continue to be subject to mandatory transfer to the Retired Reserve or discharge from the officer's reserve appointment under section 3851 or 8851 of title 10, United States Code, as in effect on the day before the effective date of this title.

“(b) EXEMPTION.—This section does not apply to an officer who is—

“(1) sooner transferred from an active status or discharged under some other provision of law;

“(2) promoted to a higher grade, unless the officer was on a list of officers recommended for promotion to the reserve grade of colonel before the effective date of this title; or

“(3) continued on the reserve active-status list under section 14701 of title 10, United States Code, as added by this title.”

MANDATORY SEPARATION FOR AGE FOR CERTAIN RESERVE OFFICERS OF NAVY AND MARINE CORPS

Section 1690 of title XVI of div. A of Pub. L. 103-337 provided that:

“(a) SAVINGS PROVISIONS FOR REQUIRED SEPARATION AGE.—A reserve officer of the Navy or the Marine Corps—

“(1) who—

“(A) on the effective date of this title [Oct. 1, 1996, see section 1691(b)(1), (2) of Pub. L. 103-337, set out as an Effective Date note under section 10001 of this title] is in an active status, and

“(B) on the day before the effective date of this title was an officer described in section 6389(e), 6397(a), 6403(a), or 6403(b) of title 10, United States Code; and

“(2) who, on or after the effective date of this title is subject to elimination from an active status under any provision of such title,

is entitled to be treated as that officer would have been treated under section 6397 or 6403 as applicable, as in effect on the day before the effective date of this title, if that treatment would result in the date for the officer's separation from an active status being a later date than the date established under the law in effect on or after the effective date of this title.

“(b) SAVINGS PROVISIONS FOR MANDATORY SEPARATION FOR AGE.—An officer who was initially appointed in the Naval Reserve or the Marine Corps Reserve before January 1, 1953, and who cannot complete 20 years of service computed under section 12732 of this title before he becomes 62 years of age, but can complete this service by the time he becomes 64 years of age, may be retained in an active status not later than the date he becomes 64 years of age.

“(c) An officer who was initially appointed in the Naval Reserve or the Marine Corps Reserve before the effective date of this title, and who cannot complete 20 years of service computed under section 12732 of this title before he becomes 60 years of age, but can complete this service by the time he becomes 62 years of age, may be retained in an active status not later than the date he becomes 62 years of age.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14315, 14316 of this title.

§ 14502. Special selection boards: correction of errors

(a) OFFICERS NOT CONSIDERED BECAUSE OF ADMINISTRATIVE ERROR.—(1) In the case of an officer or former officer who the Secretary of the military department concerned determines was not considered for selection for promotion from in or above the promotion zone by a mandatory promotion board convened under section 14101(a) of this title because of administrative error, the Secretary concerned shall convene a special selection board under this subsection to determine whether such officer or former officer should be recommended for promotion. Any such board shall be convened under regulations prescribed by the Secretary of Defense and shall be appointed and composed in accordance with section 14102 of this title and shall include the representation of competitive categories required by that section. The members of a board convened under this subsection shall be required to take an oath in the same manner as prescribed in section 14103 of this title.

(2) A special selection board convened under this subsection shall consider the record of the officer or former officer as that record would have appeared to the promotion board that should have considered the officer or former officer. That record shall be compared with a sampling of the records of those officers of the same grade and competitive category who were recommended for promotion and those officers of the same grade and competitive category who were not recommended for promotion by that board.

(3) If a special selection board convened under paragraph (1) does not recommend for promotion an officer or former officer in a grade below the grade of colonel or, in the case of an officer or former officer of the Navy, captain, whose name was referred to it for consideration, the officer or former officer shall be considered to have failed of selection for promotion.

(b) OFFICERS CONSIDERED BUT NOT SELECTED; MATERIAL ERROR.—(1) In the case of an officer or former officer who was eligible for promotion and was considered for selection for promotion from in or above the promotion zone under this chapter by a selection board but was not selected, the Secretary of the military department concerned may, under regulations prescribed by the Secretary of Defense, convene a special selection board under this subsection to determine whether the officer or former officer should be recommended for promotion, if the Secretary determines that—

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

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

(2) A special selection board convened under paragraph (1) shall be appointed and composed in accordance with section 14102 of this title (including the representation of competitive categories required by that section), and the members of such a board shall take an oath in the same manner as prescribed in section 14103 of this title.

(3) Such board shall consider the record of the officer or former officer as that record, if corrected, would have appeared to the selection board that considered the officer or former officer. That record shall be compared with a sampling of the records of those officers of the same grade and competitive category who were recommended for promotion and those officers of the same grade and competitive category who were not recommended for promotion by that board.

(4) If a special selection board convened under paragraph (1) does not recommend for promotion an officer or former officer in the grade of lieutenant colonel or commander or below whose name was referred to it for consideration, the officer or former officer shall be considered to have failed of selection for promotion by the board which did consider the officer but incurs no additional failure of selection for promotion from the action of the special selection board.

(c) REPORT.—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 officer it recommends for promotion and certifying that the board has considered carefully the record of each officer whose name was referred to it.

(d) APPLICABLE PROVISIONS.—The provisions of sections 14104, 14109, 14110, and 14111 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 promotion board convened under section 14101(a) of this title.

(e) APPOINTMENT OF OFFICERS RECOMMENDED FOR PROMOTION.—(1) An officer whose name is placed on a promotion list as a result of recommendation for promotion by a special selection board convened under this section, shall, as soon as practicable, be appointed to the next higher grade in accordance with the law and policies which would have been applicable had he been recommended for promotion by the board which should have considered or which did consider him.

(2) An officer who is promoted to the next higher grade as the result of the recommendation of a special selection board convened under this section shall, upon such promotion, have the same date of rank, the same effective date for the pay and allowances of that grade, and the same position on the reserve active-status list as the officer would have had if the officer had been recommended for promotion to that grade by the selection board which should have considered, or which did consider, the officer.

(3) 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 an officer not currently eligible for promotion or a former officer whose name was referred to it for consideration, the Secretary concerned may act under section 1552 of this title to correct the military record of the officer or former officer to correct an error or remove an injustice resulting from not being selected for promotion by the board which should have considered, or which did consider, the officer.

(f) TIME LIMITS FOR CONSIDERATION.—The Secretary of Defense may prescribe by regulation the circumstances under which consideration by a special selection board is contingent upon application for consideration by an officer or former officer and time limits within which an officer or former officer must make such application in order to be considered by a special selection board under this section.

(g) LIMITATION OF OTHER JURISDICTION.—No official or court of the United States shall have power or jurisdiction—

(1) over any claim based in any way on the failure of an officer or former officer of the armed forces to be selected for promotion by a selection board convened under chapter 1403 of this title until—

(A) the claim has been referred to a special selection board by the Secretary concerned and acted upon by that board; or

(B) the claim has been rejected by the Secretary without consideration by a special selection board; or

(2) to grant any relief on such a claim unless the officer or former officer has been selected for promotion by a special selection board convened under this section to consider the officer's claim.

(h) JUDICIAL REVIEW.—(1) A court of the United States may review a determination by the Secretary concerned under subsection (a)(1), (b)(1), or (e)(3) not to convene a special selection board. If a court finds the determination to be arbitrary or capricious, not based on substantial evidence, or otherwise contrary to law, it shall remand the case to the Secretary concerned, who shall provide for consideration of the officer or former officer by a special selection board under this section.

(2) If a court finds that the action of a special selection board which considers an officer or former officer was contrary to law or involved material error of fact or material administrative error, it shall remand the case to the Secretary concerned, who shall provide the officer or former officer reconsideration by a new special selection board.

(i) DESIGNATION OF BOARDS.—The Secretary of the military department concerned may designate a promotion board convened under section 14101(a) of this title as a special selection board convened under this section. A board so designated may function in both capacities.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2947.)

EFFECTIVE DATE OF SECTION

Section 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.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 5904 of this title, prior to repeal by Pub. L. 103-337, §1629(b)(2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14108, 14301, 14304, 14308, 14312, 14316, 14317, 14501 of this title.

§ 14503. Discharge of officers with less than five years of commissioned service or found not qualified for promotion to first lieutenant or lieutenant (junior grade)

(a) AUTHORIZED DISCHARGES.—The Secretary of the military department concerned may discharge any reserve officer who—

(1) has less than five years of service in an active status as a commissioned officer; or

(2) 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).

(b) TIME FOR DISCHARGE.—(1) An officer described in subsection (a)(2)—

(A) may be discharged at any time after being found not qualified for promotion; and

(B) if not sooner discharged, shall be discharged at the end of the 18-month period beginning on the date on which the officer is first found not qualified for promotion.

(2) Paragraph (1) shall not apply if the officer is sooner promoted.

(c) REGULATIONS.—Discharges under this section shall be made under regulations prescribed by the Secretary of Defense and may be made without regard to section 12645 of this title.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2949.)

EFFECTIVE DATE OF SECTION

Section 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.

PRIOR PROVISIONS

Provisions similar to those in subsecs. (a) and (b) of this section were contained in sections 3819(b) and 8819(c) of this title, prior to repeal by Pub. L. 103-337, §1629(a)(2), (c)(2).

RIGHTS FOR OFFICERS WITH OVER THREE YEARS SERVICE

Section 1689 of title XVI of div. A of Pub. L. 103-337 provided that: "A reserve officer of the Army, Navy, Air Force, or Marine Corps who was in an active status on the day before the effective date of this title [Oct. 1, 1996, see section 1691(b)(1), (2) of Pub. L. 103-337, set out as an Effective Date note under section 10001 of this title] and who was subject to placement of the reserve active-status list on the effective date of this title may not be discharged under section 14503 of title 10, United States Code, as added by this title, until on or after the day on which that officer completes three years of continuous service as a reserve commissioned officer."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14703 of this title.

§ 14504. Effect of failure of selection for promotion: reserve first lieutenants of the Army, Air Force, and Marine Corps and reserve lieutenants (junior grade) of the Navy

(a) GENERAL RULE.—A first lieutenant on the reserve active-status list of the Army, Air Force, or Marine Corps or a lieutenant (junior grade) on the reserve active-status list of the Navy 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 rec-

ommended for promotion to the next higher grade shall be separated in accordance with section 14513 of this title not later than the first day of the seventh month after the month in which the President approves the report of the board which considered the officer for the second time.

(b) EXCEPTIONS.—Subsection (a) does not apply (1) in the case of an officer retained as provided by regulation of the Secretary of the military department concerned in order to meet planned mobilization needs for a period not in excess of 24 months beginning with the date on which the President approves the report of the selection board which resulted in the second failure, or (2) as provided in section 12646 or 12686 of this title. (Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2950.)

EFFECTIVE DATE OF SECTION

Section 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14513, 14703 of this title.

§ 14505. Effect of failure of selection for promotion: reserve captains of the Army, Air Force, and Marine Corps and reserve lieutenants of the Navy

Unless retained as provided in section 12646 or 12686 of this title, a captain on the reserve active-status list of the Army, Air Force, or Marine Corps or a lieutenant on the reserve active-status list of the Navy 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 and who has not been selected for continuation on the reserve active-status list under section 14701 of this title, shall be separated in accordance with section 14513 of this title not later than the first day of the seventh month after the month in which the President approves the report of the board which considered the officer for the second time.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2950.)

EFFECTIVE DATE OF SECTION

Section 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14513, 14701, 14703 of this title.

§ 14506. Effect of failure of selection for promotion: reserve majors of the Army, Air Force and Marine Corps and reserve lieutenant commanders of the Navy

Unless retained as provided in section 12646, 12686, 14701, or 14702 of this title, each reserve officer of the Army, Navy, Air Force, or Marine Corps who holds the grade of major or lieutenant commander who has failed of selection 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, if not earlier removed from the reserve active-status list, be removed from that list in accordance with section 14513 of this title on the first day of the month after the month in which the officer completes 20 years of commissioned service.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2951.)

EFFECTIVE DATE OF SECTION

Section 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14513, 14701, 14702, 14703 of this title.

§ 14507. Removal from the reserve active-status list for years of service: reserve lieutenant colonels and colonels of the Army, Air Force, and Marine Corps and reserve commanders and captains of the Navy

(a) LIEUTENANT COLONELS AND COMMANDERS.—Unless continued on the reserve active-status list under section 14701 or 14702 of this title or retained as provided in section 12646 or 12686 of this title, each reserve officer of the Army, Navy, Air Force, or Marine Corps who holds the grade of lieutenant colonel or commander and who is not on a list of officers recommended for promotion to the next higher grade shall (if not earlier removed from the reserve active-status list) be removed from that list under section 14514 of this title on the first day of the month after the month in which the officer completes 28 years of commissioned service.

(b) COLONELS AND NAVY CAPTAINS.—Unless continued on the reserve active-status list under section 14701 or 14702 of this title or retained as provided in section 12646 or 12686 of this title, each reserve officer of the Army, Air Force, or Marine Corps who holds the grade of colonel, and each reserve officer of the Navy who holds the grade of captain, and who is not on a list of officers recommended for promotion to the next higher grade shall (if not earlier removed from the reserve active-status list) be removed from that list under section 14514 of this title on the first day of the month after the month in which the officer completes 30 years of commissioned service. This subsection does not apply to the adjutant general or assistant adjutants general of a State.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2951.)

EFFECTIVE DATE OF SECTION

Section 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.

CROSS REFERENCES

Adjutants general and assistant adjutants general, reference as applicable to other officers of National Guard, see section 10214 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10214, 14514, 14701, 14702 of this title.

§ 14508. Removal from the reserve active-status list for years of service: reserve general and flag officers

(a) THIRTY YEARS SERVICE OR FIVE YEARS IN GRADE.—Unless retired, transferred to the Retired Reserve, or discharged at an earlier date, each reserve officer of the Army, Air Force, or Marine Corps in the grade of brigadier general who has not been recommended for promotion to the grade of major general, and each reserve officer of the Navy in the grade of rear admiral (lower half) who has not been recommended for promotion to rear admiral shall, 30 days after completion of 30 years of commissioned service or on the fifth anniversary of the date of the officer's appointment in the grade of brigadier general or rear admiral (lower half), whichever is later, be separated in accordance with section 14514 of this title.

(b) THIRTY-FIVE YEARS SERVICE OR FIVE YEARS IN GRADE.—Unless retired, transferred to the Retired Reserve, or discharged at an earlier date, each reserve officer of the Army, Air Force, or Marine Corps in the grade of major general, and each reserve officer of the Navy in the grade of rear admiral, shall, 30 days after completion of 35 years of commissioned service or on the fifth anniversary of the date of the officer's appointment in the grade of major general or rear admiral, whichever is later, be separated in accordance with section 14514 of this title.

(c) RETENTION OF BRIGADIER GENERALS.—A reserve officer of the Army or Air Force in the grade of brigadier general who would otherwise be removed from an active status under this¹ subsection (a) may, in the discretion of the Secretary of the Army or the Secretary of the Air Force, as the case may be, be retained in an active status, but not later than the date on which the officer becomes 60 years of age. Not more than 10 officers of the Army and not more than 10 officers of the Air Force may be retained under this subsection at any one time.

(d) RETENTION OF MAJOR GENERALS.—A reserve officer of the Army or Air Force in the grade of major general who would otherwise be removed from an active status under this¹ subsection (b) may, in the discretion of the Secretary of the Army or the Secretary of the Air Force, as the case may be, be retained in an active status, but not later than the date on which the officer becomes 62 years of age. Not more than 10 officers of the Army and not more than 10 officers of the Air Force may be retained under this subsection at any one time.

(e) EXCEPTION FOR STATE ADJUTANTS GENERAL AND ASSISTANT ADJUTANTS GENERAL.—This section does not apply to an officer who is the adjutant general or assistant adjutant general of a State.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2951.)

EFFECTIVE DATE OF SECTION

Section 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.

¹ So in original. The word "this" probably should not appear.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3851, 3852, 6389(f)(1), (2), 8851, and 8852 of this title, prior to repeal by Pub. L. 103-337, §§1628(4), 1629(a)(3), (c)(3).

CROSS REFERENCES

Adjutants general and assistant adjutants general, reference as applicable to other officers of National Guard, see section 10214 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10214, 14514 of this title.

§ 14509. Separation at age 60: reserve officers in grades below brigadier general or rear admiral (lower half)

Each reserve officer of the Army, Navy, Air Force, or Marine Corps in a grade below brigadier general or rear admiral (lower half) who has not been recommended for promotion to the grade of brigadier general or rear admiral (lower half) and is not a member of the Retired Reserve shall, on the last day of the month in which that officer becomes 60 years of age, be separated in accordance with section 14515 of this title.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2952.)

EFFECTIVE DATE OF SECTION

Section 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14515, 14701 of this title.

§ 14510. Separation at age 60: reserve brigadier generals and rear admirals (lower half)

Unless retired, transferred to the Retired Reserve, or discharged at an earlier date, each reserve officer of the Army, Air Force, or Marine Corps in the grade of brigadier general who has not been recommended for promotion to the grade of major general, and each reserve rear admiral (lower half) of the Navy who has not been recommended for promotion to the grade of rear admiral, except an officer covered by section 14512 of this title, shall be separated in accordance with section 14515 of this title on the last day of the month in which the officer becomes 60 years of age.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2952.)

EFFECTIVE DATE OF SECTION

Section 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.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3843(a) and 8843 of this title, prior to repeal by Pub. L. 103-337, §1629(a)(3), (c)(3).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14512, 14515 of this title.

§ 14511. Separation at age 62: major generals and rear admirals

Unless retired, transferred to the Retired Reserve, or discharged at an earlier date, each reserve officer of the Army, Air Force, or Marine Corps in the grade of major general and each reserve officer of the Navy in the grade of rear admiral, except an officer covered by section 14512 of this title, shall be separated in accordance with section 14515 of this title on the last day of the month in which the officer becomes 62 years of age.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2953.)

EFFECTIVE DATE OF SECTION

Section 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.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3844 and 8844 of this title, prior to repeal by Pub. L. 103-337, §1629(a)(3), (c)(3).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14512, 14515 of this title.

§ 14512. Separation at age 64: officers holding certain offices

(a) **ARMY AND AIR FORCE.**—Unless retired, transferred to the Retired Reserve, or discharged at an earlier date, a reserve officer of the Army or Air Force who is Chief of the National Guard Bureau, an adjutant general, or if a reserve officer of the Army, commanding general of the troops of a State, shall on the last day of the month in which the officer becomes 64 years of age, be separated in accordance with section 14515 of this title.

(b) **NAVY AND MARINE CORPS.**—The Secretary of the Navy may defer the retirement under section 14510 or 14511 of a reserve officer of the Navy in a grade above captain or a reserve officer of the Marine Corps in a grade above colonel and retain the officer in an active status until the officer becomes 64 years of age. Not more than 10 officers may be so deferred at any one time, distributed between the Naval Reserve and the Marine Corps Reserve as the Secretary determines.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2953.)

EFFECTIVE DATE OF SECTION

Section 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.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3845, 6391(b), and 8845 of this title, prior to repeal by Pub. L. 103-337, §1629(a)(3), (b)(3), (c)(3).

CROSS REFERENCES

Adjutants general and assistant adjutants general, reference as applicable to other officers of National Guard, see section 10214 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10214, 14510, 14511, 14515 of this title.

§ 14513. Separation for failure of selection of promotion

Each reserve officer of the Army, Navy, Air Force, or Marine Corps who is in an active status and whose removal from an active status or from a reserve active-status list is required by section 14504, 14505, or 14506 of this title shall (unless the officer's separation is deferred or the officer is continued in an active status under another provision of law) not later than the date specified in those sections—

(1) be transferred to an inactive status if the Secretary concerned determines that the officer has skills which may be required to meet the mobilization needs of the officer's armed force;

(2) be transferred to the Retired Reserve, if the officer is qualified and applies for such transfer; or

(3) if the officer is not transferred to an inactive status or to the Retired Reserve, be discharged from the officer's reserve appointment.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2953.)

EFFECTIVE DATE OF SECTION

Section 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12646, 14504, 14505, 14506, 14516, 14517, 14701 of this title.

§ 14514. Discharge or retirement for years of service or after selection for early removal

Each reserve officer of the Army, Navy, Air Force, or Marine Corps who is in an active status and who is required to be removed from an active status or from a reserve active-status list, as the case may be, under section 14507, 14508, 14704, or 14705 of this title (unless the officer is sooner separated or the officer's separation is deferred or the officer is continued in an active status under another provision of law), in accordance with those sections, shall—

(1) be transferred to the Retired Reserve, if the officer is qualified and applies for such transfer; or

(2) if the officer is not qualified or does not apply for such transfer, be discharged from the officer's reserve appointment.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2953.)

EFFECTIVE DATE OF SECTION

Section 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.

CROSS REFERENCES

Reserve components, limitations on separation inapplicable to discharges under this section, see section 12683 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12646, 12683, 14507, 14508, 14516, 14517, 14701, 14704, 14705 of this title.

§ 14515. Discharge or retirement for age

Each reserve officer of the Army, Navy, Air Force, or Marine Corps who is in an active status or on an inactive status list and who reaches the maximum age specified in section 14509, 14510, 14511, or 14512 of this title for the officer's grade or position shall (unless the officer is sooner separated or the officer's separation is deferred or the officer is continued in an active status under another provision of law) not later than the last day of the month in which the officer reaches that maximum age—

(1) be transferred to the Retired Reserve, if the officer is qualified and applies for such transfer; or

(2) if the officer is not qualified or does not apply for transfer to the Retired Reserve, be discharged from the officer's reserve appointment.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2954.)

EFFECTIVE DATE OF SECTION

Section 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.

CROSS REFERENCES

Reserve components, limitations on separation inapplicable to discharges under this section, see section 12683 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12683, 14509, 14510, 14511, 14512, 14516, 14517 of this title.

§ 14516. Separation to be considered involuntary

The separation of an officer pursuant to section 14513, 14514, or 14515 of this title shall be considered to be an involuntary separation for purposes of any other provision of law.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2954.)

EFFECTIVE DATE OF SECTION

Section 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.

§ 14517. Entitlement of officers discharged under this chapter to separation pay

An officer who is discharged under section 14513, 14514, or 14515 of this title is entitled to separation pay under section 1174 of this title if otherwise eligible under that section.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2954.)

EFFECTIVE DATE OF SECTION

Section 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.

CHAPTER 1409—CONTINUATION OF OFFICERS ON THE RESERVE ACTIVE-STATUS LIST AND SELECTIVE EARLY REMOVAL

Sec.
14701. Selection of officers for continuation on the reserve active-status list.

Sec.
14702. Retention on reserve active-status list of certain officers until age 60.
14703. Authority to retain chaplains and officers in medical specialties until specified age.
14704. Selective early removal from the reserve active-status list.
14705. Selective early retirement: reserve general and flag officers of the Navy and Marine Corps.
14706. Computation of total years of service.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 113, 12645, 12646, 12647, 14001, 14006 of this title.

§ 14701. Selection of officers for continuation on the reserve active-status list

(a) CONSIDERATION FOR CONTINUATION.—(1) Upon application, a reserve officer of the Army, Navy, Air Force, or Marine Corps who is required to be removed from the reserve active-status list under section 14505, 14506, or 14507 of this title may, subject to the needs of the service and to section 14509 of this title, be considered for continuation on the reserve active-status list by a selection board convened under section 14101(b) of this title.

(2) A reserve officer who holds the grade of captain in the Army, Air Force, or Marine Corps or the grade of lieutenant in the Navy and who is subject to separation under section 14513 of this title may not be continued on the reserve active-status list under this subsection for a period which extends beyond the last day of the month in which the officer completes 20 years of commissioned service.

(3) A reserve officer who holds the grade of major or lieutenant commander and who is subject to separation under section 14513 of this title may not be continued on the reserve active-status list under this subsection for a period which extends beyond the last day of the month in which the officer completes 24 years of commissioned service.

(4) A reserve officer who holds the grade of lieutenant colonel or commander and who is subject to separation under section 14514 of this title may not be continued on the reserve active-status list under this subsection for a period which extends beyond the last day of the month in which the officer completes 33 years of commissioned service.

(5) A reserve officer who holds the grade of colonel in the Army, Air Force, or Marine Corps or the grade of captain in the Navy and who is subject to separation under section 14514 of this title may not be continued on the reserve active-status list under this subsection for a period which extends beyond the last day of the month in which the officer completes 35 years of commissioned service.

(6) An officer who is selected for continuation on the reserve active-status list as a result of the convening of a selection board under section 14101(b) of this title but who declines to continue on that list shall be separated in accordance with section 14513 or 14514 of this title, as the case may be.

(7) Each officer who is continued on the reserve active-status list under this section, who is not subsequently promoted or continued on

the active-status list, and whose name is not on a list of officers recommended for promotion to the next higher grade shall (unless sooner separated under another provision of law) be separated in accordance with section 14513 or 14514 of this title, as appropriate, upon the expiration of the period for which the officer was continued on the reserve active-status list.

(b) APPROVAL OF SECRETARY CONCERNED.—Continuation of an officer on the reserve active-status list under this section pursuant to action of a continuation board convened under section 14101(b) of this title is subject to the approval of the Secretary of the military department concerned.

(c) INSTRUCTIONS TO CONTINUATION BOARDS.—A continuation board convened under section 14101(b) of this title to consider officers for continuation on the reserve active-status list under this section shall act in accordance with the instructions and directions provided to the board by the Secretary of the military department concerned.

(d) REGULATIONS.—The Secretary of Defense shall prescribe regulations for the administration of this section.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2954.)

EFFECTIVE DATE OF SECTION

Section 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

Chapter 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14101, 14505, 14506, 14507 of this title.

§ 14702. Retention on reserve active-status list of certain officers until age 60

(a) RETENTION.—Notwithstanding the provisions of section 14506 or 14507 of this title, the Secretary of the military department concerned may, with the officer's consent, retain on the reserve active-status list an officer in the grade of major, lieutenant colonel, or colonel who is—

(1) an officer of the Army National Guard of the United States and assigned to a headquarters or headquarters detachment of a State; or

(2) a reserve officer of the Army or Air Force who, as a condition of continued employment as a National Guard or Reserve technician is required by the Secretary concerned to maintain membership in a Selected Reserve unit or organization.

(b) SEPARATION AT AGE 60.—An officer may be retained under this section only so long as the officer continues to meet the conditions of subsection (a)(1) or (a)(2). An officer may not be retained under this section after the last day of the month in which the officer becomes 60 years of age.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2955.)

EFFECTIVE DATE OF SECTION

Section 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14506, 14507 of this title.

§ 14703. Authority to retain chaplains and officers in medical specialties until specified age

(a) RETENTION.—Notwithstanding any provision of chapter 1407 of this title and except for officers referred to in sections 14503, 14504, 14505, and 14506 of this title and under regulations prescribed by the Secretary of Defense—

(1) the Secretary of the Army may, with the officer's consent, retain in an active status any reserve officer assigned to the Medical Corps, the Dental Corps, the Veterinary Corps, the Medical Services Corps (if the officer has been designated as allied health officer or biomedical sciences officer in that Corps), the Optometry Section of the Medical Services Corps, the Chaplains, the Army Nurse Corps, or the Army Medical Specialists Corps;

(2) the Secretary of the Navy may, with the officer's consent, retain in an active status any reserve officer appointed in the Medical Corps, Dental Corps, Nurse Corps, or Chaplain Corps or appointed in the Medical Services Corps and designated to perform as a veterinarian, optometrist, podiatrist, allied health officer, or biomedical sciences officer; and

(3) the Secretary of the Air Force may, with the officer's consent, retain in an active status any reserve officer who is designated as a medical officer, dental officer, veterinary officer, Air Force nurse, or chaplain or who is designated as a biomedical sciences officer and is qualified for service as a veterinarian, optometrist, or podiatrist.

(b) SEPARATION AT SPECIFIED AGE.—An officer may not be retained in active status under this section later than the date on which the officer becomes 67 years of age (or, in the case of a reserve officer of the Army in the Chaplains or a reserve officer of the Air Force designated as a chaplain, 60 years of age).

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2956.)

EFFECTIVE DATE OF SECTION

Section 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.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3855(a), (c)(1), 6392(a), (c)(1), and 8855(a), (c)(1) of this title, prior to repeal by Pub. L. 103-337, §1629(a)(3), (b)(3), (c)(3).

§ 14704. Selective early removal from the reserve active-status list

(a) BOARDS TO RECOMMEND OFFICERS FOR REMOVAL FROM RESERVE ACTIVE-STATUS LIST.—Whenever the Secretary of the military department concerned determines that there are in any reserve component under the jurisdiction of

the Secretary too many officers in any grade and competitive category who have at least 30 years of service computed under section 14706 of this title or at least 20 years of service computed under section 12732 of this title, the Secretary may convene a selection board under section 14101(b) of this title to consider all officers on that list who are in that grade and competitive category, and who have that amount of service, for the purpose of recommending officers by name for removal from the reserve active-status list, in the number specified by the Secretary by each grade and competitive category.

(b) SEPARATION OF OFFICERS SELECTED.—In the case of an officer recommended for separation in the report of a board under subsection (a), the Secretary may separate the officer in accordance with section 14514 of this title.

(c) REGULATIONS.—The Secretary of the military department concerned shall prescribe regulations for the administration of this section.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2956.)

EFFECTIVE DATE OF SECTION

Section 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.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3850 and 8850 of this title, prior to repeal by Pub. L. 103-337, §1629(a)(3), (c)(3).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14101, 14514 of this title.

§ 14705. Selective early retirement: reserve general and flag officers of the Navy and Marine Corps

(a) AUTHORITY TO CONSIDER.—An officer in the Naval Reserve in an active status serving in the grade of rear admiral (lower half) or rear admiral and an officer in the Marine Corps Reserve in an active status serving in the grade of brigadier general or major general may be considered for early retirement whenever the Secretary of the Navy determines that such action is necessary.

(b) BOARDS.—If the Secretary of the Navy determines that consideration for early retirement under this section is necessary, the Secretary shall convene a board under section 14101(b) of this title to recommend an appropriate number of officers for early retirement.

(c) SEPARATION UNDER SECTION 14514.—An officer selected for early retirement under this section shall be separated in accordance with section 14514 of this title.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2957.)

EFFECTIVE DATE OF SECTION

Section 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.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 6389(f)(3) of this title, prior to repeal by Pub. L. 103-337, §1628(4).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14101, 14514 of this title.

§ 14706. Computation of total years of service

For the purpose of this chapter and chapter 1407 of this title, a reserve officer's years of service include all service, other than constructive service, of the officer as a commissioned officer of any uniformed service (other than service as a warrant officer).

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2957.)

EFFECTIVE DATE OF SECTION

Section 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.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3853 and 8853 of this title, prior to repeal by Pub. L. 103-337, §1629(a)(3), (c)(3).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14704 of this title.

CHAPTER 1411—ADDITIONAL PROVISIONS RELATING TO INVOLUNTARY SEPARATION

Sec.

- 14901. Separation of chaplains for loss of professional qualifications.
- 14902. Separation for substandard performance and for certain other reasons.
- 14903. Boards of inquiry.
- 14904. Rights and procedures.
- 14905. Officer considered for removal: retirement or discharge.
- 14906. Officers eligible to serve on boards.
- 14907. Army National Guard of the United States and Air National Guard of the United States: discharge and withdrawal of Federal recognition of officers absent without leave.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 113, 617, 12645, 14001, 14006 of this title; title 32 section 323.

§ 14901. Separation of chaplains for loss of professional qualifications

(a) SEPARATION.—Under regulations prescribed by the Secretary of Defense, an officer on the reserve active-status list who is appointed or designated as a chaplain may, if the officer fails to maintain the qualifications needed to perform the professional function of a chaplain, be discharged. The authority under the preceding sentence applies without regard to the provisions of section 12645 of this title.

(b) EFFECT OF SEPARATION.—If an officer separated under this section is eligible for retirement, the officer may be retired. If the officer has completed the years of service required for eligibility for retired pay under chapter 1223 of this title, the officer may be transferred to the Retired Reserve.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2957.)

EFFECTIVE DATE OF SECTION

Section 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

Chapter 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.

CROSS REFERENCES

Reserve components, limitations on separation inapplicable to separation under this section, see section 12683 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12683 of this title.

§ 14902. Separation for substandard performance and for certain other reasons

(a) **SUBSTANDARD PERFORMANCE OF DUTY.**—The Secretary of the military department concerned shall prescribe, by regulation, procedures for the review at any time of the record of any reserve officer to determine whether that officer should be required, because that officer's performance has fallen below standards prescribed by the Secretary concerned, to show cause for retention in an active status.

(b) **MISCONDUCT, ETC.**—The Secretary of the military department concerned shall prescribe, by regulation, procedures for the review at any time of the record of any reserve officer to determine whether that officer should be required, because of misconduct, because of moral or professional dereliction, or because the officer's retention is not clearly consistent with the interests of national security, to show cause for retention in an active status.

(c) **REGULATIONS.**—The authority of the Secretary of a military department under this section shall be carried out subject to such limitations as the Secretary of Defense may prescribe by regulation.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2958.)

EFFECTIVE DATE OF SECTION

Section 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14109, 14903, 14904, 14905 of this title.

§ 14903. Boards of inquiry

(a) **CONVENING OF BOARDS.**—The Secretary of the military department concerned shall convene a board of inquiry at such time and place as the Secretary may prescribe to receive evidence and review the case of any officer who has been required to show cause for retention in an active status under section 14902 of this title. Each board of inquiry shall be composed of not less than three officers who have the qualifications prescribed in section 14906 of this title.

(b) **RIGHT TO FAIR HEARING.**—A board of inquiry shall give a fair and impartial hearing to each officer required under section 14902 of this chapter to show cause for retention in an active status.

(c) **RECOMMENDATIONS TO SECRETARY.**—If a board of inquiry determines that the officer has failed to establish that the officer should be re-

tained in an active status, the board shall recommend to the Secretary concerned that the officer not be retained in an active status.

(d) **ACTION BY SECRETARY.**—After review of the recommendation of the board of inquiry, the Secretary may—

- (1) remove the officer from an active status; or
- (2) determine that the case be closed.

(e) **ACTION IN CASES WHERE CAUSE FOR RETENTION IS ESTABLISHED.**—(1) If a board of inquiry determines that an officer has established that the officer should be retained in an active status or if the Secretary determines that the case be closed, the officer's case is closed.

(2) An officer who is required to show cause for retention under section 14902(a) of this title and whose case is closed under paragraph (1) may not again be required to show cause for retention under such subsection during 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 under section 14902(b) of this title and whose case is closed under paragraph (1) may again be required to show cause for retention at any time.

(B) An officer who has been required to show cause for retention under section 14902(b) of this title and who is thereafter retained in an active status may not again be required to show cause for retention under such section solely because of conduct which was the subject of the previous proceeding, unless the recommendations of the board of inquiry that considered the officer's case are determined to have been obtained by fraud or collusion.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2958.)

EFFECTIVE DATE OF SECTION

Section 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14311, 14905 of this title.

§ 14904. Rights and procedures

(a) **PROCEDURAL RIGHTS.**—Under regulations prescribed by the Secretary of Defense, an officer required under section 14902 of this title to show cause for retention in an active status—

- (1) shall be notified in writing, at least 30 days before the hearing of the officer's case by a board of inquiry, of the reasons for which the officer is being required to show cause for retention in an active status;
- (2) shall be allowed a reasonable time, as determined by the board of inquiry, to prepare for showing of cause for retention in an active status;
- (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 the 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) SUMMARY OF RECORDS WITHHELD.—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. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2959.)

EFFECTIVE DATE OF SECTION

Section 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.

§ 14905. Officer considered for removal: retirement or discharge

(a) VOLUNTARY RETIREMENT OR DISCHARGE.—At any time during proceedings under this chapter with respect to the removal of an officer from an active status, 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;

(2) for transfer to the Retired Reserve if the officer has completed the years of service required for eligibility for retired pay under chapter 1223 of this title and is otherwise eligible for transfer to the Retired Reserve; or

(3) for discharge in accordance with subsection (b)(3).

(b) REQUIRED RETIREMENT OR DISCHARGE.—An officer removed from an active status under section 14903 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 that provision;

(2) if eligible for transfer to the Retired Reserve and has completed the years of service required for retired pay under chapter 1223 of this title, be transferred to the Retired Reserve; and

(3) if ineligible for retirement or transfer to the Retired Reserve under paragraph (1) or (2) 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 14902 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 14902 of this title.

(c) SEPARATION PAY.—An officer who is discharged under subsection (b)(3) is entitled, if eligible therefor, to separation pay under section 1174(c) of this title.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2959.)

EFFECTIVE DATE OF SECTION

Section 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.

§ 14906. Officers eligible to serve on boards

(a) COMPOSITION OF BOARDS.—(1) Each officer who serves on a board convened under this chapter shall be an officer of the same armed force as the officer being required to show cause for retention in an active status.

(2) An officer may not serve on a board under this chapter unless the officer holds a grade above lieutenant colonel or commander and is senior in grade and rank to any officer considered by the board.

(b) LIMITATION.—A person may not be a member of more than one board convened under this chapter to consider the same officer.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2960.)

EFFECTIVE DATE OF SECTION

Section 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14903 of this title.

§ 14907. Army National Guard of the United States and Air National Guard of the United States: discharge and withdrawal of Federal recognition of officers absent without leave

(a) AUTHORITY TO WITHDRAW FEDERAL RECOGNITION.—If an officer of the Army National Guard of the United States or the Air National Guard of the United States has been absent without leave for three months, the Secretary of the Army or the Secretary of the Air Force, as appropriate, may—

(1) terminate the reserve appointment of the officer; and

(2) withdraw the officer's Federal recognition as an officer of the National Guard.

(b) DISCHARGE FROM RESERVE APPOINTMENT.—An officer of the Army National Guard of the United States or the Air National Guard of the United States whose Federal recognition as an officer of the National Guard is withdrawn under section 323(b) of title 32 shall be discharged from the officer's appointment as a reserve officer of the Army or the Air Force, as the case may be.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2960.)

EFFECTIVE DATE OF SECTION

Section 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.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3820(a), (b) and 8820 of this title, prior to repeal by Pub. L. 103-337, §1629(a)(2), (c)(2).

CROSS REFERENCES

Reserve components, limitations on separation inapplicable to discharges under this section, see section 12683 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12683 of this title.

PART IV—TRAINING FOR RESERVE COMPONENTS AND EDUCATIONAL ASSISTANCE PROGRAMS

Chap.		Sec.
1601.	Training Generally. [No present sections]	
1606.	Educational Assistance for Members of the Selected Reserve	16131
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1609.	Education Loan Repayments ¹	16301

CHAPTER 1601—TRAINING GENERALLY

[No present sections]

CHAPTER 1606—EDUCATIONAL ASSISTANCE FOR MEMBERS OF THE SELECTED RESERVE

Sec.	
16131.	Educational assistance program: establishment; amount.
16132.	Eligibility for educational assistance.
16133.	Time limitations for use of entitlement. ¹
16134.	Termination of assistance.
16135.	Failure to participate satisfactorily; penalties.
16136.	Administration of program.
16137.	Reports to Congress.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 2131 of this title.

§ 16131. Educational assistance program: establishment; amount

(a) To encourage membership in units of the Selected Reserve of the Ready Reserve, the Secretary of each military department, under regulations prescribed by the Secretary of Defense, and the Secretary of Transportation, under regulations prescribed by the Secretary with respect to the Coast Guard when it is not operating as a service in the Navy, shall establish and maintain a program to provide educational assistance to members of the Selected Reserve of the Ready Reserve of the armed forces under the jurisdiction of the Secretary concerned who agree to remain members of the Selected Reserve for a period of not less than six years.

(b)(1) Except as provided in paragraph (2) and subsections (d) through (g), each educational assistance program established under subsection (a) shall provide for payment by the Secretary concerned, through the Secretary of Veterans Affairs, to each person entitled to educational assistance under this chapter who is pursuing a program of education of an educational assistance allowance at the following rates:

(A) \$190 per month for each month of full-time pursuit of a program of education;

(B) \$143 per month for each month of three-quarter-time pursuit of a program of education;

(C) \$95 per month for each month of half-time pursuit of a program of education; and

(D) an appropriately reduced rate, as determined under regulations which the Secretary of Veterans Affairs shall prescribe, for each month of less than half-time pursuit of a program of education, except that no payment

may be made to a person for less than half-time pursuit if tuition assistance is otherwise available to the person for such pursuit from the military department concerned.

(2) With respect to any fiscal year beginning on or after October 1, 1994, the Secretary shall continue to pay, in lieu of the rates payable under subparagraphs (A), (B), and (C) of paragraph (1), the monthly rates payable under this paragraph for the previous fiscal year and shall provide, for any such fiscal year, a percentage increase in such rates equal to the percentage by which—

(A) the Consumer Price Index (all items, United States city average) for the 12-month period ending on the June 30 preceding the beginning of the fiscal year for which the increase is made, exceeds

(B) such Consumer Price Index for the 12-month period preceding the 12-month period described in subparagraph (A).

(c)(1) Educational assistance may be provided under this chapter for pursuit of any program of education that is an approved program of education for purposes of chapter 30 of title 38.

(2) Subject to section 3695 of title 38, the maximum number of months of educational assistance that may be provided to any person under this chapter is 36 (or the equivalent thereof in part-time educational assistance).

(3)(A) Notwithstanding any other provision of this chapter or chapter 36 of title 38, any payment of an educational assistance allowance described in subparagraph (B) of this paragraph shall not—

(i) be charged against the entitlement of any individual under this chapter; or

(ii) be counted toward the aggregate period for which section 3695 of title 38 limits an individual's receipt of assistance.

(B) The payment of the educational assistance allowance referred to in subparagraph (A) of this paragraph is the payment of such an allowance to the individual for pursuit of a course or courses under this chapter if the Secretary of Veterans Affairs finds that the individual—

(i) had to discontinue such course pursuit as a result of being ordered, in connection with the Persian Gulf War, to serve on active duty under section 12301(a), 12301(d), 12301(g), 12302, or 12304 of this title; and

(ii) failed to receive credit or training time toward completion of the individual's approved educational, professional, or vocational objective as a result of having to discontinue, as described in clause (i), the individual's course pursuit.

(C) The period for which, by reason of this subsection, an educational assistance allowance is not charged against entitlement or counted toward the applicable aggregate period under section 3695 of title 38 shall not exceed the portion of the period of enrollment in the course or courses for which the individual failed to receive credit or with respect to which the individual lost training time, as determined under subparagraph (B)(ii).

(d)(1) Except as provided in paragraph (2), the amount of the monthly educational assistance

¹ So in original. Does not conform to chapter heading.

¹ So in original. Does not conform to section catchline.

allowance payable to a person pursuing a full-time program of apprenticeship or other on-the-job training under this chapter is—

(A) for each of the first six months of the person's pursuit of such program, 75 percent of the monthly educational assistance allowance otherwise payable to such person under this chapter;

(B) for each of the second six months of the person's pursuit of such program, 55 percent of such monthly educational assistance allowance; and

(C) for each of the months following the first 12 months of the person's pursuit of such program, 35 percent of such monthly educational assistance allowance.

(2) In any month in which any person pursuing a program of education consisting of a program of apprenticeship or other on-the-job training fails to complete 120 hours of training, the amount of the monthly educational assistance allowance payable under this chapter to the person shall be limited to the same proportion of the applicable full-time rate as the number of hours worked during such month, rounded to the nearest 8 hours, bears to 120 hours.

(3)(A) Except as provided in subparagraph (B), for each month that such person is paid a monthly educational assistance allowance under this chapter, the person's entitlement under this chapter shall be charged at the rate of—

(i) 75 percent of a month in the case of payments made in accordance with paragraph (1)(A);

(ii) 55 percent of a month in the case of payments made in accordance with paragraph (1)(B); and

(iii) 35 percent of a month in the case of payments made in accordance with paragraph (1)(C).

(B) Any such charge to the entitlement shall be reduced proportionately in accordance with the reduction in payment under paragraph (2).

(e)(1) The amount of the monthly educational assistance allowance payable to a person pursuing a cooperative program under this chapter shall be 80 percent of the monthly allowance otherwise payable to such person under this chapter.

(2) For each month that a person is paid a monthly educational assistance allowance for pursuit of a cooperative program under this chapter, the person's entitlement under this chapter shall be charged at the rate of 80 percent of a month.

(f)(1)(A) The amount of the educational assistance allowance payable under this chapter to a person who enters into an agreement to pursue, and is pursuing, a program of education exclusively by correspondence is an amount equal to 55 percent of the established charge which the institution requires nonveterans to pay for the course or courses pursued by such person.

(B) For purposes of subparagraph (A), the term "established charge" means the lesser of—

(i) the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State approving agency; or

(ii) the actual charge to the person for such course or courses.

(C) Such allowance shall be paid quarterly on a pro rata basis for the lessons completed by the person and serviced by the institution.

(2) In each case in which the amount of educational assistance is determined under paragraph (1), the period of entitlement of the person concerned shall be charged with one month for each amount equal to the amount of the monthly rate payable under subsection (b)(1)(A) for the fiscal year concerned which is paid to the individual as an educational assistance allowance.

(g)(1) Each individual who is pursuing a program of education consisting exclusively of flight training approved as meeting the requirements of section 16136(c) of this title shall be paid an educational assistance allowance under this chapter in the amount equal to 60 percent of the established charges for tuition and fees which similarly circumstanced nonveterans enrolled in the same flight course are required to pay.

(2) No educational assistance allowance may be paid under this chapter to an individual for any month during which such individual is pursuing a program of education consisting exclusively of flight training until the Secretary has received from that individual and the institution providing such training a certification of the flight training received by the individual during that month and the tuition and other fees charged for that training.

(3) The period of entitlement of an individual pursuing a program of education described in paragraph (1) shall be charged with one month for each amount equal to the amount of the monthly rate payable under subsection (b)(1)(A) for the fiscal year concerned which is paid to that individual as an educational assistance allowance for such program.

(4) The number of solo flying hours for which an individual may be paid an educational assistance allowance under this subsection may not exceed the minimum number of solo flying hours required by the Federal Aviation Administration for the flight rating or certification which is the goal of the individual's flight training.

(h)(1)(A) Subject to subparagraph (B), the Secretary of Veterans Affairs shall approve individualized tutorial assistance for any person entitled to educational assistance under this chapter who—

(i) is enrolled in and pursuing a postsecondary course of education on a half-time or more basis at an educational institution; and

(ii) has a deficiency in a subject required as a part of, or which is prerequisite to, or which is indispensable to the satisfactory pursuit of, the program of education.

(B) The Secretary of Veterans Affairs shall not approve individualized tutorial assistance for a person pursuing a program of education under this paragraph unless such assistance is necessary for the person to successfully complete the program of education.

(2)(A) Subject to subparagraph (B), the Secretary concerned, through the Secretary of Veterans Affairs, shall pay to a person receiving in-

dividualized tutorial assistance pursuant to paragraph (1) a tutorial assistance allowance. The amount of the allowance payable under this paragraph may not exceed \$100 for any month, nor aggregate more than \$1,200. The amount of the allowance paid under this paragraph shall be in addition to the amount of educational assistance allowance payable to a person under this chapter.

(B) A tutorial assistance allowance may not be paid to a person under this paragraph until the educational institution at which the person is enrolled certifies that—

(i) the individualized tutorial assistance is essential to correct a deficiency of the person in a subject required as a part of, or which is prerequisite to, or which is indispensable to the satisfactory pursuit of, an approved program of education;

(ii) the tutor chosen to perform such assistance is qualified to provide such assistance and is not the person's parent, spouse, child (whether or not married or over eighteen years of age), brother, or sister; and

(iii) the charges for such assistance do not exceed the customary charges for such tutorial assistance.

(3)(A) A person's period of entitlement to educational assistance under this chapter shall be charged only with respect to the amount of tutorial assistance paid to the person under this subsection in excess of \$600.

(B) A person's period of entitlement to educational assistance under this chapter shall be charged at the rate of one month for each amount of assistance paid to the individual under this section in excess of \$600 that is equal to the amount of the monthly educational assistance allowance which the person is otherwise eligible to receive for full-time pursuit of an institutional course under this chapter.

(i) A program of education in a course of instruction beyond the baccalaureate degree level shall be provided under this chapter, subject to the availability of appropriations.

(Added Pub. L. 95-79, title IV, §402(a), July 30, 1977, 91 Stat. 328, §2131; amended Pub. L. 96-107, title IV, §402(a), Nov. 9, 1979, 93 Stat. 808; Pub. L. 96-342, title IX, §906(a)(1), Sept. 8, 1980, 94 Stat. 1117; Pub. L. 96-513, title V, §511(68), Dec. 12, 1980, 94 Stat. 2926; Pub. L. 98-525, title VII, §705(a)(1), Oct. 19, 1984, 98 Stat. 2565; Pub. L. 100-689, title I, §§110(a), 111(b)(1), Nov. 18, 1988, 102 Stat. 4170, 4172; Pub. L. 101-189, div. A, title VI, §§642(a), (b), 645(a)(1), (b)(1), Nov. 29, 1989, 103 Stat. 1456, 1458; Pub. L. 101-237, title IV, §422(b)(2), Dec. 18, 1989, 103 Stat. 2089; Pub. L. 102-25, title III, §337(b), Apr. 6, 1991, 105 Stat. 90; Pub. L. 102-127, §2(d), Oct. 10, 1991, 105 Stat. 621; Pub. L. 102-568, title III, §§301(b), (d), 310(b), 318, 320(a)(1), Oct. 29, 1992, 106 Stat. 4326, 4330, 4334, 4335; Pub. L. 103-66, title XII, §12009(b), Aug. 10, 1993, 107 Stat. 416; Pub. L. 103-160, div. A, title V, §518, Nov. 30, 1993, 107 Stat. 1651; renumbered §16131 and amended Pub. L. 103-337, div. A, title XVI, §1663(b)(2), (3), Oct. 5, 1994, 108 Stat. 3006, 3007.)

AMENDMENTS

1994—Pub. L. 103-337, §1663(b)(2), renumbered section 2131 of this title as this section.

Subsec. (c)(3)(B)(i). Pub. L. 103-337, §1663(b)(3)(A), substituted “12301(a), 12301(d), 12301(g), 12302, or 12304” for “672(a), (d), or (g), 673, or 673b”.

Subsec. (g)(1). Pub. L. 103-337, §1663(b)(3)(B), substituted “16136(c)” for “2136(c)”.

1993—Subsec. (b)(2). Pub. L. 103-66 struck out subpar. (A), struck out subpar. (B) designation before “With respect to”, redesignated former cls. (i) and (ii) as subpars. (A) and (B), respectively, and in subpar. (B) substituted “subparagraph (A)” for “clause (i)”. Prior to amendment, subpar. (A) read as follows: “With respect to the fiscal year beginning on October 1, 1993, the Secretary shall provide a percentage increase in the monthly rates payable under subparagraphs (A), (B), and (C) of paragraph (1) equal to the percentage by which the Consumer Price Index (all items, United States city average, published by the Bureau of Labor Statistics) for the 12-month period ending June 30, 1993, exceeds such Consumer Price Index for the 12-month period ending June 30, 1992.”

Subsec. (c)(1). Pub. L. 103-160, §518(1), struck out “other than a program of education in a course of instruction beyond the baccalaureate degree level” after “title 38”.

Subsec. (i). Pub. L. 103-160, §518(2), added subsec. (i). 1992—Subsec. (b)(1). Pub. L. 102-568, §301(b), substituted “\$190” for “\$140” in subpar. (A), “\$143” for “\$105” in subpar. (B), and “\$95” for “\$70” in subpar. (C).

Subsec. (b)(2)(A). Pub. L. 102-568, §301(d)(1), (2), redesignated subpar. (B) as (A), substituted “shall provide a percentage increase in the monthly rates payable under subparagraphs (A), (B), and (C) of paragraph (1)” for “may continue to pay, in lieu of the rates payable under subparagraphs (A), (B), and (C) of paragraph (1), the monthly rates payable under subparagraph (A) of this paragraph and may provide a percentage increase in such rates”, and struck out former subpar. (A) which read as follows: “During the period beginning on October 1, 1991, and ending on September 30, 1993, the monthly rates payable under subparagraphs (A), (B), and (C) of paragraph (1) shall be \$170, \$128, and \$85, respectively.”

Subsec. (b)(2)(B), (C). Pub. L. 102-568, §301(d)(3), redesignated subpar. (C) as (B) and substituted “shall continue” for “may continue” and “shall provide” for “may provide” in introductory provisions. Former subpar. (B) redesignated (A).

Subsec. (c)(2). Pub. L. 102-568, §320(a)(1)(A), substituted “section 3695 of title 38” for “section 1795 of title 38”.

Subsec. (c)(3)(B)(ii). Pub. L. 102-568, §320(a)(1)(B), substituted “, the individual's” for “of this subparagraph, his or her”.

Subsec. (c)(3)(C). Pub. L. 102-568, §320(a)(1)(C), struck out “of this paragraph” after “subparagraph (B)(ii)”.

Subsec. (g)(1). Pub. L. 102-568, §310(b)(1), struck out “(other than tuition and fees charged for or attributable to solo flying hours)” after “tuition and fees”.

Subsec. (g)(4). Pub. L. 102-568, §310(b)(2), added par. (4).

Subsec. (h). Pub. L. 102-568, §318, added subsec. (h).

1991—Subsec. (b). Pub. L. 102-25, §337(b)(1), designated existing provisions as par. (1) and substituted “Except as provided in paragraph (2) and” for “Except as provided in”, redesignated former pars. (1) to (4) as subpars. (A) to (D), respectively, and added par. (2).

Subsec. (c)(3). Pub. L. 102-127 added par. (3).

Subsecs. (f)(2), (g)(3). Pub. L. 102-25, §337(b)(2), (3), substituted “amount equal to the amount of the monthly rate payable under subsection (b)(1)(A) for the fiscal year concerned” for “\$140”.

1989—Subsec. (b). Pub. L. 101-237, §422(b)(2)(A), in introductory provisions, substituted “subsections (d) through (g)” for “subsections (d) through (f)”.

Pub. L. 101-189, §645(b)(1), in introductory provisions, substituted “of an educational assistance allowance” for “and educational assistance allowance”.

Pub. L. 101-189, §642(b)(1), in introductory provisions, substituted “Except as provided in subsections (d) through (f), each” for “Each” and inserted “, through

the Secretary of Veterans Affairs,” after “Secretary concerned”.

Subsec. (b)(4). Pub. L. 101-189, §645(a)(1), substituted “Secretary of Veterans Affairs” for “Administrator of Veterans’ Affairs”.

Subsec. (c)(1). Pub. L. 101-189, §642(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “Educational assistance may only be provided under this chapter for pursuit of a program of education at an institution of higher learning and may not be provided to a person after the person has completed a course of instruction required for the award of a baccalaureate degree or the equivalent evidence of completion of study.”

Subsecs. (d) to (f). Pub. L. 101-189, §642(b)(2), added subsecs. (d) to (f).

Subsec. (g). Pub. L. 101-237, §422(b)(2)(B), added subsec. (g).

1988—Subsec. (b)(4). Pub. L. 100-689, §110(a), added par. (4).

Subsec. (c)(2). Pub. L. 100-689, §111(b)(1), inserted “(or the equivalent thereof in part-time educational assistance)” before period at end.

1984—Pub. L. 98-525 amended section generally, substituting a schedule of payments at stated monthly rates for full-time, three-quarter-time, and half-time pursuit of an education program for former provisions which had set a maximum for any one member of \$1,000 for any twelve-month period and \$4,000 for the total assistance to any one member.

1980—Subsec. (a). Pub. L. 96-513, §511(68)(A), substituted “armed forces” for “armed force”.

Subsec. (b)(2). Pub. L. 96-513, §511(68)(B), inserted “of this title” after “2132”.

Subsec. (c). Pub. L. 96-342 substituted “\$1,000” for “\$500” and “\$4,000” for “\$2,000”.

Subsec. (d). Pub. L. 96-513, §511(68)(C), substituted “Secretary of Education” for “Commissioner of Education, Department of Health, Education, and Welfare”.

1979—Subsec. (b)(1). Pub. L. 96-107 substituted “100 percent” for “50 percent”.

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 1992 AMENDMENT

Section 301(e) of Pub. L. 102-568 provided that:

“(1) The amendments made by this section [amending this section and section 3015 of Title 38, Veterans’ Benefits] shall take effect on April 1, 1993.

“(2) The amendments made by this section shall not be construed to change the account from which payment is made for that portion of a payment under chapter 30 of title 38, United States Code, or chapter 106 [now 1606] of title 10, United States Code, which is a Montgomery GI bill rate increase and a title III benefit is paid. For the purposes of this subsection, the terms ‘Montgomery GI bill rate increase’ and ‘title III benefit’ have the meanings provided in section 393 of the Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991 [Pub. L. 102-25] (105 Stat. 99).”

Section 310(d) of Pub. L. 102-568 provided that: “The amendments made by this section [amending this section and sections 3032 and 3231 of Title 38] shall apply to flight training received under chapters 30 and 32 of title 38, United States Code, and chapter 106 [now 1606] of title 10, United States Code, after September 30, 1992.”

EFFECTIVE DATE OF 1989 AMENDMENTS

Section 422(d) of Pub. L. 101-237 provided that: “The amendments made by this section [amending this section, section 2136 [now 16136] of this title, and sections 1432 [now 3032] and 1434 [now 3034] of Title 38, Veterans’ Benefits] shall take effect on September 30, 1990.”

Section 642(d) of Pub. L. 101-189 provided that: “The amendments made by this section [amending this section and section 2136 [now 16136] of this title] shall apply with respect to any person who after September 30, 1990, meets the requirements set forth in subparagraph (A) or (B) of section 2132(a)(1) [now 16132(a)(1)(A), (B)] of title 10, United States Code.”

EFFECTIVE DATE OF 1984 AMENDMENT

Section 705(b) of Pub. L. 98-525 provided that: “The amendments made by this section [amending this chapter] shall take effect on July 1, 1985, and shall apply only to members of the Armed Forces who qualify for educational assistance under chapter 106 of title 10, United States Code, as amended by subsection (a), on or after such date.”

EFFECTIVE DATE OF 1980 AMENDMENTS

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.

Section 906(a)(2) of Pub. L. 96-342 provided that: “The amendments made by paragraph (1) [amending this section] shall take effect on October 1, 1980.”

EFFECTIVE DATE OF 1979 AMENDMENT

Section 402(c) of Pub. L. 96-107 provided that: “The amendments made by this section [amending sections 2131 and 2133 [now 16131 and 16133] of this title] shall apply only to individuals enlisting in the Reserves after September 30, 1979.”

1995 COST-OF-LIVING ADJUSTMENT IN RATES OF EDUCATIONAL ASSISTANCE

Section 12009(c) of Pub. L. 103-66 provided that: “The fiscal year 1995 cost-of-living adjustments in the rates of educational assistance payable under chapter 30 of title 38, United States Code, and under chapter 106 [now 1606] of title 10, United States Code, shall be the percentage equal to 50 percent of the percentage by which such assistance would be increased under section 3015(g) of title 38, and under section 2131(b)(2) [now 16131(b)(2)] of title 10, United States Code, respectively, but for this section [amending this section and section 3015 of Title 38, Veterans’ Benefits, and enacting provisions set out as a note under section 3015 of Title 38].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2131, 16132, 16135 of this title.

§ 16132. Eligibility for educational assistance

(a) A person who—

(1) after June 30, 1985—

(A) enlists, reenlists, or extends an enlistment as a Reserve for service in the Selected Reserve for a period of not less than six years; or

(B) is appointed as, or is serving as, a reserve officer and agrees to serve in the Selected Reserve for a period of not less than six years in addition to any other period of obligated service in the Selected Reserve to which the person may be subject; and

(2) before completing initial active duty for training has completed the requirements of a secondary school diploma (or an equivalency certificate), or in the case of an individual who reenlists or extends an enlistment as described in paragraph (1)(A) of this subsection, has completed such requirements at any time before such reenlistment or extension;

is entitled to educational assistance under section 16131 of this title.

(b) Educational assistance may not be provided to a member under this chapter until the member has completed the initial period of active duty for training required of the member.

(c) Each person who becomes entitled to educational assistance under subsection (a) shall at the time the person becomes so entitled be given a statement in writing summarizing the provisions of this chapter and stating clearly and prominently the substance of section¹ 16134 and 16135 of this title as such sections may apply to the person. At the request of the Secretary of Veterans Affairs, the Secretary of Defense shall transmit a notice of entitlement for each such person to that Secretary.

(d) A person who serves in the Selected Reserve may not receive credit for such service under both the program established by chapter 30 of title 38 and the program established by this chapter but shall elect (in such form and manner as the Secretary of Veterans Affairs may prescribe) the program to which such service is to be credited. However, a person may not receive credit under the program established by this chapter for service (in any grade) on full-time active duty or full-time National Guard duty for the purpose of organizing, administering, recruiting, instructing, or training the reserve components in a position which is included in the end strength required to be authorized each year by section 115(a)(1)(B) of this title.

(Added Pub. L. 95-79, title IV, §402(a), July 30, 1977, 91 Stat. 329, §2132; amended Pub. L. 95-485, title IV, §402(a), Oct. 20, 1978, 92 Stat. 1613; Pub. L. 96-513, title V, §511(69), Dec. 12, 1980, 94 Stat. 2926; Pub. L. 98-525, title VII, §705(a)(1), Oct. 19, 1984, 98 Stat. 2565; Pub. L. 100-48, §4, June 1, 1987, 101 Stat. 331; Pub. L. 100-689, title I, §§110(b), 111(b)(2)-(4), Nov. 18, 1988, 102 Stat. 4170, 4173; Pub. L. 101-189, div. A, title VI, §§643(a), 645(a), (b)(2), Nov. 29, 1989, 103 Stat. 1458; Pub. L. 102-25, title VII, §701(f)(6), Apr. 6, 1991, 105 Stat. 115; renumbered §16132 and amended Pub. L. 103-337, div. A, title XVI, §1663(b)(2), (4), Oct. 5, 1994, 108 Stat. 3006, 3007.)

AMENDMENTS

1994—Pub. L. 103-337, §1663(b)(2), renumbered section 2132 of this title as this section.

Subsec. (a). Pub. L. 103-337, §1663(b)(4)(A), substituted “16131” for “2131” in concluding provisions.

Subsec. (c). Pub. L. 103-337, §1663(b)(4)(B), substituted “section 16134 and 16135” for “sections 2134 and 2135”.

1991—Subsec. (d). Pub. L. 102-25 substituted “section 115(a)(1)(B)” for “section 115(b)(1)(A)(ii)”.

1989—Subsec. (c). Pub. L. 101-189, §645(a), substituted “Secretary of Veterans Affairs” for “Administrator of Veterans Affairs” and “to that Secretary” for “to the Administrator”.

Subsec. (d). Pub. L. 101-189, §645(a)(1), (b)(2), substituted “A person” for “An individual” and “Secretary of Veterans Affairs” for “Administrator of Veterans Affairs”.

Pub. L. 101-189, §643(a), inserted at end “However, a person may not receive credit under the program established by this chapter for service (in any grade) on full-time active duty or full-time National Guard duty for the purpose of organizing, administering, recruiting, instructing, or training the reserve components in a position which is included in the end strength required to be authorized each year by section 115(b)(1)(A)(ii) of this title.”

¹ So in original. Probably should be “sections”.

1988—Subsec. (a)(2). Pub. L. 100-689, §111(b)(2), substituted “completed the requirements of” for “received”, and inserted before semicolon at end “, or in the case of an individual who reenlists or extends an enlistment as described in paragraph (1)(A) of this subsection, has completed such requirements at any time before such reenlistment or extension”.

Subsec. (b). Pub. L. 100-689, §110(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “Educational assistance may not be provided to a member under this chapter until the member—

“(1) has completed the initial period of active duty for training required of the member; and

“(2) has completed 180 days of service in the Selected Reserve.”

Subsec. (c). Pub. L. 100-689, §111(b)(3), inserted at end “At the request of the Administrator of Veterans Affairs, the Secretary of Defense shall transmit a notice of entitlement for each such person to the Administrator.”

Subsec. (d). Pub. L. 100-689, §111(b)(4), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “A person who is entitled to educational assistance under chapter 30 of title 38 based on section 1412 of that title may not also be provided educational assistance under this chapter.”

1987—Subsec. (a)(1). Pub. L. 100-48 substituted “after June 30, 1985” for “during the period beginning on July 1, 1985, and ending on June 30, 1988”.

1984—Pub. L. 98-525 amended section generally, updating provisions covering eligibility for educational assistance to cover the period beginning July 1, 1985, and ending June 30, 1988.

1980—Pub. L. 96-513 inserted “of this title” after “section 2131” wherever appearing.

1978—Subsec. (b)(1). Pub. L. 95-485 substituted “not less than six years” for “automatically extended by two years” and “last day of the term” for “eighth anniversary”.

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

Amendment by Pub. L. 98-525 effective July 1, 1985, applicable only to members of the Armed Forces who qualify for educational assistance under this chapter on or after such date, see section 705(b) of Pub. L. 98-525, set out as a note under section 16131 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.

SAVINGS PROVISION

Section 643(b) of Pub. L. 101-189 provided that: “The amendment made by subsection (a) [amending this section] shall not affect the eligibility for educational assistance of any person who before the date of the enactment of this Act [Nov. 29, 1989] is entitled to educational assistance under section 2131(a) [now 16131(a)] of title 10, United States Code.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16135 of this title.

§ 16133. Time limitation for use of entitlement

(a) Except as provided in subsection (b), the period during which a person entitled to educational assistance under this chapter may use such person’s entitlement expires (1) at the end of the 10-year period beginning on the date on

which such person becomes entitled to such assistance, or (2) on the date the person is separated from the Selected Reserve, whichever occurs first.

(b)(1) In the case of a person—

(A) who is separated from the Selected Reserve because of a disability which was not the result of the individual's own willful misconduct incurred on or after the date on which such person became entitled to educational assistance under this chapter; or

(B) who, on or after the date on which such person became entitled to educational assistance under this chapter ceases to be a member of the Selected Reserve during the period beginning on October 1, 1991, and ending on September 30, 1999, by reason of the inactivation of the person's unit of assignment or by reason of involuntarily ceasing to be designated as a member of the Selected Reserve pursuant to section 10143(a) of this title,

the period for using entitlement prescribed by subsection (a) shall be determined without regard to clause (2) of such subsection.

(2) The provisions of section 3031(f) of title 38 shall apply to the period of entitlement prescribed by subsection (a).

(3) The provisions of section 3031(d) of title 38 shall apply to the period of entitlement prescribed by subsection (a) in the case of a disability incurred in or aggravated by service in the Selected Reserve.

(4)(A) In the case of a member of the Selected Reserve of the Ready Reserve who, during the Persian Gulf War, serves on active duty pursuant to an order to active duty issued under section 12301(a), 12301(d), 12301(g), 12302, or 12304 of this title—

(i) the period of such active duty service plus four months shall not be considered in determining the expiration date applicable to such member under subsection (a); and

(ii) the member may not be considered to have been separated from the Selected Reserve for the purposes of clause (2) of such subsection by reason of the commencement of such active duty service.

(B) For the purposes of this paragraph, the term "Persian Gulf War" shall have the meaning given such term in section 101(33) of title 38.

(Added Pub. L. 95-79, title IV, § 402(a), July 30, 1977, 91 Stat. 329, § 2133; amended Pub. L. 96-107, title IV, § 402(b), Nov. 9, 1979, 93 Stat. 808; Pub. L. 96-513, title V, § 511(70), Dec. 12, 1980, 94 Stat. 2926; Pub. L. 98-525, title VII, § 705(a)(1), Oct. 19, 1984, 98 Stat. 2566; Pub. L. 100-456, div. A, title XII, § 1233(g)(2), Sept. 29, 1988, 102 Stat. 2058; Pub. L. 100-689, title I, § 111(b)(5), Nov. 18, 1988, 102 Stat. 4173; Pub. L. 102-127, § 3, Oct. 10, 1991, 105 Stat. 622; Pub. L. 102-484, div. D, title XLIV, § 4419(a), Oct. 23, 1992, 106 Stat. 2717; Pub. L. 102-568, title III, § 320(a)(2), Oct. 29, 1992, 106 Stat. 4335; Pub. L. 103-160, div. A, title V, § 561(m), Nov. 30, 1993, 107 Stat. 1668; renumbered § 16133 and amended Pub. L. 103-337, div. A, title XVI, § 1663(b)(2), (5), Oct. 5, 1994, 108 Stat. 3006, 3007.)

AMENDMENTS

1994—Pub. L. 103-337, § 1663(b)(2), renumbered section 2133 of this title as this section.

Subsec. (b)(1)(B). Pub. L. 103-337, § 1663(b)(5)(A), substituted "10143(a)" for "268(b)".

Subsec. (b)(4)(A). Pub. L. 103-337, § 1663(b)(5)(B), substituted "12301(a), 12301(d), 12301(g), 12302, or 12304" for "672(a), (d), or (g), 673, or 673b".

1993—Subsec. (b)(1)(B). Pub. L. 103-160 substituted "September 30, 1999" for "September 30, 1995".

1992—Subsec. (b)(1). Pub. L. 102-484 amended par. (1) generally. Prior to amendment, par. (1) read as follows: "In the case of a person separated from the Selected Reserve because of a disability which was not the result of the individual's own willful misconduct incurred on or after the date on which such person became entitled to educational assistance under this chapter, the period for using entitlement prescribed by subsection (a) shall be determined without regard to clause (2) of such subsection."

Subsec. (b)(2), (3). Pub. L. 102-568 substituted "section 3031(f) of title 38" for "section 1431(f) of title 38" in par. (2) and "section 3031(d) of title 38" for "section 1431(d) of title 38" in par. (3).

1991—Subsec. (b)(4). Pub. L. 102-127 added par. (4).

1988—Subsec. (a). Pub. L. 100-689, § 111(b)(5)(A), substituted "chapter" for "section".

Subsec. (b). Pub. L. 100-689, § 111(b)(5)(B), added par. (1), redesignated existing pars. (1) and (2) as (2) and (3), respectively, and directed the substitution of "1431(f)" for "1431(e)" in par. (2) as redesignated, which could not be executed because such substitution was previously made by Pub. L. 100-456, prior to redesignation of par. (1) as (2), see below.

Pub. L. 100-456 substituted "section 1431(f)" for "section 1431(e)" in par. (1).

1984—Pub. L. 98-525 amended section generally, substituting provisions setting a time limit for the use of educational entitlement for provisions covering the termination of assistance and refund by members. See section 2134 of this title.

1980—Subsec. (a). Pub. L. 96-513 inserted "of this title" after "2131" and "2107".

1979—Subsec. (b). Pub. L. 96-107 redesignated existing provisions as par. (1), inserted provisions respecting agreement for term of enlistment, substituted provisions relating to computation under par. (2) for provisions relating to computation under section 2131, and added par. (2).

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

Amendment by Pub. L. 98-525 effective July 1, 1985, applicable only to members of the Armed Forces who qualify for educational assistance under this chapter on or after such date, see section 705(b) of Pub. L. 98-525, set out as a note under section 16131 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 1979 AMENDMENT

Amendment by Pub. L. 96-107 applicable only to individuals enlisting in the Reserves after Sept. 30, 1979, see section 402(c) of Pub. L. 96-107, set out as a note under section 16131 of this title.

§ 16134. Termination of assistance

Educational assistance may not be provided under this chapter—

(1) to a member receiving financial assistance under section 2107 of this title as a member of the Senior Reserve Officers' Training Corps program; or

(2) to a member who fails to participate satisfactorily in required training as a member of the Selected Reserve.

(Added Pub. L. 95-79, title IV, §402(a), July 30, 1977, 91 Stat. 330, §2134; amended Pub. L. 98-94, title XII, §1268(14), Sept. 24, 1983, 97 Stat. 707; Pub. L. 98-525, title VII, §705(a)(1), Oct. 19, 1984, 98 Stat. 2566; renumbered §16134, Pub. L. 103-337, div. A, title XVI, §1663(b)(2), Oct. 5, 1994, 108 Stat. 3006.)

AMENDMENTS

1994—Pub. L. 103-337 renumbered section 2134 of this title as this section.

1984—Pub. L. 98-525 amended section generally, substituting provisions covering termination of educational assistance for provisions relating to reports to Congress. See section 16137 of this title.

1983—Pub. L. 98-94 struck out provision requiring the first report under this section to be submitted not later than Dec. 31, 1977.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-525 effective July 1, 1985, applicable only to members of the Armed Forces who qualify for educational assistance under this chapter on or after such date, see section 705(b) of Pub. L. 98-525, set out as a note under section 16131 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16132 of this title.

§ 16135. Failure to participate satisfactorily; penalties

(a)(1) A member of the Selected Reserve of the Ready Reserve of an armed force who fails to participate satisfactorily in required training as a member of the Selected Reserve during a term of enlistment or other period of obligated service that created entitlement of the member to educational assistance under this chapter, and during which the member has received such assistance, shall, at the option of the Secretary concerned—

(A) be ordered to active duty for a period of two years or the period of obligated service the person has remaining under section 16132 of this title, whichever is less; or

(B) be required to refund to the United States an amount determined under subsection (b).

(2) The Secretary concerned may waive the requirements of paragraph (1), or may reduce the amount of any refund under clause (B) of such paragraph, in the case of any individual member when the Secretary determines that the failure to participate satisfactorily was due to reasons beyond the control of the member.

(3) Any refund by a member under this section shall not affect the period of obligation of such member to serve as a Reserve in the Selected Reserve.

(b)(1) The amount of a refund under subsection (a) shall be the amount equal to the product of—

(A) the number of months of obligated service the person has remaining under the agreement entered into under section 2131(a)¹ of

this title divided by the original number of months of such obligation; and

(B) the total amount of educational assistance provided to the member under this chapter,

as increased by interest determined under paragraph (2).

(2) The amount computed under paragraph (1) shall bear interest at the rate equal to the highest rate being paid by the United States on the day on which the refund is determined to be due for securities having maturities of 90 days or less and shall accrue from the day on which the member is first notified of the amount due to the United States as a refund under this section.

(Added Pub. L. 95-79, title IV, §402(a), July 30, 1977, 91 Stat. 330, §2135; amended Pub. L. 95-485, title IV, §402(b), Oct. 20, 1978, 92 Stat. 1613; Pub. L. 96-342, title IX, §906(b), Sept. 8, 1980, 94 Stat. 1117; Pub. L. 98-525, title VII, §705(a)(1), Oct. 19, 1984, 98 Stat. 2566; Pub. L. 100-689, title I, §111(b)(6), Nov. 18, 1988, 102 Stat. 4173; renumbered §16135 and amended Pub. L. 103-337, div. A, title XVI, §1663(b)(2), (6), Oct. 5, 1994, 108 Stat. 3006, 3007.)

REFERENCES IN TEXT

Section 2131(a) of this title, referred to in subsec. (b)(1)(A), was renumbered section 16131(a) of this title by Pub. L. 103-337, div. A, title XVI, §1663(b)(2), Oct. 5, 1994, 108 Stat. 3006.

AMENDMENTS

1994—Pub. L. 103-337, §1663(b)(2), renumbered section 2135 of this title as this section.

Subsec. (a)(1)(A). Pub. L. 103-337, §1663(b)(6)(A), substituted “16132” for “2132”.

Subsec. (b)(1)(A). Pub. L. 103-337, §1663(b)(6)(B), which directed substitution of “section 16132(a)” for “section 2132(a)”, could not be executed because “section 2132(a)” does not appear in subsec. (b)(1)(A).

1988—Subsec. (a)(1). Pub. L. 100-689, §111(b)(6)(A), inserted “, and during which the member has received such assistance,” after “chapter”.

Subsec. (b)(1)(A). Pub. L. 100-689, §111(b)(6)(B), added subpar. (A) and struck out former subpar. (A) which read as follows: “the number of months of obligated service remaining under the agreement entered into under section 2132(a)(3) divided by the original number of months of such obligation; and”.

1984—Pub. L. 98-525 amended section generally, substituting provisions relating to the failure to participate satisfactorily and penalties for provisions which had designated Sept. 30, 1985, as the termination date for enlistments qualifying for educational assistance.

1980—Pub. L. 96-342 substituted “1985” for “1980”.

1978—Pub. L. 95-485 substituted “1980” for “1978”.

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

Amendment by Pub. L. 98-525 effective July 1, 1985, applicable only to members of the Armed Forces who qualify for educational assistance under this chapter on or after such date, see section 705(b) of Pub. L. 98-525, set out as a note under section 16131 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16132 of this title; title 38 section 3485.

¹ See References in Text note below.

§ 16136. Administration of program

(a) Educational assistance under this chapter shall be provided through the Department of Veterans Affairs, under agreements to be entered into by the Secretary of Defense, and by the Secretary of Transportation, with the Secretary of Veterans Affairs. Such agreements shall include administrative procedures to ensure the prompt and timely transfer of funds from the Secretary concerned to the Department of Veterans Affairs for the making of payments under this chapter.

(b) Except as otherwise provided in this chapter, the provisions of sections 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 “a person”, as used in those provisions, shall be deemed for the purpose of the application of those provisions to this chapter to refer to a person eligible for educational assistance under this chapter.

(c) The Secretary of Veterans Affairs may approve the pursuit of flight training (in addition to a course of flight training that may be approved under section 3680A(b) of title 38) by an individual entitled to educational assistance under this chapter if—

(1) such training is generally accepted as necessary for the attainment of a recognized vocational objective in the field of aviation;

(2) the individual possesses a valid private pilot's license and meets the medical requirements necessary for a commercial pilot's license; and

(3) the flight school courses meet Federal Aviation Administration standards for such courses and are approved by the Federal Aviation Administration and the State approving agency.

(Added Pub. L. 98-525, title VII, § 705(a)(1), Oct. 19, 1984, 98 Stat. 2567, § 2136; amended Pub. L. 101-189, div. A, title VI, §§ 642(c), 645(a)(1), Nov. 29, 1989, 103 Stat. 1457, 1458; Pub. L. 101-237, title IV, §§ 405(d)(3), 422(b)(1), Dec. 18, 1989, 103 Stat. 2081, 2089; Pub. L. 101-510, div. A, title XIV, § 1484(j)(3), Nov. 5, 1990, 104 Stat. 1718; Pub. L. 102-16, § 10(b), Mar. 22, 1991, 105 Stat. 56; Pub. L. 102-568, title III, §§ 313(a)(6), 319, 320(a)(3), Oct. 29, 1992, 106 Stat. 4333, 4335, 4336; renumbered § 16136, Pub. L. 103-337, div. A, title XVI, § 1663(b)(2), Oct. 5, 1994, 108 Stat. 3006; Pub. L. 103-446, title VI, § 601(c), Nov. 2, 1994, 108 Stat. 4670.)

AMENDMENTS

1994—Pub. L. 103-337 renumbered section 2136 of this title as this section.

Subsec. (c). Pub. L. 103-446 struck out “(1)” after “(c)”, redesignated subpars. (A) to (C) as pars. (1) to (3), respectively, and struck out former par. (2) which read as follows: “This subsection shall not apply to a course of flight training that commences on or after October 1, 1994.”

1992—Subsec. (b). Pub. L. 102-568, § 320(a)(3), substituted “sections 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)” for “sections 1670, 1671,

1673, 1674, 1676, 1682(g), 1683, and 1685 of title 38 and the provisions of subchapters I and II of chapter 36 of such title (with the exception of sections 1786(a), 1787, and 1792)”.

Pub. L. 102-568, § 319, struck out “1780(c),” after “exception of sections”.

Subsec. (c)(1). Pub. L. 102-568, § 313(a)(6), substituted “section 3680A(b) of title 38” for “section 1673(b) of title 38”.

1991—Subsec. (b). Pub. L. 102-16 struck out “1434(b), 1663,” before “1670,” and “1780(g),” before “1786(a),”.

1990—Subsec. (a). Pub. L. 101-510 substituted “Department of Veterans Affairs” for “Veterans’ Administration” in two places.

1989—Subsec. (a). Pub. L. 101-189, § 645(a)(1), substituted “Secretary of Veterans Affairs” for “Administrator of Veterans’ Affairs”.

Subsec. (b). Pub. L. 101-237, § 405(d)(3), inserted reference to section 1685 of title 38.

Pub. L. 101-189, § 642(c), amended first sentence generally and substituted “and the term ‘a person’, as used” for “, as used” in second sentence. Prior to amendment, first sentence read as follows: “Except as otherwise provided in this chapter, the provisions of sections 1663, 1670, 1671, 1673, 1674, 1676, 1682(g), and 1683 of chapter 34 of title 38 and the provisions of subchapters I and II of chapter 36 of such title (with the exception of sections 1780(a)(5), 1780(b), 1786, 1787(b)(1), and 1792) shall be applicable to the provision of educational assistance under this chapter.”

Subsec. (c). Pub. L. 101-237, § 422(b)(1), added subsec. (c).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-446 effective Oct. 1, 1994, see section 601(d) of Pub. L. 103-446, set out as a note under section 3034 of Title 38, Veterans’ Benefits.

EFFECTIVE DATE OF 1989 AMENDMENTS

Section 405(e) of Pub. L. 101-237 provided that: “The amendments made by this section [amending this section and section 1685 [now 3485] of Title 38, Veterans’ Benefits] shall take effect on May 1, 1990, and shall apply to services performed on or after that date.”

Amendment by section 422(b)(1) of Pub. L. 101-237 effective Sept. 30, 1990, see section 422(d) of Pub. L. 101-237, set out as a note under section 16131 of this title.

Amendment by section 642(c) of Pub. L. 101-189 applicable with respect to any person who after Sept. 30, 1990, meets the requirements set forth in section 2132(a)(1)(A) or (B) [16132(a)(1)(A), (B)] of this title, see section 642(d) of Pub. L. 101-189, set out as a note under section 16131 of this title.

EFFECTIVE DATE

Section effective July 1, 1985, applicable only to members of the Armed Forces who qualify for educational assistance under this chapter on or after such date, see section 705(b) of Pub. L. 98-525, set out as an Effective Date of 1984 Amendment note under section 16131 of this title.

SAVINGS PROVISION

Section 313(b) of Pub. L. 102-568 provided that: “The amendments made by paragraphs (2) through (6) of subsection (a) of this section [enacting section 3680A of Title 38, Veterans’ Benefits, amending this section and sections 3034 and 3241 of Title 38, and repealing section 3473 of Title 38] shall not apply to any person receiving educational assistance for pursuit of an independent study program in which the person was enrolled on the date of enactment of this section [Oct. 29, 1992] for as long as such person is continuously thereafter so enrolled and meets the requirements of eligibility for such assistance for the pursuit of such program under title 38, United States Code, or title 10, United States Code, in effect on that date.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16131 of this title.

§ 16137. Reports to Congress

The Secretary of Defense shall submit to the Congress a report not later than December 15 of each year concerning the operation of the educational assistance program established by this chapter during the preceding fiscal year. Each such report shall include the number of members of the Selected Reserve of the Ready Reserve of each armed force receiving, and the number entitled to receive, educational assistance under this chapter during the preceding fiscal year.

(Added Pub. L. 98-525, title VII, §705(a)(1), Oct. 19, 1984, 98 Stat. 2567, §2137; renumbered §16137, Pub. L. 103-337, div. A, title XVI, §1663(b)(2), Oct. 5, 1994, 108 Stat. 3006.)

AMENDMENTS

1994—Pub. L. 103-337 renumbered section 2137 of this title as this section.

EFFECTIVE DATE

Section effective July 1, 1985, applicable only to members of the Armed Forces who qualify for educational assistance under this chapter on or after such date, see section 705(b) of Pub. L. 98-525, set out as an Effective Date of 1984 Amendment note under section 16131 of this title.

**CHAPTER 1608—HEALTH PROFESSIONS
STIPEND PROGRAM**

Sec.

16201.	Financial assistance: health-care professionals in reserve components.
16202.	Reserve service: required active duty for training.
16203.	Penalties and limitations.
16204.	Regulations.

§ 16201. Financial assistance: health-care professionals in reserve components

(a) ESTABLISHMENT OF PROGRAM.—For the purpose of obtaining adequate numbers of commissioned officers in the reserve components who are qualified in health professions specialties critically needed in wartime, the Secretary of each military department may establish and maintain a program to provide financial assistance under this chapter to persons engaged in training in such specialties. Under such a program, the Secretary concerned may agree to pay a financial stipend to persons engaged in training in certain health care specialties in return for a commitment to subsequent service in the Ready Reserve.

(b) PHYSICIANS IN CRITICAL SPECIALTIES.—(1) Under the stipend program under this chapter, the Secretary of the military department concerned may enter into an agreement with a person who—

(A) is a graduate of a medical school;

(B) is eligible for appointment, designation, or assignment as a medical officer in the Reserve of the armed force concerned; and

(C) is enrolled or has been accepted for enrollment in a residency program for physicians in a medical specialty designated by the Secretary concerned as a specialty critically needed by that military department in wartime.

(2) Under the agreement—

(A) the Secretary shall agree to pay the participant a stipend, in an amount determined under subsection (e), for the period or the remainder of the period of the residency program in which the participant enrolls or is enrolled;

(B) the participant shall not be eligible to receive such stipend before appointment, designation, or assignment as a medical officer for service in the Ready Reserve;

(C) the participant shall be subject to such active duty requirements as may be specified in the agreement and to active duty in time of war or national emergency as provided by law for members of the Ready Reserve; and

(D) the participant shall agree to serve, upon successful completion of the program, two years in the Ready Reserve for each year, or part thereof, for which the stipend is provided, to be served in the Selected Reserve or in the Individual Ready Reserve as specified in the agreement.

(c) REGISTERED NURSES IN CRITICAL SPECIALTIES.—(1) Under the stipend program under this chapter, the Secretary of the military department concerned may enter into an agreement with a person who—

(A) is a registered nurse;

(B) is eligible for appointment as—

(i) a Reserve officer for service in the Army Reserve in the Army Nurse Corps;

(ii) a Reserve officer for service in the Naval Reserve in the Navy Nurse Corps; or

(iii) a Reserve officer for service in the Air Force Reserve with a view to designation as an Air Force nurse under section 8067(e) of this title; and

(C) is enrolled or has been accepted for enrollment in an accredited program in nursing in a specialty designated by the Secretary concerned as a specialty critically needed by that military department in wartime.

(2) Under the agreement—

(A) the Secretary shall agree to pay the participant a stipend, in an amount determined under subsection (e), for the period or the remainder of the period of the nursing program in which the participant enrolls or is enrolled;

(B) the participant shall not be eligible to receive such stipend before being appointed as a Reserve officer for service in the Ready Reserve—

(i) in the Nurse Corps of the Army or Navy; or

(ii) as an Air Force nurse of the Air Force;

(C) the participant shall be subject to such active duty requirements as may be specified in the agreement and to active duty in time of war or national emergency as provided by law for members of the Ready Reserve; and

(D) the participant shall agree to serve, upon successful completion of the program, two years in the Ready Reserve for each year, or part thereof, for which the stipend is provided, to be served in the Selected Reserve or in the Individual Ready Reserve as specified in the agreement.

(d) BACCALAUREATE STUDENTS IN NURSING OR OTHER HEALTH PROFESSIONS.—(1) Under the sti-

pend program under this chapter, the Secretary of the military department concerned may enter into an agreement with a person who—

(A) will, upon completion of the program, be eligible to be appointed, designated, or assigned as a Reserve officer for duty as a nurse or other health professional; and

(B) is enrolled, or has been accepted for enrollment in the third or fourth year of—

(i) an accredited baccalaureate nursing program; or

(ii) any other accredited baccalaureate program leading to a degree in a health-care profession designated by the Secretary concerned as a profession critically needed by that military department in wartime.

(2) Under the agreement—

(A) the Secretary shall agree to pay the participant a stipend of \$100 per month for the period or the remainder of the period of the baccalaureate program in which the participant enrolls or is enrolled;

(B) the participant shall not be eligible to receive such stipend before enlistment in the Ready Reserve;

(C) the participant shall be subject to such active duty requirements as may be specified in the agreement and to active duty in time of war or national emergency as provided by law for members of the Ready Reserve; and

(D) the participant shall agree to serve, upon graduation from the baccalaureate program, one year in the Ready Reserve for each year, or part thereof, for which the stipend is paid.

(e) AMOUNT OF STIPEND.—The amount of a stipend under an agreement under subsection (b) or (c) shall be—

(1) the stipend rate in effect for participants in the Armed Forces Health Professions Scholarship Program under section 2121(d) of this title, if the participant has agreed to serve in the Selected Reserve; or

(2) one-half of that rate, if the participant has agreed to serve in the Individual Ready Reserve.

(Added Pub. L. 100-180, div. A, title VII, §711(a)(3), Dec. 4, 1987, 101 Stat. 1108, §2128; renumbered §16201 and amended Pub. L. 103-337, div. A, title XVI, §1663(c)(2), (5), Oct. 5, 1994, 108 Stat. 3007, 3008.)

AMENDMENTS

1994—Pub. L. 103-337, §1663(c)(2), renumbered section 2128 of this title as this section.

Subsecs. (a), (b)(1), (c)(1), (d)(1). Pub. L. 103-337, §1663(c)(5), substituted “chapter” for “subchapter”.

Subsec. (f). Pub. L. 103-337, §1663(c)(2), struck out subsec. (f) which defined “Individual Ready Reserve”.

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.

PAYMENTS FOR PERIOD PRIOR TO DECEMBER 4, 1987

Section 711(e)(2) of Pub. L. 100-180 provided that: “An agreement entered into by the Secretary of a military department under section 2128 [now 16201] of title 10, United States Code, as added by subsection (a), may not obligate the United States to make a payment for

any period before the date of the enactment of this Act [Dec. 4, 1987].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16202 of this title.

§ 16202. Reserve service: required active duty for training

(a) SELECTED RESERVE.—A person who is required under an agreement under section 16201 of this title to serve in the Selected Reserve shall serve not less than 12 days of active duty for training each year during the period of service required by the agreement.

(b) IRR SERVICE.—A person who is required under an agreement under section 16201 of this title to serve in the Individual Ready Reserve shall serve—

(1) not less than 30 days of initial active duty for training; and

(2) not less than five days of active duty for training each year during the period of service required by the agreement.

(Added Pub. L. 100-180, div. A, title VII, §711(a)(3), Dec. 4, 1987, 101 Stat. 1111, §2129; renumbered §16202 and amended Pub. L. 103-337, div. A, title XVI, §1663(c)(3), (6), Oct. 5, 1994, 108 Stat. 3007, 3008.)

AMENDMENTS

1994—Pub. L. 103-337, §1663(c)(3), renumbered section 2129 of this title as this section.

Subsecs. (a), (b). Pub. L. 103-337, §1663(c)(6), substituted “16201” for “2128”.

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.

§ 16203. Penalties and limitations

(a) FAILURE TO COMPLETE PROGRAM OF TRAINING.—(1) A member of the program who, under regulations prescribed by the Secretary of Defense, is dropped from the program for deficiency in training, or for other reasons, shall be required, at the discretion of the Secretary concerned—

(A) to perform one year of active duty for each year (or part thereof) for which such person was provided financial assistance under this section; or

(B) to repay the United States an amount equal to the total amount paid to such person under the program.

(2) The Secretary of a military department, under regulations prescribed by the Secretary of Defense, may relieve a member participating in the program who is dropped from the program from any requirement that may be imposed under paragraph (1), but such relief shall not relieve him from any military obligation imposed by any other law.

(b) PROHIBITIONS OF DUPLICATE BENEFITS.—Financial assistance may not be provided under this section to a member receiving financial assistance under section 2107 of this title.

(Added Pub. L. 100-180, div. A, title VII, §711(a)(3), Dec. 4, 1987, 101 Stat. 1111, §2130; re-

numbered §16203 and amended Pub. L. 103-337, div. A, title XVI, §1663(c)(4), Oct. 5, 1994, 108 Stat. 3008.)

AMENDMENTS

1994—Pub. L. 103-337, §1663(c)(4), renumbered section 2130 of this title as this section and substituted “Penalties and limitations” for “Penalties, limitations, and other administrative provisions” as section catchline.

Subsec. (c). Pub. L. 103-337, §1663(c)(4)(A), struck out subsec. (c) which related to regulations. See section 16204 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.

§ 16204. Regulations

This chapter shall be administered under regulations prescribed by the Secretary of Defense.

(Added Pub. L. 103-337, div. A, title XVI, §1663(c)(1), Oct. 5, 1994, 108 Stat. 3007.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 2130(c) of this title, prior to amendment by Pub. L. 103-337, §1663(c)(4)(A).

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 1609—EDUCATION LOAN REPAYMENT PROGRAMS

Sec.

- | | |
|--------|--|
| 16301. | Education loan repayment program: enlisted members of Selected Reserve with critical specialties. |
| 16302. | Education loan repayment program: health professions officers serving in Selected Reserve with wartime critical medical skill shortages. |

§ 16301. Education loan repayment program: enlisted members of Selected Reserve with critical specialties

(a)(1) Subject to the provisions of this section, the Secretary of Defense may repay—

(A) any loan made, insured, or guaranteed under part B of title IV of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq.); or

(B) any loan made under part E of such title (20 U.S.C. 1087aa et seq.).

Repayment of any such loan shall be made on the basis of each complete year of service performed by the borrower.

(2) The Secretary may repay loans described in paragraph (1) in the case of any person for service performed as an enlisted member of the Selected Reserve of the Ready Reserve of an armed force in a reserve component and military specialty specified by the Secretary of Defense. The Secretary may repay such a loan only if the person to whom the loan was made performed such service after the loan was made.

(b) The portion or amount of a loan that may be repaid under subsection (a) is 15 percent or \$500, whichever is greater, for each year of service.

(c) If a portion of a loan is repaid under this section for any year, interest on the remainder of the loan shall accrue and be paid in the same manner as is otherwise required.

(d) Nothing in this section shall be construed to authorize refunding any repayment of a loan.

(e) A person who transfers from service making the person eligible for repayment of loans under this section (as described in subsection (a)(2)) to service making the person eligible for repayment of loans under section 2171 of this title (as described in subsection (a)(2) of that section) during a year shall be eligible to have repaid a portion of such loan determined by giving appropriate fractional credit for each portion of the year so served, in accordance with regulations of the Secretary concerned.

(f) The Secretary of Defense shall, by regulation, prescribe a schedule for the allocation of funds made available to carry out the provisions of this section and section 2171 of this title during any year for which funds are not sufficient to pay the sum of the amounts eligible for repayment under subsection (a) and section 2171(a) of this title.

(Added Pub. L. 103-337, div. A, title XVI, §1663(d)(1), Oct. 5, 1994, 108 Stat. 3008.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in subsec. (a)(1), is Pub. L. 89-329, Nov. 8, 1965, 79 Stat. 1219, as amended. Parts B and E of title IV of the Act are classified to parts B (§1071 et seq.) and D (§1087aa et seq.), respectively, of subchapter IV of chapter 28 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2171 of this title.

§ 16302. Education loan repayment program: health professions officers serving in Selected Reserve with wartime critical medical skill shortages

(a) Under regulations prescribed by the Secretary of Defense and subject to the other provisions of this section, the Secretary concerned may repay—

(1) a loan made, insured, or guaranteed under part B of title IV of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq.);

(2) a loan made under part E of such title (20 U.S.C. 1087aa et seq.) after October 1, 1975;

(3) a health professions education loan made or insured under part A of title VII of the Public Health Service Act (42 U.S.C. 292 et seq.) or under part B of title VIII of such Act (42 U.S.C. 297 et seq.); and

(4) a loan made, insured, or guaranteed through a recognized financial or educational institution if that loan was used to finance education regarding a health profession that the Secretary of Defense determines to be critically needed in order to meet identified wartime combat medical skill shortages.

(b) The Secretary concerned may repay loans described in subsection (a) only in the case of a person who—

- (1) performs satisfactory service as an officer in the Selected Reserve of an armed force; and
- (2) possesses professional qualifications in a health profession that the Secretary of Defense has determined to be needed critically in order to meet identified wartime combat medical skill shortages.

(c)(1) The amount of any repayment of a loan made under this section on behalf of any person shall be determined on the basis of each complete year of service that is described in subsection (b)(1) and performed by the person after the date on which the loan was made.

(2) Subject to paragraph (3), the amount of a loan that may be repaid under this section on behalf of any person may not exceed \$3,000 for each year of service described in paragraph (1).

(3) The total amount that may be repaid on behalf of any person under this section may not exceed \$20,000.

(d) The authority provided in this section shall apply only in the case of a person first appointed as a commissioned officer before October 1, 1996.

(Added Pub. L. 99-145, title VI, § 671(a)(1), Nov. 8, 1985, 99 Stat. 662, § 2172; amended Pub. L. 100-180, div. A, title VII, § 713, Dec. 4, 1987, 101 Stat. 1112; Pub. L. 101-189, div. A, title VII, § 701(a)-(c), Nov. 29, 1989, 103 Stat. 1467; Pub. L. 102-484, div. A, title VI, § 612(f), Oct. 23, 1992, 106 Stat. 2421; Pub. L. 103-160, div. A, title VI, § 613(f), Nov. 30, 1993, 107 Stat. 1681; renumbered § 16302 and amended Pub. L. 103-337, div. A, title VI, § 613(e), title X, § 1070(a)(9), title XVI, § 1663(d)(2), Oct. 5, 1994, 108 Stat. 2783, 2855, 3009.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in subsec. (a)(1), (2), is Pub. L. 89-329, Nov. 8, 1965, 79 Stat. 1219, as amended. Parts B and E of title IV of the Act are classified to parts B (§ 1071 et seq.) and D (§ 1087aa et seq.), respectively, of subchapter IV of chapter 28 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

The Public Health Service Act, referred to in subsec. (a)(3), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Part A of title VII of the Act is classified generally to part A (§ 292 et seq.) of subchapter V of chapter 6A of Title 42, The Public Health and Welfare. Part B of title VIII of the Act is classified generally to part B (§ 297 et seq.) of subchapter VI of chapter 6A of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

AMENDMENTS

1994—Pub. L. 103-337, § 1663(d)(2), renumbered section 2172 of this title as this section and substituted “Education loan repayment program: health professions officers serving in Selected Reserve with wartime critical medical skill shortages” for “Education loans for certain health professionals who serve in the Selected Reserve” as section catchline.

Subsec. (a)(3). Pub. L. 103-337, § 1070(a)(9), substituted “health professions education loan” for “health education assistance loan”, “part A” for “part C”, and “42 U.S.C. 292” for “42 U.S.C. 294”.

Subsec. (d). Pub. L. 103-337, § 613(e), substituted “October 1, 1996” for “October 1, 1995”.

1993—Subsec. (d). Pub. L. 103-160 substituted “October 1, 1995” for “October 1, 1993”.

1992—Subsec. (d). Pub. L. 102-484 substituted “October 1, 1993” for “October 1, 1992”.

1989—Subsec. (a)(1). Pub. L. 101-189, § 701(c)(1), struck out “a portion of” before “a loan made”.

Subsec. (a)(4). Pub. L. 101-189, § 701(a), added par. (4).

Subsec. (c)(2). Pub. L. 101-189, § 701(c)(2), substituted “amount of” for “portion of”.

Subsec. (d). Pub. L. 101-189, § 701(b), substituted “October 1, 1992” for “October 1, 1990”.

1987—Subsec. (a)(3). Pub. L. 100-180, § 713(a), inserted “or under part B of title VIII of such Act (42 U.S.C. 297 et seq.)”.

Subsec. (d). Pub. L. 100-180, § 713(b), substituted “October 1, 1990” for “October 1, 1988”.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 1663(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

Section 671(b)(2) of Pub. L. 99-145 provided that: “The authority provided under section 2172 [now 16302] of title 10, United States Code, as added by subsection (a), shall apply only—

“(A) in the case of a person who is first appointed as a commissioned officer of an Armed Force after September 30, 1985; and

“(B) with respect to service performed after that date.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 20 section 1087cc-1.

PART V—SERVICE, SUPPLY, AND PROCUREMENT

Chap.		Sec.
1801.	Issue of Serviceable Material to Reserve Components. [No present sections]	
1803.	Facilities for Reserve Components	18231
1805.	Miscellaneous Provisions	18501

CHAPTER 1801—ISSUE OF SERVICEABLE MATERIAL TO RESERVE COMPONENTS

[No present sections]

CHAPTER 1803—FACILITIES FOR RESERVE COMPONENTS

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AMENDMENTS

1994—Pub. L. 103-337, div. A, title XVI, § 1664(b)(1), (3), Oct. 5, 1994, 108 Stat. 3010, renumbered chapter 133 as this chapter and renumbered items 2231 to 2239 as items 18231 to 18239, respectively.

1982—Pub. L. 97-214, § 3(b)(2), (c)(2), July 12, 1982, 96 Stat. 169, 170, substituted “Limitation on certain

projects; authority to carry out small projects with operation and maintenance funds” for “Limitation” in item 2233a, and added item 2239.

1958—Pub. L. 85-861, §1(42), Sept. 2, 1958, 72 Stat. 1457, inserted “: compliance with State law” in item 2237.

Pub. L. 85-685, title VI, §601(4), Aug. 20, 1958, 72 Stat. 665, added item 2233a.

CROSS REFERENCES

Property records, basis and reports, see section 2721 of this title.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 114, 2231 of this title.

§ 18231. Purpose

The purpose of this chapter is to provide for—

(1) the acquisition, by purchase, lease, transfer, construction, expansion, rehabilitation, or conversion of facilities necessary for the proper development, training, operation, and maintenance of the reserve components of the armed forces, including troop housing and messing facilities;

(2) the joint use of those facilities by units of two or more of those reserve components, to the greatest practicable extent for efficiency and economy;

(3) the use of those facilities, in time of war or national emergency, by those units and other units of the armed forces, to the greatest practicable extent for efficiency and economy; and

(4) any other use of those facilities by the United States, in time of war or national emergency, to the greatest practicable extent for efficiency and economy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 120, §2231; Aug. 29, 1957, Pub. L. 85-215, §1, 71 Stat. 489; renumbered §18231, Oct. 5, 1994, Pub. L. 103-337, div. A, title XVI, §1664(b)(2), 108 Stat. 3010.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2231	50:881.	Sept. 11, 1950, ch. 945, §2, 64 Stat. 829.

In clause (1), the words “units of” are omitted as surplusage.

In clause (4), the words “United States” are substituted for the words “Federal Government”.

AMENDMENTS

1994—Pub. L. 103-337 renumbered section 2231 of this title as this section.

1957—Par. (1). Pub. L. 85-215 included troop housing and messing facilities.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2231 of this title.

§ 18232. Definitions

In this chapter:

(1) The term “State” means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and each territory and possession of the United States and includes political subdivisions and military units thereof and tax-supported agencies therein.

(2) The term “facility” includes any (A) interest in land, (B) armory or other structure, and (C) storage or other facility normally needed for the administration and training of any unit of the reserve components of the armed forces.

(3) The term “armory” means a structure that houses one or more units of a reserve component and is used for training and administering those units. It includes a structure that is appurtenant to such a structure and houses equipment used for that training and administration.

(Aug. 10, 1956, ch. 1041, 70A Stat. 121, §2232; Sept. 2, 1958, Pub. L. 85-861, §1 (36), 72 Stat. 1456; July 12, 1982, Pub. L. 97-214, §3(d)(1), 96 Stat. 170; Apr. 21, 1987, Pub. L. 100-26, §7(k)(2), 101 Stat. 284; renumbered §18232, Oct. 5, 1994, Pub. L. 103-337, div. A, title XVI, §1664(b)(2), 108 Stat. 3010.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2232	50:886.	Sept. 11, 1950, ch. 945, §7, 64 Stat. 831.

Clause (1) is substituted for 50:886(b). The words “(2) Puerto Rico; and (3) the District of Columbia” are omitted, since they are specifically included, where applicable, in the revised chapter. The words “together with any improvement thereto” and “of the United States” are omitted as surplusage. 50:886(c) is omitted, since the reserve components of the armed forces are named in section 261 of this title. 50:886(d) is omitted, since its subject matter is covered by other relevant sections of the revised chapter.

1958 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2232	50:886.	Aug. 9, 1955, ch. 662, §1(g), (h), 69 Stat. 594.

The last sentence of 50:886(b) is omitted as surplusage.

AMENDMENTS

1994—Pub. L. 103-337 renumbered section 2232 of this title as this section.

1987—Pub. L. 100-26 inserted “The term” after each par. designation and struck out uppercase letter of first word after first quotation marks in pars. (2) and (3) and substituted lowercase letter.

1982—Cl. (1). Pub. L. 97-214 substituted provision defining “State” as any State of the United States, the District of Columbia, Puerto Rico, and each territory and possession of the United States including political subdivisions and military units thereof and tax-supported agencies therein for provision defining “State” and “Territory” as including political subdivisions and military units thereof and tax-supported agencies therein.

1958—Cl. (3). Pub. L. 85-861 added cl. (3).

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-214 effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97-214, set out as an Effective Date note under section 2801 of this title.

§ 18233. Acquisition

(a) Subject to sections 18233a, 18234, 18235, 18236, and 18238 of this title and to subsection (c), the Secretary of Defense may—

(1) acquire by purchase, lease, or transfer, and construct, expand, rehabilitate, or convert and equip, such facilities as he determines to be necessary to carry out the purposes of this chapter;

(2) contribute to any State such amounts as he determines to be necessary to expand, rehabilitate, or convert facilities owned by it or by the United States for use jointly by units of two or more reserve components of the armed forces or to acquire or construct facilities for such use;

(3) contribute to any State such amounts as he determines to be necessary to expand, rehabilitate, or convert facilities owned by it (or to acquire, construct, expand, rehabilitate, or convert additional facilities) made necessary by the conversion, redesignation, or reorganization of units of the Army National Guard of the United States or the Air National Guard of the United States authorized by the Secretary of the military department concerned;

(4) contribute to any State such amounts for the acquisition, construction, expansion, rehabilitation, or conversion by it of additional facilities as he determines to be required by any increase in the strength of the Army National Guard of the United States or the Air National Guard of the United States;

(5) contribute to any State amounts for the acquisition, construction, expansion, rehabilitation, and conversion by such State of such additional facilities as the Secretary determines to be required because of the failure of existing facilities to meet the purposes of this chapter; and

(6) contribute to any State such amounts for the construction, alteration, or rehabilitation of critical portions of facilities as the Secretary determines to be required to meet a change in Department of Defense construction criteria or standards related to the execution of the Federal military mission assigned to the unit using the facility.

(b) Title to property acquired by the United States under subsection (a)(1) vests in the United States. Such property may be transferred to any State incident to the expansion, rehabilitation, or conversion of such property under subsection (a)(2) so long as the transfer of such property does not result in the creation of an enclave owned by a State within a Federal installation.

(c) The Secretary of Defense may delegate any of his authority or functions under this chapter to any department, agency, or officer of the Department of Defense.

(d) The expenses of leasing property under subsection (a)(1) may be paid from appropriations available for the payment of rent.

(e) The Secretary of Defense may procure, or contribute to any State such amounts as the Secretary determines to be necessary to procure, architectural and engineering services and construction design in connection with facilities to be established or developed under this chapter which are not otherwise authorized by law.

(f)(1) Authority provided by law to construct, expand, rehabilitate, convert, or equip any facility under this section includes authority to expend funds for surveys, administration, overhead, planning, and supervision incident to any such activity.

(2) Authority to acquire real property under this section includes authority to make surveys and to acquire interests in land (including temporary interests) by purchase, gift, exchange of Government-owned land, or otherwise.

(Aug. 10, 1956, ch. 1041, 70A Stat. 121, § 2233; Aug. 20, 1958, Pub. L. 85-685, title VI, § 601(1), (2), 72 Stat. 664; Sept. 2, 1958, Pub. L. 85-861, § 1(37)-(39), 72 Stat. 1456; Nov. 26, 1979, Pub. L. 96-125, title VII, § 703, 93 Stat. 947; Dec. 23, 1981, Pub. L. 97-99, title VIII, §§ 803, 804, 95 Stat. 1380, 1381; July 12, 1982, Pub. L. 97-214, §§ 3(a), (d)(2), (e)(1), 10(a)(2), 96 Stat. 169, 170, 175; Aug. 28, 1984, Pub. L. 98-407, title VII, § 703(a), 98 Stat. 1517; Oct. 19, 1984, Pub. L. 98-525, title XIV, § 1405(34), 98 Stat. 2624; Dec. 3, 1985, Pub. L. 99-167, title VII, § 702(a), 99 Stat. 985; Dec. 5, 1991, Pub. L. 102-190, div. B, title XXVIII, § 2801, 105 Stat. 1537; renumbered § 18233 and amended Oct. 5, 1994, Pub. L. 103-337, div. A, title XVI, § 1664(b)(2), (4), 108 Stat. 3010.)

HISTORICAL AND REVISION NOTES
1956 ACT

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
2233(a)	50:882.	Sept. 11, 1950, ch. 945, §§ 3, 4(c) (1st sentence), 5, 64 Stat. 830, 831.
2233(b)	50:883(c) (1st sentence).	
2233(c)	50:884.	

In subsection (a), the 16th through the 31st words are omitted as executed on July 1, 1955, the end of the 5-year period.

In subsection (a)(2), the words “to the extent required” are omitted as covered by the word “necessary”. The words “use jointly by units of two or more of the reserve components of the armed forces” are substituted for the words “joint utilization of such facilities” to reflect 50:886(d).

In subsections (a)(2) and (3), the words “Territory, Puerto Rico, or the District of Columbia” are inserted to reflect 50:886(b).

In subsection (a)(3), the words “to be required” are substituted for the words “to have been made essential”.

In subsection (b), the words “real or personal” are omitted as surplusage.

In subsection (c), the words “all or * * * part”, “conferred”, “imposed”, “without relieving himself of the responsibility therefor”, “or officers”, and “as he may designate from time to time” are omitted as surplusage.

1958 ACT

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
2233(a)	50:882 (less 16th through 36th words and (a)).	Aug. 9, 1955, ch. 662, § 1(b), (d), 69 Stat. 593.
2233(b)	50:883(c) (2d sentence).	
2233(d)	50:882(a) (less last 12 words).	Aug. 3, 1956, ch. 939, § 414 (less last 12 words), 70 Stat. 1018.

In subsections (a)(2), (3), and (4), the words “Territory, Puerto Rico, or the District of Columbia” are inserted to reflect 50:886(c).

In subsection (d), 50:882(a) (1st 28 words) is omitted as covered by section 2233(a)(1) of this title.

CODIFICATION

Subsequent to enactment of this section, act Sept. 11, 1950 (cited in the Historical and Revision Notes above)

was amended by acts Aug. 9, 1955, ch. 662, 69 Stat. 593; Aug. 3, 1956, ch. 939, title IV, §414, 70 Stat. 1018; Aug. 29, 1957, Pub. L. 85-215, §2, 71 Stat. 490. The amendments were later repealed and reenacted in sections 2233 and 2236 to 2238 [now 18233 and 18236 to 18238] of this title by Pub. L. 85-685, title VI, §602, Aug. 20, 1958, 72 Stat. 665, and Pub. L. 85-861, §§1(37)-(39), 16, 36, Sept. 2, 1958, 72 Stat. 1456, 1558, 1568.

AMENDMENTS

1994—Pub. L. 103-337, §1664(b)(2), renumbered section 2233 of this title as this section.

Subsec. (a). Pub. L. 103-337, §1664(b)(4), substituted “18233a, 18234, 18235, 18236, and 18238” for “2233a, 2234, 2235, 2236, and 2238”.

1991—Subsec. (a)(2). Pub. L. 102-190 inserted before semicolon “or to acquire or construct facilities for such use”.

1985—Subsec. (e). Pub. L. 99-167 amended subsec. (e) generally, inserting “, or contribute to any State such amounts as the Secretary determines to be necessary to procure.”.

1984—Subsec. (a). Pub. L. 98-525, §1405(34)(A), substituted “to subsection (c)” for “subsection (c) of this section”.

Subsec. (a)(6). Pub. L. 98-407 substituted “critical portions of facilities” for “arms storage rooms” and “construction criteria or standards related to the execution of the Federal military mission assigned to the unit using the facility” for “standards related to the safekeeping of arms”.

Subsec. (b). Pub. L. 98-525, §1405(34)(B), struck out “or Territory, Puerto Rico, or the District of Columbia” after “State” in two places. See section 18232(1) of this title.

1982—Subsec. (a)(2) to (4). Pub. L. 97-214, §3(d)(2), struck out “or Territory, Puerto Rico, or the District of Columbia” after “contribute to any State”.

Subsec. (a)(5). Pub. L. 97-214, §3(e)(1), substituted “contribute to any State amounts for the acquisition, construction, expansion, rehabilitation, and conversion by such State of such additional facilities as the Secretary determines to be required because of the failure of existing facilities to meet the purposes of this chapter” for “contribute to any State or Territory, Puerto Rico, or the District of Columbia, such amounts for the acquisition, construction, expansion, rehabilitation, or conversion by the failure of existing facilities to meet the purposes of this chapter” and “A contribution made for an armory may not be more than 75 percent of the cost of construction of which it is applied”.

Subsec. (a)(6). Pub. L. 97-214, §3(d)(2), struck out “or Territory, Puerto Rico, or the District of Columbia” after “contribute to any State”.

Subsec. (e). Pub. L. 97-214, §10(a)(2), substituted “architectural and engineering services and construction design” for “advance planning, construction design, and architectural services”.

Subsec. (f). Pub. L. 97-214, §3(a), expanded subsec. (f) into pars. (1) and (2), and substituted provision that legal authority to construct, expand, rehabilitate, etc., any facility under this section, also includes the authority to expend funds for surveys, administration, overhead, planning, and supervision incident to any such activity and provisions that authority to acquire real property under this section includes authority to make surveys and to acquire interests in land (including temporary interests) by purchase, gift, exchange of Government-owned land, or otherwise, for provisions that facilities authorized by subsec. (a) could not be considered “military public works” under the military construction authorization acts that repeal prior authorizations for military public works.

1981—Subsec. (a)(2). Pub. L. 97-99, §803(1), inserted “or by the United States” after “or convert facilities owned by it”.

Subsec. (a)(6). Pub. L. 97-99, §804, added par. (6).

Subsec. (b). Pub. L. 97-99, §803(2), inserted provisions that such property may be transferred to any State or Territory, Puerto Rico, or the District of Columbia in-

cident to the expansion, rehabilitation, or conversion of such property under subsec. (a)(2) so long as the transfer of such property does not result in the creation of an enclave owned by a State or Territory, Puerto Rico, or the District of Columbia within a Federal installation.

1979—Subsec. (a)(5). Pub. L. 96-125 added par. (5).

1958—Subsec. (a). Pub. L. 85-861, §1(37), substituted “two or more reserve components” for “two or more of the reserve components” in cl. (2), added cl. (3), and redesignated former cl. (3) as (4).

Pub. L. 85-685, §601(1), inserted reference to section 2233a of this title in opening provisions, and struck out provisions which required the Secretary of Defense to consult with the Committees on Armed Services of the Senate and House of Representatives.

Subsec. (b). Pub. L. 85-861, §1(38), inserted “by the United States” after “property acquired”.

Subsec. (d). Pub. L. 85-861, §1(39), added subsec. (d).

Subsecs. (e), (f). Pub. L. 85-685, §601(2), added subsecs. (e) and (f).

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 703(b) of Pub. L. 98-407 provided that: “The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1984.”

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-214 effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97-214, set out as an Effective Date note under section 2801 of this title.

OBLIGATION OF FUNDS BEFORE JULY 1, 1958

Section 16 of Pub. L. 85-861, Sept. 2, 1958, 72 Stat. 1558, provided that not more than \$580,000,000 could be obligated for the purposes of this section before July 1, 1958, but with such limitation not applicable to the expenses for the leasing of property under subsec. (a)(1) of this section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 18233a, 18234, 18235, 18236, 18237, 18239 of this title.

§ 18233a. Limitation on certain projects; authority to carry out small projects with operation and maintenance funds

(a)(1) Except as provided in paragraph (2), an expenditure or contribution in an amount in excess of \$400,000 may not be made under section 18233 of this title for any facility until the Secretary of Defense has notified the Committees on Armed Services and on Appropriations of the location, nature, and estimated cost of the facility and a period of 21 days has passed after receipt of such notification.

(2) Paragraph (1) does not apply to expenditures or contributions for the following:

(A) Facilities acquired by lease.

(B) A project for a facility that has been authorized by Congress, if the location and purpose of the facility are the same as when authorized and if, based upon bids received—

(i) the scope of work of the project, as approved by Congress, is not proposed to be reduced by more than 25 percent; and

(ii) the current working estimate of the cost of the project does not exceed the amount approved for the project by more than (I) 25 percent, or (II) 200 percent of the amount specified by section 2805(a)(2) of this title as the maximum amount for a minor military construction project, whichever is lesser.

(b) Under such regulations as the Secretary of Defense may prescribe, a project authorized under section 18233(a) of this title that costs \$300,000 or less may be carried out with funds available for operations and maintenance.

(Added Pub. L. 85-685, title VI, § 601(3), Aug. 20, 1958, 72 Stat. 665, § 2233a; amended Pub. L. 87-554, title VII, § 701, July 27, 1962, 76 Stat. 243; Pub. L. 93-552, title VII, § 703, Dec. 27, 1974, 88 Stat. 1770; Pub. L. 94-107, title VII, § 703, Oct. 7, 1975, 89 Stat. 569; Pub. L. 96-125, title VII, § 704, Nov. 26, 1979, 93 Stat. 947; Pub. L. 97-214, § 3(c)(1), July 12, 1982, 96 Stat. 169; Pub. L. 98-115, title VII, § 702, Oct. 11, 1983, 97 Stat. 782; Pub. L. 98-407, title VII, § 702, Aug. 28, 1984, 98 Stat. 1517; Pub. L. 100-26, § 7(f)(1), Apr. 21, 1987, 101 Stat. 281; Pub. L. 100-180, div. B, subd. 3, title I, § 2304(a), Dec. 4, 1987, 101 Stat. 1215; Pub. L. 102-190, div. B, title XXVIII, § 2804, Dec. 5, 1991, 105 Stat. 1537; renumbered § 18233a and amended Pub. L. 103-337, div. A, title XVI, § 1664(b)(2), (5), Oct. 5, 1994, 108 Stat. 3010.)

AMENDMENTS

1994—Pub. L. 103-337, § 1664(b)(2), renumbered section 2233a of this title as this section.

Subsec. (a)(1). Pub. L. 103-337, § 1664(b)(5)(A), substituted “18233” for “2233”.

Subsec. (b). Pub. L. 103-337, § 1664(b)(5)(B), substituted “18233(a)” for “2233(a)”.

1991—Subsec. (b). Pub. L. 102-190 substituted “\$300,000” for “\$200,000”.

1987—Subsec. (a)(2)(B)(ii)(II). Pub. L. 100-26 substituted “specified by section 2805(a)(2) of this title” for “specified by law”.

Subsec. (b). Pub. L. 100-180 substituted “\$200,000” for “\$100,000”.

1984—Subsec. (b). Pub. L. 98-407 substituted “\$100,000” for “\$50,000”.

1983—Subsec. (a)(1). Pub. L. 98-115 substituted “\$400,000” for “\$200,000”.

1982—Pub. L. 97-214 substituted “Limitation on certain projects; authority to carry out small projects with operation and maintenance funds” for “Limitation” as section catchline and completely revised text. Before such revision section had provided that no expenditure or contribution of more than \$175,000 could be made under section 2233 of this title for any facility until after the expiration of thirty days from the date upon which the Secretary of Defense or his designee notified the Senate and the House of Representatives of the location, nature, and estimated cost of such facility, but that such requirement did not apply to facilities acquired by lease, facilities acquired, constructed, expanded, rehabilitated, converted, or equipped to restore or replace facilities damaged or destroyed, where the Senate and the House of Representatives had been notified of that action, and that, under such regulations as the Secretary of Defense might prescribe, any project authorized pursuant to section 2233(a) which did not cost more than \$50,000 could be accomplished from appropriations available for maintenance and operations.

1979—Par. (1). Pub. L. 96-125 substituted “\$175,000” for “\$100,000”.

1975—Par. (2). Pub. L. 94-107 substituted “\$50,000” for “\$25,000”.

1974—Par. (1). Pub. L. 93-552 substituted “\$100,000” for “\$850,000”.

1962—Pub. L. 87-554 designated existing provisions as par. (1), substituted “until after the expiration of thirty days from the date upon which the Secretary of Defense or his designee notifies the Senate and the House of Representatives of the location, nature, and estimated cost of such facility” for “that has not been authorized by a law authorizing appropriations for specific facilities for reserve forces”, and added par. (2).

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

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 1987 AMENDMENT

Section 2304(b) of Pub. L. 100-180 provided that: “The amendment made by subsection (a) [amending this section] shall apply to projects authorized under section 2233(a) [now 18233(a)] of title 10, United States Code, for which contracts are entered into on or after the date of the enactment of this Act [Dec. 4, 1987].”

EFFECTIVE DATE OF 1984 AMENDMENT

Section 702 of Pub. L. 98-407 provided that the amendment made by that section is effective Oct. 1, 1984.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 702 of Pub. L. 98-115 provided that the amendment made by that section is effective Oct. 1, 1983.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-214 effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97-214, set out as an Effective Date note under section 2801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 18233 of this title.

§ 18234. Location and use

No expenditures or contribution may be made for a facility under section 18233 of this title, unless the Secretary of Defense determines that—

(1) the number of units of the reserve components of the armed forces located or to be located in the area within which the facility is to be provided is not and will not be larger than the number that can reasonably be expected to be maintained at authorized strength, considering the number of persons living in the area who are qualified for membership in those reserve units; and

(2) the plan under which the facility is to be provided makes provision for the greatest practicable use of the facility jointly by units of two or more of those components.

(Aug. 10, 1956, ch. 1041, 70A Stat. 121, § 2234; renumbered § 18234 and amended Oct. 5, 1994, Pub. L. 103-337, div. A, title XVI, § 1664(b)(2), (6), 108 Stat. 3010.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2234	50:883(a).	Sept. 11, 1950, ch. 945, §4(a), 64 Stat. 830.

The word “community” is omitted as covered by the word “area”. The word “program” is omitted as covered by the word “plan”. The words “use * * * jointly by units of two or more of those components” are substituted for the words “joint utilization” to reflect 50:886(d). The words “is not and will not be larger than” are substituted for the words “does not exceed”. The word “considering” is substituted for the words “taking into account”.

AMENDMENTS

1994—Pub. L. 103-337 renumbered section 2234 of this title as this section and substituted “18233” for “2233” in introductory provisions.

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.

CROSS REFERENCES

- Authorized strength—
 Army and Air Force Reserves, see section 12002 of this title.
 Coast Guard Reserve, see section 702 of Title 14, Coast Guard.
 Definition, see section 101 of this title.
 Naval Reserve and Marine Corps Reserve, see section 12001 of this title.
 Ready Reserve, see section 10141 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 18233 of this title.

§ 18235. Administration; other use permitted by Secretary

(a) The Secretary of Defense, after consulting the Committees on Armed Services of the Senate and the House of Representatives on matters of policy, may—

- (1) administer, operate, maintain, and equip facilities constructed, expanded, rehabilitated, or converted under section 18233 of this title or otherwise acquired and used for the purposes of this chapter;
- (2) permit persons or organizations other than members and units of the armed forces to use those facilities under such leases or other agreements as he considers appropriate; and
- (3) cover the payments received under those leases or agreements into the Treasury to the credit of the appropriation from which the cost of maintaining the facility, including its utilities and services, is paid.

(b) The Secretary may not permit any use or disposition to be made of a facility covered by subsection (a) that would interfere with its use—

- (1) for administering and training the reserve components of the armed forces; or
- (2) in time of war or national emergency, by other units of the armed forces or by the United States for any other purpose.

(Aug. 10, 1956, ch. 1041, 70A Stat. 122, §2235; renumbered §18235 and amended Oct. 5, 1994, Pub. L. 103-337, div. A, title XVI, §1664(b)(2), (7), 108 Stat. 3010.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2235(a)	50:883(c) (less 1st sentence, and less last 70 words of last sentence).	Sept. 11, 1950, ch. 945, §4(c) (less 1st sentence), 64 Stat. 830.
2235(b)	50:883(c) (last 70 words of last sentence).	

In subsection (a), the words “from time to time” and “or appropriations” are omitted as surplusage.

In subsection (b), the words “United States” are substituted for the words “Federal Government”. The words “units of” are omitted as surplusage. The words “may not” are substituted for the words “shall at no time”.

AMENDMENTS

1994—Pub. L. 103-337, §1664(b)(2), renumbered section 2235 of this title as this section.

Subsec. (a)(1). Pub. L. 103-337, §1664(b)(7), substituted “18233” for “2233(a)(1)”.

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 18233 of this title.

§ 18236. Contributions to States; other use permitted by States

(a) Contributions under section 18233 of this title are subject to such terms as the Secretary of Defense, after consulting the Committees on Armed Services of the Senate and the House of Representatives, considers necessary for the purposes of this chapter. Except as otherwise agreed when the contribution is made, a facility provided by a contribution under paragraph (3) or (4) of section 18233(a) of this title may be used jointly by units of two or more reserve components of the armed forces only to the extent that the State considers practicable.

(b) A contribution made for an armory under paragraph (4) or (5) of section 18233(a) of this title may not exceed the sum of—

- (1) 100 percent of the cost of architectural, engineering and design services (including advance architectural, engineering and design services under section 18233(e) of this title); and
- (2) a percentage of the cost of construction (exclusive of the cost of architectural, engineering and design services) calculated so that upon completion of construction the total contribution (including the contribution for architectural, engineering and design services) equals 75 percent of the total cost of construction (including the cost of architectural, engineering and design services).

For the purpose of computing the cost of construction under this subsection, the amount contributed by a State may not include the cost or market value of any real property that it has contributed.

(c) If a State acquires, constructs, expands, rehabilitates, or converts a facility with amounts contributed under section 18233 of this title, it may—

(1) permit persons or organizations other than members and units of the armed forces to use the facility under such leases or other agreements as it considers appropriate; and

(2) apply amounts received under those leases or agreements to the cost of maintaining the facility.

(d) Except as otherwise agreed when the contribution is made, and except as the agreement is later changed, a State may not permit any use or disposition of the facility that would interfere with its use—

(1) for administering and training the reserve components of the armed forces; or

(2) in time of war or national emergency, by other units of the armed forces or by the United States for any other purpose.

(Aug. 10, 1956, ch. 1041, 70A Stat. 122, § 2236; Sept. 2, 1958, Pub. L. 85-861, § 1(40), 72 Stat. 1456; July 12, 1982, Pub. L. 97-214, § 3(d)(2), (3), (e)(2), 96 Stat. 170; Dec. 3, 1985, Pub. L. 99-167, title VII, § 702(b), 99 Stat. 985; Nov. 14, 1986, Pub. L. 99-661, div. A, title XIII, § 1343(a)(11), 100 Stat. 3993; renumbered § 18236 and amended Oct. 5, 1994, Pub. L. 103-337, div. A, title XVI, § 1664(b)(2), (8), 108 Stat. 3010.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2236(a)	50:883(d) (1st sentence).	Sept. 11, 1950, ch. 945,
2236(b)	50:883(d) (less 1st sentence).	§ 4(d), (e), 64 Stat. 830.
2236(c)	50:883(e) (less last 87 words).	
2236(d)	50:883(e) (last 87 words).	

Appropriate references to the Territories, Puerto Rico, and the District of Columbia are inserted throughout the revised section to reflect 50:886(b).

In subsection (a), the words “and conditions” are omitted as covered by the word “terms”. The words “considers necessary for” are substituted for the words “shall deem necessary to accomplish”. The words “used jointly by units of two or more reserve components of the armed forces” are substituted for the words “joint utilization”, to reflect 50:886(d).

In subsection (b), the words “the construction to which it is to be applied” are substituted for the words “the additional or improved facilities to be constructed”, since, under section 2233 of this title, contributions may be made for other purposes as well as additions and improvements. The words “may not include” are substituted for the words “shall be exclusive of”.

In subsection (c)(1), the words “from time to time” are omitted as surplusage.

In subsection (c)(2), the words “defray in whole or in part” are omitted as surplusage.

In subsection (d), the words “except as the agreement is later changed” are substituted for the words “by subsequent modifications of the agreement.” The words “units of” and “at no time” are omitted as surplusage. The words “United States” are substituted for the words “Federal Government”.

1958 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2236(a)	50:883(d) (1st sentence).	Aug. 9, 1955, ch. 662,
2236(b)	50:883(d) (less 1st sentence).	§ 1(e), 69 Stat. 593.

In subsection (a), the words “may be used jointly” are substituted for the words “shall be subject to joint utilization”. The words “and conditions” are omitted as surplusage.

AMENDMENTS

1994—Pub. L. 103-337, § 1664(b)(2), renumbered section 2236 of this title as this section.

Subsec. (a). Pub. L. 103-337, § 1664(b)(8)(A), substituted “18233” for “2233” and “paragraph (3) or (4) of section 18233(a)” for “section 2233(a)(3) or (4)”.

Subsec. (b). Pub. L. 103-337, § 1664(b)(8)(B)(i), substituted “paragraph (4) or (5) of section 18233(a)” for “clause (4) or (5) of section 2233(a)” in introductory provisions.

Subsec. (b)(1). Pub. L. 103-337, § 1664(b)(8)(B)(ii), which directed amendment of subsec. (b)(2) by substituting “section 18233(e)” for “section 2233(e)”, was executed by making the substitution in subsec. (b)(1) to reflect the probable intent of Congress because the words “section 2233(e)” did not appear in subsec. (b)(2).

Subsec. (c). Pub. L. 103-337, § 1664(b)(8)(C), substituted “18233” for “2233” in introductory provisions.

1986—Subsec. (b). Pub. L. 99-661 struck out “, territory, the Commonwealth of Puerto Rico, or the District of Columbia, as the case may be,” after “contributed by a State” in last sentence.

1985—Subsec. (b). Pub. L. 99-167 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “A contribution made for an armory under section 2233(a)(4) or (5) of this title may not be more than 75 percent of the cost of the construction to which it is applied. For the purpose of computing the cost of construction under this subsection, the amount contributed by the State may not include the cost or market value of any real property that it has contributed.”

1982—Subsec. (a). Pub. L. 97-214, § 3(d)(3), struck out “or Territory, Puerto Rico, or the District of Columbia, whichever is concerned,” after “the State”.

Subsec. (b). Pub. L. 97-214, § 3(d)(3), (e)(2), inserted “or (5)”, and struck out “or Territory, Puerto Rico, or the District of Columbia, whichever is concerned,” after “the State”.

Subsecs. (c), (d). Pub. L. 97-214, § 3(d)(2), struck out “or Territory, Puerto Rico, or the District of Columbia” after “a State”.

1958—Subsec. (a). Pub. L. 85-861 permitted joint use of facilities provided by contributions under section 2233(a)(4) of this title.

Subsec. (b). Pub. L. 85-861 substituted “A contribution made for an armory under section 2233(a)(4) of this title may not be more than 75 percent of the cost of the construction to which it is applied” for “No contribution made for a facility under section 2233(a)(3) of this title may be more than 75 percent of the cost of the construction to which it is to be applied”.

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

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 1982 AMENDMENT

Amendment by Pub. L. 97-214 effective Oct. 1, 1982, and applicable to military construction projects, and to

construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97-214, set out as an Effective Date note under section 2801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 18233 of this title.

§ 18237. Supervision of construction: compliance with State law

(a) Any construction, expansion, rehabilitation, or conversion under section 2233(a)(1)¹ of this title may be performed under the supervision of the Chief of Engineers of the Army or the head of such office or agency in the Department of the Navy as the Secretary of the Navy may designate.

(b) The construction, expansion, rehabilitation, or conversion of facilities in a State under paragraph (2), (3), (4), (5), or (6) of section 2233(a)¹ of this title shall be done according to the laws of that jurisdiction and under the supervision of its officials, subject to the inspection and approval of the Secretary of Defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 123, §2237; Sept. 2, 1958, Pub. L. 85-861, §1(41), 72 Stat. 1457; Nov. 2, 1966, Pub. L. 89-718, §19, 80 Stat. 1118; July 12, 1982, Pub. L. 97-214, §3(d)(2), 96 Stat. 170; renumbered §18237 and amended Oct. 5, 1994, Pub. L. 103-337, div. A, title XVI, §1664(b)(2), (9), div. B, title XXVIII, §2852, 108 Stat. 3010, 3011, 3072.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2237	50:885.	Sept. 11, 1950, ch. 945, §6, 64 Stat. 831.

The words “of facilities” are omitted as surplusage. The words “Chief of Engineers” are substituted for the words “Chief, Corps of Engineers” to conform to section 3036(a)(1) of this title. The words “of the Army” and “of the Navy” are inserted for clarity.

1958 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2237(a)	50:885(a).	Aug. 9, 1955, ch. 662, §1(f), 69 Stat. 594.
2237(b)	50:885 (less (a)).	

In subsection (b), the words “Territory, Puerto Rico, or the District of Columbia” are inserted to reflect 50:886(c).

REFERENCES IN TEXT

Section 2233 of this title, referred to in text, was renumbered section 18233 of this title by Pub. L. 103-337, div. A, title XVI, §1664(b)(2), Oct. 5, 1994, 108 Stat. 3010.

AMENDMENTS

1994—Pub. L. 103-337, §1664(b)(2), renumbered section 2237 of this title as this section.

Subsec. (a). Pub. L. 103-337, §1664(b)(9)(A), which directed amendment of subsec. (a) by substituting “paragraph (2), (3), or (4) of section 18233(a)” for “section 2233(a)(2), (3) and (4)”, could not be executed because the words “section 2233(a)(2), (3) and (4)” did not appear subsequent to intervening amendment by Pub. L. 103-337, §2852(a). See below.

Pub. L. 103-337, §2852(a), substituted “under section 2233(a)(1)” for “under any provision of this chapter except section 2233(a)(2), (3), and (4)”.

¹ See References in Text note below.

Subsec. (b). Pub. L. 103-337, §1664(b)(9)(B), which directed amendment of subsec. (b) by substituting “paragraph (2), (3), or (4) of section 18233(a)” for “section 2233(a)(2), (3) or (4)”, could not be executed because the words “section 2233(a)(2), (3) or (4)” did not appear subsequent to intervening amendment by Pub. L. 103-337, §2852(b). See below.

Pub. L. 103-337, §2852(b), substituted “paragraph (2), (3), (4), (5), or (6) of section 2233(a)” for “section 2233(a)(2), (3), or (4)”.

1982—Subsec. (b). Pub. L. 97-214 struck out “or Territory, Puerto Rico, or the District of Columbia” after “facilities in a State”.

1966—Subsec. (a). Pub. L. 89-718 substituted “the head of such office or agency in the Department of the Navy as the Secretary of the Navy may designate” for “the Chief of the Bureau of Yards and Docks of the Navy”.

1958—Pub. L. 85-861 inserted “: compliance with State law” in section catchline.

Subsec. (a). Pub. L. 85-861 designated existing provisions as subsec. (a) and substituted “under any provision of this chapter except section 2233(a)(2), (3), and (4) of this title” for “under this chapter”.

Subsec. (b). Pub. L. 85-861 added subsec. (b).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 1664(b)(2), (9) 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 1982 AMENDMENT

Amendment by Pub. L. 97-214 effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97-214, set out as an Effective Date note under section 2801 of this title.

§ 18238. Army National Guard of United States; Air National Guard of United States: limitation on relocation of units

A unit of the Army National Guard of the United States or the Air National Guard of the United States may not be relocated or withdrawn under this chapter without the consent of the governor of the State or, in the case of the District of Columbia, the commanding general of the National Guard of the District of Columbia.

(Aug. 10, 1956, ch. 1041, 70A Stat. 123, §2238; Sept. 2, 1958, Pub. L. 85-861, §1(43), 72 Stat. 1457; July 12, 1982, Pub. L. 97-214, §3(d)(4), 96 Stat. 170; renumbered §18238, Oct. 5, 1994, Pub. L. 103-337, div. A, title XVI, §1664(b)(2), 108 Stat. 3010.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2238	50:883(b).	Sept. 11, 1950, ch. 945, §4(b), 64 Stat. 830.

The words “from any community or area” are omitted as surplusage. The word “relocated” is substituted for the words “location * * * be changed”. The words “Territory, or Puerto Rico, or the commanding general of the National Guard of the District of Columbia” are inserted to reflect 50:886(b), since the source statute applied to the District of Columbia and there is no “governor” of the District of Columbia. The words “as the case may be” are substituted for the words “within which such unit is situated”. The words “with regard to such withdrawal or change of location” are omitted as surplusage.

1958 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2238	50:883(b).	Aug. 9, 1955, ch. 662, §1(c), 69 Stat. 593.

The words “shall have been consulted” and “such withdrawal or change of location” are omitted as surplusage.

AMENDMENTS

1994—Pub. L. 103-337 renumbered section 2238 of this title as this section.

1982—Pub. L. 97-214 substituted “or, in the case of the District of Columbia, the commanding general of the National Guard of the District of Columbia” for “or Territory, or Puerto Rico, or the commanding general of the District of Columbia, as the case may be”.

1958—Pub. L. 85-861 required the consent of the governor, or the commanding general of the National Guard of the District of Columbia, prior to relocation or withdrawal.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-214 effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97-214, set out as an Effective Date note under section 2801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 18233 of this title.

§ 18239. Waiver of certain restrictions

(a) The Secretary of Defense and the Secretary of each military department may make expenditures and contributions under section 18233 of this title without regard to section 3324(a) and (b) of title 31.

(b) Authority provided by law to place permanent or temporary improvements on land under section 18233 of this title may be exercised on land not owned by the United States—

(1) before title to the land on which the improvement is located (or is to be located) is approved under section 355 of the Revised Statutes (40 U.S.C. 255); and

(2) even though the land will be held in other than a fee simple interest in a case in which the Secretary of the military department concerned determines that the interest to be acquired in the land is sufficient for the purposes of the project.

(Added Pub. L. 97-214, §3(b)(1), July 12, 1982, 96 Stat. 169, §2239; amended Pub. L. 97-295, §1(23), Oct. 12, 1982, 96 Stat. 1290; Pub. L. 97-321, title VIII, §805(a)(2), Oct. 15, 1982, 96 Stat. 1573; renumbered §18239 and amended Pub. L. 103-337, div. A, title XVI, §1664(b)(2), (10), Oct. 5, 1994, 108 Stat. 3010, 3011.)

AMENDMENTS

1994—Pub. L. 103-337, §1664(b)(2), renumbered section 2239 of this title as this section.

Subsecs. (a), (b). Pub. L. 103-337, §1664(b)(10), substituted “18233” for “2233”.

1982—Subsec. (a). Pub. L. 97-295 substituted “section 3324(a) and (b) of title 31” for “section 3648 of the Revised Statutes (31 U.S.C. 529)”.

Subsec. (b). Pub. L. 97-321, in introductory text, substituted “on land” for “on lands” and inserted “on land not owned by the United States”; redesignated former

cl. (1) as par. (1); added par. (2) and struck out former cl. (2) “even though the land is held temporarily”.

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

Section effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97-214, set out as a note under section 2801 of this title.

CHAPTER 1805—MISCELLANEOUS PROVISIONS

Sec.

18501. Reserve components: personnel and logistic support by military departments.

18502. Reserve components: supplies, services, and facilities.

§ 18501. Reserve components: personnel and logistic support by military departments

The Secretary concerned is responsible for providing the personnel, equipment, facilities, and other general logistic support necessary to enable units and Reserves in the Ready Reserve of the reserve components under his jurisdiction to satisfy the training requirements and mobilization readiness requirements for those units and Reserves as recommended by the Secretary concerned and by the Chairman of the Joint Chiefs of Staff and approved by the Secretary of Defense, and as recommended by the Commandant of the Coast Guard and approved by the Secretary of Transportation when the Coast Guard is not operated as a service of the Navy.

(Added Pub. L. 103-337, div. A, title XVI, §1664(c)(1), Oct. 5, 1994, 108 Stat. 3011.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 264(b) of this title, prior to repeal by Pub. L. 103-337, §1661(a)(2)(A).

EFFECTIVE DATE

Chapter 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.

§ 18502. Reserve components: supplies, services, and facilities

(a) The Secretary concerned shall make available to the reserve components under his jurisdiction the supplies, services, and facilities of the armed forces under his jurisdiction that he considers necessary to support and develop those components.

(b) Whenever he finds it to be in the best interest of the United States, the Secretary concerned may issue supplies of the armed forces under his jurisdiction to the reserve components under his jurisdiction, without charge to the appropriations for those components for the cost or value of the supplies or for any related expense.

(c) Whenever he finds it to be in the best interest of the United States, the Secretary of the Army or the Secretary of the Air Force may

issue to the Army National Guard or the Air National Guard, as the case may be, supplies of the armed forces under his jurisdiction that are in addition to supplies issued to that National Guard under section 702 of title 32 or charged against its appropriations under section 106 or 107 of title 32, without charge to the appropriations for those components for the cost or value of the supplies or for any related expense.

(d) Supplies issued under subsection (b) or (c) may be repossessed or redistributed as prescribed by the Secretary concerned.

(Added Pub. L. 103-337, div. A, title XVI, §1664(c)(1), Oct. 5, 1994, 108 Stat. 3012.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 2540 of this title, prior to repeal by Pub. L. 103-337, §1664(c)(2).